

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 368

Introduced by Hughes, 44.

Read first time January 16, 2019

Committee: Natural Resources

1 A BILL FOR AN ACT relating to water; to amend sections 2-32,115,
2 46-229.04, 46-703, 46-706, 46-713, 46-714, 46-716, 46-718, 46-720,
3 46-740, 61-218, and 77-3442, Reissue Revised Statutes of Nebraska,
4 and sections 2-969, 2-3225, 46-290, 46-294, 46-715, 46-753, 46-755,
5 and 81-15,175, Revised Statutes Cumulative Supplement, 2018; to
6 eliminate overappropriated river basins, subbasins, and reaches as
7 prescribed; to change provisions relating to integrated management
8 plans; to harmonize provisions; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 2-969, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 2-969 The Riparian Vegetation Management Task Force is created. The
4 Governor shall appoint the members of the task force. The members shall
5 include one surface water project representative from each river basin
6 that has ever been deemed to be fully appropriated pursuant to subsection
7 (4) of section 46-713 or determined to be fully appropriated pursuant to
8 section 46-714 or 46-720 ~~or is designated as overappropriated pursuant to~~
9 ~~section 46-713~~ by the Department of Natural Resources; one surface water
10 project representative from a river basin that has not been deemed to be
11 fully appropriated pursuant to subsection (4) of section 46-713 or
12 determined to be fully appropriated pursuant to section 46-714 or 46-720
13 ~~or is not designated as overappropriated pursuant to section 46-713~~ by
14 the Department of Natural Resources; one representative from the
15 Department of Agriculture, the Department of Environmental Quality, the
16 Department of Natural Resources, the office of the State Forester, the
17 Game and Parks Commission, and the University of Nebraska; three
18 representatives selected from a list of at least ten individuals
19 nominated by the Nebraska Association of Resources Districts; two
20 representatives selected from a list of at least five individuals
21 nominated by the Nebraska Weed Control Association; one riparian
22 landowner from each of the state's congressional districts; and one
23 representative from the Nebraska Environmental Trust. In addition to such
24 members, any member of the Legislature may serve as a nonvoting, ex
25 officio member of the task force at his or her option. For administrative
26 and budgetary purposes only, the task force shall be housed within the
27 Department of Agriculture.

28 Sec. 2. Section 2-3225, Revised Statutes Cumulative Supplement,
29 2018, is amended to read:

30 2-3225 (1)(a) Each district shall have the power and authority to
31 levy a tax of not to exceed four and one-half cents on each one hundred

1 dollars of taxable valuation annually on all of the taxable property
2 within such district unless a higher levy is authorized pursuant to
3 section 77-3444.

4 (b) Each district shall also have the power and authority to levy a
5 tax equal to the dollar amount by which its restricted funds budgeted to
6 administer and implement ground water management activities and
7 integrated management activities under the Nebraska Ground Water
8 Management and Protection Act exceed its restricted funds budgeted to
9 administer and implement ground water management activities and
10 integrated management activities for FY2003-04, not to exceed one cent on
11 each one hundred dollars of taxable valuation annually on all of the
12 taxable property within the district.

13 (c) In addition to the power and authority granted in subdivisions
14 (1)(a) and (b) of this section, each district located in a river basin,
15 subbasin, or reach that has been deemed to be fully appropriated pursuant
16 to subsection (4) of section 46-713 or determined to be fully
17 appropriated pursuant to section 46-714 ~~or designated overappropriated~~
18 ~~pursuant to section 46-713~~ by the Department of Natural Resources shall
19 also have the power and authority to levy a tax equal to the dollar
20 amount by which its restricted funds budgeted to administer and implement
21 ground water management activities and integrated management activities
22 under the Nebraska Ground Water Management and Protection Act exceed its
23 restricted funds budgeted to administer and implement ground water
24 management activities and integrated management activities for FY2005-06,
25 not to exceed three cents on each one hundred dollars of taxable
26 valuation on all of the taxable property within the district for fiscal
27 year 2006-07 and each fiscal year thereafter through fiscal year 2017-18.

28 (d) In addition to the power and authority granted in subdivisions
29 (a) through (c) of this subsection, a district with jurisdiction that
30 includes a river subject to an interstate compact among three or more
31 states and that also includes one or more irrigation districts within the

1 compact river basin may annually levy a tax not to exceed ten cents per
2 one hundred dollars of taxable valuation of all taxable property in the
3 district. The proceeds of such tax may be used for the payment of
4 principal and interest on bonds and refunding bonds issued pursuant to
5 section 2-3226.01. Such levy is not includable in the computation of
6 other limitations upon the district's tax levy.

7 (2) The proceeds of the tax levies authorized in subdivisions (1)(a)
8 through (c) of this section shall be used, together with any other funds
9 which the district may receive from any source, for the operation of the
10 district. When adopted by the board, the tax levies authorized in
11 subdivisions (1)(a) through (d) of this section shall be certified by the
12 secretary to the county clerk of each county which in whole or in part is
13 included within the district. Such levy shall be handled by the counties
14 in the same manner as other levies, and proceeds shall be remitted to the
15 district treasurer. Such levy shall not be considered a part of the
16 general county levy and shall not be considered in connection with any
17 limitation on levies of such counties.

18 Sec. 3. Section 2-32,115, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 2-32,115 (1) Whenever a natural resources district imposes an
21 immediate temporary stay for one hundred eighty days in accordance with
22 subsection (2) of section 46-707, the department may place an immediate
23 temporary stay without prior notice or hearing on the issuance of new
24 surface water natural-flow appropriations for one hundred eighty days in
25 the area, river basin, subbasin, or reach of the same area included in
26 the natural resources district's temporary stay, except that the
27 department shall not place a temporary stay on new surface water natural-
28 flow appropriations that are necessary to alleviate an emergency
29 situation involving the provision of water for human consumption or
30 public health or safety.

31 (2) The department shall hold at least one public hearing on the

1 matter within the affected area within the period of the one-hundred-
2 eighty-day temporary stay, with the notice of hearing given as provided
3 in section 46-743, prior to making a determination as to imposing a stay
4 or conditions in accordance with section 46-234 and subsection ~~(8)~~ ~~(11)~~
5 of section 46-714. The department may hold the public hearing in
6 conjunction with the natural resources district's hearing.

7 (3) Within forty-five days after a hearing pursuant to this section,
8 the department shall decide whether to exempt from the immediate
9 temporary stay the issuance of appropriations for which applications were
10 pending prior to the declaration commencing the stay but for which the
11 application was not approved prior to such date, to continue the stay, or
12 to allow the issuance of new surface water appropriations.

13 Sec. 4. Section 46-229.04, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 46-229.04 (1) At a hearing held pursuant to section 46-229.03, the
16 verified field investigation report of an employee of the department, or
17 such other report or information that is relied upon by the department to
18 reach the preliminary determination of nonuse, shall be prima facie
19 evidence for the forfeiture and annulment of such water appropriation. If
20 no person appears at the hearing, such water appropriation or unused part
21 thereof shall be declared forfeited and annulled. If an interested person
22 appears and contests the same, the department shall hear evidence, and if
23 it appears that such water has not been put to a beneficial use or has
24 ceased to be used for such purpose for more than five consecutive years,
25 the same shall be declared canceled and annulled unless the department
26 finds that (a) there has been sufficient cause for such nonuse as
27 provided for in subsection (2), (3), or (4) of this section or (b)
28 subsection (5) or (6) of this section applies.

29 (2) Sufficient cause for nonuse shall be deemed to exist for up to
30 thirty consecutive years if such nonuse was caused by the unavailability
31 of water for that use. For a river basin, subbasin, or reach that has

1 been deemed to be fully appropriated ~~designated as overappropriated~~
2 pursuant to subsection (4) of section 46-713 or determined by the
3 department to be fully appropriated pursuant to section 46-714, the
4 period of time within which sufficient cause for nonuse because of the
5 unavailability of water may be deemed to exist may be extended beyond
6 thirty years by the department upon petition therefor by the owner of the
7 appropriation if the department determines that an integrated management
8 plan being implemented in the river basin, subbasin, or reach involved is
9 likely to result in restoration of a usable water supply for the
10 appropriation.

11 (3) Sufficient cause for nonuse shall be deemed to exist
12 indefinitely if such nonuse was the result of one or more of the
13 following:

14 (a) For any tract of land under separate ownership, the available
15 supply was used but on only part of the land under the appropriation
16 because of an inadequate water supply;

17 (b) The appropriation is a storage appropriation and there was an
18 inadequate water supply to provide the water for the storage
19 appropriation or less than the full amount of the storage appropriation
20 was needed to keep the reservoir full; or

21 (c) The appropriation is a storage-use appropriation and there was
22 an inadequate water supply to provide the water for the appropriation or
23 use of the storage water was unnecessary because of climatic conditions.

24 (4) Sufficient cause for nonuse shall be deemed to exist for up to
25 fifteen consecutive years if such nonuse was a result of one or more of
26 the following:

27 (a) Federal, state, or local laws, rules, or regulations temporarily
28 prevented or restricted such use;

29 (b) Use of the water was unnecessary because of climatic conditions;

30 (c) Circumstances were such that a prudent person, following the
31 principles of good husbandry, would not have been expected to use the

1 water;

2 (d) The works, diversions, or other facilities essential to use the
3 water were destroyed by a cause not within the control of the owner of
4 the appropriation and good faith efforts to repair or replace the works,
5 diversions, or facilities have been and are being made;

6 (e) The owner of the appropriation was in active involuntary service
7 in the armed forces of the United States or was in active voluntary
8 service during a time of crisis;

9 (f) Legal proceedings prevented or restricted use of the water; or

10 (g) The land subject to the appropriation is under an acreage
11 reserve program or production quota or is otherwise withdrawn from use as
12 required for participation in any federal or state program or such land
13 previously was under such a program but currently is not under such a
14 program and there have been not more than five consecutive years of
15 nonuse on that land since that land was last under that program.

16 The department may specify by rule and regulation other
17 circumstances that shall be deemed to constitute sufficient cause for
18 nonuse for up to fifteen years.

19 (5) When an appropriation is held in the name of an irrigation
20 district, a reclamation district, a public power and irrigation district,
21 a mutual irrigation company or canal company, or the United States Bureau
22 of Reclamation and the director determines that water under that
23 appropriation has not been used on a specific parcel of land for more
24 than five years and that no sufficient cause for such nonuse exists, the
25 right to use water under that appropriation on that parcel shall be
26 terminated and notice of the termination shall be posted on the
27 department's web site and shall be given in the manner provided in
28 subsection (2), (3), or (4) of section 46-229.03. The district or company
29 holding such right shall have five years after the determination, or five
30 years after an order of cancellation issued by the department following
31 the filing of a voluntary relinquishment of the water appropriation that

1 has been signed by the landowner and the appropriator of record, to
2 assign the right to use that portion of the appropriation to other land
3 within the district or the area served by the company, to file an
4 application for a transfer in accordance with section 46-290, or to
5 transfer the right in accordance with sections 46-2,127 to 46-2,129. The
6 department shall issue its order of cancellation within sixty days after
7 receipt of the voluntary relinquishment unless the relinquishment is
8 conditioned by the landowner upon an action of a governmental agency. If
9 the relinquishment contains such a provision, the department shall issue
10 its order of cancellation within sixty days after receipt of notification
11 that such action has been completed. The department shall be notified of
12 any such assignment within thirty days after such assignment. If the
13 district or company does not assign the right to use that portion of the
14 appropriation to other land, does not file an application for a transfer
15 within the five-year period, or does not notify the department within
16 thirty days after any such assignment, that portion of the appropriation
17 shall be canceled without further proceedings by the department and the
18 district or company involved shall be so notified by the department.
19 During the time within which assignment of a portion of an appropriation
20 is pending, the allowable diversion rate for the appropriation involved
21 shall be reduced, as necessary, to avoid inconsistency with the rate
22 allowed by section 46-231 or with any greater rate previously approved
23 for such appropriation by the director in accordance with section
24 46-229.06.

25 (6) When it is determined by the director that an appropriation, for
26 which the location of use has been temporarily transferred in accordance
27 with sections 46-290 to 46-294, has not been used at the new location for
28 more than five years and that no sufficient cause for such nonuse exists,
29 the right to use that appropriation at the temporary location of use
30 shall be terminated. Notice of that termination shall be posted on the
31 department's web site and shall be given in the manner provided in

1 subsection (2), (3), or (4) of section 46-229.03. The right to reinitiate
2 use of that appropriation at the location of use prior to the temporary
3 transfer shall continue to exist for five years after the director's
4 determination, but if such use is not reinitiated at that location within
5 such five-year period, the appropriation shall be subject to cancellation
6 in accordance with sections 46-229 to 46-229.04.

7 (7) If at the time of a hearing conducted in accordance with
8 subsection (1) of this section there is an application for incidental or
9 intentional underground water storage pending before the department and
10 filed by the owner of the appropriation, the proceedings shall be
11 consolidated.

