

AMENDMENTS TO LB 483

Introduced by Langemeier, 23.

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

3           Section 1. Section 2-32,115, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           2-32,115 (1) Whenever a natural resources district  
6 imposes an immediate temporary stay for one hundred eighty  
7 days in accordance with subsection (2) of section 46-707, the  
8 department may place an immediate temporary stay without prior  
9 notice or hearing on the issuance of new surface water natural-flow  
10 appropriations for one hundred eighty days in the area, river  
11 basin, subbasin, or reach of the same area included in the natural  
12 resources district's temporary stay, except that the department  
13 shall not place a temporary stay on new surface water natural-flow  
14 appropriations that are necessary to alleviate an emergency  
15 situation involving the provision of water for human consumption  
16 or public health or safety.

17           (2) The department shall hold at least one public hearing  
18 on the matter within the affected area within the period of  
19 the one-hundred-eighty-day temporary stay, with the notice of  
20 hearing given as provided in section 46-743, prior to making a  
21 determination as to imposing a stay or conditions in accordance  
22 with section 46-234 and subsection ~~(12)~~ (11) of section 46-714.  
23 The department may hold the public hearing in conjunction with the

1 natural resources district's hearing.

2 (3) Within forty-five days after a hearing pursuant to  
3 this section, the department shall decide whether to exempt from  
4 the immediate temporary stay the issuance of appropriations for  
5 which applications were pending prior to the declaration commencing  
6 the stay but for which the application was not approved prior to  
7 such date, to continue the stay, or to allow the issuance of new  
8 surface water appropriations.

9 Sec. 2. Section 46-706, Revised Statutes Cumulative  
10 Supplement, 2008, is amended to read:

11 46-706 For purposes of the Municipal and Rural Domestic  
12 Ground Water Transfers Permit Act, the Nebraska Ground Water  
13 Management and Protection Act, and sections 46-601 to 46-613.02,  
14 46-636, 46-637, and 46-651 to 46-655, unless the context otherwise  
15 requires:

16 (1) Person means a natural person, a partnership,  
17 a limited liability company, an association, a corporation, a  
18 municipality, an irrigation district, an agency or a political  
19 subdivision of the state, or a department, an agency, or a bureau  
20 of the United States;

21 (2) Ground water means that water which occurs in or  
22 moves, seeps, filters, or percolates through ground under the  
23 surface of the land;

24 (3) Contamination or contamination of ground water means  
25 nitrate nitrogen or other material which enters the ground water  
26 due to action of any person and causes degradation of the quality  
27 of ground water sufficient to make such ground water unsuitable for

1 present or reasonably foreseeable beneficial uses;

2 (4) District means a natural resources district operating  
3 pursuant to Chapter 2, article 32;

4 (5) Illegal water well means (a) any water well operated  
5 or constructed without or in violation of a permit required by  
6 the Nebraska Ground Water Management and Protection Act, (b) any  
7 water well not in compliance with rules and regulations adopted and  
8 promulgated pursuant to the act, (c) any water well not properly  
9 registered in accordance with sections 46-602 to 46-604, or (d)  
10 any water well not in compliance with any other applicable laws of  
11 the State of Nebraska or with rules and regulations adopted and  
12 promulgated pursuant to such laws;

13 (6) To commence construction of a water well means the  
14 beginning of the boring, drilling, jetting, digging, or excavating  
15 of the actual water well from which ground water is to be  
16 withdrawn;

17 (7) Management area means any area so designated by a  
18 district pursuant to section 46-712 or 46-718, by the Director  
19 of Environmental Quality pursuant to section 46-725, or by  
20 the Interrelated Water Review Board pursuant to section 46-719.  
21 Management area includes a control area or a special ground water  
22 quality protection area designated prior to July 19, 1996;

23 (8) Management plan means a ground water management plan  
24 developed by a district and submitted to the Director of Natural  
25 Resources for review pursuant to section 46-711;

26 (9) Ground water reservoir life goal means the finite or  
27 infinite period of time which a district establishes as its goal

1 for maintenance of the supply and quality of water in a ground  
2 water reservoir at the time a ground water management plan is  
3 adopted;

4 (10) Board means the board of directors of a district;

5 (11) Acre-inch means the amount of water necessary to  
6 cover an acre of land one inch deep;

7 (12) Subirrigation or subirrigated land means the natural  
8 occurrence of a ground water table within the root zone of  
9 agricultural vegetation, not exceeding ten feet below the surface  
10 of the ground;

