

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1074

Introduced by Lathrop, 12.

Read first time January 22, 2014

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to the Nebraska Ground Water Management and
2 Protection Act; to amend sections 46-706, 46-713, 46-714,
3 46-715, 46-720, 46-739, and 46-740, Reissue Revised
4 Statutes of Nebraska, and section 46-753, Revised
5 Statutes Cumulative Supplement, 2012; to change
6 provisions relating to overappropriation designations; to
7 harmonize provisions; and to repeal the original
8 sections.

9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-706, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 46-706 For purposes of the Municipal and Rural Domestic
4 Ground Water Transfers Permit Act, the Nebraska Ground Water
5 Management and Protection Act, and sections 46-601 to 46-613.02,
6 46-636, 46-637, and 46-651 to 46-655, unless the context otherwise
7 requires:

8 (1) Person means a natural person, a partnership, a
9 limited liability company, an association, a corporation, a
10 municipality, an irrigation district, an agency or a political
11 subdivision of the state, or a department, an agency, or a bureau of
12 the United States;

13 (2) Ground water means that water which occurs in or
14 moves, seeps, filters, or percolates through ground under the surface
15 of the land;

16 (3) Contamination or contamination of ground water means
17 nitrate nitrogen or other material which enters the ground water due
18 to action of any person and causes degradation of the quality of
19 ground water sufficient to make such ground water unsuitable for
20 present or reasonably foreseeable beneficial uses;

21 (4) District means a natural resources district operating
22 pursuant to Chapter 2, article 32;

23 (5) Illegal water well means (a) any water well operated
24 or constructed without or in violation of a permit required by the
25 Nebraska Ground Water Management and Protection Act, (b) any water

1 well not in compliance with rules and regulations adopted and
2 promulgated pursuant to the act, (c) any water well not properly
3 registered in accordance with sections 46-602 to 46-604, or (d) any
4 water well not in compliance with any other applicable laws of the
5 State of Nebraska or with rules and regulations adopted and
6 promulgated pursuant to such laws;

7 (6) To commence construction of a water well means the
8 beginning of the boring, drilling, jetting, digging, or excavating of
9 the actual water well from which ground water is to be withdrawn;

10 (7) Management area means any area so designated by a
11 district pursuant to section 46-712 or 46-718, by the Director of
12 Environmental Quality pursuant to section 46-725, or by the
13 Interrelated Water Review Board pursuant to section 46-719.
14 Management area includes a control area or a special ground water
15 quality protection area designated prior to July 19, 1996;

16 (8) Management plan means a ground water management plan
17 developed by a district and submitted to the Director of Natural
18 Resources for review pursuant to section 46-711;

19 (9) Ground water reservoir life goal means the finite or
20 infinite period of time which a district establishes as its goal for
21 maintenance of the supply and quality of water in a ground water
22 reservoir at the time a ground water management plan is adopted;

23 (10) Board means the board of directors of a district;

24 (11) Acre-inch means the amount of water necessary to
25 cover an acre of land one inch deep;

1 (12) Subirrigation or subirrigated land means the natural
2 occurrence of a ground water table within the root zone of
3 agricultural vegetation, not exceeding ten feet below the surface of
4 the ground;

5 (13) Best management practices means schedules of
6 activities, maintenance procedures, and other management practices
7 utilized for purposes of irrigation efficiency, to conserve or effect
8 a savings of ground water, or to prevent or reduce present and future
9 contamination of ground water. Best management practices relating to
10 contamination of ground water may include, but not be limited to,
11 irrigation scheduling, proper rate and timing of fertilizer
12 application, and other fertilizer and pesticide management programs.
13 In determining the rate of fertilizer application, the district shall
14 consult with the University of Nebraska or a certified crop advisor
15 certified by the American Society of Agronomy;

16 (14) Point source means any discernible, confined, and
17 discrete conveyance, including, but not limited to, any pipe,
18 channel, tunnel, conduit, well, discrete fissure, container, rolling
19 stock, vessel, other floating craft, or other conveyance, over which
20 the Department of Environmental Quality has regulatory authority and
21 from which a substance which can cause or contribute to contamination
22 of ground water is or may be discharged;

23 (15) Allocation, as it relates to water use for
24 irrigation purposes, means the allotment of a specified total number
25 of acre-inches of irrigation water per irrigated acre per year or an

1 average number of acre-inches of irrigation water per irrigated acre
2 over any reasonable period of time;

3 (16) Rotation means a recurring series of use and nonuse
4 of irrigation wells on an hourly, daily, weekly, monthly, or yearly
5 basis;

6 (17) Water well has the same meaning as in section
7 46-601.01;

8 (18) Surface water project sponsor means an irrigation
9 district created pursuant to Chapter 46, article 1, a reclamation
10 district created pursuant to Chapter 46, article 5, or a public power
11 and irrigation district created pursuant to Chapter 70, article 6;

12 (19) Beneficial use means that use by which water may be
13 put to use to the benefit of humans or other species;

14 (20) Consumptive use means the amount of water that is
15 consumed under appropriate and reasonably efficient practices to
16 accomplish without waste the purposes for which the appropriation or
17 other legally permitted use is lawfully made;

18 (21) Dewatering well means a well constructed and used
19 solely for the purpose of lowering the ground water table elevation;

20 (22) Emergency situation means any set of circumstances
21 that requires the use of water from any source that might otherwise
22 be regulated or prohibited and the agency, district, or organization
23 responsible for regulating water use from such source reasonably and
24 in good faith believes that such use is necessary to protect the
25 public health, safety, and welfare, including, if applicable,

1 compliance with federal or state water quality standards;

2 (23) Good cause shown means a reasonable justification
3 for granting a variance for a consumptive use of water that would
4 otherwise be prohibited by rule or regulation and which the granting
5 agency, district, or organization reasonably and in good faith
6 believes will provide an economic, environmental, social, or public
7 health and safety benefit that is equal to or greater than the
8 benefit resulting from the rule or regulation from which a variance
9 is sought;

10 (24) Historic consumptive use means the amount of water
11 that has previously been consumed under appropriate and reasonably
12 efficient practices to accomplish without waste the purposes for
13 which the appropriation or other legally permitted use was lawfully
14 made;

15 (25) Monitoring well means a water well that is designed
16 and constructed to provide ongoing hydrologic or water quality
17 information and is not intended for consumptive use;

18 (26) Order, except as otherwise specifically provided,
19 includes any order required by the Nebraska Ground Water Management
20 and Protection Act, by rule or regulation, or by a decision adopted
21 by a district by vote of the board of directors of the district taken
22 at any regularly scheduled or specially scheduled meeting of the
23 board;

24 (27) Overall difference between the current and fully
25 appropriated levels of development means the extent to which existing

1 uses of hydrologically connected surface water and ground water and
2 conservation activities result in the water supply available for
3 purposes identified in subsection (3) of section 46-713 to be less
4 than the water supply available if the river basin, subbasin, or
5 reach had been determined to be fully appropriated in accordance with
6 section 46-714;

7 (28) Test hole means a hole designed solely for the
8 purposes of obtaining information on hydrologic or geologic
9 conditions;

10 (29) Variance means (a) an approval to deviate from a
11 restriction imposed under subsection (1), ~~(2), (8), or (9)~~ or (2) of
12 section 46-714 or (b) the approval to act in a manner contrary to
13 existing rules or regulations from a governing body whose rule or
14 regulation is otherwise applicable;

15 (30) Certified irrigated acres means the number of acres
16 or portion of an acre that a natural resources district has approved
17 for irrigation from ground water in accordance with law and with
18 rules adopted by the district; and

19 (31) Certified water uses means beneficial uses of ground
20 water for purposes other than irrigation identified by a district
21 pursuant to rules adopted by the district.

