

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 295 CORRECTED

Introduced by Natural Resources Committee: Louden, 49, Chairperson;
Carlson, 38; Christensen, 44; Dubas, 34; Fischer, 43;
Kopplin, 3; Wallman, 30

Read first time January 10, 2007

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to natural resources; to amend sections
2 46-609, 46-644, and 46-651, Reissue Revised Statutes of
3 Nebraska, and sections 46-229.04, 46-602, and 46-714,
4 Revised Statutes Cumulative Supplement, 2006; to change
5 and eliminate provisions relating to irrigation and
6 regulation of water and water wells; to harmonize
7 provisions; to repeal the original sections; and to
8 outright repeal section 46-611, Reissue Revised Statutes
9 of Nebraska.
10 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-229.04, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

3 46-229.04 (1) At ~~such~~ a hearing held pursuant to section
4 46-229.03 the verified field investigation report of an employee of
5 the department, or such other report or information that is relied
6 upon by the department to reach the preliminary determination
7 of nonuse, shall be prima facie evidence for the forfeiture and
8 annulment of such water appropriation. If no person appears at the
9 hearing, such water appropriation or unused part thereof shall be
10 declared forfeited and annulled. If an interested person appears
11 and contests the same, the department shall hear evidence, and
12 if it appears that such water has not been put to a beneficial
13 use or has ceased to be used for such purpose for more than five
14 consecutive years, the same shall be declared canceled and annulled
15 unless the department finds that (a) there has been sufficient
16 cause for such nonuse as provided for in subsection (2), (3), or
17 (4) of this section or (b) subsection (5) or (6) of this section
18 applies.

19 (2) Sufficient cause for nonuse shall be deemed to exist
20 for up to thirty consecutive years if such nonuse was caused by the
21 unavailability of water for that use. For a river basin, subbasin,
22 or reach that has been designated as overappropriated pursuant
23 to section 46-713 or determined by the department to be fully
24 appropriated pursuant to section 46-714, the period of time within
25 which sufficient cause for nonuse because of the unavailability

1 of water may be deemed to exist may be extended beyond thirty
2 years by the department upon petition therefor by the owner of
3 the appropriation if the department determines that an integrated
4 management plan being implemented in the river basin, subbasin, or
5 reach involved is likely to result in restoration of a usable water
6 supply for the appropriation.

7 (3) Sufficient cause for nonuse shall be deemed to exist
8 indefinitely if such nonuse was the result of one or more of the
9 following:

10 (a) For any tract of land under separate ownership, the
11 available supply was used but on only part of the land under the
12 appropriation because of an inadequate water supply;

13 (b) The appropriation is a storage appropriation and
14 there was an inadequate water supply to provide the water for the
15 storage appropriation or less than the full amount of the storage
16 appropriation was needed to keep the reservoir full; or

17 (c) The appropriation is a storage-use appropriation and
18 there was an inadequate water supply to provide the water for the
19 appropriation or use of the storage water was unnecessary because
20 of climatic conditions.

21 (4) Sufficient cause for nonuse shall be deemed to exist
22 for up to fifteen consecutive years if such nonuse was a result of
23 one or more of the following:

24 (a) Federal, state, or local laws, rules, or regulations
25 temporarily prevented or restricted such use;

1 (b) Use of the water was unnecessary because of climatic
2 conditions;

3 (c) Circumstances were such that a prudent person,
4 following the principles of good husbandry, would not have been
5 expected to use the water;

6 (d) The works, diversions, or other facilities essential
7 to use the water were destroyed by a cause not within the control
8 of the owner of the appropriation and good faith efforts to repair
9 or replace the works, diversions, or facilities have been and are
10 being made;

11 (e) The owner of the appropriation was in active
12 involuntary service in the armed forces of the United States
13 or was in active voluntary service during a time of crisis;

14 (f) Legal proceedings prevented or restricted use of the
15 water; or

16 (g) The land subject to the appropriation is under
17 an acreage reserve program or production quota or is otherwise
18 withdrawn from use as required for participation in any federal or
19 state program or such land previously was under such a program but
20 currently is not under such a program and there have been not more
21 than five consecutive years of nonuse on that land since that land
22 was last under that program.

