

AMENDMENTS TO LB1074

Introduced by Lathrop

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

3           Section 1. Section 46-701, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           46-701 Sections 46-701 to 46-754 and section 3 of this  
6 act shall be known and may be cited as the Nebraska Ground Water  
7 Management and Protection Act.

8           Sec. 2. Section 46-715, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10           46-715 (1)(a) Whenever the Department of Natural  
11 Resources has designated a river basin, subbasin, or reach as  
12 overappropriated or has made a final determination that a river  
13 basin, subbasin, or reach is fully appropriated, the natural  
14 resources districts encompassing such river basin, subbasin, or  
15 reach and the department shall jointly develop an integrated  
16 management plan for such river basin, subbasin, or reach. The plan  
17 shall be completed, adopted, and take effect within three years  
18 after such designation or final determination unless the department  
19 and the natural resources districts jointly agree to an extension  
20 of not more than two additional years.

21           (b) A natural resources district encompassing a river  
22 basin, subbasin, or reach that has not been designated as  
23 overappropriated or has not been finally determined to be

1 fully appropriated may, jointly with the department, develop an  
2 integrated management plan for such river basin, subbasin, or  
3 reach located within the district. The district shall notify the  
4 department of its intention to develop an integrated management  
5 plan which shall be developed and adopted according to sections  
6 46-715 to 46-717 and subsections (1) and (2) of section 46-718. The  
7 objective of an integrated management plan under this subdivision  
8 is to manage such river basin, subbasin, or reach to achieve  
9 and sustain a balance between water uses and water supplies for  
10 the long term. If a district develops an integrated management  
11 plan under this subdivision and the department subsequently  
12 determines the affected river basin, subbasin, or reach to be fully  
13 appropriated, the department and the affected natural resources  
14 district may amend the integrated management plan.

15 (2) In developing an integrated management plan, the  
16 effects of existing and potential new water uses on existing  
17 surface water appropriators and ground water users shall be  
18 considered. An integrated management plan shall include the  
19 following: (a) Clear goals and objectives with a purpose of  
20 sustaining a balance between water uses and water supplies so that  
21 the economic viability, social and environmental health, safety,  
22 and welfare of the river basin, subbasin, or reach can be achieved  
23 and maintained for both the near term and the long term; (b)  
24 a map clearly delineating the geographic area subject to the  
25 integrated management plan; (c) one or more of the ground water  
26 controls authorized for adoption by natural resources districts  
27 pursuant to section 46-739; (d) one or more of the surface water

1 controls authorized for adoption by the department pursuant to  
2 section 46-716; and (e) a plan to gather and evaluate data,  
3 information, and methodologies that could be used to implement  
4 sections 46-715 to 46-717, increase understanding of the surface  
5 water and hydrologically connected ground water system, and test  
6 the validity of the conclusions and information upon which the  
7 integrated management plan is based. The plan may also provide for  
8 utilization of any applicable incentive programs authorized by law.  
9 Nothing in the integrated management plan for a fully appropriated  
10 river basin, subbasin, or reach shall require a natural resources  
11 district to regulate ground water uses in place at the time of  
12 the department's preliminary determination that the river basin,  
13 subbasin, or reach is fully appropriated, unless such regulation is  
14 necessary to carry out the goals and objectives of a basin-wide  
15 plan pursuant to section 3 of this act, but a natural resources  
16 district may voluntarily adopt such regulations. The applicable  
17 natural resources district may decide to include all water users  
18 within the district boundary in an integrated management plan.

19 (3) In order to provide a process for economic  
20 development opportunities and economic sustainability within a  
21 river basin, subbasin, or reach, the integrated management plan  
22 shall include clear and transparent procedures to track depletions  
23 and gains to streamflows resulting from new, retired, or other  
24 changes to uses within the river basin, subbasin, or reach. The  
25 procedures shall:

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

1           (b) Include a generally accepted methodology to be  
2 utilized to estimate depletions and gains to streamflows, which  
3 methodology includes location, amount, and time regarding gains to  
4 streamflows as offsets to new uses;

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

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

12           (e) Identify, to the extent feasible, potential water  
13 available to mitigate new uses, including, but not limited  
14 to, water rights leases, interference agreements, augmentation  
15 projects, conjunctive use management, and use retirement;

16           (f) Develop, to the extent feasible, an outline of  
17 plans after consultation with and an opportunity to provide  
18 input from irrigation districts, public power and irrigation  
19 districts, reclamation districts, municipalities, other political  
20 subdivisions, and other water users to make water available for  
21 offset to enhance and encourage economic development opportunities  
22 and economic sustainability in the river basin, subbasin, or reach;  
23 and

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

27           Nothing in this subsection shall require revision or

1 amendment of an integrated management plan approved on or before  
2 August 30, 2009.

