

AMENDMENTS TO LB 54

(Amendments to Final Ready copy)

Introduced by Langemeier, 23.

1 1. Insert the following new section:

2 Section 1. Section 46-713, Revised Statutes Cumulative
3 Supplement, 2008, as amended by section 3, Legislative Bill 483,
4 One Hundred First Legislature, First Session, 2009, is amended to
5 read:

6 46-713 (1)(a) By January 1 of each year beginning in
7 2006 and except as otherwise provided in this section and section
8 46-720, the Department of Natural Resources shall complete an
9 evaluation of the expected long-term availability of hydrologically
10 connected water supplies for both existing and new surface water
11 uses and existing and new ground water uses in each of the
12 state's river basins and shall issue a report that describes the
13 results of the evaluation. For purposes of the evaluation and the
14 report, a river basin may be divided into two or more subbasins or
15 reaches. A river basin, subbasin, or reach for which an integrated
16 management plan has been or is being developed pursuant to sections
17 46-715 to 46-717 or pursuant to section 46-719 shall not be
18 evaluated unless it is being reevaluated as provided in subsection
19 (2) of this section. For each river basin, subbasin, or reach
20 evaluated, the report shall describe (i) the nature and extent
21 of use of both surface water and ground water in each river
22 basin, subbasin, or reach, (ii) the geographic area within which

1 the department preliminarily considers surface water and ground
2 water to be hydrologically connected and the criteria used for
3 that determination, and (iii) the extent to which the then-current
4 uses affect available near-term and long-term water supplies.
5 River basins, subbasins, and reaches designated as overappropriated
6 in accordance with subsection (4) of this section shall not be
7 evaluated by the department. The department is not required to
8 perform an annual evaluation for a river basin, subbasin, or reach
9 during the four years following a status change in such river
10 basin, subbasin, or reach under subsection (12) of section 46-714.

11 (b) Based on the information reviewed in the evaluation
12 process, the department shall arrive at a preliminary conclusion
13 for each river basin, subbasin, and reach evaluated as to
14 whether such river basin, subbasin, or reach presently is fully
15 appropriated without the initiation of additional uses. The
16 department shall also determine if and how such preliminary
17 conclusion would change if no additional legal constraints were
18 imposed on future development of hydrologically connected surface
19 water and ground water and reasonable projections are made about
20 the extent and location of future development in such river basin,
21 subbasin, or reach.

22 (c) In addition to the conclusion about whether a river
23 basin, subbasin, or reach is fully appropriated, the department
24 shall include in the report, for informational purposes only,
25 a summary of relevant data provided by any interested party
26 concerning the social, economic, and environmental impacts of
27 additional hydrologically connected surface water and ground water

1 uses on resources that are dependent on streamflow or ground water
2 levels but are not protected by appropriations or regulations.

3 (d) In preparing the report, the department shall rely
4 on the best scientific data, information, and methodologies readily
5 available to ensure that the conclusions and results contained
6 in the report are reliable. In its report, the department shall
7 provide sufficient documentation to allow these data, information,
8 methodologies, and conclusions to be independently replicated
9 and assessed. Upon request by the department, state agencies,
10 natural resources districts, irrigation districts, reclamation
11 districts, public power and irrigation districts, mutual irrigation
12 companies, canal companies, municipalities, and other water users
13 and stakeholders shall provide relevant data and information in
14 their possession. The Department of Natural Resources shall specify
15 by rule and regulation the types of scientific data and other
16 information that will be considered for making the preliminary
17 determinations required by this section.

