

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 762

Introduced by Christensen, 44.

Read first time January 09, 2014

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to the Nebraska Ground Water Management and
2 Protection Act; to amend section 46-715, Reissue Revised
3 Statutes of Nebraska; to change provisions relating to
4 the development of integrated management plans; to
5 provide a duty for the Department of Natural Resources;
6 to harmonize provisions; and to repeal the original
7 section.

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

1 Section 1. Section 46-715, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 46-715 (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 reach
8 and the department shall jointly develop an integrated management
9 plan for such river basin, subbasin, or reach. The plan shall be
10 completed, adopted, and take effect within three years after such
11 designation or final determination unless the department and the
12 natural resources districts jointly agree to an extension of not more
13 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 fully
17 appropriated may, jointly with the department, develop an integrated
18 management plan for such river basin, subbasin, or reach located
19 within the district. The district shall notify the department of its
20 intention to develop an integrated management plan which shall be
21 developed and adopted according to sections 46-715 to 46-717 and
22 subsections (1) and (2) of section 46-718. The objective of an
23 integrated management plan under this subdivision is to manage such
24 river basin, subbasin, or reach to achieve and sustain a balance
25 between water uses and water supplies for the long term. If a

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

6 (c) In the process of developing an integrated management
7 plan under this section, the department shall represent the interests
8 of surface water appropriators or designate an individual to do so.

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

1 validity of the conclusions and information upon which the integrated
2 management plan is based, and (f) terms which provide equal
3 allocations of water to surface water appropriators and ground water
4 users or allocations to surface water appropriators equal to the
5 average of the delivered allocations to surface water appropriators
6 from calendar years 2009 to 2011. The plan may also provide for
7 utilization of any applicable incentive programs authorized by law.
8 Nothing in the integrated management plan for a fully appropriated
9 river basin, subbasin, or reach shall require a natural resources
10 district to regulate ground water uses in place at the time of the
11 department's preliminary determination that the river basin,
12 subbasin, or reach is fully appropriated, but a natural resources
13 district may voluntarily adopt such regulations. The applicable
14 natural resources district may decide to include all water users
15 within the district boundary in an integrated management plan.

16 (3) In order to provide a process for economic
17 development opportunities and economic sustainability within a river
18 basin, subbasin, or reach, the integrated management plan shall
19 include clear and transparent procedures to track depletions and
20 gains to streamflows resulting from new, retired, or other changes to
21 uses within the river basin, subbasin, or reach. The procedures
22 shall:

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

25 (b) Include a generally accepted methodology to be

1 utilized to estimate depletions and gains to streamflows, which
2 methodology includes location, amount, and time regarding gains to
3 streamflows as offsets to new uses;

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

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

11 (e) Identify, to the extent feasible, potential water
12 available to mitigate new uses, including, but not limited to, water
13 rights leases, interference agreements, augmentation projects,
14 conjunctive use management, and use retirement;

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

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

25 Nothing in this subsection shall require revision or

1 amendment of an integrated management plan approved on or before
2 August 30, 2009.

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

19 (5)(a) In any river basin, subbasin, or reach that is
20 designated as overappropriated, when the designated area lies within
21 two or more natural resources districts, the department and the
22 affected natural resources districts shall jointly develop a basin-
23 wide plan for the area designated as overappropriated. Such plan
24 shall be developed using the consultation and collaboration process
25 described in subdivision (b) of this subsection, shall be developed

1 concurrently with the development of the integrated management plan
2 required pursuant to subsections (1) through (4) of this section, and
3 shall be designed to achieve, in the incremental manner described in
4 subdivision (d) of this subsection, the goals and objectives
5 described in subsection (2) of this section. The basin-wide plan
6 shall be adopted after hearings by the department and the affected
7 natural resources districts.

8 (b) In any river basin, subbasin, or reach designated as
9 overappropriated and subject to this subsection, the department and
10 each natural resources district encompassing such river basin,
11 subbasin, or reach shall jointly develop an integrated management
12 plan for such river basin, subbasin, or reach pursuant to subsections
13 (1) through (4) of this section. Each integrated management plan for
14 a river basin, subbasin, or reach subject to this subsection shall be
15 consistent with any basin-wide plan developed pursuant to subdivision
16 (a) of this subsection. Such integrated management plan shall be
17 developed after consultation and collaboration with irrigation
18 districts, reclamation districts, public power and irrigation
19 districts, mutual irrigation companies, canal companies, and
20 municipalities that rely on water from within the affected area and
21 that, after being notified of the commencement of the plan
22 development process, indicate in writing their desire to participate
23 in such process. In addition, the department or the affected natural
24 resources districts may include designated representatives of other
25 stakeholders. In the process of developing an integrated management

1 plan under this subsection, the department shall represent the
2 interests of surface water appropriators or designate an individual
3 to do so. If agreement is reached by all parties involved in such
4 consultation and collaboration process, the department and each
5 natural resources district shall adopt the agreed-upon integrated
6 management plan. If agreement cannot be reached by all parties
7 involved, the integrated management plan shall be developed and
8 adopted by the department and the affected natural resources district
9 pursuant to sections 46-715 to 46-718 or by the Interrelated Water
10 Review Board pursuant to section 46-719.

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

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

25 (i) The first incremental goals shall be to address the

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

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

19 (iii) During the ten years following adoption of an
20 integrated management plan developed under this subsection (5) or
21 during the ten years after the adoption of any subsequent increment
22 of the integrated management plan pursuant to subdivision (d)(iv) of
23 this subsection, the department and the affected natural resources
24 district shall conduct a technical analysis of the actions taken in
25 such increment to determine the progress towards meeting the goals

1 and objectives adopted pursuant to subsection (2) of this section.
2 The analysis shall include an examination of (A) available supplies
3 and changes in long-term availability, (B) the effects of
4 conservation practices and natural causes, including, but not limited
5 to, drought, and (C) the effects of the plan on reducing the overall
6 difference between the current and fully appropriated levels of
7 development identified in subdivision (5)(c) of this section. The
8 analysis shall determine whether a subsequent increment is necessary
9 in the integrated management plan to meet the goals and objectives
10 adopted pursuant to subsection (2) of this section and reduce the
11 overall difference between the current and fully appropriated levels
12 of development identified in subdivision (5)(c) of this section;

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

21 (v) If necessary, the steps described in subdivisions (d)
22 (ii) through (iv) of this subsection shall be repeated until the
23 department and the affected natural resources districts agree that
24 the goals and objectives identified pursuant to subsection (2) of
25 this section have been met and the overall difference between the

1 current and fully appropriated levels of development identified in
2 subdivision (5)(c) of this section has been addressed so that the
3 river basin, subbasin, or reach has returned to a fully appropriated
4 condition.

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

15 Sec. 2. Original section 46-715, Reissue Revised Statutes
16 of Nebraska, is repealed.