

AMENDMENTS TO LB 483

Introduced by Natural Resources.

1 1. Strike the original sections and insert the following
2 new sections:

3 Section 1. Section 46-714, Revised Statutes Cumulative
4 Supplement, 2008, is amended to read:

5 46-714 (1) Whenever the Department of Natural Resources
6 makes a preliminary determination that a river basin, subbasin,
7 or reach not previously designated as overappropriated and not
8 previously determined to be fully appropriated has become fully
9 appropriated, the department shall place an immediate stay on
10 the issuance of any new natural-flow, storage, or storage-use
11 appropriations in such river basin, subbasin, or reach. The
12 department shall also provide prompt notice of such preliminary
13 determination to all licensed water well contractors in the state
14 and to each natural resources district that encompasses any of
15 the geographic area involved. Such notice to natural resources
16 districts shall be by certified mail. The notice shall be addressed
17 to the manager of the natural resources district or his or her
18 designee and shall include the signature of the Director of Natural
19 Resources. Immediately upon receipt of such notice by the natural
20 resources district, there shall be a stay on issuance of water
21 well construction permits in the geographic area preliminarily
22 determined by the department to include hydrologically connected
23 surface water and ground water in such river basin, subbasin,

1 or reach. The department shall also notify the public of the
2 preliminary determination that the river basin, subbasin, or reach
3 is fully appropriated and of the affected geographic area. Such
4 notice shall be provided by publication once each week for
5 three consecutive weeks in at least one newspaper of statewide
6 circulation and in such other newspaper or newspapers as are deemed
7 appropriate by the department to provide general circulation in the
8 river basin, subbasin, or reach.

9 (2) If the department preliminarily determines a river
10 basin, subbasin, or reach to be fully appropriated and has
11 identified the existence of hydrologically connected surface water
12 and ground water in such river basin, subbasin, or reach, stays
13 shall also be imposed:

14 (a) On the construction of any new water well in the
15 area covered by the determination unless a permit with conditions
16 imposed by the natural resources district has been issued prior
17 to the determination. Such conditions shall meet the objectives
18 of subsection (3) of section 46-715 and may include, but are not
19 limited to, conditions in accordance with subsection (6) of section
20 46-739. Any well constructed pursuant to such permit shall be
21 completed in accordance with section 46-738; and

22 (b) On the use of an existing water well or an existing
23 surface water appropriation in the affected area to increase the
24 number of acres historically irrigated.

25 Such additional stays shall begin ten days after the
26 first publication, in a newspaper of statewide circulation, of
27 the notice of the preliminary determination that the river basin,

1 subbasin, or reach is fully appropriated.

2 (3) Exceptions to the stays imposed pursuant to
3 subsection (1), (2), (9), or (10) of this section shall exist
4 for (a) test holes, (b) dewatering wells with an intended use
5 of one year or less, (c) monitoring wells, (d) wells constructed
6 pursuant to a ground water remediation plan under the Environmental
7 Protection Act, (e) water wells designed and constructed to pump
8 fifty gallons per minute or less, except that no two or more
9 water wells that each pump fifty gallons per minute or less may
10 be connected or otherwise combined to serve a single project such
11 that the collective pumping would exceed fifty gallons per minute,
12 (f) water wells for range livestock, (g) new surface water uses or
13 water wells that are necessary to alleviate an emergency situation
14 involving the provision of water for human consumption or public
15 health and safety, (h) water wells defined by the applicable
16 natural resources district as replacement water wells, but the
17 consumptive use of any such replacement water well can be no
18 greater than the historic consumptive use of the water well it
19 is to replace or, if applicable, the historic consumptive use of
20 the surface water use it is to replace, (i) new surface water
21 uses and water wells to which a right or permit is transferred in
22 accordance with state law, but the consumptive use of any such new
23 use can be no greater than the historic consumptive use of the
24 surface water use or water well from which the right or permit is
25 being transferred, (j) water wells and increases in ground water
26 irrigated acres for which a variance is granted by the applicable
27 natural resources district for good cause shown, (k) subject to any

