

LEGISLATIVE BILL 962

Approved by the Governor April 15, 2004

Introduced by Natural Resources Committee: Schrock, 38, Chairperson; Friend, 10; Jones, 43; Kremer, 34; Louden, 49; Preister, 5; Stuhr, 24; and Aguilar, 35; Baker, 44; Beutler, 28; Bromm, 23; Brown, 6; Burling, 33; Combs, 32; Cudaback, 36; Erdman, 47; Jensen, 20; Johnson, 37; Landis, 46; D. Pederson, 42; Price, 26; Raikes, 25; Schimek, 27; Stuthman, 22; Wehrbein, 2

AN ACT relating to natural resources; to amend sections 2-1586, 2-3225, 46-229.02, 46-229.03, 46-2,127, 46-609, 46-651, 46-656.03, 46-656.04, 46-656.08, 46-656.11, 46-656.13, 46-656.21, 46-656.32, 46-656.35 to 46-656.37, 46-656.39, 46-656.41 to 46-656.48, 46-656.64, 46-680, 46-1207.01, 46-1207.02, 46-1212, 46-1228, 61-206, 66-1501, 66-1519, 66-1523, 66-1525, 66-1529.02, 77-27,137.02, and 77-3442, Reissue Revised Statutes of Nebraska, sections 2-1588, 13-520, 46-226.03, 46-229, 46-229.04, 46-230, 46-235.04, 46-237, 46-261, 46-290 to 46-296, 46-2,112, 46-2,119, 46-2,132, 46-2,135, 46-601.01, 46-613.02, 46-653, 46-656.05, 46-656.14, 46-656.19, 46-656.25 to 46-656.27, 46-656.31, 46-656.33, 46-656.38, 46-656.40, 46-656.62, 46-656.63, 46-656.65 to 46-656.67, 46-676, 46-678.01, and 81-15,176, Revised Statutes Supplement, 2002, and sections 46-241, 46-602, 46-656.01, 46-656.02, 46-656.07, 46-656.10, 46-656.12, 46-656.24, 46-656.29, 46-656.30, and 81-15,174, Revised Statutes Supplement, 2003; to change tax levy provisions for natural resources districts; to change provisions relating to management plans, water appropriations, water policy, water wells, public water supply, water transfers, and the Department of Natural Resources; to provide a termination date for provisions relating to the Water Policy Task Force; to transfer, change, and eliminate provisions relating to the Nebraska Ground Water Management and Protection Act; to require insurance for remedial action and change dates relating to the Petroleum Release Remedial Action Act; to define and redefine terms; to provide and change powers and duties; to create a board and a fund; to provide for transfers of funds; to eliminate a committee; to harmonize provisions; to provide operative dates; to provide severability; to repeal the original sections; to outright repeal sections 46-656.06, 46-656.09, 46-656.17, 46-656.18, 46-656.20, 46-656.22, 46-656.23, and 46-656.49, Reissue Revised Statutes of Nebraska, and sections 46-656.15, 46-656.16, 46-656.28, and 46-656.50 to 46-656.61, Revised Statutes Supplement, 2002; and to declare an emergency.

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

Section 1. Section 2-1586, Reissue Revised Statutes of Nebraska, is amended to read:

2-1586. ~~It is hereby recognized~~ The Legislature finds that it is the a public purpose of this the state to properly develop the water and related land resources of the state and that it is in the public interest of this state (1) to ~~financially assist in provide financial assistance to~~ programs and projects necessary essential to the development, preservation, and maintenance of Nebraska's the state's water and related land resources, including programs and projects for the (a) abatement of pollution, (b) potential reduction of potential flood damages, (c) reservation of lands for resource development projects, (d) provision of public irrigation facilities, (e) preservation and development of fish and wildlife resources, (f) protection and improvement of public lands, (g) provision of public outdoor recreation lands and facilities, (h) provision and preservation of the waters of this the state for all beneficial uses, including domestic, agricultural, and manufacturing uses, (i) conservation of land resources, and (j) protection of the health, safety, and general welfare of the people, of the State of Nebraska, and (2) to ~~financially assist~~ provide financial assistance to natural resources districts in the preparation of management plans pursuant to section 46-656.12 49 of this act.

Sec. 2. Section 2-1588, Revised Statutes Supplement, 2002, is amended to read:

2-1588. (1) Any money in the Nebraska Resources Development Fund may be allocated by the commission in accordance with sections 2-1586 to 2-1595 for utilization by the department, by any state office, agency, board,

or commission, or by any political subdivision of the ~~State of Nebraska~~ state which has the authority to develop the state's water and related land resources. Such money may be allocated in the form of grants or loans or for acquiring state interests in water and related land resources programs and projects undertaken within the state. The allocation of funds to a program or project in one form shall not of itself preclude additional allocations in the same or any other form to the same program or project. Funds may also be allocated to assist natural resources districts in the preparation of management plans as provided in section ~~46-656.12~~ 49 of this act. Funds so allocated shall not be subject to sections 2-1589 to 2-1595.

(2) No project, including all related phases, segments, parts, or divisions, shall receive more than ten million dollars from the fund. On July 1, 1994, and each year thereafter, the director shall adjust the project cost and payment limitation of this subsection by an amount equal to the average percentage change in the federal Department of Commerce, Bureau of the Census, Composite Construction Cost Index for the prior three years.

(3) Prior to September 1 of each even-numbered year, a biennial report shall be made to the Governor and the Clerk of the Legislature describing the work accomplished by the use of such development fund during the immediately preceding two-year period. The report shall include a complete financial statement. Each member of the Legislature shall receive a copy of such report upon making a request ~~for it~~ to the director.

