



**Ninety-Ninth Legislature - Second Session - 2006
Committee Statement
LB 1226**

Hearing Date: February 9, 2006
Committee On: Natural Resources

Introducer(s): (Langemeier)

Title: Change provisions relating to instream appropriations, ground water, and management areas

Roll Call Vote – Final Committee Action:

- Advanced to General File
 - X Advanced to General File with Amendments
 - Indefinitely Postponed
-

Vote Results:

6	Yes	Senators Hudkins, Kopplin, Kremer, McDonald, Schrock, Stuhr
0	No	
1	Present, not voting	Senator Louden
1	Absent	Senator Smith

Proponents:

Senator Chris Langemeier
Ron Bishop

Stan Staab
John Miyoshi
Don Blankenau

Dean Edson
Clint Johannes

Jay Rempe

Representing:

Introducer
Central Platte Natural Resources District;
Nebraska Association of Resources Districts
Lower Elkhorn Natural Resources District
Lower Platte North Natural Resources District
Nebraska Association of Resources Districts;
League of Nebraska Municipalities
Nebraska Association of Resources Districts
Nebraska Electric Generation and Transmission
Cooperative, Inc., Lower Platte North Natural
Resources District
Nebraska Farm Bureau Federation

Opponents:

Brian Barels
Mark Brohman
Larry Hutchinson

Representing:

Nebraska Public Power District
Game and Parks Commission
Game and Parks Commission

Neutral:

Tom Schwarz

Representing:

Self

Summary of purpose and/or changes:

- Section 1 Clarifies that a permit for instream flow shall not be in the public interest unless a determination can be made that the flow rate in the permit is available at least 85% of the time during the specified period.
- Section 2 Increases the percentage of the instream flow rate from 20% of the time to 85% of the time.
- Section 3 Creates a new section (6). Allows the natural resources district that has implemented controls on water wells to request that the department immediately call for a stay on new surface water rights in the affected areas.
- Section 4 (d) Requires the conclusion reached in the report on the evaluation of each river basin in the state to be accurate to a reasonable degree of scientific certainty.
(3) Changes language regarding “the Department of Natural Resources determination” to “the evaluation by the department” regarding the determination that a basin is fully appropriated. The department’s evaluation must show that the then-current uses of hydrologically connected surface water and ground water in the river basin, subbasin or reach cause or will cause in the next ten years (current language is in the “reasonably foreseeable future”) depletions. The evaluation is required to be performed with a degree of scientific certainty.
- Section 5 (1) Requires the notice to the natural resources district of the designation of fully appropriated be sent by certified mail to the manager of the district and must include the director of the Department of Natural Resources signature.
(2) Clarifies that if a well permit has not been issued prior to the determination that request for a permit would be stayed; and further clarifies that well permits existing prior to the determination could be completed but would be subject to conditions imposed by the district. Wells would have to be completed within the existing one-year time frame allowed under the permit.
- Section 6 Exempts water not hydrologically connected from regulation unless required by a compact or the local natural resources district chooses to add all users within the district boundary to the management plan.
It restricts the integrated management plan to the basin, subbasin or reach surface drainage area.
- Section 7 Repealer.

Explanation of amendments, if any:

The committee amendment becomes the bill. It incorporates provisions of LB 933 as amended and advanced by the Natural Resources Committee; LB 971 as amended and advanced by the Revenue Committee; LB 1081 as advanced by the Agriculture Committee; LB 1097 as amended and advanced by the Natural Resources Committee and amended provisions of original LB 1226.

