

AMENDMENTS TO LB 701

Introduced by Natural Resources

1 1. Strike the original sections and all amendments
2 thereto and insert the following sections:

3 Sec. 14. Section 46-229.04, Revised Statutes Cumulative
4 Supplement, 2006, is amended to read:

5 46-229.04 (1) At ~~such~~ a hearing held pursuant to section
6 46-229.03, the verified field investigation report of an employee
7 of the department, or such other report or information that
8 is relied upon by the department to reach the preliminary
9 determination of nonuse, shall be prima facie evidence for the
10 forfeiture and annulment of such water appropriation. If no person
11 appears at the hearing, such water appropriation or unused part
12 thereof shall be declared forfeited and annulled. If an interested
13 person appears and contests the same, the department shall hear
14 evidence, and if it appears that such water has not been put to a
15 beneficial use or has ceased to be used for such purpose for more
16 than five consecutive years, the same shall be declared canceled
17 and annulled unless the department finds that (a) there has been
18 sufficient cause for such nonuse as provided for in subsection (2),
19 (3), or (4) of this section or (b) subsection (5) or (6) of this
20 section applies.

21 (2) Sufficient cause for nonuse shall be deemed to exist
22 for up to thirty consecutive years if such nonuse was caused by the
23 unavailability of water for that use. For a river basin, subbasin,

1 or reach that has been designated as overappropriated pursuant
2 to section 46-713 or determined by the department to be fully
3 appropriated pursuant to section 46-714, the period of time within
4 which sufficient cause for nonuse because of the unavailability
5 of water may be deemed to exist may be extended beyond thirty
6 years by the department upon petition therefor by the owner of
7 the appropriation if the department determines that an integrated
8 management plan being implemented in the river basin, subbasin, or
9 reach involved is likely to result in restoration of a usable water
10 supply for the appropriation.

11 (3) Sufficient cause for nonuse shall be deemed to exist
12 indefinitely if such nonuse was the result of one or more of the
13 following:

14 (a) For any tract of land under separate ownership, the
15 available supply was used but on only part of the land under the
16 appropriation because of an inadequate water supply;

17 (b) The appropriation is a storage appropriation and
18 there was an inadequate water supply to provide the water for the
19 storage appropriation or less than the full amount of the storage
20 appropriation was needed to keep the reservoir full; or

21 (c) The appropriation is a storage-use appropriation and
22 there was an inadequate water supply to provide the water for the
23 appropriation or use of the storage water was unnecessary because
24 of climatic conditions.

25 (4) Sufficient cause for nonuse shall be deemed to exist
26 for up to fifteen consecutive years if such nonuse was a result of
27 one or more of the following:

1 (a) Federal, state, or local laws, rules, or regulations
2 temporarily prevented or restricted such use;

3 (b) Use of the water was unnecessary because of climatic
4 conditions;

5 (c) Circumstances were such that a prudent person,
6 following the principles of good husbandry, would not have been
7 expected to use the water;

8 (d) The works, diversions, or other facilities essential
9 to use the water were destroyed by a cause not within the control
10 of the owner of the appropriation and good faith efforts to repair
11 or replace the works, diversions, or facilities have been and are
12 being made;

13 (e) The owner of the appropriation was in active
14 involuntary service in the armed forces of the United States
15 or was in active voluntary service during a time of crisis;

16 (f) Legal proceedings prevented or restricted use of the
17 water; or

18 (g) The land subject to the appropriation is under
19 an acreage reserve program or production quota or is otherwise
20 withdrawn from use as required for participation in any federal or
21 state program or such land previously was under such a program but
22 currently is not under such a program and there have been not more
23 than five consecutive years of nonuse on that land since that land
24 was last under that program.

25 The department may specify by rule and regulation other
26 circumstances that shall be deemed to constitute sufficient cause
27 for nonuse for up to fifteen years.

