



**Hundredth Legislature - First Session - 2007**  
**Revised Committee Statement**  
**LB 701**

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**Hearing Date:** February 28, 2007 and April 4, 2007 (Rehearing)  
**Committee On:** Natural Resources

**Introducer(s):** (Christensen)  
**Title:** Adopt a river basin administration committee

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**Roll Call Vote – Final Committee Action:**

- Advanced to General File
  - X Advanced to General File with Amendments
  - Indefinitely Postponed
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**Vote Results:**

5	Yes	Senators Carlson, Dubas, Fischer, Hudkins, Loudon
1	No	Senator Kopplin
2	Present, not voting	Senators Christensen, Wallman
0	Absent	

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**Proponents:**

Senator Mark Christensen  
Steve Smith  
Scot German  
Ron Friehe  
Don Adams  
Gregg Smith  
Mike Lucas  
David Nabity  
Ed Schrock  
Liz Mollendor  
Kurt Elder  
Steve Grams  
Weston Furrer  
Gale Lush  
Terry Andersen  
Mike Delka  
Jeff Wallin  
Lee Carskadon

**Representing:**

Introducer  
Water Claim  
Self  
Self  
Nebraskans First  
Self  
Franklin Public Schools  
Self  
South Platte United Chambers of Commerce  
Self  
Self  
Self  
Self  
Nebraska Farmers Union  
Self  
Bostwick Irrigation District  
Self  
Carskadon Farms

**Rehearing (AM 872)**

Jody Gittins	Introducer
Dan Smith	Middle Republican Natural Resources District

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Mike Clements  
Jasper Fanning  
John Heil  
Curt Friesen  
John Thorburn  
Ann Bleed  
Keith Olsen  
Dale Helms  
Tom Schwarz  
Jay Wolf

**Opponents:**

Jerry Kuenning  
Claude Cappel  
Lucas Haag  
Dean Edson

**Rehearing (AM 872)**

Don Adams  
Barry Richards  
Steve Ebke  
Jim Tierney

**Neutral:**

William Barger  
Elaine Menzel  
Dean Edson

Matthew Fischer

**Rehearing (AM 872)**

Don Kraus

David Cookson  
Claude Cappel  
Steve Smith  
Matt Harrison

Lower Republican Natural Resources District  
Upper Republican Natural Resources District  
Nebraska Association of Resources Districts  
Upper Big Blue Natural Resources District  
Tri-Basin Natural Resources District  
Department of Natural Resources  
Nebraska Farm Bureau  
Self  
Self  
Nebraska Cattlemen

**Representing:**

Nebraska Cattlemen  
Self  
Self  
Upper Republican Natural Resources District

Nebraskans First  
Self  
Nebraska Corn Growers  
Self

**Representing:**

Self  
Nebraska Association of County Officials  
Middle Republican Natural Resources District;  
Lower Republican Natural Resources District  
Chase County Schools

Central Nebraska Public Power and Irrigation  
District  
Attorney General's Office  
Self  
Water Claim  
Self

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**Summary of purpose and/or changes:**

LB 701 does the following:

Section 1 Legislative findings and intent language.

Section 2 Definitions:

- (1) Allocation – an amount of water that can be restricted by either a natural resources district or the Department of Natural Resources;

- (2) Allowance – the amount of beneficial consumptive use to which the basin administration committee may restrict a regulatory agency;
- (3) Balanced water budget – the amount of water necessary to comply with an interstate compact;
- (4) Basin administration committee – committee created by this act;
- (5) Beneficial consumptive use – water consumed through the activities of man and evaporation;
- (6) Computed beneficial consumptive use – streamflow depletion resulting from the activities of man as defined by the Republican River Compact;
- (7) Conservation practices – terraces, grassed waterways, retention ponds, dams, and minimum till or no-tillage farming practices;
- (8) Department – Department of Natural Resources;
- (9) Eligible natural resources district – the Upper, Middle and Lower Republican Natural Resources Districts and the Tri-Basin Natural Resources District;
- (10) Interstate compact – Final settlement stipulations of the Republican River Basin Settlement Agreement.

