

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 764

Introduced by Fischer, 43.

Read first time January 06, 2010

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to the Nebraska Ground Water Management
2 and Protection Act; to amend section 46-717, Reissue
3 Revised Statutes of Nebraska, and section 46-715, Revised
4 Statutes Supplement, 2009; to change provisions relating
5 to integrated management plans; to harmonize provisions;
6 and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-715, Revised Statutes Supplement,
2 2009, is amended to read:

3 46-715 ~~(1)~~ (1)(a) Whenever the Department of Natural
4 Resources has designated a river basin, subbasin, or reach as
5 overappropriated or has made a final determination that a river
6 basin, subbasin, or reach is fully appropriated, the natural
7 resources districts encompassing such river basin, subbasin, or
8 reach and the department shall jointly develop an integrated
9 management plan for such river basin, subbasin, or reach. The plan
10 shall be completed, adopted, and take effect within three years
11 after such designation or final determination unless the department
12 and the natural resources districts jointly agree to an extension
13 of not more than two additional years.

14 (b) A natural resources district encompassing a river
15 basin, subbasin, or reach that has not been designated as
16 overappropriated or has not been finally determined to be
17 fully appropriated may, jointly with the department, develop an
18 integrated management plan for such river basin, subbasin, or
19 reach located within the district. The district shall notify the
20 department on or before October 1 of its intention to develop an
21 integrated management plan which shall be developed and adopted
22 according to sections 46-715 to 46-717 and subsections (1) and (2)
23 of section 46-718. The objective of an integrated management plan
24 under this subdivision is to maintain such river basin, subbasin,
25 or reach in the status of not fully appropriated. If a district

1 develops an integrated management plan under this subdivision and
2 the department subsequently determines the affected river basin,
3 subbasin, or reach to be fully appropriated, the department and
4 the affected natural resources district may amend the integrated
5 management plan.

6 (2) In developing an integrated management plan, the
7 effects of existing and potential new water uses on existing
8 surface water appropriators and ground water users shall be
9 considered. An integrated management plan shall include the
10 following: (a) Clear goals and objectives with a purpose of
11 sustaining a balance between water uses and water supplies so that
12 the economic viability, social and environmental health, safety,
13 and welfare of the river basin, subbasin, or reach can be achieved
14 and maintained for both the near term and the long term; (b)
15 a map clearly delineating the geographic area subject to the
16 integrated management plan; (c) one or more of the ground water
17 controls authorized for adoption by natural resources districts
18 pursuant to section 46-739; (d) one or more of the surface water
19 controls authorized for adoption by the department pursuant to
20 section 46-716; and (e) a plan to gather and evaluate data,
21 information, and methodologies that could be used to implement
22 sections 46-715 to 46-717, increase understanding of the surface
23 water and hydrologically connected ground water system, and test
24 the validity of the conclusions and information upon which the
25 integrated management plan is based. The plan may also provide for

1 utilization of any applicable incentive programs authorized by law.
2 Nothing in the integrated management plan for a fully appropriated
3 river basin, subbasin, or reach shall require a natural resources
4 district to regulate ground water uses in place at the time of
5 the department's preliminary determination that the river basin,
6 subbasin, or reach is fully appropriated, but a natural resources
7 district may voluntarily adopt such regulations. The applicable
8 natural resources district may decide to include all water users
9 within the district boundary in an integrated management plan.

10 (3) In order to provide a process for economic
11 development opportunities and economic sustainability within a
12 river basin, subbasin, or reach, ~~designated as fully appropriated~~
13 ~~or overappropriated,~~ the integrated management plan shall include
14 clear and transparent procedures to track depletions and gains to
15 streamflows resulting from new, retired, or other changes to uses
16 within the river basin, subbasin, or reach. The procedures shall:

17 (a) Utilize generally accepted methodologies based on the
18 best available information, data, and science;

19 (b) Include a generally accepted methodology to be
20 utilized to estimate depletions and gains to streamflows, which
21 methodology includes location, amount, and time regarding gains to
22 streamflows as offsets to new uses;

23 (c) Identify means to be utilized so that new uses will
24 not have more than a de minimis effect upon existing surface water
25 users or ground water users;

1 (d) Identify procedures the natural resources district
2 and the department will use to report, consult, and otherwise
3 share information on new uses, changes in uses, or other activities
4 affecting water use in the river basin, subbasin, or reach;

5 (e) Identify, to the extent feasible, potential water
6 available to mitigate new uses, including, but not limited
7 to, water rights leases, interference agreements, augmentation
8 projects, conjunctive use management, and use retirement;

9 (f) Develop, to the extent feasible, an outline of
10 plans after consultation with and an opportunity to provide
11 input from irrigation districts, public power and irrigation
12 districts, reclamation districts, municipalities, other political
13 subdivisions, and other water users to make water available for
14 offset to enhance and encourage economic development opportunities
15 and economic sustainability in the river basin, subbasin, or reach;
16 and

17 (g) Clearly identify procedures that applicants for new
18 uses shall take to apply for approval of a new water use and
19 corresponding offset.

