

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 589**

Introduced by Groene, 42.

Read first time January 20, 2021

Committee: Natural Resources

- 1 A BILL FOR AN ACT relating to natural resources; to amend section 46-715,
- 2 Revised Statutes Cumulative Supplement, 2020; to change integrated
- 3 management plan provisions relating to water augmentation projects
- 4 for natural streams; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-715, Revised Statutes Cumulative Supplement,  
2 2020, is amended to read:

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

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

29 (2) In developing an integrated management plan, the effects of  
30 existing and potential new water uses on existing surface water  
31 appropriators and ground water users shall be considered. An integrated

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

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

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

3 (b) Include a generally accepted methodology to be utilized to  
4 estimate depletions and gains to streamflows, which methodology includes  
5 location, amount, and time regarding gains to streamflows as offsets to  
6 new uses;

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

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

14 (e) Identify, to the extent feasible, potential water available to  
15 mitigate new uses, including, but not limited to, water rights leases,  
16 interference agreements, augmentation projects, conjunctive use  
17 management, and use retirement. A public augmentation project that is not  
18 attempting to guarantee that a certain quantity of water is used for a  
19 beneficial use or reaches a certain point downstream for a particular  
20 use, but rather, the purpose of the augmentation project is simply to add  
21 water to a natural stream in order to offset water depletion, shall be  
22 without regard to beneficial use on the overlying land or dependent on  
23 the amount of land owned, rented, or leased by the natural resources  
24 district or districts involved in operating the augmentation project;

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

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

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

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

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

1 affected natural resources districts.

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

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

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

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

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

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

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

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

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

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

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



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

6 Sec. 2. Original section 46-715, Revised Statutes Cumulative  
7 Supplement, 2020, is repealed.