

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1226

Introduced by Langemeier, 23

Read first time January 18, 2006

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to water; to amend sections 46-2,112, 46-2,115,
2 46-712, 46-713, 46-714, and 46-715, Reissue Revised
3 Statutes of Nebraska; to change provisions relating to
4 instream appropriations, ground water, and management
5 areas; and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-2,112, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 46-2,112 A permit to appropriate water for instream flows
4 shall be subject to review every fifteen years after it is granted.
5 Notice of a pending review shall be published in a newspaper
6 published or of general circulation in the area involved at least
7 once each week for three consecutive weeks, the last publication to
8 be not later than fourteen years and ten months after the permit
9 was granted or after the date of the director's action following
10 the last such review, whichever is later. The notice shall state
11 that any interested person may file comments relating to the review
12 of the instream appropriation or may request a hearing to present
13 evidence relevant to such review. Any such comments or request
14 for hearing shall be filed in the headquarters office of the
15 department within six weeks after the date of final publication of
16 the notice. If requested by any interested person, the director
17 shall schedule a hearing. The purpose of the hearing shall be to
18 receive evidence regarding whether the water appropriated under the
19 permit still provides the beneficial uses for which the permit was
20 granted and whether the permit is still in the public interest.
21 The hearing shall proceed under the rebuttable presumption that the
22 appropriation continues to provide the beneficial uses for which
23 the permit was granted. The permit shall not be deemed to be in
24 the public interest unless a determination can be made that the
25 flow rate approved in the permit is available at least eighty-five

1 percent of the time during the specified period. and that the
2 appropriation is in the public interest. After the hearing, the
3 director may by order modify or cancel, in whole or in part, the
4 instream appropriation.

5 Sec. 2. Section 46-2,115, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 46-2,115 An application for an instream appropriation
8 which is pending on or filed after January 1, 1997, shall be
9 approved by the director if he or she finds that:

10 (1) In order to allow for future beneficial uses, there
11 is unappropriated water available to provide the approved instream
12 flow rate at least ~~twenty~~ eighty-five percent of the time during
13 the period requested;

14 (2) The appropriation is necessary to maintain the
15 existing recreational uses or needs of existing fish and wildlife
16 species;

17 (3) The appropriation will not interfere with any senior
18 surface water appropriation;

19 (4) The rate and timing of the flow is the minimum
20 necessary to maintain the existing recreational uses or needs of
21 existing fish and wildlife species; and

22 (5) The application is in the public interest.

23 The application may be granted for a rate of flow that is
24 less than that requested by the applicant or for a shorter period
25 of time than requested by the applicant.

1 Sec. 3. Section 46-712, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 46-712 (1) A natural resources district may establish
4 a ground water management area in accordance with this section
5 to accomplish any one or more of the following objectives: (a)
6 Protection of ground water quantity; (b) protection of ground water
7 quality; or (c) prevention or resolution of conflicts between users
8 of ground water and appropriators of surface water, which ground
9 water and surface water are hydrologically connected.

10 (2) Prior to establishment by a district of a management
11 area other than a management area being established in accordance
12 with section 46-718, the district's management plan shall have been
13 approved by the Director of Natural Resources or the district
14 shall have completed the requirements of subsection (2) of
15 section 46-711. If necessary to determine whether a management
16 area should be designated, the district may initiate new studies
17 and data-collection efforts and develop computer models. In order
18 to establish a management area, the district shall fix a time
19 and place for a public hearing to consider the management plan
20 information supplied by the director and to hear any other
21 evidence. The hearing shall be located within or in reasonable
22 proximity to the area proposed for designation as a management
23 area. Notice of the hearing shall be published as provided in
24 section 46-743, and the hearing shall be conducted in accordance
25 with such section.

1 (3) (a) Within ninety days after the hearing, the district
2 shall determine whether a management area shall be designated.
3 If the district determines that no management area shall be
4 established, the district shall issue an order to that effect.

5 (b) If the district determines that a management area
6 shall be established, the district shall by order designate
7 the area as a management area and shall adopt one or more
8 controls authorized by section 46-739 to be utilized within the
9 area in order to achieve the ground water management objectives
10 specified in the plan. Such an order shall include a geographic and
11 stratigraphic definition of the area. The boundaries and controls
12 shall take into account any considerations brought forth at the
13 hearing and administrative factors directly affecting the ability
14 of the district to implement and carry out local ground water
15 management.

