

LEGISLATURE OF NEBRASKA
 ONE HUNDRED FIRST LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 54

FINAL READING

(SECOND)

Introduced by Fischer, 43.

Read first time January 8, 2009

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to the Nebraska Ground Water Management and
 2 Protection Act; to amend sections 46-714, 46-715, and
 3 46-719, Revised Statutes Cumulative Supplement, 2008, and
 4 section 46-713, Revised Statutes Cumulative Supplement,
 5 2008, as amended by section 3, Legislative Bill 483, One
 6 Hundred First Legislature, First Session, 2009; to change
 7 provisions relating to evaluations of hydrologically
 8 connected water supplies and integrated management plans;
 9 to harmonize provisions; and to repeal the original
 10 sections.

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

1 Section 1. Section 46-713, Revised Statutes Cumulative
2 Supplement, 2008, as amended by section 3, Legislative Bill 483,
3 One Hundred First Legislature, First Session, 2009, is amended to
4 read:

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

1 River basins, subbasins, and reaches designated as overappropriated
2 in accordance with subsection (4) of this section shall not be
3 evaluated by the department. The department is not required to
4 perform an annual evaluation for a river basin, subbasin, or reach
5 during the four years following a status change in such river
6 basin, subbasin, or reach under subsection (12) of section 46-714.

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

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

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

16 (2)(a) The department shall complete a reevaluation
17 of a river basin, subbasin, or reach for which an integrated
18 management plan has been or is being prepared if the department has
19 reason to believe that a reevaluation might lead to a different
20 determination about whether such river basin, subbasin, or reach
21 is fully appropriated or overappropriated. A decision to reevaluate
22 may be reached by the department on its own or in response
23 to a petition filed with the department by any interested
24 person. To be considered sufficient to justify a reevaluation,
25 a petition shall be accompanied by supporting information showing

1 that (i) new scientific data or other information relevant to the
2 determination of whether the river basin, subbasin, or reach is
3 fully appropriated or overappropriated has become available since
4 the last evaluation of such river basin, subbasin, or reach, (ii)
5 the department relied on incorrect or incomplete information when
6 the river basin, subbasin, or reach was last evaluated, or (iii)
7 the department erred in its interpretation or application of the
8 information available when the river basin, subbasin, or reach was
9 last evaluated. If a petition determined by the department to be
10 sufficient is filed before July 1 of any year, the reevaluation of
11 the river basin, subbasin, or reach involved shall be included in
12 the next annual report prepared in accordance with subsection (1)
13 of this section. If any such petition is filed on or after July 1
14 of any year, the department may defer the reevaluation of the river
15 basin, subbasin, or reach involved until the second annual report
16 after such filing.

17 (b) If the reevaluation results in a different
18 determination by the department, then (i) the department shall
19 notify, by certified mail, the affected natural resources districts
20 and any irrigation district, public power and irrigation district,
21 mutual irrigation company, canal company, or municipality that
22 relies on water from the affected river basin, subbasin, or
23 reach of the preliminary change in the determination and (ii)
24 the department shall hold one or more public hearings not more
25 than ninety days after the publication of the notice required

1 in subdivision (b) (i) of this subsection. Notice of the hearings
2 shall be provided in the same manner as the notice required in
3 subsection (1) of section 46-714. Any interested person may appear
4 at the hearing and present written or oral testimony and evidence
5 concerning the appropriation status of the river basin, subbasin,
6 or reach.

7 (c) Within thirty days after the final hearing under
8 subdivision (b) of this subsection, the department shall notify the
9 appropriate natural resources districts of the department's final
10 determination with respect to the appropriation status of the river
11 basin, subbasin, or reach.

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

1 recharge from the river or stream involved, or (c) reduction in
2 the flow of a river or stream sufficient to cause noncompliance by
3 Nebraska with an interstate compact or decree, other formal state
4 contract or agreement, or applicable state or federal laws.

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

22 (b) Within sixty days after July 16, 2004, the department
23 shall designate which river basins, subbasins, or reaches are
24 overappropriated. The designation shall include a description of
25 the geographic area within which the department has determined that

1 surface water and ground water are hydrologically connected and the
2 criteria used to make such determination.

