

E AND R AMENDMENTS TO LB 477

Introduced by Enrollment and Review Committee: Nordquist, 7,
Chairperson

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

3 Section 1. Section 46-290, Revised Statutes Cumulative
4 Supplement, 2008, is amended to read:

5 46-290 (1)(a) Except as provided in this section and
6 sections 46-2,120 to 46-2,130, any person having a permit to
7 appropriate water for beneficial purposes issued pursuant to
8 sections 46-233 to 46-235, 46-240.01, 46-241, 46-242, or 46-637
9 and who desires (i) to transfer the use of such appropriation to
10 a location other than the location specified in the permit, (ii)
11 to change that appropriation to a different type of appropriation
12 as provided in subsection (3) of this section, or (iii) to change
13 the purpose for which the water is to be used under a natural-flow,
14 storage, or storage-use appropriation to a purpose not at that time
15 permitted under the appropriation shall apply for approval of such
16 transfer or change to the Department of Natural Resources.

17 (b) The application for such approval shall contain (i)
18 the number assigned to such appropriation by the department, (ii)
19 the name and address of the present holder of the appropriation,
20 (iii) if applicable, the name and address of the person or entity
21 to whom the appropriation would be transferred or who will be
22 the user of record after a change in the location of use, type
23 of appropriation, or purpose of use under the appropriation, (iv)

1 the legal description of the land to which the appropriation is
2 now appurtenant, (v) ~~the name and address of each holder of a~~
3 ~~mortgage or deed of trust for the land to which the appropriation~~
4 ~~is now appurtenant,~~ (vi) the name and address of each holder of
5 a mortgage, trust deed, or other equivalent consensual security
6 interest against the tract or tracts of land to which the
7 appropriation is now appurtenant, (vi) if applicable, the legal
8 description of the land to which the appropriation is proposed
9 to be transferred, (vii) if a transfer is proposed, whether other
10 sources of water are available at the original location of use
11 and whether any provisions have been made to prevent either use
12 of a new source of water at the original location or increased
13 use of water from any existing source at that location, (viii)
14 if applicable, the legal descriptions of the beginning and end
15 of the stream reach to which the appropriation is proposed to be
16 transferred for the purpose of augmenting the flows in that stream
17 reach, (ix) if a proposed transfer is for the purpose of increasing
18 the quantity of water available for use pursuant to another
19 appropriation, the number assigned to such other appropriation by
20 the department, (x) the purpose of the current use, (xi) if a
21 change in purpose of use is proposed, the proposed purpose of
22 use, (xii) if a change in the type of appropriation is proposed,
23 the type of appropriation to which a change is desired, (xiii) if
24 a proposed transfer or change is to be temporary in nature, the
25 duration of the proposed transfer or change, and (xiv) such other
26 information as the department by rule and regulation requires.

27 (2) If a proposed transfer or change is to be temporary

1 in nature, a copy of the proposed agreement between the current
2 appropriator and the person who is to be responsible for use of
3 water under the appropriation while the transfer or change is in
4 effect shall be submitted at the same time as the application.

5 (3) Regardless of whether a transfer or a change in
6 the purpose of use is involved, the following changes in type of
7 appropriation, if found by the Director of Natural Resources to
8 be consistent with section 46-294, may be approved subject to the
9 following:

10 (a) A natural-flow appropriation for direct out-of-stream
11 use may be changed to a natural-flow appropriation for aboveground
12 reservoir storage or for intentional underground water storage;

13 (b) A natural-flow appropriation for intentional
14 underground water storage may be changed to a natural-flow
15 appropriation for direct out-of-stream use or for aboveground
16 reservoir storage;

17 (c) A natural-flow appropriation for direct out-of-stream
18 use, for aboveground reservoir storage, or for intentional
19 underground water storage may be changed to an instream
20 appropriation subject to sections 46-2,107 to 46-2,119 if the
21 director determines that the resulting instream appropriation would
22 be consistent with subdivisions (2), (3), and (4) of section
23 46-2,115;

24 (d) A natural-flow appropriation for direct out-of-stream
25 use, for aboveground reservoir storage, or for intentional
26 underground water storage may be changed to an appropriation for
27 induced ground water recharge if the director determines that the

1 resulting appropriation for induced ground water recharge would be
2 consistent with subdivisions (2)(a)(i) and (ii) of section 46-235;
3 and