23 The department may specify by rule and regulation other
24 circumstances that shall be deemed to constitute sufficient cause
25 for nonuse for up to fifteen years.

1 (5) When an appropriation is held in the name of
2 an irrigation district, reclamation district, public power and
3 irrigation district, ~~or~~ mutual irrigation company or canal company,
4 or the United States Bureau of Reclamation and the director
5 determines that water under that appropriation has not been used
6 on a specific parcel of land for more than five years and that no
7 sufficient cause for such nonuse exists, the right to use water
8 under that appropriation on that parcel shall be terminated and
9 notice of the termination shall be posted on the department's web
10 site and shall be given in the manner provided in subsection (2),
11 (3), or (4) of section 46-229.03. The district or company holding
12 such right shall have five years after the determination, or five
13 years after an order of cancellation issued by the department
14 following the filing of a voluntary relinquishment of the water
15 appropriation that has been signed by the landowner and the
16 appropriator of record, to assign the right to use that portion
17 of the appropriation to other land within the district or the
18 area served by the company, to file an application for a transfer
19 in accordance with section 46-290, or to transfer the right in
20 accordance with sections 46-2,127 to 46-2,129. The department shall
21 issue its order of cancellation within sixty days after receipt of
22 ~~the~~ a voluntary unconditional relinquishment. The department shall
23 be notified of any such assignment within thirty days after such
24 assignment. If the district or company does not assign the right
25 to use that portion of the appropriation to other land, does not

1 file an application for a transfer within the five-year period, or
2 does not notify the department within thirty days after any such
3 assignment, that portion of the appropriation shall be canceled
4 without further proceedings by the department and the district or
5 company involved shall be so notified by the department. During
6 the time within which assignment of a portion of an appropriation
7 is pending, the allowable diversion rate for the appropriation
8 involved shall be reduced, as necessary, to avoid inconsistency
9 with the rate allowed by section 46-231 or with any greater rate
10 previously approved for such appropriation by the director in
11 accordance with section 46-229.06.

12 (6) When it is determined by the director that an
13 appropriation, for which the location of use has been temporarily
14 transferred in accordance with sections 46-290 to 46-294, has not
15 been used at the new location for more than five years and that
16 no sufficient cause for such nonuse exists, the right to use that
17 appropriation at the temporary location of use shall be terminated.
18 Notice of that termination shall be posted on the department's
19 web site and shall be given in the manner provided in subsection
20 (2), (3), or (4) of section 46-229.03. The right to reinstate
21 use of that appropriation at the location of use prior to the
22 temporary transfer shall continue to exist for five years after the
23 director's determination, but if such use is not reinstated at
24 that location within such five-year period, the appropriation shall
25 be subject to cancellation in accordance with sections 46-229 to

1 46-229.04.

2 (7) If at the time of a hearing conducted in accordance
3 with subsection (1) of this section there is an application for
4 incidental or intentional underground water storage pending before
5 the department and filed by the owner of the appropriation, the
6 proceedings shall be consolidated.

7 Sec. 2. Section 46-602, Revised Statutes Cumulative
8 Supplement, 2006, is amended to read:

9 46-602 (1) Each water well completed in this state on
10 or after July 1, 2001, excluding test holes and dewatering wells
11 to be used for less than ninety days, shall be registered with
12 the Department of Natural Resources as provided in this section
13 within sixty days after completion of construction of the water
14 well. The water well contractor as defined in section 46-1213
15 constructing the water well, or the owner of the water well if
16 the owner constructed the water well, shall file the registration
17 on a form made available by the department and shall also file
18 with the department the information from the well log required
19 pursuant to section 46-1241. The department shall, by January 1,
20 2002, provide water well contractors with the option of filing such
21 registration forms electronically. No signature shall be required
22 on forms filed electronically. The fee required by subsection (3)
23 of section 46-1224 shall be the source of funds for any required
24 fee to a contractor which provides the on-line services for such
25 registration. Any discount in the amount paid the state by a credit

1 card, charge card, or debit card company or a third-party merchant
2 bank for such registration fees shall be deducted from the portion
3 of the registration fee collected pursuant to section 46-1224.