1 conditions imposed by the applicable natural resources district, to
2 the extent permitted by the applicable natural resources district,
3 increases in ground water irrigated acres that result from the
4 use of water wells that were permitted prior to the effective
5 date of the determination made in subsection (1) of this section
6 and completed in accordance with section 46-738 but were not used
7 for irrigation prior to that effective date, (1) to the extent
8 permitted by the applicable natural resources district, increases
9 in ground water irrigated acres that result from the use of water
10 wells that are constructed after the effective date of the stay in
11 accordance with a permit granted by that natural resources district
12 prior to the effective date of the stay, (m) surface water uses for
13 which temporary public-use construction permits are issued pursuant
14 to subsection (8) of section 46-233, (n) surface water uses and
15 increases in surface water irrigated acres for which a variance is
16 granted by the department for good cause shown, and (o) water wells
17 for which permits have been approved by the Department of Natural
18 Resources pursuant to the Municipal and Rural Domestic Ground Water
19 Transfers Permit Act prior to the effective date of the stay.

20 (4) Except as otherwise provided in this section, any
21 stay imposed pursuant to subsections (1) and (2) of this section
22 shall remain in effect for the affected river basin, subbasin, or
23 reach until the department has made a final determination regarding
24 whether the river basin, subbasin, or reach is fully appropriated
25 and, if the department's final determination is that the river
26 basin, subbasin, or reach is fully appropriated, shall remain in
27 effect as provided in subsection (12) of this section. Within

1 the time period between the dates of the preliminary and final
2 determinations, the department and the affected natural resources
3 districts shall consult with any irrigation district, reclamation
4 district, public power and irrigation district, mutual irrigation
5 company, canal company, or municipality that relies on water from
6 the affected river basin, subbasin, or reach and with other water
7 users and stakeholders as deemed appropriate by the department
8 or the natural resources districts. The department shall also
9 hold one or more public hearings not more than ninety days after
10 the first publication of the notice required by subsection (1)
11 of this section. Notice of the hearings shall be provided in
12 the same manner as the notice required by such subsection. Any
13 interested person may appear at such hearing and present written or
14 oral testimony and evidence concerning the appropriation status of
15 the river basin, subbasin, or reach, the department's preliminary
16 conclusions about the extent of the area within which the surface
17 water and ground water supplies for the river basin, subbasin, or
18 reach are determined to be hydrologically connected, and whether
19 the stays on new uses should be terminated.

20 (5) Within thirty days after the final hearing under
21 subsection (4) of this section, the department shall notify the
22 appropriate natural resources districts of the department's final
23 determination with respect to the appropriation status of the
24 river basin, subbasin, or reach. If the final determination is
25 that the river basin, subbasin, or reach is fully appropriated,
26 the department, at the same time, shall (a) decide whether to
27 continue or to terminate the stays on new surface water uses and

1 on increases in the number of surface water irrigated acres and (b)
2 designate the geographic area within which the department considers
3 surface water and ground water to be hydrologically connected in
4 the river basin, subbasin, or reach and describe the methods and
5 criteria used in making that determination. The department shall
6 provide notice of its decision to continue or terminate the stays
7 in the same manner as the notice required by subsection (1) of this
8 section.

9 (6) If the department's final determination is that
10 the river basin, subbasin, or reach is not fully appropriated,
11 the department shall provide notice of such determination as
12 provided in subsection (1) of this section, the stays imposed
13 pursuant to subsections (1) and (2) of this section shall terminate
14 immediately, and no further action pursuant to subsections (7)
15 through (12) of this section and sections 46-715 to 46-719 shall be
16 required.

17 (7) Within ninety days after a final determination by
18 the department that a river basin, subbasin, or reach is fully
19 appropriated, an affected natural resources district may hold one
20 or more public hearings on the question of whether the stays on
21 the issuance of new water well permits, on the construction of
22 new water wells, or on increases in ground water irrigated acres
23 should be terminated. Notice of the hearings shall be published as
24 provided in section 46-743.