16 (c) The controls adopted shall not include controls
17 substantially different from those set forth in the notice of the
18 hearing. The area designated by the order shall not include any
19 area not included in the notice of the hearing.

20 (4) Modification of the boundaries of a
21 district-designated management area or dissolution of such an area
22 shall be in accordance with the procedures established in this
23 section. Hearings for such modifications or for dissolution may not
24 be initiated more often than once a year. Hearings for modification
25 of controls may be initiated as often as deemed necessary by the

1 district, and such modifications may be accomplished using the
2 procedure in this section.

3 (5) A district shall, prior to adopting or amending
4 any rules or regulations for a management area, consult with any
5 holders of permits for intentional or incidental underground water
6 storage and recovery issued pursuant to section 46-226.02, 46-233,
7 46-240, 46-241, 46-242, or 46-297.

8 (6) If a plan has been adopted by a district under
9 this section that includes one or more controls authorized by
10 subdivision (1)(a), (b), or (c) of section 46-739, the district
11 may request the department to immediately call for a stay on the
12 issuance of new surface water rights in the area, river basin,
13 subbasin, or reach of the management area.

14 Sec. 4. Section 46-713, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 46-713 (1)(a) By January 1 of each year beginning in
17 2006 and except as otherwise provided in this section and section
18 46-720, the Department of Natural Resources shall complete an
19 evaluation of the expected long-term availability of hydrologically
20 connected water supplies for both existing and new surface water
21 uses and existing and new ground water uses in each of the
22 state's river basins and shall issue a report that describes the
23 results of the evaluation. For purposes of the evaluation and the
24 report, a river basin may be divided into two or more subbasins or
25 reaches. A river basin, subbasin, or reach for which an integrated

1 management plan has been or is being developed pursuant to sections
2 46-715 to 46-717 or pursuant to section 46-719 shall not be
3 evaluated unless it is being reevaluated as provided in subsection
4 (2) of this section. For each river basin, subbasin, or reach
5 evaluated, the report shall describe (i) the nature and extent
6 of use of both surface water and ground water in each river
7 basin, subbasin, or reach, (ii) the geographic area within which
8 the department preliminarily considers surface water and ground
9 water to be hydrologically connected and the criteria used for
10 that determination, and (iii) the extent to which the then-current
11 uses affect available near-term and long-term water supplies.
12 River basins, subbasins, and reaches designated as overappropriated
13 in accordance with subsection (4) of this section shall not be
14 evaluated by the department.

15 (b) Based on the information reviewed in the evaluation
16 process, the department shall arrive at a preliminary conclusion
17 for each river basin, subbasin, and reach evaluated as to
18 whether such river basin, subbasin, or reach presently is fully
19 appropriated without the initiation of additional uses. The
20 department shall also determine if and how such preliminary
21 conclusion would change if no additional legal constraints were
22 imposed on future development of hydrologically connected surface
23 water and ground water and reasonable projections are made about
24 the extent and location of future development in such river basin,
25 subbasin, or reach.

1 (c) In addition to the conclusion about whether a river
2 basin, subbasin, or reach is fully appropriated, the department
3 shall include in the report, for informational purposes only,
4 a summary of relevant data provided by any interested party
5 concerning the social, economic, and environmental impacts of
6 additional hydrologically connected surface water and ground water
7 uses on resources that are dependent on streamflow or ground water
8 levels but are not protected by appropriations or regulations.

9 (d) In preparing the report, the department shall rely
10 on the best scientific data and information readily available
11 and ensure that the conclusions and results contained in the
12 report are accurate to a reasonable degree of scientific certainty.

13 Upon request by the department, state agencies, natural resources
14 districts, irrigation districts, reclamation districts, public
15 power and irrigation districts, mutual irrigation companies, canal
16 companies, municipalities, and other water users and stakeholders
17 shall provide relevant data and information in their possession.
18 The Department of Natural Resources shall specify by rule and
19 regulation the types of scientific data and other information
20 that will be considered for making the preliminary determinations
21 required by this section.