Sec. 3. Section 2-3225, Reissue Revised Statutes of Nebraska, is amended to read:

2-3225. Each district shall have the power and authority to levy a tax of not to exceed four and one-half cents on each one hundred dollars of taxable valuation annually on all of the taxable property within such district unless a higher levy is authorized pursuant to section 77-3444. Each district shall also have the power and authority to levy a tax equal to the dollar amount by which its restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed its restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2003-04, not to exceed one cent on each one hundred dollars of taxable valuation annually on all of the taxable property within the district. The proceeds of such tax shall be used, together with any other funds which the district may receive from any source, for the operation of the district. When adopted by the board, the levy shall be certified by the secretary to the county clerk of each county which in whole or in part is included within the district. Such levy shall be handled by the counties in the same manner as other levies, and proceeds shall be remitted to the district treasurer. Such levy shall not be considered a part of the general county levy and shall not be considered in connection with any limitation on levies of such counties.

Sec. 4. Section 13-520, Revised Statutes Supplement, 2002, is amended to read:

13-520. The limitations in section 13-519 shall not apply to (1) restricted funds budgeted for capital improvements, (2) restricted funds expended from a qualified sinking fund for acquisition or replacement of tangible personal property with a useful life of five years or more, (3) restricted funds pledged to retire bonded indebtedness, used by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport, or used to pay other financial instruments that are approved and agreed to before July 1, 1999, in the same manner as bonds by a governing body created under section 35-501, (4) restricted funds budgeted in support of a service which is the subject of an agreement or a modification of an existing agreement whether operated by one of the parties to the agreement or by an independent joint entity or joint public agency, (5) restricted funds budgeted to pay for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency pursuant to the Emergency Management Act, ~~or~~ (6) restricted funds budgeted to pay for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a governmental unit which require or obligate a governmental unit to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a governmental unit, or (7) the dollar amount by which restricted funds budgeted by a natural resources district to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed its restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2003-04.

Sec. 5. Section 46-226.03, Revised Statutes Supplement, 2002, is

amended to read:

46-226.03. For purposes of sections 46-226 to 46-243 and section 10 of this act:

- (1) Department means the Department of Natural Resources;
- (2) Director means the Director of Natural Resources;
- (3) Incidental underground water storage has the same meaning as in section 46-296;
- (4) Induced ground water recharge means the process by which ground water withdrawn from wells near a natural stream is replaced by surface water flowing in the stream;
- (5) Intentional underground water storage has the same meaning as in section 46-296;
- (6) Public water supplier means a city, village, municipal corporation, metropolitan utilities district, rural water district, natural resources district, irrigation district, reclamation district, or sanitary and improvement district which supplies or intends to supply water to inhabitants of cities, villages, or rural areas for domestic or municipal purposes;
- (7) Underground water storage has the same meaning as in section 46-296; and
- (8) Well means a well, subsurface collector, or other artificial opening or excavation in the ground from which ground water flows under natural pressure or is artificially withdrawn.

Sec. 6. Section 46-229, Revised Statutes Supplement, 2002, is amended to read:

46-229. All appropriations for water must be for a some beneficial or useful purpose and, except as provided in sections 46-290 to 46-294 and 46-2,122 to 46-2,125, when the ~~appropriator~~ owner of an appropriation or his or her successor in interest ceases to use it for such purpose for more than ~~three~~ five consecutive years, the right may be terminated only by the director ~~following a hearing~~ pursuant to sections 46-229.02 to 46-229.05.

Sec. 7. Section 46-229.02, Reissue Revised Statutes of Nebraska, is amended to read:

46-229.02. ~~If it shall appear that any water appropriation has not been used for some beneficial or useful purpose or having been so used at one time has ceased to be used for such purpose for more than three consecutive years, the department shall appoint a place and time of hearing, shall serve notice upon the owners of such water appropriation or such ditch, canal, or other diverting works to show cause by such time and at such place why the water appropriation owned by such person should not be declared forfeited and annulled because such water appropriation had not been used for more than three consecutive years prior to receiving such notice, and shall also serve such notice upon the landowners under such water appropriation, ditch, or canal. The notice shall contain a copy of section 46-229.04 and a department telephone number which any person may call for information regarding sufficient cause for nonuse.~~

A water appropriation may be canceled by the department without complying with sections 46-229.01 to 46-229.04 if the owner of such appropriation fails to comply with any of the conditions of approval in the permit. (1) If, based upon the results of a field investigation or upon information, however obtained, the department makes preliminary determinations (a) that an appropriation has not been used, in whole or in part, for a beneficial or useful purpose or having been so used at one time has ceased to be used, in whole or in part, for such purpose for more than five consecutive years and (b) that the department knows of no reason that constitutes sufficient cause, as provided in section 46-229.04, for such nonuse or that such nonuse has continued beyond the additional time permitted because of the existence of any applicable sufficient cause, the department shall serve notice of such preliminary determinations upon the owner or owners of such appropriation and upon any other person who is an owner of the land under such appropriation. Such notice shall contain the information required by section 46-229.03, shall be provided in the manner required by such section, and shall be posted on the department's web site. Each owner of the appropriation and any owner of the land under such appropriation shall have thirty days after the mailing or last publication, as applicable, of such notice to notify the department, on a form provided by the department, that he or she contests the department's preliminary determination of nonuse or the department's preliminary determination of the absence of sufficient cause for such nonuse. Such notification shall indicate the reason or reasons the owner is contesting the department's preliminary determination and include any information the owner believes is relevant to the issues of nonuse or sufficient cause for such nonuse.

- (2) If no owner of the appropriation or of the land under the

appropriation provides notification to the department in accordance with subsection (1) of this section, the director may issue an order canceling the appropriation in whole or in part. The extent of such cancellation shall not exceed the extent described in the department's notice to the owner or owners in accordance with subsection (1) of this section. A copy of the order canceling the appropriation, or part thereof, shall be posted on the department's web site and shall be provided to the owner or owners of the appropriation and to any other owner of the land under the appropriation in the same manner that notices are to be given in accordance with subsection (2), (3), or (4) of section 46-229.03, as applicable.

(3) If an owner of the appropriation provides notification to the department in accordance with subsection (1) of this section, the department shall review the owner's stated reasons for contesting the department's preliminary determination and any other information provided with the owner's notice. If the department determines that the owner has provided sufficient information for the department to conclude that the appropriation should not be canceled, in whole or in part, it shall inform the owners of the appropriation, and any other owners of the land under the appropriation, of such determination.

