

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 483

FINAL READING

Introduced by Langemeier, 23.

Read first time January 20, 2009

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to the Nebraska Ground Water Management and
2 Protection Act; to amend sections 2-32,115 and 46-720,
3 Reissue Revised Statutes of Nebraska, and sections
4 46-706, 46-713, and 46-714, Revised Statutes Cumulative
5 Supplement, 2008; to provide powers and duties for the
6 Department of Natural Resources and for natural resources
7 districts relating to water well permits as prescribed;
8 to harmonize provisions; to repeal the original sections;
9 and to declare an emergency.

10 Be it enacted by the people of the State of Nebraska,

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

3 2-32,115 (1) Whenever a natural resources district
4 imposes an immediate temporary stay for one hundred eighty
5 days in accordance with subsection (2) of section 46-707, the
6 department may place an immediate temporary stay without prior
7 notice or hearing on the issuance of new surface water natural-flow
8 appropriations for one hundred eighty days in the area, river
9 basin, subbasin, or reach of the same area included in the natural
10 resources district's temporary stay, except that the department
11 shall not place a temporary stay on new surface water natural-flow
12 appropriations that are necessary to alleviate an emergency
13 situation involving the provision of water for human consumption
14 or public health or safety.

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

23 (3) Within forty-five days after a hearing pursuant to
24 this section, the department shall decide whether to exempt from
25 the immediate temporary stay the issuance of appropriations for

1 which applications were pending prior to the declaration commencing
2 the stay but for which the application was not approved prior to
3 such date, to continue the stay, or to allow the issuance of new
4 surface water appropriations.

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

7 46-706 For purposes of the Municipal and Rural Domestic
8 Ground Water Transfers Permit Act, the Nebraska Ground Water
9 Management and Protection Act, and sections 46-601 to 46-613.02,
10 46-636, 46-637, and 46-651 to 46-655, unless the context otherwise
11 requires:

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

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

20 (3) Contamination or contamination of ground water means
21 nitrate nitrogen or other material which enters the ground water
22 due to action of any person and causes degradation of the quality
23 of ground water sufficient to make such ground water unsuitable for
24 present or reasonably foreseeable beneficial uses;

25 (4) District means a natural resources district operating

1 pursuant to Chapter 2, article 32;

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

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

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

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

24 (9) Ground water reservoir life goal means the finite or
25 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,

1 rolling stock, vessel, other floating craft, or other conveyance,
2 over which the Department of Environmental Quality has regulatory
3 authority and from which a substance which can cause or contribute
4 to contamination of ground water is or may be discharged;

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

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

13 (17) Water well has the same meaning as in section
14 46-601.01;

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

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

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

1 (21) Dewatering well means a well constructed and used
2 solely for the purpose of lowering the ground water table
3 elevation;

4 (22) Emergency situation means any set of circumstances
5 that requires the use of water from any source that might
6 otherwise be regulated or prohibited and the agency, district,
7 or organization responsible for regulating water use from such
8 source reasonably and in good faith believes that such use is
9 necessary to protect the public health, safety, and welfare,
10 including, if applicable, compliance with federal or state water
11 quality standards;

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

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

25 (25) Monitoring well means a water well that is designed

1 and constructed to provide ongoing hydrologic or water quality
2 information and is not intended for consumptive use;

3 (26) Order, except as otherwise specifically provided,
4 includes any order required by the Nebraska Ground Water Management
5 and Protection Act, by rule or regulation, or by a decision adopted
6 by a district by vote of the board of directors of the district
7 taken at any regularly scheduled or specially scheduled meeting of
8 the board;

9 (27) Overall difference between the current and fully
10 appropriated levels of development means the extent to which
11 existing uses of hydrologically connected surface water and ground
12 water and conservation activities result in the water supply
13 available for purposes identified in subsection (3) of section
14 46-713 to be less than the water supply available if the
15 river basin, subbasin, or reach had been determined to be fully
16 appropriated in accordance with section 46-714;

17 (28) Test hole means a hole designed solely for the
18 purposes of obtaining information on hydrologic or geologic
19 conditions; and