22 (2) The department shall complete a reevaluation of
23 a river basin, subbasin, or reach for which an integrated
24 management plan has been or is being prepared if the department has
25 reason to believe that a reevaluation might lead to a different

1 determination about whether such river basin, subbasin, or reach
2 is fully appropriated or overappropriated. A decision to reevaluate
3 may be reached by the department on its own or in response
4 to a petition filed with the department by any interested
5 person. To be considered sufficient to justify a reevaluation,
6 a petition shall be accompanied by supporting information showing
7 that (a) new scientific data or other information relevant to the
8 determination of whether the river basin, subbasin, or reach is
9 fully appropriated or overappropriated has become available since
10 the last evaluation of such river basin, subbasin, or reach, (b)
11 the department relied on incorrect or incomplete information when
12 the river basin, subbasin, or reach was last evaluated, or (c)
13 the department erred in its interpretation or application of the
14 information available when the river basin, subbasin, or reach was
15 last evaluated. If a petition determined by the department to be
16 sufficient is filed before March 1 of any year, the reevaluation of
17 the river basin, subbasin, or reach involved shall be included in
18 the next annual report prepared in accordance with subsection (1)
19 of this section. If any such petition is filed on or after March 1
20 of any year, the department may defer the reevaluation of the river
21 basin, subbasin, or reach involved until the second annual report
22 after such filing.

23 (3) A river basin, subbasin, or reach shall be deemed
24 fully appropriated if the ~~department determines~~ evaluation
25 performed by the department shows that then-current uses of

1 hydrologically connected surface water and ground water in the
2 river basin, subbasin, or reach cause or will in the ~~reasonably~~
3 ~~foreseeable future~~ next ten years cause (a) the surface water
4 supply to be insufficient to sustain over the long term the
5 beneficial or useful purposes for which existing natural flow or
6 storage appropriations were granted and the beneficial or useful
7 purposes for which, at the time of approval, any existing instream
8 appropriation was granted, (b) the streamflow to be insufficient
9 to sustain over the long term the beneficial uses from wells
10 constructed in aquifers dependent on recharge from the river or
11 stream involved, or (c) reduction in the flow of a river or stream
12 sufficient to cause noncompliance by Nebraska with an interstate
13 compact or decree, other formal state contract or agreement, or
14 applicable state or federal laws. The evaluation performed by
15 the department to determine future streamflow depletions shall
16 be performed to ensure that all results and conclusions can be
17 verified and are accurate to a reasonable degree of scientific
18 certainty.

19 (4) (a) A river basin, subbasin, or reach shall be deemed
20 overappropriated if, on July 16, 2004, the river basin, subbasin,
21 or reach is subject to an interstate cooperative agreement among
22 three or more states and if, prior to such date, the department
23 has declared a moratorium on the issuance of new surface water
24 appropriations in such river basin, subbasin, or reach and has
25 requested each natural resources district with jurisdiction in the

1 affected area in such river basin, subbasin, or reach either (i)
2 to close or to continue in effect a previously adopted closure of
3 all or part of such river basin, subbasin, or reach to the issuance
4 of additional water well permits in accordance with subdivision
5 (1)(k) of section 46-656.25 as such section existed prior to July
6 16, 2004, or (ii) to temporarily suspend or to continue in effect
7 a temporary suspension, previously adopted pursuant to section
8 46-656.28 as such section existed prior to July 16, 2004, on the
9 drilling of new water wells in all or part of such river basin,
10 subbasin, or reach.

11 (b) Within sixty days after July 16, 2004, the department
12 shall designate which river basins, subbasins, or reaches are
13 overappropriated. The designation shall include a description of
14 the geographic area within which the department has determined that
15 surface water and ground water are hydrologically connected and the
16 criteria used to make such determination.

