

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 483

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
2 and Protection Act; to amend section 46-714, Revised
3 Statutes Cumulative Supplement, 2008; to provide duties
4 for natural resources districts relating to water well
5 permits as prescribed; to repeal the original section;
6 and to declare an emergency.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-714, Revised Statutes Cumulative
2 Supplement, 2008, 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 (3) 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) Exceptions to the stays imposed pursuant to

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

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

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

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

22 (5) Within thirty days after the final hearing under
23 subsection (4) of this section, the department shall notify the
24 appropriate natural resources districts of the department's final
25 determination with respect to the appropriation status of the

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

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

21 (7) Within ninety days after a final determination by
22 the department that a river basin, subbasin, or reach is fully
23 appropriated, an affected natural resources district may hold one
24 or more public hearings on the question of whether the stays on
25 the issuance of new water well permits, on the construction of

1 new water wells, or on increases in ground water irrigated acres
2 should be terminated. Notice of the hearings shall be published as
3 provided in section 46-743.

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

19 (9) Whenever the department designates a river basin,
20 subbasin, or reach as overappropriated, each previously declared
21 moratorium on the issuance of new surface water appropriations in
22 the river basin, subbasin, or reach shall continue in effect. The
23 department shall also provide prompt notice of such designation
24 to all licensed water well contractors in the state and to each
25 natural resources district that encompasses any of the geographic

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

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

25 (11) Within ninety days after a designation by

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

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

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

16 (13)(a) Each affected district shall adopt rules and
17 regulations for the prioritization and granting of water well
18 permits for the four-year period following a status change when (i)
19 a departmental reevaluation pursuant to subsection (2) of section
20 46-713 and determination that the affected river basin, subbasin,
21 or reach is not fully appropriated and a stay implemented pursuant
22 to this section has expired as provided in subsection (12) of this
23 section or (ii) a preliminary determination by the department that
24 a river basin, subbasin, or reach is fully appropriated when the
25 final determination is that such river basin, subbasin, or reach is

1 not fully appropriated.

2 (b) The rules and regulations shall include, but need
3 not be limited to, the following: (i) Water well permits may be
4 issued that will result in no more than two thousand five hundred
5 irrigated acres or that will result in an increase of not more
6 than twenty percent of all certified irrigated acres within each
7 district within the affected river basin, subbasin, or reach,
8 whichever is less, for each calendar year of the four-year period
9 following the date of a determination described in subdivision (a)
10 of this subsection; and (ii) a district may, after the initial
11 four-year period has expired, annually determine whether water
12 well permit limitations should continue and may enforce such
13 limitations.

14 For purposes of this subsection, a status change occurs
15 when a preliminary or final determination that a river basin,
16 subbasin, or reach is fully appropriated is reversed by the
17 department and determined not to be fully appropriated.

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

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