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

25 Sec. 3. Section 46-713, Revised Statutes Cumulative

1 Supplement, 2008, is amended to read:

2 46-713 (1)(a) By January 1 of each year beginning in
3 2006 and except as otherwise provided in this section and section
4 46-720, the Department of Natural Resources shall complete an
5 evaluation of the expected long-term availability of hydrologically
6 connected water supplies for both existing and new surface water
7 uses and existing and new ground water uses in each of the
8 state's river basins and shall issue a report that describes the
9 results of the evaluation. For purposes of the evaluation and the
10 report, a river basin may be divided into two or more subbasins or
11 reaches. A river basin, subbasin, or reach for which an integrated
12 management plan has been or is being developed pursuant to sections
13 46-715 to 46-717 or pursuant to section 46-719 shall not be
14 evaluated unless it is being reevaluated as provided in subsection
15 (2) of this section. For each river basin, subbasin, or reach
16 evaluated, the report shall describe (i) the nature and extent
17 of use of both surface water and ground water in each river
18 basin, subbasin, or reach, (ii) the geographic area within which
19 the department preliminarily considers surface water and ground
20 water to be hydrologically connected and the criteria used for
21 that determination, and (iii) the extent to which the then-current
22 uses affect available near-term and long-term water supplies.
23 River basins, subbasins, and reaches designated as overappropriated
24 in accordance with subsection (4) of this section shall not be
25 evaluated by the department.

1 (b) Based on the information reviewed in the evaluation
2 process, the department shall arrive at a preliminary conclusion
3 for each river basin, subbasin, and reach evaluated as to
4 whether such river basin, subbasin, or reach presently is fully
5 appropriated without the initiation of additional uses. The
6 department shall also determine if and how such preliminary
7 conclusion would change if no additional legal constraints were
8 imposed on future development of hydrologically connected surface
9 water and ground water and reasonable projections are made about
10 the extent and location of future development in such river basin,
11 subbasin, or reach.

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

20 (d) In preparing the report, the department shall rely
21 on the best scientific data, information, and methodologies readily
22 available to ensure that the conclusions and results contained
23 in the report are reliable. In its report, the department shall
24 provide sufficient documentation to allow these data, information,
25 methodologies, and conclusions to be independently replicated

1 and assessed. Upon request by the department, state agencies,
2 natural resources districts, irrigation districts, reclamation
3 districts, public power and irrigation districts, mutual irrigation
4 companies, canal companies, municipalities, and other water users
5 and stakeholders shall provide relevant data and information in
6 their possession. The Department of Natural Resources shall specify
7 by rule and regulation the types of scientific data and other
8 information that will be considered for making the preliminary
9 determinations required by this section.

10 (2) (a) ~~(2)~~ The department shall complete a reevaluation
11 of a river basin, subbasin, or reach for which an integrated
12 management plan has been or is being prepared if the department has
13 reason to believe that a reevaluation might lead to a different
14 determination about whether such river basin, subbasin, or reach
15 is fully appropriated or overappropriated. A decision to reevaluate
16 may be reached by the department on its own or in response to
17 a petition filed with the department by any interested person.
18 To be considered sufficient to justify a reevaluation, a petition
19 shall be accompanied by supporting information showing that ~~(a)~~
20 (i) new scientific data or other information relevant to the
21 determination of whether the river basin, subbasin, or reach is
22 fully appropriated or overappropriated has become available since
23 the last evaluation of such river basin, subbasin, or reach, ~~(b)~~
24 (ii) the department relied on incorrect or incomplete information
25 when the river basin, subbasin, or reach was last evaluated, or ~~(e)~~

1 (iii) the department erred in its interpretation or application of
2 the information available when the river basin, subbasin, or reach
3 was last evaluated. If a petition determined by the department
4 to be sufficient is filed before ~~March~~ July 1 of any year, the
5 reevaluation of the river basin, subbasin, or reach involved shall
6 be included in the next annual report prepared in accordance with
7 subsection (1) of this section. If any such petition is filed on
8 or after ~~March~~ July 1 of any year, the department may defer the
9 reevaluation of the river basin, subbasin, or reach involved until
10 the second annual report after such filing.