22 Sec. 2. Section 46-713, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 46-713 (1)(a) By January 1 of each year beginning in 2006
25 and except as otherwise provided in this section and section 46-720,

1 the Department of Natural Resources shall complete an evaluation of
2 the expected long-term availability of hydrologically connected water
3 supplies for both existing and new surface water uses and existing
4 and new ground water uses in each of the state's river basins and
5 shall issue a report that describes the results of the evaluation.
6 For purposes of the evaluation and the report, a river basin may be
7 divided into two or more subbasins or reaches. A river basin,
8 subbasin, or reach for which an integrated management plan has been
9 or is being developed pursuant to sections 46-715 to 46-717 or
10 pursuant to section 46-719 shall not be evaluated unless it is being
11 reevaluated as provided in subsection (2) of this section. For each
12 river basin, subbasin, or reach evaluated, the report shall describe
13 (i) the nature and extent of use of both surface water and ground
14 water in each river basin, subbasin, or reach, (ii) the geographic
15 area within which the department preliminarily considers surface
16 water and ground water to be hydrologically connected and the
17 criteria used for that determination, and (iii) the extent to which
18 the then-current uses of hydrologically connected surface water and
19 ground water in the river basin, subbasin, or reach cause or will in
20 the reasonably foreseeable future cause (A) the surface water supply
21 to be insufficient to sustain over the long term the beneficial or
22 useful purposes for which existing natural-flow or storage
23 appropriations were granted and the beneficial or useful purposes for
24 which, at the time of approval, any existing instream appropriation
25 was granted, (B) the streamflow to be insufficient to sustain over

1 the long term the beneficial uses from wells constructed in aquifers
2 dependent on recharge from the river or stream involved, or (C) a
3 reduction in the flow of a river or stream sufficient to cause
4 noncompliance by Nebraska with an interstate compact or decree, other
5 formal state contract or agreement, or applicable state or federal
6 laws, or otherwise affect available near-term and long-term water
7 supplies. River basins, subbasins, and reaches designated as
8 ~~overappropriated in accordance with subsection (4) of this section~~
9 prior to the effective date of this legislative bill shall not be
10 evaluated by the department. The department is not required to
11 perform an annual evaluation for a river basin, subbasin, or reach
12 during the four years following a status change in such river basin,
13 subbasin, or reach under subsection ~~(12)~~(9) of section 46-714.

14 (b) Based on the information reviewed in the evaluation
15 process, the department shall arrive at a preliminary conclusion for
16 each river basin, subbasin, and reach evaluated as to whether such
17 river basin, subbasin, or reach presently is fully appropriated or
18 overappropriated without the initiation of additional uses and to
19 what extent additional uses will cause the surface water supplies to
20 be insufficient to sustain the uses of existing surface water
21 appropriators, the beneficial uses of existing wells dependent on
22 recharge from the river or stream involved, or the reduction in the
23 flow of a river or stream sufficient to cause noncompliance by
24 Nebraska with an interstate compact or decree, other formal state
25 contract or agreement, or applicable state or federal laws. The

1 department shall also determine if and how such preliminary
2 conclusion would change if no additional legal constraints were
3 imposed on future development of hydrologically connected surface
4 water and ground water and reasonable projections are made about the
5 extent and location of future development in such river basin,
6 subbasin, or reach.

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

15 (d) In preparing the report, the department shall rely on
16 the best scientific data, information, and methodologies readily
17 available to ensure that the conclusions and results contained in the
18 report are reliable. In its report, the department shall provide
19 sufficient documentation to allow these data, information,
20 methodologies, and conclusions to be independently replicated and
21 assessed. Upon request by the department, state agencies, natural
22 resources districts, irrigation districts, reclamation districts,
23 public power and irrigation districts, mutual irrigation companies,
24 canal companies, municipalities, and other water users and
25 stakeholders shall provide relevant data and information in their

1 possession. The Department of Natural Resources shall specify by rule
2 and regulation the types of scientific data and other information
3 that will be considered for making the preliminary determinations
4 required by this section.

5 (2)(a) The department shall complete an evaluation or a
6 reevaluation of a river basin, subbasin, or reach for which an
7 integrated management plan has been or is being prepared if the
8 department has reason to believe that an evaluation or a reevaluation
9 might lead to a different designation determination about whether
10 such river basin, subbasin, or reach is fully appropriated or
11 overappropriated. A decision to evaluate or reevaluate may be reached
12 by the department on its own or in response to a petition filed with
13 the department by any interested person. To be considered sufficient
14 to justify an evaluation or a reevaluation, a petition shall be
15 accompanied by supporting information showing that (i) new scientific
16 data or other information relevant to the determination of whether
17 the river basin, subbasin, or reach is fully appropriated or
18 overappropriated has become available since the last evaluation or
19 determination of such river basin, subbasin, or reach, (ii) the
20 department relied on incorrect or incomplete information when the
21 river basin, subbasin, or reach was last evaluated, ~~or~~ (iii) the
22 department erred in its interpretation or application of the
23 information available when the river basin, subbasin, or reach was
24 last evaluated, or (iv) an evaluation or reevaluation is necessary
25 due to the changes made pursuant to this legislative bill. If a

1 petition determined by the department to be sufficient is filed
2 before July 1 of any year, the evaluation or reevaluation of the
3 river basin, subbasin, or reach involved shall be included in the
4 next annual report prepared in accordance with subsection (1) of this
5 section. If any such petition is filed on or after July 1 of any
6 year, the department may defer the evaluation or reevaluation of the
7 river basin, subbasin, or reach involved until the second annual
8 report after such filing. Such report shall meet the same
9 requirements as in subsection (1) of this section.

10 (b) If the evaluation or reevaluation results in a
11 different determination by the department, then (i) the department
12 shall notify, by certified mail, the affected natural resources
13 districts and any irrigation district, public power and irrigation
14 district, mutual irrigation company, canal company, or municipality
15 that relies on water from the affected river basin, subbasin, or
16 reach of the preliminary change in the determination and (ii) the
17 department shall hold one or more public hearings not more than
18 ninety days after the publication of the notice required in
19 subdivision (b)(i) of this subsection. Notice of the hearings shall
20 be provided in the same manner as the notice required in subsection
21 (1) of section 46-714. Any interested person may appear at the
22 hearing and present written or oral testimony and evidence concerning
23 the appropriation status of the river basin, subbasin, or reach.

24 (c) Within thirty days after the final hearing under
25 subdivision (b) of this subsection, the department shall notify the

1 appropriate natural resources districts of the department's final
2 determination with respect to the appropriation status of the river
3 basin, subbasin, or reach.

4 (3) A river basin, subbasin, or reach shall be deemed
5 fully appropriated if the department determines based upon its
6 evaluation or reevaluation conducted pursuant to subsection (1) or
7 (2) of this section and information presented at the hearing pursuant
8 to subsection (4) of section 46-714 that then-current uses of
9 hydrologically connected surface water and ground water in the river
10 basin, subbasin, or reach cause or will in the reasonably foreseeable
11 future cause (a) the surface water supply to be insufficient to
12 sustain over the long term the beneficial or useful purposes for
13 which existing natural-flow or storage appropriations were granted
14 and the beneficial or useful purposes for which, at the time of
15 approval, any existing instream appropriation was granted, (b) the
16 streamflow to be insufficient to sustain over the long term the
17 beneficial uses from wells constructed in aquifers dependent on
18 recharge from the river or stream involved, or (c) reduction in the
19 flow of a river or stream sufficient to cause noncompliance by
20 Nebraska with an interstate compact or decree, other formal state
21 contract or agreement, or applicable state or federal laws.

22 ~~(4)(a) A river basin, subbasin, or reach shall be deemed~~
23 ~~overappropriated if, on July 16, 2004, the river basin, subbasin, or~~
24 ~~reach is subject to an interstate cooperative agreement among three~~
25 ~~or more states and if, prior to such date, the department has~~

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

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

19 ~~(4) A river basin, subbasin, or reach shall be deemed~~
20 ~~overappropriated if the department determines based upon its~~
21 ~~evaluation or reevaluation conducted pursuant to subsection (1) or~~
22 ~~(2) of this section and information presented at the hearing pursuant~~
23 ~~to subsection (4) of section 46-714 that then-current uses of~~
24 ~~hydrologically connected surface water and ground water in the river~~
25 ~~basin, subbasin, or reach have already caused (a) the surface water~~

1 supply to be insufficient to sustain over the long term the
2 beneficial or useful purposes for which existing natural-flow or
3 storage appropriations were granted and the beneficial or useful
4 purposes for which, at the time of approval, any existing instream
5 appropriation was granted, (b) the streamflow to be insufficient to
6 sustain over the long term the beneficial uses from wells constructed
7 in aquifers dependent on recharge from the river or stream involved,
8 or (c) reduction in the flow of a river or stream sufficient to cause
9 noncompliance by Nebraska with an interstate compact or decree, other
10 formal state contract or agreement, or applicable state or federal
11 laws.