18 (2)(a) The department shall complete a reevaluation
19 of a river basin, subbasin, or reach for which an integrated
20 management plan has been or is being prepared if the department has
21 reason to believe that a reevaluation might lead to a different
22 determination about whether such river basin, subbasin, or reach
23 is fully appropriated or overappropriated. A decision to reevaluate
24 may be reached by the department on its own or in response
25 to a petition filed with the department by any interested
26 person. To be considered sufficient to justify a reevaluation,
27 a petition shall be accompanied by supporting information showing

1 that (i) new scientific data or other information relevant to the
2 determination of whether the river basin, subbasin, or reach is
3 fully appropriated or overappropriated has become available since
4 the last evaluation of such river basin, subbasin, or reach, (ii)
5 the department relied on incorrect or incomplete information when
6 the river basin, subbasin, or reach was last evaluated, or (iii)
7 the department erred in its interpretation or application of the
8 information available when the river basin, subbasin, or reach was
9 last evaluated. If a petition determined by the department to be
10 sufficient is filed before July 1 of any year, the reevaluation of
11 the river basin, subbasin, or reach involved shall be included in
12 the next annual report prepared in accordance with subsection (1)
13 of this section. If any such petition is filed on or after July 1
14 of any year, the department may defer the reevaluation of the river
15 basin, subbasin, or reach involved until the second annual report
16 after such filing.

17 (b) If the reevaluation results in a different
18 determination by the department, then (i) the department shall
19 notify, by certified mail, the affected natural resources districts
20 and any irrigation district, public power and irrigation district,
21 mutual irrigation company, canal company, or municipality that
22 relies on water from the affected river basin, subbasin, or
23 reach of the preliminary change in the determination and (ii)
24 the department shall hold one or more public hearings not more
25 than ninety days after the publication of the notice required
26 in subdivision (b)(i) of this subsection. Notice of the hearings
27 shall be provided in the same manner as the notice required in

1 subsection (1) of section 46-714. Any interested person may appear
2 at the hearing and present written or oral testimony and evidence
3 concerning the appropriation status of the river basin, subbasin,
4 or reach.

5 (c) Within thirty days after the final hearing under
6 subdivision (b) of this subsection, the department shall notify the
7 appropriate natural resources districts of the department's final
8 determination with respect to the appropriation status of the river
9 basin, subbasin, or reach.

10 (3) A river basin, subbasin, or reach shall be deemed
11 fully appropriated if the department determines based upon its
12 evaluation conducted pursuant to subsection (1) of this section
13 and information presented at the hearing pursuant to subsection
14 (4) of section 46-714 that then-current uses of hydrologically
15 connected surface water and ground water in the river basin,
16 subbasin, or reach cause or will in the reasonably foreseeable
17 future cause (a) the surface water supply to be insufficient to
18 sustain over the long term the beneficial or useful purposes for
19 which existing natural-flow or storage appropriations were granted
20 and the beneficial or useful purposes for which, at the time of
21 approval, any existing instream appropriation was granted, (b) the
22 streamflow to be insufficient to sustain over the long term the
23 beneficial uses from wells constructed in aquifers dependent on
24 recharge from the river or stream involved, or (c) reduction in
25 the flow of a river or stream sufficient to cause noncompliance by
26 Nebraska with an interstate compact or decree, other formal state
27 contract or agreement, or applicable state or federal laws.

1 (4) (a) A river basin, subbasin, or reach shall be deemed
2 overappropriated if, on July 16, 2004, the river basin, subbasin,
3 or reach is subject to an interstate cooperative agreement among
4 three or more states and if, prior to such date, the department
5 has declared a moratorium on the issuance of new surface water
6 appropriations in such river basin, subbasin, or reach and has
7 requested each natural resources district with jurisdiction in the
8 affected area in such river basin, subbasin, or reach either (i)
9 to close or to continue in effect a previously adopted closure of
10 all or part of such river basin, subbasin, or reach to the issuance
11 of additional water well permits in accordance with subdivision
12 (1) (k) of section 46-656.25 as such section existed prior to July
13 16, 2004, or (ii) to temporarily suspend or to continue in effect
14 a temporary suspension, previously adopted pursuant to section
15 46-656.28 as such section existed prior to July 16, 2004, on the
16 drilling of new water wells in all or part of such river basin,
17 subbasin, or reach.

18 (b) Within sixty days after July 16, 2004, the department
19 shall designate which river basins, subbasins, or reaches are
20 overappropriated. The designation shall include a description of
21 the geographic area within which the department has determined that
22 surface water and ground water are hydrologically connected and the
23 criteria used to make such determination.

24 2. Amend the title and repealer and renumber the
25 remaining sections accordingly.