

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1005

Introduced by Avery, 28.

Read first time January 21, 2014

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to the Nebraska Ground Water Management and
2 Protection Act; to amend sections 46-703, 46-706, 46-714,
3 46-715, 46-718, 46-719, and 46-720, Reissue Revised
4 Statutes of Nebraska; to eliminate the Interrelated Water
5 Review Board; to create the Surface Water and Ground
6 Water Review Board; to provide powers and duties; and to
7 repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-703, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 46-703 The Legislature further finds:

4 (1) The management, conservation, and beneficial use of
5 hydrologically connected ground water and surface water are essential
6 to the continued economic prosperity and well-being of the state,
7 including the present and future development of agriculture in the
8 state;

9 (2) Hydrologically connected ground water and surface
10 water may need to be managed differently from unconnected ground
11 water and surface water in order to permit equity among water users
12 and to optimize the beneficial use of interrelated ground water and
13 surface water supplies;

14 (3) Natural resources districts already have significant
15 legal authority to regulate activities which contribute to declines
16 in ground water levels and to nonpoint source contamination of ground
17 water and are the preferred entities to regulate, through ground
18 water management areas, ground water related activities which are
19 contributing to or are, in the reasonably foreseeable future, likely
20 to contribute to conflicts between ground water users and surface
21 water appropriators or to water supply shortages in fully
22 appropriated or overappropriated river basins, subbasins, or reaches;

23 (4) The Legislature recognizes that ground water use or
24 surface water use in one natural resources district may have adverse
25 affects on water supplies in another district or in an adjoining

1 state. The Legislature intends and expects that each natural
2 resources district within which water use is causing external impacts
3 will accept responsibility for ground water management in accordance
4 with the Nebraska Ground Water Management and Protection Act in the
5 same manner and to the same extent as if the impacts were contained
6 within that district;

7 (5) The Department of Natural Resources is responsible
8 for regulation of surface water resources and local surface water
9 project sponsors are responsible for much of the structured
10 irrigation utilizing surface water supplies, and these entities
11 should be responsible for regulation of surface water related
12 activities which contribute to conflicts between ground water users
13 and surface water appropriators or to water supply shortages in fully
14 appropriated or overappropriated river basins, subbasins, or reaches;
15 and

16 (6) All involved natural resources districts, the
17 department, and surface water project sponsors should cooperate and
18 collaborate on the identification and implementation of management
19 solutions to conflicts between ground water users and surface water
20 appropriators or to water supply shortages in fully appropriated or
21 overappropriated river basins, subbasins, and reaches. ~~;~~ and

22 ~~(7) An Interrelated Water Review Board is needed to~~
23 ~~resolve any conflicts between the department and the involved natural~~
24 ~~resources districts concerning the content, implementation, or~~
25 ~~enforcement of integrated management plans for fully appropriated and~~

1 ~~overappropriated river basins, subbasins, and reaches.~~

2 Sec. 2. Section 46-706, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 46-706 For purposes of the Municipal and Rural Domestic
5 Ground Water Transfers Permit Act, the Nebraska Ground Water
6 Management and Protection Act, and sections 46-601 to 46-613.02,
7 46-636, 46-637, and 46-651 to 46-655, unless the context otherwise
8 requires:

9 (1) Person means a natural person, a partnership, a
10 limited liability company, an association, a corporation, a
11 municipality, an irrigation district, an agency or a political
12 subdivision of the state, or a department, an agency, or a bureau of
13 the United States;

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

17 (3) Contamination or contamination of ground water means
18 nitrate nitrogen or other material which enters the ground water due
19 to action of any person and causes degradation of the quality of
20 ground water sufficient to make such ground water unsuitable for
21 present or reasonably foreseeable beneficial uses;

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

24 (5) Illegal water well means (a) any water well operated
25 or constructed without or in violation of a permit required by the

1 Nebraska Ground Water Management and Protection Act, (b) any water
2 well not in compliance with rules and regulations adopted and
3 promulgated pursuant to the act, (c) any water well not properly
4 registered in accordance with sections 46-602 to 46-604, or (d) any
5 water well not in compliance with any other applicable laws of the
6 State of Nebraska or with rules and regulations adopted and
7 promulgated pursuant to such laws;

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

11 (7) Management area means any area so designated by a
12 district pursuant to section 46-712 or 46-718, or by the Director of
13 Environmental Quality pursuant to section 46-725, ~~or by the~~
14 ~~Interrelated Water Review Board pursuant to section 46-719.~~
15 Management area includes a control area or a special ground water
16 quality protection area designated prior to July 19, 1996;

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

20 (9) Ground water reservoir life goal means the finite or
21 infinite period of time which a district establishes as its goal for
22 maintenance of the supply and quality of water in a ground water
23 reservoir at the time a ground water management plan is adopted;

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

25 (11) Acre-inch means the amount of water necessary to

1 cover an acre of land one inch deep;

2 (12) Subirrigation or subirrigated land means the natural
3 occurrence of a ground water table within the root zone of
4 agricultural vegetation, not exceeding ten feet below the surface of
5 the ground;

6 (13) Best management practices means schedules of
7 activities, maintenance procedures, and other management practices
8 utilized for purposes of irrigation efficiency, to conserve or effect
9 a savings of ground water, or to prevent or reduce present and future
10 contamination of ground water. Best management practices relating to
11 contamination of ground water may include, but not be limited to,
12 irrigation scheduling, proper rate and timing of fertilizer
13 application, and other fertilizer and pesticide management programs.
14 In determining the rate of fertilizer application, the district shall
15 consult with the University of Nebraska or a certified crop advisor
16 certified by the American Society of Agronomy;

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

24 (15) Allocation, as it relates to water use for
25 irrigation purposes, means the allotment of a specified total number

1 of acre-inches of irrigation water per irrigated acre per year or an
2 average number of acre-inches of irrigation water per irrigated acre
3 over any reasonable period of time;

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

7 (17) Water well has the same meaning as in section
8 46-601.01;

9 (18) Surface water project sponsor means an irrigation
10 district created pursuant to Chapter 46, article 1, a reclamation
11 district created pursuant to Chapter 46, article 5, or a public power
12 and irrigation district created pursuant to Chapter 70, article 6;

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

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

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

21 (22) Emergency situation means any set of circumstances
22 that requires the use of water from any source that might otherwise
23 be regulated or prohibited and the agency, district, or organization
24 responsible for regulating water use from such source reasonably and
25 in good faith believes that such use is necessary to protect the

1 public health, safety, and welfare, including, if applicable,
2 compliance with federal or state water quality standards;

3 (23) Good cause shown means a reasonable justification
4 for granting a variance for a consumptive use of water that would
5 otherwise be prohibited by rule or regulation and which the granting
6 agency, district, or organization reasonably and in good faith
7 believes will provide an economic, environmental, social, or public
8 health and safety benefit that is equal to or greater than the
9 benefit resulting from the rule or regulation from which a variance
10 is sought;

11 (24) Historic consumptive use means the amount of water
12 that has previously been consumed under appropriate and reasonably
13 efficient practices to accomplish without waste the purposes for
14 which the appropriation or other legally permitted use was lawfully
15 made;

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

19 (26) Order, except as otherwise specifically provided,
20 includes any order required by the Nebraska Ground Water Management
21 and Protection Act, by rule or regulation, or by a decision adopted
22 by a district by vote of the board of directors of the district taken
23 at any regularly scheduled or specially scheduled meeting of the
24 board;