12 Sec. 3. Section 46-714, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 46-714 (1) Whenever the Department of Natural Resources
15 makes a preliminary determination that a river basin, subbasin, or
16 reach not previously designated as overappropriated and not
17 previously determined to be fully appropriated or overappropriated
18 has become fully appropriated or overappropriated, the department
19 shall place an immediate stay on the issuance of any new natural-
20 flow, storage, or storage-use appropriations in such river basin,
21 subbasin, or reach. The department shall also provide prompt notice
22 of such preliminary determination to all licensed water well
23 contractors in the state and to each natural resources district that
24 encompasses any of the geographic area involved. Such notice to
25 natural resources districts shall be by certified mail. The notice

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

16 (2) If the department preliminarily determines a river
17 basin, subbasin, or reach to be fully appropriated or
18 overappropriated and has identified the existence of hydrologically
19 connected surface water and ground water in such river basin,
20 subbasin, or reach, stays shall also be imposed:

21 (a) On the construction of any new water well in the area
22 covered by the determination unless a permit with conditions imposed
23 by the natural resources district has been issued prior to the
24 determination. Such conditions shall meet the objectives of
25 subsection (4) of section 46-715 and may include, but are not limited

1 to, conditions in accordance with subsection (6) of section 46-739.
2 Any well constructed pursuant to such permit shall be completed in
3 accordance with section 46-738; and

4 (b) On the use of an existing water well or an existing
5 surface water appropriation in the affected area to increase the
6 number of acres historically irrigated.

7 Such additional stays shall begin ten days after the
8 first publication, in a newspaper of statewide circulation, of the
9 notice of the preliminary determination that the river basin,
10 subbasin, or reach is fully appropriated or overappropriated.

11 (3) Exceptions to the stays imposed pursuant to
12 subsection (1), (2), (8), or (9) of this section shall exist for (a)
13 test holes, (b) dewatering wells with an intended use of one year or
14 less, (c) monitoring wells, (d) wells constructed pursuant to a
15 ground water remediation plan under the Environmental Protection Act,
16 (e) water wells designed and constructed to pump fifty gallons per
17 minute or less, except that no two or more water wells that each pump
18 fifty gallons per minute or less may be connected or otherwise
19 combined to serve a single project such that the collective pumping
20 would exceed fifty gallons per minute, (f) water wells for range
21 livestock, (g) new surface water uses or water wells that are
22 necessary to alleviate an emergency situation involving the provision
23 of water for human consumption or public health and safety, (h) water
24 wells defined by the applicable natural resources district as
25 replacement water wells, but the consumptive use of any such

1 replacement water well can be no greater than the historic
2 consumptive use of the water well it is to replace or, if applicable,
3 the historic consumptive use of the surface water use it is to
4 replace, (i) new surface water uses and water wells to which a right
5 or permit is transferred in accordance with state law, but the
6 consumptive use of any such new use can be no greater than the
7 historic consumptive use of the surface water use or water well from
8 which the right or permit is being transferred, (j) water wells and
9 increases in ground water irrigated acres for which a variance is
10 granted by the applicable natural resources district for good cause
11 shown, (k) subject to any conditions imposed by the applicable
12 natural resources district, to the extent permitted by the applicable
13 natural resources district, increases in ground water irrigated acres
14 that result from the use of water wells that were permitted prior to
15 the effective date of the determination made in subsection (1) of
16 this section and completed in accordance with section 46-738 but were
17 not used for irrigation prior to that effective date, (l) to the
18 extent permitted by the applicable natural resources district,
19 increases in ground water irrigated acres that result from the use of
20 water wells that are constructed after the effective date of the stay
21 in accordance with a permit granted by that natural resources
22 district prior to the effective date of the stay, (m) surface water
23 uses for which temporary public-use construction permits are issued
24 pursuant to subsection (8) of section 46-233, (n) surface water uses
25 and increases in surface water irrigated acres for which a variance

1 is granted by the department for good cause shown, and (o) water
2 wells for which permits have been approved by the Department of
3 Natural Resources pursuant to the Municipal and Rural Domestic Ground
4 Water Transfers Permit Act prior to the effective date of the stay.

5 (4) Except as otherwise provided in this section, any
6 stay imposed pursuant to subsections (1) and (2) of this section
7 shall remain in effect for the affected river basin, subbasin, or
8 reach until the department has made a final determination regarding
9 whether the river basin, subbasin, or reach is fully appropriated or
10 overappropriated and, if the department's final determination is that
11 the river basin, subbasin, or reach is fully appropriated or
12 overappropriated, shall remain in effect as provided in subsection
13 (11) of this section. Within the time period between the dates of the
14 preliminary and final determinations, the department and the affected
15 natural resources districts shall consult with any irrigation
16 district, reclamation district, public power and irrigation district,
17 mutual irrigation company, canal company, or municipality that relies
18 on water from the affected river basin, subbasin, or reach and with
19 other water users and stakeholders as deemed appropriate by the
20 department or the natural resources districts. The department shall
21 also hold one or more public hearings not more than ninety days after
22 the first publication of the notice required by subsection (1) of
23 this section. Notice of the hearings shall be provided in the same
24 manner as the notice required by such subsection. Any interested
25 person may appear at such hearing and present written or oral

1 testimony and evidence concerning the appropriation status of the
2 river basin, subbasin, or reach, the department's preliminary
3 conclusions about the extent of the area within which the surface
4 water and ground water supplies for the river basin, subbasin, or
5 reach are determined to be hydrologically connected, and whether the
6 stays on new uses should be terminated.

7 (5) Within thirty days after the final hearing under
8 subsection (4) of this section, the department shall notify the
9 appropriate natural resources districts of the department's final
10 determination with respect to the appropriation status of the river
11 basin, subbasin, or reach. If the final determination is that the
12 river basin, subbasin, or reach is fully appropriated or
13 overappropriated, the department, at the same time, shall (a) decide
14 whether to continue or to terminate the stays on new surface water
15 uses and on increases in the number of surface water irrigated acres
16 and (b) designate the geographic area within which the department
17 considers surface water and ground water to be hydrologically
18 connected in the river basin, subbasin, or reach and describe the
19 methods and criteria used in making that determination. The
20 department shall provide notice of its decision to continue or
21 terminate the stays in the same manner as the notice required by
22 subsection (1) of this section.

23 (6) Within ninety days after a final determination by the
24 department that a river basin, subbasin, or reach is fully
25 appropriated or overappropriated, an affected natural resources

1 district may hold one or more public hearings on the question of
2 whether the stays on the issuance of new water well permits, on the
3 construction of new water wells, or on increases in ground water
4 irrigated acres should be terminated. Notice of the hearings shall be
5 published as provided in section 46-743.

6 (7) Within forty-five days after a natural resources
7 district's final hearing pursuant to subsection (6) of this section,
8 the natural resources district shall decide (a) whether to terminate
9 the stay on new water wells in all or part of the natural resources
10 district subject to the stay and (b) whether to terminate the stay on
11 increases in ground water irrigated acres. If the natural resources
12 district decides not to terminate the stay on new water wells in any
13 geographic area, it shall also decide whether to exempt from such
14 stay the construction of water wells for which permits were issued
15 prior to the issuance of the stay but for which construction had not
16 begun prior to issuance of the stay. If construction of water wells
17 for which permits were issued prior to the stay is allowed, all
18 permits that were valid when the stay went into effect shall be
19 extended by a time period equal to the length of the stay.