(4) If the department determines that an owner has provided sufficient information to support the conclusion that the appropriation should be canceled only in part and if (a) the owner or owners filing the notice of contest agree in writing to such cancellation in part and (b) such owner or owners are the only known owners of the appropriation and of the land under the appropriation, the director may issue an order canceling the appropriation to the extent agreed to by the owner or owners and shall provide a copy of such order to such owner or owners.

(5) If the department determines that subsections (2), (3), and (4) of this section do not apply, it shall schedule and conduct a hearing on the cancellation of the appropriation in whole or in part. Notice of the hearing shall be provided to the owner or owners who filed notices with the department pursuant to subsection (1) of this section, to any other owner of the appropriation known to the department, and to any other owner of the land under the appropriation. The notice shall be posted on the department's web site and shall be served or published, as applicable, in the manner provided in subsection (2), (3), or (4) of section 46-229.03, as applicable.

(6) Following a hearing conducted in accordance with subsection (5) of this section and subsection (1) of section 46-229.04, the director shall render a decision by order. A copy of the order shall be provided to the owner or owners of the appropriation and to any other person who is an owner of the land under the appropriation. The copy of the order shall be posted on the department's web site and shall be served or published, as applicable, in the same manner that notices are to be given in accordance with subsection (2), (3), or (4) of section 46-229.03, as applicable, except that if publication is required, it shall be sufficient for the department to publish notice that an order has been issued. Any such published notice shall identify the land or lands involved and shall provide the address and telephone number that may be used to obtain a copy of the order.

Sec. 8. Section 46-229.03, Reissue Revised Statutes of Nebraska, is amended to read:

46-229.03. (1) The notice shall contain the date and place of hearing, a description of the water appropriation, the number thereof upon the books and records of the department, the date of priority, the point of diversion, and a description of the lands which are located under such water appropriation. It shall call upon all persons interested in such water appropriation to show cause why all or part of the same should not be canceled and annulled. The notice shall be served personally or by registered or certified mail at least thirty days before the date of hearing upon those owning or controlling the water appropriation and the ditch, canal, or reservoir for the purpose of using or storing water for any purpose if they are known to the department to be the owners thereof and maintain an office within the State of Nebraska.

(2) If the persons named in subsection (1) of this section do not maintain an office within the State of Nebraska, then such notice shall be served by the publication in some legal newspaper published or of general circulation in the county in which the place of diversion of such water appropriation is located, once a week for three consecutive weeks prior to the date of hearing.

(3) Except as provided in subsection (4) of this section, a copy of such notice shall be personally served or sent by either registered or certified mail to all other persons appearing from the records of the county clerk or register of deeds to be landowners under such appropriation. The

notice provided by the department in accordance with subsection (1) or (5) of section 46-229.02 shall contain: (a) A description of the appropriation; (b) the number assigned to the appropriation by the department; (c) the date of priority; (d) the point of diversion; (e) if the notice is published, the section or sections of land which contain the lands located under such appropriation; (f) if the notice is served by personal service or by registered or certified mail, a description of the lands which are located under such appropriation, a description of the information used by the department to reach the preliminary determinations of nonuse, and a copy of section 46-229.04; (g) a description of the owner's options in response to the notice; (h) a department telephone number which any person may call during normal business hours for more information regarding the owner's rights and options, including what constitutes sufficient cause for nonuse; (i) if the notice is provided in accordance with subsection (1) of section 46-229.02 and is mailed, a copy of the form that such owner may file to request a departmental hearing; (j) if the notice is provided in accordance with subsection (1) of section 46-229.02 and is published, the location where the owner may obtain a form to file to request a departmental hearing; and (k) if the notice is provided in accordance with subsection (5) of section 46-229.02, the date, time, and location of the hearing.

(2) For any owner whose name and address are known to the department or can be reasonably obtained by the department, the notice shall be served by personal service or by registered mail or certified mail. Any landowner's name or address shall be considered reasonably obtainable if that person is listed as an owner of the land involved, on the records of the county clerk or register of deeds for the county in which the land is located.

(3) For any owner whose name and address are not known to the department and cannot reasonably be obtained by the department, such notice shall be served by publication in a legal newspaper published or of general circulation in any county in which the place of diversion is located and in a legal newspaper published or of general circulation in each county containing land for which the right to use water under the appropriation is subject to cancellation. Each such publication shall be once each week for three consecutive weeks.

(4) Landowners whose property under such appropriation is located within the corporate limits of a city or village shall be served by the publication of such notice in a legal newspaper published or of general circulation in the county in which the city or village is located. The notice shall be published once a each week for three consecutive weeks. ~~prior to the date of hearing.~~

Sec. 9. Section 46-229.04, Revised Statutes Supplement, 2002, is amended to read:

46-229.04. (1) At such hearing the verified field investigation report of an employee of the department shall be prima facie evidence for the forfeiture and annulment of such water appropriation. If no ~~one~~ person appears at the hearing, such water appropriation or unused part thereof shall be declared forfeited and annulled. If ~~someone interested~~ an interested person appears and contests the same, the department shall hear evidence, and if it appears that such water has not been put to a beneficial use or has ceased to be used for such purpose for more than ~~three~~ five consecutive years, the same shall be declared canceled and annulled unless the department finds that (a) there has been sufficient cause for such nonuse as provided for in subsection ~~(3)~~ (2), (3), or (4) of this section or (b) subsection (5) or (6) of this section applies.

(2) If it is determined that such water has not been put to beneficial use or has ceased to be used for such purpose for more than ten consecutive years, the water right shall be declared canceled and annulled, except that for any water appropriation or part of a water appropriation on any tract of land under separate ownership, sufficient cause for nonuse shall be deemed to exist even if the period of nonuse was for more than ten consecutive years if the landowner used the available water supply on only part of the land under the water appropriation because of an inadequate water supply.