1 (5) When an appropriation is held in the name of an
2 irrigation district, a reclamation district, a public power and
3 irrigation district, ~~or~~ a mutual irrigation company or canal
4 company, or the United States Bureau of Reclamation and the
5 director determines that water under that appropriation has not
6 been used on a specific parcel of land for more than five years and
7 that no sufficient cause for such nonuse exists, the right to use
8 water under that appropriation on that parcel shall be terminated
9 and notice of the termination shall be posted on the department's
10 web site and shall be given in the manner provided in subsection
11 (2), (3), or (4) of section 46-229.03. The district or company
12 holding such right shall have five years after the determination,
13 or five years after an order of cancellation issued by the
14 department following the filing of a voluntary relinquishment of
15 the water appropriation that has been signed by the landowner and
16 the appropriator of record, to assign the right to use that portion
17 of the appropriation to other land within the district or the
18 area served by the company, to file an application for a transfer
19 in accordance with section 46-290, or to transfer the right in
20 accordance with sections 46-2,127 to 46-2,129. The department
21 shall issue its order of cancellation within sixty days after
22 receipt of the voluntary relinquishment unless the relinquishment
23 is conditioned by the landowner upon an action of a governmental
24 agency. If the relinquishment contains such a provision, the
25 department shall issue its order of cancellation within sixty days
26 after receipt of notification that such action has been completed.
27 The department shall be notified of any such assignment within

1 thirty days after such assignment. If the district or company does
2 not assign the right to use that portion of the appropriation to
3 other land, does not file an application for a transfer within the
4 five-year period, or does not notify the department within thirty
5 days after any such assignment, that portion of the appropriation
6 shall be canceled without further proceedings by the department
7 and the district or company involved shall be so notified by the
8 department. During the time within which assignment of a portion
9 of an appropriation is pending, the allowable diversion rate for
10 the appropriation involved shall be reduced, as necessary, to avoid
11 inconsistency with the rate allowed by section 46-231 or with any
12 greater rate previously approved for such appropriation by the
13 director in accordance with section 46-229.06.

14 (6) When it is determined by the director that an
15 appropriation, for which the location of use has been temporarily
16 transferred in accordance with sections 46-290 to 46-294, has not
17 been used at the new location for more than five years and that
18 no sufficient cause for such nonuse exists, the right to use that
19 appropriation at the temporary location of use shall be terminated.
20 Notice of that termination shall be posted on the department's
21 web site and shall be given in the manner provided in subsection
22 (2), (3), or (4) of section 46-229.03. The right to reinitiate
23 use of that appropriation at the location of use prior to the
24 temporary transfer shall continue to exist for five years after the
25 director's determination, but if such use is not reinitiated at
26 that location within such five-year period, the appropriation shall
27 be subject to cancellation in accordance with sections 46-229 to

1 46-229.04.

2 (7) If at the time of a hearing conducted in accordance
3 with subsection (1) of this section there is an application for
4 incidental or intentional underground water storage pending before
5 the department and filed by the owner of the appropriation, the
6 proceedings shall be consolidated.

7 Sec. 15. (1) Whenever a natural resources district
8 imposes an immediate temporary stay for one hundred eighty days in
9 accordance with subsection (2) of section 46-707, the director may
10 place an immediate temporary stay without prior notice or hearing
11 on the issuance of new surface water natural-flow appropriations
12 for one hundred eighty days in the area, river basin, subbasin,
13 or reach of the same area included in the natural resources
14 district's temporary stay, except the director shall not place a
15 temporary stay on new surface water natural-flow appropriations
16 that are necessary to alleviate an emergency situation involving
17 the provision of water for human consumption or public health or
18 safety.

19 (2) The department shall hold at least one public hearing
20 on the matter within the affected area within the period of
21 the one-hundred-eighty-day temporary stay, with the notice of
22 hearing given as provided in section 46-743, prior to making a
23 determination as to imposing a stay or conditions in accordance
24 with section 46-234 and subsection (12) of section 46-714. The
25 department may hold the public hearing in conjunction with the
26 natural resources district's hearing.

27 (3) Within forty-five days after a hearing pursuant to

1 this section, the department shall decide whether to exempt from
2 the immediate temporary stay the issuance of appropriations for
3 which applications were pending prior to the declaration commencing
4 the stay but for which the application was not approved prior to
5 such date, to continue the stay, or to allow the issuance of new
6 surface water appropriations.