3 Sec. 2. Section 46-714, Revised Statutes Cumulative
4 Supplement, 2008, is amended to read:

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

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

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

12 (a) On the construction of any new water well in the
13 area covered by the determination unless a permit with conditions
14 imposed by the natural resources district has been issued prior
15 to the determination. Such conditions shall meet the objectives
16 of subsection ~~(3)~~ (4) of section 46-715 and may include, but are
17 not limited to, conditions in accordance with subsection (6) of
18 section 46-739. Any well constructed pursuant to such permit shall
19 be completed in accordance with section 46-738; and

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

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

1 subbasin, or reach is fully appropriated.

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

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

22 (4) Except as otherwise provided in this section, any
23 stay imposed pursuant to subsections (1) and (2) of this section
24 shall remain in effect for the affected river basin, subbasin, or
25 reach until the department has made a final determination regarding

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

24 (5) Within thirty days after the final hearing under
25 subsection (4) of this section, the department shall notify the

1 appropriate natural resources districts of the department's final
2 determination with respect to the appropriation status of the
3 river basin, subbasin, or reach. If the final determination is
4 that the river basin, subbasin, or reach is fully appropriated,
5 the department, at the same time, shall (a) decide whether to
6 continue or to terminate the stays on new surface water uses and
7 on increases in the number of surface water irrigated acres and (b)
8 designate the geographic area within which the department considers
9 surface water and ground water to be hydrologically connected in
10 the river basin, subbasin, or reach and describe the methods and
11 criteria used in making that determination. The department shall
12 provide notice of its decision to continue or terminate the stays
13 in the same manner as the notice required by subsection (1) of this
14 section.

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

23 (7) Within ninety days after a final determination by
24 the department that a river basin, subbasin, or reach is fully
25 appropriated, an affected natural resources district may hold one

1 or more public hearings on the question of whether the stays on
2 the issuance of new water well permits, on the construction of
3 new water wells, or on increases in ground water irrigated acres
4 should be terminated. Notice of the hearings shall be published as
5 provided in section 46-743.

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

21 (9) Whenever the department designates a river basin,
22 subbasin, or reach as overappropriated, each previously declared
23 moratorium on the issuance of new surface water appropriations in
24 the river basin, subbasin, or reach shall continue in effect. The
25 department shall also provide prompt notice of such designation

1 to all licensed water well contractors in the state and to each
2 natural resources district that encompasses any of the geographic
3 area involved. Immediately upon receipt of such notice by a natural
4 resources district, there shall be a stay on the issuance of new
5 water well construction permits in any portion of such natural
6 resources district that is within the hydrologically connected area
7 designated by the department. The department shall also notify the
8 public of its designation of such river basin, subbasin, or reach
9 as overappropriated and of the geographic area involved in such
10 designation. Such notice shall be published once each week for
11 three consecutive weeks in at least one newspaper of statewide
12 circulation and in such other newspapers as are deemed appropriate
13 by the department to provide general notice in the river basin,
14 subbasin, or reach.

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

1 irrigated in the affected area.

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

21 (12) Any stay issued pursuant to this section shall
22 remain in effect until (a) the stay has been terminated pursuant
23 to subsection (5), (6), (8), or (11) of this section, (b) an
24 integrated management plan for the affected river basin, subbasin,
25 or reach has been adopted by the department and the affected

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

18 Sec. 3. Section 46-715, Revised Statutes Cumulative
19 Supplement, 2008, is amended to read:

20 46-715 (1) Whenever the Department of Natural
21 Resources has designated a river basin, subbasin, or reach as
22 overappropriated or has made a final determination that a river
23 basin, subbasin, or reach is fully appropriated, the natural
24 resources districts encompassing such river basin, subbasin, or
25 reach and the department shall jointly develop an integrated

1 management plan for such river basin, subbasin, or reach. The plan
2 shall be completed, adopted, and take effect within three years
3 after such designation or final determination unless the department
4 and the natural resources districts jointly agree to an extension
5 of not more than two additional years.