25 (27) Overall difference between the current and fully

1 appropriated levels of development means the extent to which existing
2 uses of hydrologically connected surface water and ground water and
3 conservation activities result in the water supply available for
4 purposes identified in subsection (3) of section 46-713 to be less
5 than the water supply available if the river basin, subbasin, or
6 reach had been determined to be fully appropriated in accordance with
7 section 46-714;

8 (28) Test hole means a hole designed solely for the
9 purposes of obtaining information on hydrologic or geologic
10 conditions;

11 (29) Variance means (a) an approval to deviate from a
12 restriction imposed under subsection (1), (2), (8), or (9) of section
13 46-714 or (b) the approval to act in a manner contrary to existing
14 rules or regulations from a governing body whose rule or regulation
15 is otherwise applicable;

16 (30) Certified irrigated acres means the number of acres
17 or portion of an acre that a natural resources district has approved
18 for irrigation from ground water in accordance with law and with
19 rules adopted by the district; and

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

23 Sec. 3. Section 46-714, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 46-714 (1) Whenever the Department of Natural Resources

1 makes a preliminary determination that a river basin, subbasin, or
2 reach not previously designated as overappropriated and not
3 previously determined to be fully appropriated has become fully
4 appropriated, the department shall place an immediate stay on the
5 issuance of any new natural-flow, storage, or storage-use
6 appropriations in such river basin, subbasin, or reach. The
7 department shall also provide prompt notice of such preliminary
8 determination to all licensed water well contractors in the state and
9 to each natural resources district that encompasses any of the
10 geographic area involved. Such notice to natural resources districts
11 shall be by certified mail. The notice shall be addressed to the
12 manager of the natural resources district or his or her designee and
13 shall include the signature of the Director of Natural Resources.
14 Immediately upon receipt of such notice by the natural resources
15 district, there shall be a stay on issuance of water well
16 construction permits in the geographic area preliminarily determined
17 by the department to include hydrologically connected surface water
18 and ground water in such river basin, subbasin, or reach. The
19 department shall also notify the public of the preliminary
20 determination that the river basin, subbasin, or reach is fully
21 appropriated and of the affected geographic area. Such notice shall
22 be provided by publication once each week for three consecutive weeks
23 in at least one newspaper of statewide circulation and in such other
24 newspaper or newspapers as are deemed appropriate by the department
25 to provide general circulation in the river basin, subbasin, or

1 reach.

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

7 (a) On the construction of any new water well in the area
8 covered by the determination unless a permit with conditions imposed
9 by the natural resources district has been issued prior to the
10 determination. Such conditions shall meet the objectives of
11 subsection (4) of section 46-715 and may include, but are not limited
12 to, conditions in accordance with subsection (6) of section 46-739.
13 Any well constructed pursuant to such permit shall be completed in
14 accordance with section 46-738; and

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

18 Such additional stays shall begin ten days after the
19 first publication, in a newspaper of statewide circulation, of the
20 notice of the preliminary determination that the river basin,
21 subbasin, or reach is fully appropriated.

22 (3) Exceptions to the stays imposed pursuant to
23 subsection (1), (2), (8), or (9) of this section shall exist for (a)
24 test holes, (b) dewatering wells with an intended use of one year or
25 less, (c) monitoring wells, (d) wells constructed pursuant to a

1 ground water remediation plan under the Environmental Protection Act,
2 (e) water wells designed and constructed to pump fifty gallons per
3 minute or less, except that no two or more water wells that each pump
4 fifty gallons per minute or less may be connected or otherwise
5 combined to serve a single project such that the collective pumping
6 would exceed fifty gallons per minute, (f) water wells for range
7 livestock, (g) new surface water uses or water wells that are
8 necessary to alleviate an emergency situation involving the provision
9 of water for human consumption or public health and safety, (h) water
10 wells defined by the applicable natural resources district as
11 replacement water wells, but the consumptive use of any such
12 replacement water well can be no greater than the historic
13 consumptive use of the water well it is to replace or, if applicable,
14 the historic consumptive use of the surface water use it is to
15 replace, (i) new surface water uses and water wells to which a right
16 or permit is transferred in accordance with state law, but the
17 consumptive use of any such new use can be no greater than the
18 historic consumptive use of the surface water use or water well from
19 which the right or permit is being transferred, (j) water wells and
20 increases in ground water irrigated acres for which a variance is
21 granted by the applicable natural resources district for good cause
22 shown, (k) subject to any conditions imposed by the applicable
23 natural resources district, to the extent permitted by the applicable
24 natural resources district, increases in ground water irrigated acres
25 that result from the use of water wells that were permitted prior to

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

16 (4) Except as otherwise provided in this section, any
17 stay imposed pursuant to subsections (1) and (2) of this section
18 shall remain in effect for the affected river basin, subbasin, or
19 reach until the department has made a final determination regarding
20 whether the river basin, subbasin, or reach is fully appropriated
21 and, if the department's final determination is that the river basin,
22 subbasin, or reach is fully appropriated, shall remain in effect as
23 provided in subsection (11) of this section. Within the time period
24 between the dates of the preliminary and final determinations, the
25 department and the affected natural resources districts shall consult

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

17 (5) Within thirty days after the final hearing under
18 subsection (4) of this section, the department shall notify the
19 appropriate natural resources districts of the department's final
20 determination with respect to the appropriation status of the river
21 basin, subbasin, or reach. If the final determination is that the
22 river basin, subbasin, or reach is fully appropriated, the
23 department, at the same time, shall (a) decide whether to continue or
24 to terminate the stays on new surface water uses and on increases in
25 the number of surface water irrigated acres and (b) designate the

1 geographic area within which the department considers surface water
2 and ground water to be hydrologically connected in the river basin,
3 subbasin, or reach and describe the methods and criteria used in
4 making that determination. The department shall provide notice of its
5 decision to continue or terminate the stays in the same manner as the
6 notice required by subsection (1) of this section.

7 (6) Within ninety days after a final determination by the
8 department that a river basin, subbasin, or reach is fully
9 appropriated, an affected natural resources district may hold one or
10 more public hearings on the question of whether the stays on the
11 issuance of new water well permits, on the construction of new water
12 wells, or on increases in ground water irrigated acres should be
13 terminated. Notice of the hearings shall be published as provided in
14 section 46-743.

15 (7) Within forty-five days after a natural resources
16 district's final hearing pursuant to subsection (6) of this section,
17 the natural resources district shall decide (a) whether to terminate
18 the stay on new water wells in all or part of the natural resources
19 district subject to the stay and (b) whether to terminate the stay on
20 increases in ground water irrigated acres. If the natural resources
21 district decides not to terminate the stay on new water wells in any
22 geographic area, it shall also decide whether to exempt from such
23 stay the construction of water wells for which permits were issued
24 prior to the issuance of the stay but for which construction had not
25 begun prior to issuance of the stay. If construction of water wells

1 for which permits were issued prior to the stay is allowed, all
2 permits that were valid when the stay went into effect shall be
3 extended by a time period equal to the length of the stay.

