

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 801

Introduced by Louden, 49.

Read first time January 10, 2008

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to the Nebraska Ground Water Management
2 and Protection Act; to amend section 46-715, Revised
3 Statutes Supplement, 2007; to change provisions relating
4 to integrated management plans as prescribed; and to
5 repeal the original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-715, Revised Statutes Supplement,
2 2007, is amended to read:

3 46-715 (1) Whenever the Department of Natural
4 Resources has designated a river basin, subbasin, or reach as
5 overappropriated or has made a final determination that a river
6 basin, subbasin, or reach is fully appropriated, the natural
7 resources districts encompassing such river basin, subbasin, or
8 reach and the department shall jointly develop an integrated
9 management plan for such river basin, subbasin, or reach. The plan
10 shall be completed, adopted, and take effect within three years
11 after such designation or final determination unless the department
12 and the natural resources districts jointly agree to an extension
13 of not more than two additional years.

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

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

18 (3) The ground water and surface water controls proposed
19 for adoption in the integrated management plan pursuant to
20 subsection (1) of this section shall, when considered together
21 and with any applicable incentive programs, (a) be consistent with
22 the goals and objectives of the plan, (b) be sufficient to ensure
23 that the state will remain in compliance with applicable state and
24 federal laws and with any applicable interstate water compact or
25 decree or other formal state contract or agreement pertaining to

1 surface water or ground water use or supplies, and (c) protect the
2 ground water users whose water wells are dependent on recharge from
3 the river or stream involved and the surface water appropriators on
4 such river or stream from streamflow depletion caused by surface
5 water uses and ground water uses begun after the date the river
6 basin, subbasin, or reach was designated as overappropriated or
7 was preliminarily determined to be fully appropriated in accordance
8 with section 46-713.

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

23 (b) In any river basin, subbasin, or reach designated
24 as overappropriated and subject to this subsection, the department
25 and each natural resources district encompassing such river basin,

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

24 (c) Any integrated management plan developed under
25 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

1 date. The department and the affected natural resources districts
2 may also use other appropriate and authorized measures for such
3 purpose;

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

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

1 fully appropriated levels of development identified in subdivision
2 (4)(c) of this section;

3 (iv) Based on the determination made in subdivision
4 (d)(iii) of this subsection, the department and the affected
5 natural resources districts, utilizing the consultative and
6 collaborative process described in subdivision (b) of this
7 subsection, shall if necessary identify goals for a subsequent
8 increment of the integrated management plan. Subsequent increments
9 shall be completed, adopted, and take effect not more than ten
10 years after adoption of the previous increment; and

11 (v) Any integrated management plan developed under this
12 section shall prevent or offset any increased depletion to the
13 stream resulting from the removal of a surface water appropriation
14 from a tract of land by an adjudication, voluntary relinquishment,
15 or transfer when the land continues to be served by a ground water
16 well; and

17 ~~(v)~~ (vi) If necessary, the steps described in
18 subdivisions (d)(ii) through ~~(iv)~~ (v) of this subsection shall be
19 repeated until the department and the affected natural resources
20 districts agree that the goals and objectives identified pursuant
21 to subsection (2) of this section have been met and the overall
22 difference between the current and fully appropriated levels of
23 development identified in subdivision (4)(c) of this section has
24 been addressed so that the river basin, subbasin, or reach has
25 returned to a fully appropriated condition.

1 (5) In any river basin, subbasin, or reach that is
2 designated as fully appropriated or overappropriated and whenever
3 necessary to ensure that the state is in compliance with an
4 interstate compact or decree or a formal state contract or
5 agreement, the department, in consultation with the affected
6 districts, shall forecast on an annual basis the maximum amount
7 of water that may be available from streamflow for beneficial use
8 in the short term and long term in order to comply with the
9 requirement of subdivision (3)(b) of this section. This forecast
10 shall be made by January 1, 2008, and each January 1 thereafter.

11 Sec. 2. Original section 46-715, Revised Statutes
12 Supplement, 2007, is repealed.