4 (e) The incidental underground water storage portion,
5 whether or not previously quantified, of a natural-flow or
6 storage-use appropriation may be separated from the direct-use
7 portion of the appropriation and may be changed to a natural-flow
8 or storage-use appropriation for intentional underground water
9 storage at the same location if the historic consumptive use
10 of the direct-use portion of the appropriation is transferred
11 to another location or is terminated, but such a separation and
12 change may be approved only if, after the separation and change,
13 (i) the total permissible diversion under the appropriation will
14 not increase, (ii) the projected consequences of the separation
15 and change are consistent with the provisions of any integrated
16 management plan adopted in accordance with section 46-718 or 46-719
17 for the geographic area involved, and (iii) if the location of the
18 proposed intentional underground water storage is in a river basin,
19 subbasin, or reach designated as overappropriated in accordance
20 with section 46-713, the integrated management plan for that river
21 basin, subbasin, or reach has gone into effect, and that plan
22 requires that the amount of the intentionally stored water that is
23 consumed after the change will be no greater than the amount of the
24 incidentally stored water that was consumed prior to the change.
25 Approval of a separation and change pursuant to this subdivision
26 (e) shall not exempt any consumptive use associated with the
27 incidental recharge right from any reduction in water use required

1 by an integrated management plan for a river basin, subbasin, or
2 reach designated as overappropriated in accordance with section
3 46-713.

4 Whenever any change in type of appropriation is approved
5 pursuant to this subsection and as long as that change remains in
6 effect, the appropriation shall be subject to the statutes, rules,
7 and regulations that apply to the type of appropriation to which
8 the change has been made.

9 (4) The Legislature finds that induced ground water
10 recharge appropriations issued pursuant to sections 46-233 and
11 46-235 and instream appropriations issued pursuant to section
12 46-2,115 are specific to the location identified in the
13 appropriation. Neither type of appropriation shall be transferred
14 to a different location, changed to a different type of
15 appropriation, or changed to permit a different purpose of use.

16 (5) In addition to any other purposes for which transfers
17 and changes may be approved, such transfers and changes may
18 be approved if the purpose is (a) to augment the flow in a
19 specific stream reach for any instream use that the department has
20 determined, through rules and regulations, to be a beneficial use
21 or (b) to increase the frequency that a diversion rate or rate of
22 flow specified in another valid appropriation is achieved.

23 For any transfer or change approved pursuant to
24 subdivision (a) of this subsection, the department shall be
25 provided with a report at least every five years while such
26 transfer or change is in effect. The purpose of such report shall
27 be to indicate whether the beneficial instream use for which the

1 flow is augmented continues to exist. If the report indicates that
2 it does not or if no report is filed within sixty days after
3 the department's notice to the appropriator that the deadline
4 for filing the report has passed, the department may cancel its
5 approval of the transfer or change and such appropriation shall
6 revert to the same location of use, type of appropriation, and
7 purpose of use as prior to such approval.

8 (6) A quantified or unquantified appropriation for
9 incidental underground water storage may be transferred to a new
10 location along with the direct-use appropriation with which it is
11 recognized if the director finds such transfer to be consistent
12 with section 46-294 and determines that the geologic and other
13 relevant conditions at the new location are such that incidental
14 underground water storage will occur at the new location. The
15 director may request such information from the applicant as
16 is needed to make such determination and may modify any such
17 quantified appropriation for incidental underground water storage,
18 if necessary, to reflect the geologic and other conditions at the
19 new location.

20 (7) Unless an incidental underground water storage
21 appropriation is changed as authorized by subdivision (3)(e)
22 of this section or is transferred as authorized by subsection
23 (6) of this section or subsection (1) of section 46-291, such
24 appropriation shall be canceled or modified, as appropriate, by
25 the director to reflect any reduction in water that will be stored
26 underground as the result of a transfer or change of the direct-use
27 appropriation with which the incidental underground water storage

1 was recognized prior to the transfer or change.