11 (13) Best management practices means schedules of  
12 activities, maintenance procedures, and other management practices  
13 utilized for purposes of irrigation efficiency, to conserve or  
14 effect a savings of ground water, or to prevent or reduce present  
15 and future contamination of ground water. Best management practices  
16 relating to contamination of ground water may include, but not  
17 be limited to, irrigation scheduling, proper rate and timing  
18 of fertilizer application, and other fertilizer and pesticide  
19 management programs. In determining the rate of fertilizer  
20 application, the district shall consult with the University of  
21 Nebraska or a certified crop advisor certified by the American  
22 Society of Agronomy;

23 (14) Point source means any discernible, confined, and  
24 discrete conveyance, including, but not limited to, any pipe,  
25 channel, tunnel, conduit, well, discrete fissure, container,  
26 rolling stock, vessel, other floating craft, or other conveyance,  
27 over which the Department of Environmental Quality has regulatory

1 authority and from which a substance which can cause or contribute  
2 to contamination of ground water is or may be discharged;

3 (15) Allocation, as it relates to water use for  
4 irrigation purposes, means the allotment of a specified total  
5 number of acre-inches of irrigation water per irrigated acre per  
6 year or an average number of acre-inches of irrigation water per  
7 irrigated acre over any reasonable period of time;

8 (16) Rotation means a recurring series of use and nonuse  
9 of irrigation wells on an hourly, daily, weekly, monthly, or yearly  
10 basis;

11 (17) Water well has the same meaning as in section  
12 46-601.01;

13 (18) Surface water project sponsor means an irrigation  
14 district created pursuant to Chapter 46, article 1, a reclamation  
15 district created pursuant to Chapter 46, article 5, or a public  
16 power and irrigation district created pursuant to Chapter 70,  
17 article 6;

18 (19) Beneficial use means that use by which water may be  
19 put to use to the benefit of humans or other species;

20 (20) Consumptive use means the amount of water that is  
21 consumed under appropriate and reasonably efficient practices to  
22 accomplish without waste the purposes for which the appropriation  
23 or other legally permitted use is lawfully made;

24 (21) Dewatering well means a well constructed and used  
25 solely for the purpose of lowering the ground water table  
26 elevation;

27 (22) Emergency situation means any set of circumstances

1 that requires the use of water from any source that might  
2 otherwise be regulated or prohibited and the agency, district,  
3 or organization responsible for regulating water use from such  
4 source reasonably and in good faith believes that such use is  
5 necessary to protect the public health, safety, and welfare,  
6 including, if applicable, compliance with federal or state water  
7 quality standards;

8 (23) Good cause shown means a reasonable justification  
9 for granting a variance for a consumptive use of water that  
10 would otherwise be prohibited by rule or regulation and which the  
11 granting agency, district, or organization reasonably and in good  
12 faith believes will provide an economic, environmental, social, or  
13 public health and safety benefit that is equal to or greater than  
14 the benefit resulting from the rule or regulation from which a  
15 variance is sought;

16 (24) Historic consumptive use means the amount of water  
17 that has previously been consumed under appropriate and reasonably  
18 efficient practices to accomplish without waste the purposes for  
19 which the appropriation or other legally permitted use was lawfully  
20 made;

21 (25) Monitoring well means a water well that is designed  
22 and constructed to provide ongoing hydrologic or water quality  
23 information and is not intended for consumptive use;

24 (26) Order, except as otherwise specifically provided,  
25 includes any order required by the Nebraska Ground Water Management  
26 and Protection Act, by rule or regulation, or by a decision adopted  
27 by a district by vote of the board of directors of the district

1 taken at any regularly scheduled or specially scheduled meeting of  
2 the board;

3 (27) Overall difference between the current and fully  
4 appropriated levels of development means the extent to which  
5 existing uses of hydrologically connected surface water and ground  
6 water and conservation activities result in the water supply  
7 available for purposes identified in subsection (3) of section  
8 46-713 to be less than the water supply available if the  
9 river basin, subbasin, or reach had been determined to be fully  
10 appropriated in accordance with section 46-714;

11 (28) Test hole means a hole designed solely for the  
12 purposes of obtaining information on hydrologic or geologic  
13 conditions; and

14 (29) Variance means (a) an approval to deviate from a  
15 restriction imposed under subsection (1), (2), (8), or (9) ~~or (10)~~  
16 of section 46-714 or (b) the approval to act in a manner contrary  
17 to existing rules or regulations from a governing body whose rule  
18 or regulation is otherwise applicable.