17 Sec. 5. Section 46-714, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 46-714 (1) Whenever the Department of Natural Resources
20 makes a preliminary determination that a river basin, subbasin,
21 or reach not previously designated as overappropriated and not
22 previously determined to be fully appropriated has become fully
23 appropriated, the department shall place an immediate stay on
24 the issuance of any new natural-flow, storage, or storage-use
25 appropriations in such river basin, subbasin, or reach. The

1 department shall also provide prompt notice of such preliminary
2 determination to all licensed water well contractors in the state
3 and to each natural resources district that encompasses any of
4 the geographic area involved. Such notice to natural resources
5 districts shall be by certified mail. The notice shall be addressed
6 to the manager of the natural resources district or his or her
7 designee and shall include the signature of the director of the
8 department. Immediately upon receipt of such notice by the natural
9 resources district, there shall be a stay on issuance of water
10 well construction permits in the geographic area preliminarily
11 determined by the department to include hydrologically connected
12 surface water and ground water in such river basin, subbasin,
13 or reach. The department shall also notify the public of the
14 preliminary determination that the river basin, subbasin, or reach
15 is fully appropriated and of the affected geographic area. Such
16 notice shall be provided by publication once each week for
17 three consecutive weeks in at least one newspaper of statewide
18 circulation and in such other newspaper or newspapers as are deemed
19 appropriate by the department to provide general circulation in the
20 river basin, subbasin, or reach.

21 (2) If the department preliminarily determines a river
22 basin, subbasin, or reach to be fully appropriated and has
23 identified the existence of hydrologically connected surface water
24 and ground water in such river basin, subbasin, or reach, stays
25 shall also be imposed (a) on the construction of any new water

1 well in the area covered by the determination if ~~such construction~~
2 ~~has not commenced~~ a permit has not been issued prior to the
3 determination, ~~whether or not a construction permit for such water~~
4 ~~well was previously obtained from the department or a natural~~
5 ~~resources district,~~ and (b) on the use of an existing water well
6 or an existing surface water appropriation in the affected area
7 to increase the number of acres historically irrigated. Permits
8 for construction of new wells not completed by the date of
9 the determination shall be subject to any conditions imposed by
10 the applicable natural resources district. Such additional stays
11 shall begin ten days after the first publication, in a newspaper
12 of statewide circulation, of the notice of the preliminary
13 determination that the river basin, subbasin, or reach is fully
14 appropriated.

15 (3) Exceptions to the stays imposed pursuant to
16 subsection (1), (2), (9), or (10) of this section shall exist
17 for (a) test holes, (b) dewatering wells with an intended use
18 of one year or less, (c) monitoring wells, (d) wells constructed
19 pursuant to a ground water remediation plan under the Environmental
20 Protection Act, (e) water wells designed and constructed to pump
21 fifty gallons per minute or less, except that no two or more
22 water wells that each pump fifty gallons per minute or less may
23 be connected or otherwise combined to serve a single project such
24 that the collective pumping would exceed fifty gallons per minute,
25 (f) water wells for range livestock, (g) new surface water uses or

1 water wells that are necessary to alleviate an emergency situation
2 involving the provision of water for human consumption or public
3 health and safety, (h) water wells defined by the applicable
4 natural resources district as replacement water wells, but the
5 consumptive use of any such replacement water well can be no
6 greater than the historic consumptive use of the water well it
7 is to replace or, if applicable, the historic consumptive use of
8 the surface water use it is to replace, (i) new surface water
9 uses and water wells to which a right or permit is transferred in
10 accordance with state law, but the consumptive use of any such new
11 use can be no greater than the historic consumptive use of the
12 surface water use or water well from which the right or permit is
13 being transferred, (j) water wells and increases in ground water
14 irrigated acres for which a variance is granted by the applicable
15 natural resources district for good cause shown, (k) to the extent
16 permitted by the applicable natural resources district and subject
17 to any conditions imposed by the natural resources district,
18 increases in ground water irrigated acres that result from the use
19 of water wells that were ~~constructed within the nine months prior~~
20 ~~to the effective date of the stay~~ permitted prior to the effective
21 date of the determination made in subsection (1) of this section
22 and completed in accordance with section 46-738 but were not used
23 for irrigation prior to that effective date, (l) to the extent
24 permitted by the applicable natural resources district, increases
25 in ground water irrigated acres that result from the use of water

1 wells that are constructed after the effective date of the stay in
2 accordance with a permit granted by that natural resources district
3 prior to the effective date of the stay, (m) surface water uses for
4 which temporary public-use construction permits are issued pursuant
5 to subsection (8) of section 46-233, (n) surface water uses and
6 increases in surface water irrigated acres for which a variance is
7 granted by the department for good cause shown, and (o) water wells
8 for which permits have been approved by the Department of Natural
9 Resources pursuant to the Municipal and Rural Domestic Ground Water
10 Transfers Permit Act prior to the effective date of the stay.