11 (b) If the reevaluation results in a different
12 determination by the department, then (i) the department shall
13 notify, by certified mail, the affected natural resources districts
14 and any irrigation district, public power and irrigation district,
15 mutual irrigation company, canal company, or municipality that
16 relies on water from the affected river basin, subbasin, or
17 reach of the preliminary change in the determination and (ii)
18 the department shall hold one or more public hearings not more
19 than ninety days after the publication of the notice required
20 in subdivision (b) (i) of this subsection. Notice of the hearings
21 shall be provided in the same manner as the notice required in
22 subsection (1) of section 46-714. Any interested person may appear
23 at the hearing and present written or oral testimony and evidence
24 concerning the appropriation status of the river basin, subbasin,
25 or reach.

1 (c) Within thirty days after the final hearing under
2 subdivision (b) of this subsection, the department shall notify the
3 appropriate natural resources districts of the department's final
4 determination with respect to the appropriation status of the river
5 basin, subbasin, or reach.

6 (3) A river basin, subbasin, or reach shall be deemed
7 fully appropriated if the department determines based upon its
8 evaluation conducted pursuant to subsection (1) of this section
9 and information presented at the hearing pursuant to subsection
10 (4) of section 46-714 that then-current uses of hydrologically
11 connected surface water and ground water in the river basin,
12 subbasin, or reach cause or will in the reasonably foreseeable
13 future cause (a) the surface water supply to be insufficient to
14 sustain over the long term the beneficial or useful purposes for
15 which existing natural-flow or storage appropriations were granted
16 and the beneficial or useful purposes for which, at the time of
17 approval, any existing instream appropriation was granted, (b) the
18 streamflow to be insufficient to sustain over the long term the
19 beneficial uses from wells constructed in aquifers dependent on
20 recharge from the river or stream involved, or (c) reduction in
21 the flow of a river or stream sufficient to cause noncompliance by
22 Nebraska with an interstate compact or decree, other formal state
23 contract or agreement, or applicable state or federal laws.

24 (4) (a) A river basin, subbasin, or reach shall be deemed
25 overappropriated if, on July 16, 2004, the river basin, subbasin,

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

16 (b) Within sixty days after July 16, 2004, the department
17 shall designate which river basins, subbasins, or reaches are
18 overappropriated. The designation shall include a description of
19 the geographic area within which the department has determined that
20 surface water and ground water are hydrologically connected and the
21 criteria used to make such determination.

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

24 46-714 (1) Whenever the Department of Natural Resources
25 makes a preliminary determination that a river basin, subbasin,

1 or reach not previously designated as overappropriated and not
2 previously determined to be fully appropriated has become fully
3 appropriated, the department shall place an immediate stay on
4 the issuance of any new natural-flow, storage, or storage-use
5 appropriations in such river basin, subbasin, or reach. The
6 department shall also provide prompt notice of such preliminary
7 determination to all licensed water well contractors in the state
8 and to each natural resources district that encompasses any of
9 the geographic area involved. Such notice to natural resources
10 districts shall be by certified mail. The notice shall be addressed
11 to the manager of the natural resources district or his or her
12 designee and shall include the signature of the Director of Natural
13 Resources. Immediately upon receipt of such notice by the natural
14 resources district, there shall be a stay on issuance of water
15 well construction permits in the geographic area preliminarily
16 determined by the department to include hydrologically connected
17 surface water and ground water in such river basin, subbasin,
18 or reach. The department shall also notify the public of the
19 preliminary determination that the river basin, subbasin, or reach
20 is fully appropriated and of the affected geographic area. Such
21 notice shall be provided by publication once each week for
22 three consecutive weeks in at least one newspaper of statewide
23 circulation and in such other newspaper or newspapers as are deemed
24 appropriate by the department to provide general circulation in the
25 river basin, subbasin, or reach.

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

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

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

17 Such additional stays shall begin ten days after the
18 first publication, in a newspaper of statewide circulation, of
19 the notice of the preliminary determination that the river basin,
20 subbasin, or reach is fully appropriated.