2 Sec. 2. Section 46-291, Revised Statutes Cumulative
3 Supplement, 2008, is amended to read:

4 46-291 (1) Upon receipt of an application filed under
5 section 46-290 for a transfer in the location of use of an
6 appropriation, the Department of Natural Resources shall review
7 it for compliance with this subsection. The Director of Natural
8 Resources may approve the application without notice or hearing
9 if he or she determines that: (a) The appropriation is used and
10 will continue to be used exclusively for irrigation purposes; (b)
11 the only lands involved in the proposed transfer are (i) lands
12 within the quarter section of land to which the appropriation is
13 appurtenant, (ii) lands within such quarter section of land and
14 one or more quarter sections of land each of which is contiguous
15 to the quarter section of land to which the appropriation is
16 appurtenant, or (iii) lands within the boundaries or service
17 area of and capable of service by the same irrigation district,
18 reclamation district, public power and irrigation district, or
19 mutual irrigation or canal company; (c) after the transfer, the
20 total number of acres irrigated under the appropriation will be no
21 greater than the number of acres that could legally be irrigated
22 under the appropriation prior to the transfer; (d) all the land
23 involved in the transfer is under the same ownership or is within
24 the same irrigation district, reclamation district, public power
25 and irrigation district, or mutual irrigation or canal company;
26 (e) the transfer will not result in a change in the point of
27 diversion or the point of diversion will be changed but the

1 change meets the following requirements: (i) The new point of
2 diversion is on the same named stream, the same tributary, or
3 the same river or creek as the approved point of diversion; (ii)
4 the proposed point of diversion will not move above or below an
5 existing diversion point owned by another appropriator; and (iii)
6 the proposed point of diversion will not move above or below a
7 tributary stream or a constructed river return or a constructed
8 drain; and (f) the transfer will not diminish the water supply
9 available for or otherwise adversely affect any other surface
10 water appropriator. If transfer of an appropriation with associated
11 incidental underground water storage is approved in accordance
12 with this subsection, the associated incidental underground water
13 storage also may be transferred pursuant to this subsection as
14 long as such transfer would continue to be consistent with the
15 requirements of this subsection. If necessary, the boundaries of
16 the incidental underground water storage area may be modified to
17 reflect any change in the location of that storage consistent with
18 such a transfer. Transfers shall not be approved pursuant to this
19 subsection until the department has adopted and promulgated rules
20 and regulations establishing the criteria it will use to determine
21 whether proposed transfers are consistent with subdivision (1)(f)
22 of this section.

23 (2) If after reviewing an application filed under section
24 46-290 the director determines that it cannot be approved pursuant
25 to subsection (1) of this section, he or she shall cause a notice
26 of such application to be posted on the department's web site, to
27 be sent by certified mail to each holder of a mortgage or deed of

1 ~~trust~~ each holder of a mortgage, trust deed, or other equivalent
2 consensual security interest that is identified by the applicant
3 pursuant to subdivision (1)(b)(v) of section 46-290 and to any
4 entity owning facilities currently used or proposed to be used for
5 purposes of diversion or delivery of water under the appropriation,
6 and to be published at the applicant's expense at least once each
7 week for three consecutive weeks in at least one newspaper of
8 general circulation in each county containing lands to which the
9 appropriation is appurtenant and, if applicable, in at least one
10 newspaper of general circulation in each county containing lands to
11 which the appropriation is proposed to be transferred.

12 (3) The notice shall contain: (a) A description of the
13 appropriation; (b) the number assigned to such appropriation in
14 the records of the department; (c) the date of priority; (d) if
15 applicable, a description of the land or stream reach to which
16 such water appropriation is proposed to be transferred; (e) if
17 applicable, the type of appropriation to which the appropriation
18 is proposed to be changed; (f) if applicable, the proposed change
19 in the purpose of use; (g) whether the proposed transfer or change
20 is to be permanent or temporary and, if temporary, the duration
21 of the proposed transfer or change; and (h) any other information
22 the director deems relevant and essential to provide the interested
23 public with adequate notice of the proposed transfer or change.

24 (4) The notice shall state (a) that any interested person
25 may object to and request a hearing on the application by filing
26 such objections in writing specifically stating the grounds for
27 each objection and (b) that any such objection and request shall be

1 filed in the office of the department within two weeks after the
2 date of final publication of the notice.

3 (5) Within the time period allowed by this section for
4 the filing of objections and requests for hearings, the county
5 board of any county containing land to which the appropriation
6 is appurtenant and, if applicable, the county board of any county
7 containing land to which the appropriation is proposed to be
8 transferred may provide the department with comments about the
9 potential economic impacts of the proposed transfer or change in
10 such county. The filing of any such comments by a county board
11 shall not make the county a party in the application process, but
12 such comments shall be considered by the director in determining
13 pursuant to section 46-294 whether the proposed transfer or change
14 is in the public interest.