4 (8) Whenever the department designates a river basin,
5 subbasin, or reach as overappropriated, each previously declared
6 moratorium on the issuance of new surface water appropriations in the
7 river basin, subbasin, or reach shall continue in effect. The
8 department shall also provide prompt notice of such designation to
9 all licensed water well contractors in the state and to each natural
10 resources district that encompasses any of the geographic area
11 involved. Immediately upon receipt of such notice by a natural
12 resources district, there shall be a stay on the issuance of new
13 water well construction permits in any portion of such natural
14 resources district that is within the hydrologically connected area
15 designated by the department. The department shall also notify the
16 public of its designation of such river basin, subbasin, or reach as
17 overappropriated and of the geographic area involved in such
18 designation. Such notice shall be published once each week for three
19 consecutive weeks in at least one newspaper of statewide circulation
20 and in such other newspapers as are deemed appropriate by the
21 department to provide general notice in the river basin, subbasin, or
22 reach.

23 (9) Beginning ten days after the first publication of
24 notice under subsection (8) of this section in a newspaper of
25 statewide circulation, there shall also be stays (a) on the

1 construction of any new water well in the hydrologically connected
2 area if such construction has not commenced prior to such date and if
3 no permit for construction of the water well has been issued
4 previously by either the department or the natural resources
5 district, (b) on the use of an existing water well in the
6 hydrologically connected area to increase the number of acres
7 historically irrigated, and (c) on the use of an existing surface
8 water appropriation to increase the number of acres historically
9 irrigated in the affected area.

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

1 subbasin, or reach and with other water users and stakeholders as
2 deemed appropriate by the department or the natural resources
3 district.

4 (11) Any stay issued pursuant to this section shall
5 remain in effect until (a) the stay has been terminated pursuant to
6 subsection (5), (7), or (10) of this section, (b) an integrated
7 management plan for the affected river basin, subbasin, or reach has
8 been adopted by the department and the affected natural resources
9 districts and has taken effect, (c) ~~an integrated management plan for~~
10 ~~the affected river basin, subbasin, or reach has been adopted by the~~
11 ~~Interrelated Water Review Board and has taken effect,~~ (d) the
12 department has completed a reevaluation pursuant to subsection (2) of
13 section 46-713 and has determined that the affected river basin,
14 subbasin, or reach is not fully appropriated or overappropriated, or
15 ~~(e)-(d)~~ the stay expires pursuant to this subsection. Such stay may
16 be imposed initially for not more than three years following the
17 department's designation of the river basin, subbasin, or reach as
18 overappropriated or the department's final determination that a river
19 basin, subbasin, or reach is fully appropriated and may be extended
20 thereafter on an annual basis by agreement of the department and the
21 affected natural resources district for not more than two additional
22 years if necessary to allow the development, adoption, and
23 implementation of an integrated management plan pursuant to sections
24 46-715 to ~~46-719.~~ 46-718.

25 (12)(a) For purposes of this subsection, (i) a status

1 change occurs when a preliminary or final determination that a river
2 basin, subbasin, or reach is fully appropriated is reversed by the
3 department or by judicial determination and such river basin,
4 subbasin, or reach is determined not to be fully appropriated and
5 (ii) the hydrologically connected area means the geographic area
6 within which the department considers surface water and ground water
7 in such river basin, subbasin, or reach to be hydrologically
8 connected.

9 (b) If a status change occurs, any stays previously in
10 force by the department or affected natural resources districts shall
11 remain in force until the stays imposed under this subsection are in
12 place and the department shall place an immediate stay on the
13 issuance of any new natural-flow, storage, or storage-use
14 appropriations in the river basin, subbasin, or reach. The department
15 shall also provide prompt notice of the status change in accordance
16 with subsection (1) of this section. Immediately upon receipt of the
17 notice by the affected natural resources district, there shall be
18 stays imposed as set forth in subsections (1) and (2) of this
19 section, subject to the exceptions set forth in subsection (3) of
20 this section. The stays imposed pursuant to this subsection shall
21 remain in effect within each affected natural resources district
22 until such district adopts rules and regulations in accordance with
23 subdivision (c), (d), or (e) of this subsection.

24 (c) Upon receipt of notice of a status change, each
25 affected natural resources district shall adopt rules and regulations

1 within one hundred twenty days after receipt of such notice for the
2 prioritization and granting of water well permits within the
3 hydrologically connected area for the four-year period following the
4 status change. Nothing in this subsection shall be construed to
5 supersede the authority provided to natural resources districts under
6 subsection (2) of section 46-707 and subdivisions (1)(f) and (1)(m)
7 of section 46-739.

8 (d) The rules and regulations adopted by each affected
9 natural resources district in accordance with subdivision (c) of this
10 subsection shall (i) allow a limited number of total new ground water
11 irrigated acres annually, (ii) be created with the purpose of
12 maintaining the status of not fully appropriated based on the most
13 recent basin determination, (iii) be for a term of not less than four
14 years, and (iv) limit the number of new permits so that total new
15 ground water irrigated acres do not exceed the number set in the
16 rules and regulations. The department shall approve the proposed new
17 number of ground water irrigated acres within sixty days after
18 approval by the natural resources district if such district meets the
19 conditions set forth in subdivision (d)(ii) of this subsection, based
20 on the most recent basin determination.

21 (e) If the proposed new number of acres is not approved
22 by the department within the applicable time period as provided in
23 subdivision (d) of this subsection, the affected natural resources
24 districts shall adopt rules and regulations that allow water well
25 permits to be issued that will result in no more than two thousand

1 five hundred irrigated acres or that will result in an increase of
2 not more than twenty percent of all historically irrigated acres
3 within the hydrologically connected area of each natural resources
4 district within the affected river basin, subbasin, or reach,
5 whichever is less, for each calendar year of the four-year period
6 following the date of the determination described in this subsection.
7 Each affected natural resources district may, after the initial four-
8 year period has expired, annually determine whether water well permit
9 limitations should continue and may enforce such limitations.

10 (f) During the four-year period following the status
11 change, the department shall ensure that any new appropriation
12 granted will not cause the basin, subbasin, or reach to be fully
13 appropriated based on the most recent basin determination. The
14 department, pursuant to its rules and regulations, shall not issue
15 new natural flow surface water appropriations for irrigation, within
16 the river basin, subbasin, or reach affected by the status change,
17 that will result in a net increase of more than eight hundred thirty-
18 four irrigated acres in each natural resources district during each
19 calendar year of the four-year period following the date of the
20 determination described in this subsection.

21 Sec. 4. Section 46-715, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 46-715 (1)(a) Whenever the Department of Natural
24 Resources has designated a river basin, subbasin, or reach as
25 overappropriated or has made a final determination that a river

1 basin, subbasin, or reach is fully appropriated, the natural
2 resources districts encompassing such river basin, subbasin, or reach
3 and the department shall jointly develop an integrated management
4 plan for such river basin, subbasin, or reach. The plan shall be
5 completed, adopted, and take effect within three years after such
6 designation or final determination unless the department and the
7 natural resources districts jointly agree to an extension of not more
8 than two additional years.

9 (b) A natural resources district encompassing a river
10 basin, subbasin, or reach that has not been designated as
11 overappropriated or has not been finally determined to be fully
12 appropriated may, jointly with the department, develop an integrated
13 management plan for such river basin, subbasin, or reach located
14 within the district. The district shall notify the department of its
15 intention to develop an integrated management plan which shall be
16 developed and adopted according to sections 46-715 to 46-717 and
17 subsections (1) and (2) of section 46-718. The objective of an
18 integrated management plan under this subdivision is to manage such
19 river basin, subbasin, or reach to achieve and sustain a balance
20 between water uses and water supplies for the long term. If a
21 district develops an integrated management plan under this
22 subdivision and the department subsequently determines the affected
23 river basin, subbasin, or reach to be fully appropriated, the
24 department and the affected natural resources district may amend the
25 integrated management plan.