4 (2)(a) If the newly constructed water well is a
5 replacement water well, the registration form shall include
6 (i) the registration number of the water well being replaced,
7 if applicable, and (ii) the date the original water well was
8 decommissioned or a certification that the water well will be
9 decommissioned within one hundred eighty days or a certification
10 that the original water well will be modified and equipped to
11 pump fifty gallons per minute or less and will be used only for
12 livestock, monitoring, observation, or any other nonconsumptive
13 use or de ~~minimus~~ minimis use approved by the applicable natural
14 resources district.

15 (b) For purposes of this section, replacement water well
16 means a water well which is constructed to provide water for
17 the same purpose as the original water well and is operating
18 in accordance with any applicable permit from the department and
19 any applicable rules and regulations of the natural resources
20 district and, if the purpose is for irrigation, the replacement
21 water well delivers water to the same tract of land served by the
22 original water well and (i) replaces ~~an abandoned~~ a decommissioned
23 water well within three years after the last operation of the
24 ~~abandoned~~ decommissioned water well, and the original water well
25 is ~~decommissioned either before or within one hundred eighty days~~

1 ~~after such construction,~~ (ii) replaces a water well that has
2 not been ~~abandoned~~ decommissioned but will not be used after
3 construction of the new water well and the original water well
4 will be decommissioned within one hundred eighty days after such
5 construction, except that in the case of a municipal water well,
6 the original municipal water well may be used after construction
7 of the new water well but shall be decommissioned within one
8 year after completion of the replacement water well, or (iii) the
9 original water well will continue to be used but will be modified
10 and equipped within one hundred eighty days after such construction
11 of the replacement water well to pump fifty gallons per minute or
12 less and will be used only for livestock, monitoring, observation,
13 or any other nonconsumptive or de ~~minimus~~ minimis use and approved
14 by the applicable natural resources district.

15 (c) No water well shall be registered as a replacement
16 water well until the Department of Natural Resources has received
17 a properly completed notice of decommissioning for the water well
18 being replaced on a form made available by the department, or
19 properly completed notice, prepared in accordance with subsection
20 (7) of this section, of the modification and equipping of the
21 original water well to pump fifty gallons per minute or less
22 for use only for livestock, monitoring, observation, or any other
23 nonconsumptive or de ~~minimus~~ minimis use approved by the applicable
24 natural resources district. Such notices, as required, shall be
25 completed by (i) the water well contractor as defined in section

1 46-1213 who decommissions the water well or modifies and equips
2 the water well, (ii) the pump installation contractor as defined
3 in section 46-1209 who decommissions the water well or modifies
4 and equips the water well, or (iii) the owner if the owner
5 decommissions a driven sandpoint well which is on land owned by him
6 or her for farming, ranching, or agricultural purposes or as his
7 or her place of abode. The Department of Health and Human Services
8 Regulation and Licensure shall, by rule and regulation, determine
9 which contractor or owner shall be responsible for such notice
10 in situations in which more than one contractor or owner may be
11 required to provide notice under this subsection.

12 (3) For a series of two or more water wells completed and
13 pumped into a common carrier as part of a single site plan for
14 irrigation purposes, a registration form and a detailed site plan
15 shall be filed for each water well. The registration form shall
16 include the registration numbers of other water wells included in
17 the series if such water wells are already registered.

18 (4) A series of water wells completed for purposes
19 of installation of a ground heat exchanger for a structure
20 for utilizing the geothermal properties of the ground shall be
21 considered as one water well. One registration form and a detailed
22 site plan shall be filed for each such series.

23 (5) One registration form shall be required along with
24 a detailed site plan which shows the location of each such water
25 well in the site and a log from each such water well for water

1 wells constructed as part of a single site plan for (a) monitoring
2 ground water, obtaining hydrogeologic information, or extracting
3 contaminants from the ground, (b) water wells constructed as part
4 of remedial action approved by the Department of Environmental
5 Quality pursuant to section 66-1525, 66-1529.02, or 81-15,124, and
6 (c) water well owners who have a permit issued pursuant to the
7 Industrial Ground Water Regulatory Act and also have an underground
8 injection control permit issued by the Department of Environmental
9 Quality.