21 (3) Exceptions to the stays imposed pursuant to
22 subsection (1), (2), (8), or (9), ~~or (10)~~ of this section shall
23 exist for (a) test holes, (b) dewatering wells with an intended use
24 of one year or less, (c) monitoring wells, (d) wells constructed
25 pursuant to a ground water remediation plan under the Environmental

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

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

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

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

18 (5) Within thirty days after the final hearing under
19 subsection (4) of this section, the department shall notify the
20 appropriate natural resources districts of the department's final
21 determination with respect to the appropriation status of the
22 river basin, subbasin, or reach. If the final determination is
23 that the river basin, subbasin, or reach is fully appropriated,
24 the department, at the same time, shall (a) decide whether to
25 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)~~ (6) Within ninety days after a final determination
18 by 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)~~ (7) Within forty-five days after a natural resources

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

15 ~~(9)~~ (8) Whenever the department designates a river basin,
16 subbasin, or reach as overappropriated, each previously declared
17 moratorium on the issuance of new surface water appropriations in
18 the river basin, subbasin, or reach shall continue in effect. The
19 department shall also provide prompt notice of such designation
20 to all licensed water well contractors in the state and to each
21 natural resources district that encompasses any of the geographic
22 area involved. Immediately upon receipt of such notice by a natural
23 resources district, there shall be a stay on the issuance of new
24 water well construction permits in any portion of such natural
25 resources district that is within the hydrologically connected area

1 designated by the department. The department shall also notify the
2 public of its designation of such river basin, subbasin, or reach
3 as overappropriated and of the geographic area involved in such
4 designation. Such notice shall be published once each week for
5 three consecutive weeks in at least one newspaper of statewide
6 circulation and in such other newspapers as are deemed appropriate
7 by the department to provide general notice in the river basin,
8 subbasin, or reach.

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

21 ~~(11)~~ (10) Within ninety days after a designation
22 by the department of a river basin, subbasin, or reach as
23 overappropriated, a natural resources district that encompasses any
24 of the hydrologically connected area designated by the department
25 may hold one or more public hearings on the question of whether

1 to terminate the stays on (a) the construction of new water wells
2 within all or part of its portion of the hydrologically connected
3 area, (b) the issuance of new water well construction permits in
4 such area, or (c) the increase in ground water irrigated acres in
5 such area. Notice of any hearing for such purpose shall be provided
6 pursuant to section 46-743. Prior to the scheduling of a natural
7 resources district hearing on the question of whether to terminate
8 any such stay, the department and the affected natural resources
9 district shall consult with any irrigation district, reclamation
10 district, public power and irrigation district, mutual irrigation
11 company, canal company, or municipality that relies on water from
12 the affected river basin, subbasin, or reach and with other water
13 users and stakeholders as deemed appropriate by the department or
14 the natural resources district.

15 ~~(12)~~ (11) Any stay issued pursuant to this section
16 shall remain in effect until (a) the stay has been terminated
17 pursuant to subsection (5), ~~(6)~~, ~~(8)~~, ~~or~~ ~~(11)~~ (7), (10) of
18 this section, (b) an integrated management plan for the affected
19 river basin, subbasin, or reach has been adopted by the department
20 and the affected natural resources districts and has taken effect,
21 (c) an integrated management plan for the affected river basin,
22 subbasin, or reach has been adopted by the Interrelated Water
23 Review Board and has taken effect, (d) the department has completed
24 a reevaluation pursuant to subsection (2) of section 46-713 and has
25 determined that the affected river basin, subbasin, or reach is

1 not fully appropriated or overappropriated, or (e) the stay expires
2 pursuant to this subsection. Such stay may be imposed initially for
3 not more than three years following the department's designation
4 of the river basin, subbasin, or reach as overappropriated or the
5 department's final determination that a river basin, subbasin, or
6 reach is fully appropriated and may be extended thereafter on
7 an annual basis by agreement of the department and the affected
8 natural resources district for not more than two additional years
9 if necessary to allow the development, adoption, and implementation
10 of an integrated management plan pursuant to sections 46-715 to
11 46-719.