7 Sec. 16. Section 46-601.01, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 46-601.01 For purposes of Chapter 46, article 6:

10 ~~(1)~~ (1)(a) Water well means any excavation that is
11 drilled, cored, bored, washed, driven, dug, jetted, or otherwise
12 constructed for the purpose of exploring for ground water,
13 monitoring ground water, utilizing the geothermal properties of
14 the ground, obtaining hydrogeologic information, or extracting
15 water from or injecting fluid as defined in section 81-1502 into
16 the underground water reservoir.

17 (b) Water well includes any excavation made for any
18 purpose if ground water flows into the excavation under natural
19 pressure and a pump or other device is placed in the excavation
20 for the purpose of withdrawing water from the excavation for
21 irrigation. For such excavations, construction means placing a pump
22 or other device into the excavation for the purpose of withdrawing
23 water for irrigation.

24 (c) Water well does not include (i) any excavation
25 made for obtaining or prospecting for oil or natural gas or for
26 inserting media to repressure oil or natural gas bearing formations
27 regulated by the Nebraska Oil and Gas Conservation Commission or

1 (ii) any structure requiring a permit by the Department of Natural
2 Resources used to exercise surface water appropriation; and

3 (2) Common carrier means any carrier of water including a
4 pipe, canal, ditch, or other means of piping or adjoining water for
5 irrigation purposes.

6 Sec. 17. Section 46-602, Revised Statutes Cumulative
7 Supplement, 2006, is amended to read:

8 46-602 (1) Each water well completed in this state on
9 or after July 1, 2001, excluding test holes and dewatering wells
10 to be used for less than ninety days, shall be registered with
11 the Department of Natural Resources as provided in this section
12 within sixty days after completion of construction of the water
13 well. The water well contractor as defined in section 46-1213
14 constructing the water well, or the owner of the water well if
15 the owner constructed the water well, shall file the registration
16 on a form made available by the department and shall also file
17 with the department the information from the well log required
18 pursuant to section 46-1241. The department shall, by January 1,
19 2002, provide water well contractors with the option of filing such
20 registration forms electronically. No signature shall be required
21 on forms filed electronically. The fee required by subsection (3)
22 of section 46-1224 shall be the source of funds for any required
23 fee to a contractor which provides the on-line services for such
24 registration. Any discount in the amount paid the state by a credit
25 card, charge card, or debit card company or a third-party merchant
26 bank for such registration fees shall be deducted from the portion
27 of the registration fee collected pursuant to section 46-1224.

1 (2)(a) If the newly constructed water well is a
2 replacement water well, the registration form shall include
3 (i) the registration number of the water well being replaced,
4 if applicable, and (ii) the date the original water well was
5 decommissioned or a certification that the water well will be
6 decommissioned within one hundred eighty days or a certification
7 that the original water well will be modified and equipped to
8 pump fifty gallons per minute or less and will be used only for
9 livestock, monitoring, observation, or any other nonconsumptive
10 use or de ~~minimus~~ minimis use approved by the applicable natural
11 resources district.

12 (b) For purposes of this section, replacement water well
13 means a water well which is constructed to provide water for
14 the same purpose as the original water well and is operating in
15 accordance with any applicable permit from the department and any
16 applicable rules and regulations of the natural resources district
17 and, if the purpose is for irrigation, the replacement water well
18 delivers water to the same tract of land served by the original
19 water well and (i) replaces ~~an abandoned~~ a decommissioned water
20 well within ~~three years~~ one hundred eighty days after the last
21 ~~operation~~ decommissioning of the ~~abandoned~~ original water well, and
22 ~~the original water well is decommissioned either before or within~~
23 ~~one hundred eighty days after such construction,~~ (ii) replaces a
24 water well that has not been ~~abandoned~~ decommissioned but will not
25 be used after construction of the new water well and the original
26 water well will be decommissioned within one hundred eighty days
27 after such construction, except that in the case of a municipal

1 water well, the original municipal water well may be used after
2 construction of the new water well but shall be decommissioned
3 within one year after completion of the replacement water well, or
4 (iii) the original water well will continue to be used but will
5 be modified and equipped within one hundred eighty days after such
6 construction of the replacement water well to pump fifty gallons
7 per minute or less and will be used only for livestock, monitoring,
8 observation, or any other nonconsumptive or de ~~minimus~~ minimis use
9 and approved by the applicable natural resources district.