19 Sec. 3. Section 46-713, Revised Statutes Cumulative  
20 Supplement, 2008, is amended to read:

21 46-713 (1)(a) By January 1 of each year beginning in  
22 2006 and except as otherwise provided in this section and section  
23 46-720, the Department of Natural Resources shall complete an  
24 evaluation of the expected long-term availability of hydrologically  
25 connected water supplies for both existing and new surface water  
26 uses and existing and new ground water uses in each of the  
27 state's river basins and shall issue a report that describes the

1 results of the evaluation. For purposes of the evaluation and the  
2 report, a river basin may be divided into two or more subbasins or  
3 reaches. A river basin, subbasin, or reach for which an integrated  
4 management plan has been or is being developed pursuant to sections  
5 46-715 to 46-717 or pursuant to section 46-719 shall not be  
6 evaluated unless it is being reevaluated as provided in subsection  
7 (2) of this section. For each river basin, subbasin, or reach  
8 evaluated, the report shall describe (i) the nature and extent  
9 of use of both surface water and ground water in each river  
10 basin, subbasin, or reach, (ii) the geographic area within which  
11 the department preliminarily considers surface water and ground  
12 water to be hydrologically connected and the criteria used for  
13 that determination, and (iii) the extent to which the then-current  
14 uses affect available near-term and long-term water supplies.  
15 River basins, subbasins, and reaches designated as overappropriated  
16 in accordance with subsection (4) of this section shall not be  
17 evaluated by the department.

18 (b) Based on the information reviewed in the evaluation  
19 process, the department shall arrive at a preliminary conclusion  
20 for each river basin, subbasin, and reach evaluated as to  
21 whether such river basin, subbasin, or reach presently is fully  
22 appropriated without the initiation of additional uses. The  
23 department shall also determine if and how such preliminary  
24 conclusion would change if no additional legal constraints were  
25 imposed on future development of hydrologically connected surface  
26 water and ground water and reasonable projections are made about  
27 the extent and location of future development in such river basin,



1 subbasin, or reach.

2 (c) In addition to the conclusion about whether a river  
3 basin, subbasin, or reach is fully appropriated, the department  
4 shall include in the report, for informational purposes only,  
5 a summary of relevant data provided by any interested party  
6 concerning the social, economic, and environmental impacts of  
7 additional hydrologically connected surface water and ground water  
8 uses on resources that are dependent on streamflow or ground water  
9 levels but are not protected by appropriations or regulations.

10 (d) In preparing the report, the department shall rely  
11 on the best scientific data, information, and methodologies readily  
12 available to ensure that the conclusions and results contained  
13 in the report are reliable. In its report, the department shall  
14 provide sufficient documentation to allow these data, information,  
15 methodologies, and conclusions to be independently replicated  
16 and assessed. Upon request by the department, state agencies,  
17 natural resources districts, irrigation districts, reclamation  
18 districts, public power and irrigation districts, mutual irrigation  
19 companies, canal companies, municipalities, and other water users  
20 and stakeholders shall provide relevant data and information in  
21 their possession. The Department of Natural Resources shall specify  
22 by rule and regulation the types of scientific data and other  
23 information that will be considered for making the preliminary  
24 determinations required by this section.

25 (2) (a) ~~(2)~~ The department shall complete a reevaluation  
26 of a river basin, subbasin, or reach for which an integrated  
27 management plan has been or is being prepared if the department has

1 reason to believe that a reevaluation might lead to a different  
2 determination about whether such river basin, subbasin, or reach  
3 is fully appropriated or overappropriated. A decision to reevaluate  
4 may be reached by the department on its own or in response to  
5 a petition filed with the department by any interested person.  
6 To be considered sufficient to justify a reevaluation, a petition  
7 shall be accompanied by supporting information showing that ~~(a)~~  
8 (i) new scientific data or other information relevant to the  
9 determination of whether the river basin, subbasin, or reach is  
10 fully appropriated or overappropriated has become available since  
11 the last evaluation of such river basin, subbasin, or reach, ~~(b)~~  
12 (ii) the department relied on incorrect or incomplete information  
13 when the river basin, subbasin, or reach was last evaluated, or ~~(c)~~  
14 (iii) the department erred in its interpretation or application of  
15 the information available when the river basin, subbasin, or reach  
16 was last evaluated. If a petition determined by the department  
17 to be sufficient is filed before ~~March~~ July 1 of any year, the  
18 reevaluation of the river basin, subbasin, or reach involved shall  
19 be included in the next annual report prepared in accordance with  
20 subsection (1) of this section. If any such petition is filed on  
21 or after ~~March~~ July 1 of any year, the department may defer the  
22 reevaluation of the river basin, subbasin, or reach involved until  
23 the second annual report after such filing.