1 (2) In developing an integrated management plan, the
2 effects of existing and potential new water uses on existing surface
3 water appropriators and ground water users shall be considered. An
4 integrated management plan shall include the following: (a) Clear
5 goals and objectives with a purpose of sustaining a balance between
6 water uses and water supplies so that the economic viability, social
7 and environmental health, safety, and welfare of the river basin,
8 subbasin, or reach can be achieved and maintained for both the near
9 term and the long term; (b) a map clearly delineating the geographic
10 area subject to the integrated management plan; (c) one or more of
11 the ground water controls authorized for adoption by natural
12 resources districts pursuant to section 46-739; (d) one or more of
13 the surface water controls authorized for adoption by the department
14 pursuant to section 46-716; and (e) a plan to gather and evaluate
15 data, information, and methodologies that could be used to implement
16 sections 46-715 to 46-717, increase understanding of the surface
17 water and hydrologically connected ground water system, and test the
18 validity of the conclusions and information upon which the integrated
19 management plan is based. The plan may also provide for utilization
20 of any applicable incentive programs authorized by law. Nothing in
21 the integrated management plan for a fully appropriated river basin,
22 subbasin, or reach shall require a natural resources district to
23 regulate ground water uses in place at the time of the department's
24 preliminary determination that the river basin, subbasin, or reach is
25 fully appropriated, but a natural resources district may voluntarily

1 adopt such regulations. The applicable natural resources district may
2 decide to include all water users within the district boundary in an
3 integrated management plan.

4 (3) In order to provide a process for economic
5 development opportunities and economic sustainability within a river
6 basin, subbasin, or reach, the integrated management plan shall
7 include clear and transparent procedures to track depletions and
8 gains to streamflows resulting from new, retired, or other changes to
9 uses within the river basin, subbasin, or reach. The procedures
10 shall:

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

13 (b) Include a generally accepted methodology to be
14 utilized to estimate depletions and gains to streamflows, which
15 methodology includes location, amount, and time regarding gains to
16 streamflows as offsets to new uses;

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

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

24 (e) Identify, to the extent feasible, potential water
25 available to mitigate new uses, including, but not limited to, water

1 rights leases, interference agreements, augmentation projects,
2 conjunctive use management, and use retirement;

3 (f) Develop, to the extent feasible, an outline of plans
4 after consultation with and an opportunity to provide input from
5 irrigation districts, public power and irrigation districts,
6 reclamation districts, municipalities, other political subdivisions,
7 and other water users to make water available for offset to enhance
8 and encourage economic development opportunities and economic
9 sustainability in the river basin, subbasin, or reach; and

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

13 Nothing in this subsection shall require revision or
14 amendment of an integrated management plan approved on or before
15 August 30, 2009.

16 (4) The ground water and surface water controls proposed
17 for adoption in the integrated management plan pursuant to subsection
18 (1) of this section shall, when considered together and with any
19 applicable incentive programs, (a) be consistent with the goals and
20 objectives of the plan, (b) be sufficient to ensure that the state
21 will remain in compliance with applicable state and federal laws and
22 with any applicable interstate water compact or decree or other
23 formal state contract or agreement pertaining to surface water or
24 ground water use or supplies, and (c) protect the ground water users
25 whose water wells are dependent on recharge from the river or stream

1 involved and the surface water appropriators on such river or stream
2 from streamflow depletion caused by surface water uses and ground
3 water uses begun, in the case of a river basin, subbasin, or reach
4 designated as overappropriated or preliminarily determined to be
5 fully appropriated in accordance with section 46-713, after the date
6 of such designation or preliminary determination.

7 (5)(a) In any river basin, subbasin, or reach that is
8 designated as overappropriated, when the designated area lies within
9 two or more natural resources districts, the department and the
10 affected natural resources districts shall jointly develop a basin-
11 wide plan for the area designated as overappropriated. Such plan
12 shall be developed using the consultation and collaboration process
13 described in subdivision (b) of this subsection, shall be developed
14 concurrently with the development of the integrated management plan
15 required pursuant to subsections (1) through (4) of this section, and
16 shall be designed to achieve, in the incremental manner described in
17 subdivision (d) of this subsection, the goals and objectives
18 described in subsection (2) of this section. The basin-wide plan
19 shall be adopted after hearings by the department and the affected
20 natural resources districts.

21 (b) In any river basin, subbasin, or reach designated as
22 overappropriated and subject to this subsection, the department and
23 each natural resources district encompassing such river basin,
24 subbasin, or reach shall jointly develop an integrated management
25 plan for such river basin, subbasin, or reach pursuant to subsections

1 (1) through (4) of this section. Each integrated management plan for
2 a river basin, subbasin, or reach subject to this subsection shall be
3 consistent with any basin-wide plan developed pursuant to subdivision
4 (a) of this subsection. Such integrated management plan shall be
5 developed after consultation and collaboration with irrigation
6 districts, reclamation districts, public power and irrigation
7 districts, mutual irrigation companies, canal companies, and
8 municipalities that rely on water from within the affected area and
9 that, after being notified of the commencement of the plan
10 development process, indicate in writing their desire to participate
11 in such process. In addition, the department or the affected natural
12 resources districts may include designated representatives of other
13 stakeholders. If agreement is reached by all parties involved in such
14 consultation and collaboration process, the department and each
15 natural resources district shall adopt the agreed-upon integrated
16 management plan. If agreement cannot be reached by all parties
17 involved, the integrated management plan shall be developed and
18 adopted by the department and the affected natural resources district
19 pursuant to sections 46-715 to 46-718, ~~or by the Interrelated Water~~
20 ~~Review Board pursuant to section 46-719.~~

21 (c) Any integrated management plan developed under this
22 subsection shall identify the overall difference between the current
23 and fully appropriated levels of development. Such determination
24 shall take into account cyclical supply, including drought, identify
25 the portion of the overall difference between the current and fully

1 appropriated levels of development that is due to conservation
2 measures, and identify the portions of the overall difference between
3 the current and fully appropriated levels of development that are due
4 to water use initiated prior to July 1, 1997, and to water use
5 initiated on or after such date.