10 (c) No water well shall be registered as a replacement
11 water well until the Department of Natural Resources has received
12 a properly completed notice of decommissioning for the water well
13 being replaced on a form made available by the department, or
14 properly completed notice, prepared in accordance with subsection
15 (7) of this section, of the modification and equipping of the
16 original water well to pump fifty gallons per minute or less
17 for use only for livestock, monitoring, observation, or any other
18 nonconsumptive or de ~~minimus~~ minimis use approved by the applicable
19 natural resources district. Such notices, as required, shall be
20 completed by (i) the water well contractor as defined in section
21 46-1213 who decommissions the water well or modifies and equips
22 the water well, (ii) the pump installation contractor as defined
23 in section 46-1209 who decommissions the water well or modifies
24 and equips the water well, or (iii) the owner if the owner
25 decommissions a driven sandpoint well which is on land owned by him
26 or her for farming, ranching, or agricultural purposes or as his
27 or her place of abode. The Department of Health and Human Services

1 Regulation and Licensure shall, by rule and regulation, determine
2 which contractor or owner shall be responsible for such notice
3 in situations in which more than one contractor or owner may be
4 required to provide notice under this subsection.

5 (3) For a series of two or more water wells completed and
6 pumped into a common carrier as part of a single site plan for
7 irrigation purposes, a registration form and a detailed site plan
8 shall be filed for each water well. The registration form shall
9 include the registration numbers of other water wells included in
10 the series if such water wells are already registered.

11 (4) A series of water wells completed for purposes
12 of installation of a ground heat exchanger for a structure
13 for utilizing the geothermal properties of the ground shall be
14 considered as one water well. One registration form and a detailed
15 site plan shall be filed for each such series.

16 (5) One registration form shall be required along with
17 a detailed site plan which shows the location of each such water
18 well in the site and a log from each such water well for water
19 wells constructed as part of a single site plan for (a) monitoring
20 ground water, obtaining hydrogeologic information, or extracting
21 contaminants from the ground, (b) water wells constructed as part
22 of remedial action approved by the Department of Environmental
23 Quality pursuant to section 66-1525, 66-1529.02, or 81-15,124, and
24 (c) water well owners who have a permit issued pursuant to the
25 Industrial Ground Water Regulatory Act and also have an underground
26 injection control permit issued by the Department of Environmental
27 Quality.

1 (6) The Department of Natural Resources shall be notified
2 by the owner of any change in the ownership of a water well
3 required to be registered under this section. Notification shall be
4 in such form and include such evidence of ownership as the Director
5 of Natural Resources by rule and regulation directs. The department
6 shall use such notice to update the registration on file. The
7 department shall not collect a fee for the filing of the notice.

8 (7) The water well contractor or pump installation
9 contractor responsible therefor shall notify the department within
10 sixty days on a form provided by the department of any pump
11 installation or any modifications to the construction of the water
12 well or pump, after the initial registration of the well. For
13 a change of use resulting in modification and equipping of an
14 original water well which is being replaced in accordance with
15 subsection (2) of this section, the water well contractor or pump
16 installation contractor shall notify the department within sixty
17 days on a form provided by the department of the water well and
18 pump modifications and equipping of the original water well. A
19 water well owner shall notify the department within sixty days on
20 a form provided by the department of any other changes or any
21 inaccuracies in recorded water well information, including, but not
22 limited to, changes in use. The department shall not collect a fee
23 for the filing of the notice.

