

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 845

Introduced by Groene, 42.

Read first time January 08, 2020

Committee: Natural Resources

- 1 A BILL FOR AN ACT relating to ground water management and protection; to
- 2 amend section 46-715, Revised Statutes Cumulative Supplement, 2018;
- 3 to change procedures relating to augmentation projects under an
- 4 integrated management plan; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-715, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 46-715 (1)(a) Whenever the Department of Natural Resources has
4 designated a river basin, subbasin, or reach as overappropriated or has
5 made a final determination that a river basin, subbasin, or reach is
6 fully appropriated, the natural resources districts encompassing such
7 river basin, subbasin, or reach and the department shall jointly develop
8 an integrated management plan for such river basin, subbasin, or reach.
9 The plan shall be completed, adopted, and take effect within three years
10 after such designation or final determination unless the department and
11 the natural resources districts jointly agree to an extension of not more
12 than two additional years.

13 (b) A natural resources district encompassing a river basin,
14 subbasin, or reach that has not been designated as overappropriated or
15 has not been finally determined to be fully appropriated may, jointly
16 with the department, develop an integrated management plan for such river
17 basin, subbasin, or reach located within the district. The district shall
18 notify the department of its intention to develop an integrated
19 management plan which shall be developed and adopted according to
20 sections 46-715 to 46-717 and subsections (1) and (2) of section 46-718.
21 The objective of an integrated management plan under this subdivision is
22 to manage such river basin, subbasin, or reach to achieve and sustain a
23 balance between water uses and water supplies for the long term. If a
24 district develops an integrated management plan under this subdivision
25 and the department subsequently determines the affected river basin,
26 subbasin, or reach to be fully appropriated, the department and the
27 affected natural resources district may amend the integrated management
28 plan.

29 (2) In developing an integrated management plan, the effects of
30 existing and potential new water uses on existing surface water
31 appropriators and ground water users shall be considered. An integrated

1 management plan shall include the following: (a) Clear goals and
2 objectives with a purpose of sustaining a balance between water uses and
3 water supplies so that the economic viability, social and environmental
4 health, safety, and welfare of the river basin, subbasin, or reach can be
5 achieved and maintained for both the near term and the long term; (b) a
6 map clearly delineating the geographic area subject to the integrated
7 management plan; (c) one or more of the ground water controls authorized
8 for adoption by natural resources districts pursuant to section 46-739;
9 (d) one or more of the surface water controls authorized for adoption by
10 the department pursuant to section 46-716; and (e) a plan to gather and
11 evaluate data, information, and methodologies that could be used to
12 implement sections 46-715 to 46-717, increase understanding of the
13 surface water and hydrologically connected ground water system, and test
14 the validity of the conclusions and information upon which the integrated
15 management plan is based. The plan may also provide for utilization of
16 any applicable incentive programs authorized by law. Nothing in the
17 integrated management plan for a fully appropriated river basin,
18 subbasin, or reach shall require a natural resources district to regulate
19 ground water uses in place at the time of the department's preliminary
20 determination that the river basin, subbasin, or reach is fully
21 appropriated, unless such regulation is necessary to carry out the goals
22 and objectives of a basin-wide plan pursuant to section 46-755, but a
23 natural resources district may voluntarily adopt such regulations. The
24 applicable natural resources district may decide to include all water
25 users within the district boundary in an integrated management plan.

26 (3) In order to provide a process for economic development
27 opportunities and economic sustainability within a river basin, subbasin,
28 or reach, the integrated management plan shall include clear and
29 transparent procedures to track depletions and gains to streamflows
30 resulting from new, retired, or other changes to uses within the river
31 basin, subbasin, or reach. The procedures shall:

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

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

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

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

14 (e) Identify, to the extent feasible, potential water available to
15 mitigate new uses, including, but not limited to, water rights leases,
16 interference agreements, augmentation projects, conjunctive use
17 management, and use retirement. If real property was acquired to develop
18 and operate an augmentation project for streamflow enhancement, the owner
19 or owners of such project may later sell such real property and continue
20 to pump ground water, subject to the provisions of subdivision (1)(a) of
21 section 46-739, in the amount necessary for augmentation purposes without
22 regard to land area or acres owned;

23 (f) Develop, to the extent feasible, an outline of plans after
24 consultation with and an opportunity to provide input from irrigation
25 districts, public power and irrigation districts, reclamation districts,
26 municipalities, other political subdivisions, and other water users to
27 make water available for offset to enhance and encourage economic
28 development opportunities and economic sustainability in the river basin,
29 subbasin, or reach; and

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

1 Nothing in this subsection shall require revision or amendment of an
2 integrated management plan approved on or before August 30, 2009.