Sections 1 and 2	<p>Incorporate the provisions of LB 1081.</p> <p>This allows a limited right of entry to weed control authorities to carry out control projects targeting specific weeds over a defined period of time without the prerequisite of individual notice. This authority is only available if the weed control authority has published general notice specifying the specific weed or weeds to be controlled, the commencement date and the approximate duration of the project at least four weeks prior to the date of commencement of the control project. Landowners are not subject to fine for non-compliance with weed laws discovered, nor the costs of control activities carried out, under entry authorized by the bill unless the landowners were first served with individual notice.</p>
Section 3	<p>Eliminates an incorrect reference and replaces it with the correct reference.</p>
Sections 4 and 30	<p>Incorporate the amended version of LB 971.</p>
Section 4	<p>Changes the taxing and spending authority of those natural resources districts that contain river basins, subbasins or reaches that have been declared fully appropriated or designated over appropriated by the Department of Natural Resources.</p>
Section 30	<p>Allows those same districts to increase their levy by three cents for fiscal year 2006-2007; and two cents for fiscal years 2007-08 and 2008-09.</p>
Section 5	<p>Adds a reference.</p>
Section 6	<p>Incorporates the provisions of LB 1097.</p> <p>Creates the Storm Water Management Plan Program within the Department of Environmental Quality. The program is a grant program to assist cities and counties that have a storm water management plan that has been approved by the department.</p> <p>(1) Not less than 80% of the funds shall be provided to cities and counties in urbanized areas, as identified in the federal register.</p> <p>(2) Not more than 20% of the fund shall be provided to cities and counties outside the urbanized area, and identified in the federal register.</p> <p>It requires that cities and counties applying for these grants provide a 20% match.</p>
Sections 7 through 18, 21, 26, 28, and 29	<p>Incorporate the amended version of LB 933.</p>
Section 7	<p>Clarifies that in the case of an uncontested cancellation of a surface water right for non-use on a specific parcel served by an irrigation district, that the irrigation district is not prohibited from asserting its statutory rights to</p>

reassign the rights to use to some other user within five years. It also provides that a water appropriation may be cancelled without complying with all the provisions of the adjudication process if the owner fails to comply with the conditions of approval in a permit.

- Section 8 Clarifies that the form to file to contest the Department of Natural Resources' determination that an appropriation should be cancelled for non-use shall accompany the notice.
- Section 9 Provides that, in addition to a verified field investigation report, the department may rely upon other reports or information, as prima facie evidence for the forfeiture and annulment of a surface water appropriation. It further provides that a district or company holding a water right has five years after an order of cancellation issued following a voluntary relinquishment to assign the right to other land in the district or area served by the company. It requires the department to issue its order of cancellation within 60 days after receipt of a voluntary relinquishment.
- Section 10 Adds a requirement that the "location of use" be added to any application for transfer.
- Section 11 Adds a requirement that notice of an application for a transfer of location of use of a surface water appropriation be sent to any entity owning facilities used or proposed to be used for diversion or delivery of water under the appropriation that is to be transferred.
- Section 12 Clarifies that the applicant, rather than the department, must file certain documents with the county clerk or register of deeds whenever a temporary transfer is approved and file proof of such filing with the department. It also includes a provision that failure to file the proof of filing would be grounds for the director to negate a prior approval.
- Section 13 Requires the notice of review of the required 15-year review be mailed to the appropriator of record and posted on the department's web site; requires the appropriator to file documentation of continued use within six weeks after the date of final publication of notice; adds a provision that in the absence of a request for hearing, if the director is satisfied with the information provided by the appropriator that the appropriation continues to be beneficially used in the public interest, the director shall issue an order stating such findings, and provides for a hearing on the director's motion even if no other requests for hearing are received.
- Section 14 Clarifies that the Water Policy Task Force shall perform its duties so long as the Water Policy Task Force is authorized by the Legislature, and deletes language regarding the completion of the Task Force's work within 18 months and the selection of a meeting facilitator since the original report has been issued and the facilitator has been selected.

- Section 15 Requires a water well contractor or pump installation contractor to provide notice to the department within 60 days of pump installation, well modification, or pump modification for a well previously registered, and requires well owners to notify the department of other changes within 60 days.
- Section 16 Requires a copy of the notice of intent to be sent to the owners of all land falling within the spacing protection limits provided for by statute, and requires the public water supplier to notify the applicable natural resources districts and the owners of all land falling within the spacing protection limits provided for by statute of its determination that land described in a particular notice of intent is not suitable for its intended purpose.
- Section 17 Requires the director to issue a written order under the Industrial Ground Water Regulatory Act within 90 days of a hearing only if a hearing is held. (The requirement for a hearing was deleted by LB 962.)
- Section 18 Clarifies that a permit to withdraw ground water and transport that water off the overlying land for use as augmentation for water supplies in any Nebraska wetland or natural stream for the purpose of benefiting fish or wildlife or producing other environmental or recreational benefits in management areas must be obtained from a natural resources district in addition to any other required permit.
- Section 19 Adds a reference.
- Section 20 Incorporates LB 805 which was amended into LB 933.
Creates the Interrelated Water Management Plan Program whose purpose is to facilitate and fund the duties of natural resources districts arising under the Nebraska Ground Water Management and Protection Act. This program is to be a grant program administered by the Natural Resources Commission and the Department of Natural Resources upon recommendations by the Commission.
Requires the Commission to develop guidelines and limitations for grant requests, including studies to carry out those duties.
Requires the natural resources districts to provide, at a minimum, a local revenue match compromising 20% of the total project cost.
Requires the director to expend these funds to implement the commission's recommendations for fiscal support under the program only upon the Commission's approval.
- Section 21 Best management practices would include practices, procedures and schedules utilized for purposes of irrigation efficiency, to conserve or effect a savings of ground water, as well as to prevent or reduce present and future contamination of ground water. Variance would be broadened to include an approval to deviate from a restriction imposed under certain provisions of the Ground Water Management and Protection Act.