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

10 (i) The first incremental goals shall be to address the
11 impact of streamflow depletions to (A) surface water appropriations
12 and (B) water wells constructed in aquifers dependent upon recharge
13 from streamflow, to the extent those depletions are due to water use
14 initiated after July 1, 1997, and, unless an interstate cooperative
15 agreement for such river basin, subbasin, or reach is no longer in
16 effect, to prevent streamflow depletions that would cause
17 noncompliance by Nebraska with such interstate cooperative agreement.
18 During the first increment, the department and the affected natural
19 resources districts shall also pursue voluntary efforts, subject to
20 the availability of funds, to offset any increase in streamflow
21 depletive effects that occur after July 1, 1997, but are caused by
22 ground water uses initiated prior to such date. The department and
23 the affected natural resources districts may also use other
24 appropriate and authorized measures for such purpose;

25 (ii) The department and the affected natural resources

1 districts may amend an integrated management plan subject to this
2 subsection (5) as necessary based on an annual review of the progress
3 being made toward achieving the goals for that increment;

4 (iii) During the ten years following adoption of an
5 integrated management plan developed under this subsection (5) or
6 during the ten years after the adoption of any subsequent increment
7 of the integrated management plan pursuant to subdivision (d)(iv) of
8 this subsection, the department and the affected natural resources
9 district shall conduct a technical analysis of the actions taken in
10 such increment to determine the progress towards meeting the goals
11 and objectives adopted pursuant to subsection (2) of this section.
12 The analysis shall include an examination of (A) available supplies
13 and changes in long-term availability, (B) the effects of
14 conservation practices and natural causes, including, but not limited
15 to, drought, and (C) the effects of the plan on reducing the overall
16 difference between the current and fully appropriated levels of
17 development identified in subdivision (5)(c) of this section. The
18 analysis shall determine whether a subsequent increment is necessary
19 in the integrated management plan to meet the goals and objectives
20 adopted pursuant to subsection (2) of this section and reduce the
21 overall difference between the current and fully appropriated levels
22 of development identified in subdivision (5)(c) of this section;

23 (iv) Based on the determination made in subdivision (d)
24 (iii) of this subsection, the department and the affected natural
25 resources districts, utilizing the consultative and collaborative

1 process described in subdivision (b) of this subsection, shall if
2 necessary identify goals for a subsequent increment of the integrated
3 management plan. Subsequent increments shall be completed, adopted,
4 and take effect not more than ten years after adoption of the
5 previous increment; and

6 (v) If necessary, the steps described in subdivisions (d)
7 (ii) through (iv) of this subsection shall be repeated until the
8 department and the affected natural resources districts agree that
9 the goals and objectives identified pursuant to subsection (2) of
10 this section have been met and the overall difference between the
11 current and fully appropriated levels of development identified in
12 subdivision (5)(c) of this section has been addressed so that the
13 river basin, subbasin, or reach has returned to a fully appropriated
14 condition.

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

25 Sec. 5. Section 46-718, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 46-718 (1) If the Department of Natural Resources and the
3 affected natural resources districts preparing an integrated
4 management plan reach agreement on (a) the proposed goals and
5 objectives of the plan for the affected river basin, subbasin, or
6 reach, (b) the proposed geographic area to be subject to controls,
7 and (c) the surface water and ground water controls and any incentive
8 programs that are proposed for adoption and implementation in the
9 river basin, subbasin, or reach, they shall schedule one or more
10 public hearings to take testimony on the proposed integrated
11 management plan and the proposed controls. Such hearings shall be
12 held within forty-five days after reaching agreement and within or in
13 reasonable proximity to the area to be affected by implementation of
14 the integrated management plan. Notice of such hearings shall be
15 published as provided in section 46-743. The costs of publishing the
16 notice shall be shared between the department and the affected
17 natural resources districts. All interested persons may appear at the
18 hearings and present testimony or provide other evidence relevant to
19 the issues being considered.

20 (2) Within sixty days after the final hearing under this
21 section, the department and the affected natural resources districts
22 shall jointly decide whether to implement the plan proposed, with or
23 without modifications, and whether to adopt and implement the surface
24 water and ground water controls and incentive programs proposed in
25 the plan. If the department and the natural resources districts agree

1 to implement the plan and to adopt and implement the proposed
2 controls, the natural resources districts shall by order designate a
3 ground water management area for integrated management or, if the
4 geographic area subject to the integrated management plan is already
5 in a ground water management area, the order shall designate an
6 integrated management subarea for that area. The order shall include
7 a geographic and stratigraphic definition of the ground water
8 management area or integrated management subarea and shall adopt the
9 controls in the integrated management plan that are authorized for
10 adoption by the natural resources district pursuant to section
11 46-739. The department shall by order adopt the controls in the
12 integrated management plan that are authorized for adoption by the
13 department pursuant to section 46-716. Neither the controls adopted
14 by the district nor those adopted by the department shall include
15 controls substantially different from those set forth in the notice
16 of hearing. The area designated as a ground water management area or
17 an integrated management subarea by the natural resources district
18 shall not include any area that was not identified in the notice of
19 the hearing as within the area proposed to be subject to the controls
20 in the plan. The department and the natural resources district shall
21 each cause a copy of its order to be published in the manner provided
22 in section 46-744.

23 ~~(3) If at any time during the development of a basin-wide~~
24 ~~plan or an integrated management plan either the department or the~~
25 ~~affected natural resources districts conclude that the parties will~~

1 ~~be unable to reach a timely agreement on the basin-wide plan or on~~
2 ~~(a) the goals and objectives of the integrated management plan for~~
3 ~~the affected river basin, subbasin, or reach, (b) the geographic area~~
4 ~~to be subject to controls, or (c) the surface water or ground water~~
5 ~~controls or any incentive programs to be proposed for adoption and~~
6 ~~implementation in the affected river basin, subbasin, or reach, the~~
7 ~~Governor shall be notified and the dispute shall be submitted to the~~
8 ~~Interrelated Water Review Board as provided in subsection (2) of~~
9 ~~section 46-719.~~

10 Sec. 6. Section 46-719, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 46-719 (1)(a) ~~The Interrelated Water Review Board is~~
13 ~~created for the purposes stated in subsections (2) through (5) of~~
14 ~~this section. The board shall consist of five members. The board,~~
15 ~~when appointed and convened, shall continue in existence only until~~
16 ~~it has resolved a dispute referred to it pursuant to such~~
17 ~~subsections. The Governor shall appoint and convene the board within~~
18 ~~forty five days of being notified of the need to resolve a dispute.~~
19 ~~The board shall be chaired by the Governor or his or her designee,~~
20 ~~which designee shall be knowledgeable concerning surface water and~~
21 ~~ground water issues. The Governor shall appoint one additional member~~
22 ~~of his or her choosing and shall appoint the other three members of~~
23 ~~the board from a list of no fewer than six nominees provided by the~~
24 ~~Nebraska Natural Resources Commission within twenty days after~~
25 ~~request by the Governor for a list of nominees.~~

1 ~~(b) Not more than two members of the board shall reside~~
2 ~~in the geographic area involved in the dispute. A person is not~~
3 ~~eligible for membership on the board if the decisions to be made by~~
4 ~~the board would or could cause financial benefit or detriment to the~~
5 ~~person, a member of his or her immediate family, or a business with~~
6 ~~which the person is associated, unless such benefit or detriment is~~
7 ~~indistinguishable from the effects of such action on the public~~
8 ~~generally or a broad segment of the public. The board shall be~~
9 ~~subject to the Open Meetings Act.~~

10 ~~(c) For purposes of subsections (2) and (3) of this~~
11 ~~section, action may be taken by a vote of three of the board's five~~
12 ~~members. For purposes of subsections (4) and (5) of this section,~~
13 ~~action may be taken only by a vote of at least four of the board's~~
14 ~~five members.~~

15 ~~(2)(a) If the Department of Natural Resources and the~~
16 ~~affected natural resources districts cannot resolve disputes over the~~
17 ~~content of a basin wide plan or an integrated management plan by~~
18 ~~utilizing the process described in sections 46-715 to 46-718, the~~
19 ~~Governor shall be notified and the dispute submitted to the~~
20 ~~Interrelated Water Review Board. When the board has been appointed~~
21 ~~and convened to resolve disputes over a basin wide plan, the~~
22 ~~department and each affected district shall present their proposed~~
23 ~~basin wide plans to the board. When the board has been convened to~~
24 ~~resolve disputes over an integrated management plan, the department~~
25 ~~and each affected natural resources district shall present their (i)~~