6 (2) In developing an integrated management plan, the
7 effects of existing and potential new water uses on existing
8 surface water appropriators and ground water users shall be
9 considered. An integrated management plan shall include the
10 following: (a) Clear goals and objectives with a purpose of
11 sustaining a balance between water uses and water supplies so that
12 the economic viability, social and environmental health, safety,
13 and welfare of the river basin, subbasin, or reach can be achieved
14 and maintained for both the near term and the long term; (b)
15 a map clearly delineating the geographic area subject to the
16 integrated management plan; (c) one or more of the ground water
17 controls authorized for adoption by natural resources districts
18 pursuant to section 46-739; (d) one or more of the surface water
19 controls authorized for adoption by the department pursuant to
20 section 46-716; and (e) a plan to gather and evaluate data,
21 information, and methodologies that could be used to implement
22 sections 46-715 to 46-717, increase understanding of the surface
23 water and hydrologically connected ground water system, and test
24 the validity of the conclusions and information upon which the
25 integrated management plan is based. The plan may also provide for

1 utilization of any applicable incentive programs authorized by law.
2 Nothing in the integrated management plan for a fully appropriated
3 river basin, subbasin, or reach shall require a natural resources
4 district to regulate ground water uses in place at the time of
5 the department's preliminary determination that the river basin,
6 subbasin, or reach is fully appropriated, but a natural resources
7 district may voluntarily adopt such regulations. The applicable
8 natural resources district may decide to include all water users
9 within the district boundary in an integrated management plan.

10 (3) In order to provide a process for economic
11 development opportunities and economic sustainability within a
12 river basin, subbasin, or reach designated as fully appropriated
13 or overappropriated, the integrated management plan shall include
14 clear and transparent procedures to track depletions and gains to
15 streamflows resulting from new, retired, or other changes to uses
16 within the river basin, subbasin, or reach. The procedures shall:

17 (a) Utilize generally accepted methodologies based on the
18 best available information, data, and science;

19 (b) Include a generally accepted methodology to be
20 utilized to estimate depletions and gains to streamflows, which
21 methodology includes location, amount, and time regarding gains to
22 streamflows as offsets to new uses;

23 (c) Identify means to be utilized so that new uses will
24 not have more than a de minimis effect upon existing surface water
25 users or ground water users;

1 (d) Identify procedures the natural resources district
2 and the department will use to report, consult, and otherwise
3 share information on new uses, changes in uses, or other activities
4 affecting water use in the river basin, subbasin, or reach;

5 (e) Identify, to the extent feasible, potential water
6 available to mitigate new uses, including, but not limited
7 to, water rights leases, interference agreements, augmentation
8 projects, conjunctive use management, and use retirement;

9 (f) Develop, to the extent feasible, an outline of
10 plans after consultation with and an opportunity to provide
11 input from irrigation districts, public power and irrigation
12 districts, reclamation districts, municipalities, other political
13 subdivisions, and other water users to make water available for
14 offset to enhance and encourage economic development opportunities
15 and economic sustainability in the river basin, subbasin, or reach;
16 and

17 (g) Clearly identify procedures that applicants for new
18 uses shall take to apply for approval of a new water use and
19 corresponding offset.

20 Nothing in this subsection shall require revision or
21 amendment of an integrated management plan approved on or before
22 the effective date of this act.

23 ~~(3)~~ (4) The ground water and surface water controls
24 proposed for adoption in the integrated management plan pursuant
25 to subsection (1) of this section shall, when considered together

1 and with any applicable incentive programs, (a) be consistent with
2 the goals and objectives of the plan, (b) be sufficient to ensure
3 that the state will remain in compliance with applicable state and
4 federal laws and with any applicable interstate water compact or
5 decree or other formal state contract or agreement pertaining to
6 surface water or ground water use or supplies, and (c) protect the
7 ground water users whose water wells are dependent on recharge from
8 the river or stream involved and the surface water appropriators on
9 such river or stream from streamflow depletion caused by surface
10 water uses and ground water uses begun after the date the river
11 basin, subbasin, or reach was designated as overappropriated or
12 was preliminarily determined to be fully appropriated in accordance
13 with section 46-713.