Section 3 Creates the basin administration committee for any river basin subject to an interstate compact with the following members:

- (1) One representative from each eligible natural resources district;
- (2) The director of the Department of Natural Resources;
- (3) A representative of surface water irrigation districts chosen by caucus; and
- (4) A representative of municipalities within the river basin having a population of at least 1,500 inhabitants chosen by caucus.

Allows the committee to take basinwide actions upon majority vote and is subject to the Open Meetings Act.

Section 4 The committee shall:

- (1) Develop a balanced water budget and insure basinwide compliance with the interstate compact;
- (2) Develop a financial budget, and notify the eligible natural resources districts of required funding by October 31 of each year. In order to meet this obligation the affected districts would be allowed to levy an additional ten cents, to be matched 4:1 with state general fund dollars, up to \$9 million from the general fund; and
- (3) Assign water allocations to each regulatory agency within the basin.

Section 5 The committee may:

- (1) Supplement and augment river basin water supplies;
- (2) Manage vegetation;
- (3) Implement acreage retirement programs after publication of an economic impact study;
- (4) Provide incentives to manage surface and ground water irrigation;
- (5) Purchase surface water rights;
- (6) Apply for and hold water permits;

- (7) Develop and manage a water bank;
- (8) Contract for services; and
- (9) Limit administrative costs to not more than three percent annually, which includes hydrological modeling.

Gives preference to supplementing and augmenting water supplies and managing vegetation.

- Section 6 Any actions undertaken by the committee must result in compliance with the interstate compact. It also requires the publication of a report detailing the expected benefits and costs of each action taken over a one-year, five-year, ten-year, twenty-five-year, and fifty-year period from the date of implementation.
- Section 7 The committee must formulate an action plan within its budget that will result in compliance with the compact according to the ground water model. The plan must be submitted to the eligible natural resources districts for approval, and must be made available to the public and the department.
- Section 8 Requires the department, upon a formal request from the committee, to provide technical support, computer modeling results, and honor all data requests within 30 days.  
Requires the department to provide up to 50 computer simulations each year at no cost to the committee.  
Additional computer simulations must be provided at a mutually agreed upon cost not to exceed \$500 per simulation.  
Requires the department, if it fails to provide the requested information within 30 days, to pay the costs if this data is compiled by another entity under contract with the committee.
- Section 9 Requires the department to provide annual river basin depletion forecasts for dry, average, and wet years caused by ground water pumping within the alluvial basin, within one mile, two miles and five miles of the center of any flowing tributary or stream; for ground water wells not included in the above description; for any surface water diversions; for reductions in the virgin water supply caused by conservation and by vegetation. The forecasts shall project one-year, two-year, five-year, ten-year, twenty-five-year and fifty-year periods.
- Section 10
- (1) Requires a \$10 million appropriation for fiscal year 07-08 to be made to the committee;
  - (2) Requires an appropriation to the Central Nebraska Public Power and Irrigation District of \$40,000 for each year that Elwood Reservoir is above seventy-five percent capacity for at least six months; and an additional \$50 per acre-foot in excess of thirty-three percent capacity.
- Section 11 Requires the state to assume financial responsibility for all consumptive uses exceeding the compact from now through December 31, 2012. After that date,

the state would be required to pay four-fifths of the costs and the committee would be required to pay one-fifth.