1 ~~proposed goals and objectives for the integrated management plan,~~
2 ~~(ii) proposed geographic area to be subject to controls, and (iii)~~
3 ~~proposed surface water and ground water controls and any proposed~~
4 ~~incentive program for adoption and implementation in the river basin,~~
5 ~~subbasin, or reach involved. The department and each affected natural~~
6 ~~resources district shall also be given adequate opportunity to~~
7 ~~comment on the proposals made by the other parties to the dispute.~~

8 ~~(b) When the Interrelated Water Review Board concludes~~
9 ~~that the issues in dispute have been fully presented and commented~~
10 ~~upon by the parties to the dispute, which conclusion shall be made~~
11 ~~not more than forty five days after the board is convened, the board~~
12 ~~shall select the proposals or portions of proposals that the board~~
13 ~~will consider for adoption and shall schedule one or more public~~
14 ~~hearings to take testimony on the selected proposals. The hearings~~
15 ~~shall be held within forty five days after the board's selection of~~
16 ~~proposals to consider for adoption and shall be within or in~~
17 ~~reasonable proximity to the area that would be affected by~~
18 ~~implementation of any of the proposals to be considered at the~~
19 ~~hearings. Notice of the hearings shall be published as provided in~~
20 ~~section 46-743. The cost of publishing the notice shall be shared by~~
21 ~~the department and the affected natural resources districts. All~~
22 ~~interested persons may appear at the hearings and present testimony~~
23 ~~or provide other evidence relevant to the issues being considered.~~

24 ~~(c) Within forty five days after the final hearing~~
25 ~~pursuant to subdivision (b) of this subsection, the Interrelated~~

1 ~~Water Review Board shall by order, as applicable, adopt a basin-wide~~
2 ~~plan or an integrated management plan for the affected river basin,~~
3 ~~subbasin, or reach and, in the case of an integrated management plan,~~
4 ~~shall designate a ground water management area for integrated~~
5 ~~management or an integrated management subarea for such river basin,~~
6 ~~subbasin, or reach. An integrated management plan shall be consistent~~
7 ~~with subsection (2) of section 46-715, and the surface water and~~
8 ~~ground water controls and any applicable incentive programs adopted~~
9 ~~as part of that plan shall be consistent with subsection (4) of~~
10 ~~section 46-715. The controls adopted by the board shall not be~~
11 ~~substantially different from those described in the notice of~~
12 ~~hearing. The area designated as a ground water management area or an~~
13 ~~integrated management subarea shall not include any area that was not~~
14 ~~identified in the notice of the hearing as within the area proposed~~
15 ~~to be subject to the controls in the plan.~~

16 ~~(d) The order adopted under this subsection shall be~~
17 ~~published in the manner prescribed in section 46-744.~~

18 ~~(e) Surface water controls adopted by the Interrelated~~
19 ~~Water Review Board shall be implemented and enforced by the~~
20 ~~department. Ground water controls adopted by the Interrelated Water~~
21 ~~Review Board shall be implemented and enforced by the affected~~
22 ~~natural resources districts.~~

23 ~~(3) Whether an integrated management plan is adopted~~
24 ~~pursuant to section 46-718 or by the Interrelated Water Review Board~~
25 ~~pursuant to subsection (2) of this section, the department or a~~

1 ~~natural resources district responsible in part for implementation and~~
2 ~~enforcement of an integrated management plan may propose modification~~
3 ~~of the goals or objectives of that plan, of the area subject to the~~
4 ~~plan, or of the surface water controls, ground water controls, or~~
5 ~~incentive programs adopted to implement the plan. The department and~~
6 ~~the affected natural resources districts shall utilize the procedures~~
7 ~~in sections 46-715 to 46-718 in an attempt to reach agreement on and~~
8 ~~to adopt and implement proposed modifications. If agreement on such~~
9 ~~modifications cannot be achieved utilizing those procedures, either~~
10 ~~the department or an affected natural resources district may notify~~
11 ~~the Governor of the dispute. The Interrelated Water Review Board~~
12 ~~shall be appointed and convened in accordance with subsection (1) of~~
13 ~~this section to resolve the dispute and, if applicable, to adopt any~~
14 ~~modifications utilizing the procedures in subsection (2) of this~~
15 ~~section.~~

16 ~~(4) The department and the affected natural resources~~
17 ~~districts may also raise objections concerning the implementation or~~
18 ~~enforcement of previously adopted surface water or ground water~~
19 ~~controls. The department and the affected natural resources districts~~
20 ~~shall utilize the procedures in sections 46-715 to 46-718 in an~~
21 ~~attempt to reach agreement on such implementation or enforcement~~
22 ~~issues. If agreement on such issues cannot be achieved utilizing such~~
23 ~~procedures, either the department or an affected natural resources~~
24 ~~district may notify the Governor of the dispute. The Interrelated~~
25 ~~Water Review Board shall be appointed and convened in accordance with~~

1 ~~subsection (1) of this section. After permitting each party to fully~~
2 ~~express its reasons for its position on the disputed issues, the~~
3 ~~board may either take no action or conclude (a) that one or more~~
4 ~~parties needs to modify its approach to implementation or enforcement~~
5 ~~and direct that such modifications take place or (b) that one or more~~
6 ~~parties either has not made a good faith effort to implement or~~
7 ~~enforce the portion of the plan or controls for which it is~~
8 ~~responsible or is unable to fully implement and enforce such portion~~
9 ~~and that such party's jurisdiction with respect to implementation and~~
10 ~~enforcement of the plan and controls shall be terminated and~~
11 ~~reassigned to one or more of the other parties responsible for~~
12 ~~implementation and enforcement. A decision by the Interrelated Water~~
13 ~~Review Board to terminate and reassign jurisdiction of any portion of~~
14 ~~the plan or controls shall take effect immediately upon that~~
15 ~~decision. Notice of such reassignment shall be published at least~~
16 ~~once in one or more newspapers as necessary to provide general~~
17 ~~circulation in the area affected by such reassignment.~~

18 ~~(5) The board may be reconvened in accordance with~~
19 ~~subsection (1) of this section at a later date upon request to the~~
20 ~~Governor by the party for which jurisdiction for implementation and~~
21 ~~enforcement was terminated if such party desires to have its~~
22 ~~jurisdiction reinstated, but no such request shall be honored until~~
23 ~~at least one year after the termination and not more than once per~~
24 ~~year thereafter. The board may reinstate jurisdiction to that party~~
25 ~~only upon a clear showing by such party that it is willing and able~~

1 ~~to fully implement and enforce the plan and any applicable controls.~~
2 ~~Notice that a party's jurisdiction has been reinstated shall be~~
3 ~~provided in the same manner that notice of the earlier termination~~
4 ~~was given.~~

5 (1)(a) The Surface Water and Ground Water Review Board is
6 created. The board shall consist of the Director of Natural Resources
7 or his or her designee, the chairperson of the Game and Parks
8 Commission or his or her designee, and the following members
9 appointed by the Governor: A member of the Nebraska Environmental
10 Trust Board, one representative from each of municipalities, natural
11 resources districts, and irrigators, and a certified hydrologist. The
12 Governor shall appoint three additional members of his or her
13 choosing who shall have a minimum of seven years water-related
14 experience, one from each congressional district. Appointed members
15 shall serve four-year terms not to exceed three terms. The members
16 shall select a chairperson and vice chairperson.