20 ~~(8) Whenever the department designates a river basin,~~
21 ~~subbasin, or reach as overappropriated, each previously declared~~
22 ~~moratorium on the issuance of new surface water appropriations in the~~
23 ~~river basin, subbasin, or reach shall continue in effect. The~~
24 ~~department shall also provide prompt notice of such designation to~~
25 ~~all licensed water well contractors in the state and to each natural~~

1 ~~resources district that encompasses any of the geographic area~~
2 ~~involved. Immediately upon receipt of such notice by a natural~~
3 ~~resources district, there shall be a stay on the issuance of new~~
4 ~~water well construction permits in any portion of such natural~~
5 ~~resources district that is within the hydrologically connected area~~
6 ~~designated by the department. The department shall also notify the~~
7 ~~public of its designation of such river basin, subbasin, or reach as~~
8 ~~overappropriated and of the geographic area involved in such~~
9 ~~designation. Such notice shall be published once each week for three~~
10 ~~consecutive weeks in at least one newspaper of statewide circulation~~
11 ~~and in such other newspapers as are deemed appropriate by the~~
12 ~~department to provide general notice in the river basin, subbasin, or~~
13 ~~reach.~~

14 ~~(9) Beginning ten days after the first publication of~~
15 ~~notice under subsection (8) of this section in a newspaper of~~
16 ~~statewide circulation, there shall also be stays (a) on the~~
17 ~~construction of any new water well in the hydrologically connected~~
18 ~~area if such construction has not commenced prior to such date and if~~
19 ~~no permit for construction of the water well has been issued~~
20 ~~previously by either the department or the natural resources~~
21 ~~district, (b) on the use of an existing water well in the~~
22 ~~hydrologically connected area to increase the number of acres~~
23 ~~historically irrigated, and (c) on the use of an existing surface~~
24 ~~water appropriation to increase the number of acres historically~~
25 ~~irrigated in the affected area.~~

1 ~~(10)~~ Within ninety days after a designation by the
2 department of a river basin, subbasin, or reach as overappropriated,
3 a natural resources district that encompasses any of the
4 hydrologically connected area designated by the department may hold
5 one or more public hearings on the question of whether to terminate
6 the stays on (a) the construction of new water wells within all or
7 part of its portion of the hydrologically connected area, (b) the
8 issuance of new water well construction permits in such area, or (c)
9 the increase in ground water irrigated acres in such area. Notice of
10 any hearing for such purpose shall be provided pursuant to section
11 46-743. Prior to the scheduling of a natural resources district
12 hearing on the question of whether to terminate any such stay, the
13 department and the affected natural resources district shall consult
14 with any irrigation district, reclamation district, public power and
15 irrigation district, mutual irrigation company, canal company, or
16 municipality that relies on water from the affected river basin,
17 subbasin, or reach and with other water users and stakeholders as
18 deemed appropriate by the department or the natural resources
19 district.

20 ~~(11)~~(8) Any stay issued pursuant to this section shall
21 remain in effect until (a) the stay has been terminated pursuant to
22 subsection (5), (7), or (10) of this section, (b) an integrated
23 management plan for the affected river basin, subbasin, or reach has
24 been adopted by the department and the affected natural resources
25 districts and has taken effect, (c) an integrated management plan for

1 the affected river basin, subbasin, or reach has been adopted by the
2 Interrelated Water Review Board and has taken effect, (d) the
3 department has completed a reevaluation pursuant to subsection (2) of
4 section 46-713 and has determined that the affected river basin,
5 subbasin, or reach is not fully appropriated or overappropriated, or
6 (e) the stay expires pursuant to this subsection. Such stay may be
7 imposed initially for not more than three years following the
8 department's designation of the river basin, subbasin, or reach as
9 overappropriated or the department's final determination that a river
10 basin, subbasin, or reach is fully appropriated and may be extended
11 thereafter on an annual basis by agreement of the department and the
12 affected natural resources district for not more than two additional
13 years if necessary to allow the development, adoption, and
14 implementation of an integrated management plan pursuant to sections
15 46-715 to 46-719.

16 ~~(12)(a)~~(9)(a) For purposes of this subsection, (i) a
17 status change occurs when a preliminary or final determination that a
18 river basin, subbasin, or reach is fully appropriated or
19 overappropriated is reversed by the department or by judicial
20 determination and such river basin, subbasin, or reach is determined
21 not to be fully appropriated or overappropriated and (ii) the
22 hydrologically connected area means the geographic area within which
23 the department considers surface water and ground water in such river
24 basin, subbasin, or reach to be hydrologically connected.

25 (b) If a status change occurs, any stays previously in

1 force by the department or affected natural resources districts shall
2 remain in force until the stays imposed under this subsection are in
3 place and the department shall place an immediate stay on the
4 issuance of any new natural-flow, storage, or storage-use
5 appropriations in the river basin, subbasin, or reach. The department
6 shall also provide prompt notice of the status change in accordance
7 with subsection (1) of this section. Immediately upon receipt of the
8 notice by the affected natural resources district, there shall be
9 stays imposed as set forth in subsections (1) and (2) of this
10 section, subject to the exceptions set forth in subsection (3) of
11 this section. The stays imposed pursuant to this subsection shall
12 remain in effect within each affected natural resources district
13 until such district adopts rules and regulations in accordance with
14 subdivision (c), (d), or (e) of this subsection.

15 (c) Upon receipt of notice of a status change, each
16 affected natural resources district shall adopt rules and regulations
17 within one hundred twenty days after receipt of such notice for the
18 prioritization and granting of water well permits within the
19 hydrologically connected area for the four-year period following the
20 status change. Nothing in this subsection shall be construed to
21 supersede the authority provided to natural resources districts under
22 subsection (2) of section 46-707 and subdivisions (1)(f) and (1)(m)
23 of section 46-739.

24 (d) The rules and regulations adopted by each affected
25 natural resources district in accordance with subdivision (c) of this

1 subsection shall (i) allow a limited number of total new ground water
2 irrigated acres annually, (ii) be created with the purpose of
3 maintaining the status of not fully appropriated based on the most
4 recent basin determination, (iii) be for a term of not less than four
5 years, and (iv) limit the number of new permits so that total new
6 ground water irrigated acres do not exceed the number set in the
7 rules and regulations. The department shall approve the proposed new
8 number of ground water irrigated acres within sixty days after
9 approval by the natural resources district if such district meets the
10 conditions set forth in subdivision (d)(ii) of this subsection, based
11 on the most recent basin determination.

12 (e) If the proposed new number of acres is not approved
13 by the department within the applicable time period as provided in
14 subdivision (d) of this subsection, the affected natural resources
15 districts shall adopt rules and regulations that allow water well
16 permits to be issued that will result in no more than two thousand
17 five hundred irrigated acres or that will result in an increase of
18 not more than twenty percent of all historically irrigated acres
19 within the hydrologically connected area of each natural resources
20 district within the affected river basin, subbasin, or reach,
21 whichever is less, for each calendar year of the four-year period
22 following the date of the determination described in this subsection.
23 Each affected natural resources district may, after the initial four-
24 year period has expired, annually determine whether water well permit
25 limitations should continue and may enforce such limitations.

1 (f) During the four-year period following the status
2 change, the department shall ensure that any new appropriation
3 granted will not cause the basin, subbasin, or reach to be fully
4 appropriated based on the most recent basin determination. The
5 department, pursuant to its rules and regulations, shall not issue
6 new natural flow surface water appropriations for irrigation, within
7 the river basin, subbasin, or reach affected by the status change,
8 that will result in a net increase of more than eight hundred thirty-
9 four irrigated acres in each natural resources district during each
10 calendar year of the four-year period following the date of the
11 determination described in this subsection.

12 (10)(a) For purposes of this subsection (i) a status
13 change also occurs if a preliminary or final determination that a
14 basin, subbasin, or reach is fully appropriated is changed to a
15 status of overappropriated, or a preliminary or final determination
16 that an overappropriated basin is changed to a status of fully
17 appropriated and (ii) hydrologically connected area means the
18 geographic area within which the department considers surface water
19 and ground water in such river basin, subbasin, or reach to be
20 hydrologically connected.

21 (b) If a status change occurs, the department shall
22 provide prompt notice of the status change pursuant to subsection (1)
23 of this section. Any restrictions on the use of surface water and
24 ground water by the department or natural resources district in any
25 integrated management plan regulating the area affected by a status

1 change shall remain in force until a new integrated management plan
2 for the area affected by the status change is adopted by the
3 department and affected natural resource districts pursuant to
4 section 46-715. Before the adoption of a new integrated management
5 plan pursuant to this subsection, the department may adopt rules and
6 regulations to further restrict surface water uses and the affected
7 natural resource districts may adopt rules and regulations to further
8 restrict ground water uses.