24 (b) If the reevaluation results in a different  
25 determination by the department, then (i) the department shall  
26 notify, by certified mail, the affected natural resources districts  
27 and any irrigation district, public power and irrigation district,

1 mutual irrigation company, canal company, or municipality that  
2 relies on water from the affected river basin, subbasin, or  
3 reach of the preliminary change in the determination and (ii)  
4 the department shall hold one or more public hearings not more  
5 than ninety days after the publication of the notice required  
6 in subdivision (b) (i) of this subsection. Notice of the hearings  
7 shall be provided in the same manner as the notice required in  
8 subsection (1) of section 46-714. Any interested person may appear  
9 at the hearing and present written or oral testimony and evidence  
10 concerning the appropriation status of the river basin, subbasin,  
11 or reach.

12 (c) Within thirty days after the final hearing under  
13 subdivision (b) of this subsection, the department shall notify the  
14 appropriate natural resources districts of the department's final  
15 determination with respect to the appropriation status of the river  
16 basin, subbasin, or reach.

17 (3) A river basin, subbasin, or reach shall be deemed  
18 fully appropriated if the department determines based upon its  
19 evaluation conducted pursuant to subsection (1) of this section  
20 and information presented at the hearing pursuant to subsection  
21 (4) of section 46-714 that then-current uses of hydrologically  
22 connected surface water and ground water in the river basin,  
23 subbasin, or reach cause or will in the reasonably foreseeable  
24 future cause (a) the surface water supply to be insufficient to  
25 sustain over the long term the beneficial or useful purposes for  
26 which existing natural-flow or storage appropriations were granted  
27 and the beneficial or useful purposes for which, at the time of

1 approval, any existing instream appropriation was granted, (b) the  
2 streamflow to be insufficient to sustain over the long term the  
3 beneficial uses from wells constructed in aquifers dependent on  
4 recharge from the river or stream involved, or (c) reduction in  
5 the flow of a river or stream sufficient to cause noncompliance by  
6 Nebraska with an interstate compact or decree, other formal state  
7 contract or agreement, or applicable state or federal laws.

8 (4) (a) A river basin, subbasin, or reach shall be deemed  
9 overappropriated if, on July 16, 2004, the river basin, subbasin,  
10 or reach is subject to an interstate cooperative agreement among  
11 three or more states and if, prior to such date, the department  
12 has declared a moratorium on the issuance of new surface water  
13 appropriations in such river basin, subbasin, or reach and has  
14 requested each natural resources district with jurisdiction in the  
15 affected area in such river basin, subbasin, or reach either (i)  
16 to close or to continue in effect a previously adopted closure of  
17 all or part of such river basin, subbasin, or reach to the issuance  
18 of additional water well permits in accordance with subdivision  
19 (1) (k) of section 46-656.25 as such section existed prior to July  
20 16, 2004, or (ii) to temporarily suspend or to continue in effect  
21 a temporary suspension, previously adopted pursuant to section  
22 46-656.28 as such section existed prior to July 16, 2004, on the  
23 drilling of new water wells in all or part of such river basin,  
24 subbasin, or reach.

25 (b) Within sixty days after July 16, 2004, the department  
26 shall designate which river basins, subbasins, or reaches are  
27 overappropriated. The designation shall include a description of

1 the geographic area within which the department has determined that  
2 surface water and ground water are hydrologically connected and the  
3 criteria used to make such determination.

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

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

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

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

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

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

22 Such additional stays shall begin ten days after the  
23 first publication, in a newspaper of statewide circulation, of  
24 the notice of the preliminary determination that the river basin,  
25 subbasin, or reach is fully appropriated.

