

AMENDMENTS TO LB1098

(Amendments to Standing Committee amendments, AM2594)

Introduced by Lathrop

1 1. Insert the following new sections:

2 Sec. 7. Section 46-701, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 46-701 Sections 46-701 to 46-754 and section 9 of this
5 act shall be known and may be cited as the Nebraska Ground Water
6 Management and Protection Act.

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

9 46-715 (1)(a) 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 (b) A natural resources district encompassing a river
21 basin, subbasin, or reach that has not been designated as
22 overappropriated or has not been finally determined to be

1 fully appropriated may, jointly with the department, develop an
2 integrated management plan for such river basin, subbasin, or
3 reach located within the district. The district shall notify the
4 department of its intention to develop an integrated management
5 plan which shall be developed and adopted according to sections
6 46-715 to 46-717 and subsections (1) and (2) of section 46-718. The
7 objective of an integrated management plan under this subdivision
8 is to manage such river basin, subbasin, or reach to achieve
9 and sustain a balance between water uses and water supplies for
10 the long term. If a district develops an integrated management
11 plan under this subdivision and the department subsequently
12 determines the affected river basin, subbasin, or reach to be fully
13 appropriated, the department and the affected natural resources
14 district may amend the integrated management plan.

15 (2) In developing an integrated management plan, the
16 effects of existing and potential new water uses on existing
17 surface water appropriators and ground water users shall be
18 considered. An integrated management plan shall include the
19 following: (a) Clear goals and objectives with a purpose of
20 sustaining a balance between water uses and water supplies so that
21 the economic viability, social and environmental health, safety,
22 and welfare of the river basin, subbasin, or reach can be achieved
23 and maintained for both the near term and the long term; (b)
24 a map clearly delineating the geographic area subject to the
25 integrated management plan; (c) one or more of the ground water
26 controls authorized for adoption by natural resources districts
27 pursuant to section 46-739; (d) one or more of the surface water

1 controls authorized for adoption by the department pursuant to
2 section 46-716; and (e) a plan to gather and evaluate data,
3 information, and methodologies that could be used to implement
4 sections 46-715 to 46-717, increase understanding of the surface
5 water and hydrologically connected ground water system, and test
6 the validity of the conclusions and information upon which the
7 integrated management plan is based. The plan may also provide for
8 utilization of any applicable incentive programs authorized by law.
9 Nothing in the integrated management plan for a fully appropriated
10 river basin, subbasin, or reach shall require a natural resources
11 district to regulate ground water uses in place at the time of
12 the department's preliminary determination that the river basin,
13 subbasin, or reach is fully appropriated, unless such regulation is
14 necessary to carry out the goals and objectives of a basin-wide
15 plan pursuant to section 9 of this act, but a natural resources
16 district may voluntarily adopt such regulations. The applicable
17 natural resources district may decide to include all water users
18 within the district boundary in an integrated management plan.

19 (3) In order to provide a process for economic
20 development opportunities and economic sustainability within a
21 river basin, subbasin, or reach, the integrated management plan
22 shall include clear and transparent procedures to track depletions
23 and gains to streamflows resulting from new, retired, or other
24 changes to uses within the river basin, subbasin, or reach. The
25 procedures shall:

26 (a) Utilize generally accepted methodologies based on the
27 best available information, data, and science;

1 (b) Include a generally accepted methodology to be
2 utilized to estimate depletions and gains to streamflows, which
3 methodology includes location, amount, and time regarding gains to
4 streamflows as offsets to new uses;

5 (c) Identify means to be utilized so that new uses will
6 not have more than a de minimis effect upon existing surface water
7 users or ground water users;

8 (d) Identify procedures the natural resources district
9 and the department will use to report, consult, and otherwise
10 share information on new uses, changes in uses, or other activities
11 affecting water use in the river basin, subbasin, or reach;

12 (e) Identify, to the extent feasible, potential water
13 available to mitigate new uses, including, but not limited
14 to, water rights leases, interference agreements, augmentation
15 projects, conjunctive use management, and use retirement;

16 (f) Develop, to the extent feasible, an outline of
17 plans after consultation with and an opportunity to provide
18 input from irrigation districts, public power and irrigation
19 districts, reclamation districts, municipalities, other political
20 subdivisions, and other water users to make water available for
21 offset to enhance and encourage economic development opportunities
22 and economic sustainability in the river basin, subbasin, or reach;
23 and

24 (g) Clearly identify procedures that applicants for new
25 uses shall take to apply for approval of a new water use and
26 corresponding offset.

27 Nothing in this subsection shall require revision or

1 amendment of an integrated management plan approved on or before
2 August 30, 2009.