Sections 22 through
25 and 27

Incorporates amended provisions of LB 1226

Section 22

Allows a natural resources district that has imposed a limit or prohibition on the expansion of irrigated acres or otherwise limited or prevented increases in the consumptive use of ground water or imposed a moratorium on the issuance of new well permits under its groundwater management plan, to request that the Department of Natural Resources conduct an evaluation to determine if an immediate stay should be placed on the issuance of new surface water appropriations in the area if the department determines that it is in the public interest to do so. There are exceptions to the stay which exist in current law. Those exceptions are: surface water uses for which temporary public-use construction permits are issued; and, surface water uses and increases in surface water irrigated acres for which a variance is granted for good cause shown.

Section 23

Adds the requirement that the department must use the best methodologies as well as scientific data and information to ensure that the conclusions and results contained in the report are reliable. It also requires the department to document in the report the data, information and methodologies that were used so that these can be independently assessed. (The report is the evaluation of a river basin as to whether the basin is fully appropriated.)

Section 24

(1) Requires the department to send notice of its preliminary determination of fully appropriated by certified mail to the manager of the natural resources district located in the designated area. It also requires that the notice contain the signature of the director of the department.
(2)(a) Allows the construction of a new water well in the area determined to be fully appropriated if the permit with conditions imposed has been issued prior to the determination. Those conditions must meet the objectives of existing law, which are to be consistent with the integrated management plan, be sufficient to ensure that the state will remain in compliance with applicable state and federal laws and with any applicable interstate water compact or decree or other formal state contract or agreement pertaining to surface water or ground water use or supplies, and to protect the ground water users whose water wells are dependent on recharge from the river or stream involved and the surface water appropriators on such river or stream from streamflow depletion caused by surface water uses and ground water uses begun after the date such basin, subbasin or reach was preliminarily declared fully appropriated. This section also references Section 46-739 (6) which allows districts to establish different provisions in its management area for different hydrologic relationships between ground water and surface water including establishing different provisions for water wells constructed before the designation and for those constructed after the designation; and

for the restriction of water wells constructed after January 1, 2001, in those basins which were the subject of litigation over an interstate water compact or decree in which the state of Nebraska is a named defendant, if such litigation was commenced before May 22, 2001, and if the litigation was commenced after May 22, 2001, the provisions for restrictions may be different.

3. (k) Clarifies that increases in ground water irrigated acres that result from the use of water wells that were permitted prior to the effective date of the preliminary determination of fully appropriated but were not used for irrigation prior to the effective date could be subject to any conditions imposed by the applicable natural resources district. It removes the requirement that the wells be constructed within nine months prior to the determination. Wells would be allowed to be constructed under the existing one-year time frame allowed under the general permit statute Section 46-738.

- Section 25 (e) Requires an integrated management plan to include a plan to gather and evaluate data, information, and methodologies that could be used to implement the development of the plan, increase understanding of the surface water and hydrologically connected ground water system, and test the validity of the conclusions and information upon which the integrated management plan is based. It allows the applicable natural resources district to include all water users within the district boundary in an integrated management plan.
- Section 26 Corrects an erroneous reference to the integrated management plan which should have been the integrated management area.
- Section 27 Adds “wells permitted” to those wells constructed which may be treated differently by a district in a management area on or after the designation of fully appropriated is made, and clarifies that any permits for construction of new wells not completed by the date the determination of fully appropriated is made are going to be subject to any conditions imposed by the district.
Strikes language which would require districts to act jointly and uniformly by agreement of the respective boards of all districts that are included in the designated management area.
- Section 28 **MUNICIPAL ALLOCATIONS** Adds a new section to the ground water allocation dealing with municipalities and nonmunicipal commercial or industrial users.
(3) Unless an integrated management plan, rule, or order exists prior to November 1, 2005, no such plan, rule, or order may limit the use of ground water by a municipality in an area that is fully appropriated or over-appropriated until January 1, 2026, with certain exceptions:

- a. Any allocations to a municipality that have been made as of November 1, 2005, shall remain in full force and effect unless changed by the appropriate natural resources districts.
 - b. For any municipality that has not received an allocation as of November 1, 2005, the minimum annual allocation may be the greater of either the amount of ground water authorized by a permit or the governmental, commercial, and industrial uses of the municipality plus a per capita allowance.
 - i. Per capita allowance is based on the location of the municipality, increasing in equal increments from east to west and shall not be less than 200 gallons per person per day at 95 degrees, 19 minutes, 00 seconds longitude and not less than 250 gallons per person per day at 104 degrees, 04 minutes, 00 seconds longitude. Persons served by a municipality outside of its corporate limits shall be considered part of the municipality if such service begins prior to January 1, 2026.
 - ii. Prior to January 1, 2026, any new or expanded single commercial or industrial development served by a municipality commences water use resulting in the consumptive use in amounts greater than 25 million gallons annually may be subject to controls.
 - c. Prior to January 1, 2026, increases in the consumptive use of water by a municipality that result in decreases in streamflow shall be addressed by the integrated water management plan pursuant to controls or incentive programs and shall not affect the allocations in (a) and (b) of this subsection. Any permanent reduction in consumptive use of water associated with municipal growth, during the period between the operative date of this act and 2026, accrues to the benefit of the natural resources district where the municipality is located.
 - d. To qualify for the exemptions, any city of the metropolitan class, first class or second class shall file a conservation plan with the district if it is required by the integrated management plan. Villages and other municipalities smaller than a city of the second class shall not be required to submit a conservation plan to qualify.
- (4) Provides that on and after January 1, 2026, the base amount for an annual allocation to a municipality will be the greater of either the amount of water authorized by a permit issued by the department, or the greatest annual use prior to January 1, 2026, plus the per capita allowance. Increases in consumptive use of water by a municipality on and after January 1, 2026 that result in a decrease in streamflow must be addressed by the integrated management plan pursuant to controls or incentive programs, and a municipality may be subject to controls adopted pursuant to Section 46-715 for amounts in excess of the allocations.
- (5) Provides that unless an integrated management plan, rule, or order exists prior to November 1, 2005, no such plan, rule, or order may limit the use of ground water by a nonmunicipal commercial or industrial water user in an area that is

fully appropriated or overappropriated until January 1, 2026, with certain exceptions. The exceptions include:

- a. A nonmunicipal commercial or industrial user without an allocation as of November 1, 2005 may have the greater of either the amount of ground water authorized pursuant to permit issued by the department, or the amount necessary to achieve the commercial or industrial use, including all new or expanded uses that consume less than 25 million gallons annually. Any such increases will be subject to controls on incentive programs which have been adopted.
- b. Prior to January 1, 2026, any new or expanded single commercial or industrial development served by a nonmunicipal well within an area determined to be fully appropriated or designated overappropriated commences water use resulting in the consumptive use of water in amounts greater than 25 million gallons annually may be subject to controls.
- c. On and after January 1, 2026, the base amount for an annual allocation to a nonmunicipal commercial or industrial user within a designated area shall be the amount specified in subdivision (a) or (b) above.
- d. On and after January 1, 2026, increases in the consumptive use of water by a nonmunicipal commercial or industrial water user resulting in a decrease in streamflow must be addressed by the integrated management plan pursuant to controls or incentive programs.
- e. Any reduction in consumptive use associated with new nonmunicipal industrial or commercial uses of less than 25 million gallons, during the period between effectiveness and January 1, 2026 will accrue to the benefit of the natural resources district that the nonmunicipal user is located in.

Section 29	Adds to the list of structures and devices that the director and staff of the department shall have access at all reasonable times for the purpose of performing the duties assigned to the department, to include water measuring devices.
Section 31	Specifies operative dates.
Sections 32 and 33	Repealers.
Section 34	Emergency clause.

Senator Ed Schrock, Chairperson