(3) If the period of nonuse did not exceed ten consecutive years, sufficient cause shall be deemed to exist if such nonuse was a result of one or more of the following:

(a) The land subject to the appropriation was placed under an acreage reserve or production quota program or otherwise withdrawn from use as required for participation in any federal or state program;

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

(c) The available water supply was inadequate to enable the owner to

use the water for a beneficial or useful purpose;

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

(e) Circumstances were such that a prudent person, following the dictates of good husbandry, would not have been expected to use the water;

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

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

(h) Legal proceedings prevented or restricted use of the water.

The department may specify by rule and regulation other circumstances which shall be deemed to constitute sufficient cause.

(4) If at the time of the hearing there is an application for incidental or intentional underground water storage pending before the department and filed by the owner of the appropriation, the proceedings shall be consolidated. Sufficient cause for nonuse shall be deemed to exist for up to thirty consecutive years if such nonuse was caused by the unavailability of water for that use. For a river basin, subbasin, or reach that has been designated as overappropriated pursuant to section 53 of this act or determined by the department to be fully appropriated pursuant to section 54 of this act, the period of time within which sufficient cause for nonuse because of the unavailability of water may be deemed to exist may be extended beyond thirty years by the department upon petition therefor by the owner of the appropriation if the department determines that an integrated management plan being implemented in the river basin, subbasin, or reach involved is likely to result in restoration of a usable water supply for the appropriation.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) When an appropriation is held in the name of an irrigation district, reclamation district, public power and irrigation district, or mutual irrigation company or canal company and the director determines that water under that appropriation has not been used on a specific parcel of land for more than five years and that no sufficient cause for such nonuse exists, the right to use water under that appropriation on that parcel shall be

terminated and notice of the termination shall be posted on the department's web site and shall be given in the manner provided in subsection (2), (3), or (4) of section 46-229.03. The district or company holding such right shall have five years after the determination to assign the right to use that portion of the appropriation to other land within and served by the district or company or to file an application for a transfer in accordance with section 46-290. The department shall be notified of any such assignment within thirty days thereafter. If the district or company does not assign the right to use that portion of the appropriation to other land, does not file an application for a transfer within the five-year period, or does not notify the department within thirty days after any such assignment, that portion of the appropriation shall be canceled without further proceedings by the department and the district or company involved shall be so notified by the department. During the time within which assignment of a portion of an appropriation is pending, the allowable diversion rate for the appropriation involved shall be reduced, as necessary, to avoid inconsistency with the rate allowed by section 46-231 or with any greater rate previously approved for such appropriation by the director in accordance with section 10 of this act.

(6) When it is determined by the director that an appropriation, for which the location of use has been temporarily transferred in accordance with sections 46-290 to 46-294, has not been used at the new location for more than five years and that no sufficient cause for such nonuse exists, the right to use that appropriation at the temporary location of use shall be terminated. Notice of that termination shall be posted on the department's web site and shall be given in the manner provided in subsection (2), (3), or (4) of section 46-229.03. The right to reinitiate use of that appropriation at the location of use prior to the temporary transfer shall continue to exist for five years after the director's determination, but if such use is not reinitiated at that location within such five-year period, the appropriation shall be subject to cancellation in accordance with sections 46-229 to 46-229.04.

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

Sec. 10. When a departmental proceeding that is conducted pursuant to sections 46-229 to 46-229.04 concerns the partial cancellation of an appropriation, the department may receive evidence on the question of whether, following such partial cancellation, a reduction in the rate of diversion to the maximum rate prescribed in section 46-231 would result in an authorized diversion rate less than the rate necessary, in the interests of good husbandry, for the production of crops on the lands that remain subject to the appropriation. If the director determines, based on a preponderance of the evidence, that such rate would be less than the rate necessary, in the interests of good husbandry, for the production of crops, he or she may approve a diversion rate for the remaining portion of the appropriation greater than the maximum rate authorized by section 46-231. Such increased rate can be no greater than the rate authorized for the appropriation prior to the partial cancellation and no greater than the rate determined by the director to be necessary, in the interests of good husbandry, for the production of crops on the lands that remain subject to the appropriation.

Sec. 11. Section 46-230, Revised Statutes Supplement, 2002, is amended to read:

46-230. (1) As the adjudication of a stream progresses and as each claim is finally adjudicated, the director shall make and cause to be entered of record in his or her office an order determining and establishing the priorities of right to use the water of such stream, the amount of the appropriation of the persons claiming water from such stream and the character of use for which each appropriation is found to have been made, and the address of the owner of each water appropriation. ~~It shall be the duty of every owner of an appropriation to give notice to the department of its address and any change of its address or of the name of the owner of the appropriation. Notification shall be in such form and shall include such evidence of ownership as the director may by regulation require. Upon receipt of such notice, the department shall update its records. The department shall not collect a fee for the filing of the notice.~~

(2) Whenever requested by the department, the owner of any appropriation not held by an irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company shall provide the department with the name, address, and telephone number of each then-current owner of the appropriation and with the name, address, and telephone number of any tenant or other person who is authorized by the owner

to receive opening and closing notices and other departmental communications relating to the appropriation. Each appropriation owner shall also notify the department any time there is a change in any of such names, addresses, or telephone numbers. Notice of ownership changes may be provided to the department in the manner provided in section 76-2,124 or in any other manner authorized by the department. If notice of an ownership change is provided other than in accordance with such section, the notice shall include such evidence of ownership as the director may require. Notice of all other changes may be provided in any manner authorized by the department. Upon receipt of any new information, the department shall update its records. The department shall not collect a fee for the filing of any such information or for updating its records.

Sec. 12. Section 46-235.04, Revised Statutes Supplement, 2002, is amended to read:

46-235.04. (1) Induced ground water recharge appropriations shall be administered in the same manner as prescribed by Chapter 46, article 2, for other appropriations. Appropriations for induced ground water recharge may be canceled and annulled as provided in ~~section 46-229.04~~ sections 46-229.02 to 46-229.05.