12 Sec. 5. Section 46-290, Revised Statutes Cumulative Supplement,
13 2018, is amended to read:

14 46-290 (1)(a) Except as provided in this section and sections
15 46-2,120 to 46-2,130, any person having a permit to appropriate water for
16 beneficial purposes issued pursuant to sections 46-233 to 46-235,
17 46-240.01, 46-241, 46-242, or 46-637 and who desires (i) to transfer the
18 use of such appropriation to a location other than the location specified
19 in the permit, (ii) to change that appropriation to a different type of
20 appropriation as provided in subsection (3) of this section, or (iii) to
21 change the purpose for which the water is to be used under a natural-
22 flow, storage, or storage-use appropriation to a purpose not at that time
23 permitted under the appropriation shall apply for approval of such
24 transfer or change to the Department of Natural Resources.

25 (b) The application for such approval shall contain (i) the number
26 assigned to such appropriation by the department, (ii) the name and
27 address of the present holder of the appropriation, (iii) if applicable,
28 the name and address of the person or entity to whom the appropriation
29 would be transferred or who will be the user of record after a change in
30 the location of use, type of appropriation, or purpose of use under the
31 appropriation, (iv) the legal description of the land to which the

1 appropriation is now appurtenant, (v) the name and address of each holder
2 of a mortgage, trust deed, or other equivalent consensual security
3 interest against the tract or tracts of land to which the appropriation
4 is now appurtenant, (vi) if applicable, the legal description of the land
5 to which the appropriation is proposed to be transferred, (vii) if a
6 transfer is proposed, whether other sources of water are available at the
7 original location of use and whether any provisions have been made to
8 prevent either use of a new source of water at the original location or
9 increased use of water from any existing source at that location, (viii)
10 if applicable, the legal descriptions of the beginning and end of the
11 stream reach to which the appropriation is proposed to be transferred for
12 the purpose of augmenting the flows in that stream reach, (ix) if a
13 proposed transfer is for the purpose of increasing the quantity of water
14 available for use pursuant to another appropriation, the number assigned
15 to such other appropriation by the department, (x) the purpose of the
16 current use, (xi) if a change in purpose of use is proposed, the proposed
17 purpose of use, (xii) if a change in the type of appropriation is
18 proposed, the type of appropriation to which a change is desired, (xiii)
19 if a proposed transfer or change is to be temporary in nature, the
20 duration of the proposed transfer or change, and (xiv) such other
21 information as the department by rule and regulation requires.

22 (2) If a proposed transfer or change is to be temporary in nature, a
23 copy of the proposed agreement between the current appropriator and the
24 person who is to be responsible for use of water under the appropriation
25 while the transfer or change is in effect shall be submitted at the same
26 time as the application.

27 (3) Regardless of whether a transfer or a change in the purpose of
28 use is involved, the following changes in type of appropriation, if found
29 by the Director of Natural Resources to be consistent with section
30 46-294, may be approved subject to the following:

31 (a) A natural-flow appropriation for direct out-of-stream use may be

1 changed to a natural-flow appropriation for aboveground reservoir storage
2 or for intentional underground water storage;

3 (b) A natural-flow appropriation for intentional underground water
4 storage may be changed to a natural-flow appropriation for direct out-of-
5 stream use or for aboveground reservoir storage;

6 (c) A natural-flow appropriation for direct out-of-stream use, for
7 aboveground reservoir storage, or for intentional underground water
8 storage may be changed to an instream appropriation subject to sections
9 46-2,107 to 46-2,119 if the director determines that the resulting
10 instream appropriation would be consistent with subdivisions (2), (3),
11 and (4) of section 46-2,115;

12 (d) A natural-flow appropriation for direct out-of-stream use, for
13 aboveground reservoir storage, or for intentional underground water
14 storage may be changed to an appropriation for induced ground water
15 recharge if the director determines that the resulting appropriation for
16 induced ground water recharge would be consistent with subdivisions (2)
17 (a)(i) and (ii) of section 46-235;

18 (e) An appropriation for the manufacturing of hydropower at a
19 facility located on a natural stream channel may be permanently changed
20 in full to an instream basin-management appropriation to be held jointly
21 by the Game and Parks Commission and any natural resources district or
22 combination of natural resources districts. The beneficial use of such
23 change is to maintain the streamflow for fish, wildlife, and recreation
24 that was available from the manufacturing of hydropower prior to the
25 change. Such changed appropriation may also be utilized by the owners of
26 the appropriation to assist in the implementation of an approved
27 integrated management plan or plans developed pursuant to sections 46-714
28 to 46-718 for each natural resources district within the river basin. Any
29 such change under this section shall be subject to review under sections
30 46-229 to 46-229.06 to ensure that the beneficial uses of the change of
31 use are still being achieved; and

1 (f) The incidental underground water storage portion, whether or not
2 previously quantified, of a natural-flow or storage-use appropriation may
3 be separated from the direct-use portion of the appropriation and may be
4 changed to a natural-flow or storage-use appropriation for intentional
5 underground water storage at the same location if the historic
6 consumptive use of the direct-use portion of the appropriation is
7 transferred to another location or is terminated, but such a separation
8 and change may be approved only if, after the separation and change, (i)
9 the total permissible diversion under the appropriation will not
10 increase, (ii) the projected consequences of the separation and change
11 are consistent with the provisions of any integrated management plan
12 adopted in accordance with section 46-718 or 46-719 for the geographic
13 area involved, and (iii) if the location of the proposed intentional
14 underground water storage is in a river basin, subbasin, or reach deemed
15 to be fully appropriated ~~designated as overappropriated~~ in accordance
16 with subsection (4) of section 46-713, the integrated management plan for
17 that river basin, subbasin, or reach has gone into effect, and that plan
18 requires that the amount of the intentionally stored water that is
19 consumed after the change will be no greater than the amount of the
20 incidentally stored water that was consumed prior to the change. Approval
21 of a separation and change pursuant to this subdivision (f) shall not
22 exempt any consumptive use associated with the incidental recharge right
23 from any reduction in water use required by an integrated management plan
24 for a river basin, subbasin, or reach deemed to be fully appropriated
25 ~~designated as overappropriated~~ in accordance with subsection (4) of
26 section 46-713.

27 Whenever any change in type of appropriation is approved pursuant to
28 this subsection and as long as that change remains in effect, the
29 appropriation shall be subject to the statutes, rules, and regulations
30 that apply to the type of appropriation to which the change has been
31 made.

1 (4) The Legislature finds that induced ground water recharge
2 appropriations issued pursuant to sections 46-233 and 46-235 and instream
3 appropriations issued pursuant to section 46-2,115 are specific to the
4 location identified in the appropriation. Neither type of appropriation
5 shall be transferred to a different location, changed to a different type
6 of appropriation, or changed to permit a different purpose of use.

7 (5) In addition to any other purposes for which transfers and
8 changes may be approved, such transfers and changes may be approved if
9 the purpose is (a) to maintain or augment the flow in a specific stream
10 reach for any instream use that the department has determined, through
11 rules and regulations, to be a beneficial use or (b) to increase the
12 frequency that a diversion rate or rate of flow specified in another
13 valid appropriation is achieved.

14 For any transfer or change approved pursuant to subdivision (a) of
15 this subsection, the department shall be provided with a report at least
16 every five years while such transfer or change is in effect. The purpose
17 of such report shall be to indicate whether the beneficial instream use
18 for which the flow is maintained or augmented continues to exist. If the
19 report indicates that it does not or if no report is filed within sixty
20 days after the department's notice to the appropriator that the deadline
21 for filing the report has passed, the department may cancel its approval
22 of the transfer or change and such appropriation shall revert to the same
23 location of use, type of appropriation, and purpose of use as prior to
24 such approval.

25 (6) A quantified or unquantified appropriation for incidental
26 underground water storage may be transferred to a new location along with
27 the direct-use appropriation with which it is recognized if the director
28 finds such transfer to be consistent with section 46-294 and determines
29 that the geologic and other relevant conditions at the new location are
30 such that incidental underground water storage will occur at the new
31 location. The director may request such information from the applicant as

1 is needed to make such determination and may modify any such quantified
2 appropriation for incidental underground water storage, if necessary, to
3 reflect the geologic and other conditions at the new location.

4 (7) Unless an incidental underground water storage appropriation is
5 changed as authorized by subdivision (3)(f) of this section or is
6 transferred as authorized by subsection (6) of this section or subsection
7 (1) of section 46-291, such appropriation shall be canceled or modified,
8 as appropriate, by the director to reflect any reduction in water that
9 will be stored underground as the result of a transfer or change of the
10 direct-use appropriation with which the incidental underground water
11 storage was recognized prior to the transfer or change.

12 (8) Any appropriation for manufacturing of hydropower changed under
13 subdivision (3)(e) of this section shall maintain the priority date and
14 preference category of the original manufacturing appropriation and shall
15 be subject to condemnation and subordination pursuant to sections 70-668
16 and 70-669. Any person holding a subordination agreement that was
17 established prior to such change of appropriation shall be entitled to
18 enter into a new subordination agreement for terms consistent with the
19 original subordination agreement at no additional cost. Any person having
20 obtained a condemnation award that was established prior to such change
21 of appropriation shall be entitled to the same benefits created by such
22 award, and any obligations created by such award shall become the
23 obligations of the new owner of the appropriation changed under this
24 section.

25 Sec. 6. Section 46-294, Revised Statutes Cumulative Supplement,
26 2018, is amended to read:

27 46-294 (1) Except for applications approved in accordance with
28 subsection (1) of section 46-291, the Director of Natural Resources shall
29 approve an application filed pursuant to section 46-290 only if the
30 application and the proposed transfer or change meet the following
31 requirements:

1 (a) The application is complete and all other information requested
2 pursuant to section 46-293 has been provided;

3 (b) The proposed use of water after the transfer or change will be a
4 beneficial use of water;

5 (c)(i) Any requested transfer in the location of use is within the
6 same river basin as defined in section 46-288 or (ii) the river basin
7 from which the appropriation is to be transferred is tributary to the
8 river basin to which the appropriation is to be transferred;

9 (d) Except as otherwise provided in subsection (4) of this section,
10 the proposed transfer or change, alone or when combined with any new or
11 increased use of any other source of water at the original location or
12 within the same irrigation district, reclamation district, public power
13 and irrigation district, or mutual irrigation or canal company for the
14 original or other purposes, will not diminish the supply of water
15 available for or otherwise adversely affect any other water appropriator
16 and will not significantly adversely affect any riparian water user who
17 files an objection in writing pursuant to section 46-291;

18 (e) The quantity of water that is transferred for diversion or other
19 use at the new location will not exceed the historic consumptive use
20 under the appropriation or portion thereof being transferred, except that
21 this subdivision does not apply to (i) a transfer in the location of use
22 if both the current use and the proposed use are for irrigation, the
23 number of acres to be irrigated will not increase after the transfer, and
24 the location of the diversion from the stream will not change or (ii) a
25 transfer or change in the purpose of use of a surface water irrigation
26 appropriation as provided for in subsection (3), (5), or (6) of section
27 46-290 if the transfer or change in purpose will not diminish the supply
28 of water available or otherwise adversely affect any other water
29 appropriator, adversely affect Nebraska's ability to meet its obligations
30 under a multistate agreement, or result in administration of the prior
31 appropriation system by the Department of Natural Resources, which would

1 not have otherwise occurred;

2 (f) The appropriation, prior to the transfer or change, is not
3 subject to termination or cancellation pursuant to sections 46-229 to
4 46-229.04;

5 (g) If a proposed transfer or change is of an appropriation that has
6 been used for irrigation and is in the name of an irrigation district,
7 reclamation district, public power and irrigation district, or mutual
8 irrigation or canal company or is dependent upon any such district's or
9 company's facilities for water delivery, such district or company has
10 approved the transfer or change;

11 (h) If the proposed transfer or change is of a storage-use
12 appropriation and if the owner of that appropriation is different from
13 the owner of the associated storage appropriation, the owner of the
14 storage appropriation has approved the transfer or change;

15 (i) If the proposed transfer or change is to be permanent, either
16 (i) the purpose for which the water is to be used before the transfer or
17 change is in the same preference category established by section 46-204
18 as the purpose for which the water is to be used after the transfer or
19 change or (ii) the purpose for which the water is to be used before the
20 transfer or change and the purpose for which the water is to be used
21 after the transfer or change are both purposes for which no preferences
22 are established by section 46-204;

23 (j) If the proposed transfer or change is to be temporary, it will
24 be for a duration of no less than one year and, except as provided in
25 section 46-294.02, no more than thirty years;

26 (k) The transfer or change will not be inconsistent with any
27 applicable state or federal law and will not jeopardize the state's
28 compliance with any applicable interstate water compact or decree or
29 cause difficulty in fulfilling the provisions of any other formal state
30 contract or agreement; and

31 (l) The proposed transfer or change is in the public interest. The

1 director's considerations relative to the public interest shall include,
2 but not be limited to, (i) the economic, social, and environmental
3 impacts of the proposed transfer or change and (ii) whether and under
4 what conditions other sources of water are available for the uses to be
5 made of the appropriation after the proposed transfer or change. The
6 Department of Natural Resources shall adopt and promulgate rules and
7 regulations to govern the director's determination of whether a proposed
8 transfer or change is in the public interest.