20 Nothing in this subsection shall require revision or
21 amendment of an integrated management plan approved on or before
22 August 30, 2009.

23 (4) The ground water and surface water controls proposed
24 for adoption in the integrated management plan pursuant to
25 subsection (1) of this section shall, when considered together

1 and with any applicable incentive programs, (a) be consistent
2 with the goals and objectives of the plan, (b) be sufficient to
3 ensure that the state will remain in compliance with applicable
4 state and federal laws and with any applicable interstate water
5 compact or decree or other formal state contract or agreement
6 pertaining to surface water or ground water use or supplies, and
7 (c) protect the ground water users whose water wells are dependent
8 on recharge from the river or stream involved and the surface water
9 appropriators on such river or stream from streamflow depletion
10 caused by surface water uses and ground water uses begun, in the
11 case of a ~~after the date the~~ river basin, subbasin, or reach was
12 designated as overappropriated or ~~was~~ preliminarily determined to
13 be fully appropriated in accordance with section 46-713, after the
14 date of such designation or preliminary determination.

15 (5) (a) In any river basin, subbasin, or reach that is
16 designated as overappropriated, when the designated area lies
17 within two or more natural resources districts, the department and
18 the affected natural resources districts shall jointly develop a
19 basin-wide plan for the area designated as overappropriated. Such
20 plan shall be developed using the consultation and collaboration
21 process described in subdivision (b) of this subsection, shall
22 be developed concurrently with the development of the integrated
23 management plan required pursuant to subsections (1) through (4) of
24 this section, and shall be designed to achieve, in the incremental
25 manner described in subdivision (d) of this subsection, the goals

1 and objectives described in subsection (2) of this section. The
2 basin-wide plan shall be adopted after hearings by the department
3 and the affected natural resources districts.

4 (b) In any river basin, subbasin, or reach designated
5 as overappropriated and subject to this subsection, the department
6 and each natural resources district encompassing such river basin,
7 subbasin, or reach shall jointly develop an integrated management
8 plan for such river basin, subbasin, or reach pursuant to
9 subsections (1) through (4) of this section. Each integrated
10 management plan for a river basin, subbasin, or reach subject
11 to this subsection shall be consistent with any basin-wide plan
12 developed pursuant to subdivision (a) of this subsection. Such
13 integrated management plan shall be developed after consultation
14 and collaboration with irrigation districts, reclamation districts,
15 public power and irrigation districts, mutual irrigation companies,
16 canal companies, and municipalities that rely on water from
17 within the affected area and that, after being notified of the
18 commencement of the plan development process, indicate in writing
19 their desire to participate in such process. In addition, the
20 department or the affected natural resources districts may include
21 designated representatives of other stakeholders. If agreement
22 is reached by all parties involved in such consultation and
23 collaboration process, the department and each natural resources
24 district shall adopt the agreed-upon integrated management plan. If
25 agreement cannot be reached by all parties involved, the integrated

1 management plan shall be developed and adopted by the department
2 and the affected natural resources district pursuant to sections
3 46-715 to 46-718 or by the Interrelated Water Review Board pursuant
4 to section 46-719.

5 (c) Any integrated management plan developed under
6 this subsection shall identify the overall difference between
7 the current and fully appropriated levels of development. Such
8 determination shall take into account cyclical supply, including
9 drought, identify the portion of the overall difference between the
10 current and fully appropriated levels of development that is due
11 to conservation measures, and identify the portions of the overall
12 difference between the current and fully appropriated levels of
13 development that are due to water use initiated prior to July 1,
14 1997, and to water use initiated on or after such date.

15 (d) Any integrated management plan developed under this
16 subsection shall adopt an incremental approach to achieve the goals
17 and objectives identified under subdivision (2)(a) of this section
18 using the following steps:

19 (i) The first incremental goals shall be to address the
20 impact of streamflow depletions to (A) surface water appropriations
21 and (B) water wells constructed in aquifers dependent upon recharge
22 from streamflow, to the extent those depletions are due to water
23 use initiated after July 1, 1997, and, unless an interstate
24 cooperative agreement for such river basin, subbasin, or reach is
25 no longer in effect, to prevent streamflow depletions that would

1 cause noncompliance by Nebraska with such interstate cooperative
2 agreement. During the first increment, the department and the
3 affected natural resources districts shall also pursue voluntary
4 efforts, subject to the availability of funds, to offset any
5 increase in streamflow depletive effects that occur after July 1,
6 1997, but are caused by ground water uses initiated prior to such
7 date. The department and the affected natural resources districts
8 may also use other appropriate and authorized measures for such
9 purpose;

