

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 482

Introduced by Langemeier, 23.

Read first time January 20, 2009

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to the Nebraska Ground Water Management
2 and Protection Act; to amend section 46-731, Reissue
3 Revised Statutes of Nebraska, and sections 46-713 and
4 46-714, Revised Statutes Cumulative Supplement, 2008;
5 to eliminate obsolete language; to change provisions
6 relating to meetings; and to repeal the original
7 sections.

8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-713, Revised Statutes Cumulative
2 Supplement, 2008, 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.

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

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

21 (d) In preparing the report, the department shall rely
22 on the best scientific data, information, and methodologies readily
23 available to ensure that the conclusions and results contained
24 in the report are reliable. In its report, the department shall
25 provide sufficient documentation to allow these data, information,

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

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

1 the river basin, subbasin, or reach was last evaluated, or (c)
2 the department erred in its interpretation or application of the
3 information available when the river basin, subbasin, or reach was
4 last evaluated. If a petition determined by the department to be
5 sufficient is filed before March 1 of any year, the reevaluation of
6 the river basin, subbasin, or reach involved shall be included in
7 the next annual report prepared in accordance with subsection (1)
8 of this section. If any such petition is filed on or after March 1
9 of any year, the department may defer the reevaluation of the river
10 basin, subbasin, or reach involved until the second annual report
11 after such filing.

12 (3) A river basin, subbasin, or reach shall be deemed
13 fully appropriated if the department determines based upon its
14 evaluation conducted pursuant to subsection (1) of this section
15 and information presented at the hearing pursuant to subsection
16 (4) of section 46-714 that then-current uses of hydrologically
17 connected surface water and ground water in the river basin,
18 subbasin, or reach cause or will in the reasonably foreseeable
19 future cause (a) the surface water supply to be insufficient to
20 sustain over the long term the beneficial or useful purposes for
21 which existing natural-flow or storage appropriations were granted
22 and the beneficial or useful purposes for which, at the time of
23 approval, any existing instream appropriation was granted, (b) the
24 streamflow to be insufficient to sustain over the long term the
25 beneficial uses from wells constructed in aquifers dependent on

1 recharge from the river or stream involved, or (c) reduction in
2 the flow of a river or stream sufficient to cause noncompliance by
3 Nebraska with an interstate compact or decree, other formal state
4 contract or agreement, or applicable state or federal laws.

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

22 (b) ~~Within sixty days after July 16, 2004, the~~ The
23 department shall designate which river basins, subbasins, or
24 reaches are overappropriated. The designation shall include a
25 description of the geographic area within which the department has

1 determined that surface water and ground water are hydrologically
2 connected and the criteria used to make such determination.

3 Sec. 2. Section 46-714, Revised Statutes Cumulative
4 Supplement, 2008, is amended to read:

5 46-714 (1) Whenever the Department of Natural Resources
6 makes a preliminary determination that a river basin, subbasin,
7 or reach not previously designated as overappropriated and not
8 previously determined to be fully appropriated has become fully
9 appropriated, the department shall place an immediate stay on
10 the issuance of any new natural-flow, storage, or storage-use
11 appropriations in such river basin, subbasin, or reach. The
12 department shall also provide prompt notice of such preliminary
13 determination to all licensed water well contractors in the state
14 and to each natural resources district that encompasses any of
15 the geographic area involved. Such notice to natural resources
16 districts shall be by certified mail. The notice shall be addressed
17 to the manager of the natural resources district or his or her
18 designee and shall include the signature of the Director of Natural
19 Resources. Immediately upon receipt of such notice by the natural
20 resources district, there shall be a stay on issuance of water
21 well construction permits in the geographic area preliminarily
22 determined by the department to include hydrologically connected
23 surface water and ground water in such river basin, subbasin,
24 or reach. The department shall also notify the public of the
25 preliminary determination that the river basin, subbasin, or reach

1 is fully appropriated and of the affected geographic area. Such
2 notice shall be provided by publication once each week for
3 three consecutive weeks in at least one newspaper of statewide
4 circulation and in such other newspaper or newspapers as are deemed
5 appropriate by the department to provide general circulation in the
6 river basin, subbasin, or reach.

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

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

20 (b) On the use of an existing water well or an existing
21 surface water appropriation in the affected area to increase the
22 number of acres historically irrigated.

23 Such additional stays shall begin ten days after the
24 first publication, in a newspaper of statewide circulation, of
25 the notice of the preliminary determination that the river basin,

1 subbasin, or reach is fully appropriated.