9 (2) The applicant has the burden of proving that the proposed
10 transfer or change will comply with subdivisions (1)(a) through (1) of
11 this section, except that (a) the burden is on a riparian user to
12 demonstrate his or her riparian status and to demonstrate a significant
13 adverse effect on his or her use in order to prevent approval of an
14 application and (b) if both the current use and the proposed use after a
15 transfer are for irrigation, the number of acres to be irrigated will not
16 increase after the transfer, and the location of the diversion from the
17 stream will not change, there is a rebuttable presumption that the
18 transfer will be consistent with subdivision (1)(d) of this section.

19 (3) In approving an application, the director may impose any
20 reasonable conditions deemed necessary to protect the public interest, to
21 ensure consistency with any of the other criteria in subsection (1) of
22 this section, or to provide the department with information needed to
23 properly and efficiently administer the appropriation while the transfer
24 or change remains in effect. If necessary to prevent diminution of supply
25 for any other appropriator, the conditions imposed by the director shall
26 require that historic return flows be maintained or replaced in quantity,
27 timing, and location. After approval of any such transfer or change, the
28 appropriation shall be subject to all water use restrictions and
29 requirements in effect at any new location of use and, if applicable, at
30 any new diversion location. An appropriation for which a transfer or
31 change has been approved shall retain the same priority date as that of

1 the original appropriation. If an approved transfer or change is
2 temporary, the location of use, purpose of use, or type of appropriation
3 shall revert to the location of use, purpose of use, or type of
4 appropriation prior to the transfer or change.

5 (4) In approving an application for a transfer, the director may
6 also authorize the overlying of water appropriations on the same lands,
7 except that if any such overlying of appropriations would result in
8 either the authorized diversion rate or the authorized aggregate annual
9 quantity that could be diverted to be greater than is otherwise permitted
10 by section 46-231, the director shall limit the total diversion rate or
11 aggregate annual quantity for the appropriations overlain to the rate or
12 quantity that he or she determines is necessary, in the exercise of good
13 husbandry, for the production of crops on the land involved. The director
14 may also authorize a greater number of acres to be irrigated if the
15 amount and rate of water approved under the original appropriation is not
16 increased by the change of location. An increase in the number of acres
17 to be irrigated shall be approved only if (a) such an increase will not
18 diminish the supply of water available to or otherwise adversely affect
19 another water appropriator or (b) the transfer would not adversely affect
20 the water supply for any river basin, subbasin, or reach that has been
21 ~~deemed to be fully appropriated designated as overappropriated~~ pursuant
22 to subsection (4) of section 46-713 or determined to be fully
23 appropriated pursuant to section 46-714 and (i) the number of acres
24 authorized under the appropriation when originally approved has not been
25 increased previously, (ii) the increase in the number of acres irrigated
26 will not exceed five percent of the number of acres being irrigated under
27 the permit before the proposed transfer or a total of ten acres,
28 whichever acreage is less, and (iii) all the use will be either on the
29 quarter section to which the appropriation was appurtenant before the
30 transfer or on an adjacent quarter section.

31 Sec. 7. Section 46-703, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 46-703 The Legislature further finds:

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

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

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

20 (4) The Legislature recognizes that ground water use or surface
21 water use in one natural resources district may have adverse affects on
22 water supplies in another district or in an adjoining state. The
23 Legislature intends and expects that each natural resources district
24 within which water use is causing external impacts will accept
25 responsibility for ground water management in accordance with the
26 Nebraska Ground Water Management and Protection Act in the same manner
27 and to the same extent as if the impacts were contained within that
28 district;

29 (5) The Department of Natural Resources is responsible for
30 regulation of surface water resources and local surface water project
31 sponsors are responsible for much of the structured irrigation utilizing

1 surface water supplies, and these entities should be responsible for
2 regulation of surface water related activities which contribute to
3 conflicts between ground water users and surface water appropriators or
4 to water supply shortages in fully appropriated ~~or overappropriated~~ river
5 basins, subbasins, or reaches;

6 (6) All involved natural resources districts, the department, and
7 surface water project sponsors should cooperate and collaborate on the
8 identification and implementation of management solutions to conflicts
9 between ground water users and surface water appropriators or to water
10 supply shortages in fully appropriated ~~or overappropriated~~ river basins,
11 subbasins, and reaches; and

12 (7) An Interrelated Water Review Board is needed to resolve any
13 conflicts between the department and the involved natural resources
14 districts concerning the content, implementation, or enforcement of
15 integrated management plans for fully appropriated ~~and overappropriated~~
16 river basins, subbasins, and reaches.

17 Sec. 8. Section 46-706, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 46-706 For purposes of the Municipal and Rural Domestic Ground Water
20 Transfers Permit Act, the Nebraska Ground Water Management and Protection
21 Act, and sections 46-601 to 46-613.02, 46-636, 46-637, and 46-651 to
22 46-655, unless the context otherwise requires:

23 (1) Person means a natural person, a partnership, a limited
24 liability company, an association, a corporation, a municipality, an
25 irrigation district, an agency or a political subdivision of the state,
26 or a department, an agency, or a bureau of the United States;

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

29 (3) Contamination or contamination of ground water means nitrate
30 nitrogen or other material which enters the ground water due to action of
31 any person and causes degradation of the quality of ground water

1 sufficient to make such ground water unsuitable for present or reasonably
2 foreseeable beneficial uses;

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

5 (5) Illegal water well means (a) any water well operated or
6 constructed without or in violation of a permit required by the Nebraska
7 Ground Water Management and Protection Act, (b) any water well not in
8 compliance with rules and regulations adopted and promulgated pursuant to
9 the act, (c) any water well not properly registered in accordance with
10 sections 46-602 to 46-604, or (d) any water well not in compliance with
11 any other applicable laws of the State of Nebraska or with rules and
12 regulations adopted and promulgated pursuant to such laws;

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

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

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

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

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

30 (11) Acre-inch means the amount of water necessary to cover an acre
31 of land one inch deep;

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

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

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

22 (15) Allocation, as it relates to water use for irrigation purposes,
23 means the allotment of a specified total number of acre-inches of
24 irrigation water per irrigated acre per year or an average number of
25 acre-inches of irrigation water per irrigated acre over any reasonable
26 period of time;

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

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

30 (18) Surface water project sponsor means an irrigation district
31 created pursuant to Chapter 46, article 1, a reclamation district created

1 pursuant to Chapter 46, article 5, or a public power and irrigation
2 district created pursuant to Chapter 70, article 6;

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

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

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

11 (22) Emergency situation means any set of circumstances that
12 requires the use of water from any source that might otherwise be
13 regulated or prohibited and the agency, district, or organization
14 responsible for regulating water use from such source reasonably and in
15 good faith believes that such use is necessary to protect the public
16 health, safety, and welfare, including, if applicable, compliance with
17 federal or state water quality standards;

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

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

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

1 (26) Order, except as otherwise specifically provided, includes any
2 order required by the Nebraska Ground Water Management and Protection
3 Act, by rule or regulation, or by a decision adopted by a district by
4 vote of the board of directors of the district taken at any regularly
5 scheduled or specially scheduled meeting of the board;

6 (27) Overall difference between the current and fully appropriated
7 levels of development means the extent to which existing uses of
8 hydrologically connected surface water and ground water and conservation
9 activities result in the water supply available for purposes identified
10 in subsection (3) of section 46-713 to be less than the water supply
11 available if the river basin, subbasin, or reach had been determined to
12 be fully appropriated in accordance with section 46-714;

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

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

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

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

27 Sec. 9. Section 46-713, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 46-713 (1)(a) By January 1 of each year beginning in 2006 and except
30 as otherwise provided in this section and section 46-720, the Department
31 of Natural Resources shall complete an evaluation of the expected long-

1 term availability of hydrologically connected water supplies for both
2 existing and new surface water uses and existing and new ground water
3 uses in each of the state's river basins and shall issue a report that
4 describes the results of the evaluation. For purposes of the evaluation
5 and the report, a river basin may be divided into two or more subbasins
6 or reaches. A river basin, subbasin, or reach for which an integrated
7 management plan has been or is being developed pursuant to sections
8 46-715 to 46-717 or pursuant to section 46-719 shall not be evaluated
9 unless it is being reevaluated as provided in subsection (2) of this
10 section. For each river basin, subbasin, or reach evaluated, the report
11 shall describe (i) the nature and extent of use of both surface water and
12 ground water in each river basin, subbasin, or reach, (ii) the geographic
13 area within which the department preliminarily considers surface water
14 and ground water to be hydrologically connected and the criteria used for
15 that determination, and (iii) the extent to which the then-current uses
16 affect available near-term and long-term water supplies. ~~River basins,~~
17 ~~subbasins, and reaches designated as overappropriated in accordance with~~
18 ~~subsection (4) of this section shall not be evaluated by the department.~~
19 The department is not required to perform an annual evaluation for a
20 river basin, subbasin, or reach during the four years following a status
21 change in such river basin, subbasin, or reach under subsection (9) ~~(12)~~
22 of section 46-714.

23 (b) Based on the information reviewed in the evaluation process, the
24 department shall arrive at a preliminary conclusion for each river basin,
25 subbasin, and reach evaluated as to whether such river basin, subbasin,
26 or reach presently is fully appropriated without the initiation of
27 additional uses. The department shall also determine if and how such
28 preliminary conclusion would change if no additional legal constraints
29 were imposed on future development of hydrologically connected surface
30 water and ground water and reasonable projections are made about the
31 extent and location of future development in such river basin, subbasin,

1 or reach.

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

10 (d) In preparing the report, the department shall rely on the best
11 scientific data, information, and methodologies readily available to
12 ensure that the conclusions and results contained in the report are
13 reliable. In its report, the department shall provide sufficient
14 documentation to allow these data, information, methodologies, and
15 conclusions to be independently replicated and assessed. Upon request by
16 the department, state agencies, natural resources districts, irrigation
17 districts, reclamation districts, public power and irrigation districts,
18 mutual irrigation companies, canal companies, municipalities, and other
19 water users and stakeholders shall provide relevant data and information
20 in their possession. The Department of Natural Resources shall specify by
21 rule and regulation the types of scientific data and other information
22 that will be considered for making the preliminary determinations
23 required by this section.

24 (2)(a) The department shall complete a reevaluation of a river
25 basin, subbasin, or reach for which an integrated management plan has
26 been or is being prepared if the department has reason to believe that a
27 reevaluation might lead to a different determination about whether such
28 river basin, subbasin, or reach is fully appropriated—~~or~~
29 ~~overappropriated~~. A decision to reevaluate may be reached by the
30 department on its own or in response to a petition filed with the
31 department by any interested person. To be considered sufficient to

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

17 (b) If the reevaluation results in a different determination by the
18 department, then (i) the department shall notify, by certified mail, the
19 affected natural resources districts and any irrigation district, public
20 power and irrigation district, mutual irrigation company, canal company,
21 or municipality that relies on water from the affected river basin,
22 subbasin, or reach of the preliminary change in the determination and
23 (ii) the department shall hold one or more public hearings not more than
24 ninety days after the publication of the notice required in subdivision
25 (b)(i) of this subsection. Notice of the hearings shall be provided in
26 the same manner as the notice required in subsection (1) of section
27 46-714. Any interested person may appear at the hearing and present
28 written or oral testimony and evidence concerning the appropriation
29 status of the river basin, subbasin, or reach.

30 (c) Within thirty days after the final hearing under subdivision (b)
31 of this subsection, the department shall notify the appropriate natural

1 resources districts of the department's final determination with respect
2 to the appropriation status of the river basin, subbasin, or reach.

3 (3) A river basin, subbasin, or reach shall be deemed fully
4 appropriated if the department determines based upon its evaluation
5 conducted pursuant to subsection (1) of this section and information
6 presented at the hearing pursuant to subsection (4) of section 46-714
7 that then-current uses of hydrologically connected surface water and
8 ground water in the river basin, subbasin, or reach cause or will in the
9 reasonably foreseeable future cause (a) the surface water supply to be
10 insufficient to sustain over the long term the beneficial or useful
11 purposes for which existing natural-flow or storage appropriations were
12 granted and the beneficial or useful purposes for which, at the time of
13 approval, any existing instream appropriation was granted, (b) the
14 streamflow to be insufficient to sustain over the long term the
15 beneficial uses from wells constructed in aquifers dependent on recharge
16 from the river or stream involved, or (c) reduction in the flow of a
17 river or stream sufficient to cause noncompliance by Nebraska with an
18 interstate compact or decree, other formal state contract or agreement,
19 or applicable state or federal laws.