9 Sec. 4. Section 46-715, Reissue Revised Statutes of
10 Nebraska, is amended to read:

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

22 (b) A natural resources district encompassing a river
23 basin, subbasin, or reach that has not been designated as or
24 determined to be overappropriated or has not been finally determined
25 to be fully appropriated may, jointly with the department, develop an

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

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

1 the surface water controls authorized for adoption by the department
2 pursuant to section 46-716; and (e) a plan to gather and evaluate
3 data, 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 the
6 validity of the conclusions and information upon which the integrated
7 management plan is based. The plan may also provide for utilization
8 of any applicable incentive programs authorized by law. Nothing in
9 the integrated management plan for a fully appropriated river basin,
10 subbasin, or reach shall require a natural resources district to
11 regulate ground water uses in place at the time of the department's
12 preliminary determination that the river basin, subbasin, or reach is
13 fully appropriated, but a natural resources district may voluntarily
14 adopt such regulations. The applicable natural resources district may
15 decide to include all water users within the district boundary in an
16 integrated management plan.

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

24 (a) Utilize generally accepted methodologies based on the
25 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 share
10 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 to, water
14 rights leases, interference agreements, augmentation projects,
15 conjunctive use management, and use retirement;

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

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

1 Nothing in this subsection shall require revision or
2 amendment of an integrated management plan approved on or before
3 August 30, 2009.

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

21 (5)(a) In any river basin, subbasin, or reach that is
22 designated as or determined to be overappropriated, when the
23 designated area lies within two or more natural resources districts,
24 the department and the affected natural resources districts shall
25 jointly develop a basin-wide plan for the area designated as or

1 determined to be overappropriated. Such plan shall be developed using
2 the consultation and collaboration process described in subdivision
3 (b) of this subsection, shall be developed concurrently with the
4 development of the integrated management plan required pursuant to
5 subsections (1) through (4) of this section, and shall be designed to
6 achieve, in the incremental manner described in subdivision (d) of
7 this subsection, the goals and objectives described in subsection (2)
8 of this section. The basin-wide plan shall be adopted after hearings
9 by the department and the affected natural resources districts.

10 (b) In any river basin, subbasin, or reach designated as
11 or determined to be overappropriated and subject to this subsection,
12 the department and each natural resources district encompassing such
13 river basin, subbasin, or reach shall jointly develop an integrated
14 management plan for such river basin, subbasin, or reach pursuant to
15 subsections (1) through (4) of this section. Each integrated
16 management plan for a river basin, subbasin, or reach subject to this
17 subsection shall be consistent with any basin-wide plan developed
18 pursuant to subdivision (a) of this subsection. Such integrated
19 management plan shall be developed after consultation and
20 collaboration with irrigation districts, reclamation districts,
21 public power and irrigation districts, mutual irrigation companies,
22 canal companies, and municipalities that rely on water from within
23 the affected area and that, after being notified of the commencement
24 of the plan development process, indicate in writing their desire to
25 participate in such process. In addition, the department or the

1 affected natural resources districts may include designated
2 representatives of other stakeholders. If agreement is reached by all
3 parties involved in such consultation and collaboration process, the
4 department and each natural resources district shall adopt the
5 agreed-upon integrated management plan. If agreement cannot be
6 reached by all parties involved, the integrated management plan shall
7 be developed and adopted by the department and the affected natural
8 resources district pursuant to sections 46-715 to 46-718 or by the
9 Interrelated Water Review Board pursuant to section 46-719.

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

21 (d) Any integrated management plan developed under this
22 subsection shall adopt an incremental approach to achieve the goals
23 and objectives identified under subdivision (2)(a) of this section
24 using and a timeline indicating the date the stated goals will be
25 achieved. The incremental approach shall use the following steps:

1 (i) The first incremental goals shall be to address the
2 impact of streamflow depletions ~~to~~ (A) to surface water
3 appropriations, ~~and~~ (B) to water wells constructed in aquifers
4 dependent upon recharge from streamflow, to the extent those
5 depletions are due to water use initiated after July 1, 1997, and (C)
6 on Nebraska's ability to comply with an interstate decree, compact,
7 or agreement., ~~and, unless an interstate cooperative agreement for~~
8 ~~such river basin, subbasin, or reach is no longer in effect, to~~
9 ~~prevent streamflow depletions that would cause noncompliance by~~
10 ~~Nebraska with such interstate cooperative agreement.~~ During the first
11 increment, the department and the affected natural resources
12 districts shall also pursue voluntary efforts, subject to the
13 availability of funds, to offset any increase in streamflow depletive
14 effects that occur after July 1, 1997, but are caused by ground water
15 uses initiated prior to such date. The department and the affected
16 natural resources districts may also use other appropriate and
17 authorized measures for such purpose;

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

22 (iii) During the ten years following adoption of an
23 integrated management plan developed under this subsection (5) or
24 during the ten years after the adoption of any subsequent increment
25 of the integrated management plan pursuant to subdivision (d)(iv) of

1 this subsection, the department and the affected natural resources
2 district shall conduct a technical analysis of the actions taken in
3 such increment to determine the progress towards meeting the goals
4 and objectives adopted pursuant to subsection (2) of this section.
5 The analysis shall include an examination of (A) available supplies
6 and changes in long-term availability, (B) the effects of
7 conservation practices and natural causes, including, but not limited
8 to, drought, and (C) the effects of the plan on reducing the overall
9 difference between the current and fully appropriated levels of
10 development identified in subdivision (5)(c) of this section. The
11 analysis shall determine whether a subsequent increment is necessary
12 in the integrated management plan to meet the goals and objectives
13 adopted pursuant to subsection (2) of this section and reduce the
14 overall difference between the current and fully appropriated levels
15 of development identified in subdivision (5)(c) of this section;

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

24 (v) If necessary, the steps described in subdivisions (d)
25 (ii) through (iv) of this subsection shall be repeated up to, but no

1 more than, three times or until the department and the affected
2 natural resources districts agree that the goals and objectives
3 identified pursuant to subsection (2) of this section have been met
4 and the overall difference between the current and fully appropriated
5 levels of development identified in subdivision (5)(c) of this
6 section has been ~~addressed~~ reduced to zero or addressed by obtaining
7 the consent of existing appropriators so that the river basin,
8 subbasin, or reach has returned to a fully appropriated condition.

9 (6) In any river basin, subbasin, or reach that is
10 designated as or determined to be fully appropriated or
11 overappropriated and whenever necessary to ensure that the state is
12 in compliance with an interstate compact or decree or a formal state
13 contract or agreement, the department, in consultation with the
14 affected districts, shall forecast on an annual basis the maximum
15 amount of water that may be available from streamflow for beneficial
16 use in the short term and long term in order to comply with the
17 requirement of subdivision (4)(b) of this section. This forecast
18 shall be made by January 1, 2008, and each January 1 thereafter.

19 Sec. 5. Section 46-720, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 46-720 (1) The Legislature finds that, prior to July 16,
22 2004, actions were taken by the Department of Natural Resources and
23 by one or more natural resources districts pursuant to section
24 46-656.28, as such section existed immediately prior to such date,
25 for the purpose of addressing circumstances that are, after such

1 date, to be addressed in accordance with sections 46-713 to 46-719.
2 It is the intent of the Legislature that actions taken pursuant to
3 section 46-656.28, as such section existed immediately prior to July
4 16, 2004, should not be negated and that transition from the
5 authorities and responsibilities granted by such section to those
6 granted by sections 46-713 to 46-719 should occur in as efficient a
7 manner as possible. Such transition shall be therefor governed by
8 subsections (2) through (5) of this section, and all references in
9 such subsections to section 46-656.28 shall be construed to mean
10 section 46-656.28 as such section existed immediately prior to July
11 16, 2004.