(2) The department may approve the transfer of priority dates among water wells, including replacement water wells, located within a single well field that are subject to an induced recharge appropriation, or are part of an application for such an appropriation, to improve the ~~water~~ well field's efficiency of operation with respect to river flow. The transfers shall be approved if the department finds that (a) the transfers would not increase the quantity of induced ground water recharge under the original priority date or application, (b) the amount of water withdrawn from water wells under the original priority date or application would not increase, (c) the quantity of streamflow needed to sustain well field operation under the original priority date would decrease, (d) the transfer would not impair the rights of other appropriators, and (e) the transfer is in the public interest in the same manner as provided in section 46-235. The department may assign multiple priority dates to a single water well that replaces two or more water wells which are abandoned. Replacement water wells installed pursuant to this subsection must be installed within the same well field as the abandoned water well. Notice shall be furnished and any hearing held as provided in sections 46-291 ~~to 46-293~~ and 46-292. For purposes of this subsection, single well field means those contiguous tracts of land owned or leased by the applicant containing two or more water wells subject to induced recharge.

Sec. 13. Section 46-237, Revised Statutes Supplement, 2002, is amended to read:

46-237. (1) Within six months after approval and allowance of an application other than an application to appropriate public waters for induced ground water recharge, the applicant shall file in the office of the department a map or plat which shall conform to the rules and regulations of the department as to material, size, ~~and~~ coloring, and ~~be upon a scale of not less than two inches to the mile scale.~~ Such map or plat shall show the source from which the proposed appropriation is to be taken and all proposed dams, dikes, reservoirs, canals, powerhouses, and other structures for the purpose of storing, conveying, or using water for any purpose whatsoever and their true courses or positions in connection with the boundary lines and corners of lands which they occupy. ~~Land listed for irrigation shall be shown in government subdivisions or fractions thereof, as the case may be, and no~~ The lands to be irrigated shall be identified in the manner prescribed by the department. No rights shall be deemed to have been acquired until the provisions of this section have been complied with. Failure Except as provided in subsection (2) of this section, failure to so comply shall work a forfeiture of the appropriation and all rights thereunder.

(2) For any appropriation with a priority date earlier than 1958 but for which either the appropriator has failed to comply with the requirements of subsection (1) of this section or a map or plat required by such subsection has been lost or destroyed through no fault of the appropriator, the lack of such compliance or of such map or plat shall not be the basis for a departmental adjudication or cancellation of the appropriation and the appropriation shall not be subject to legal challenge by any party on that basis.

(3) The department may notify any appropriator subject to subsection (2) of this section of the need to file a map or plat of lands under such appropriation. Unless the department grants an extension for good cause shown, the appropriator shall file the required map within three years after that notification and such map shall conform to the rules and regulations of the department as to material, size, coloring, and scale. If the appropriator

fails to comply, the department may deny the appropriator the right to divert or withdraw water subject to the appropriation until compliance has been achieved.

Sec. 14. Section 46-241, Revised Statutes Supplement, 2003, is amended to read:

46-241. (1) Every person intending to construct and operate a storage reservoir for irrigation or any other beneficial purpose or intending to construct and operate a facility for intentional underground water storage and recovery shall, except as provided in subsections (2) and (3) of this section and section 46-243, make an application to the department upon the prescribed form and provide such plans, drawings, and specifications as are necessary to comply with section 46-257. Such application shall be filed and proceedings had thereunder in the same manner and under the same rules and regulations as other applications. Upon the approval of such application under this section and any approval required by section 46-257, the applicant shall have the right to construct and impound in such reservoir, or store in and recover from such underground water storage facility, all water not otherwise appropriated and any appropriated water not needed for immediate use, to construct and operate necessary ditches for the purpose of conducting water to such storage reservoir or facility, and to condemn land for such reservoir, ditches, or other facility. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

(2) Any person intending to construct an on-channel reservoir with a water storage impounding capacity of less than fifteen acre-feet measured below the crest of the lowest open outlet or overflow shall be exempt from subsection (1) of this section as long as there will be (a) no diversion or withdrawal of water from the reservoir for any purpose other than for watering range livestock and (b) no release ~~of water~~ from the reservoir ~~for the purpose of to provide water for a downstream diversion or withdrawal for any purpose other than for watering range livestock~~. This subsection does not exempt any person from the requirements of section 46-257 or 54-2412.

(3) Any person intending to construct a reservoir, holding pond, or lagoon for the sole purpose of holding, managing, or disposing of animal or human waste shall be exempt from subsection (1) of this section. This subsection does not exempt any person from any requirements of section 46-233, 46-257, or 54-2412.

(4) Every person intending to modify or rehabilitate an existing storage reservoir so that its impounding capacity is to be increased shall comply with subsection (1) of this section.

(5) The owner of a storage reservoir or facility shall be liable for all damages arising from leakage or overflow of the water therefrom or from the breaking of the embankment of such reservoir. The owner or possessor of a reservoir or intentional underground water storage facility does not have the right to store water in such reservoir or facility during the time that such water is required in ditches for direct irrigation or for any reservoir or facility holding a senior right. Every person who owns, controls, or operates a reservoir or intentional underground water storage facility, except political subdivisions of this state, shall be required to pass through the outlets of such reservoir or facility, whether presently existing or hereafter constructed, a portion of the measured inflows to furnish water for livestock in such amounts and at such times as directed by the department to meet the requirements for such purposes as determined by the department, except that a reservoir or facility owner shall not be required to release water for this purpose which has been legally stored. Any dam shall be constructed in accordance with section 46-257, and the outlet works shall be installed so that water may be released in compliance with this section. The requirement for outlet works may be waived by the department upon a showing of good cause. Whenever any person diverts water from a public stream and returns it into the same stream, he or she may take out the same amount of water, less a reasonable deduction for losses in transit, to be determined by the department, if no prior appropriator for beneficial use is prejudiced by such diversion.

(6) An application for storage and recovery of water intentionally stored underground may be made only by an appropriator of record who shows, by documentary evidence, sufficient interest in the underground water storage facility to entitle the applicant to the water requested.