14 ~~(4)(a)~~ (5)(a) In any river basin, subbasin, or reach that
15 is designated as overappropriated, when the designated area lies
16 within two or more natural resources districts, the department and
17 the affected natural resources districts shall jointly develop a
18 basin-wide plan for the area designated as overappropriated. Such
19 plan shall be developed using the consultation and collaboration
20 process described in subdivision (b) of this subsection, shall
21 be developed concurrently with the development of the integrated
22 management plan required pursuant to subsections (1) through ~~(3)~~
23 (4) of this section, and shall be designed to achieve, in the
24 incremental manner described in subdivision (d) of this subsection,
25 the goals and objectives described in subsection (2) of this

1 section. The basin-wide plan shall be adopted after hearings by the
2 department and the affected natural resources districts.

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

1 and the affected natural resources district pursuant to sections
2 46-715 to 46-718 or by the Interrelated Water Review Board pursuant
3 to section 46-719.

4 (c) Any integrated management plan developed under
5 this subsection shall identify the overall difference between
6 the current and fully appropriated levels of development. Such
7 determination shall take into account cyclical supply, including
8 drought, identify the portion of the overall difference between the
9 current and fully appropriated levels of development that is due
10 to conservation measures, and identify the portions of the overall
11 difference between the current and fully appropriated levels of
12 development that are due to water use initiated prior to July 1,
13 1997, and to water use initiated on or after such date.

14 (d) Any integrated management plan developed under this
15 subsection shall adopt an incremental approach to achieve the goals
16 and objectives identified under subdivision (2)(a) of this section
17 using the following steps:

18 (i) The first incremental goals shall be to address the
19 impact of streamflow depletions to (A) surface water appropriations
20 and (B) water wells constructed in aquifers dependent upon recharge
21 from streamflow, to the extent those depletions are due to water
22 use initiated after July 1, 1997, and, unless an interstate
23 cooperative agreement for such river basin, subbasin, or reach is
24 no longer in effect, to prevent streamflow depletions that would
25 cause noncompliance by Nebraska with such interstate cooperative

1 agreement. During the first increment, the department and the
2 affected natural resources districts shall also pursue voluntary
3 efforts, subject to the availability of funds, to offset any
4 increase in streamflow depletive effects that occur after July 1,
5 1997, but are caused by ground water uses initiated prior to such
6 date. The department and the affected natural resources districts
7 may also use other appropriate and authorized measures for such
8 purpose;

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

13 (iii) During the ten years following adoption of an
14 integrated management plan developed under this subsection ~~(4)~~ (5)
15 or during the ten years after the adoption of any subsequent
16 increment of the integrated management plan pursuant to subdivision
17 (d)(iv) of this subsection, the department and the affected natural
18 resources district shall conduct a technical analysis of the
19 actions taken in such increment to determine the progress towards
20 meeting the goals and objectives adopted pursuant to subsection (2)
21 of this section. The analysis shall include an examination of (A)
22 available supplies and changes in long-term availability, (B) the
23 effects of conservation practices and natural causes, including,
24 but not limited to, drought, and (C) the effects of the plan
25 on reducing the overall difference between the current and fully

1 appropriated levels of development identified in subdivision ~~(4)(e)~~
2 (5)(c) of this section. The analysis shall determine whether a
3 subsequent increment is necessary in the integrated management plan
4 to meet the goals and objectives adopted pursuant to subsection
5 (2) of this section and reduce the overall difference between the
6 current and fully appropriated levels of development identified in
7 subdivision ~~(4)(e)~~ (5)(c) of this section;

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

16 (v) If necessary, the steps described in subdivisions
17 (d)(ii) through (iv) of this subsection shall be repeated until the
18 department and the affected natural resources districts agree that
19 the goals and objectives identified pursuant to subsection (2) of
20 this section have been met and the overall difference between the
21 current and fully appropriated levels of development identified in
22 subdivision ~~(4)(e)~~ (5)(c) of this section has been addressed so
23 that the river basin, subbasin, or reach has returned to a fully
24 appropriated condition.