12 (2) If, prior to July 16, 2004, (a) a natural resources
13 district requested pursuant to subsection (1) of section 46-656.28
14 that affected appropriators, affected surface water project sponsors,
15 and the department consult and that studies and a hearing be held but
16 (b) the Director of Natural Resources has not made a preliminary
17 determination relative to that request pursuant to subsection (2) of
18 section 46-656.28, no further action on the district's request shall
19 be required of the department. If under the same circumstances a
20 temporary suspension in the drilling of certain water wells has been
21 imposed by the district pursuant to subsection (16) of section
22 46-656.28 and remains in effect immediately prior to July 16, 2004,
23 such temporary suspension shall remain in effect for thirty days
24 after the department issues its first annual report under section
25 46-713, except that (i) such temporary suspension shall not apply to

1 water wells for which a permit has been obtained pursuant to the
2 Municipal and Rural Domestic Ground Water Transfers Permit Act and
3 (ii) to the extent any such temporary suspension is in effect for all
4 or part of a hydrologically connected area for a river basin,
5 subbasin, or reach designated as overappropriated by the department,
6 such temporary suspension shall remain in effect only until it is
7 superseded by the stays imposed pursuant to ~~subsections (8) and (9)~~
8 ~~of~~ section 46-714. To the extent that any such temporary suspension
9 applies to a geographic area preliminarily considered by the
10 department to have ground water hydrologically connected to the
11 surface water of a fully appropriated river basin, subbasin, or
12 reach, such temporary suspension shall be superseded by the stays
13 imposed pursuant to subsections (1) and (2) of section 46-714.

14 (3)(a) If prior to July 16, 2004, (i) the director has
15 made a preliminary determination pursuant to subsection (2) of
16 section 46-656.28 that there is reason to believe that the use of
17 hydrologically connected ground water and surface water in a specific
18 geographic area is contributing to or is in the reasonably
19 foreseeable future likely to contribute to any conflict, dispute, or
20 difficulty listed in such subsection, (ii) the director has not made
21 a determination pursuant to subsection (4) of section 46-656.28 that
22 a joint action plan should not be prepared, and (iii) preparation of
23 a joint action plan pursuant to subsections (5) through (9) of such
24 section has not been completed, the geographic area involved shall
25 become subject to sections 46-713 to 46-719 on July 16, 2004, and the

1 department need not evaluate such geographic area in its first annual
2 report issued pursuant to section 46-713.

3 (b) For purposes of this subsection and section 46-714
4 and except as otherwise provided in this section, (i) July 16, 2004,
5 shall result in the imposition in any geographic area subject to this
6 subsection of the stays required by subsections (1) and (2) of
7 section 46-714, (ii) such stays shall be imposed in the manner
8 required by such section, and (iii) July 16, 2004, shall be treated
9 as if it were the date of a departmental preliminary determination
10 pursuant to section 46-713 that such area is a geographic area within
11 which ground water and surface water of a fully appropriated river
12 basin, subbasin, or reach are hydrologically connected.
13 Notwithstanding the other provisions of this subsection, if a
14 temporary suspension in the drilling of certain new water wells has
15 previously been imposed by the affected natural resources district,
16 (A) the stays on construction of new water wells and on the increase
17 in ground water irrigated acres shall be limited in geographic extent
18 to only that part of the affected area within which the temporary
19 suspension was in effect unless the director determines that
20 inclusion of additional area is necessary because ground water and
21 surface water are hydrologically connected in such additional area
22 and (B) the stays on construction of certain new water wells shall
23 not apply to a water well constructed in accordance with the terms of
24 a water well construction permit approved by the district prior to
25 July 16, 2004, unless such well was subject to the district's

1 temporary suspension. If, prior to July 16, 2004, the director has
2 held a hearing on a report issued pursuant to subsection (3) of
3 section 46-656.28 but has not yet determined whether a joint action
4 plan should be prepared, no departmental hearing shall be required
5 pursuant to subsection (4) of section 46-714 before a final
6 determination is made about whether the river basin, subbasin, or
7 reach involved is fully appropriated. If, prior to July 16, 2004, the
8 director has determined pursuant to subsection (4) of section
9 46-656.28 that a joint action plan should be prepared, such
10 determination shall have the same effect as a final departmental
11 determination pursuant to subsection (5) of section 46-714 that the
12 affected river basin, subbasin, or reach is fully appropriated and no
13 separate determination to that effect shall be required. If, after
14 July 16, 2004, the department determines that all or part of the area
15 subject to this subsection is in an overappropriated river basin,
16 subbasin, or reach, that portion of the area shall thereafter be
17 subject to the provisions of the Nebraska Ground Water Management and
18 Protection Act applicable to an overappropriated river basin,
19 subbasin, or reach and stays that have previously taken effect in
20 accordance with this subsection shall continue in effect as stays for
21 an overappropriated river basin, subbasin, or reach without
22 additional action or publication of notice by the department. Any
23 temporary suspension in the drilling of certain water wells that has
24 been imposed in the geographic area involved by a natural resources
25 district pursuant to subsection (16) of section 46-656.28 prior to

1 July 16, 2004, shall remain in effect until superseded by the stays
2 imposed pursuant to subsections (1) and (2) of section 46-714.

3 (4) If, prior to July 16, 2004, preparation of a joint
4 action plan has been completed pursuant to subsections (5) through
5 (9) of section 46-656.28 but the plan has not yet been adopted
6 pursuant to subsection (11) of such section, the department need not
7 evaluate the affected geographic area in its first annual report
8 issued pursuant to section 46-713. The department and the affected
9 natural resources district shall review the completed joint action
10 plan for its compliance with sections 46-715 to 46-717. If the joint
11 action plan is determined to be in compliance with sections 46-715 to
12 46-717 or if agreement is reached on the revisions necessary to bring
13 it into such compliance, the department and the district shall adopt
14 the plan and implement the controls as provided in section 46-718. If
15 the joint action plan is determined not to be in compliance with
16 sections 46-715 to 46-717 and agreement on the proposed plan or the
17 proposed controls cannot be reached pursuant to section 46-718,
18 section 46-719 shall apply. Except to the extent that any portion of
19 the affected area is designated as all or part of an overappropriated
20 river basin, subbasin, or reach, any temporary suspension in the
21 drilling of certain water wells imposed in the affected geographic
22 area by a natural resources district pursuant to subsection (16) of
23 section 46-656.28 shall remain in effect until (a) the department and
24 the affected district have jointly decided to implement the plan,
25 with or without modifications, and controls have been adopted and

1 taken effect or (b) the Interrelated Water Review Board, pursuant to
2 section 46-719, has adopted an integrated management plan for the
3 affected river basin, subbasin, or reach and the controls adopted by
4 the board have taken effect. To the extent that any portion of the
5 affected area is designated as all or part of an overappropriated
6 river basin, subbasin, or reach, any temporary suspension in the
7 drilling of water wells shall be superseded by the stays imposed
8 pursuant to ~~subsections (8) and (9) of section 46-714.~~

9 (5) If, before July 16, 2004, a joint action plan has
10 been adopted and implemented pursuant to subsections (10) through
11 (12) of section 46-656.28 and is in effect immediately prior to such
12 date, the department need not evaluate the geographic area subject to
13 the plan in the department's first annual report issued pursuant to
14 section 46-713. For purposes of the Nebraska Ground Water Management
15 and Protection Act, (a) the plan adopted shall be considered an
16 integrated management plan adopted pursuant to section 46-718, (b)
17 the management area designated shall be considered an integrated
18 management area or subarea designated pursuant to section 46-718, and
19 (c) the controls adopted shall be considered controls adopted
20 pursuant to section 46-718 and shall remain in effect until amended
21 or repealed pursuant to section 46-718 or 46-719.

22 Sec. 6. Section 46-739, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 46-739 (1) A district in which a management area has been
25 designated shall by order adopt one or more of the following controls

1 for the management area:

2 (a) It may allocate the amount of ground water that may
3 be withdrawn by ground water users;

4 (b) It may adopt a system of rotation for use of ground
5 water;

6 (c) It may adopt well-spacing requirements more
7 restrictive than those found in sections 46-609 and 46-651;

8 (d) It may require the installation of devices for
9 measuring ground water withdrawals from water wells;

10 (e) It may adopt a system which requires reduction of
11 irrigated acres pursuant to subsection (2) of section 46-740;

12 (f) It may limit or prevent the expansion of irrigated
13 acres or otherwise limit or prevent increases in the consumptive use
14 of ground water withdrawals from water wells used for irrigation or
15 other beneficial purposes;

16 (g) It may require the use of best management practices;

17 (h) It may require the analysis of water or deep soils
18 for fertilizer and chemical content;

19 (i) It may impose mandatory educational requirements
20 designed to protect water quality or to stabilize or reduce the
21 incidence of ground water depletion, conflicts between ground water
22 users and surface water appropriators, disputes over interstate
23 compacts or decrees, or difficulties fulfilling the provisions of
24 other formal state contracts or agreements;