3 (4) The ground water and surface water controls proposed  
4 for adoption in the integrated management plan pursuant to  
5 subsection (1) of this section shall, when considered together  
6 and with any applicable incentive programs, (a) be consistent  
7 with the goals and objectives of the plan, (b) be sufficient to  
8 ensure that the state will remain in compliance with applicable  
9 state and federal laws and with any applicable interstate water  
10 compact or decree or other formal state contract or agreement  
11 pertaining to surface water or ground water use or supplies,  
12 and (c) protect the ground water users whose water wells are  
13 dependent on recharge from the river or stream involved and  
14 the surface water appropriators on such river or stream from  
15 streamflow depletion caused by surface water uses and ground water  
16 uses begun, in the case of a river basin, subbasin, or reach  
17 designated as overappropriated or preliminarily determined to be  
18 fully appropriated in accordance with section 46-713, after the  
19 date of such designation or preliminary determination.

20 (5)(a) In any river basin, subbasin, or reach that is  
21 designated as overappropriated, when the designated area lies  
22 within two or more natural resources districts, the department and  
23 the affected natural resources districts shall jointly develop a  
24 basin-wide plan for the area designated as overappropriated. Such  
25 plan shall be developed using the consultation and collaboration  
26 process described in subdivision (b) of this subsection, shall  
27 be developed concurrently with the development of the integrated

1 management plan required pursuant to subsections (1) through (4) of  
2 this section, and shall be designed to achieve, in the incremental  
3 manner described in subdivision (d) of this subsection, the goals  
4 and objectives described in subsection (2) of this section. The  
5 basin-wide plan shall be adopted after hearings by the department  
6 and the affected natural resources districts.

7 (b) In any river basin, subbasin, or reach designated  
8 as overappropriated and subject to this subsection, the department  
9 and each natural resources district encompassing such river basin,  
10 subbasin, or reach shall jointly develop an integrated management  
11 plan for such river basin, subbasin, or reach pursuant to  
12 subsections (1) through (4) of this section. Each integrated  
13 management plan for a river basin, subbasin, or reach subject  
14 to this subsection shall be consistent with any basin-wide plan  
15 developed pursuant to subdivision (a) of this subsection. Such  
16 integrated management plan shall be developed after consultation  
17 and collaboration with irrigation districts, reclamation districts,  
18 public power and irrigation districts, mutual irrigation companies,  
19 canal companies, and municipalities that rely on water from  
20 within the affected area and that, after being notified of the  
21 commencement of the plan development process, indicate in writing  
22 their desire to participate in such process. In addition, the  
23 department or the affected natural resources districts may include  
24 designated representatives of other stakeholders. If agreement  
25 is reached by all parties involved in such consultation and  
26 collaboration process, the department and each natural resources  
27 district shall adopt the agreed-upon integrated management plan. If

1 agreement cannot be reached by all parties involved, the integrated  
2 management plan shall be developed and adopted by the department  
3 and the affected natural resources district pursuant to sections  
4 46-715 to 46-718 or by the Interrelated Water Review Board pursuant  
5 to section 46-719.

6 (c) Any integrated management plan developed under  
7 this subsection shall identify the overall difference between  
8 the current and fully appropriated levels of development. Such  
9 determination shall take into account cyclical supply, including  
10 drought, identify the portion of the overall difference between the  
11 current and fully appropriated levels of development that is due  
12 to conservation measures, and identify the portions of the overall  
13 difference between the current and fully appropriated levels of  
14 development that are due to water use initiated prior to July 1,  
15 1997, and to water use initiated on or after such date.