15 Sec. 3. Section 46-701, Revised Statutes Cumulative
16 Supplement, 2008, is amended to read:

17 46-701 Sections 46-701 to 46-754 and sections 7 and 8 of
18 this act shall be known and may be cited as the Nebraska Ground
19 Water Management and Protection Act.

20 Sec. 4. Section 46-706, Revised Statutes Cumulative
21 Supplement, 2008, is amended to read:

22 46-706 For purposes of the Municipal and Rural Domestic
23 Ground Water Transfers Permit Act, the Nebraska Ground Water
24 Management and Protection Act, and sections 46-601 to 46-613.02,
25 46-636, 46-637, and 46-651 to 46-655, unless the context otherwise
26 requires:

27 (1) Person means a natural person, a partnership,

1 a limited liability company, an association, a corporation, a
2 municipality, an irrigation district, an agency or a political
3 subdivision of the state, or a department, an agency, or a bureau
4 of the United States;

5 (2) Ground water means that water which occurs in or
6 moves, seeps, filters, or percolates through ground under the
7 surface of the land;

8 (3) Contamination or contamination of ground water means
9 nitrate nitrogen or other material which enters the ground water
10 due to action of any person and causes degradation of the quality
11 of ground water sufficient to make such ground water unsuitable for
12 present or reasonably foreseeable beneficial uses;

13 (4) District means a natural resources district operating
14 pursuant to Chapter 2, article 32;

15 (5) Illegal water well means (a) any water well operated
16 or constructed without or in violation of a permit required by
17 the Nebraska Ground Water Management and Protection Act, (b) any
18 water well not in compliance with rules and regulations adopted and
19 promulgated pursuant to the act, (c) any water well not properly
20 registered in accordance with sections 46-602 to 46-604, or (d)
21 any water well not in compliance with any other applicable laws of
22 the State of Nebraska or with rules and regulations adopted and
23 promulgated pursuant to such laws;

24 (6) To commence construction of a water well means the
25 beginning of the boring, drilling, jetting, digging, or excavating
26 of the actual water well from which ground water is to be
27 withdrawn;

1 (7) Management area means any area so designated by a
2 district pursuant to section 46-712 or 46-718, by the Director
3 of Environmental Quality pursuant to section 46-725, or by
4 the Interrelated Water Review Board pursuant to section 46-719.
5 Management area includes a control area or a special ground water
6 quality protection area designated prior to July 19, 1996;

7 (8) Management plan means a ground water management plan
8 developed by a district and submitted to the Director of Natural
9 Resources for review pursuant to section 46-711;

10 (9) Ground water reservoir life goal means the finite or
11 infinite period of time which a district establishes as its goal
12 for maintenance of the supply and quality of water in a ground
13 water reservoir at the time a ground water management plan is
14 adopted;

15 (10) Board means the board of directors of a district;

16 (11) Acre-inch means the amount of water necessary to
17 cover an acre of land one inch deep;

18 (12) Subirrigation or subirrigated land means the natural
19 occurrence of a ground water table within the root zone of
20 agricultural vegetation, not exceeding ten feet below the surface
21 of the ground;

22 (13) Best management practices means schedules of
23 activities, maintenance procedures, and other management practices
24 utilized for purposes of irrigation efficiency, to conserve or
25 effect a savings of ground water, or to prevent or reduce present
26 and future contamination of ground water. Best management practices
27 relating to contamination of ground water may include, but not

1 be limited to, irrigation scheduling, proper rate and timing
2 of fertilizer application, and other fertilizer and pesticide
3 management programs. In determining the rate of fertilizer
4 application, the district shall consult with the University of
5 Nebraska or a certified crop advisor certified by the American
6 Society of Agronomy;

7 (14) Point source means any discernible, confined, and
8 discrete conveyance, including, but not limited to, any pipe,
9 channel, tunnel, conduit, well, discrete fissure, container,
10 rolling stock, vessel, other floating craft, or other conveyance,
11 over which the Department of Environmental Quality has regulatory
12 authority and from which a substance which can cause or contribute
13 to contamination of ground water is or may be discharged;

14 (15) Allocation, as it relates to water use for
15 irrigation purposes, means the allotment of a specified total
16 number of acre-inches of irrigation water per irrigated acre per
17 year or an average number of acre-inches of irrigation water per
18 irrigated acre over any reasonable period of time;

19 (16) Rotation means a recurring series of use and nonuse
20 of irrigation wells on an hourly, daily, weekly, monthly, or yearly
21 basis;

22 (17) Water well has the same meaning as in section
23 46-601.01;

