



Ninety-Ninth Legislature - Second Session - 2006
Revised Committee Statement
LB 933

Hearing Date: January 18, 2006
Committee On: Natural Resources

Introducer(s): (Natural Resources Committee: Schrock, Chairperson; Hudkins, Kopplin, Kremer, McDonald, Stuhr)
Title: Change provisions relating to water resources

Roll Call Vote – Final Committee Action:

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

Vote Results:

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

Proponents:

Jody Gittins
Ann Bleed
David Cookson
Don Blankenau
Daniel Crouchley
Steve Huggenberger
Gary Mader
Lynn Rex

Representing:

Introducer
Department of Natural Resources
Attorney General's Office
League of Nebraska Municipalities
Metropolitan Utilities District
City of Lincoln
City of Grand Island
League of Nebraska Municipalities

Opponents:

Michael Jacobson

Representing:

Self

Neutral:

None

Representing:

Summary of purpose and/or changes:

LB 933 does the following:

Section 1 Eliminates a reference to a cost index that has been discontinued and

- replaces it with a more general reference to construction cost indexes.
- Section 2 Provides a reference change to the Ground Water Management and Protection Act.
- Section 3 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 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 4 Clarifies that the form to file to contest the Department of Natural Resources's determination that an appropriation should be cancelled for non-use shall accompany the notice.
- Section 5 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 6 Adds a requirement that the "location of use" be added to any application for transfer.
- Section 7 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 8 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 of the Department of Natural Resources to negate a prior approval.
- Section 9 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 10 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 11 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 12 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 13 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 14 Clarifies that a permit to withdraw ground water and transport that water off the overlying land must be obtained in addition to any permit required to conduct water or for natural resources district's permit to transfer water off land in management areas.
- Section 15 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.
- Section 16 Corrects an erroneous reference to the integrated management plan which should have been the integrated management area.
- Section 17 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 overappropriated 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. a municipality 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 governmental, commercial and industrial uses of the municipality plus a per capita allowance as its minimum allocation. The per capita allowance would be based on location and would range from not less than 200 gallons per person per day to not less than 250 gallons per person per day. Prior to January 1, 2026, any new or expanded commercial or industrial development served by a municipality in the fully appropriated or overappropriated area that results in the consumptive use of water in amounts greater than 25 million gallons annually may be subject to controls. Prior to January 1, 2026, consumptive use of water by a municipality that results in a decrease in streamflow would be required to be addressed by the integrated management plan

pursuant to controls or incentive programs, and would not affect municipal allocations. Permanent reductions in consumptive use of water associated with municipal growth between the effective date and January 1, 2026 will accrue to the benefit of the natural resources district that the municipality is in. It also requires any city of the metropolitan class, primary class, first class, or second class to file a conservation plan with the natural resources district in order to qualify for any exception.

- (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. 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. 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 18 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 19 Repealer.

Explanation of amendments, if any:

The Committee amendment does two things. First, it incorporates provisions of LB 805 that creates the Interrelated Water Management Plan Program for the purpose of facilitating and funding, in the form of grants, the duties of natural resources districts arising under the Nebraska

Ground Water Management and Protection Act, and requires a twenty percent match from the districts. Second, it adopts conforming language for noncommercial or industrial water users.

Senator Ed Schrock, Chairperson