24 (8) Whenever a water well becomes an illegal water well
25 as defined in section 46-706, the owner of the water well shall
26 either correct the deficiency that causes the well to be an
27 illegal water well or shall cause the proper decommissioning of

1 the water well in accordance with rules and regulations adopted
2 pursuant to the Water Well Standards and Contractors' Licensing
3 Act. The water well contractor who decommissions the water well,
4 the pump installation contractor who decommissions the water well,
5 or the owner if the owner decommissions a driven sandpoint well
6 which is on land owned by him or her for farming, ranching, or
7 agricultural purposes or as his or her place of abode, shall
8 provide a properly completed notice of ~~abandonment~~ decommissioning
9 to the Department of Natural Resources within sixty days. The
10 Department of Health and Human Services Regulation and Licensure
11 shall, by rule and regulation, determine which contractor or owner
12 shall be responsible for such notice in situations in which more
13 than one contractor or owner may be required to provide notice
14 under this subsection. The Department of Natural Resources shall
15 not collect a fee for the filing of the notice.

16 (9) Except for water wells which are used solely for
17 domestic purposes and were constructed before September 9, 1993,
18 and for test holes and dewatering wells used for less than ninety
19 days, each water well which was completed in this state before
20 July 1, 2001, and which is not registered on that date shall be an
21 illegal water well until it is registered with the Department of
22 Natural Resources. Such registration shall be completed by a water
23 well contractor or by the current owner of the water well, shall
24 be on forms provided by the department, and shall provide as much
25 of the information required by subsections (1) through (5) of this
26 section for registration of a new water well as is possible at the
27 time of registration.

1 (10) Water wells which are or were used solely for
2 injecting any fluid other than water into the underground water
3 reservoir, which were constructed before July 16, 2004, and which
4 have not been properly decommissioned on or before July 16, 2004,
5 shall be registered on or before July 1, 2005.

6 (11) Water wells described in subdivision (1)(b) of
7 section 46-601.01 shall be registered with the Department of
8 Natural Resources as provided in subsection (1) of this section
9 within sixty days after the water well is constructed. Water wells
10 described in subdivision (1)(b) of section 46-601.01 which were
11 constructed prior to the operative date of this section shall be
12 registered within one hundred eighty days after such date.

13 Sec. 18. Section 46-609, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 46-609 (1) Except as otherwise provided by this section
16 or section 46-610, no irrigation water well shall be drilled
17 constructed upon any land in this state within six hundred feet of
18 any registered irrigation water well and no existing nonirrigation
19 water well within six hundred feet of any registered irrigation
20 water well shall be used for irrigation purposes. Such spacing
21 requirement shall not apply to (a) any well used to irrigate two
22 acres or less or (b) any replacement irrigation water well if it is
23 ~~drilled~~ constructed within fifty feet of the irrigation water well
24 being replaced and if the water well being replaced was ~~drilled~~
25 constructed prior to September 20, 1957, and is less than six
26 hundred feet from a registered irrigation water well.

27 (2) The spacing protection of subsection (1) of this

1 section shall apply to an unregistered water well for a period of
2 sixty days after completion of such water well.

3 (3) No person shall use a water well for purposes other
4 than its registered purpose until the water well registration has
5 been changed to the intended new use, except that a person may
6 use a water well registered for purposes other than its intended
7 purpose for use for livestock, monitoring, observation, or any
8 other nonconsumptive or de minimis use approved by the applicable
9 natural resources district. The change to a new use shall be
10 made by filing a water well registration modification with the
11 Department of Natural Resources and shall be approved only if the
12 water well is in conformity with subsection (1) of this section and
13 with section 46-651.

14 Sec. 19. Section 46-644, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 46-644 Permits granted by the Director of Natural
17 Resources shall be valid for a period of five years after the
18 granting of a permit and as long thereafter as the water for
19 which the permit is granted is used. For the purposes of the
20 Municipal and Rural Domestic Ground Water Transfers Permit Act,
21 the commencement of construction of facilities to provide water
22 for beneficial use shall be deemed the date of the commencement of
23 beneficial use. If it appears that the holder of a permit granted
24 under the act has not used water for a beneficial purpose and in
25 accordance with the terms of the permit for more than ~~three~~ five
26 years, such permit may be revoked or modified by the director. The
27 procedure for such revocation or modification shall be the same as

1 that provided for in sections 46-229.02 to 46-229.05.