26 (3) Exceptions to the stays imposed pursuant to  
27 subsection (1), (2), (8), or (9), ~~or (10)~~ of this section shall

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

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

17 (4) Except as otherwise provided in this section, any  
18 stay imposed pursuant to subsections (1) and (2) of this section  
19 shall remain in effect for the affected river basin, subbasin, or  
20 reach until the department has made a final determination regarding  
21 whether the river basin, subbasin, or reach is fully appropriated  
22 and, if the department's final determination is that the river  
23 basin, subbasin, or reach is fully appropriated, shall remain in  
24 effect as provided in subsection ~~(12)~~ (11) of this section. Within  
25 the time period between the dates of the preliminary and final  
26 determinations, the department and the affected natural resources  
27 districts shall consult with any irrigation district, reclamation



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

17 (5) Within thirty days after the final hearing under  
18 subsection (4) of this section, the department shall notify the  
19 appropriate natural resources districts of the department's final  
20 determination with respect to the appropriation status of the  
21 river basin, subbasin, or reach. If the final determination is  
22 that the river basin, subbasin, or reach is fully appropriated,  
23 the department, at the same time, shall (a) decide whether to  
24 continue or to terminate the stays on new surface water uses and  
25 on increases in the number of surface water irrigated acres and (b)  
26 designate the geographic area within which the department considers  
27 surface water and ground water to be hydrologically connected in

1 the river basin, subbasin, or reach and describe the methods and  
2 criteria used in making that determination. The department shall  
3 provide notice of its decision to continue or terminate the stays  
4 in the same manner as the notice required by subsection (1) of this  
5 section.

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

14 ~~(7)~~ (6) Within ninety days after a final determination  
15 by the department that a river basin, subbasin, or reach is fully  
16 appropriated, an affected natural resources district may hold one  
17 or more public hearings on the question of whether the stays on  
18 the issuance of new water well permits, on the construction of  
19 new water wells, or on increases in ground water irrigated acres  
20 should be terminated. Notice of the hearings shall be published as  
21 provided in section 46-743.

22 ~~(8)~~ (7) Within forty-five days after a natural resources  
23 district's final hearing pursuant to subsection ~~(7)~~ (6) of this  
24 section, the natural resources district shall decide (a) whether  
25 to terminate the stay on new water wells in all or part of the  
26 natural resources district subject to the stay and (b) whether to  
27 terminate the stay on increases in ground water irrigated acres. If

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

10 ~~(9)~~ (8) Whenever the department designates a river basin,  
11 subbasin, or reach as overappropriated, each previously declared  
12 moratorium on the issuance of new surface water appropriations in  
13 the river basin, subbasin, or reach shall continue in effect. The  
14 department shall also provide prompt notice of such designation  
15 to all licensed water well contractors in the state and to each  
16 natural resources district that encompasses any of the geographic  
17 area involved. Immediately upon receipt of such notice by a natural  
18 resources district, there shall be a stay on the issuance of new  
19 water well construction permits in any portion of such natural  
20 resources district that is within the hydrologically connected area  
21 designated by the department. The department shall also notify the  
22 public of its designation of such river basin, subbasin, or reach  
23 as overappropriated and of the geographic area involved in such  
24 designation. Such notice shall be published once each week for  
25 three consecutive weeks in at least one newspaper of statewide  
26 circulation and in such other newspapers as are deemed appropriate  
27 by the department to provide general notice in the river basin,

1 subbasin, or reach.

2 ~~(10)~~ (9) Beginning ten days after the first publication  
3 of notice under subsection ~~(9)~~ (8) of this section in a newspaper  
4 of statewide circulation, there shall also be stays (a) on the  
5 construction of any new water well in the hydrologically connected  
6 area if such construction has not commenced prior to such date  
7 and if no permit for construction of the water well has been  
8 issued previously by either the department or the natural resources  
9 district, (b) on the use of an existing water well in the  
10 hydrologically connected area to increase the number of acres  
11 historically irrigated, and (c) on the use of an existing surface  
12 water appropriation to increase the number of acres historically  
13 irrigated in the affected area.

14 ~~(11)~~ (10) Within ninety days after a designation  
15 by the department of a river basin, subbasin, or reach as  
16 overappropriated, a natural resources district that encompasses any  
17 of the hydrologically connected area designated by the department  
18 may hold one or more public hearings on the question of whether  
19 to terminate the stays on (a) the construction of new water wells  
20 within all or part of its portion of the hydrologically connected  
21 area, (b) the issuance of new water well construction permits in  
22 such area, or (c) the increase in ground water irrigated acres in  
23 such area. Notice of any hearing for such purpose shall be provided  
24 pursuant to section 46-743. Prior to the scheduling of a natural  
25 resources district hearing on the question of whether to terminate  
26 any such stay, the department and the affected natural resources  
27 district shall consult with any irrigation district, reclamation

1 district, public power and irrigation district, mutual irrigation  
2 company, canal company, or municipality that relies on water from  
3 the affected river basin, subbasin, or reach and with other water  
4 users and stakeholders as deemed appropriate by the department or  
5 the natural resources district.