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

1 irrigated acres for which a variance is granted by the applicable
2 natural resources district for good cause shown, (k) subject to any
3 conditions imposed by the applicable natural resources district, to
4 the extent permitted by the applicable natural resources district,
5 increases in ground water irrigated acres that result from the
6 use of water wells that were permitted prior to the effective
7 date of the determination made in subsection (1) of this section
8 and completed in accordance with section 46-738 but were not used
9 for irrigation prior to that effective date, (l) to the extent
10 permitted by the applicable natural resources district, increases
11 in ground water irrigated acres that result from the use of water
12 wells that are constructed after the effective date of the stay in
13 accordance with a permit granted by that natural resources district
14 prior to the effective date of the stay, (m) surface water uses for
15 which temporary public-use construction permits are issued pursuant
16 to subsection (8) of section 46-233, (n) surface water uses and
17 increases in surface water irrigated acres for which a variance is
18 granted by the department for good cause shown, and (o) water wells
19 for which permits have been approved by the Department of Natural
20 Resources pursuant to the Municipal and Rural Domestic Ground Water
21 Transfers Permit Act prior to the effective date of the stay.

22 (4) Except as otherwise provided in this section, any
23 stay imposed pursuant to subsections (1) and (2) of this section
24 shall remain in effect for the affected river basin, subbasin, or
25 reach until the department has made a final determination regarding

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

24 (5) Within thirty days after the final hearing under
25 subsection (4) of this section, the department shall notify the

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

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

23 (7) Within ninety days after a final determination by
24 the department that a river basin, subbasin, or reach is fully
25 appropriated, an affected natural resources district may hold one

1 two or more public hearings on the question of whether the stays
2 on the issuance of new water well permits, on the construction of
3 new water wells, or on increases in ground water irrigated acres
4 should be terminated. Notice of the hearings shall be published as
5 provided in section 46-743.

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

21 (9) Whenever the department designates a river basin,
22 subbasin, or reach as overappropriated, each previously declared
23 moratorium on the issuance of new surface water appropriations in
24 the river basin, subbasin, or reach shall continue in effect. The
25 department shall also provide prompt notice of such designation

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

15 (10) Beginning ten days after the first publication
16 of notice under subsection (9) of this section in a newspaper
17 of statewide circulation, there shall also be stays (a) on the
18 construction of any new water well in the hydrologically connected
19 area if such construction has not commenced prior to such date
20 and if no permit for construction of the water well has been
21 issued previously by either the department or the natural resources
22 district, (b) on the use of an existing water well in the
23 hydrologically connected area to increase the number of acres
24 historically irrigated, and (c) on the use of an existing surface
25 water appropriation to increase the number of acres historically

1 irrigated in the affected area.

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

21 (12) Any stay issued pursuant to this section shall
22 remain in effect until (a) the stay has been terminated pursuant
23 to subsection (5), (6), (8), or (11) of this section, (b) an
24 integrated management plan for the affected river basin, subbasin,
25 or reach has been adopted by the department and the affected

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

18 Sec. 3. Section 46-731, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 46-731 (1) The power to specify controls authorized by
21 section 46-739 shall vest in the Director of Environmental Quality
22 if (a) at the end of one hundred eighty days following the
23 designation of a management area or the requiring of an action
24 plan for a management area pursuant to section 46-725, a district
25 encompassed in whole or in part by the management area has not

1 completed and adopted an action plan, (b) a district does not
2 submit a revised action plan within sixty days after denial of its
3 original action plan, or (c) the district submits a revised action
4 plan which is not approved by the director.

5 (2) If the power to specify controls in such a management
6 area is vested in the Director of Environmental Quality, he
7 or she shall within ninety days adopt and promulgate by rule
8 and regulation such measures as he or she deems necessary for
9 carrying out the intent of the Nebraska Ground Water Management
10 and Protection Act. He or she shall conduct ~~one~~ two or more
11 public hearings prior to the adoption of controls. Notice of any
12 such additional hearings shall be given in the manner provided
13 in section 46-743. The enforcement of controls adopted pursuant
14 to this section shall be the responsibility of the Department of
15 Environmental Quality.

16 Sec. 4. Original section 46-731, Reissue Revised Statutes
17 of Nebraska, and sections 46-713 and 46-714, Revised Statutes
18 Cumulative Supplement, 2008, are repealed.