20 ~~(4) (a) A river basin, subbasin, or reach that was shall be~~
21 ~~deemed overappropriated prior to the effective date of this act shall be~~
22 ~~deemed fully appropriated on and after such date if, on July 16, 2004,~~
23 ~~the river basin, subbasin, or reach is subject to an interstate~~
24 ~~cooperative agreement among three or more states and if, prior to such~~
25 ~~date, the department has declared a moratorium on the issuance of new~~
26 ~~surface water appropriations in such river basin, subbasin, or reach and~~
27 ~~has requested each natural resources district with jurisdiction in the~~
28 ~~affected area in such river basin, subbasin, or reach either (i) to close~~
29 ~~or to continue in effect a previously adopted closure of all or part of~~
30 ~~such river basin, subbasin, or reach to the issuance of additional water~~
31 ~~well permits in accordance with subdivision (1)(k) of section 46-656.25~~

1 ~~as such section existed prior to July 16, 2004, or (ii) to temporarily~~
2 ~~suspend or to continue in effect a temporary suspension, previously~~
3 ~~adopted pursuant to section 46-656.28 as such section existed prior to~~
4 ~~July 16, 2004, on the drilling of new water wells in all or part of such~~
5 ~~river basin, subbasin, or reach.~~

6 ~~(b) Within sixty days after July 16, 2004, the department shall~~
7 ~~designate which river basins, subbasins, or reaches are overappropriated.~~
8 ~~The designation shall include a description of the geographic area within~~
9 ~~which the department has determined that surface water and ground water~~
10 ~~are hydrologically connected and the criteria used to make such~~
11 ~~determination.~~

12 Sec. 10. Section 46-714, Reissue Revised Statutes of Nebraska, is
13 amended to read:

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

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

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

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

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

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

25 (3) Exceptions to the stays imposed pursuant to subsection (1) or ~~7~~
26 (2), ~~(8)~~, ~~or~~ ~~(9)~~ of this section shall exist for (a) test holes, (b)
27 dewatering wells with an intended use of one year or less, (c) monitoring
28 wells, (d) wells constructed pursuant to a ground water remediation plan
29 under the Environmental Protection Act, (e) water wells designed and
30 constructed to pump fifty gallons per minute or less, except that no two
31 or more water wells that each pump fifty gallons per minute or less may

1 be connected or otherwise combined to serve a single project such that
2 the collective pumping would exceed fifty gallons per minute, (f) water
3 wells for range livestock, (g) new surface water uses or water wells that
4 are necessary to alleviate an emergency situation involving the provision
5 of water for human consumption or public health and safety, (h) water
6 wells defined by the applicable natural resources district as replacement
7 water wells, but the consumptive use of any such replacement water well
8 can be no greater than the historic consumptive use of the water well it
9 is to replace or, if applicable, the historic consumptive use of the
10 surface water use it is to replace, (i) new surface water uses and water
11 wells to which a right or permit is transferred in accordance with state
12 law, but the consumptive use of any such new use can be no greater than
13 the historic consumptive use of the surface water use or water well from
14 which the right or permit is being transferred, (j) water wells and
15 increases in ground water irrigated acres for which a variance is granted
16 by the applicable natural resources district for good cause shown, (k)
17 subject to any conditions imposed by the applicable natural resources
18 district, to the extent permitted by the applicable natural resources
19 district, increases in ground water irrigated acres that result from the
20 use of water wells that were permitted prior to the effective date of the
21 determination made in subsection (1) of this section and completed in
22 accordance with section 46-738 but were not used for irrigation prior to
23 that effective date, (l) 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 are constructed after the
26 effective date of the stay in accordance with a permit granted by that
27 natural resources district prior to the effective date of the stay, (m)
28 surface water uses for which temporary public-use construction permits
29 are issued pursuant to subsection (8) of section 46-233, (n) surface
30 water uses and increases in surface water irrigated acres for which a
31 variance is granted by the department for good cause shown, and (o) water

1 wells for which permits have been approved by the Department of Natural
2 Resources pursuant to the Municipal and Rural Domestic Ground Water
3 Transfers Permit Act prior to the effective date of the stay.

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

29 (5) Within thirty days after the final hearing under subsection (4)
30 of this section, the department shall notify the appropriate natural
31 resources districts of the department's final determination with respect

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

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

19 (7) Within forty-five days after a natural resources district's
20 final hearing pursuant to subsection (6) of this section, the natural
21 resources district shall decide (a) whether to terminate the stay on new
22 water wells in all or part of the natural resources district subject to
23 the stay and (b) whether to terminate the stay on increases in ground
24 water irrigated acres. If the natural resources district decides not to
25 terminate the stay on new water wells in any geographic area, it shall
26 also decide whether to exempt from such stay the construction of water
27 wells for which permits were issued prior to the issuance of the stay but
28 for which construction had not begun prior to issuance of the stay. If
29 construction of water wells for which permits were issued prior to the
30 stay is allowed, all permits that were valid when the stay went into
31 effect shall be extended by a time period equal to the length of the

1 stay.

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

19 ~~(9) Beginning ten days after the first publication of notice under~~
20 ~~subsection (8) of this section in a newspaper of statewide circulation,~~
21 ~~there shall also be stays (a) on the construction of any new water well~~
22 ~~in the hydrologically connected area if such construction has not~~
23 ~~commenced prior to such date and if no permit for construction of the~~
24 ~~water well has been issued previously by either the department or the~~
25 ~~natural resources district, (b) on the use of an existing water well in~~
26 ~~the hydrologically connected area to increase the number of acres~~
27 ~~historically irrigated, and (c) on the use of an existing surface water~~
28 ~~appropriation to increase the number of acres historically irrigated in~~
29 ~~the affected area.~~

30 ~~(10) Within ninety days after a designation by the department of a~~
31 ~~river basin, subbasin, or reach as overappropriated, a natural resources~~

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

16 (8) ~~(11)~~ Any stay issued pursuant to this section shall remain in
17 effect until (a) the stay has been terminated pursuant to subsection (5)
18 ~~or 7~~ (7), ~~or (10)~~ of this section, (b) an integrated management plan for
19 the affected river basin, subbasin, or reach has been adopted by the
20 department and the affected natural resources districts and has taken
21 effect, (c) an integrated management plan for the affected river basin,
22 subbasin, or reach has been adopted by the Interrelated Water Review
23 Board and has taken effect, (d) the department has completed a
24 reevaluation pursuant to subsection (2) of section 46-713 and has
25 determined that the affected river basin, subbasin, or reach is not fully
26 ~~appropriated or overappropriated~~, or (e) the stay expires pursuant to
27 this subsection. Such stay may be imposed initially for not more than
28 three years following the department's ~~designation of the river basin,~~
29 ~~subbasin, or reach as overappropriated or the department's final~~
30 ~~determination that a river basin, subbasin, or reach is fully~~
31 ~~appropriated and may be extended thereafter on an annual basis by~~

1 agreement of the department and the affected natural resources district
2 for not more than two additional years if necessary to allow the
3 development, adoption, and implementation of an integrated management
4 plan pursuant to sections 46-715 to 46-719.

5 (9)(a) ~~(12)(a)~~ For purposes of this subsection, (i) a status change
6 occurs when a preliminary or final determination that a river basin,
7 subbasin, or reach is fully appropriated is reversed by the department or
8 by judicial determination and such river basin, subbasin, or reach is
9 determined not to be fully appropriated and (ii) the hydrologically
10 connected area means the geographic area within which the department
11 considers surface water and ground water in such river basin, subbasin,
12 or reach to be hydrologically connected.

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

27 (c) Upon receipt of notice of a status change, each affected natural
28 resources district shall adopt rules and regulations within one hundred
29 twenty days after receipt of such notice for the prioritization and
30 granting of water well permits within the hydrologically connected area
31 for the four-year period following the status change. Nothing in this

1 subsection shall be construed to supersede the authority provided to
2 natural resources districts under subsection (2) of section 46-707 and
3 subdivisions (1)(f) and (1)(m) of section 46-739.

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

16 (e) If the proposed new number of acres is not approved by the
17 department within the applicable time period as provided in subdivision
18 (d) of this subsection, the affected natural resources districts shall
19 adopt rules and regulations that allow water well permits to be issued
20 that will result in no more than two thousand five hundred irrigated
21 acres or that will result in an increase of not more than twenty percent
22 of all historically irrigated acres within the hydrologically connected
23 area of each natural resources district within the affected river basin,
24 subbasin, or reach, whichever is less, for each calendar year of the
25 four-year period following the date of the determination described in
26 this subsection. Each affected natural resources district may, after the
27 initial four-year period has expired, annually determine whether water
28 well permit limitations should continue and may enforce such limitations.

29 (f) During the four-year period following the status change, the
30 department shall ensure that any new appropriation granted will not cause
31 the basin, subbasin, or reach to be fully appropriated based on the most

1 recent basin determination. The department, pursuant to its rules and
2 regulations, shall not issue new natural flow surface water
3 appropriations for irrigation, within the river basin, subbasin, or reach
4 affected by the status change, that will result in a net increase of more
5 than eight hundred thirty-four irrigated acres in each natural resources
6 district during each calendar year of the four-year period following the
7 date of the determination described in this subsection.

8 Sec. 11. Section 46-715, Revised Statutes Cumulative Supplement,
9 2018, is amended to read:

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

20 (b) A natural resources district encompassing a river basin,
21 subbasin, or reach that ~~has not been designated as overappropriated~~ or
22 has not been finally determined to be fully appropriated may, jointly
23 with the department, develop an integrated management plan for such river
24 basin, subbasin, or reach located within the district. The district shall
25 notify the department of its intention to develop an integrated
26 management plan which shall be developed and adopted according to
27 sections 46-715 to 46-717 and subsections (1) and (2) of section 46-718.
28 The objective of an integrated management plan under this subdivision is
29 to manage such river basin, subbasin, or reach to achieve and sustain a
30 balance between water uses and water supplies for the long term. If a
31 district develops an integrated management plan under this subdivision

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

5 (2) In developing an integrated management plan, the effects of
6 existing and potential new water uses on existing surface water
7 appropriators and ground water users shall be considered. An integrated
8 management plan shall include the following: (a) Clear goals and
9 objectives with a purpose of sustaining a balance between water uses and
10 water supplies so that the economic viability, social and environmental
11 health, safety, and welfare of the river basin, subbasin, or reach can be
12 achieved and maintained for both the near term and the long term; (b) a
13 map clearly delineating the geographic area subject to the integrated
14 management plan; (c) one or more of the ground water controls authorized
15 for adoption by natural resources districts pursuant to section 46-739;
16 (d) all one or more of the surface water controls required to be adopted
17 ~~authorized for adoption~~ by the department pursuant to section 46-716; and
18 (e) a plan to gather and evaluate data, information, and methodologies
19 that could be used to implement sections 46-715 to 46-717, increase
20 understanding of the surface water and hydrologically connected ground
21 water system, and test the validity of the conclusions and information
22 upon which the integrated management plan is based. The plan may also
23 provide for utilization of any applicable incentive programs authorized
24 by law. Nothing in the integrated management plan for a fully
25 appropriated river basin, subbasin, or reach shall require a natural
26 resources district to regulate ground water uses in place at the time of
27 the department's preliminary determination that the river basin,
28 subbasin, or reach is fully appropriated, unless such regulation is
29 necessary to carry out the goals and objectives of a basin-wide plan
30 pursuant to section 46-755, but a natural resources district may
31 voluntarily adopt such regulations. The applicable natural resources

1 district may decide to include all water users within the district
2 boundary in an integrated management plan.

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

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

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

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

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

22 (e) Identify, to the extent feasible, potential water available to
23 mitigate new uses, including, but not limited to, water rights leases,
24 interference agreements, augmentation projects, conjunctive use
25 management, and use retirement;

26 (f) Develop, to the extent feasible, an outline of plans after
27 consultation with and an opportunity to provide input from irrigation
28 districts, public power and irrigation districts, reclamation districts,
29 municipalities, other political subdivisions, and other water users to
30 make water available for offset to enhance and encourage economic
31 development opportunities and economic sustainability in the river basin,

1 subbasin, or reach; and

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

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

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

21 ~~(5)(a) In any river basin, subbasin, or reach that is designated as~~
22 ~~overappropriated, when the designated area lies within two or more~~
23 ~~natural resources districts, the department and the affected natural~~
24 ~~resources districts shall jointly develop a basin-wide plan for the area~~
25 ~~designated as overappropriated. Such plan shall be developed using the~~
26 ~~consultation and collaboration process described in subdivision (b) of~~
27 ~~this subsection, shall be developed concurrently with the development of~~
28 ~~the integrated management plan required pursuant to subsections (1)~~
29 ~~through (4) of this section, and shall be designed to achieve, in the~~
30 ~~incremental manner described in subdivision (d) of this subsection, the~~
31 ~~goals and objectives described in subsection (2) of this section. The~~

1 ~~basin-wide plan shall be adopted after hearings by the department and the~~
2 ~~affected natural resources districts.~~

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

27 ~~(c) Any integrated management plan developed under this subsection~~
28 ~~shall identify the overall difference between the current and fully~~
29 ~~appropriated levels of development. Such determination shall take into~~
30 ~~account cyclical supply, including drought, identify the portion of the~~
31 ~~overall difference between the current and fully appropriated levels of~~

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

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

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

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

27 ~~(iii) During the ten years following adoption of an integrated~~
28 ~~management plan developed under this subsection (5) or during the ten~~
29 ~~years after the adoption of any subsequent increment of the integrated~~
30 ~~management plan pursuant to subdivision (d)(iv) of this subsection, the~~
31 ~~department and the affected natural resources district shall conduct a~~

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

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

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

29 ~~(5) (6) In any river basin, subbasin, or reach that is designated as~~
30 ~~fully appropriated or overappropriated and whenever necessary to ensure~~
31 ~~that the state is in compliance with an interstate compact or decree or a~~

1 formal state contract or agreement, the department, in consultation with
2 the affected districts, shall forecast on an annual basis the maximum
3 amount of water that may be available from streamflow for beneficial use
4 in the short term and long term in order to comply with the requirement
5 of subdivision (4)(b) of this section. This forecast shall be made by
6 January 1, 2008, and each January 1 thereafter.

