

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 1076**

Introduced by Schilz, 47.

Read first time January 21, 2010

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to the Nebraska Ground Water Management  
2 and Protection Act; to amend section 46-713, Revised  
3 Statutes Supplement, 2009; to change provisions relating  
4 to evaluation of river basins, subbasins, and reaches as  
5 prescribed; and to repeal the original section.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 46-713, Revised Statutes Supplement,  
2 2009, is amended to read:

3           46-713 (1)(a) By January 1 of each year beginning in  
4 2006 and except as otherwise provided in this section and section  
5 46-720, the Department of Natural Resources shall complete an  
6 evaluation of the expected long-term availability of hydrologically  
7 connected water supplies for both existing and new surface water  
8 uses and existing and new ground water uses in each of the  
9 state's river basins and shall issue a report that describes the  
10 results of the evaluation. For purposes of the evaluation and the  
11 report, a river basin may be divided into two or more subbasins or  
12 reaches. ~~A river basin, subbasin, or reach for which an integrated~~  
13 ~~management plan has been or is being developed pursuant to sections~~  
14 ~~46-715 to 46-717 or pursuant to section 46-719 shall not be~~  
15 ~~evaluated unless it is being reevaluated as provided in subsection~~  
16 ~~(2) of this section.~~ For each river basin, subbasin, or reach  
17 evaluated, the report shall describe (i) the nature and extent  
18 of use of both surface water and ground water in each river  
19 basin, subbasin, or reach, (ii) the geographic area within which  
20 the department preliminarily considers surface water and ground  
21 water to be hydrologically connected and the criteria used for  
22 that determination, and (iii) the extent to which the then-current  
23 uses affect available near-term and long-term water supplies.  
24 ~~River basins, subbasins, and reaches designated as overappropriated~~  
25 ~~in accordance with subsection (4) of this section shall not be~~

1 ~~evaluated by the department.~~ The department is not required to  
2 perform an annual evaluation for a river basin, subbasin, or reach  
3 during the four years following a status change in such river  
4 basin, subbasin, or reach under subsection (12) of section 46-714.

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

16 (c) In addition to the conclusion about whether a river  
17 basin, subbasin, or reach is fully appropriated, the department  
18 shall include in the report, for informational purposes only,  
19 a summary of relevant data provided by any interested party  
20 concerning the social, economic, and environmental impacts of  
21 additional hydrologically connected surface water and ground water  
22 uses on resources that are dependent on streamflow or ground water  
23 levels but are not protected by appropriations or regulations.

24 (d) In preparing the report, the department shall rely  
25 on the best scientific data, information, and methodologies readily

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

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

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

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

1 Nebraska with an interstate compact or decree, other formal state  
2 contract or agreement, or applicable state or federal laws.

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

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

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1                   Sec. 2. Original section 46-713, Revised Statutes  
2 Supplement, 2009, is repealed.