6 ~~(12)~~ (11) Any stay issued pursuant to this section  
7 shall remain in effect until (a) the stay has been terminated  
8 pursuant to subsection (5), ~~(6)~~, ~~(8)~~, or ~~(11)~~ (7), or (10) of  
9 this section, (b) an integrated management plan for the affected  
10 river basin, subbasin, or reach has been adopted by the department  
11 and the affected natural resources districts and has taken effect,  
12 (c) an integrated management plan for the affected river basin,  
13 subbasin, or reach has been adopted by the Interrelated Water  
14 Review Board and has taken effect, (d) the department has completed  
15 a reevaluation pursuant to subsection (2) of section 46-713 and has  
16 determined that the affected river basin, subbasin, or reach is  
17 not fully appropriated or overappropriated, or (e) the stay expires  
18 pursuant to this subsection. Such stay may be imposed initially for  
19 not more than three years following the department's designation  
20 of the river basin, subbasin, or reach as overappropriated or the  
21 department's final determination that a river basin, subbasin, or  
22 reach is fully appropriated and may be extended thereafter on  
23 an annual basis by agreement of the department and the affected  
24 natural resources district for not more than two additional years  
25 if necessary to allow the development, adoption, and implementation  
26 of an integrated management plan pursuant to sections 46-715 to  
27 46-719.

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

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

25           (c) Upon receipt of notice of a status change, each  
26 affected natural resources district shall adopt rules and  
27 regulations within one hundred twenty days after receipt of such

1 notice for the prioritization and granting of water well permits  
2 within the hydrologically connected area for the four-year period  
3 following the status change. Nothing in this subsection shall be  
4 construed to supersede the authority provided to natural resources  
5 districts under subsection (2) of section 46-707 and subdivisions  
6 (1)(f) and (1)(m) of section 46-739.

7 (d) The rules and regulations adopted by each affected  
8 natural resources district in accordance with subdivision (c) of  
9 this subsection shall (i) allow a limited number of total new  
10 ground water irrigated acres annually, (ii) be created with the  
11 purpose of maintaining the status of not fully appropriated based  
12 on the most recent basin determination, (iii) be for a term  
13 of not less than four years, and (iv) limit the number of new  
14 permits so that total new ground water irrigated acres do not  
15 exceed the number set in the rules and regulations. The department  
16 shall approve the proposed new number of ground water irrigated  
17 acres within sixty days after approval by the natural resources  
18 district if such district meets the conditions set forth in  
19 subdivision (d)(ii) of this subsection, based on the most recent  
20 basin determination.

21 (e) If the proposed new number of acres is not approved  
22 by the department within the applicable time period as provided in  
23 subdivision (d) of this subsection, the affected natural resources  
24 districts shall adopt rules and regulations that allow water well  
25 permits to be issued that will result in no more than two thousand  
26 five hundred irrigated acres or that will result in an increase  
27 of not more than twenty percent of all historically irrigated

1 acres within the hydrologically connected area of each natural  
2 resources district within the affected river basin, subbasin, or  
3 reach, whichever is less, for each calendar year of the four-year  
4 period following the date of the determination described in this  
5 subsection. Each affected natural resources district may, after the  
6 initial four-year period has expired, annually determine whether  
7 water well permit limitations should continue and may enforce such  
8 limitations.

9       (f) During the four-year period following the status  
10 change, the department shall ensure that any new appropriation  
11 granted will not cause the basin, subbasin, or reach to be  
12 fully appropriated based on the most recent basin determination.  
13 The department, pursuant to its rules and regulations, shall  
14 not issue new natural flow surface water appropriations for  
15 irrigation, within the river basin, subbasin, or reach affected  
16 by the status change, that will result in a net increase of more  
17 than eight hundred thirty-four irrigated acres in each natural  
18 resources district during each calendar year of the four-year  
19 period following the date of the determination described in this  
20 subsection.

21       Sec. 5. Section 46-720, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23       46-720 (1) The Legislature finds that, prior to July 16,  
24 2004, actions were taken by the Department of Natural Resources  
25 and by one or more natural resources districts pursuant to section  
26 46-656.28, as such section existed immediately prior to such date,  
27 for the purpose of addressing circumstances that are, after such



1 date, to be addressed in accordance with sections 46-713 to 46-719.  
2 It is the intent of the Legislature that actions taken pursuant  
3 to section 46-656.28, as such section existed immediately prior to  
4 July 16, 2004, should not be negated and that transition from the  
5 authorities and responsibilities granted by such section to those  
6 granted by sections 46-713 to 46-719 should occur in as efficient a  
7 manner as possible. Such transition shall be therefor governed by  
8 subsections (2) through (5) of this section, and all references in  
9 such subsections to section 46-656.28 shall be construed to mean  
10 section 46-656.28 as such section existed immediately prior to July  
11 16, 2004.