24 (18) Surface water project sponsor means an irrigation
25 district created pursuant to Chapter 46, article 1, a reclamation
26 district created pursuant to Chapter 46, article 5, or a public
27 power and irrigation district created pursuant to Chapter 70,

1 article 6;

2 (19) Beneficial use means that use by which water may be
3 put to use to the benefit of humans or other species;

4 (20) Consumptive use means the amount of water that is
5 consumed under appropriate and reasonably efficient practices to
6 accomplish without waste the purposes for which the appropriation
7 or other legally permitted use is lawfully made;

8 (21) Dewatering well means a well constructed and used
9 solely for the purpose of lowering the ground water table
10 elevation;

11 (22) Emergency situation means any set of circumstances
12 that requires the use of water from any source that might
13 otherwise be regulated or prohibited and the agency, district,
14 or organization responsible for regulating water use from such
15 source reasonably and in good faith believes that such use is
16 necessary to protect the public health, safety, and welfare,
17 including, if applicable, compliance with federal or state water
18 quality standards;

19 (23) Good cause shown means a reasonable justification
20 for granting a variance for a consumptive use of water that
21 would otherwise be prohibited by rule or regulation and which the
22 granting agency, district, or organization reasonably and in good
23 faith believes will provide an economic, environmental, social, or
24 public health and safety benefit that is equal to or greater than
25 the benefit resulting from the rule or regulation from which a
26 variance is sought;

27 (24) Historic consumptive use means the amount of water

1 that has previously been consumed under appropriate and reasonably
2 efficient practices to accomplish without waste the purposes for
3 which the appropriation or other legally permitted use was lawfully
4 made;

5 (25) Monitoring well means a water well that is designed
6 and constructed to provide ongoing hydrologic or water quality
7 information and is not intended for consumptive use;

8 (26) Order, except as otherwise specifically provided,
9 includes any order required by the Nebraska Ground Water Management
10 and Protection Act, by rule or regulation, or by a decision adopted
11 by a district by vote of the board of directors of the district
12 taken at any regularly scheduled or specially scheduled meeting of
13 the board;

14 (27) Overall difference between the current and fully
15 appropriated levels of development means the extent to which
16 existing uses of hydrologically connected surface water and ground
17 water and conservation activities result in the water supply
18 available for purposes identified in subsection (3) of section
19 46-713 to be less than the water supply available if the
20 river basin, subbasin, or reach had been determined to be fully
21 appropriated in accordance with section 46-714;

22 (28) Test hole means a hole designed solely for the
23 purposes of obtaining information on hydrologic or geologic
24 conditions; and

25 (29) Variance means (a) an approval to deviate from a
26 restriction imposed under subsection (1), (2), (9), or (10) of
27 section 46-714 or (b) the approval to act in a manner contrary to

1 existing rules or regulations from a governing body whose rule or
2 regulation is otherwise applicable;—

3 (30) Certified irrigated land means the number of acres
4 or portion of an acre that a natural resources district has
5 approved for irrigation from ground water in accordance with law
6 and with rules adopted by the district; and

7 (31) Certified water uses means beneficial uses of ground
8 water for purposes other than irrigation identified by a district
9 pursuant to rules adopted by the district.

10 Sec. 5. Section 46-707, Revised Statutes Cumulative
11 Supplement, 2008, is amended to read:

12 46-707 (1) Regardless of whether or not any portion of
13 a district has been designated as a management area, in order
14 to administer and enforce the Nebraska Ground Water Management
15 and Protection Act and to effectuate the policy of the state to
16 conserve ground water resources, a district may:

17 (a) Adopt and promulgate rules and regulations necessary
18 to discharge the administrative duties assigned in the act;

19 (b) Require such reports from ground water users as may
20 be necessary;

21 (c) Require landowners and others with control over uses
22 of ground water to certify water uses and certify irrigated land;

23 ~~(e)~~ (d) Require meters to be placed on any water wells
24 for the purpose of acquiring water use data;

25 ~~(d)~~ (e) Require decommissioning of water wells that are
26 not properly classified as active status water wells as defined in
27 section 46-1204.02 or inactive status water wells as defined in

1 section 46-1207.02;

2 ~~(e)~~ (f) Conduct investigations and cooperate or contract
3 with agencies of the United States, agencies or political
4 subdivisions of this state, public or private corporations, or
5 any association or individual on any matter relevant to the
6 administration of the act;

7 ~~(f)~~ (g) Report to and consult with the Department
8 of Environmental Quality on all matters concerning the entry
9 of contamination or contaminating materials into ground water
10 supplies; and

11 ~~(g)~~ (h) Issue cease and desist orders, following ten
12 days' notice to the person affected stating the contemplated action
13 and in general the grounds for the action and following reasonable
14 opportunity to be heard, to enforce any of the provisions of the
15 act or of orders or permits issued pursuant to the act, to initiate
16 suits to enforce the provisions of orders issued pursuant to the
17 act, and to restrain the construction of illegal water wells or the
18 withdrawal or use of water from illegal water wells.