25 (j) It may require water quality monitoring and reporting

1 of results to the district for all water wells within all or part of
2 the management area;

3 (k) It may require district approval of (i) transfers of
4 ground water off the land where the water is withdrawn, (ii)
5 transfers of rights to use ground water that result from district
6 allocations imposed pursuant to subdivision (1)(a) of this section or
7 from other restrictions on use that are imposed by the district in
8 accordance with this section, (iii) transfers of certified water uses
9 or certified irrigated acres between landowners or other persons, or
10 (iv) transfers of certified water uses or certified irrigated acres
11 between parcels or tracts under the control of a common landowner or
12 other person. Such approval may be required whether the transfer is
13 within the management area, from inside to outside the management
14 area, or from outside to inside the management area, except that
15 transfers for which permits have been obtained from the Department of
16 Natural Resources prior to July 16, 2004, or pursuant to the
17 Municipal and Rural Domestic Ground Water Transfers Permit Act shall
18 not be subject to district approval pursuant to this subdivision. If
19 the district adopts rules and regulations pursuant to this
20 subdivision, such regulations shall require that the district deny or
21 condition the approval of any such transfer when and to the extent
22 such action is necessary to (A) ensure the consistency of the
23 transfer with the purpose or purposes for which the management area
24 was designated, (B) prevent adverse effects on other ground water
25 users or on surface water appropriators, (C) prevent adverse effects

1 on the state's ability to comply with an interstate compact or decree
2 or to fulfill the provisions of any other formal state contract or
3 agreement, and (D) otherwise protect the public interest and prevent
4 detriment to the public welfare. Approval of any transfer of
5 certified water uses or certified irrigated acres under subdivision
6 (1)(k)(iii) or (iv) of this section shall further be subject to the
7 district having complied with the requirements of section 46-739.01;

8 (l) It may require, when conditions so permit, that new
9 or replacement water wells to be used for domestic or other purposes
10 shall be constructed to such a depth that they are less likely to be
11 affected by seasonal water level declines caused by other water wells
12 in the same area;

13 (m) It may close all or a portion of the management area
14 to the issuance of additional permits or may condition the issuance
15 of additional permits on compliance with other rules and regulations
16 adopted and promulgated by the district to achieve the purpose or
17 purposes for which the management area was designated; and

18 (n) It may adopt and promulgate such other reasonable
19 rules and regulations as are necessary to carry out the purpose for
20 which a management area was designated.

21 (2) In adopting, amending, or repealing any control
22 authorized by subsection (1) of this section or sections 46-740 and
23 46-741, the district's considerations shall include, but not be
24 limited to, whether it reasonably appears that such action will
25 mitigate or eliminate the condition which led to designation of the

1 management area or will improve the administration of the area.

2 (3) Upon request by the district or when any of the
3 controls being proposed are for the purpose of integrated management
4 of hydrologically connected ground water and surface water, the
5 Director of Natural Resources shall review and comment on the
6 adoption, amendment, or repeal of any authorized control in a
7 management area. The director may hold a public hearing to consider
8 testimony regarding the control prior to commenting on the adoption,
9 amendment, or repeal of the control. The director shall consult with
10 the district and fix a time, place, and date for such hearing. In
11 reviewing and commenting on an authorized control in a management
12 area, the director's considerations shall include, but not be limited
13 to, those enumerated in subsection (2) of this section.

14 (4) If because of varying ground water uses, varying
15 surface water uses, different irrigation distribution systems, or
16 varying climatic, hydrologic, geologic, or soil conditions existing
17 within a management area the uniform application throughout such area
18 of one or more controls would fail to carry out the intent of the
19 Nebraska Ground Water Management and Protection Act in a reasonably
20 effective and equitable manner, the controls adopted by the district
21 pursuant to this section may contain different provisions for
22 different categories of ground water use or portions of the
23 management area which differ from each other because of varying
24 climatic, hydrologic, geologic, or soil conditions. Any differences
25 in such provisions shall recognize and be directed toward such

1 varying ground water uses or varying conditions. Except as otherwise
2 provided in this section, if the district adopts different controls
3 for different categories of ground water use, those controls shall be
4 consistent with section 46-613 and shall, for each such category, be
5 uniform for all portions of the area which have substantially similar
6 climatic, hydrologic, geologic, and soil conditions.

7 (5) The district may establish different water
8 allocations for different irrigation distribution systems.

9 (6)(a) The district may establish different provisions
10 for different hydrologic relationships between ground water and
11 surface water.

12 (b) For management areas a purpose of which is the
13 integrated management of hydrologically connected ground water and
14 surface water, the district may establish different provisions for
15 water wells either permitted or constructed before the designation of
16 a management area for integrated management of hydrologically
17 connected ground water and surface water and for water wells either
18 permitted or constructed on or after the designation date or any
19 other later date or dates established by the district. Permits for
20 construction of new wells not completed by the date of the
21 determination of fully appropriated or overappropriated shall be
22 subject to any conditions imposed by the applicable natural resources
23 district.

24 (c) For a management area in a river basin or part of a
25 river basin that is or was the subject of litigation over an

1 interstate water compact or decree in which the State of Nebraska is
2 a named defendant, the district may establish different provisions
3 for restriction of water wells constructed after January 1, 2001, if
4 such litigation was commenced before or on May 22, 2001. If such
5 litigation is commenced after May 22, 2001, the district may
6 establish different provisions for restriction of water wells
7 constructed after the date on which such litigation is commenced in
8 federal court. An appeal from a decision of the district under this
9 subdivision shall be in accordance with the hearing procedures
10 established in the Nebraska Ground Water Management and Protection
11 Act.

12 (d) Except as otherwise authorized by law, the district
13 shall make a replacement water well as defined in section 46-602, or
14 as further defined in district rules and regulations, subject to the
15 same provisions as the water well it replaces.

16 (7) If the district has included controls delineated in
17 subdivision (1)(m) of this section in its management plan, but has
18 not implemented such controls within two years after the initial
19 public hearing on the controls, the district shall hold a public
20 hearing, as provided in section 46-712, regarding the controls before
21 implementing them.

22 (8) In addition to the controls listed in subsection (1)
23 of this section, a district in which a management area has been
24 designated may also adopt and implement one or more of the following
25 measures if it determines that any such measures would help the

1 district and water users achieve the goals and objectives of the
2 management area: (a) It may sponsor nonmandatory educational
3 programs; and (b) it may establish and implement financial or other
4 incentive programs. As a condition for participation in an incentive
5 program, the district may require water users or landowners to enter
6 into and perform such agreements or covenants concerning the use of
7 land or water as are necessary to produce the benefits for which the
8 incentive program is established and shall further condition
9 participation upon satisfaction of the requirements of section
10 46-739.01.

11 Sec. 7. Section 46-740, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 46-740 (1) If allocation is adopted for use of ground
14 water for irrigation purposes in a management area, the permissible
15 withdrawal of ground water shall be allocated equally per irrigated
16 acre except as permitted by subsections (4) through (6) of section
17 46-739. Such allocation shall specify the total number of acre-inches
18 that are allocated per irrigated acre per year, except that the
19 district may allow a ground water user to average his or her
20 allocation over any reasonable period of time. A ground water user
21 may use his or her allocation on all or any part of the irrigated
22 acres to which the allocation applies or in any other manner approved
23 by the district.

24 (2) Except as permitted pursuant to subsections (4)
25 through (6) of section 46-739, if annual rotation or reduction of

1 irrigated acres is adopted for use of ground water for irrigation
2 purposes in a management area, the nonuse of irrigated acres shall be
3 a uniform percentage reduction of each landowner's irrigated acres
4 within the management area or a subarea of the management area. Such
5 uniform reduction may be adjusted for each landowner based upon crops
6 grown on his or her land to reflect the varying consumptive
7 requirements between crops.