12 (2) If, prior to July 16, 2004, (a) a natural resources  
13 district requested pursuant to subsection (1) of section 46-656.28  
14 that affected appropriators, affected surface water project  
15 sponsors, and the department consult and that studies and a hearing  
16 be held but (b) the Director of Natural Resources has not made  
17 a preliminary determination relative to that request pursuant to  
18 subsection (2) of section 46-656.28, no further action on the  
19 district's request shall be required of the department. If under  
20 the same circumstances a temporary suspension in the drilling of  
21 certain water wells has been imposed by the district pursuant  
22 to subsection (16) of section 46-656.28 and remains in effect  
23 immediately prior to July 16, 2004, such temporary suspension shall  
24 remain in effect for thirty days after the department issues its  
25 first annual report under section 46-713, except that (i) such  
26 temporary suspension shall not apply to water wells for which  
27 a permit has been obtained pursuant to the Municipal and Rural

1 Domestic Ground Water Transfers Permit Act and (ii) to the extent  
2 any such temporary suspension is in effect for all or part of a  
3 hydrologically connected area for a river basin, subbasin, or reach  
4 designated as overappropriated by the department, such temporary  
5 suspension shall remain in effect only until it is superseded by  
6 the stays imposed pursuant to subsections (8) and (9) and ~~(10)~~ of  
7 section 46-714. To the extent that any such temporary suspension  
8 applies to a geographic area preliminarily considered by the  
9 department to have ground water hydrologically connected to the  
10 surface water of a fully appropriated river basin, subbasin, or  
11 reach, such temporary suspension shall be superseded by the stays  
12 imposed pursuant to subsections (1) and (2) of section 46-714.

13 (3) (a) If prior to July 16, 2004, (i) the director has  
14 made a preliminary determination pursuant to subsection (2) of  
15 section 46-656.28 that there is reason to believe that the use  
16 of hydrologically connected ground water and surface water in a  
17 specific geographic area is contributing to or is in the reasonably  
18 foreseeable future likely to contribute to any conflict, dispute,  
19 or difficulty listed in such subsection, (ii) the director has  
20 not made a determination pursuant to subsection (4) of section  
21 46-656.28 that a joint action plan should not be prepared, and  
22 (iii) preparation of a joint action plan pursuant to subsections  
23 (5) through (9) of such section has not been completed, the  
24 geographic area involved shall become subject to sections 46-713  
25 to 46-719 on July 16, 2004, and the department need not evaluate  
26 such geographic area in its first annual report issued pursuant to  
27 section 46-713.

1           (b) For purposes of this subsection and section 46-714  
2 and except as otherwise provided in this section, (i) July 16,  
3 2004, shall result in the imposition in any geographic area subject  
4 to this subsection of the stays required by subsections (1) and (2)  
5 of section 46-714, (ii) such stays shall be imposed in the manner  
6 required by such section, and (iii) July 16, 2004, shall be treated  
7 as if it were the date of a departmental preliminary determination  
8 pursuant to section 46-713 that such area is a geographic area  
9 within which ground water and surface water of a fully appropriated  
10 river basin, subbasin, or reach are hydrologically connected.  
11 Notwithstanding the other provisions of this subsection, if a  
12 temporary suspension in the drilling of certain new water wells  
13 has previously been imposed by the affected natural resources  
14 district, (A) the stays on construction of new water wells and on  
15 the increase in ground water irrigated acres shall be limited in  
16 geographic extent to only that part of the affected area within  
17 which the temporary suspension was in effect unless the director  
18 determines that inclusion of additional area is necessary because  
19 ground water and surface water are hydrologically connected in  
20 such additional area and (B) the stays on construction of certain  
21 new water wells shall not apply to a water well constructed in  
22 accordance with the terms of a water well construction permit  
23 approved by the district prior to July 16, 2004, unless such  
24 well was subject to the district's temporary suspension. If,  
25 prior to July 16, 2004, the director has held a hearing on a  
26 report issued pursuant to subsection (3) of section 46-656.28 but  
27 has not yet determined whether a joint action plan should be