- Section 12 Requires that a member of the committee be involved in the negotiations, planning, and creation of future interstate compacts and agreements, as well as meetings and negotiations regarding the Final Settlement Stipulations of the Republican River Basin Settlement Agreement.
- Section 13 States that there is an accumulated computed beneficial consumptive use overage on the effective date of the act, and once that overage is eliminated, if the department or district fails to live within the committee's allocation, the committee assumes management of water policies of the department or district for a period of one year.
- Section 14 Beginning January 1, 2013, if the basin fails to remain in compliance with the compact, the Interrelated Water Review Board must review and revise the committee's plans.
- Section 15
- (1) Allows the transfer of ground water from one river basin to another if the following conditions exist:
    - (a) No net increase in beneficial consumptive use to the district from which the water will be transferred;
    - (b) Projected aquifer level change is not greater than the permitted change caused by irrigation wells in the district from which the water will be transferred;
    - (c) Voluntary seller;
    - (d) Erosion protection;
    - (e) Owners of the property are compensated and made whole for any change in the owners' property use; and
    - (f) Public property, including roads, upgraded to accommodate any such transfer.
  - (2) Surface water transfers from one river basin to another if the following conditions exist:
    - (a) No net increase in beneficial consumptive use to the basin from which the water will be transferred at or below the new diversion point;
    - (b) No harm to the holders of water rights prior in time;
    - (c) Physical ability to move the water to new diversion point;
    - (d) Voluntary seller;
    - (e) Erosion protection;
    - (f) Owners compensated and made whole for any change in the owners' property use; and
    - (g) Public property upgraded to accommodate any such transfer.
  - (3) Compliance with this section shall be confirmed and permitted by a neutral party with necessary expertise as designated by the Legislature.

- Section 16 Requires the Governor, in cooperation with the Attorney General, to seek financial compensation from the federal government for the effects of conservation programs on streamflow in areas involving the federal government.
- Section 17 Prohibits the department from installing any new conservation practices that reduce streamflow.
- Section 18
- (1) No fiscal impact on existing programs shall occur.
  - (2) Any program involving a state agency instituted after the effective date of this act which involves a state agency, and is designed to reduce or offset beneficial consumptive uses shall estimate the ten-year economic impact of the program on the affected community and shall compensate that community for any negative impacts, to provide property tax relief.
  - (3) Requires compensation be paid to property owners on or before the projected date of the negative economic impact.
- Section 19 Any change in ownership of a surface water right retains the priority date of the original water right holder as long as the water continues to be distributed on the same land for which the permit was originally granted. Any change in the diversion point of a surface water right will retain the priority date assigned to the water right.
- Section 20 Allows a natural resources district that is a member of a basin administration committee to levy an additional ten cents for purposes of the committee.
- Section 21 Repealer.

**Explanation of amendments, if any:**

The Committee amendment does the following:

**Sections 1 through 4 – LB 458 as amended by the Committee**

Section 1 Creates the Riparian Vegetation Task Force consisting of: one surface water project representative from each river basin that has been determined to be fully appropriated or overappropriated, a representative of the Department of Agriculture, the Department of Environmental Quality, the Department of Natural Resources, the office of the Governor, the office of the State Forester, the Game and Parks Commission, the University of Nebraska, two representatives of the Natural Resources Association; and one riparian landowner from each of the state's congressional districts, and any member of the Legislature.

The task force sunsets on June 30, 2009.

Section 2 The task force is to consult with appropriate federal agencies and develop and prioritize vegetation management goals and plans to accomplish them. The task force is to convene within thirty days after the appointment process is complete to

elect a chairperson and conduct its business. The primary focus of the task force shall be in river basins that are fully appropriated or overappropriated, and requires a meeting to be held in communities within the Platte River and Republican River Basins. A preliminary report to the Governor and the Legislature is to be made by December 15, 2007, and each year thereafter, with the final report due prior to June 30, 2009. The expenses of the task force are to be paid out of the appropriated funds, not to exceed \$25,000 per fiscal year.

Section 3 Statutory reference change.

Section 4 (adds a new subsection (4) ) Specifies that an appropriation in the amount of \$2 million annually is to be made for the management of vegetation within the banks of a natural stream or within 100 feet of the banks of the channel of any natural stream. These funds are to be used only for activities and equipment as part of a vegetation program to improve streamflow. Priority shall be given to grant applicants whose proposed programs are consistent with the policy established by the Task Force. Preference is to be given to local weed control authorities or natural resources districts whose territory includes one or more fully appropriated or overappropriated river basins as designated by the Department of Natural Resources, with priority for the first year being given to fully appropriated basins that are the subject of an interstate compact or decree. Requires the Game and Parks Commission to assist grant recipients in implementing grant projects.