25 ~~(5)~~ (6) In any river basin, subbasin, or reach that is

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

11 Sec. 4. Section 46-719, Revised Statutes Cumulative
12 Supplement, 2008, is amended to read:

13 46-719 (1)(a) The Interrelated Water Review Board is
14 created for the purposes stated in subsections (2) through (5)
15 of this section. The board shall consist of five members. The
16 board, when appointed and convened, shall continue in existence
17 only until it has resolved a dispute referred to it pursuant to
18 such subsections. The Governor shall appoint and convene the board
19 within forty-five days of being notified of the need to resolve
20 a dispute. The board shall be chaired by the Governor or his
21 or her designee, which designee shall be knowledgeable concerning
22 surface water and ground water issues. The Governor shall appoint
23 one additional member of his or her choosing and shall appoint
24 the other three members of the board from a list of no fewer than
25 six nominees provided by the Nebraska Natural Resources Commission

1 within twenty days after request by the Governor for a list of
2 nominees.

3 (b) Not more than two members of the board shall reside
4 in the geographic area involved in the dispute. A person is not
5 eligible for membership on the board if the decisions to be made
6 by the board would or could cause financial benefit or detriment
7 to the person, a member of his or her immediate family, or a
8 business with which the person is associated, unless such benefit
9 or detriment is indistinguishable from the effects of such action
10 on the public generally or a broad segment of the public. The board
11 shall be subject to the Open Meetings Act.

12 (c) For purposes of subsections (2) and (3) of this
13 section, action may be taken by a vote of three of the board's five
14 members. For purposes of subsections (4) and (5) of this section,
15 action may be taken only by a vote of at least four of the board's
16 five members.

17 (2)(a) If the Department of Natural Resources and the
18 affected natural resources districts cannot resolve disputes over
19 the content of a basin-wide plan or an integrated management plan
20 by utilizing the process described in sections 46-715 to 46-718,
21 the Governor shall be notified and the dispute submitted to the
22 Interrelated Water Review Board. When the board has been appointed
23 and convened to resolve disputes over a basin-wide plan, the
24 department and each affected district shall present their proposed
25 basin-wide plans to the board. When the board has been convened to

1 resolve disputes over an integrated management plan, the department
2 and each affected natural resources district shall present their
3 (i) proposed goals and objectives for the integrated management
4 plan, (ii) proposed geographic area to be subject to controls,
5 and (iii) proposed surface water and ground water controls and any
6 proposed incentive program for adoption and implementation in the
7 river basin, subbasin, or reach involved. The department and each
8 affected natural resources district shall also be given adequate
9 opportunity to comment on the proposals made by the other parties
10 to the dispute.

11 (b) When the Interrelated Water Review Board concludes
12 that the issues in dispute have been fully presented and commented
13 upon by the parties to the dispute, which conclusion shall be made
14 not more than forty-five days after the board is convened, the
15 board shall select the proposals or portions of proposals that the
16 board will consider for adoption and shall schedule one or more
17 public hearings to take testimony on the selected proposals. The
18 hearings shall be held within forty-five days after the board's
19 selection of proposals to consider for adoption and shall be within
20 or in reasonable proximity to the area that would be affected by
21 implementation of any of the proposals to be considered at the
22 hearings. Notice of the hearings shall be published as provided in
23 section 46-743. The cost of publishing the notice shall be shared
24 by the department and the affected natural resources districts. All
25 interested persons may appear at the hearings and present testimony

1 or provide other evidence relevant to the issues being considered.

2 (c) Within forty-five days after the final hearing
3 pursuant to subdivision (b) of this subsection, the Interrelated
4 Water Review Board shall by order, as applicable, adopt a
5 basin-wide plan or an integrated management plan for the affected
6 river basin, subbasin, or reach and, in the case of an integrated
7 management plan, shall designate a ground water management area
8 for integrated management or an integrated management subarea for
9 such river basin, subbasin, or reach. An integrated management plan
10 shall be consistent with subsection (2) of section 46-715, and
11 the surface water and ground water controls and any applicable
12 incentive programs adopted as part of that plan shall be consistent
13 with subsection ~~(3)~~ (4) of section 46-715. The controls adopted by
14 the board shall not be substantially different from those described
15 in the notice of hearing. The area designated as a ground water
16 management area or an integrated management subarea shall not
17 include any area that was not identified in the notice of the
18 hearing as within the area proposed to be subject to the controls
19 in the plan.