Sec. 15. Section 46-261, Revised Statutes Supplement, 2002, is amended to read:

46-261. (1) The Department of Natural Resources may require an appropriator or his or her agent to furnish the department, by April 1 in any year, a list or map of all lands to be irrigated, the acreage of each tract, and the names of the owners, controllers, or officers for every ditch,

reservoir, or other device for appropriating, diverting, carrying, or distributing water to be used as a basis for the distribution of water until April 1 of the following year, and if so ordered such a list or map shall be furnished by the appropriator or his or her agent to the department.

(2) By April 1, any district or company which has transferred an appropriation pursuant to sections 46-2,127 to 46-2,129 in the previous calendar year shall provide the department:

(a) A legal description and list or map of the tracts of land receiving and transferring an appropriation of water, or portion thereof, within the district or company;

(b) The water appropriation permit number under sections 46-233 to 46-235 and the priority date of the water appropriation;

(c) A statement on whether objections were filed, whether a hearing was held, and how consent was given;

(d) The effective date of the transfer of the appropriation; and

(e) A statement summarizing the water use on the receiving and transferring tracts of land.

(3) The department may require the owner or controller of any canal or ditch to install an approved recording gauge at one or more specific locations to record the amount of water used.

(4) For any appropriation not held by an irrigation district, a reclamation district, a public power and irrigation district, or a mutual irrigation or canal company, the department may require the owner of an appropriation for irrigation purposes to provide the department with any or all of the following information relative to the use of water under the appropriation during the previous irrigation season: (a) A list or map of all lands irrigated; (b) the acreage of each tract irrigated; (c) the rate at which water was diverted; (d) the amount diverted; (e) for any lands under the appropriation that were not irrigated, any sufficient cause, as described in section 46-229.04, which the appropriator claims was the reason for such nonuse; and (f) any other information needed by the department to properly monitor and administer use of water under the appropriation. If the appropriator claims sufficient cause for nonuse, he or she shall also provide the department with any evidence the department requires as a condition for accepting such claimed cause as sufficient cause to excuse nonuse.

(5) The department shall not furnish may deny an appropriator the right to any water to be delivered to or used by or through any ditch, reservoir, or other contrivance for the appropriation, use, or storage of water until this section has been complied with if the appropriator is not in compliance with this section, with subsection (2) of section 46-230, or with any conditions of any permit, notice, or order of the department concerning the appropriation. The department may construct bars or dams or may install such other devices as are necessary to prevent such delivery or use.

Sec. 16. Section 46-290, Revised Statutes Supplement, 2002, is amended to read:

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

(b) The application for such approval shall contain (i) the number assigned to such appropriation by the department, (ii) the name and address of the present holder of the appropriation, (iii) if applicable, the name and address of the person or entity to whom the appropriation would be transferred or who will be the user of record after a change in the type of appropriation or purpose of use under the appropriation, (iv) the legal description of the land to which the appropriation is now appurtenant, (v) the name and address of each holder of a mortgage or deed of trust for the land to which the appropriation is now appurtenant, (vi) if applicable, the legal description of the land to which the appropriation is proposed to be transferred, (vii) if a transfer is proposed, whether other sources of water are available at the

original location of use and whether any provisions have been made to prevent either use of a new source of water at the original location or increased use of water from any existing source at that location, (viii) if applicable, the legal descriptions of the beginning and end of the stream reach to which the appropriation is proposed to be transferred for the purpose of augmenting the flows in that stream reach, (ix) if a proposed transfer is for the purpose of increasing the quantity of water available for use pursuant to another appropriation, the number assigned to such other appropriation by the department, (x) the purpose of the current use, (xi) if a change in purpose of use is proposed, the proposed purpose of use, (xii) if a change in the type of appropriation is proposed, the type of appropriation to which a change is desired, (xiii) if a proposed transfer or change is to be temporary in nature, the duration of the proposed transfer or change, and (xiv) such other information as the department by rule and regulation requires.

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

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

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

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

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

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

(e) The incidental underground water storage portion, whether or not previously quantified, of a natural-flow or storage-use appropriation may be separated from the direct-use portion of the appropriation and may be changed to a natural-flow or storage-use appropriation for intentional underground water storage at the same location if the historic consumptive use of the direct-use portion of the appropriation is transferred to another location or is terminated, but such a separation and change may be approved only if, after the separation and change, (i) the total permissible diversion under the appropriation will not increase, (ii) the projected consequences of the separation and change are consistent with the provisions of any integrated management plan adopted in accordance with section 58 or 59 of this act for the geographic area involved, and (iii) if the location of the proposed intentional underground water storage is in a river basin, subbasin, or reach designated as overappropriated in accordance with section 53 of this act, the integrated management plan for that river basin, subbasin, or reach has gone into effect, and that plan requires that the amount of the intentionally stored water that is consumed after the change will be no greater than the amount of the incidentally stored water that was consumed prior to the change. Approval of a separation and change pursuant to this subdivision (e) shall not exempt any consumptive use associated with the incidental recharge right from any reduction in water use required by an integrated management plan for a river basin, subbasin, or reach designated as overappropriated in accordance with section 53 of this act.

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

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

appropriation, or changed to permit a different purpose of use.

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

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

(6) A quantified or unquantified appropriation for incidental underground water storage may be transferred to a new location along with the direct-use appropriation with which it is recognized if the director finds such transfer to be consistent with section 46-294 and determines that the geologic and other relevant conditions at the new location are such that incidental underground water storage will occur at the new location. The director may request such information from the applicant as is needed to make such determination and may modify any such quantified appropriation for incidental underground water storage, if necessary, to reflect the geologic and other conditions at the new location.

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

Sec. 17. Section 46-291, Revised Statutes Supplement, 2002, is amended to read:

46-291. (1) Upon receipt of an application filed under section 46-290, the Director of Natural Resources shall cause a notice of such application to be published at the applicant's expense at least once a week for three weeks in at least one newspaper of general circulation in each county containing lands on which the water appropriation is or is proposed to be located and a newspaper of general circulation in Nebraska.