This subsection sunsets on June 30, 2009.

**Sections 5 through 13 – Bonding authority; occupation tax authority; levy authority; and allows the acquisition of any project works from reclamation districts and irrigation districts.**

Section 5 Statutory language reference change.

Section 6 In order to implement activities that are required under the Nebraska Ground Water Management and Protection Act, a natural resources district whose territory includes a river basin subject to an interstate compact among three or more states and that also includes one or more irrigation district to issue river flow enhancement bonds, payable by funds granted to the district by the state or federal government for one or more qualified project, may levy an occupational tax, or a property tax. Allows a joint entity to be created for the benefit of the district to bond.

Section 7 Allows the payment of fees to fiscal agents for bond placement.

Section 8 Limits the purpose of the bonds to (1) acquisition and ownership of ground water rights or surface water rights, including storage rights; (2) acquisition by purchase or lease or the administration and management by mutual agreement of canals and other works constructed for irrigation from the river; (3) vegetation management or (4) augmentation of river flows.

- Section 9 Allows the district to levy an occupation tax not to exceed \$10 per acre for irrigation of agricultural lands for the purpose of repaying principal and interest on any bonds. This levy would stay in effect until the bonds have been repaid. The levy would be collected by the county treasurer and would become a lien against the property inferior only to general taxes levied by political subdivisions of the state.
- Section 10 Extends the existing levy authority of three cents per \$100 valuation in districts located in a river basin, subbasin or reach that has been determined to be fully appropriated or designated over appropriated through the fiscal year 2011-2012.
- Allows a district that includes a river basin subject to an interstate compact among three or more states that also includes one or more irrigation districts to impose a ten-cent levy per \$100 valuation for the repayment of bonds.
- Section 11 Allows a district to acquire by purchase, lease or mutual agreement project works undertaken by the United States or any of its agencies, or by this state or any of its agencies, including a reclamation district or an irrigation district.
- Section 12 Allows a joint entity to issue bonds for the purpose of river flow enhancement.
- Section 13 Allows a joint entity to be formed for the specific purpose of river flow enhancement.

## **PART OF LB 295 – Department of Natural Resources “clean-up” bill**

- Section 14 (5) Adds “the U.S. Bureau of Reclamation” to the list of certain public entities holding surface water rights subject to adjudication for non-use which qualify for particular transfer rights, or assignment within five years after cancellation or voluntary relinquishment.
- Clarifies that if a landowner conditions his or her relinquishment upon an action of a governmental agency, the Department of Natural Resources must issue an order within 60 days after receiving notice from the landowner that the condition has been met.
- Section 15
1. Allows the department to impose a temporary 180-day stay on new surface water natural-flow appropriations in areas where a natural resources district has imposed a temporary 180-day stay on new well construction and the addition of new irrigated acres.
  2. Requires the department to hold a public hearing within the 180-day stay to gather information; and
  3. Requires the department to reach a decision whether to exempt from the immediate temporary stay pending applications, to continue the stay, or to allow the issuance of new surface water appropriations.



## **Provisions of LB 314**

Section 16 Expands the definition of water well to include any excavation made for any purpose if ground water flows into the excavation under natural pressure and a pump or other device is placed in this excavation for the purpose of withdrawing water from the excavation for irrigation but excludes any structures requiring a permit by the Department of Natural Resources used to exercise surface water appropriations.

## **Sections 17 through 19 – continuation of LB 295**

Section 17 Conforming language to existing statutory language by changing “abandoned” to “decommissioned” and identifying the well as the “original” water well so as not to be confused with a replacement well. It also allows the original water well to be modified so that it would pump no greater than 50 gallons per minute for de minimus uses approved by the natural resources district.

Requires replacement water wells to be registered with the department within 60 days after construction if it is new construction or 180 days after the operative date of this section if it was constructed prior to the operative date of this section.