12 (12) (a) For purposes of this subsection, (i) a status
13 change occurs when a preliminary or final determination that
14 a river basin, subbasin, or reach is fully appropriated is
15 reversed by the department or by judicial determination and such
16 river basin, subbasin, or reach is determined not to be fully
17 appropriated and (ii) the hydrologically connected area means the
18 geographic area within which the department considers surface water
19 and ground water in such river basin, subbasin, or reach to be
20 hydrologically connected.

21 (b) If a status change occurs, any stays previously in
22 force by the department or affected natural resources districts
23 shall remain in force until the stays imposed under this subsection
24 are in place and the department shall place an immediate stay on
25 the issuance of any new natural-flow, storage, or storage-use

1 appropriations in the river basin, subbasin, or reach. The
2 department shall also provide prompt notice of the status change
3 in accordance with subsection (1) of this section. Immediately upon
4 receipt of the notice by the affected natural resources district,
5 there shall be stays imposed as set forth in subsections (1)
6 and (2) of this section, subject to the exceptions set forth in
7 subsection (3) of this section. The stays imposed pursuant to this
8 subsection shall remain in effect within each affected natural
9 resources district until such district adopts rules and regulations
10 in accordance with subdivision (c), (d), or (e) of this subsection.

11 (c) Upon receipt of notice of a status change, each
12 affected natural resources district shall adopt rules and
13 regulations within one hundred twenty days after receipt of such
14 notice for the prioritization and granting of water well permits
15 within the hydrologically connected area for the four-year period
16 following the status change. Nothing in this subsection shall be
17 construed to supersede the authority provided to natural resources
18 districts under subsection (2) of section 46-707 and subdivisions
19 (1)(f) and (1)(m) of section 46-739.

20 (d) The rules and regulations adopted by each affected
21 natural resources district in accordance with subdivision (c) of
22 this subsection shall (i) allow a limited number of total new
23 ground water irrigated acres annually, (ii) be created with the
24 purpose of maintaining the status of not fully appropriated based
25 on the most recent basin determination, (iii) be for a term

1 of not less than four years, and (iv) limit the number of new
2 permits so that total new ground water irrigated acres do not
3 exceed the number set in the rules and regulations. The department
4 shall approve the proposed new number of ground water irrigated
5 acres within sixty days after approval by the natural resources
6 district if such district meets the conditions set forth in
7 subdivision (d)(ii) of this subsection, based on the most recent
8 basin determination.

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

24 (f) During the four-year period following the status
25 change, the department shall ensure that any new appropriation

1 granted will not cause the basin, subbasin, or reach to be
2 fully appropriated based on the most recent basin determination.
3 The department, pursuant to its rules and regulations, shall
4 not issue new natural flow surface water appropriations for
5 irrigation, within the river basin, subbasin, or reach affected
6 by the status change, that will result in a net increase of more
7 than eight hundred thirty-four irrigated acres in each natural
8 resources district during each calendar year of the four-year
9 period following the date of the determination described in this
10 subsection.

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

13 46-720 (1) The Legislature finds that, prior to July 16,
14 2004, actions were taken by the Department of Natural Resources
15 and by one or more natural resources districts pursuant to section
16 46-656.28, as such section existed immediately prior to such date,
17 for the purpose of addressing circumstances that are, after such
18 date, to be addressed in accordance with sections 46-713 to 46-719.
19 It is the intent of the Legislature that actions taken pursuant
20 to section 46-656.28, as such section existed immediately prior to
21 July 16, 2004, should not be negated and that transition from the
22 authorities and responsibilities granted by such section to those
23 granted by sections 46-713 to 46-719 should occur in as efficient a
24 manner as possible. Such transition shall be therefor governed by
25 subsections (2) through (5) of this section, and all references in

1 such subsections to section 46-656.28 shall be construed to mean
2 section 46-656.28 as such section existed immediately prior to July
3 16, 2004.