Such notice shall be published at least once a week for three consecutive weeks and shall contain a description of the water appropriation, the number assigned such permit in the records of the Department of Natural Resources, the date of priority, a description of the lands to which such water appropriation is proposed to be applied, and any other relevant information.

The notice shall state that any person may in writing object to and request a hearing on the application at any time prior to the elapse of two weeks from the date of final publication. for a transfer in the location of use of an appropriation, the Department of Natural Resources shall review it for compliance with this subsection. The Director of Natural Resources may approve the application without notice or hearing if he or she determines that: (a) The appropriation is used and will continue to be used exclusively for irrigation purposes; (b) the only lands involved in the proposed transfer are (i) lands within the quarter section of land to which the appropriation is appurtenant, (ii) lands within such quarter section of land and one or more quarter sections of land each of which is contiguous to the quarter section of land to which the appropriation is appurtenant, or (iii) lands within the boundaries or service area of and capable of service by the same irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company; (c) after the transfer, the total number of acres irrigated under the appropriation will be no greater than the number of acres that could legally be irrigated under the appropriation prior to the transfer; (d) all the land involved in the transfer is under the same ownership or is within the same irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company; (e) the transfer will not result in a change in the point of diversion; and (f) the transfer will not diminish the water supply available for or otherwise adversely affect any other water appropriator. If transfer of an

appropriation with associated incidental underground water storage is approved in accordance with this subsection, the associated incidental underground water storage also may be transferred pursuant to this subsection as long as such transfer would continue to be consistent with the requirements of this subsection. If necessary, the boundaries of the incidental underground water storage area may be modified to reflect any change in the location of that storage consistent with such a transfer. Transfers shall not be approved pursuant to this subsection until the department has adopted and promulgated rules and regulations establishing the criteria it will use to determine whether proposed transfers are consistent with subdivision (1)(f) of this section.

(2) If after reviewing an application filed under section 46-290 the director determines that it cannot be approved pursuant to subsection (1) of this section, he or she shall cause a notice of such application to be posted on the department's web site, to be sent by certified mail to each holder of a mortgage or deed of trust that is identified by the applicant pursuant to subdivision (1)(b)(v) of section 46-290, and to be published at the applicant's expense at least once each week for three consecutive weeks in at least one newspaper of general circulation in each county containing lands to which the appropriation is appurtenant and, if applicable, in at least one newspaper of general circulation in each county containing lands to which the appropriation is proposed to be transferred.

(3) The notice shall contain: (a) A description of the appropriation; (b) the number assigned to such appropriation in the records of the department; (c) the date of priority; (d) if applicable, a description of the land or stream reach to which such water appropriation is proposed to be transferred; (e) if applicable, the type of appropriation to which the appropriation is proposed to be changed; (f) if applicable, the proposed change in the purpose of use; (g) whether the proposed transfer or change is to be permanent or temporary and, if temporary, the duration of the proposed transfer or change; and (h) any other information the director deems relevant and essential to provide the interested public with adequate notice of the proposed transfer or change.

(4) The notice shall state (a) that any interested person may object to and request a hearing on the application by filing such objections in writing specifically stating the grounds for each objection and (b) that any such objection and request shall be filed in the office of the department within two weeks after the date of final publication of the notice.

(5) Within the time period allowed by this section for the filing of objections and requests for hearings, the county board of any county containing land to which the appropriation is appurtenant and, if applicable, the county board of any county containing land to which the appropriation is proposed to be transferred may provide the department with comments about the potential economic impacts of the proposed transfer or change in such county. The filing of any such comments by a county board shall not make the county a party in the application process, but such comments shall be considered by the director in determining pursuant to section 46-294 whether the proposed transfer or change is in the public interest.

Sec. 18. Section 46-292, Revised Statutes Supplement, 2002, is amended to read:

46-292. The Department of Natural Resources may hold a hearing on an application filed under section 46-290 on its own motion and shall hold a hearing if ~~requested by any person~~ a timely request therefor is filed by any interested person in accordance with section 46-291. Any such hearing shall be subject to section 61-206.

Sec. 19. Section 46-293, Revised Statutes Supplement, 2002, is amended to read:

46-293. ~~Any hearing held pursuant to section 46-292 shall be conducted in accordance with sections 61-206 and 61-207.~~ (1) The Director of Natural Resources shall independently review each application subject to subsection (2) of section 46-291 to determine whether the requirements of section 46-294 will be met if the transfer or change is approved. The requirement of this subsection is not altered when there are objectors who have become parties to the proposed transfer or change, but if a hearing is called by the Department of Natural Resources on its own motion or as the result of a request therefor filed in accordance with subsection (4) of section 46-291, any evidence considered by the director in making such determinations shall be made a part of the record of the hearing as provided in section 84-914.

(2) Either on his or her own motion or in response to objections or comments received pursuant to subsection (4) or (5) of section 46-291, the director may require the applicant to provide additional information before a

hearing will be scheduled or, if no hearing is to be held, before the application will receive further consideration. The information requested may include economic, social, or environmental impact analyses of the proposed transfer or change, information about the amount of water historically consumed under the appropriation, copies of any plans for mitigation of any anticipated adverse impacts that would result from the proposed transfer or change, and such other information as the director deems necessary in order to determine whether the proposed transfer or change is consistent with section 46-294.