19 Before any rule or regulation is adopted pursuant to this
20 subsection, a public hearing shall be held within the district.
21 Notice of the hearing shall be given as provided in section 46-743.

22 (2) In addition to the powers enumerated in subsection
23 (1) of this section, a district may impose an immediate temporary
24 stay for a period of one hundred eighty days on the construction
25 of any new water well and on any increase in the number of
26 acres historically irrigated, without prior notice or hearing, upon
27 adoption of a resolution by the board finding that such temporary

1 immediate stay is necessary. The district shall hold at least
2 one public hearing on the matter within the district during such
3 one hundred eighty days, with the notice of the hearing given
4 as provided in section 46-743, prior to making a determination
5 as to imposing a permanent stay or conditions in accordance with
6 subsections (1) and (6) of section 46-739. Within forty-five days
7 after a hearing pursuant to this subsection, the district shall
8 decide whether to exempt from the immediate temporary stay the
9 construction of water wells for which permits were issued prior
10 to the date of the resolution commencing the stay but for which
11 construction had not begun prior to such date. If construction of
12 such water wells is allowed, all permits that were valid when the
13 stay went into effect shall be extended by a time period equal to
14 the length of the stay and such water wells shall otherwise be
15 completed in accordance with section 46-738. Water wells listed in
16 subsection (3) of section 46-714 and water wells of public water
17 suppliers are exempt from this subsection.

18 Sec. 6. Section 46-739, Revised Statutes Cumulative
19 Supplement, 2008, is amended to read:

20 46-739 (1) A district in which a management area has
21 been designated shall by order adopt one or more of the following
22 controls for the management area:

23 (a) It may allocate the amount of ground water that may
24 be withdrawn by ground water users;

25 (b) It may adopt a system of rotation for use of ground
26 water;

27 (c) It may adopt well-spacing requirements more

1 restrictive than those found in sections 46-609 and 46-651;

2 (d) It may require the installation of devices for
3 measuring ground water withdrawals from water wells;

4 (e) It may adopt a system which requires reduction of
5 irrigated acres pursuant to subsection (2) of section 46-740;

6 (f) It may limit or prevent the expansion of irrigated
7 acres or otherwise limit or prevent increases in the consumptive
8 use of ground water withdrawals from water wells used for
9 irrigation or other beneficial purposes;

10 (g) It may require the use of best management practices;

11 (h) It may require the analysis of water or deep soils
12 for fertilizer and chemical content;

13 (i) It may impose mandatory educational requirements
14 designed to protect water quality or to stabilize or reduce the
15 incidence of ground water depletion, conflicts between ground water
16 users and surface water appropriators, disputes over interstate
17 compacts or decrees, or difficulties fulfilling the provisions of
18 other formal state contracts or agreements;

19 (j) It may require water quality monitoring and reporting
20 of results to the district for all water wells within all or part
21 of the management area;

22 (k) It may require district approval of (i) transfers of
23 ground water off the land where the water is withdrawn, ~~or~~ (ii)
24 transfers of rights to use ground water that result from district
25 allocations imposed pursuant to subdivision (1)(a) of this section
26 or from other restrictions on use that are imposed by the district
27 in accordance with this section, (iii) transfers of certified