20 (d) The order adopted under this subsection shall be
21 published in the manner prescribed in section 46-744.

22 (e) Surface water controls adopted by the Interrelated
23 Water Review Board shall be implemented and enforced by the
24 department. Ground water controls adopted by the Interrelated Water
25 Review Board shall be implemented and enforced by the affected

1 natural resources districts.

2 (3) Whether an integrated management plan is adopted
3 pursuant to section 46-718 or by the Interrelated Water Review
4 Board pursuant to subsection (2) of this section, the department or
5 a natural resources district responsible in part for implementation
6 and enforcement of an integrated management plan may propose
7 modification of the goals or objectives of that plan, of the area
8 subject to the plan, or of the surface water controls, ground
9 water controls, or incentive programs adopted to implement the
10 plan. The department and the affected natural resources districts
11 shall utilize the procedures in sections 46-715 to 46-718 in
12 an attempt to reach agreement on and to adopt and implement
13 proposed modifications. If agreement on such modifications cannot
14 be achieved utilizing those procedures, either the department or
15 an affected natural resources district may notify the Governor of
16 the dispute. The Interrelated Water Review Board shall be appointed
17 and convened in accordance with subsection (1) of this section to
18 resolve the dispute and, if applicable, to adopt any modifications
19 utilizing the procedures in subsection (2) of this section.

20 (4) The department and the affected natural resources
21 districts may also raise objections concerning the implementation
22 or enforcement of previously adopted surface water or ground
23 water controls. The department and the affected natural resources
24 districts shall utilize the procedures in sections 46-715 to
25 46-718 in an attempt to reach agreement on such implementation or

1 enforcement issues. If agreement on such issues cannot be achieved
2 utilizing such procedures, either the department or an affected
3 natural resources district may notify the Governor of the dispute.
4 The Interrelated Water Review Board shall be appointed and convened
5 in accordance with subsection (1) of this section. After permitting
6 each party to fully express its reasons for its position on the
7 disputed issues, the board may either take no action or conclude
8 (a) that one or more parties needs to modify its approach to
9 implementation or enforcement and direct that such modifications
10 take place or (b) that one or more parties either has not made
11 a good faith effort to implement or enforce the portion of the
12 plan or controls for which it is responsible or is unable to
13 fully implement and enforce such portion and that such party's
14 jurisdiction with respect to implementation and enforcement of
15 the plan and controls shall be terminated and reassigned to one
16 or more of the other parties responsible for implementation and
17 enforcement. A decision by the Interrelated Water Review Board to
18 terminate and reassign jurisdiction of any portion of the plan or
19 controls shall take effect immediately upon that decision. Notice
20 of such reassignment shall be published at least once in one or
21 more newspapers as necessary to provide general circulation in the
22 area affected by such reassignment.

23 (5) The board may be reconvened in accordance with
24 subsection (1) of this section at a later date upon request to
25 the Governor by the party for which jurisdiction for implementation

1 and enforcement was terminated if such party desires to have its
2 jurisdiction reinstated, but no such request shall be honored until
3 at least one year after the termination and not more than once
4 per year thereafter. The board may reinstate jurisdiction to that
5 party only upon a clear showing by such party that it is willing
6 and able to fully implement and enforce the plan and any applicable
7 controls. Notice that a party's jurisdiction has been reinstated
8 shall be provided in the same manner that notice of the earlier
9 termination was given.

10 Sec. 5. Original sections 46-714, 46-715, and 46-719,
11 Revised Statutes Cumulative Supplement, 2008, and section 46-713,
12 Revised Statutes Cumulative Supplement, 2008, as amended by section
13 3, Legislative Bill 483, One Hundred First Legislature, First
14 Session, 2009, are repealed.