7 Sec. 12. Section 46-716, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 46-716 (1) The surface water controls that shall ~~may~~ be included in
10 an integrated management plan and ~~may be~~ adopted by the Department of
11 Natural Resources are: (a) Increased monitoring and enforcement of
12 surface water diversion rates and amounts diverted annually; (b) the
13 prohibition or limitation of additional surface water appropriations; (c)
14 requirements for surface water appropriators to apply or utilize
15 reasonable conservation measures consistent with good husbandry and other
16 requirements of section 46-231 and consistent with reasonable reliance by
17 other surface water or ground water users on return flows or on seepage
18 to the aquifer; ~~and~~ (d) other reasonable restrictions on surface water
19 use which are consistent with the intent of section 46-715 and the
20 requirements of section 46-231; and (e) requirements needed to maintain
21 compliance with any interstate compact or decree or other formal state
22 contract or agreement.

23 (2) If during the development of the integrated management plan the
24 department determines that surface water appropriators should be required
25 to apply or utilize conservation measures or that other reasonable
26 restrictions on surface water use need to be imposed, the department's
27 portion of the integrated management plan shall allow the affected
28 surface water appropriators and surface water project sponsors a
29 reasonable amount of time, not to exceed one hundred eighty days unless
30 extended by the department, to identify the conservation measures to be
31 applied or utilized, to develop a schedule for such application and

1 utilization, and to comment on any other proposed restrictions.

2 (3) On-stream reservoirs in fully appropriated river basins,
3 subbasins, or reaches shall be managed by the Department of Natural
4 Resources as flood control structures to protect lives and property below
5 the structures. Such structures shall not exceed eighty percent capacity
6 prior to March 1 of any year so that such structures are capable of
7 capturing spring snow melt and runoff. The department shall develop a
8 management plan for such structures as part of the integrated management
9 plan developed in accordance with section 46-717.

10 Sec. 13. Section 46-718, Reissue Revised Statutes of Nebraska, is
11 amended to read:

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

29 (2) Within sixty days after the final hearing under this section,
30 the department and the affected natural resources districts shall jointly
31 decide whether to implement the plan proposed, with or without

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

25 (3) If at any time during the development of a basin-wide plan or an
26 integrated management plan either the department or the affected natural
27 resources districts conclude that the parties will be unable to reach a
28 timely agreement on the basin-wide plan or on (a) the goals and
29 objectives of the integrated management plan for the affected river
30 basin, subbasin, or reach, (b) the geographic area to be subject to
31 controls, or (c) the surface water or ground water controls or any

1 incentive programs to be proposed for adoption and implementation in the
2 affected river basin, subbasin, or reach, the Governor shall be notified
3 and the dispute shall be submitted to the Interrelated Water Review Board
4 as provided in subsection (2) of section 46-719.

5 Sec. 14. Section 46-720, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 46-720 (1) The Legislature finds that, prior to July 16, 2004,
8 actions were taken by the Department of Natural Resources and by one or
9 more natural resources districts pursuant to section 46-656.28, as such
10 section existed immediately prior to such date, for the purpose of
11 addressing circumstances that are, after such date, to be addressed in
12 accordance with sections 46-713 to 46-719. It is the intent of the
13 Legislature that actions taken pursuant to section 46-656.28, as such
14 section existed immediately prior to July 16, 2004, should not be negated
15 and that transition from the authorities and responsibilities granted by
16 such section to those granted by sections 46-713 to 46-719 should occur
17 in as efficient a manner as possible. Such transition shall be therefor
18 governed by subsections (2) through (5) of this section, and all
19 references in such subsections to section 46-656.28 shall be construed to
20 mean section 46-656.28 as such section existed immediately prior to July
21 16, 2004.

22 (2) If, prior to July 16, 2004, (a) a natural resources district
23 requested pursuant to subsection (1) of section 46-656.28 that affected
24 appropriators, affected surface water project sponsors, and the
25 department consult and that studies and a hearing be held but (b) the
26 Director of Natural Resources has not made a preliminary determination
27 relative to that request pursuant to subsection (2) of section 46-656.28,
28 no further action on the district's request shall be required of the
29 department. If under the same circumstances a temporary suspension in the
30 drilling of certain water wells has been imposed by the district pursuant
31 to subsection (16) of section 46-656.28 and remains in effect immediately

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

17 (3)(a) If prior to July 16, 2004, (i) the director has made a
18 preliminary determination pursuant to subsection (2) of section 46-656.28
19 that there is reason to believe that the use of hydrologically connected
20 ground water and surface water in a specific geographic area is
21 contributing to or is in the reasonably foreseeable future likely to
22 contribute to any conflict, dispute, or difficulty listed in such
23 subsection, (ii) the director has not made a determination pursuant to
24 subsection (4) of section 46-656.28 that a joint action plan should not
25 be prepared, and (iii) preparation of a joint action plan pursuant to
26 subsections (5) through (9) of such section has not been completed, the
27 geographic area involved shall become subject to sections 46-713 to
28 46-719 on July 16, 2004, and the department need not evaluate such
29 geographic area in its first annual report issued pursuant to section
30 46-713.

31 (b) For purposes of this subsection and section 46-714 and except as

1 otherwise provided in this section, (i) July 16, 2004, shall result in
2 the imposition in any geographic area subject to this subsection of the
3 stays required by subsections (1) and (2) of section 46-714, (ii) such
4 stays shall be imposed in the manner required by such section, and (iii)
5 July 16, 2004, shall be treated as if it were the date of a departmental
6 preliminary determination pursuant to section 46-713 that such area is a
7 geographic area within which ground water and surface water of a fully
8 appropriated river basin, subbasin, or reach are hydrologically
9 connected. Notwithstanding the other provisions of this subsection, if a
10 temporary suspension in the drilling of certain new water wells has
11 previously been imposed by the affected natural resources district, (A)
12 the stays on construction of new water wells and on the increase in
13 ground water irrigated acres shall be limited in geographic extent to
14 only that part of the affected area within which the temporary suspension
15 was in effect unless the director determines that inclusion of additional
16 area is necessary because ground water and surface water are
17 hydrologically connected in such additional area and (B) the stays on
18 construction of certain new water wells shall not apply to a water well
19 constructed in accordance with the terms of a water well construction
20 permit approved by the district prior to July 16, 2004, unless such well
21 was subject to the district's temporary suspension. If, prior to July 16,
22 2004, the director has held a hearing on a report issued pursuant to
23 subsection (3) of section 46-656.28 but has not yet determined whether a
24 joint action plan should be prepared, no departmental hearing shall be
25 required pursuant to subsection (4) of section 46-714 before a final
26 determination is made about whether the river basin, subbasin, or reach
27 involved is fully appropriated. If, prior to July 16, 2004, the director
28 has determined pursuant to subsection (4) of section 46-656.28 that a
29 joint action plan should be prepared, such determination shall have the
30 same effect as a final departmental determination pursuant to subsection
31 (5) of section 46-714 that the affected river basin, subbasin, or reach

1 is fully appropriated and no separate determination to that effect shall
2 be required. ~~If, after July 16, 2004, the department determines that all~~
3 ~~or part of the area subject to this subsection is in an overappropriated~~
4 ~~river basin, subbasin, or reach, that portion of the area shall~~
5 ~~thereafter be subject to the provisions of the Nebraska Ground Water~~
6 ~~Management and Protection Act applicable to an overappropriated river~~
7 ~~basin, subbasin, or reach and stays that have previously taken effect in~~
8 ~~accordance with this subsection shall continue in effect as stays for an~~
9 ~~overappropriated river basin, subbasin, or reach without additional~~
10 ~~action or publication of notice by the department.~~ Any temporary
11 suspension in the drilling of certain water wells that has been imposed
12 in the geographic area involved by a natural resources district pursuant
13 to subsection (16) of section 46-656.28 prior to July 16, 2004, shall
14 remain in effect until superseded by the stays imposed pursuant to
15 subsections (1) and (2) of section 46-714.

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

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

15 (5) If, before July 16, 2004, a joint action plan has been adopted
16 and implemented pursuant to subsections (10) through (12) of section
17 46-656.28 and is in effect immediately prior to such date, the department
18 need not evaluate the geographic area subject to the plan in the
19 department's first annual report issued pursuant to section 46-713. For
20 purposes of the Nebraska Ground Water Management and Protection Act, (a)
21 the plan adopted shall be considered an integrated management plan
22 adopted pursuant to section 46-718, (b) the management area designated
23 shall be considered an integrated management area or subarea designated
24 pursuant to section 46-718, and (c) the controls adopted shall be
25 considered controls adopted pursuant to section 46-718 and shall remain
26 in effect until amended or repealed pursuant to section 46-718 or 46-719.

27 Sec. 15. Section 46-740, Reissue Revised Statutes of Nebraska, is
28 amended to read:

29 46-740 (1) If allocation is adopted for use of ground water for
30 irrigation purposes in a management area, the permissible withdrawal of
31 ground water shall be allocated equally per irrigated acre except as

1 permitted by subsections (4) through (6) of section 46-739. Such
2 allocation shall specify the total number of acre-inches that are
3 allocated per irrigated acre per year, except that the district may allow
4 a ground water user to average his or her allocation over any reasonable
5 period of time. A ground water user may use his or her allocation on all
6 or any part of the irrigated acres to which the allocation applies or in
7 any other manner approved by the district.

8 (2) Except as permitted pursuant to subsections (4) through (6) of
9 section 46-739, if annual rotation or reduction of irrigated acres is
10 adopted for use of ground water for irrigation purposes in a management
11 area, the nonuse of irrigated acres shall be a uniform percentage
12 reduction of each landowner's irrigated acres within the management area
13 or a subarea of the management area. Such uniform reduction may be
14 adjusted for each landowner based upon crops grown on his or her land to
15 reflect the varying consumptive requirements between crops.

16 (3) Unless an integrated management plan, a rule, or an order is
17 established, adopted, or issued prior to November 1, 2005, no integrated
18 management plan, rule, or order shall limit the use of ground water by a
19 municipality, within an area deemed to be fully appropriated pursuant to
20 subsection (4) of section 46-713 or determined by the Department of
21 Natural Resources to be fully appropriated pursuant to section 46-714 ~~or~~
22 ~~designated as overappropriated pursuant to section 46-713~~, until January
23 1, 2026, except that:

24 (a) Any allocations to a municipality that have been made as of
25 November 1, 2005, shall remain in full force and effect unless changed by
26 the appropriate natural resources district;

27 (b)(i) For any municipality that has not received an allocation as
28 of November 1, 2005, the minimum annual allocation may be the greater of
29 either the amount of ground water authorized by a permit issued pursuant
30 to the Municipal and Rural Domestic Ground Water Transfers Permit Act or
31 the governmental, commercial, and industrial uses of the municipality

1 plus a per capita allowance. Water for commercial and industrial uses may
2 be limited as specified in subdivision (b)(iii) of this subsection.

3 (ii) The per capita allowance shall be based on the location of the
4 municipality, increasing in equal increments from east to west, and shall
5 not be less than two hundred gallons per person per day at 95 degrees, 19
6 minutes, 00 seconds longitude and not less than two hundred fifty gallons
7 per person per day at 104 degrees, 04 minutes, 00 seconds longitude.
8 Persons served by a municipality outside of its corporate limits shall be
9 considered part of the municipality's population if such service begins
10 prior to January 1, 2026.

11 (iii) Prior to January 1, 2026, any new or expanded single
12 commercial or single industrial development served by any municipality
13 within the fully appropriated ~~or overappropriated~~ area which, after July
14 14, 2006, commences water use resulting in the consumptive use of water
15 in amounts greater than twenty-five million gallons annually may be
16 subject to controls adopted pursuant to section 46-715;

17 (c) Prior to January 1, 2026, increases in the consumptive use of
18 water by a municipality that result in a decrease in streamflow shall be
19 addressed by the integrated management plan pursuant to controls or
20 incentive programs adopted pursuant to section 46-715 and shall not
21 affect the municipal allocations outlined in subdivisions (3)(a) and (b)
22 of this section. Any permanent reduction in consumptive use of water
23 associated with municipal growth, including governmental, industrial, and
24 commercial growth, during the period between July 14, 2006, and January
25 1, 2026, shall accrue to the benefit of the natural resources district
26 within which such municipality is located; and

27 (d) To qualify for the exemption specified in subsection (3) of this
28 section, any city of the metropolitan class, city of the primary class,
29 city of the first class, or city of the second class shall file a
30 conservation plan with the natural resources district, if required by the
31 integrated management plan. Villages and other municipalities smaller

1 than a city of the second class shall not be required to submit a
2 conservation plan to qualify for such exemption.