1 water uses or certified irrigated land between landowners or other
2 persons, or (iv) transfers of certified water uses or certified
3 irrigated land between parcels or tracts under the control of a
4 common landowner or other person. Such approval may be required
5 whether the transfer is within the management area, from inside
6 to outside the management area, or from outside to inside the
7 management area, except that transfers for which permits have been
8 obtained from the Department of Natural Resources prior to July 16,
9 2004, or pursuant to the Municipal and Rural Domestic Ground Water
10 Transfers Permit Act shall not be subject to district approval
11 pursuant to this subdivision. If the district adopts rules and
12 regulations pursuant to this subdivision, such regulations shall
13 require that the district deny or condition the approval of any
14 such transfer when and to the extent such action is necessary to
15 (A) ensure the consistency of the transfer with the purpose or
16 purposes for which the management area was designated, (B) prevent
17 adverse effects on other ground water users or on surface water
18 appropriators, (C) prevent adverse effects on the state's ability
19 to comply with an interstate compact or decree or to fulfill the
20 provisions of any other formal state contract or agreement, and (D)
21 otherwise protect the public interest and prevent detriment to the
22 public welfare. Approval of any transfer of certified water uses
23 or certified irrigated land under subdivision (1)(k)(iii) or (iv)
24 of this section shall further be subject to the district having
25 complied with the requirements of section 7 of this act;

26 (1) It may require, when conditions so permit, that
27 new or replacement water wells to be used for domestic or other

1 purposes shall be constructed to such a depth that they are less
2 likely to be affected by seasonal water level declines caused by
3 other water wells in the same area;

4 (m) It may close all or a portion of the management
5 area to the issuance of additional permits or may condition the
6 issuance of additional permits on compliance with other rules and
7 regulations adopted and promulgated by the district to achieve the
8 purpose or purposes for which the management area was designated;
9 and

10 (n) It may adopt and promulgate such other reasonable
11 rules and regulations as are necessary to carry out the purpose for
12 which a management area was designated.

13 (2) In adopting, amending, or repealing any control
14 authorized by subsection (1) of this section or sections 46-740
15 and 46-741, the district's considerations shall include, but not
16 be limited to, whether it reasonably appears that such action will
17 mitigate or eliminate the condition which led to designation of the
18 management area or will improve the administration of the area.

19 (3) Upon request by the district or when any of
20 the controls being proposed are for the purpose of integrated
21 management of hydrologically connected ground water and surface
22 water, the Director of Natural Resources shall review and comment
23 on the adoption, amendment, or repeal of any authorized control
24 in a management area. The director may hold a public hearing to
25 consider testimony regarding the control prior to commenting on the
26 adoption, amendment, or repeal of the control. The director shall
27 consult with the district and fix a time, place, and date for

1 such hearing. In reviewing and commenting on an authorized control
2 in a management area, the director's considerations shall include,
3 but not be limited to, those enumerated in subsection (2) of this
4 section.

5 (4) If because of varying ground water uses, varying
6 surface water uses, different irrigation distribution systems, or
7 varying climatic, hydrologic, geologic, or soil conditions existing
8 within a management area the uniform application throughout such
9 area of one or more controls would fail to carry out the intent
10 of the Nebraska Ground Water Management and Protection Act in a
11 reasonably effective and equitable manner, the controls adopted
12 by the district pursuant to this section may contain different
13 provisions for different categories of ground water use or portions
14 of the management area which differ from each other because of
15 varying climatic, hydrologic, geologic, or soil conditions. Any
16 differences in such provisions shall recognize and be directed
17 toward such varying ground water uses or varying conditions. Except
18 as otherwise provided in this section, if the district adopts
19 different controls for different categories of ground water use,
20 those controls shall be consistent with section 46-613 and shall,
21 for each such category, be uniform for all portions of the area
22 which have substantially similar climatic, hydrologic, geologic,
23 and soil conditions.

24 (5) The district may establish different water
25 allocations for different irrigation distribution systems.

26 (6) (a) The district may establish different provisions
27 for different hydrologic relationships between ground water and

1 surface water.

2 (b) For management areas a purpose of which is the
3 integrated management of hydrologically connected ground water and
4 surface water, the district may establish different provisions for
5 water wells either permitted or constructed before the designation
6 of a management area for integrated management of hydrologically
7 connected ground water and surface water and for water wells
8 either permitted or constructed on or after the designation date
9 or any other later date or dates established by the district.
10 Permits for construction of new wells not completed by the date
11 of the determination of fully appropriated shall be subject to any
12 conditions imposed by the applicable natural resources district.

13 (c) For a management area in a river basin or part
14 of a river basin that is or was the subject of litigation over
15 an interstate water compact or decree in which the State of
16 Nebraska is a named defendant, the district may establish different
17 provisions for restriction of water wells constructed after January
18 1, 2001, if such litigation was commenced before or on May 22,
19 2001. If such litigation is commenced after May 22, 2001, the
20 district may establish different provisions for restriction of
21 water wells constructed after the date on which such litigation
22 is commenced in federal court. An appeal from a decision of
23 the district under this subdivision shall be in accordance with
24 the hearing procedures established in the Nebraska Ground Water
25 Management and Protection Act.