1 prepared, no departmental hearing shall be required pursuant to  
2 subsection (4) of section 46-714 before a final determination is  
3 made about whether the river basin, subbasin, or reach involved  
4 is fully appropriated. If, prior to July 16, 2004, the director  
5 has determined pursuant to subsection (4) of section 46-656.28 that  
6 a joint action plan should be prepared, such determination shall  
7 have the same effect as a final departmental determination pursuant  
8 to subsection (5) of section 46-714 that the affected river  
9 basin, subbasin, or reach is fully appropriated and no separate  
10 determination to that effect shall be required. If, after July  
11 16, 2004, the department determines that all or part of the area  
12 subject to this subsection is in an overappropriated river basin,  
13 subbasin, or reach, that portion of the area shall thereafter be  
14 subject to the provisions of the Nebraska Ground Water Management  
15 and Protection Act applicable to an overappropriated river basin,  
16 subbasin, or reach and stays that have previously taken effect in  
17 accordance with this subsection shall continue in effect as stays  
18 for an overappropriated river basin, subbasin, or reach without  
19 additional action or publication of notice by the department. Any  
20 temporary suspension in the drilling of certain water wells that  
21 has been imposed in the geographic area involved by a natural  
22 resources district pursuant to subsection (16) of section 46-656.28  
23 prior to July 16, 2004, shall remain in effect until superseded by  
24 the stays imposed pursuant to subsections (1) and (2) of section  
25 46-714.

26 (4) If, prior to July 16, 2004, preparation of a joint  
27 action plan has been completed pursuant to subsections (5) through

1 (9) of section 46-656.28 but the plan has not yet been adopted  
2 pursuant to subsection (11) of such section, the department need  
3 not evaluate the affected geographic area in its first annual  
4 report issued pursuant to section 46-713. The department and the  
5 affected natural resources district shall review the completed  
6 joint action plan for its compliance with sections 46-715 to  
7 46-717. If the joint action plan is determined to be in compliance  
8 with sections 46-715 to 46-717 or if agreement is reached on  
9 the revisions necessary to bring it into such compliance, the  
10 department and the district shall adopt the plan and implement  
11 the controls as provided in section 46-718. If the joint action  
12 plan is determined not to be in compliance with sections 46-715 to  
13 46-717 and agreement on the proposed plan or the proposed controls  
14 cannot be reached pursuant to section 46-718, section 46-719 shall  
15 apply. Except to the extent that any portion of the affected area  
16 is designated as all or part of an overappropriated river basin,  
17 subbasin, or reach, any temporary suspension in the drilling of  
18 certain water wells imposed in the affected geographic area by a  
19 natural resources district pursuant to subsection (16) of section  
20 46-656.28 shall remain in effect until (a) the department and  
21 the affected district have jointly decided to implement the plan,  
22 with or without modifications, and controls have been adopted and  
23 taken effect or (b) the Interrelated Water Review Board, pursuant  
24 to section 46-719, has adopted an integrated management plan for  
25 the affected river basin, subbasin, or reach and the controls  
26 adopted by the board have taken effect. To the extent that any  
27 portion of the affected area is designated as all or part of an

1 overappropriated river basin, subbasin, or reach, any temporary  
2 suspension in the drilling of water wells shall be superseded by  
3 the stays imposed pursuant to subsections (8) and (9) and ~~(10)~~ of  
4 section 46-714.

5 (5) If, before July 16, 2004, a joint action plan has  
6 been adopted and implemented pursuant to subsections (10) through  
7 (12) of section 46-656.28 and is in effect immediately prior  
8 to such date, the department need not evaluate the geographic  
9 area subject to the plan in the department's first annual report  
10 issued pursuant to section 46-713. For purposes of the Nebraska  
11 Ground Water Management and Protection Act, (a) the plan adopted  
12 shall be considered an integrated management plan adopted pursuant  
13 to section 46-718, (b) the management area designated shall be  
14 considered an integrated management area or subarea designated  
15 pursuant to section 46-718, and (c) the controls adopted shall be  
16 considered controls adopted pursuant to section 46-718 and shall  
17 remain in effect until amended or repealed pursuant to section  
18 46-718 or 46-719.

19 Sec. 6. Original sections 2-32,115 and 46-720, Reissue  
20 Revised Statutes of Nebraska, and sections 46-706, 46-713, and  
21 46-714, Revised Statutes Cumulative Supplement, 2008, are repealed.

22 Sec. 7. Since an emergency exists, this act takes effect  
23 when passed and approved according to law.