2 Sec. 20. Section 46-707, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 46-707 (1) Regardless of whether or not any portion of
5 a district has been designated as a management area, in order
6 to administer and enforce the Nebraska Ground Water Management
7 and Protection Act and to effectuate the policy of the state to
8 conserve ground water resources, a district may:

9 ~~(1)~~ (a) Adopt and promulgate rules and regulations
10 necessary to discharge the administrative duties assigned in the
11 act;

12 ~~(2)~~ (b) Require such reports from ground water users as
13 may be necessary;

14 ~~(3)~~ (c) Require meters to be placed on any water wells
15 for the purpose of acquiring water use data;

16 ~~(4)~~ (d) Require decommissioning of water wells that are
17 not properly classified as active status water wells as defined in
18 section 46-1204.02 or inactive status water wells as defined in
19 section 46-1207.02;

20 ~~(5)~~ (e) Conduct investigations and cooperate or contract
21 with agencies of the United States, agencies or political
22 subdivisions of this state, public or private corporations, or
23 any association or individual on any matter relevant to the
24 administration of the act;

25 ~~(6)~~ (f) Report to and consult with the Department
26 of Environmental Quality on all matters concerning the entry
27 of contamination or contaminating materials into ground water

1 supplies; and

2 ~~(7)~~ (g) Issue cease and desist orders, following ten
3 days' notice to the person affected stating the contemplated action
4 and in general the grounds for the action and following reasonable
5 opportunity to be heard, to enforce any of the provisions of the
6 act or of orders or permits issued pursuant to the act, to initiate
7 suits to enforce the provisions of orders issued pursuant to the
8 act, and to restrain the construction of illegal water wells or the
9 withdrawal or use of water from illegal water wells.

10 Before any rule or regulation is adopted pursuant to
11 this ~~section~~, subsection, a public hearing shall be held within
12 the district. Notice of the hearing shall be given as provided in
13 section 46-743.

14 (2) In addition to the powers enumerated in subsection
15 (1) of this section, a district may impose an immediate temporary
16 stay for a period of one hundred eighty days on the construction
17 of any new water well and on any increase in the number of
18 acres historically irrigated, without prior notice or hearing, upon
19 adoption of a resolution by the board finding that such temporary
20 immediate stay is necessary. The district shall hold at least
21 one public hearing on the matter within the district during such
22 one hundred eighty days, with the notice of the hearing given
23 as provided in section 46-743, prior to making a determination
24 as to imposing a permanent stay or conditions in accordance with
25 subsections (1) and (6) of section 46-739. Within forty-five days
26 after a hearing pursuant to this subsection, the district shall
27 decide whether to exempt from the immediate temporary stay the

1 construction of water wells for which permits were issued prior
2 to the date of the resolution commencing the stay but for which
3 construction had not begun prior to such date. If construction of
4 such water wells is allowed, all permits that were valid when the
5 stay went into effect shall be extended by a time period equal to
6 the length of the stay and such water wells shall otherwise be
7 completed in accordance with section 46-738. Water wells listed in
8 subsection (3) of section 46-714 are exempt from this subsection.

9 Sec. 21. Section 46-715, Revised Statutes Cumulative
10 Supplement, 2006, is amended to read:

11 46-715 (1) 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
16 reach and the department shall jointly develop an integrated
17 management plan for such river basin, subbasin, or reach. The plan
18 shall be completed, adopted, and take effect within three years
19 after such designation or final determination unless the department
20 and the natural resources districts jointly agree to an extension
21 of not more than two additional years.