25 (8) Within forty-five days after a natural resources
26 district's final hearing pursuant to subsection (7) of this
27 section, the natural resources district shall decide (a) whether

1 to terminate the stay on new water wells in all or part of the
2 natural resources district subject to the stay and (b) whether to
3 terminate the stay on increases in ground water irrigated acres. If
4 the natural resources district decides not to terminate the stay
5 on new water wells in any geographic area, it shall also decide
6 whether to exempt from such stay the construction of water wells
7 for which permits were issued prior to the issuance of the stay but
8 for which construction had not begun prior to issuance of the stay.
9 If construction of water wells for which permits were issued prior
10 to the stay is allowed, all permits that were valid when the stay
11 went into effect shall be extended by a time period equal to the
12 length of the stay.

13 (9) Whenever the department designates a river basin,
14 subbasin, or reach as overappropriated, each previously declared
15 moratorium on the issuance of new surface water appropriations in
16 the river basin, subbasin, or reach shall continue in effect. The
17 department shall also provide prompt notice of such designation
18 to all licensed water well contractors in the state and to each
19 natural resources district that encompasses any of the geographic
20 area involved. Immediately upon receipt of such notice by a natural
21 resources district, there shall be a stay on the issuance of new
22 water well construction permits in any portion of such natural
23 resources district that is within the hydrologically connected area
24 designated by the department. The department shall also notify the
25 public of its designation of such river basin, subbasin, or reach
26 as overappropriated and of the geographic area involved in such
27 designation. Such notice shall be published once each week for

1 three consecutive weeks in at least one newspaper of statewide
2 circulation and in such other newspapers as are deemed appropriate
3 by the department to provide general notice in the river basin,
4 subbasin, or reach.

5 (10) Beginning ten days after the first publication
6 of notice under subsection (9) of this section in a newspaper
7 of statewide circulation, there shall also be stays (a) on the
8 construction of any new water well in the hydrologically connected
9 area if such construction has not commenced prior to such date
10 and if no permit for construction of the water well has been
11 issued previously by either the department or the natural resources
12 district, (b) on the use of an existing water well in the
13 hydrologically connected area to increase the number of acres
14 historically irrigated, and (c) on the use of an existing surface
15 water appropriation to increase the number of acres historically
16 irrigated in the affected area.

17 (11) Within ninety days after a designation by
18 the department of a river basin, subbasin, or reach as
19 overappropriated, a natural resources district that encompasses any
20 of the hydrologically connected area designated by the department
21 may hold one or more public hearings on the question of whether
22 to terminate the stays on (a) the construction of new water wells
23 within all or part of its portion of the hydrologically connected
24 area, (b) the issuance of new water well construction permits in
25 such area, or (c) the increase in ground water irrigated acres in
26 such area. Notice of any hearing for such purpose shall be provided
27 pursuant to section 46-743. Prior to the scheduling of a natural

1 resources district hearing on the question of whether to terminate
2 any such stay, the department and the affected natural resources
3 district shall consult with any irrigation district, reclamation
4 district, public power and irrigation district, mutual irrigation
5 company, canal company, or municipality that relies on water from
6 the affected river basin, subbasin, or reach and with other water
7 users and stakeholders as deemed appropriate by the department or
8 the natural resources district.

9 (12) Any stay issued pursuant to this section shall
10 remain in effect until (a) the stay has been terminated pursuant
11 to subsection (5), (6), (8), or (11) of this section, (b) an
12 integrated management plan for the affected river basin, subbasin,
13 or reach has been adopted by the department and the affected
14 natural resources districts and has taken effect, (c) an integrated
15 management plan for the affected river basin, subbasin, or reach
16 has been adopted by the Interrelated Water Review Board and has
17 taken effect, (d) the department has completed a reevaluation
18 pursuant to subsection (2) of section 46-713 and has determined
19 that the affected river basin, subbasin, or reach is not fully
20 appropriated or overappropriated, or (e) the stay expires pursuant
21 to this subsection. Such stay may be imposed initially for not
22 more than three years following the department's designation of
23 the river basin, subbasin, or reach as overappropriated or the
24 department's final determination that a river basin, subbasin, or
25 reach is fully appropriated and may be extended thereafter on
26 an annual basis by agreement of the department and the affected
27 natural resources district for not more than two additional years

1 if necessary to allow the development, adoption, and implementation
2 of an integrated management plan pursuant to sections 46-715 to
3 46-719.