3 (4) On and after January 1, 2026, the base amount for an annual
4 allocation to a municipality shall be determined as the greater of either
5 (a) the amount of water authorized by a permit issued pursuant to the
6 Municipal and Rural Domestic Ground Water Transfers Permit Act or (b) the
7 greatest annual use prior to January 1, 2026, for uses specified in
8 subdivision (3)(b) of this section plus the per capita allowance
9 described in subdivision (3)(b)(ii) of this section. On and after January
10 1, 2026, increases in the consumptive use of water by a municipality that
11 result in a decrease in streamflow shall be addressed by the integrated
12 management plan pursuant to controls or incentive programs adopted
13 pursuant to section 46-715. Each municipality may be subject to controls
14 adopted pursuant to such section for amounts in excess of the
15 allocations.

16 (5) Unless an integrated management plan, rule, or order is
17 established, adopted, or issued prior to November 1, 2005, no integrated
18 management plan, rule, or order shall limit the use of ground water by a
19 nonmunicipal commercial or industrial water user within an area deemed to
20 be fully appropriated pursuant to subsection (4) of section 46-713 or
21 determined by the department to be fully appropriated pursuant to section
22 46-714 or designated as overappropriated pursuant to section 46-713,
23 until January 1, 2026, except that:

24 (a) Prior to January 1, 2026, the minimum annual allocation for a
25 nonmunicipal commercial or industrial user shall be the greater of either
26 (i) the amount specified in a permit issued pursuant to the Industrial
27 Ground Water Regulatory Act or (ii) the amount necessary to achieve the
28 commercial or industrial use, including all new or expanded uses that
29 consume less than twenty-five million gallons annually. Any increases in
30 the consumptive use of water by a nonmunicipal commercial or industrial
31 water user that result in a decrease in streamflow shall be addressed by

1 the integrated management plan pursuant to controls or incentive programs
2 adopted pursuant to section 46-715;

3 (b) Prior to January 1, 2026, any new or expanded single commercial
4 or industrial development served by a nonmunicipal well within an area
5 deemed to be fully appropriated pursuant to subsection (4) of section
6 46-713 or determined by the department to be fully appropriated pursuant
7 to section 46-714 ~~or designated as overappropriated pursuant to section~~
8 ~~46-713~~ which, after July 14, 2006, commences water use resulting in the
9 consumptive use of water in amounts greater than twenty-five million
10 gallons annually may be subject to controls adopted pursuant to section
11 46-715. This subdivision does not apply to a water user described in this
12 subdivision that is regulated by the Industrial Ground Water Regulatory
13 Act and the United States Nuclear Regulatory Commission;

14 (c) On and after January 1, 2026, the base amount for an annual
15 allocation to a nonmunicipal commercial or industrial user within an area
16 deemed to be fully appropriated pursuant to subsection (4) of section
17 46-713 or determined by the department to be fully appropriated pursuant
18 to section 46-714 ~~or designated as overappropriated pursuant to section~~
19 ~~46-713~~ shall be the amount specified in subdivision (5)(a) or (b) of this
20 section;

21 (d) On and after January 1, 2026, increases in the consumptive use
22 of water by a nonmunicipal commercial or industrial water user that
23 result in a decrease in streamflow shall be addressed by the integrated
24 management plan pursuant to controls or incentive programs adopted
25 pursuant to section 46-715; and

26 (e) Any reduction in consumptive use associated with new
27 nonmunicipal industrial or commercial uses of less than twenty-five
28 million gallons, during the period between July 14, 2006, and January 1,
29 2026, shall accrue to the benefit of the natural resources district
30 within which such nonmunicipal industrial or commercial user is located.

31 Sec. 16. Section 46-753, Revised Statutes Cumulative Supplement,

1 2018, is amended to read:

2 46-753 (1) The Water Resources Trust Fund is created. The State
3 Treasurer shall credit to the fund such money as is specifically
4 appropriated thereto by the Legislature, transfers authorized by the
5 Legislature, and such funds, fees, donations, gifts, or bequests received
6 by the Department of Natural Resources from any federal, state, public,
7 or private source for expenditure for the purposes described in the
8 Nebraska Ground Water Management and Protection Act. Money in the fund
9 shall not be subject to any fiscal-year limitation or lapse provision of
10 unexpended balance at the end of any fiscal year or biennium. Any money
11 in the fund available for investment shall be invested by the state
12 investment officer pursuant to the Nebraska Capital Expansion Act and the
13 Nebraska State Funds Investment Act.

14 (2) The fund shall be administered by the department. The department
15 shall adopt and promulgate rules and regulations regarding the allocation
16 and expenditure of money from the fund.

17 (3) Money in the fund may be expended by the department for costs
18 incurred by the department, by natural resources districts, or by other
19 political subdivisions in (a) determining whether river basins,
20 subbasins, or reaches are fully appropriated in accordance with section
21 46-713, (b) developing or implementing integrated management plans for
22 such fully appropriated river basins, subbasins, or reaches or for river
23 basins, subbasins, or reaches deemed to be fully appropriated ~~designated~~
24 ~~as overappropriated~~ in accordance with subsection (4) of section 46-713,
25 (c) developing or implementing integrated management plans in river
26 basins, subbasins, or reaches which have not yet become ~~either~~ fully
27 appropriated ~~or overappropriated~~, or (d) attaining state compliance with
28 an interstate water compact or decree or other formal state contract or
29 agreement.

30 (4) Except for funds paid to a political subdivision for forgoing or
31 reducing its own water use or for implementing projects or programs

1 intended to aid the state in complying with an interstate water compact
2 or decree or other formal state contract or agreement, a political
3 subdivision that receives funds from the fund shall provide, or cause to
4 be provided, matching funds in an amount at least equal to twenty percent
5 of the amount received from the fund by that natural resources district
6 or political subdivision. The department shall monitor programs and
7 activities funded by the fund to ensure that the required match is being
8 provided.

9 Sec. 17. Section 46-755, Revised Statutes Cumulative Supplement,
10 2018, is amended to read:

11 46-755 This section shall apply notwithstanding any other provision
12 of the Nebraska Ground Water Management and Protection Act.

13 (1) If a river basin as described in subdivision (2)(a) of section
14 2-1504 includes three or more natural resources districts that, pursuant
15 to subdivision (1)(a) of section 46-715, have been or are required to
16 develop an integrated management plan for all or substantially all
17 (eighty-five percent) of the district, such natural resources districts
18 shall, jointly with the department and the natural resources districts
19 within the same basin, develop and adopt a basin-wide plan for the areas
20 of a basin, subbasin, or reach determined by the department to have
21 hydrologically connected water supplies, ~~except that any natural~~
22 ~~resources district that has developed and implemented a basin-wide plan~~
23 ~~pursuant to subsection (5) of section 46-715 shall not be affected by~~
24 ~~this section.~~ If deemed appropriate by the department and the affected
25 natural resources districts, the basin-wide plan may combine two or more
26 river basins.

27 (2) An integrated management plan developed under subdivision (1)(a)
28 or (b) of section 46-715 shall ensure such integrated management plan is
29 consistent with any basin-wide plan developed pursuant to this section.
30 However, an integrated management plan may implement additional incentive
31 programs or controls pursuant to section 46-739 if the programs and

1 controls are consistent with the basin-wide plan.

2 (3) A basin-wide plan shall be completed, adopted, and take effect
3 within three years after April 17, 2014, unless the department and the
4 natural resources districts jointly agree to an extension of not more
5 than an additional two years.

6 (4) A basin-wide plan shall (a) have clear goals and objectives with
7 a purpose of sustaining a balance between water uses and water supplies
8 so that the economic viability, social and environmental health, safety,
9 and welfare of the river basin, subbasin, or reach can be achieved and
10 maintained for both the near term and the long term, (b) ensure that
11 compliance with any interstate compact or decree or other formal state
12 contract or agreement or applicable state or federal law is maintained,
13 and (c) set forth a timeline to meet the goals and objectives as required
14 under this subdivision, but in no case shall a timeline exceed thirty
15 years after April 17, 2014.

16 (5)(a) A basin-wide plan developed under this section shall utilize
17 the best generally-accepted methodologies and available information,
18 data, and science to evaluate the effect of existing uses of
19 hydrologically connected water on existing surface water and ground water
20 users. The plan shall include a process to gather and evaluate data,
21 information, and methodologies to increase understanding of the surface
22 water and hydrologically connected ground water system within the basin,
23 subbasin, or reach and test the validity of the conclusions, information,
24 and assumptions upon which the plan is based.

25 (b) A basin-wide plan developed under this section shall include a
26 schedule indicating the end date by which the stated goals and objectives
27 are to be achieved and the management actions to be taken to achieve the
28 goals and objectives. To ensure that reasonable progress is being made
29 toward achieving the final goals and objectives of the plan, the schedule
30 shall also include measurable hydrologic objectives and intermediate
31 dates by which the objectives are expected to be met and monitoring plans

1 to measure the extent to which the objectives are being achieved. Such
2 intermediate objectives shall be established in a manner that, if
3 achieved on schedule, will provide a reasonable expectation that the
4 goals of the plan will be achieved by the established end date.

5 (c) A basin-wide plan shall be developed using a consultation and
6 collaboration process involving representatives from irrigation
7 districts, reclamation districts, public power and irrigation districts,
8 mutual irrigation companies, canal companies, ground water users, range
9 livestock owners, the Game and Parks Commission, and municipalities that
10 rely on water from within the affected area and that, after being
11 notified of the commencement of the plan development process, indicate in
12 writing their desire to become an official participant in such process.
13 The department and affected natural resources districts shall involve
14 official participants in formulating, evaluating, and recommending plans
15 and management actions and work to reach an agreement among all official
16 participants involved in a basin-wide plan. In addition, the department
17 or the affected natural resources districts may include designated
18 representatives of other stakeholders. If agreement is reached by all
19 parties involved in such consultation and collaboration process, the
20 department and the affected natural resources districts shall adopt the
21 agreed-upon basin-wide plan. If agreement cannot be reached by all
22 parties involved, the basin-wide plan shall be developed and adopted by
23 the department and the affected natural resources districts or by the
24 Interrelated Water Review Board pursuant to section 46-719.

25 (d) Within five years after the adoption of the basin-wide plan, and
26 every five years thereafter, the department and affected natural
27 resources districts shall conduct a technical analysis of the actions
28 taken in a river basin to determine the progress towards meeting the
29 goals and objectives of the plan. The analysis shall include an
30 examination of (i) available supplies, current uses, and changes in long-
31 term water availability, (ii) the effects of conservation practices and

1 natural causes, including, but not limited to, drought, and (iii) the
2 effects of the plan in meeting the goal of sustaining a balance between
3 water uses and water supplies. The analysis shall determine if changes or
4 modifications to the basin-wide plan are needed to meet the goals and
5 objectives pursuant to subdivision (4)(a) of this section. The department
6 and affected natural resources districts shall present the results of the
7 analysis and any recommended modifications to the plan at a public
8 meeting and shall provide for at least a thirty-day public comment period
9 before holding a public hearing on the recommended modifications. The
10 department shall submit a report to the Legislature of the results of
11 this analysis and the progress made under the basin-wide plan. The report
12 shall be submitted electronically. Any official participant or
13 stakeholder may submit comments to the department and affected natural
14 resources districts on the final basin-wide plan adopted by the
15 department and affected natural resources districts, which shall be made
16 a part of the report to the Legislature.

17 (e) Before adoption of a basin-wide plan, the department and
18 affected natural resources districts shall schedule at least one public
19 hearing to take testimony on the proposed plan. Any such hearings shall
20 be held in reasonable proximity to the area affected by the plan. Notice
21 of hearings shall be published as provided in section 46-743. All
22 interested persons may appear at any hearings and present testimony or
23 provide other evidence relevant to the issues under consideration. Within
24 sixty days after the final hearing, the department and affected natural
25 resources districts shall jointly determine whether to adopt the plan.

26 (f) The department and the affected natural resources districts may
27 utilize, when necessary, the Interrelated Water Review Board process
28 provided in section 46-719 for disputes arising from developing,
29 implementing, and enforcing a basin-wide plan developed under this
30 section.

31 Sec. 18. Section 61-218, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 61-218 (1) The Water Resources Cash Fund is created. The fund shall
3 be administered by the Department of Natural Resources. Any money in the
4 fund available for investment shall be invested by the state investment
5 officer pursuant to the Nebraska Capital Expansion Act and the Nebraska
6 State Funds Investment Act.

7 (2) The State Treasurer shall credit to the fund such money as is
8 (a) transferred to the fund by the Legislature, (b) paid to the state as
9 fees, deposits, payments, and repayments relating to the fund, both
10 principal and interest, (c) donated as gifts, bequests, or other
11 contributions to such fund from public or private entities, (d) made
12 available by any department or agency of the United States if so directed
13 by such department or agency, (e) allocated pursuant to section
14 81-15,175, and (f) received by the state for settlement of claims
15 regarding Colorado's past use of water under the Republican River
16 Compact.