11 (4) Except as otherwise provided in this section, any
12 stay imposed pursuant to subsections (1) and (2) of this section
13 shall remain in effect for the affected river basin, subbasin, or
14 reach until the department has made a final determination regarding
15 whether the river basin, subbasin, or reach is fully appropriated
16 and, if the department's final determination is that the river
17 basin, subbasin, or reach is fully appropriated, shall remain in
18 effect as provided in subsection (12) of this section. Within
19 the time period between the dates of the preliminary and final
20 determinations, the department and the affected natural resources
21 districts shall consult with any irrigation district, reclamation
22 district, public power and irrigation district, mutual irrigation
23 company, canal company, or municipality that relies on water from
24 the affected river basin, subbasin, or reach and with other water
25 users and stakeholders as deemed appropriate by the department

1 or the natural resources districts. The department shall also
2 hold one or more public hearings not more than ninety days after
3 the first publication of the notice required by subsection (1)
4 of this section. Notice of the hearings shall be provided in
5 the same manner as the notice required by such subsection. Any
6 interested person may appear at such hearing and present written or
7 oral testimony and evidence concerning the appropriation status of
8 the river basin, subbasin, or reach, the department's preliminary
9 conclusions about the extent of the area within which the surface
10 water and ground water supplies for the river basin, subbasin, or
11 reach are determined to be hydrologically connected, and whether
12 the stays on new uses should be terminated.

13 (5) Within thirty days after the final hearing under
14 subsection (4) of this section, the department shall notify the
15 appropriate natural resources districts of the department's final
16 determination with respect to the appropriation status of the
17 river basin, subbasin, or reach. If the final determination is
18 that the river basin, subbasin, or reach is fully appropriated,
19 the department, at the same time, shall (a) decide whether to
20 continue or to terminate the stays on new surface water uses and
21 on increases in the number of surface water irrigated acres and (b)
22 designate the geographic area within which the department considers
23 surface water and ground water to be hydrologically connected in
24 the river basin, subbasin, or reach and describe the methods and
25 criteria used in making that determination. The department shall

1 provide notice of its decision to continue or terminate the stays
2 in the same manner as the notice required by subsection (1) of this
3 section.

4 (6) If the department's final determination is that
5 the river basin, subbasin, or reach is not fully appropriated,
6 the department shall provide notice of such determination as
7 provided in subsection (1) of this section, the stays imposed
8 pursuant to subsections (1) and (2) of this section shall terminate
9 immediately, and no further action pursuant to subsections (7)
10 through (12) of this section and sections 46-715 to 46-719 shall be
11 required.

12 (7) Within ninety days after a final determination by
13 the department that a river basin, subbasin, or reach is fully
14 appropriated, an affected natural resources district may hold one
15 or more public hearings on the question of whether the stays on
16 the issuance of new water well permits, on the construction of
17 new water wells, or on increases in ground water irrigated acres
18 should be terminated. Notice of the hearings shall be published as
19 provided in section 46-743.

20 (8) Within forty-five days after a natural resources
21 district's final hearing pursuant to subsection (7) of this
22 section, the natural resources district shall decide (a) whether
23 to terminate the stay on new water wells in all or part of the
24 natural resources district subject to the stay and (b) whether to
25 terminate the stay on increases in ground water irrigated acres. If

1 the natural resources district decides not to terminate the stay
2 on new water wells in any geographic area, it shall also decide
3 whether to exempt from such stay the construction of water wells
4 for which permits were issued prior to the issuance of the stay but
5 for which construction had not begun prior to issuance of the stay.
6 If construction of water wells for which permits were issued prior
7 to the stay is allowed, all permits that were valid when the stay
8 went into effect shall be extended by a time period equal to the
9 length of the stay.