4 (13) (a) If a status change occurs, each affected natural
5 resources district shall adopt rules and regulations within one
6 hundred twenty days of the status change for the prioritization and
7 granting of water well permits within the hydrologically connected
8 area for the four-year period following the status change. Nothing
9 in this section shall be construed to supersede the authority
10 provided to natural resources districts under subsection (2) of
11 section 46-707 and subdivision (1) (m) of section 46-739.

12 (b) If a status change occurs, there shall be an
13 immediate stay on the issuance of any new natural-flow, storage, or
14 storage-use appropriations in the river basin, subbasin, or reach.
15 The department shall also provide prompt notice of the status
16 change in accordance with subsection (1) of this section. Upon
17 receipt of the notice by the affected natural resources district,
18 there shall be a stay on the activities set forth in subsections
19 (1) and (2) of this section, subject to the exceptions set forth
20 in subsection (3) of this section. The stays imposed pursuant to
21 this subsection shall remain in effect within each affected natural
22 resources district until such district adopts rules and regulations
23 in accordance with subdivision (c) or (d) of this subsection.

24 (c) The rules and regulations adopted by each affected
25 natural resources district shall (i) allow a limited number of
26 total irrigated acres annually; (ii) be created with the purpose
27 of maintaining the status of not fully appropriated; (iii) be for

1 a term of not less than four years; (iv) limit the number of new
2 permits so that total irrigated acres do not exceed the number set
3 in the rules and regulations; and (v) be approved by the department
4 within sixty days after approval by the natural resources district.
5 The department shall approve the rules and regulations if they meet
6 the conditions set forth in subdivisions (c)(i) through (c)(iv) of
7 this subsection.

8 (d) If the rules and regulations are not adopted by the
9 natural resources district or approved by the department within the
10 applicable time periods, the affected natural resources districts
11 shall adopt rules and regulations that allow water well permits
12 to be issued that will result in no more than two thousand
13 five hundred irrigated acres or that will result in an increase
14 of not more than twenty percent of all historically irrigated
15 acres within the hydrologically connected area of each natural
16 resources district within the affected river basin, subbasin, or
17 reach, whichever is less, for each calendar year of the four-year
18 period following the date of the determination described in this
19 section. Each affected natural resources district may, after the
20 initial four-year period has expired, annually determine whether
21 water well permit limitations should continue and may enforce such
22 limitations.

23 (e) In conjunction with the rules and regulations adopted
24 by natural resources districts under this section, the department
25 shall not issue new surface water appropriations, within the river
26 basin, subbasin, or reach that is deemed not fully appropriated,
27 that will result in a net increase of more than four hundred

1 irrigated acres in each natural resources district during each
2 calendar year of the four-year period following the date of the
3 determination described in this section. The department shall not
4 in any event issue a new surface water appropriation that will
5 cause a basin, subbasin, or reach to be fully appropriated.

6 (f) For purposes of this subsection, (i) a status change
7 occurs when a preliminary or final determination that a river
8 basin, subbasin, or reach is fully appropriated is reversed by the
9 department and determined not to be fully appropriated and (ii) the
10 hydrologically connected area means the geographic area determined
11 by the department to include hydrologically connected surface water
12 and ground water in such river basin, subbasin, or reach.

13 Sec. 2. Original section 46-714, Revised Statutes
14 Cumulative Supplement, 2008, is repealed.

15 Sec. 3. Since an emergency exists, this act takes effect
16 when passed and approved according to law.