10 (6) The Department of Natural Resources shall be notified
11 by the owner of any change in the ownership of a water well
12 required to be registered under this section. Notification shall be
13 in such form and include such evidence of ownership as the Director
14 of Natural Resources by rule and regulation directs. The department
15 shall use such notice to update the registration on file. The
16 department shall not collect a fee for the filing of the notice.

17 (7) The water well contractor or pump installation
18 contractor responsible therefor shall notify the department within
19 sixty days on a form provided by the department of any pump
20 installation or any modifications to the construction of the water
21 well or pump, after the initial registration of the well. For
22 a change of use resulting in modification and equipping of an
23 original water well which is being replaced in accordance with
24 subsection (2) of this section, the water well contractor or pump
25 installation contractor shall notify the department within sixty

1 days on a form provided by the department of the water well and
2 pump modifications and equipping of the original water well. A
3 water well owner shall notify the department within sixty days on
4 a form provided by the department of any other changes or any
5 inaccuracies in recorded water well information, including, but not
6 limited to, changes in use. The department shall not collect a fee
7 for the filing of the notice.

8 (8) Whenever a water well becomes an illegal water well
9 as defined in section 46-706, the owner of the water well shall
10 either correct the deficiency that causes the well to be an
11 illegal water well or shall cause the proper decommissioning of
12 the water well in accordance with rules and regulations adopted
13 pursuant to the Water Well Standards and Contractors' Licensing
14 Act. The water well contractor who decommissions the water well,
15 the pump installation contractor who decommissions the water well,
16 or the owner if the owner decommissions a driven sandpoint well
17 which is on land owned by him or her for farming, ranching, or
18 agricultural purposes or as his or her place of abode, shall
19 provide a properly completed notice of ~~abandonment~~ decommissioning
20 to the Department of Natural Resources within sixty days. The
21 Department of Health and Human Services Regulation and Licensure
22 shall, by rule and regulation, determine which contractor or owner
23 shall be responsible for such notice in situations in which more
24 than one contractor or owner may be required to provide notice
25 under this subsection. The Department of Natural Resources shall

1 not collect a fee for the filing of the notice.

2 (9) Except for water wells which are used solely for
3 domestic purposes and were constructed before September 9, 1993,
4 and for test holes and dewatering wells used for less than ninety
5 days, each water well which was completed in this state before
6 July 1, 2001, and which is not registered on that date shall be an
7 illegal water well until it is registered with the Department of
8 Natural Resources. Such registration shall be completed by a water
9 well contractor or by the current owner of the water well, shall
10 be on forms provided by the department, and shall provide as much
11 of the information required by subsections (1) through (5) of this
12 section for registration of a new water well as is possible at the
13 time of registration.

14 (10) Water wells which are or were used solely for
15 injecting any fluid other than water into the underground water
16 reservoir, which were constructed before July 16, 2004, and which
17 have not been properly decommissioned on or before July 16, 2004,
18 shall be registered on or before July 1, 2005.

19 Sec. 3. Section 46-609, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 46-609 ~~(1) Except as otherwise provided by this section~~
22 ~~or section 46-610, no irrigation water well shall be drilled upon~~
23 ~~any land in this state within six hundred feet of any registered~~
24 ~~irrigation water well and no existing nonirrigation water well~~
25 ~~within six hundred feet of any registered irrigation water well~~

1 shall be used for irrigation purposes. Such spacing requirement
2 shall not apply to (a) any well used to irrigate two acres or
3 less or (b) any replacement irrigation water well if it is drilled
4 within fifty feet of the irrigation water well being replaced and
5 if the water well being replaced was drilled prior to September
6 20, 1957, and is less than six hundred feet from a registered
7 irrigation water well.

8 (2) The spacing protection of subsection (1) of this
9 section shall apply to an unregistered water well for a period of
10 sixty days after completion of such water well.