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

20 (i) The first incremental goals shall be to address the  
21 impact of streamflow depletions to (A) surface water appropriations  
22 and (B) water wells constructed in aquifers dependent upon recharge  
23 from streamflow, to the extent those depletions are due to water  
24 use initiated after July 1, 1997, and, unless an interstate  
25 cooperative agreement for such river basin, subbasin, or reach is  
26 no longer in effect, to prevent streamflow depletions that would  
27 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 (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 (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  
26 appropriated levels of development identified in subdivision (5) (c)  
27 of this section. The analysis shall determine whether a subsequent

1 increment is necessary in the integrated management plan to meet  
2 the goals and objectives adopted pursuant to subsection (2) of this  
3 section and reduce the overall difference between the current and  
4 fully appropriated levels of development identified in subdivision  
5 (5) (c) of this section;

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

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

23 (6) In any river basin, subbasin, or reach that is  
24 designated as fully appropriated or overappropriated and whenever  
25 necessary to ensure that the state is in compliance with an  
26 interstate compact or decree or a formal state contract or  
27 agreement, the department, in consultation with the affected

1 districts, shall forecast on an annual basis the maximum amount  
2 of water that may be available from streamflow for beneficial use  
3 in the short term and long term in order to comply with the  
4 requirement of subdivision (4)(b) of this section. This forecast  
5 shall be made by January 1, 2008, and each January 1 thereafter.

6       Sec. 3. This section shall apply notwithstanding any  
7 other provision of the Nebraska Ground Water Management and  
8 Protection Act.

9       (1)(a) Each natural resources district within a river  
10 basin as described in subdivision (2)(a) of section 2-1504 shall,  
11 jointly with the department and the natural resources districts  
12 within the same basin, develop and adopt a basin-wide plan for the  
13 areas of a basin, subbasin, or reach determined by the department  
14 to have hydrologically connected water supplies, except that (i)  
15 any natural resources district that has developed and implemented  
16 a basin-wide plan pursuant to subsection (5) of section 46-715  
17 shall not be affected by this section, and (ii) any voluntary  
18 basin-wide or multi-basin planning process on which the department  
19 and natural resources districts within a basin have partnered and  
20 signed a formal agreement of participation prior to the effective  
21 date of this act may continue as provided in such formal agreement  
22 as long as the plan's provisions are consistent with the goals and  
23 objectives of this section. If deemed appropriate by the department  
24 and the affected natural resources districts, the basin-wide plan  
25 may combine two or more river basins.

26       (b) A natural resources district shall develop an  
27 integrated management plan concurrently with a basin-wide plan

1 developed under this section if such natural resources district  
2 has not adopted or is not in the process of developing an  
3 integrated management plan pursuant to subdivision (1)(a) or (b)  
4 of section 46-715. An integrated management plan developed under  
5 this subdivision shall be subject to the provisions of subdivision  
6 (1)(b) of section 46-715. A natural resources district that  
7 has developed or is in the process of developing an integrated  
8 management plan under subdivision (1)(a) or (b) of section 46-715  
9 shall ensure such integrated management plan is consistent with any  
10 basin-wide plan developed pursuant to this section.

11 (c) The basin-wide plan shall be completed, adopted, and  
12 take effect within three years after the effective date of this  
13 act, unless the department and the natural resources districts  
14 jointly agree to an extension of not more than an additional two  
15 years.

16 (2) The basin-wide plan shall (i) have clear goals and  
17 objectives with a purpose of sustaining a balance between water  
18 uses and water supplies, (ii) ensure that permitted uses of  
19 hydrologically connected surface water and ground water in a river  
20 basin, subbasin, or reach will be sustained to the greatest extent  
21 possible, and (iii) ensure that compliance with any interstate  
22 compact or decree, or other formal state contract or agreement or  
23 applicable state or federal law is maintained. The plan shall set  
24 forth a timeline to meet the goals and objectives as required under  
25 this subsection, but in no case shall a timeline exceed thirty  
26 years after the effective date of this act.

27 (3)(a) The basin-wide plan developed under this section

1 shall utilize the best generally-accepted methodologies and  
2 available information, data, and science to evaluate the effect  
3 of existing uses of hydrologically connected water on existing  
4 surface water and groundwater users. The plan shall include a  
5 process to gather and evaluate data, information, and methodologies  
6 to increase understanding of the surface water and hydrologically  
7 connected ground water system within the basin, subbasin, or  
8 reach and test the validity of the conclusions, information, and  
9 assumptions upon which the plan is based.