17 (b) A person is not eligible for membership on the board
18 if the decisions to be made by the board would or could cause
19 financial benefit or detriment to the person, a member of his or her
20 immediate family, or a business with which the person is associated,
21 unless such benefit or detriment is indistinguishable from the
22 effects of such action on the public generally or a broad segment of
23 the public. The board shall be subject to the Open Meetings Act.

24 (c) Actions of the board may only be taken by a majority
25 vote of the board.

1 (2) The Legislature finds that all surface water and
2 ground water in Nebraska is a limited beneficial resource for public
3 use and private use by individuals and entities. The Legislature has
4 the responsibility to centralize surface water and ground water
5 management for cohesive and effective state water policy. The Surface
6 Water and Ground Water Review Board shall promote good stewardship of
7 the shared limited resource and balance the municipal, agricultural,
8 and conservation interests of the state. The board shall respect all
9 federal water interests, permits, and federally owned assets across
10 the state. The board shall represent the state in all water-related
11 interstate compacts and decrees.

12 (3) The board shall adopt and promulgate rules and
13 regulations, including a standard of review and procedures for
14 unified management and development of surface water and ground water
15 policy that are consistent with balancing multiple interests in
16 sustained water usage in perpetuity. Standards and review shall be
17 applicable to all water-related decisions, including integrated
18 management plans and interstate compacts and decrees in the State of
19 Nebraska.

20 (4) The board shall review and approve ground water and
21 surface water usage and conservation in all twenty-three water
22 basins. The board shall issue and review all new and existing water
23 well permits. The board shall identify statewide priorities and water
24 management activities to achieve the goals of increased productivity,
25 sustainability, and conservation. The board shall hold public

1 hearings consistent with the Open Meetings Act and shall solicit
2 public opinion. The board shall issue an annual report summarizing
3 Nebraska's yearly water usage and include detailed assessments of
4 consumptive use, water supply, and regional and local aquifer trends
5 by river basin. The board shall review and assess water usage and
6 make an annual report and recommendation to the Legislature on state
7 water priorities, policy, and funding by December 15 of each year.
8 The report shall also include all final decisions issued by the board
9 for the reporting period. The report shall be submitted
10 electronically. The board shall have authority to negotiate and enter
11 contracts with other states. The board may partner with or solicit
12 advice from external entities or academic institutions to the extent
13 such relationship fulfills advancement of water policy initiatives.

14 (5)(a) When the board concludes that the issues have been
15 fully presented and commented upon by all stakeholders in the
16 development of an integrated management plan, decree, or compact,
17 which conclusion shall be made not more than forty-five days after
18 submission by a natural resources district or the Department of
19 Natural Resources, the board shall select the proposals, provisions,
20 or portions of proposals that the board will consider for adoption
21 and shall schedule one or more public hearings to take testimony on
22 the selected proposals. The hearings shall be held within forty-five
23 days after the board's selection of proposals to consider for
24 adoption and shall be within or in reasonable proximity to the area
25 that would be affected by implementation of any of the proposals to

1 be considered at the hearings. Notice of the hearings shall be
2 published as provided in section 46-743. The cost of publishing the
3 notice shall be shared by the department and the affected natural
4 resources districts. All interested persons may appear at the
5 hearings and present testimony or provide other evidence relevant to
6 the issues being considered.

7 (b) Within forty-five days after the final hearing
8 pursuant to subdivision (5)(a) of this section, the board shall by
9 order, as applicable, adopt a basin-wide plan or an integrated
10 management plan for the affected river basin, subbasin, or reach and,
11 in the case of an integrated management plan, shall designate a
12 ground water management area for integrated management or an
13 integrated management subarea for such river basin, subbasin, or
14 reach. An integrated management plan shall be consistent with
15 subsection (2) of section 46-715, and the surface water and ground
16 water controls and any applicable incentive programs adopted as part
17 of that plan shall be consistent with subsection (4) of section
18 46-715. The controls adopted by the board shall not be substantially
19 different from those described in the notice of hearing. The area
20 designated as a ground water management area or an integrated
21 management subarea shall not include any area that was not identified
22 in the notice of the hearing as within the area proposed to be
23 subject to the controls in the plan.

24 (c) The order adopted under this subsection shall be
25 published in the manner prescribed in section 46-744.

1 (d) Surface water controls adopted by the board shall be
2 implemented and enforced by the department. Ground water controls
3 adopted by the board shall be implemented and enforced by the
4 affected natural resources districts. The ruling of the board shall
5 be binding and final unless challenged in a court of jurisdiction.

6 (6) When an integrated management plan is adopted
7 pursuant to section 46-718 as reviewed by the board, the department
8 or a natural resources district responsible in part for
9 implementation and enforcement of an integrated management plan may
10 propose modification of the goals or objectives of that plan, of the
11 area subject to the plan, or of the surface water controls, ground
12 water controls, or incentive programs adopted to implement the plan.

13 (7) The department and the affected natural resources
14 districts may raise objections during a public hearing concerning the
15 implementation or enforcement of previously adopted surface water or
16 ground water controls. The department and the affected natural
17 resources districts shall utilize the procedures in sections 46-715
18 to 46-718 in an attempt to reach agreement on such implementation or
19 enforcement issues. A decision by the board to terminate and reassign
20 jurisdiction of any portion of the plan or controls shall take effect
21 immediately upon that decision. Notice of such reassignment shall be
22 published at least once in one or more newspapers as necessary to
23 provide general circulation in the area affected by such
24 reassignment.

25 Sec. 7. Section 46-720, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 46-720 (1) The Legislature finds that, prior to July 16,
3 2004, actions were taken by the Department of Natural Resources and
4 by one or more natural resources districts pursuant to section
5 46-656.28, as such section existed immediately prior to such date,
6 for the purpose of addressing circumstances that are, after such
7 date, to be addressed in accordance with sections 46-713 to ~~46-719-~~
8 46-718. It is the intent of the Legislature that actions taken
9 pursuant to section 46-656.28, as such section existed immediately
10 prior to July 16, 2004, should not be negated and that transition
11 from the authorities and responsibilities granted by such section to
12 those granted by sections 46-713 to ~~46-719-46-718~~ should occur in as
13 efficient a manner as possible. Such transition shall be therefor
14 governed by subsections (2) through (5) of this section, and all
15 references in such subsections to section 46-656.28 shall be
16 construed to mean section 46-656.28 as such section existed
17 immediately prior to July 16, 2004.

