

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 845**

Introduced by Groene, 42.

Read first time January 08, 2020

Committee:

- 1 A BILL FOR AN ACT relating to ground water management and protection; to
- 2 amend section 46-715, Revised Statutes Cumulative Supplement, 2018;
- 3 to change procedures relating to augmentation projects under an
- 4 integrated management plan; 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 2018, 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. If real property was acquired to develop  
18 and operate an augmentation project for streamflow enhancement, the owner  
19 or owners of such project may later sell such real property and continue  
20 to pump ground water, subject to the provisions of subdivision (1)(a) of  
21 section 46-739, in the amount necessary for augmentation purposes without  
22 regard to land area or acres owned;

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

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

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

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

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

31           (b) In any river basin, subbasin, or reach designated as

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

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

1 prior to July 1, 1997, and to water use initiated on or after such date.

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

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

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

24 (iii) During the ten years following adoption of an integrated  
25 management plan developed under this subsection (5) or during the ten  
26 years after the adoption of any subsequent increment of the integrated  
27 management plan pursuant to subdivision (d)(iv) of this subsection, the  
28 department and the affected natural resources district shall conduct a  
29 technical analysis of the actions taken in such increment to determine  
30 the progress towards meeting the goals and objectives adopted pursuant to  
31 subsection (2) of this section. The analysis shall include an examination

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

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

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

26 (6) In any river basin, subbasin, or reach that is designated as  
27 fully appropriated or overappropriated and whenever necessary to ensure  
28 that the state is in compliance with an interstate compact or decree or a  
29 formal state contract or agreement, the department, in consultation with  
30 the affected districts, shall forecast on an annual basis the maximum  
31 amount of water that may be available from streamflow for beneficial use



1 in the short term and long term in order to comply with the requirement  
2 of subdivision (4)(b) of this section. This forecast shall be made by  
3 January 1, 2008, and each January 1 thereafter.

4       Sec. 2.   Original section 46-715, Revised Statutes Cumulative  
5 Supplement, 2018, is repealed.