17 (3) The fund shall be expended by the department (a) to aid
18 management actions taken to reduce consumptive uses of water or to
19 enhance streamflows or ground water recharge in river basins, subbasins,
20 or reaches which are deemed by the department ~~overappropriated pursuant~~
21 ~~to section 46-713 or~~ fully appropriated pursuant to subsection (4) of
22 section 46-713 or section 46-714 or are bound by an interstate compact or
23 decree or a formal state contract or agreement, (b) for purposes of
24 projects or proposals described in the grant application as set forth in
25 subdivision (2)(h) of section 81-15,175, and (c) to the extent funds are
26 not expended pursuant to subdivisions (a) and (b) of this subsection, the
27 department may conduct a statewide assessment of short-term and long-term
28 water management activities and funding needs to meet statutory
29 requirements in sections 46-713 to 46-718 and 46-739 and any requirements
30 of an interstate compact or decree or formal state contract or agreement.
31 The fund shall not be used to pay for administrative expenses or any

1 salaries for the department or any political subdivision.

2 (4) It is the intent of the Legislature that three million three
3 hundred thousand dollars be transferred each fiscal year from the General
4 Fund to the Water Resources Cash Fund for FY2011-12 through FY2018-19,
5 except that for FY2012-13 it is the intent of the Legislature that four
6 million seven hundred thousand dollars be transferred from the General
7 Fund to the Water Resources Cash Fund. It is the intent of the
8 Legislature that the State Treasurer credit any money received from any
9 Republican River Compact settlement to the Water Resources Cash Fund in
10 the fiscal year in which it is received.

11 (5)(a) Expenditures from the Water Resources Cash Fund may be made
12 to natural resources districts eligible under subsection (3) of this
13 section for activities to either achieve a sustainable balance of
14 consumptive water uses or assure compliance with an interstate compact or
15 decree or a formal state contract or agreement and shall require a match
16 of local funding in an amount equal to or greater than forty percent of
17 the total cost of carrying out the eligible activity. The department
18 shall, no later than August 1 of each year, beginning in 2007, determine
19 the amount of funding that will be made available to natural resources
20 districts from the Water Resources Cash Fund and notify natural resources
21 districts of this determination. The department shall adopt and
22 promulgate rules and regulations governing application for and use of the
23 Water Resources Cash Fund by natural resources districts. Such rules and
24 regulations shall, at a minimum, include the following components:

25 (i) Require an explanation of how the planned activity will achieve
26 a sustainable balance of consumptive water uses or will assure compliance
27 with an interstate compact or decree or a formal state contract or
28 agreement as required by section 46-715 and the controls, rules, and
29 regulations designed to carry out the activity; and

30 (ii) A schedule of implementation of the activity or its components,
31 including the local match as set forth in subdivision (5)(a) of this

1 section.

2 (b) Any natural resources district that fails to implement and
3 enforce its controls, rules, and regulations as required by section
4 46-715 shall not be eligible for funding from the Water Resources Cash
5 Fund until it is determined by the department that compliance with the
6 provisions required by section 46-715 has been established.

7 (6) The Department of Natural Resources shall submit electronically
8 an annual report to the Legislature no later than October 1 of each year,
9 beginning in the year 2007, that shall detail the use of the Water
10 Resources Cash Fund in the previous year. The report shall provide:

11 (a) Details regarding the use and cost of activities carried out by
12 the department; and

13 (b) Details regarding the use and cost of activities carried out by
14 each natural resources district that received funds from the Water
15 Resources Cash Fund.

16 (7)(a) Prior to the application deadline for fiscal year 2011-12,
17 the Department of Natural Resources shall apply for a grant of nine
18 million nine hundred thousand dollars from the Nebraska Environmental
19 Trust Fund, to be paid out in three annual installments of three million
20 three hundred thousand dollars. The purposes listed in the grant
21 application shall be consistent with the uses of the Water Resources Cash
22 Fund provided in this section and shall be used to aid management actions
23 taken to reduce consumptive uses of water, to enhance streamflows, to
24 recharge ground water, or to support wildlife habitat in any river basin
25 deemed to be fully appropriated pursuant to subsection (4) of section
26 46-713 or determined to be fully appropriated pursuant to section 46-714
27 ~~or designated as overappropriated pursuant to section 46-713.~~

28 (b) If the application is granted, funds received from such grant
29 shall be remitted to the State Treasurer for credit to the Water
30 Resources Cash Fund for the purpose of supporting the projects set forth
31 in the grant application. The department shall include in its grant

1 application documentation that the Legislature has authorized a transfer
2 of three million three hundred thousand dollars from the General Fund
3 into the Water Resources Cash Fund for each of fiscal years 2011-12 and
4 2012-13 and has stated its intent to transfer three million three hundred
5 thousand dollars to the Water Resources Cash Fund for fiscal year
6 2013-14.

7 (c) It is the intent of the Legislature that the department apply
8 for an additional three-year grant that would begin in fiscal year
9 2014-15 and an additional three-year grant from the Nebraska
10 Environmental Trust Fund that would begin in fiscal year 2017-18 if the
11 criteria established in subsection (4) of section 81-15,175 are achieved.

12 (8) The department shall establish a subaccount within the Water
13 Resources Cash Fund for the accounting of all money received as a grant
14 from the Nebraska Environmental Trust Fund as the result of an
15 application made pursuant to subsection (7) of this section. At the end
16 of each calendar month, the department shall calculate the amount of
17 interest earnings accruing to the subaccount and shall notify the State
18 Treasurer who shall then transfer a like amount from the Water Resources
19 Cash Fund to the Nebraska Environmental Trust Fund.

20 Sec. 19. Section 77-3442, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 77-3442 (1) Property tax levies for the support of local governments
23 for fiscal years beginning on or after July 1, 1998, shall be limited to
24 the amounts set forth in this section except as provided in section
25 77-3444.

26 (2)(a) Except as provided in subdivisions (2)(b) and (2)(e) of this
27 section, school districts and multiple-district school systems may levy a
28 maximum levy of one dollar and five cents per one hundred dollars of
29 taxable valuation of property subject to the levy.

30 (b) For each fiscal year prior to fiscal year 2017-18, learning
31 communities may levy a maximum levy for the general fund budgets of

1 member school districts of ninety-five cents per one hundred dollars of
2 taxable valuation of property subject to the levy. The proceeds from the
3 levy pursuant to this subdivision shall be distributed pursuant to
4 section 79-1073.

5 (c) Except as provided in subdivision (2)(e) of this section, for
6 each fiscal year prior to fiscal year 2017-18, school districts that are
7 members of learning communities may levy for purposes of such districts'
8 general fund budget and special building funds a maximum combined levy of
9 the difference of one dollar and five cents on each one hundred dollars
10 of taxable property subject to the levy minus the learning community levy
11 pursuant to subdivision (2)(b) of this section for such learning
12 community.

13 (d) Excluded from the limitations in subdivisions (2)(a) and (2)(c)
14 of this section are (i) amounts levied to pay for current and future sums
15 agreed to be paid by a school district to certificated employees in
16 exchange for a voluntary termination of employment occurring prior to
17 September 1, 2017, (ii) amounts levied by a school district otherwise at
18 the maximum levy pursuant to subdivision (2)(a) of this section to pay
19 for current and future qualified voluntary termination incentives for
20 certificated teachers pursuant to subsection (3) of section 79-8,142 that
21 are not otherwise included in an exclusion pursuant to subdivision (2)(d)
22 of this section, (iii) amounts levied by a school district otherwise at
23 the maximum levy pursuant to subdivision (2)(a) of this section to pay
24 for seventy-five percent of the current and future sums agreed to be paid
25 to certificated employees in exchange for a voluntary termination of
26 employment occurring between September 1, 2017, and August 31, 2018, as a
27 result of a collective-bargaining agreement in force and effect on
28 September 1, 2017, that are not otherwise included in an exclusion
29 pursuant to subdivision (2)(d) of this section, (iv) amounts levied by a
30 school district otherwise at the maximum levy pursuant to subdivision (2)
31 (a) of this section to pay for fifty percent of the current and future

1 sums agreed to be paid to certificated employees in exchange for a
2 voluntary termination of employment occurring between September 1, 2018,
3 and August 31, 2019, as a result of a collective-bargaining agreement in
4 force and effect on September 1, 2017, that are not otherwise included in
5 an exclusion pursuant to subdivision (2)(d) of this section, (v) amounts
6 levied by a school district otherwise at the maximum levy pursuant to
7 subdivision (2)(a) of this section to pay for twenty-five percent of the
8 current and future sums agreed to be paid to certificated employees in
9 exchange for a voluntary termination of employment occurring between
10 September 1, 2019, and August 31, 2020, as a result of a collective-
11 bargaining agreement in force and effect on September 1, 2017, that are
12 not otherwise included in an exclusion pursuant to subdivision (2)(d) of
13 this section, (vi) amounts levied in compliance with sections 79-10,110
14 and 79-10,110.02, and (vii) amounts levied to pay for special building
15 funds and sinking funds established for projects commenced prior to April
16 1, 1996, for construction, expansion, or alteration of school district
17 buildings. For purposes of this subsection, commenced means any action
18 taken by the school board on the record which commits the board to expend
19 district funds in planning, constructing, or carrying out the project.

20 (e) Federal aid school districts may exceed the maximum levy
21 prescribed by subdivision (2)(a) or (2)(c) of this section only to the
22 extent necessary to qualify to receive federal aid pursuant to Title VIII
23 of Public Law 103-382, as such title existed on September 1, 2001. For
24 purposes of this subdivision, federal aid school district means any
25 school district which receives ten percent or more of the revenue for its
26 general fund budget from federal government sources pursuant to Title
27 VIII of Public Law 103-382, as such title existed on September 1, 2001.

28 (f) For each fiscal year, learning communities may levy a maximum
29 levy of one-half cent on each one hundred dollars of taxable property
30 subject to the levy for elementary learning center facility leases, for
31 remodeling of leased elementary learning center facilities, and for up to

1 fifty percent of the estimated cost for focus school or program capital
2 projects approved by the learning community coordinating council pursuant
3 to section 79-2111.

4 (g) For each fiscal year, learning communities may levy a maximum
5 levy of one and one-half cents on each one hundred dollars of taxable
6 property subject to the levy for early childhood education programs for
7 children in poverty, for elementary learning center employees, for
8 contracts with other entities or individuals who are not employees of the
9 learning community for elementary learning center programs and services,
10 and for pilot projects, except that no more than ten percent of such levy
11 may be used for elementary learning center employees.

12 (3) For each fiscal year, community college areas may levy the
13 levies provided in subdivisions (2)(a) through (c) of section 85-1517, in
14 accordance with the provisions of such subdivisions. A community college
15 area may exceed the levy provided in subdivision (2)(b) of section
16 85-1517 by the amount necessary to retire general obligation bonds
17 assumed by the community college area or issued pursuant to section
18 85-1515 according to the terms of such bonds or for any obligation
19 pursuant to section 85-1535 entered into prior to January 1, 1997.

20 (4)(a) Natural resources districts may levy a maximum levy of four
21 and one-half cents per one hundred dollars of taxable valuation of
22 property subject to the levy.

23 (b) Natural resources districts shall also have the power and
24 authority to levy a tax equal to the dollar amount by which their
25 restricted funds budgeted to administer and implement ground water
26 management activities and integrated management activities under the
27 Nebraska Ground Water Management and Protection Act exceed their
28 restricted funds budgeted to administer and implement ground water
29 management activities and integrated management activities for FY2003-04,
30 not to exceed one cent on each one hundred dollars of taxable valuation
31 annually on all of the taxable property within the district.

1 (c) In addition, natural resources districts located in a river
2 basin, subbasin, or reach that has been deemed to be fully appropriated
3 pursuant to subsection (4) of section 46-713 or determined to be fully
4 appropriated pursuant to section 46-714 or ~~designated as overappropriated~~
5 ~~pursuant to section 46-713~~ by the Department of Natural Resources shall
6 also have the power and authority to levy a tax equal to the dollar
7 amount by which their restricted funds budgeted to administer and
8 implement ground water management activities and integrated management
9 activities under the Nebraska Ground Water Management and Protection Act
10 exceed their restricted funds budgeted to administer and implement ground
11 water management activities and integrated management activities for
12 FY2005-06, not to exceed three cents on each one hundred dollars of
13 taxable valuation on all of the taxable property within the district for
14 fiscal year 2006-07 and each fiscal year thereafter through fiscal year
15 2017-18.

16 (5) Any educational service unit authorized to levy a property tax
17 pursuant to section 79-1225 may levy a maximum levy of one and one-half
18 cents per one hundred dollars of taxable valuation of property subject to
19 the levy.