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

1 the economic viability, social and environmental health, safety,
2 and welfare of the river basin, subbasin, or reach can be achieved
3 and maintained for both the near term and the long term; (b)
4 a map clearly delineating the geographic area subject to the
5 integrated management plan; (c) one or more of the ground water
6 controls authorized for adoption by natural resources districts
7 pursuant to section 46-739; (d) one or more of the surface water
8 controls authorized for adoption by the department pursuant to
9 section 46-716; and (e) a plan to gather and evaluate data,
10 information, and methodologies that could be used to implement
11 sections 46-715 to 46-717, increase understanding of the surface
12 water and hydrologically connected ground water system, and test
13 the validity of the conclusions and information upon which the
14 integrated management plan is based. The plan may also provide for
15 utilization of any applicable incentive programs authorized by law.
16 Nothing in the integrated management plan for a fully appropriated
17 river basin, subbasin, or reach shall require a natural resources
18 district to regulate ground water uses in place at the time of
19 the department's preliminary determination that the river basin,
20 subbasin, or reach is fully appropriated, but a natural resources
21 district may voluntarily adopt such regulations. The applicable
22 natural resources district may decide to include all water users
23 within the district boundary in an integrated management plan.

24 (3) The ground water and surface water controls proposed
25 for adoption in the integrated management plan pursuant to
26 subsection (1) of this section shall, when considered together
27 and with any applicable incentive programs, (a) be consistent with

1 the goals and objectives of the plan, (b) be sufficient to ensure
2 that the state will remain in compliance with applicable state and
3 federal laws and with any applicable interstate water compact or
4 decree or other formal state contract or agreement pertaining to
5 surface water or ground water use or supplies, and (c) protect the
6 ground water users whose water wells are dependent on recharge from
7 the river or stream involved and the surface water appropriators on
8 such river or stream from streamflow depletion caused by surface
9 water uses and ground water uses begun after the date the river
10 basin, subbasin, or reach was designated as overappropriated or
11 was preliminarily determined to be fully appropriated in accordance
12 with section 46-713.

13 (4) (a) In any river basin, subbasin, or reach that is
14 designated as overappropriated, when the designated area lies
15 within two or more natural resources districts, the department and
16 the affected natural resources districts shall jointly develop a
17 basin-wide plan for the area designated as overappropriated. Such
18 plan shall be developed using the consultation and collaboration
19 process described in subdivision (b) of this subsection, shall
20 be developed concurrently with the development of the integrated
21 management plan required pursuant to subsections (1) through (3) of
22 this section, and shall be designed to achieve, in the incremental
23 manner described in subdivision (d) of this subsection, the goals
24 and objectives described in subsection (2) of this section. The
25 basin-wide plan shall be adopted after hearings by the department
26 and the affected natural resources districts.

27 (b) In any river basin, subbasin, or reach designated

1 as overappropriated and subject to this subsection, the department
2 and each natural resources district encompassing such river basin,
3 subbasin, or reach shall jointly develop an integrated management
4 plan for such river basin, subbasin, or reach pursuant to
5 subsections (1) through (3) of this section. Each integrated
6 management plan for a river basin, subbasin, or reach subject
7 to this subsection shall be consistent with any basin-wide plan
8 developed pursuant to subdivision (a) of this subsection. Such
9 integrated management plan shall be developed after consultation
10 and collaboration with irrigation districts, reclamation districts,
11 public power and irrigation districts, mutual irrigation companies,
12 canal companies, and municipalities that rely on water from
13 within the affected area and that, after being notified of the
14 commencement of the plan development process, indicate in writing
15 their desire to participate in such process. In addition, the
16 department or the affected natural resources districts may include
17 designated representatives of other stakeholders. If agreement
18 is reached by all parties involved in such consultation and
19 collaboration process, the department and each natural resources
20 district shall adopt the agreed-upon integrated management plan. If
21 agreement cannot be reached by all parties involved, the integrated
22 management plan shall be developed and adopted by the department
23 and the affected natural resources district pursuant to sections
24 46-715 to 46-718 or by the Interrelated Water Review Board pursuant
25 to section 46-719.

26 (c) Any integrated management plan developed under
27 this subsection shall identify the overall difference between

1 the current and fully appropriated levels of development. Such
2 determination shall take into account cyclical supply, including
3 drought, identify the portion of the overall difference between the
4 current and fully appropriated levels of development that is due
5 to conservation measures, and identify the portions of the overall
6 difference between the current and fully appropriated levels of
7 development that are due to water use initiated prior to July 1,
8 1997, and to water use initiated on or after such date.