10 (b) The basin-wide plan developed under this section  
11 shall include a schedule indicating the end date by which the  
12 stated goals and objectives are to be achieved and the management  
13 actions to be taken to achieve the goals and objectives. To ensure  
14 that reasonable progress is being made toward achieving the final  
15 goals and objectives of the plan, the schedule shall also include  
16 measurable hydrologic objectives and intermediate dates by which  
17 the objectives are expected to be met and monitoring plans to  
18 measure the extent to which the objectives are being achieved. Such  
19 intermediate objectives shall be established in a manner that, if  
20 achieved on schedule, will provide a reasonable expectation that  
21 the goals of the plan will be achieved by the established end date.

22 (c) The basin-wide plan shall be developed using  
23 a consultation and collaboration process involving irrigation  
24 districts, reclamation districts, public power and irrigation  
25 districts, mutual irrigation companies, canal companies, and  
26 municipalities that rely on water from within the affected area  
27 and that, after being notified of the commencement of the plan

1 development process, indicate in writing their desire to become  
2 an official participant in such process. The department and  
3 natural resources districts shall involve official participants  
4 in formulating, evaluating, and recommending alternative plans  
5 and management actions and work to reach an agreement among all  
6 official participants involved in a basin-wide plan. In addition,  
7 the department or the affected natural resources districts may  
8 include designated representatives of other stakeholders. If an  
9 agreement is reached by all parties involved, the department and  
10 affected natural resources districts shall adopt the agreed upon  
11 basin-wide plan. Regardless of whether an agreement is reached,  
12 only the department and natural resources districts shall have  
13 the authority to adopt a basin-wide plan, except that if at  
14 any time during the development of a basin-wide plan either the  
15 department or the affected natural resources districts conclude  
16 that the parties will be unable to reach a timely agreement on the  
17 basin-wide plan or on the goals and objectives of the integrated  
18 management plan for the affected river basin, subbasin, or reach,  
19 the Governor shall be notified and the dispute shall be submitted  
20 to the Interrelated Water Review Board as provided in subsection  
21 (2) of section 46-719.

22 (d) Within five years after the adoption of the  
23 basin-wide plan, and every five years thereafter, the department  
24 and the affected natural resources districts shall conduct a  
25 technical analysis of the actions taken in a river basin to  
26 determine the progress towards meeting the goals and objectives  
27 of the plan. The analysis shall include an examination of (i)

1 available supplies, current uses, and changes in long-term water  
2 availability, (ii) the effects of conservation practices and  
3 natural causes, including, but not limited to, drought, and (iii)  
4 the effects of the plan in meeting the goal of sustaining a balance  
5 between water uses and water supplies. The analysis shall determine  
6 if changes or modifications to the basin-wide plan are needed  
7 to meet the goals and objectives pursuant to subdivision (a) of  
8 this subsection. The department and natural resources districts  
9 shall present the results of the analysis and any recommended  
10 modifications to the plan at a public meeting and shall provide for  
11 at least a thirty-day public comment period before holding a public  
12 hearing on the recommended modifications. The department shall  
13 submit a report to the Legislature of the results of this analysis  
14 and the progress made under the basin-wide plan. The report shall  
15 be submitted electronically. If the department finds that the goals  
16 and objectives of a basin-wide plan have not been met within thirty  
17 years after the date of this act, the department shall assume  
18 complete management control over the basin.

19 (e) Before adoption of a basin-wide plan, the department  
20 and affected natural resources districts shall schedule at least  
21 one public hearing to take testimony on the proposed plan. Any  
22 such hearings shall be held in reasonable proximity to the area  
23 affected by the plan. Notice of hearings shall be published as  
24 provided in section 46-743. All interested persons may appear  
25 at any hearings and present testimony or provide other evidence  
26 relevant to the issues under consideration. Within sixty days of  
27 the final hearing, the department and affected natural resources

1 districts shall jointly determine whether to adopt the plan.

2 (f) Any official participant or stakeholder may submit  
3 comments to the department and the affected natural resources  
4 districts on the final basin-wide plan adopted by the department  
5 and natural resources districts, which shall be made a part of the  
6 report to the Legislature.

7 Sec. 4. Original sections 46-701 and 46-715, Reissue  
8 Revised Statutes of Nebraska, are repealed.