4 (2) If, prior to July 16, 2004, (a) a natural resources
5 district requested pursuant to subsection (1) of section 46-656.28
6 that affected appropriators, affected surface water project
7 sponsors, and the department consult and that studies and a hearing
8 be held but (b) the Director of Natural Resources has not made
9 a preliminary determination relative to that request pursuant to
10 subsection (2) of section 46-656.28, no further action on the
11 district's request shall be required of the department. If under
12 the same circumstances a temporary suspension in the drilling of
13 certain water wells has been imposed by the district pursuant
14 to subsection (16) of section 46-656.28 and remains in effect
15 immediately prior to July 16, 2004, such temporary suspension shall
16 remain in effect for thirty days after the department issues its
17 first annual report under section 46-713, except that (i) such
18 temporary suspension shall not apply to water wells for which
19 a permit has been obtained pursuant to the Municipal and Rural
20 Domestic Ground Water Transfers Permit Act and (ii) to the extent
21 any such temporary suspension is in effect for all or part of a
22 hydrologically connected area for a river basin, subbasin, or reach
23 designated as overappropriated by the department, such temporary
24 suspension shall remain in effect only until it is superseded by
25 the stays imposed pursuant to subsections (8) and (9) and ~~(10)~~ of

1 section 46-714. To the extent that any such temporary suspension
2 applies to a geographic area preliminarily considered by the
3 department to have ground water hydrologically connected to the
4 surface water of a fully appropriated river basin, subbasin, or
5 reach, such temporary suspension shall be superseded by the stays
6 imposed pursuant to subsections (1) and (2) of section 46-714.

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

22 (b) For purposes of this subsection and section 46-714
23 and except as otherwise provided in this section, (i) July 16,
24 2004, shall result in the imposition in any geographic area subject
25 to this subsection of the stays required by subsections (1) and (2)

1 of section 46-714, (ii) such stays shall be imposed in the manner
2 required by such section, and (iii) July 16, 2004, shall be treated
3 as if it were the date of a departmental preliminary determination
4 pursuant to section 46-713 that such area is a geographic area
5 within which ground water and surface water of a fully appropriated
6 river basin, subbasin, or reach are hydrologically connected.
7 Notwithstanding the other provisions of this subsection, if a
8 temporary suspension in the drilling of certain new water wells
9 has previously been imposed by the affected natural resources
10 district, (A) the stays on construction of new water wells and on
11 the increase in ground water irrigated acres shall be limited in
12 geographic extent to only that part of the affected area within
13 which the temporary suspension was in effect unless the director
14 determines that inclusion of additional area is necessary because
15 ground water and surface water are hydrologically connected in
16 such additional area and (B) the stays on construction of certain
17 new water wells shall not apply to a water well constructed in
18 accordance with the terms of a water well construction permit
19 approved by the district prior to July 16, 2004, unless such
20 well was subject to the district's temporary suspension. If,
21 prior to July 16, 2004, the director has held a hearing on a
22 report issued pursuant to subsection (3) of section 46-656.28 but
23 has not yet determined whether a joint action plan should be
24 prepared, no departmental hearing shall be required pursuant to
25 subsection (4) of section 46-714 before a final determination is

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

24 (4) If, prior to July 16, 2004, preparation of a joint
25 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

1 adopted by the board have taken effect. To the extent that any
2 portion of the affected area is designated as all or part of an
3 overappropriated river basin, subbasin, or reach, any temporary
4 suspension in the drilling of water wells shall be superseded by
5 the stays imposed pursuant to subsections (8) and (9) and ~~(10)~~ of
6 section 46-714.

7 (5) If, before July 16, 2004, a joint action plan has
8 been adopted and implemented pursuant to subsections (10) through
9 (12) of section 46-656.28 and is in effect immediately prior
10 to such date, the department need not evaluate the geographic
11 area subject to the plan in the department's first annual report
12 issued pursuant to section 46-713. For purposes of the Nebraska
13 Ground Water Management and Protection Act, (a) the plan adopted
14 shall be considered an integrated management plan adopted pursuant
15 to section 46-718, (b) the management area designated shall be
16 considered an integrated management area or subarea designated
17 pursuant to section 46-718, and (c) the controls adopted shall be
18 considered controls adopted pursuant to section 46-718 and shall
19 remain in effect until amended or repealed pursuant to section
20 46-718 or 46-719.

21 Sec. 6. Original sections 2-32,115 and 46-720, Reissue
22 Revised Statutes of Nebraska, and sections 46-706, 46-713, and
23 46-714, Revised Statutes Cumulative Supplement, 2008, are repealed.

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