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

13 (i) The first incremental goals shall be to address the
14 impact of streamflow depletions to (A) surface water appropriations
15 and (B) water wells constructed in aquifers dependent upon recharge
16 from streamflow, to the extent those depletions are due to water
17 use initiated after July 1, 1997, and, unless an interstate
18 cooperative agreement for such river basin, subbasin, or reach is
19 no longer in effect, to prevent streamflow depletions that would
20 cause noncompliance by Nebraska with such interstate cooperative
21 agreement. During the first increment, the department and the
22 affected natural resources districts shall also pursue voluntary
23 efforts, subject to the availability of funds, to offset any
24 increase in streamflow depletive effects that occur after July 1,
25 1997, but are caused by ground water uses initiated prior to such
26 date. The department and the affected natural resources districts
27 may also use other appropriate and authorized measures for such

1 purpose;

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

6 (iii) During the ten years following adoption of an
7 integrated management plan developed under this subsection (4)
8 or during the ten years after the adoption of any subsequent
9 increment of the integrated management plan pursuant to subdivision
10 (d)(iv) of this subsection, the department and the affected natural
11 resources district shall conduct a technical analysis of the
12 actions taken in such increment to determine the progress towards
13 meeting the goals and objectives adopted pursuant to subsection (2)
14 of this section. The analysis shall include an examination of (A)
15 available supplies and changes in long-term availability, (B) the
16 effects of conservation practices and natural causes, including,
17 but not limited to, drought, and (C) the effects of the plan
18 on reducing the overall difference between the current and fully
19 appropriated levels of development identified in subdivision (4)(c)
20 of this section. The analysis shall determine whether a subsequent
21 increment is necessary in the integrated management plan to meet
22 the goals and objectives adopted pursuant to subsection (2) of this
23 section and reduce the overall difference between the current and
24 fully appropriated levels of development identified in subdivision
25 (4)(c) of this section;

26 (iv) Based on the determination made in subdivision
27 (d)(iii) of this subsection, the department and the affected

1 natural resources districts, utilizing the consultative and
2 collaborative process described in subdivision (b) of this
3 subsection, shall if necessary identify goals for a subsequent
4 increment of the integrated management plan. Subsequent increments
5 shall be completed, adopted, and take effect not more than ten
6 years after adoption of the previous increment; and

7 (v) If necessary, the steps described in subdivisions
8 (d)(ii) through (iv) of this subsection shall be repeated until
9 the department and the affected natural resources districts agree
10 that the goals and objectives identified pursuant to subsection
11 (2) of this section have been met and the overall difference
12 between the current and fully appropriated levels of development
13 identified in subdivision (4)(c) of this section has been addressed
14 so that the river basin, subbasin, or reach has returned to a fully
15 appropriated condition.

16 (5) In any river basin, subbasin, or reach that is
17 designated as fully appropriated or overappropriated and whenever
18 necessary to ensure that the state is in compliance with an
19 interstate compact or decree or a formal state contract or
20 agreement, the department, in consultation with the affected
21 districts, shall forecast on an annual basis the maximum amount of
22 water that may be available from stream flow for beneficial use in
23 the short and long term in order to comply with the requirement
24 of subdivision (3)(b) of this section. This determination shall be
25 made by January 1, 2008, and each January 1 thereafter.

26 Sec. 22. Section 46-1212, Reissue Revised Statutes of
27 Nebraska, is amended to read:

1 46-1212 Water well shall mean any excavation that is
2 drilled, cored, bored, washed, driven, dug, jetted, or otherwise
3 constructed for the purpose of exploring for ground water,
4 monitoring ground water, utilizing the geothermal properties of
5 the ground, obtaining hydrogeologic information, or extracting
6 water from or injecting fluid as defined in section 81-1502 into
7 the underground water reservoir. Water well shall not include any
8 excavation made ~~for obtaining or prospecting for oil or natural gas~~
9 ~~or for inserting media to repressure oil or natural gas bearing~~
10 ~~formations regulated by the Nebraska Oil and Gas Conservation~~
11 ~~Commission.~~ described in subdivisions (1)(b) and (1)(c) of section
12 46-601.01.