18 (2) If, prior to July 16, 2004, (a) a natural resources
19 district requested pursuant to subsection (1) of section 46-656.28
20 that affected appropriators, affected surface water project sponsors,
21 and the department consult and that studies and a hearing be held but
22 (b) the Director of Natural Resources has not made a preliminary
23 determination relative to that request pursuant to subsection (2) of
24 section 46-656.28, no further action on the district's request shall
25 be required of the department. If under the same circumstances a

1 temporary suspension in the drilling of certain water wells has been
2 imposed by the district pursuant to subsection (16) of section
3 46-656.28 and remains in effect immediately prior to July 16, 2004,
4 such temporary suspension shall remain in effect for thirty days
5 after the department issues its first annual report under section
6 46-713, except that (i) such temporary suspension shall not apply to
7 water wells for which a permit has been obtained pursuant to the
8 Municipal and Rural Domestic Ground Water Transfers Permit Act and
9 (ii) to the extent any such temporary suspension is in effect for all
10 or part of a hydrologically connected area for a river basin,
11 subbasin, or reach designated as overappropriated by the department,
12 such temporary suspension shall remain in effect only until it is
13 superseded by the stays imposed pursuant to subsections (8) and (9)
14 of section 46-714. To the extent that any such temporary suspension
15 applies to a geographic area preliminarily considered by the
16 department to have ground water hydrologically connected to the
17 surface water of a fully appropriated river basin, subbasin, or
18 reach, such temporary suspension shall be superseded by the stays
19 imposed pursuant to subsections (1) and (2) of section 46-714.

20 (3)(a) If prior to July 16, 2004, (i) the director has
21 made a preliminary determination pursuant to subsection (2) of
22 section 46-656.28 that there is reason to believe that the use of
23 hydrologically connected ground water and surface water in a specific
24 geographic area is contributing to or is in the reasonably
25 foreseeable future likely to contribute to any conflict, dispute, or

1 difficulty listed in such subsection, (ii) the director has not made
2 a determination pursuant to subsection (4) of section 46-656.28 that
3 a joint action plan should not be prepared, and (iii) preparation of
4 a joint action plan pursuant to subsections (5) through (9) of such
5 section has not been completed, the geographic area involved shall
6 become subject to sections 46-713 to ~~46-719-46-718~~ on July 16, 2004,
7 and the department need not evaluate such geographic area in its
8 first annual report issued pursuant to section 46-713.

9 (b) For purposes of this subsection and section 46-714
10 and except as otherwise provided in this section, (i) July 16, 2004,
11 shall result in the imposition in any geographic area subject to this
12 subsection of the stays required by subsections (1) and (2) of
13 section 46-714, (ii) such stays shall be imposed in the manner
14 required by such section, and (iii) July 16, 2004, shall be treated
15 as if it were the date of a departmental preliminary determination
16 pursuant to section 46-713 that such area is a geographic area within
17 which ground water and surface water of a fully appropriated river
18 basin, subbasin, or reach are hydrologically connected.
19 Notwithstanding the other provisions of this subsection, if a
20 temporary suspension in the drilling of certain new water wells has
21 previously been imposed by the affected natural resources district,
22 (A) the stays on construction of new water wells and on the increase
23 in ground water irrigated acres shall be limited in geographic extent
24 to only that part of the affected area within which the temporary
25 suspension was in effect unless the director determines that

1 inclusion of additional area is necessary because ground water and
2 surface water are hydrologically connected in such additional area
3 and (B) the stays on construction of certain new water wells shall
4 not apply to a water well constructed in accordance with the terms of
5 a water well construction permit approved by the district prior to
6 July 16, 2004, unless such well was subject to the district's
7 temporary suspension. If, prior to July 16, 2004, the director has
8 held a hearing on a report issued pursuant to subsection (3) of
9 section 46-656.28 but has not yet determined whether a joint action
10 plan should be prepared, no departmental hearing shall be required
11 pursuant to subsection (4) of section 46-714 before a final
12 determination is made about whether the river basin, subbasin, or
13 reach involved is fully appropriated. If, prior to July 16, 2004, the
14 director has determined pursuant to subsection (4) of section
15 46-656.28 that a joint action plan should be prepared, such
16 determination shall have the same effect as a final departmental
17 determination pursuant to subsection (5) of section 46-714 that the
18 affected river basin, subbasin, or reach is fully appropriated and no
19 separate determination to that effect shall be required. If, after
20 July 16, 2004, the department determines that all or part of the area
21 subject to this subsection is in an overappropriated river basin,
22 subbasin, or reach, that portion of the area shall thereafter be
23 subject to the provisions of the Nebraska Ground Water Management and
24 Protection Act applicable to an overappropriated river basin,
25 subbasin, or reach and stays that have previously taken effect in

1 accordance with this subsection shall continue in effect as stays for
2 an overappropriated river basin, subbasin, or reach without
3 additional action or publication of notice by the department. Any
4 temporary suspension in the drilling of certain water wells that has
5 been imposed in the geographic area involved by a natural resources
6 district pursuant to subsection (16) of section 46-656.28 prior to
7 July 16, 2004, shall remain in effect until superseded by the stays
8 imposed pursuant to subsections (1) and (2) of section 46-714.

9 (4) If, prior to July 16, 2004, preparation of a joint
10 action plan has been completed pursuant to subsections (5) through
11 (9) of section 46-656.28 but the plan has not yet been adopted
12 pursuant to subsection (11) of such section, the department need not
13 evaluate the affected geographic area in its first annual report
14 issued pursuant to section 46-713. The department and the affected
15 natural resources district shall review the completed joint action
16 plan for its compliance with sections 46-715 to 46-717. If the joint
17 action plan is determined to be in compliance with sections 46-715 to
18 46-717 or if agreement is reached on the revisions necessary to bring
19 it into such compliance, the department and the district shall adopt
20 the plan and implement the controls as provided in section 46-718. If
21 the joint action plan is determined not to be in compliance with
22 sections 46-715 to 46-717 and agreement on the proposed plan or the
23 proposed controls cannot be reached pursuant to section 46-718,
24 section 46-719 shall apply. Except to the extent that any portion of
25 the affected area is designated as all or part of an overappropriated

1 river basin, subbasin, or reach, any temporary suspension in the
2 drilling of certain water wells imposed in the affected geographic
3 area by a natural resources district pursuant to subsection (16) of
4 section 46-656.28 shall remain in effect until ~~(a) the department and~~
5 ~~the affected district have jointly decided to implement the plan,~~
6 ~~with or without modifications, and controls have been adopted and~~
7 ~~taken effect. or (b) the Interrelated Water Review Board, pursuant to~~
8 ~~section 46-719, has adopted an integrated management plan for the~~
9 ~~affected river basin, subbasin, or reach and the controls adopted by~~
10 ~~the board have taken effect.~~ To the extent that any portion of the
11 affected area is designated as all or part of an overappropriated
12 river basin, subbasin, or reach, any temporary suspension in the
13 drilling of water wells shall be superseded by the stays imposed
14 pursuant to subsections (8) and (9) of section 46-714.

15 (5) If, before July 16, 2004, a joint action plan has
16 been adopted and implemented pursuant to subsections (10) through
17 (12) of section 46-656.28 and is in effect immediately prior to such
18 date, the department need not evaluate the geographic area subject to
19 the plan in the department's first annual report issued pursuant to
20 section 46-713. For purposes of the Nebraska Ground Water Management
21 and Protection Act, (a) the plan adopted shall be considered an
22 integrated management plan adopted pursuant to section 46-718, (b)
23 the management area designated shall be considered an integrated
24 management area or subarea designated pursuant to section 46-718, and
25 (c) the controls adopted shall be considered controls adopted

1 pursuant to section 46-718 and shall remain in effect until amended
2 or repealed pursuant to section 46-718. ~~or 46-719.~~

3 Sec. 8. Original sections 46-703, 46-706, 46-714, 46-715,
4 46-718, 46-719, and 46-720, Reissue Revised Statutes of Nebraska, are
5 repealed.