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

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

1 management plan required pursuant to subsections (1) through (4) 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 (4) 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
26 collaboration process, the department and each natural resources
27 district shall adopt the agreed-upon integrated management plan. If

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

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

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

20 (i) The first incremental goals shall be to address the
21 impact of streamflow depletions to (A) surface water appropriations
22 and (B) water wells constructed in aquifers dependent upon recharge
23 from streamflow, to the extent those depletions are due to water
24 use initiated after July 1, 1997, and, unless an interstate
25 cooperative agreement for such river basin, subbasin, or reach is
26 no longer in effect, to prevent streamflow depletions that would
27 cause noncompliance by Nebraska with such interstate cooperative

1 agreement. During the first increment, the department and the
2 affected natural resources districts shall also pursue voluntary
3 efforts, subject to the availability of funds, to offset any
4 increase in streamflow depletive effects that occur after July 1,
5 1997, but are caused by ground water uses initiated prior to such
6 date. The department and the affected natural resources districts
7 may also use other appropriate and authorized measures for such
8 purpose;

9 (ii) The department and the affected natural resources
10 districts may amend an integrated management plan subject to this
11 subsection (5) as necessary based on an annual review of the
12 progress being made toward achieving the goals for that increment;

13 (iii) During the ten years following adoption of an
14 integrated management plan developed under this subsection (5)
15 or during the ten years after the adoption of any subsequent
16 increment of the integrated management plan pursuant to subdivision
17 (d) (iv) of this subsection, the department and the affected natural
18 resources district shall conduct a technical analysis of the
19 actions taken in such increment to determine the progress towards
20 meeting the goals and objectives adopted pursuant to subsection (2)
21 of this section. The analysis shall include an examination of (A)
22 available supplies and changes in long-term availability, (B) the
23 effects of conservation practices and natural causes, including,
24 but not limited to, drought, and (C) the effects of the plan
25 on reducing the overall difference between the current and fully
26 appropriated levels of development identified in subdivision (5) (c)
27 of this section. The analysis shall determine whether a subsequent

1 increment is necessary in the integrated management plan to meet
2 the goals and objectives adopted pursuant to subsection (2) of this
3 section and reduce the overall difference between the current and
4 fully appropriated levels of development identified in subdivision
5 (5) (c) of this section;

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

14 (v) If necessary, the steps described in subdivisions
15 (d) (ii) through (iv) of this subsection shall be repeated until
16 the department and the affected natural resources districts agree
17 that the goals and objectives identified pursuant to subsection
18 (2) of this section have been met and the overall difference
19 between the current and fully appropriated levels of development
20 identified in subdivision (5) (c) of this section has been addressed
21 so that the river basin, subbasin, or reach has returned to a fully
22 appropriated condition.

23 (6) In any river basin, subbasin, or reach that is
24 designated as fully appropriated or overappropriated and whenever
25 necessary to ensure that the state is in compliance with an
26 interstate compact or decree or a formal state contract or
27 agreement, the department, in consultation with the affected

1 districts, shall forecast on an annual basis the maximum amount
2 of water that may be available from streamflow for beneficial use
3 in the short term and long term in order to comply with the
4 requirement of subdivision (4)(b) of this section. This forecast
5 shall be made by January 1, 2008, and each January 1 thereafter.

6 Sec. 9. This section shall apply notwithstanding any
7 other provision of the Nebraska Ground Water Management and
8 Protection Act.

9 (1) If a river basin as described in subdivision
10 (2)(a) of section 2-1504 includes three or more natural resources
11 districts that, pursuant to subdivision (1)(a) of section 46-715,
12 have been or are required to develop an integrated management
13 plan for all or substantially all of the district, such natural
14 resources districts shall, jointly with the department and the
15 natural resources districts within the same basin, develop and
16 adopt a basin-wide plan for the areas of a basin, subbasin, or
17 reach determined by the department to have hydrologically connected
18 water supplies, except that any natural resources district that has
19 developed and implemented a basin-wide plan pursuant to subsection
20 (5) of section 46-715 shall not be affected by this section.
21 If deemed appropriate by the department and the affected natural
22 resources districts, the basin-wide plan may combine two or more
23 river basins.

24 (2) An integrated management plan developed under
25 subdivision (1)(a) or (b) of section 46-715 shall ensure such
26 integrated management plan is consistent with any basin-wide
27 plan developed pursuant to this section. However, an integrated

1 management plan may implement additional incentive programs or
2 controls pursuant to section 46-739, if the programs and controls
3 are consistent with the basin-wide plan.

4 (3) A basin-wide plan shall be completed, adopted, and
5 take effect within three years after the effective date of this
6 act, unless the department and the natural resources districts
7 jointly agree to an extension of not more than an additional two
8 years.