11 (1) (a) No person shall drill an irrigation water well
12 within six hundred feet of another irrigation water well entitled
13 to spacing protection unless (i) both water wells are owned by
14 the same person, (ii) the person has received a special permit
15 as provided in section 46-610, or (iii) (A) the replacement well
16 is drilled within fifty feet of the irrigation water well being
17 replaced and (B) the water well being replaced was drilled prior
18 to September 20, 1957, and is less than six hundred feet from the
19 other owner's registered irrigation water well.

20 (b) The following water wells are entitled to spacing
21 protection:

22 (i) Registered irrigation water wells unless (A) the
23 water well's location is incorrect in the department's water well
24 registration data base and the well's actual location cannot be
25 determined through the use of reasonable diligence or (B) the

1 irrigation water well is used to irrigate two acres or less; and

2 (ii) Unregistered irrigation water wells that have been
3 constructed within the last sixty days.

4 (2) No person shall irrigate with a water well registered
5 for another purpose until the water well registration has been
6 changed to irrigation and then only if the water well is not within
7 six hundred feet of an existing registered irrigation water well or
8 an irrigation water well that has been constructed within the last
9 sixty days.

10 Sec. 4. Section 46-644, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 46-644 Permits granted by the Director of Natural
13 Resources shall be valid for a period of five years after the
14 granting of a permit and as long thereafter as the water for
15 which the permit is granted is used. For the purposes of the
16 Municipal and Rural Domestic Ground Water Transfers Permit Act,
17 the commencement of construction of facilities to provide water
18 for beneficial use shall be deemed the date of the commencement of
19 beneficial use. If it appears that the holder of a permit granted
20 under the act has not used water for a beneficial purpose and in
21 accordance with the terms of the permit for more than ~~three~~ five
22 years, such permit may be revoked or modified by the director. The
23 procedure for such revocation or modification shall be the same as
24 that provided for in sections 46-229.02 to 46-229.05.

25 Sec. 5. Section 46-651, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 46-651 (1) Except as provided in section 46-653 or
3 46-654, (a) no irrigation or industrial water well or water well
4 of any other public water supplier shall be drilled within one
5 thousand feet of any registered water well of any public water
6 supplier, (b) no water well of any such public water supplier shall
7 be drilled within one thousand feet of any ~~registered irrigation~~
8 ~~or~~ irrigation water well subject to spacing protection under
9 section 46-609 or any registered industrial water well, (c) no
10 irrigation water well shall be drilled within one thousand feet of
11 a registered industrial water well, and (d) no industrial water
12 well shall be drilled within one thousand feet of a ~~registered~~
13 ~~irrigation or~~ any irrigation water well subject to spacing
14 protection under section 46-609 or any registered industrial water
15 well. Such prohibitions shall not apply to water wells owned by the
16 same person.

17 (2) An existing water well for which a change in
18 the intended use is proposed shall be subject to any spacing
19 requirement in subsection (1) of this section that would apply to
20 the drilling of a new water well at the same location for the new
21 use intended.

22 (3) The well-spacing protection of subsections (1) and
23 (2) of this section shall apply to an unregistered water well for a
24 period of only sixty days following completion of such water well.

25 (4) The spacing requirements in subsection (1) of this

1 section shall not apply to any replacement water well if that water
2 well is drilled within fifty feet of the water well being replaced
3 and if the water well being replaced was drilled prior to July 16,
4 2004, was in compliance with any applicable spacing statute when
5 drilled, and is less than one thousand feet from the registered
6 water well for which spacing protection is provided.

7 Sec. 6. Section 46-714, Revised Statutes Cumulative
8 Supplement, 2006, is amended to read:

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

1 determined by the department to include hydrologically connected
2 surface water and ground water in such river basin, subbasin,
3 or reach. The department shall also notify the public of the
4 preliminary determination that the river basin, subbasin, or reach
5 is fully appropriated and of the affected geographic area. Such
6 notice shall be provided by publication once each week for
7 three consecutive weeks in at least one newspaper of statewide
8 circulation and in such other newspaper or newspapers as are deemed
9 appropriate by the department to provide general circulation in the
10 river basin, subbasin, or reach.