26 (d) Except as otherwise authorized by law, the district
27 shall make a replacement water well as defined in section 46-602,

1 or as further defined in district rules and regulations, subject to
2 the same provisions as the water well it replaces.

3 (7) If the district has included controls delineated in
4 subdivision (1)(m) of this section in its management plan, but has
5 not implemented such controls within two years after the initial
6 public hearing on the controls, the district shall hold a public
7 hearing, as provided in section 46-712, regarding the controls
8 before implementing them.

9 (8) In addition to the controls listed in subsection
10 (1) of this section, a district in which a management area has
11 been designated may also adopt and implement one or more of the
12 following measures if it determines that any such measures would
13 help the district and water users achieve the goals and objectives
14 of the management area: (a) It may sponsor nonmandatory educational
15 programs; and (b) it may establish and implement financial or
16 other incentive programs. As a condition for participation in
17 an incentive program, the district may require water users or
18 landowners to enter into and perform such agreements or covenants
19 concerning the use of land or water as are necessary to produce
20 the benefits for which the incentive program is established and
21 shall further condition participation upon satisfaction of the
22 requirements of section 7 of this act.

23 Sec. 7. (1) Notwithstanding any other provision of law,
24 no district shall approve a transfer of certified water uses
25 or certified irrigated land or allow a ground water user or
26 landowner to participate in a financial or other incentive program
27 established pursuant to subsection (8) of section 46-739 unless the

1 person seeking such transfer or participation in such program
2 has submitted to the district a report of title issued by
3 an attorney or a licensed abstracter, on a form prescribed by
4 the department pursuant to subdivision (1)(b) of section 46-290,
5 reflecting (a) the owner and legal description of the land from
6 which the certified water uses or certified irrigated land is to
7 be transferred or which is the subject of such program and (b)
8 the existence of all liens, evidenced by the filing of a mortgage,
9 trust deed, or other equivalent consensual security interest,
10 against the land from which the certified water uses or certified
11 irrigated land is to be transferred or which is the subject of
12 such program and the name and address of each such lienholder,
13 if any. If the report of title reflects the existence of any
14 lien evidenced by the filing of a mortgage, trust deed, or other
15 equivalent consensual security interest, written consent to such
16 transfer or participation in such program shall be obtained from
17 each such lienholder. The district may assess a fee against the
18 person seeking such transfer or participation in such program to
19 recoup its costs in reviewing the report of title.

20 (2) Approval of a transfer of certified water uses or
21 certified irrigated land or authorization of a ground water user
22 or landowner to participate in such financial or other incentive
23 program by a district shall not affect the rights of any lienholder
24 who is not reflected in the report of title and from whom the
25 required consent was not obtained. Such a lienholder may bring an
26 action against the person seeking such transfer or participation
27 in such program for damages or injunctive or other relief for any

1 injury done to the lienholder's interest in land or use of ground
2 water resulting from such transfer or participation.

3 (3) This section does not limit the right to resort to
4 other means of review, redress, or relief provided by law.

5 Sec. 8. An instrument of transfer of the right to use
6 ground water shall be recorded by a natural resources district with
7 the register of deeds in each county in which is situated the real
8 estate, or any part thereof, from which a transfer of certified
9 water uses or certified irrigated land occurred, in any case in
10 which a transfer of certified water uses or certified irrigated
11 land has been approved by such district. The instrument of transfer
12 of the right to use ground water shall include a description of
13 the real estate to and from which the certified water uses or
14 certified irrigated land was transferred, the date on which the
15 transfer occurred, and a statement that all lienholders evidenced
16 by the filing of a mortgage, trust deed, or other equivalent
17 consensual security interest against the real estate from which the
18 certified water uses or certified irrigated land was transferred,
19 if any, have consented in writing to such transfer. The district
20 may recover the cost of filing an instrument of transfer of the
21 right to use ground water from the person seeking the transfer. The
22 instrument of transfer of the right to use ground water shall be
23 executed, acknowledged, and recorded in the same manner as other
24 conveyances of real estate.

25 Sec. 9. Original sections 46-290, 46-291, 46-701, 46-706,
26 46-707, and 46-739, Revised Statutes Cumulative Supplement, 2008,
27 are repealed.

- 1 2. On page 1, line 6, strike "water rights" and insert
- 2 "the right to use ground water".