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

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

31 (b) In any river basin, subbasin, or reach designated as

1 overappropriated and subject to this subsection, the department and each
2 natural resources district encompassing such river basin, subbasin, or
3 reach shall jointly develop an integrated management plan for such river
4 basin, subbasin, or reach pursuant to subsections (1) through (4) of this
5 section. Each integrated management plan for a river basin, subbasin, or
6 reach subject to this subsection shall be consistent with any basin-wide
7 plan developed pursuant to subdivision (a) of this subsection. Such
8 integrated management plan shall be developed after consultation and
9 collaboration with irrigation districts, reclamation districts, public
10 power and irrigation districts, mutual irrigation companies, canal
11 companies, and municipalities that rely on water from within the affected
12 area and that, after being notified of the commencement of the plan
13 development process, indicate in writing their desire to participate in
14 such process. In addition, the department or the affected natural
15 resources districts may include designated representatives of other
16 stakeholders. If agreement is reached by all parties involved in such
17 consultation and collaboration process, the department and each natural
18 resources district shall adopt the agreed-upon integrated management
19 plan. If agreement cannot be reached by all parties involved, the
20 integrated management plan shall be developed and adopted by the
21 department and the affected natural resources district pursuant to
22 sections 46-715 to 46-718 or by the Interrelated Water Review Board
23 pursuant to section 46-719.

24 (c) Any integrated management plan developed under this subsection
25 shall identify the overall difference between the current and fully
26 appropriated levels of development. Such determination shall take into
27 account cyclical supply, including drought, identify the portion of the
28 overall difference between the current and fully appropriated levels of
29 development that is due to conservation measures, and identify the
30 portions of the overall difference between the current and fully
31 appropriated levels of development that are due to water use initiated

1 prior to July 1, 1997, and to water use initiated on or after such date.

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

6 (i) The first incremental goals shall be to address the impact of
7 streamflow depletions to (A) surface water appropriations and (B) water
8 wells constructed in aquifers dependent upon recharge from streamflow, to
9 the extent those depletions are due to water use initiated after July 1,
10 1997, and, unless an interstate cooperative agreement for such river
11 basin, subbasin, or reach is no longer in effect, to prevent streamflow
12 depletions that would cause noncompliance by Nebraska with such
13 interstate cooperative agreement. During the first increment, the
14 department and the affected natural resources districts shall also pursue
15 voluntary efforts, subject to the availability of funds, to offset any
16 increase in streamflow depletive effects that occur after July 1, 1997,
17 but are caused by ground water uses initiated prior to such date. The
18 department and the affected natural resources districts may also use
19 other appropriate and authorized measures for such purpose;

20 (ii) The department and the affected natural resources districts may
21 amend an integrated management plan subject to this subsection (5) as
22 necessary based on an annual review of the progress being made toward
23 achieving the goals for that increment;

24 (iii) During the ten years following adoption of an integrated
25 management plan developed under this subsection (5) or during the ten
26 years after the adoption of any subsequent increment of the integrated
27 management plan pursuant to subdivision (d)(iv) of this subsection, the
28 department and the affected natural resources district shall conduct a
29 technical analysis of the actions taken in such increment to determine
30 the progress towards meeting the goals and objectives adopted pursuant to
31 subsection (2) of this section. The analysis shall include an examination

1 of (A) available supplies and changes in long-term availability, (B) the
2 effects of conservation practices and natural causes, including, but not
3 limited to, drought, and (C) the effects of the plan on reducing the
4 overall difference between the current and fully appropriated levels of
5 development identified in subdivision (5)(c) of this section. The
6 analysis shall determine whether a subsequent increment is necessary in
7 the integrated management plan to meet the goals and objectives adopted
8 pursuant to subsection (2) of this section and reduce the overall
9 difference between the current and fully appropriated levels of
10 development identified in subdivision (5)(c) of this section;

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

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

26 (6) In any river basin, subbasin, or reach that is designated as
27 fully appropriated or overappropriated and whenever necessary to ensure
28 that the state is in compliance with an interstate compact or decree or a
29 formal state contract or agreement, the department, in consultation with
30 the affected districts, shall forecast on an annual basis the maximum
31 amount of water that may be available from streamflow for beneficial use

1 in the short term and long term in order to comply with the requirement
2 of subdivision (4)(b) of this section. This forecast shall be made by
3 January 1, 2008, and each January 1 thereafter.

4 Sec. 2. Original section 46-715, Revised Statutes Cumulative
5 Supplement, 2018, is repealed.