10 (9) Whenever the department designates a river basin,
11 subbasin, or reach as overappropriated, each previously declared
12 moratorium on the issuance of new surface water appropriations in
13 the river basin, subbasin, or reach shall continue in effect. The
14 department shall also provide prompt notice of such designation
15 to all licensed water well contractors in the state and to each
16 natural resources district that encompasses any of the geographic
17 area involved. Immediately upon receipt of such notice by a natural
18 resources district, there shall be a stay on the issuance of new
19 water well construction permits in any portion of such natural
20 resources district that is within the hydrologically connected area
21 designated by the department. The department shall also notify the
22 public of its designation of such river basin, subbasin, or reach
23 as overappropriated and of the geographic area involved in such
24 designation. Such notice shall be published once each week for
25 three consecutive weeks in at least one newspaper of statewide

1 circulation and in such other newspapers as are deemed appropriate
2 by the department to provide general notice in the river basin,
3 subbasin, or reach.

4 (10) Beginning ten days after the first publication
5 of notice under subsection (9) of this section in a newspaper
6 of statewide circulation, there shall also be stays (a) on the
7 construction of any new water well in the hydrologically connected
8 area if such construction has not commenced prior to such date
9 and if no permit for construction of the water well has been
10 issued previously by either the department or the natural resources
11 district, (b) on the use of an existing water well in the
12 hydrologically connected area to increase the number of acres
13 historically irrigated, and (c) on the use of an existing surface
14 water appropriation to increase the number of acres historically
15 irrigated in the affected area.

16 (11) Within ninety days after a designation by
17 the department of a river basin, subbasin, or reach as
18 overappropriated, a natural resources district that encompasses any
19 of the hydrologically connected area designated by the department
20 may hold one or more public hearings on the question of whether
21 to terminate the stays on (a) the construction of new water wells
22 within all or part of its portion of the hydrologically connected
23 area, (b) the issuance of new water well construction permits in
24 such area, or (c) the increase in ground water irrigated acres in
25 such area. Notice of any hearing for such purpose shall be provided

1 pursuant to section 46-743. Prior to the scheduling of a natural
2 resources district hearing on the question of whether to terminate
3 any such stay, the department and the affected natural resources
4 district shall consult with any irrigation district, reclamation
5 district, public power and irrigation district, mutual irrigation
6 company, canal company, or municipality that relies on water from
7 the affected river basin, subbasin, or reach and with other water
8 users and stakeholders as deemed appropriate by the department or
9 the natural resources district.

10 (12) Any stay issued pursuant to this section shall
11 remain in effect until (a) the stay has been terminated pursuant
12 to subsection (5), (6), (8), or (11) of this section, (b) an
13 integrated management plan for the affected river basin, subbasin,
14 or reach has been adopted by the department and the affected
15 natural resources districts and has taken effect, (c) an integrated
16 management plan for the affected river basin, subbasin, or reach
17 has been adopted by the Interrelated Water Review Board and has
18 taken effect, (d) the department has completed a reevaluation
19 pursuant to subsection (2) of section 46-713 and has determined
20 that the affected river basin, subbasin, or reach is not fully
21 appropriated or overappropriated, or (e) the stay expires pursuant
22 to this subsection. Such stay may be imposed initially for not
23 more than three years following the department's designation of
24 the river basin, subbasin, or reach as overappropriated or the
25 department's final determination that a river basin, subbasin, or

1 reach is fully appropriated and may be extended thereafter on
2 an annual basis by agreement of the department and the affected
3 natural resources district for not more than two additional years
4 if necessary to allow the development, adoption, and implementation
5 of an integrated management plan pursuant to sections 46-715 to
6 46-719.

7 Sec. 6. Section 46-715, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 46-715 (1) Whenever the Department of Natural
10 Resources has designated a river basin, subbasin, or reach as
11 overappropriated or has made a final determination that a river
12 basin, subbasin, or reach is fully appropriated, the natural
13 resources districts encompassing such river basin, subbasin, or
14 reach and the department shall jointly develop an integrated
15 management plan for such river basin, subbasin, or reach. The plan
16 shall be completed, adopted, and take effect within three years
17 after such designation or final determination unless the department
18 and the natural resources districts jointly agree to an extension
19 of not more than two additional years.