20 (6)(a) Incorporated cities and villages which are not within the
21 boundaries of a municipal county may levy a maximum levy of forty-five
22 cents per one hundred dollars of taxable valuation of property subject to
23 the levy plus an additional five cents per one hundred dollars of taxable
24 valuation to provide financing for the municipality's share of revenue
25 required under an agreement or agreements executed pursuant to the
26 Interlocal Cooperation Act or the Joint Public Agency Act. The maximum
27 levy shall include amounts levied to pay for sums to support a library
28 pursuant to section 51-201, museum pursuant to section 51-501, visiting
29 community nurse, home health nurse, or home health agency pursuant to
30 section 71-1637, or statue, memorial, or monument pursuant to section
31 80-202.

1 (b) Incorporated cities and villages which are within the boundaries
2 of a municipal county may levy a maximum levy of ninety cents per one
3 hundred dollars of taxable valuation of property subject to the levy. The
4 maximum levy shall include amounts paid to a municipal county for county
5 services, amounts levied to pay for sums to support a library pursuant to
6 section 51-201, a museum pursuant to section 51-501, a visiting community
7 nurse, home health nurse, or home health agency pursuant to section
8 71-1637, or a statue, memorial, or monument pursuant to section 80-202.

9 (7) Sanitary and improvement districts which have been in existence
10 for more than five years may levy a maximum levy of forty cents per one
11 hundred dollars of taxable valuation of property subject to the levy, and
12 sanitary and improvement districts which have been in existence for five
13 years or less shall not have a maximum levy. Unconsolidated sanitary and
14 improvement districts which have been in existence for more than five
15 years and are located in a municipal county may levy a maximum of eighty-
16 five cents per hundred dollars of taxable valuation of property subject
17 to the levy.

18 (8) Counties may levy or authorize a maximum levy of fifty cents per
19 one hundred dollars of taxable valuation of property subject to the levy,
20 except that five cents per one hundred dollars of taxable valuation of
21 property subject to the levy may only be levied to provide financing for
22 the county's share of revenue required under an agreement or agreements
23 executed pursuant to the Interlocal Cooperation Act or the Joint Public
24 Agency Act. The maximum levy shall include amounts levied to pay for sums
25 to support a library pursuant to section 51-201 or museum pursuant to
26 section 51-501. The county may allocate up to fifteen cents of its
27 authority to other political subdivisions subject to allocation of
28 property tax authority under subsection (1) of section 77-3443 and not
29 specifically covered in this section to levy taxes as authorized by law
30 which do not collectively exceed fifteen cents per one hundred dollars of
31 taxable valuation on any parcel or item of taxable property. The county

1 may allocate to one or more other political subdivisions subject to
2 allocation of property tax authority by the county under subsection (1)
3 of section 77-3443 some or all of the county's five cents per one hundred
4 dollars of valuation authorized for support of an agreement or agreements
5 to be levied by the political subdivision for the purpose of supporting
6 that political subdivision's share of revenue required under an agreement
7 or agreements executed pursuant to the Interlocal Cooperation Act or the
8 Joint Public Agency Act. If an allocation by a county would cause another
9 county to exceed its levy authority under this section, the second county
10 may exceed the levy authority in order to levy the amount allocated.

11 (9) Municipal counties may levy or authorize a maximum levy of one
12 dollar per one hundred dollars of taxable valuation of property subject
13 to the levy. The municipal county may allocate levy authority to any
14 political subdivision or entity subject to allocation under section
15 77-3443.

16 (10) Beginning July 1, 2016, rural and suburban fire protection
17 districts may levy a maximum levy of ten and one-half cents per one
18 hundred dollars of taxable valuation of property subject to the levy if
19 (a) such district is located in a county that had a levy pursuant to
20 subsection (8) of this section in the previous year of at least forty
21 cents per one hundred dollars of taxable valuation of property subject to
22 the levy or (b) for any rural or suburban fire protection district that
23 had a levy request pursuant to section 77-3443 in the previous year, the
24 county board of the county in which the greatest portion of the valuation
25 of such district is located did not authorize any levy authority to such
26 district in the previous year.

27 (11) Property tax levies (a) for judgments, except judgments or
28 orders from the Commission of Industrial Relations, obtained against a
29 political subdivision which require or obligate a political subdivision
30 to pay such judgment, to the extent such judgment is not paid by
31 liability insurance coverage of a political subdivision, (b) for

1 preexisting lease-purchase contracts approved prior to July 1, 1998, (c)
2 for bonds as defined in section 10-134 approved according to law and
3 secured by a levy on property except as provided in section 44-4317 for
4 bonded indebtedness issued by educational service units and school
5 districts, and (d) for payments by a public airport to retire interest-
6 free loans from the Division of Aeronautics of the Department of
7 Transportation in lieu of bonded indebtedness at a lower cost to the
8 public airport are not included in the levy limits established by this
9 section.

10 (12) The limitations on tax levies provided in this section are to
11 include all other general or special levies provided by law.
12 Notwithstanding other provisions of law, the only exceptions to the
13 limits in this section are those provided by or authorized by sections
14 77-3442 to 77-3444.

15 (13) Tax levies in excess of the limitations in this section shall
16 be considered unauthorized levies under section 77-1606 unless approved
17 under section 77-3444.

18 (14) For purposes of sections 77-3442 to 77-3444, political
19 subdivision means a political subdivision of this state and a county
20 agricultural society.

21 (15) For school districts that file a binding resolution on or
22 before May 9, 2008, with the county assessors, county clerks, and county
23 treasurers for all counties in which the school district has territory
24 pursuant to subsection (7) of section 79-458, if the combined levies,
25 except levies for bonded indebtedness approved by the voters of the
26 school district and levies for the refinancing of such bonded
27 indebtedness, are in excess of the greater of (a) one dollar and twenty
28 cents per one hundred dollars of taxable valuation of property subject to
29 the levy or (b) the maximum levy authorized by a vote pursuant to section
30 77-3444, all school district levies, except levies for bonded
31 indebtedness approved by the voters of the school district and levies for

1 the refinancing of such bonded indebtedness, shall be considered
2 unauthorized levies under section 77-1606.

3 Sec. 20. Section 81-15,175, Revised Statutes Cumulative Supplement,
4 2018, is amended to read:

5 81-15,175 (1) The board may make an annual allocation each fiscal
6 year from the Nebraska Environmental Trust Fund to the Nebraska
7 Environmental Endowment Fund as provided in section 81-15,174.01. The
8 board shall make annual allocations from the Nebraska Environmental Trust
9 Fund and may make annual allocations each fiscal year from the Nebraska
10 Environmental Endowment Fund for projects which conform to the
11 environmental categories of the board established pursuant to section
12 81-15,176 and to the extent the board determines those projects to have
13 merit. The board shall establish a calendar annually for receiving and
14 evaluating proposals and awarding grants. To evaluate the economic,
15 financial, and technical feasibility of proposals, the board may
16 establish subcommittees, request or contract for assistance, or establish
17 advisory groups. Private citizens serving on advisory groups shall be
18 reimbursed for their actual and necessary expenses pursuant to sections
19 81-1174 to 81-1177.

20 (2) The board shall establish rating systems for ranking proposals
21 which meet the board's environmental categories and other criteria. The
22 rating systems shall include, but not be limited to, the following
23 considerations:

24 (a) Conformance with categories established pursuant to section
25 81-15,176;

26 (b) Amount of funds committed from other funding sources;

27 (c) Encouragement of public-private partnerships;

28 (d) Geographic mix of projects over time;

29 (e) Cost-effectiveness and economic impact;

30 (f) Direct environmental impact;

31 (g) Environmental benefit to the general public and the long-term

1 nature of such public benefit; and

2 (h) Applications recommended by the Director of Natural Resources
3 and submitted by the Department of Natural Resources pursuant to
4 subsection (7) of section 61-218 shall be awarded fifty priority points
5 in the ranking process for the 2011 grant application if the Legislature
6 has authorized annual transfers of three million three hundred thousand
7 dollars to the Water Resources Cash Fund for each of fiscal years 2011-12
8 and 2012-13 and has stated its intent to transfer three million three
9 hundred thousand dollars to the Water Resources Cash Fund in fiscal year
10 2013-14. Priority points shall be awarded if the proposed programs set
11 forth in the grant application are consistent with the purposes of
12 reducing consumptive uses of water, enhancing streamflows, recharging
13 ground water, or supporting wildlife habitat in any river basin deemed to
14 be fully appropriated pursuant to subsection (4) of section 46-713 or
15 determined to be fully appropriated pursuant to section 46-714~~or~~
16 ~~designated as overappropriated pursuant to section 46-713.~~

17 (3) A grant awarded under this section pursuant to an application
18 made under subsection (7) of section 61-218 shall be paid out in the
19 following manner:

20 (a) The initial three million three hundred thousand dollar
21 installment shall be remitted to the State Treasurer for credit to the
22 Water Resources Cash Fund no later than fifteen business days after the
23 date that the grant is approved by the board;

24 (b) The second three million three hundred thousand dollar
25 installment shall be remitted to the State Treasurer for credit to the
26 Water Resources Cash Fund no later than May 15, 2013; and

27 (c) The third three million three hundred thousand dollar
28 installment shall be remitted to the State Treasurer for credit to the
29 Water Resources Cash Fund no later than May 15, 2014, if the Legislature
30 has authorized a transfer of three million three hundred thousand dollars
31 from the General Fund to the Water Resources Cash Fund for fiscal year

1 2013-14.

2 (4) It is the intent of the Legislature that the Department of
3 Natural Resources apply for an additional three-year grant from the
4 Nebraska Environmental Trust Fund that would begin in fiscal year 2014-15
5 and a three-year grant that would begin in fiscal year 2017-18 and such
6 application shall be awarded fifty priority points in the ranking process
7 as set forth in subdivision (2)(h) of this section if the following
8 criteria are met:

9 (a) The Natural Resources Committee of the Legislature has examined
10 options for water funding and has submitted a report electronically to
11 the Clerk of the Legislature and the Governor by December 1, 2012,
12 setting forth:

13 (i) An outline and priority listing of water management and funding
14 needs in Nebraska, including instream flows, residential, agricultural,
15 recreational, and municipal needs, interstate obligations, water quality
16 issues, and natural habitats preservation;

17 (ii) An outline of statewide funding options which create a
18 dedicated, sustainable funding source to meet the needs set forth in the
19 report; and

20 (iii) Recommendations for legislation;

21 (b) The projects and activities funded by the department through
22 grants from the Nebraska Environmental Trust Fund under this section have
23 resulted in enhanced streamflows, reduced consumptive uses of water,
24 recharged ground water, supported wildlife habitat, or otherwise
25 contributed towards conserving, enhancing, and restoring Nebraska's
26 ground water and surface water resources. On or before July 1, 2014, the
27 department shall submit electronically a report to the Natural Resources
28 Committee of the Legislature providing demonstrable evidence of the
29 benefits accrued from such projects and activities; and

30 (c) In addition to the grant reporting requirements of the trust, on
31 or before July 1, 2014, the department provides to the board a report

1 which includes documentation that:

2 (i) Expenditures from the Water Resources Cash Fund made to natural
3 resources districts have met the matching fund requirements provided in
4 subdivision (5)(a) of section 61-218;

5 (ii) Ten percent or less of the matching fund requirements has been
6 provided by in-kind contributions for expenses incurred for projects
7 enumerated in the grant application. In-kind contributions shall not
8 include land or land rights; and

9 (iii) All other projects and activities funded by the department
10 through grants from the Nebraska Environmental Trust Fund under this
11 section were matched not less than forty percent of the project or
12 activity cost by other funding sources.

13 (5) The board may establish a subcommittee to rate grant
14 applications. If the board uses a subcommittee, the meetings of such
15 subcommittee shall be subject to the Open Meetings Act. The subcommittee
16 shall (a) use the rating systems established by the board under
17 subsection (2) of this section, (b) assign a numeric value to each rating
18 criterion, combine these values into a total score for each application,
19 and rank the applications by the total scores, (c) recommend an amount of
20 funding for each application, which amount may be more or less than the
21 requested amount, and (d) submit the ranked list and recommended funding
22 to the board for its approval or disapproval.

23 (6) The board may commit funds to multiyear projects, subject to
24 available funds and appropriations. No commitment shall exceed three
25 years without formal action by the board to renew the grant or contract.
26 Multiyear commitments may be exempt from the rating process except for
27 the initial application and requests to renew the commitment.

28 (7) The board shall adopt and promulgate rules and regulations and
29 publish guidelines governing allocations from the fund. The board shall
30 conduct annual reviews of existing projects for compliance with project
31 goals and grant requirements.

1 (8) Every five years the board may evaluate the long-term effects of
2 the projects it funds. The evaluation may assess a sample of such
3 projects. The board may hire an independent consultant to conduct the
4 evaluation and may report the evaluation findings to the Legislature and
5 the Governor. The report submitted to the Legislature shall be submitted
6 electronically.

7 Sec. 21. Original sections 2-32,115, 46-229.04, 46-703, 46-706,
8 46-713, 46-714, 46-716, 46-718, 46-720, 46-740, 61-218, and 77-3442,
9 Reissue Revised Statutes of Nebraska, and sections 2-969, 2-3225, 46-290,
10 46-294, 46-715, 46-753, 46-755, and 81-15,175, Revised Statutes
11 Cumulative Supplement, 2018, are repealed.