

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1025

Introduced by Avery, 28.

Read first time January 20, 2010

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to water; to amend section 46-714, Revised
2 Statutes Supplement, 2009; to change provisions relating
3 to stays on new appropriations; and to repeal the
4 original section.

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

1 Section 1. Section 46-714, Revised Statutes Supplement,
2 2009, is amended to read:

3 46-714 (1) Whenever the Department of Natural Resources
4 makes a preliminary determination that a river basin, subbasin,
5 or reach not previously designated as overappropriated and not
6 previously determined to be fully appropriated has become fully
7 appropriated, the department shall place an immediate stay on
8 the issuance of any new natural-flow, storage, or storage-use
9 appropriations in such river basin, subbasin, or reach. The
10 department shall also provide prompt notice of such preliminary
11 determination to all licensed water well contractors in the state
12 and to each natural resources district that encompasses any of
13 the geographic area involved. Such notice to natural resources
14 districts shall be by certified mail. The notice shall be addressed
15 to the manager of the natural resources district or his or her
16 designee and shall include the signature of the Director of Natural
17 Resources. Immediately upon receipt of such notice by the natural
18 resources district, there shall be a stay on issuance of water
19 well construction permits in the geographic area preliminarily
20 determined by the department to include hydrologically connected
21 surface water and ground water in such river basin, subbasin,
22 or reach. The department shall also notify the public of the
23 preliminary determination that the river basin, subbasin, or reach
24 is fully appropriated and of the affected geographic area. Such
25 notice shall be provided by publication once each week for

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

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

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

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

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

25 ~~(3)~~ (3) (a) Exceptions to the stays imposed pursuant to

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

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

22 (b) Notwithstanding subdivision (3)(a) of this section,
23 the department may accept and act on an application for an instream
24 flow water use, or another surface water use that involves no
25 consumptive use, if such appropriation will not harm the senior

1 surface water appropriators on such river or stream or the ground
2 water users whose water wells are dependent on recharge from the
3 river or stream involved and such ground water uses were in place
4 on or before the date the river basin, subbasin, or reach was
5 designated as overappropriated or was preliminarily determined to
6 be fully appropriated in accordance with section 46-713.

7 (4) Except as otherwise provided in this section, any
8 stay imposed pursuant to subsections (1) and (2) of this section
9 shall remain in effect for the affected river basin, subbasin, or
10 reach until the department has made a final determination regarding
11 whether the river basin, subbasin, or reach is fully appropriated
12 and, if the department's final determination is that the river
13 basin, subbasin, or reach is fully appropriated, shall remain in
14 effect as provided in subsection (11) of this section. Within
15 the time period between the dates of the preliminary and final
16 determinations, the department and the affected natural resources
17 districts shall consult with any irrigation district, reclamation
18 district, public power and irrigation district, mutual irrigation
19 company, canal company, or municipality that relies on water from
20 the affected river basin, subbasin, or reach and with other water
21 users and stakeholders as deemed appropriate by the department
22 or the natural resources districts. The department shall also
23 hold one or more public hearings not more than ninety days after
24 the first publication of the notice required by subsection (1)
25 of this section. Notice of the hearings shall be provided in

1 the same manner as the notice required by such subsection. Any
2 interested person may appear at such hearing and present written or
3 oral testimony and evidence concerning the appropriation status of
4 the river basin, subbasin, or reach, the department's preliminary
5 conclusions about the extent of the area within which the surface
6 water and ground water supplies for the river basin, subbasin, or
7 reach are determined to be hydrologically connected, and whether
8 the stays on new uses should be terminated.

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

25 (6) Within ninety days after a final determination by

1 the department that a river basin, subbasin, or reach is fully
2 appropriated, an affected natural resources district may hold one
3 or more public hearings on the question of whether the stays on
4 the issuance of new water well permits, on the construction of
5 new water wells, or on increases in ground water irrigated acres
6 should be terminated. Notice of the hearings shall be published as
7 provided in section 46-743.

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

23 (8) Whenever the department designates a river basin,
24 subbasin, or reach as overappropriated, each previously declared
25 moratorium on the issuance of new surface water appropriations in

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

17 (9) Beginning ten days after the first publication of
18 notice under subsection (8) of this section in a newspaper of
19 statewide circulation, there shall also be stays (a) on the
20 construction of any new water well in the hydrologically connected
21 area if such construction has not commenced prior to such date
22 and if no permit for construction of the water well has been
23 issued previously by either the department or the natural resources
24 district, (b) on the use of an existing water well in the
25 hydrologically connected area to increase the number of acres

1 historically irrigated, and (c) on the use of an existing surface
2 water appropriation to increase the number of acres historically
3 irrigated in the affected area.

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

23 (11) Any stay issued pursuant to this section shall
24 remain in effect until (a) the stay has been terminated pursuant
25 to subsection (5), (7), or (10) of this section, (b) an integrated

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

20 (12)(a) For purposes of this subsection, (i) a status
21 change occurs when a preliminary or final determination that
22 a river basin, subbasin, or reach is fully appropriated is
23 reversed by the department or by judicial determination and such
24 river basin, subbasin, or reach is determined not to be fully
25 appropriated and (ii) the hydrologically connected area means the

1 geographic area within which the department considers surface water
2 and ground water in such river basin, subbasin, or reach to be
3 hydrologically connected.

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

19 (c) Upon receipt of notice of a status change, each
20 affected natural resources district shall adopt rules and
21 regulations within one hundred twenty days after receipt of such
22 notice for the prioritization and granting of water well permits
23 within the hydrologically connected area for the four-year period
24 following the status change. Nothing in this subsection shall be
25 construed to supersede the authority provided to natural resources

1 districts under subsection (2) of section 46-707 and subdivisions
2 (1)(f) and (1)(m) of section 46-739.

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

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

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

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

19 Sec. 2. Original section 46-714, Revised Statutes
20 Supplement, 2009, is repealed.