Section 18 States that no water well may be used for other than its intended purposes unless the water well registration has been changed to the intended new use or if it is to be used for livestock, monitoring, observation or any other nonconsumptive or de minimus use approved by the natural resources district.

Section 19 Conforming language to a statutory change that was made in 2004 in one section of law but the change was not made in another. It changes the duration of surface water permits when there is nonuse of the appropriation from three years to five years. This change concerns the cancellation of the water appropriation permit.

## **Imposition of a temporary stay on well construction**

Section 20 Adds a new subsection (2) regarding district authority.

(2) Allows a district to impose an immediate temporary stay on the construction of any new water well or the addition of irrigated acres for 180 days, without prior notice or hearing, upon adoption of a resolution by the board that such stay is necessary. It requires that a public hearing be held within that 180 days, with proper notice being given, prior to making a determination as to imposing a permanent stay or imposing conditions. Within 45 days after the hearing, the district must decide whether to exempt from the immediate temporary stay the construction of water wells for which permits were issued prior to the date of the resolution. All permits that were valid when the stay

went into effect shall be extended by a time period equal to the length of the stay.

## **Department of Natural Resources requirement on stream depletion**

Section 21 Adds a requirement beginning on January 1, 2008, and each January thereafter, the department, in consultation with the effected natural resources district, must make an annual estimate regarding the maximum amount of water that may be available from streamflow for a beneficial purpose in the short- and long-term in order to comply with the requirement that the state will remain in compliance with applicable state and federal laws and with any applicable interstate water compact or decree or formal state contract or agreement pertaining to surface water or ground water use or supplies.

## **Continuation of LB 295**

Section 22 Statutory reference change, and an elimination of unnecessary language.

## **Creation of the Water Resources Cash Fund – Governor’s proposal**

Section 23 Creates the Water Resources Cash Fund to be administered by the Department of Natural Resources for (i) the purpose of aiding compliance efforts regarding the reduction of consumptive uses of water dealing with those natural resources districts which are deemed overappropriated or fully appropriated or are bound by an interstate compact or decree; and (ii) for a statewide assessment of short- and long-term water management activities and funding needs that are statutorily required.

States legislative intent that \$2.7 million be transferred each year from the general fund to the Water Resources Cash Fund.

Allows natural resources districts to have access to the fund, with a 40 percent match requirement, for an eligible activity. Requires a report be given by a natural resources district that receives funds from the Water Resources Cash Fund on the controls, rules and regulations designed to carry out the activity, and a schedule of implementation.

If the district failed to implement and enforce its controls, rules and regulations, the state could require the district to repay the Water Resources Cash Fund all of the monies the district received from the fund.

Section 24 Eliminates obsolete language.

Section 25 Requires a transfer of the unexpended and unobligated funds, with interest, from the Ethanol Production Incentive Cash Fund to the Water Resources Cash Fund on December 31, 2012.

- Section 26 Establishes that corn or grain sorghum sold on or after October 1, 2012 and before October 1, 2019, shall be subject to a half-cent per bushel or hundredweight excise tax.
- Section 27 Requires that the half-cent per bushel or hundredweight excise tax on corn and grain sorghum be deposited in the Water Resources Cash Fund.
- Section 28 Directs the State Treasurer to transfer \$2.7 million from the General Fund to the Water Resources Cash Fund on or before June 30, 2008.
- Section 29 Directs the State Treasurer to transfer \$2.7 million from the general fund to the Water Resources Cash Fund on or before June 30, 2009.
- Section 30 Allows the Department of Natural Resources to undertake measures in fiscal year 2006-2007 to further facilitate compliance with interstate compact or decree stipulations.

### **Extension of levy and budget authority**

- Section 31 Extends the additional three-cent levy authority for budgeting for districts in fully or overappropriated river basins until 2012.

### **Severability; repealer; emergency clause**

- Section 32 Severability clause
- Section 33 Repealer clause
- Section 34 Emergency clause

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**Senator LeRoy Loudon, Chairperson**