20 (2) In developing an integrated management plan, the
21 effects of existing and potential new water uses on existing
22 surface water appropriators and ground water users shall be
23 considered. An integrated management plan shall include the
24 following: (a) Clear goals and objectives with a purpose of
25 sustaining a balance between water uses and water supplies so that

1 the economic viability, social and environmental health, safety,
2 and welfare of the river basin, subbasin, or reach can be achieved
3 and maintained for both the near term and the long term; (b) a map
4 clearly delineating the geographic area subject to the integrated
5 management plan; (c) one or more of the ground water controls
6 authorized for adoption by natural resources districts pursuant to
7 section 46-739; and (d) one or more of the surface water controls
8 authorized for adoption by the department pursuant to section
9 46-716. The plan may also provide for utilization of any applicable
10 incentive programs authorized by law. Nothing in the integrated
11 management plan for a fully appropriated river basin, subbasin, or
12 reach shall require a natural resources district to regulate ground
13 water uses in place at the time of the department's preliminary
14 determination that the river basin, subbasin, or reach is fully
15 appropriated, but a natural resources district may voluntarily
16 adopt such regulations. Unless required by compact, no integrated
17 management plan shall require regulation for purposes of mitigation
18 or offset for the withdrawal and use of ground water that occurs
19 in areas that do not contain hydrologically connected water. Any
20 use of water that is not hydrologically connected water shall
21 be considered de minimus and exempt from regulation under an
22 integrated management plan unless the applicable natural resources
23 district decides to include all water users within the district
24 boundary. No area shall be subject to more than one integrated
25 management plan. Integrated management plans shall be limited to

1 the basin, subbasin, or reach surface drainage areas.

2 (3) The ground water and surface water controls proposed
3 for adoption in the integrated management plan pursuant to
4 subsection (1) of this section shall, when considered together
5 and with any applicable incentive programs, (a) be consistent with
6 the goals and objectives of the plan, (b) be sufficient to ensure
7 that the state will remain in compliance with applicable state and
8 federal laws and with any applicable interstate water compact or
9 decree or other formal state contract or agreement pertaining to
10 surface water or ground water use or supplies, and (c) protect the
11 ground water users whose water wells are dependent on recharge from
12 the river or stream involved and the surface water appropriators on
13 such river or stream from streamflow depletion caused by surface
14 water uses and ground water uses begun after the date the river
15 basin, subbasin, or reach was designated as overappropriated or
16 was preliminarily determined to be fully appropriated in accordance
17 with section 46-713.

18 (4)(a) In any river basin, subbasin, or reach that is
19 designated as overappropriated, when the designated area lies
20 within two or more natural resources districts, the department and
21 the affected natural resources districts shall jointly develop a
22 basin-wide plan for the area designated as overappropriated. Such
23 plan shall be developed using the consultation and collaboration
24 process described in subdivision (b) of this subsection, shall
25 be developed concurrently with the development of the integrated

1 management plan required pursuant to subsections (1) through (3) of
2 this section, and shall be designed to achieve, in the incremental
3 manner described in subdivision (d) of this subsection, the goals
4 and objectives described in subsection (2) of this section. The
5 basin-wide plan shall be adopted after hearings by the department
6 and the affected natural resources districts.

7 (b) In any river basin, subbasin, or reach designated
8 as overappropriated and subject to this subsection, the department
9 and each natural resources district encompassing such river basin,
10 subbasin, or reach shall jointly develop an integrated management
11 plan for such river basin, subbasin, or reach pursuant to
12 subsections (1) through (3) of this section. Each integrated
13 management plan for a river basin, subbasin, or reach subject
14 to this subsection shall be consistent with any basin-wide plan
15 developed pursuant to subdivision (a) of this subsection. Such
16 integrated management plan shall be developed after consultation
17 and collaboration with irrigation districts, reclamation districts,
18 public power and irrigation districts, mutual irrigation companies,
19 canal companies, and municipalities that rely on water from
20 within the affected area and that, after being notified of the
21 commencement of the plan development process, indicate in writing
22 their desire to participate in such process. In addition, the
23 department or the affected natural resources districts may include
24 designated representatives of other stakeholders. If agreement
25 is reached by all parties involved in such consultation and

1 collaboration process, the department and each natural resources
2 district shall adopt the agreed-upon integrated management plan. If
3 agreement cannot be reached by all parties involved, the integrated
4 management plan shall be developed and adopted by the department
5 and the affected natural resources district pursuant to sections
6 46-715 to 46-718 or by the Interrelated Water Review Board pursuant
7 to section 46-719.