10 (ii) The department and the affected natural resources
11 districts may amend an integrated management plan subject to this
12 subsection (5) as necessary based on an annual review of the
13 progress being made toward achieving the goals for that increment;

14 (iii) During the ten years following adoption of an
15 integrated management plan developed under this subsection (5)
16 or during the ten years after the adoption of any subsequent
17 increment of the integrated management plan pursuant to subdivision
18 (d) (iv) of this subsection, the department and the affected natural
19 resources district shall conduct a technical analysis of the
20 actions taken in such increment to determine the progress towards
21 meeting the goals and objectives adopted pursuant to subsection (2)
22 of this section. The analysis shall include an examination of (A)
23 available supplies and changes in long-term availability, (B) the
24 effects of conservation practices and natural causes, including,
25 but not limited to, drought, and (C) the effects of the plan

1 on reducing the overall difference between the current and fully
2 appropriated levels of development identified in subdivision (5)(c)
3 of this section. The analysis shall determine whether a subsequent
4 increment is necessary in the integrated management plan to meet
5 the goals and objectives adopted pursuant to subsection (2) of this
6 section and reduce the overall difference between the current and
7 fully appropriated levels of development identified in subdivision
8 (5)(c) of this section;

9 (iv) Based on the determination made in subdivision
10 (d)(iii) of this subsection, the department and the affected
11 natural resources districts, utilizing the consultative and
12 collaborative process described in subdivision (b) of this
13 subsection, shall if necessary identify goals for a subsequent
14 increment of the integrated management plan. Subsequent increments
15 shall be completed, adopted, and take effect not more than ten
16 years after adoption of the previous increment; and

17 (v) If necessary, the steps described in subdivisions
18 (d)(ii) through (iv) of this subsection shall be repeated until
19 the department and the affected natural resources districts agree
20 that the goals and objectives identified pursuant to subsection
21 (2) of this section have been met and the overall difference
22 between the current and fully appropriated levels of development
23 identified in subdivision (5)(c) of this section has been addressed
24 so that the river basin, subbasin, or reach has returned to a fully
25 appropriated condition.

1 (6) In any river basin, subbasin, or reach that is
2 designated as fully appropriated or overappropriated and whenever
3 necessary to ensure that the state is in compliance with an
4 interstate compact or decree or a formal state contract or
5 agreement, the department, in consultation with the affected
6 districts, shall forecast on an annual basis the maximum amount
7 of water that may be available from streamflow for beneficial use
8 in the short term and long term in order to comply with the
9 requirement of subdivision (4)(b) of this section. This forecast
10 shall be made by January 1, 2008, and each January 1 thereafter.

11 Sec. 2. Section 46-717, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 46-717 (1) In developing an integrated management plan,
14 the Department of Natural Resources and the affected natural
15 resources districts shall utilize the best scientific data and
16 other information available and shall review and consider any rules
17 and regulations in effect in any existing ground water management
18 area that encompasses all or part of the geographic area to be
19 encompassed by the plan. Consideration shall be given to the
20 applicable scientific data and other information relied upon by
21 the department in preparing the annual report required by section
22 46-713 and to other types of data and information that may be
23 deemed appropriate by the department. The department, after seeking
24 input from the affected natural resources districts, shall specify
25 by rule and regulation the types of scientific data and other

1 information that will be considered in developing an integrated
2 management plan. The natural resources districts shall adopt
3 similar rules and regulations specifying the types of scientific
4 data and other information necessary for purposes of this section.
5 Existing research, data, studies, or any other relevant information
6 which has been compiled by or is in possession of other state
7 or federal agencies, other natural resources districts, and other
8 political subdivisions within the State of Nebraska shall be
9 utilized. State agencies and political subdivisions shall furnish
10 information or data upon request of the department or any affected
11 natural resources district. Neither the department nor the natural
12 resources districts shall be required to conduct new research or
13 to develop new computer models to prepare an integrated management
14 plan, but such new research may be conducted or new computer models
15 developed within the limits of available funding if the additional
16 information is desired by the department or the affected natural
17 resources districts.

18 (2) During preparation of an integrated management plan
19 for a fully appropriated river basin, subbasin, or reach or of
20 an integrated management plan under subdivision (1)(b) of section
21 46-715, the department and the affected natural resources districts
22 shall consult with any irrigation district, reclamation district,
23 public power and irrigation district, mutual irrigation company,
24 canal company, or municipality that relies on water from the
25 affected river basin, subbasin, or reach and with other water users

1 and stakeholders as deemed appropriate by the department or by
2 the affected natural resources districts. They shall also actively
3 solicit public comments and opinions through public meetings and
4 other means.

5 Sec. 3. Original section 46-717, Reissue Revised Statutes
6 of Nebraska, and section 46-715, Revised Statutes Supplement, 2009,
7 are repealed.