8 (3) Unless an integrated management plan, a rule, or an
9 order is established, adopted, or issued prior to November 1, 2005,
10 no integrated management plan, rule, or order shall limit the use of
11 ground water by a municipality, within an area determined by the
12 Department of Natural Resources to be fully appropriated ~~pursuant to~~
13 ~~section 46-714~~ or designated as or determined to be overappropriated
14 pursuant to section 46-713 or 46-714, until January 1, 2026, except
15 that:

16 (a) Any allocations to a municipality that have been made
17 as of November 1, 2005, shall remain in full force and effect unless
18 changed by the appropriate natural resources district;

19 (b)(i) For any municipality that has not received an
20 allocation as of November 1, 2005, the minimum annual allocation may
21 be the greater of either the amount of ground water authorized by a
22 permit issued pursuant to the Municipal and Rural Domestic Ground
23 Water Transfers Permit Act or the governmental, commercial, and
24 industrial uses of the municipality plus a per capita allowance.
25 Water for commercial and industrial uses may be limited as specified

1 in subdivision (b)(iii) of this subsection.

2 (ii) The per capita allowance shall be based on the
3 location of the municipality, increasing in equal increments from
4 east to west, and shall not be less than two hundred gallons per
5 person per day at 95 degrees, 19 minutes, 00 seconds longitude and
6 not less than two hundred fifty gallons per person per day at 104
7 degrees, 04 minutes, 00 seconds longitude. Persons served by a
8 municipality outside of its corporate limits shall be considered part
9 of the municipality's population if such service begins prior to
10 January 1, 2026.

11 (iii) Prior to January 1, 2026, any new or expanded
12 single commercial or single industrial development served by any
13 municipality within the fully appropriated or overappropriated area
14 which, after July 14, 2006, commences water use resulting in the
15 consumptive use of water in amounts greater than twenty-five million
16 gallons annually may be subject to controls adopted pursuant to
17 section 46-715;

18 (c) Prior to January 1, 2026, increases in the
19 consumptive use of water by a municipality that result in a decrease
20 in streamflow shall be addressed by the integrated management plan
21 pursuant to controls or incentive programs adopted pursuant to
22 section 46-715 and shall not affect the municipal allocations
23 outlined in subdivisions (3)(a) and (b) of this section. Any
24 permanent reduction in consumptive use of water associated with
25 municipal growth, including governmental, industrial, and commercial

1 growth, during the period between July 14, 2006, and January 1, 2026,
2 shall accrue to the benefit of the natural resources district within
3 which such municipality is located; and

4 (d) To qualify for the exemption specified in subsection
5 (3) of this section, any city of the metropolitan class, city of the
6 primary class, city of the first class, or city of the second class
7 shall file a conservation plan with the natural resources district,
8 if required by the integrated management plan. Villages and other
9 municipalities smaller than a city of the second class shall not be
10 required to submit a conservation plan to qualify for such exemption.

11 (4) On and after January 1, 2026, the base amount for an
12 annual allocation to a municipality shall be determined as the
13 greater of either (a) the amount of water authorized by a permit
14 issued pursuant to the Municipal and Rural Domestic Ground Water
15 Transfers Permit Act or (b) the greatest annual use prior to January
16 1, 2026, for uses specified in subdivision (3)(b) of this section
17 plus the per capita allowance described in subdivision (3)(b)(ii) of
18 this section. On and after January 1, 2026, increases in the
19 consumptive use of water by a municipality that result in a decrease
20 in streamflow shall be addressed by the integrated management plan
21 pursuant to controls or incentive programs adopted pursuant to
22 section 46-715. Each municipality may be subject to controls adopted
23 pursuant to such section for amounts in excess of the allocations.

24 (5) Unless an integrated management plan, rule, or order
25 is established, adopted, or issued prior to November 1, 2005, no

1 integrated management plan, rule, or order shall limit the use of
2 ground water by a nonmunicipal commercial or industrial water user
3 within an area determined by the department to be fully appropriated
4 ~~pursuant to section 46-714~~ or designated as or determined to be
5 overappropriated pursuant to section 46-713 or 46-714, until January
6 1, 2026, except that:

7 (a) Prior to January 1, 2026, the minimum annual
8 allocation for a nonmunicipal commercial or industrial user shall be
9 the greater of either (i) the amount specified in a permit issued
10 pursuant to the Industrial Ground Water Regulatory Act or (ii) the
11 amount necessary to achieve the commercial or industrial use,
12 including all new or expanded uses that consume less than twenty-five
13 million gallons annually. Any increases in the consumptive use of
14 water by a nonmunicipal commercial or industrial water user that
15 result in a decrease in streamflow shall be addressed by the
16 integrated management plan pursuant to controls or incentive programs
17 adopted pursuant to section 46-715;

18 (b) Prior to January 1, 2026, any new or expanded single
19 commercial or industrial development served by a nonmunicipal well
20 within an area determined by the department to be fully appropriated
21 ~~pursuant to section 46-714~~ or designated as or determined to be
22 overappropriated pursuant to section 46-713 or 46-714 which, after
23 July 14, 2006, commences water use resulting in the consumptive use
24 of water in amounts greater than twenty-five million gallons annually
25 may be subject to controls adopted pursuant to section 46-715. This

1 subdivision does not apply to a water user described in this
2 subdivision that is regulated by the Industrial Ground Water
3 Regulatory Act and the United States Nuclear Regulatory Commission;

4 (c) On and after January 1, 2026, the base amount for an
5 annual allocation to a nonmunicipal commercial or industrial user
6 within an area determined by the department to be fully appropriated
7 ~~pursuant to section 46-714~~ or designated as or determined to be
8 overappropriated pursuant to section 46-713 shall be the amount
9 specified in subdivision (5)(a) or (b) of this section;

10 (d) On and after January 1, 2026, increases in the
11 consumptive use of water by a nonmunicipal commercial or industrial
12 water user that result in a decrease in streamflow shall be addressed
13 by the integrated management plan pursuant to controls or incentive
14 programs adopted pursuant to section 46-715; and

15 (e) Any reduction in consumptive use associated with new
16 nonmunicipal industrial or commercial uses of less than twenty-five
17 million gallons, during the period between July 14, 2006, and January
18 1, 2026, shall accrue to the benefit of the natural resources
19 district within which such nonmunicipal industrial or commercial user
20 is located.

21 Sec. 8. Section 46-753, Revised Statutes Cumulative
22 Supplement, 2012, is amended to read:

23 46-753 (1) The Water Resources Trust Fund is created. The
24 State Treasurer shall credit to the fund such money as is
25 specifically appropriated thereto by the Legislature, transfers

1 authorized by the Legislature, and such funds, fees, donations,
2 gifts, or bequests received by the Department of Natural Resources
3 from any federal, state, public, or private source for expenditure
4 for the purposes described in the Nebraska Ground Water Management
5 and Protection Act. Money in the fund shall not be subject to any
6 fiscal-year limitation or lapse provision of unexpended balance at
7 the end of any fiscal year or biennium. Any money in the fund
8 available for investment shall be invested by the state investment
9 officer pursuant to the Nebraska Capital Expansion Act and the
10 Nebraska State Funds Investment Act.

11 (2) The fund shall be administered by the department. The
12 department shall adopt and promulgate rules and regulations regarding
13 the allocation and expenditure of money from the fund.

14 (3) Money in the fund may be expended by the department
15 for costs incurred by the department, by natural resources districts,
16 or by other political subdivisions in (a) determining whether river
17 basins, subbasins, or reaches are fully appropriated or
18 overappropriated in accordance with section 46-713, (b) developing or
19 implementing integrated management plans for such fully appropriated
20 river basins, subbasins, or reaches or for river basins, subbasins,
21 or reaches designated as overappropriated in accordance with section
22 46-713, (c) developing or implementing integrated management plans in
23 river basins, subbasins, or reaches which have not yet become either
24 fully appropriated or overappropriated, or (d) attaining state
25 compliance with an interstate water compact or decree or other formal

1 state contract or agreement.

2 (4) Except for funds paid to a political subdivision for
3 forgoing or reducing its own water use or for implementing projects
4 or programs intended to aid the state in complying with an interstate
5 water compact or decree or other formal state contract or agreement,
6 a political subdivision that receives funds from the fund shall
7 provide, or cause to be provided, matching funds in an amount at
8 least equal to twenty percent of the amount received from the fund by
9 that natural resources district or political subdivision. The
10 department shall monitor programs and activities funded by the fund
11 to ensure that the required match is being provided.

12 Sec. 9. Original sections 46-706, 46-713, 46-714, 46-715,
13 46-720, 46-739, and 46-740, Reissue Revised Statutes of Nebraska, and
14 section 46-753, Revised Statutes Cumulative Supplement, 2012, are
15 repealed.