8 (c) Any integrated management plan developed under
9 this subsection shall identify the overall difference between
10 the current and fully appropriated levels of development. Such
11 determination shall take into account cyclical supply, including
12 drought, identify the portion of the overall difference between the
13 current and fully appropriated levels of development that is due
14 to conservation measures, and identify the portions of the overall
15 difference between the current and fully appropriated levels of
16 development that are due to water use initiated prior to July 1,
17 1997, and to water use initiated on or after such date.

18 (d) Any integrated management plan developed under this
19 subsection shall adopt an incremental approach to achieve the goals
20 and objectives identified under subdivision (2)(a) of this section
21 using the following steps:

22 (i) The first incremental goals shall be to address the
23 impact of streamflow depletions to (A) surface water appropriations
24 and (B) water wells constructed in aquifers dependent upon recharge
25 from streamflow, to the extent those depletions are due to water

1 use initiated after July 1, 1997, and, unless an interstate
2 cooperative agreement for such river basin, subbasin, or reach is
3 no longer in effect, to prevent streamflow depletions that would
4 cause noncompliance by Nebraska with such interstate cooperative
5 agreement. During the first increment, the department and the
6 affected natural resources districts shall also pursue voluntary
7 efforts, subject to the availability of funds, to offset any
8 increase in streamflow depletive effects that occur after July 1,
9 1997, but are caused by ground water uses initiated prior to such
10 date. The department and the affected natural resources districts
11 may also use other appropriate and authorized measures for such
12 purpose;

13 (ii) The department and the affected natural resources
14 districts may amend an integrated management plan subject to this
15 subsection (4) as necessary based on an annual review of the
16 progress being made toward achieving the goals for that increment;

17 (iii) During the ten years following adoption of an
18 integrated management plan developed under this subsection (4)
19 or during the ten years after the adoption of any subsequent
20 increment of the integrated management plan pursuant to subdivision
21 (d) (iv) of this subsection, the department and the affected natural
22 resources district shall conduct a technical analysis of the
23 actions taken in such increment to determine the progress towards
24 meeting the goals and objectives adopted pursuant to subsection (2)
25 of this section. The analysis shall include an examination of (A)

1 available supplies and changes in long-term availability, (B) the
2 effects of conservation practices and natural causes, including,
3 but not limited to, drought, and (C) the effects of the plan
4 on reducing the overall difference between the current and fully
5 appropriated levels of development identified in subdivision (4)(c)
6 of this section. The analysis shall determine whether a subsequent
7 increment is necessary in the integrated management plan to meet
8 the goals and objectives adopted pursuant to subsection (2) of this
9 section and reduce the overall difference between the current and
10 fully appropriated levels of development identified in subdivision
11 (4)(c) of this section;

12 (iv) Based on the determination made in subdivision
13 (d)(iii) of this subsection, the department and the affected
14 natural resources districts, utilizing the consultative and
15 collaborative process described in subdivision (b) of this
16 subsection, shall if necessary identify goals for a subsequent
17 increment of the integrated management plan. Subsequent increments
18 shall be completed, adopted, and take effect not more than ten
19 years after adoption of the previous increment; and

20 (v) If necessary, the steps described in subdivisions
21 (d)(ii) through (iv) of this subsection shall be repeated until
22 the department and the affected natural resources districts agree
23 that the goals and objectives identified pursuant to subsection
24 (2) of this section have been met and the overall difference
25 between the current and fully appropriated levels of development

1 identified in subdivision (4)(c) of this section has been addressed
2 so that the river basin, subbasin, or reach has returned to a fully
3 appropriated condition.

4 Sec. 7. Original sections 46-2,112, 46-2,115, 46-712,
5 46-713, 46-714, and 46-715, Reissue Revised Statutes of Nebraska,
6 are repealed.