9 (4) A basin-wide plan shall (a) have clear goals and
10 objectives with a purpose of stopping ground water declines and
11 sustaining a balance between water uses and water supplies, (b)
12 ensure that compliance with any interstate compact or decree, or
13 other formal state contract or agreement or applicable state or
14 federal law is maintained, and (c) set forth a timeline to meet the
15 goals and objectives as required under this subsection, but in no
16 case shall a timeline exceed thirty years after the effective date
17 of this act. The basin-wide plan may allow for the use of ground
18 water in excess of predevelopment storage quantities.

19 (5)(a) A basin-wide plan developed under this section
20 shall utilize the best generally-accepted methodologies and
21 available information, data, and science to evaluate the effect
22 of existing uses of hydrologically connected water on existing
23 surface water and ground water users. The plan shall include a
24 process to gather and evaluate data, information, and methodologies
25 to increase understanding of the surface water and hydrologically
26 connected ground water system within the basin, subbasin, or
27 reach and test the validity of the conclusions, information, and

1 assumptions upon which the plan is based.

2 (b) A basin-wide plan developed under this section shall
3 include a schedule indicating the end date by which the stated
4 goals and objectives are to be achieved and the management actions
5 to be taken to achieve the goals and objectives. To ensure that
6 reasonable progress is being made toward achieving the final
7 goals and objectives of the plan, the schedule shall also include
8 measurable hydrologic objectives and intermediate dates by which
9 the objectives are expected to be met and monitoring plans to
10 measure the extent to which the objectives are being achieved. Such
11 intermediate objectives shall be established in a manner that, if
12 achieved on schedule, will provide a reasonable expectation that
13 the goals of the plan will be achieved by the established end date.

14 (c) A basin-wide plan shall be developed using a
15 consultation and collaboration process involving irrigation
16 districts, reclamation districts, public power and irrigation
17 districts, mutual irrigation companies, canal companies, ground
18 water users, the Game and Parks Commission, and municipalities
19 that rely on water from within the affected area and that, after
20 being notified of the commencement of the plan development process,
21 indicate in writing their desire to become an official participant
22 in such process. The department and affected natural resources
23 districts shall involve official participants in formulating,
24 evaluating, and recommending plans and management actions and work
25 to reach an agreement among all official participants involved in
26 a basin-wide plan. In addition, the department or the affected
27 natural resources districts may include designated representatives

1 of other stakeholders. If agreement is reached by all parties
2 involved in such consultation and collaboration process, the
3 department and the affected natural resources districts shall adopt
4 the agreed-upon basin-wide plan. If agreement cannot be reached
5 by all parties involved, the basin-wide plan shall be developed
6 and adopted by the department and the affected natural resources
7 districts or by the Interrelated Water Review Board pursuant to
8 section 46-719.

9 (d) Within five years after the adoption of the
10 basin-wide plan, and every five years thereafter, the department
11 and affected natural resources districts shall conduct a technical
12 analysis of the actions taken in a river basin to determine the
13 progress towards meeting the goals and objectives of the plan. The
14 analysis shall include an examination of (i) available supplies,
15 current uses, and changes in long-term water availability, (ii) the
16 effects of conservation practices and natural causes, including,
17 but not limited to, drought, and (iii) the effects of the plan
18 in meeting the goal of sustaining a balance between water uses
19 and water supplies. The analysis shall determine if changes or
20 modifications to the basin-wide plan are needed to meet the goals
21 and objectives pursuant to subdivision (a) of this subsection. The
22 department and affected natural resources districts shall present
23 the results of the analysis and any recommended modifications to
24 the plan at a public meeting and shall provide for at least a
25 thirty-day public comment period before holding a public hearing on
26 the recommended modifications. The department shall submit a report
27 to the Legislature of the results of this analysis and the progress

1 made under the basin-wide plan. The report shall be submitted
2 electronically. Any official participant or stakeholder may submit
3 comments to the department and affected natural resources districts
4 on the final basin-wide plan adopted by the department and affected
5 natural resources districts, which shall be made a part of the
6 report to the Legislature.

7 (e) Before adoption of a basin-wide plan, the department
8 and affected natural resources districts shall schedule at least
9 one public hearing to take testimony on the proposed plan. Any such
10 hearings shall be held in reasonable proximity to the area affected
11 by the plan. Notice of hearings shall be published as provided in
12 section 46-743. All interested persons may appear at any hearings
13 and present testimony or provide other evidence relevant to the
14 issues under consideration. Within sixty days after the final
15 hearing, the department and affected natural resources districts
16 shall jointly determine whether to adopt the plan.

17 (f) The department and the affected natural resources
18 districts may utilize, when necessary, the Interrelated Water
19 Review Board process provided in section 46-719 for disputes
20 arising from developing, implementing, and enforcing a basin-wide
21 plan developed under this section.

22 2. Renumber the remaining sections and correct the
23 repealer accordingly.