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

16 (a) On the construction of any new water well in the
17 area covered by the determination unless a permit with conditions
18 imposed by the natural resources district has been issued prior
19 to the determination. Such conditions shall meet the objectives
20 of subsection (3) of section 46-715 and may include, but are not
21 limited to, conditions in accordance with subsection (6) of section
22 46-739. Any well constructed pursuant to such permit shall be
23 completed in accordance with section 46-738; and

24 (b) On the use of an existing water well or an existing
25 surface water appropriation in the affected area to increase the

1 number of acres historically irrigated.

2 Such additional stays shall begin ten days after the
3 first publication, in a newspaper of statewide circulation, of
4 the notice of the preliminary determination that the river basin,
5 subbasin, or reach is fully appropriated.

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

1 accordance with state law, but the consumptive use of any such new
2 use can be no greater than the historic consumptive use of the
3 surface water use or water well from which the right or permit is
4 being transferred, (j) water wells and increases in ground water
5 irrigated acres for which a variance is granted by the applicable
6 natural resources district for good cause shown, (k) subject to any
7 conditions imposed by the applicable natural resources district, to
8 the extent permitted by the applicable natural resources district,
9 increases in ground water irrigated acres that result from the
10 use of water wells that were permitted prior to the effective
11 date of the determination made in subsection (1) of this section
12 and completed in accordance with section 46-738 but were not used
13 for irrigation prior to that effective date, (l) to the extent
14 permitted by the applicable natural resources district, increases
15 in ground water irrigated acres that result from the use of water
16 wells that are constructed after the effective date of the stay in
17 accordance with a permit granted by that natural resources district
18 prior to the effective date of the stay, (m) surface water uses for
19 which temporary public-use construction permits are issued pursuant
20 to subsection (8) of section 46-233, (n) surface water uses and
21 increases in surface water irrigated acres for which a variance is
22 granted by the department for good cause shown, and (o) water wells
23 for which permits have been approved by the Department of Natural
24 Resources pursuant to the Municipal and Rural Domestic Ground Water
25 Transfers Permit Act prior to the effective date of the stay.

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

1 reach are determined to be hydrologically connected, and whether
2 the stays on new uses should be terminated.

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

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

1 required.

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

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

25 (9) Whenever the department designates a river basin,

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

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

1 resources district, (b) on the use of an existing water well or an
2 unconstructed water well that has a valid construction permit in
3 the hydrologically connected area to increase the number of acres
4 historically irrigated, and (c) on the use of an existing surface
5 water appropriation to increase the number of acres historically
6 irrigated in the affected area.

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

1 (12) Any stay issued pursuant to this section shall
2 remain in effect until (a) the stay has been terminated pursuant
3 to subsection (5), (6), (8), or (11) of this section, (b) an
4 integrated management plan for the affected river basin, subbasin,
5 or reach has been adopted by the department and the affected
6 natural resources districts and has taken effect, (c) an integrated
7 management plan for the affected river basin, subbasin, or reach
8 has been adopted by the Interrelated Water Review Board and has
9 taken effect, (d) the department has completed a reevaluation
10 pursuant to subsection (2) of section 46-713 and has determined
11 that the affected river basin, subbasin, or reach is not fully
12 appropriated or overappropriated, or (e) the stay expires pursuant
13 to this subsection. Such stay may be imposed initially for not
14 more than three years following the department's designation of
15 the river basin, subbasin, or reach as overappropriated or the
16 department's final determination that a river basin, subbasin, or
17 reach is fully appropriated and may be extended thereafter on
18 an annual basis by agreement of the department and the affected
19 natural resources district for not more than two additional years
20 if necessary to allow the development, adoption, and implementation
21 of an integrated management plan pursuant to sections 46-715 to
22 46-719.

23 Sec. 7. Original sections 46-609, 46-644, and 46-651,
24 Reissue Revised Statutes of Nebraska, and sections 46-229.04,
25 46-602, and 46-714, Revised Statutes Cumulative Supplement, 2006,

1 are repealed.

2 Sec. 8. The following section is outright repealed:

3 Section 46-611, Reissue Revised Statutes of Nebraska.