Sec. 20. Section 46-294, Revised Statutes Supplement, 2002, is amended to read:

46-294. (1) ~~The Director of Natural Resources shall approve an application filed pursuant to section 46-290 if:~~

~~(a) The requested change of location is within the same river basin, will not adversely affect any other water appropriator, and will not significantly adversely affect any riparian water user who files an objection in writing prior to the hearing;~~

~~(b) The requested change will use water from the same source of supply as the current use;~~

~~(c) The change of location will not diminish the supply of water otherwise available;~~

~~(d) The water will be applied to a use in the same preference category as the current use, as provided in section 46-204; and~~

~~(e) The requested change is in the public interest.~~

~~The applicant has the burden of proving that the change of location will comply with subdivisions (a) through (e) of this subsection, except that the burden is on the riparian user to demonstrate his or her riparian status and to demonstrate a significant adverse effect on his or her use in order to prevent approval of an application.~~

~~(2) In approving an application, the director may impose any reasonable conditions deemed necessary to protect the public interest. An approved change of location shall retain the same priority date as that of the original water right. In approving an application, the director may (a) authorize a greater number of acres to be irrigated if the amount and rate of water approved under the original appropriation is not increased by the change of location or (b) authorize the overlying of water appropriations on the same lands as long as the limits provided in section 46-231 are not exceeded. Except for applications approved in accordance with subsection (1) of section 46-291, the Director of Natural Resources shall approve an application filed pursuant to section 46-290 only if the application and the proposed transfer or change meet the following requirements:~~

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

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

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

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

~~(e) The quantity of water that is transferred for diversion or other use at the new location will not exceed the historic consumptive use under the appropriation or portion thereof being transferred, except that this subdivision does not apply to a transfer in the location of use if both the current use and the proposed use are for irrigation, the number of acres to be irrigated will not increase after the transfer, and the location of the diversion from the stream will not change;~~

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

~~(g) If a proposed transfer or change is of an appropriation that has been used for irrigation and is in the name of an irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company or is dependent upon any such district's or~~

company's facilities for water delivery, such district or company has approved the transfer or change;

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

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

(j) If the proposed transfer or change is to be temporary, it will be for a duration of no less than one year and, except as provided in section 22 of this act, no more than thirty years;

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

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

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

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

(4) In approving an application for a transfer, the director may also authorize the overlying of water appropriations on the same lands, except that if any such overlying of appropriations would result in either the authorized diversion rate or the authorized aggregate annual quantity that could be diverted to be greater than is otherwise permitted by section 46-231, the director shall limit the total diversion rate or aggregate annual quantity for the appropriations overlain to the rate or quantity that he or she determines is necessary, in the exercise of good husbandry, for the production of crops on the land involved. The director may also authorize a greater number of acres to be irrigated if the amount and rate of water approved under the original appropriation is not increased by the change of location. An increase in the number of acres to be irrigated shall be approved only if (a) such an increase will not diminish the supply of water available to or otherwise adversely affect another water appropriator or (b) the transfer would not adversely affect the water supply for any river basin, subbasin, or reach that has been designated as overappropriated pursuant to section 53 of this act or determined to be fully appropriated pursuant to section 54 of this

act and (i) the number of acres authorized under the appropriation when originally approved has not been increased previously, (ii) the increase in the number of acres irrigated will not exceed five percent of the number of acres being irrigated under the permit before the proposed transfer or a total of ten acres, whichever acreage is less, and (iii) all the use will be either on the quarter section to which the appropriation was appurtenant before the transfer or on an adjacent quarter section.

Sec. 21. Whenever a temporary transfer is approved in accordance with sections 46-290 to 46-294, the Department of Natural Resources shall cause copies of the following to be filed with the county clerk or register of deeds of the county in which the land subject to the appropriation prior to the transfer is located: (1) The permit by which the appropriation was established; (2) the agreement by which the temporary transfer is to be effected; and (3) the order of the Director of Natural Resources approving the temporary transfer. Whenever renewal of a temporary transfer is approved pursuant to section 22 of this act, the department shall cause a copy of the order of the director approving such renewal to be filed with the county clerk or register of deeds of such county. Such documents shall be indexed to the land subject to the appropriation prior to the transfer. The costs of the filing and indexing shall be charged to the applicant for the transfer or renewal, and failure to pay such costs shall be grounds for the director to negate any prior approval of the transfer or renewal.

Sec. 22. A temporary transfer or a change in the type or purpose of use of an appropriation may be renewed or otherwise extended by the parties thereto at any time following the midpoint of the transfer or change term, but any such renewal or extension is subject to review and approval pursuant to sections 46-290 to 46-294. No renewal or extension shall cause the term of any such temporary transfer or change to exceed thirty years in duration from the date the renewal or extension is approved by the Director of Natural Resources.

Sec. 23. For purposes of assessment pursuant to sections 77-1343 to 77-1363, neither the temporary transfer or change of an appropriation nor any resulting land-use changes on the land to which the appropriation was appurtenant prior to the transfer or change shall cause the land to be reclassified to a lower value use or the valuation of the land to be reduced, but the land may be reclassified to a higher value use and its valuation may be increased if a higher value use is made of the land while the temporary transfer or change is in effect. Land from which an appropriation has been permanently transferred shall be classified and valued for tax purposes in accordance with the use of the land after the transfer.

Sec. 24. During the time within which a temporary transfer or change in purpose of use of an appropriation is in effect, the appropriation may not be used to invoke any rights of condemnation that are based on preference of use, but such appropriation shall be subject to the exercise of such rights by owners of other appropriations that are for water uses superior to the pretransfer or prechange use of the water under the transferred or changed appropriation.

Sec. 25. The Director of Natural Resources may adopt and promulgate rules and regulations to carry out sections 46-290 to 46-294 and sections 21 to 24 of this act.

Sec. 26. Section 46-295, Revised Statutes Supplement, 2002, is amended to read:

46-295. The Legislature recognizes that, as a result of water project operations, surface water in some areas of the state has been, is, and will be in the future intentionally and incidentally stored in and withdrawn from underground strata. The Legislature acknowledges that rights to water intentionally or incidentally stored underground and rights to withdrawal of such water should be formally recognized and quantified and recognizes the propriety of all beneficiaries proportionately sharing, to the extent of potential benefit from intentional underground water storage, in the financial obligations necessary for construction, operation, and maintenance of water projects which cause intentional underground water storage.

The Legislature finds that uses of water for incidental and intentional underground water storage are beneficial uses of water which contribute to the recharge of Nebraska's aquifers and that comprehensive, conjunctive management of surface water and intentional or incidental underground water storage is essential for the continued economic prosperity and well-being of the state, serves the public interest by providing an element of certainty essential for investment in water resources development, and will improve Nebraska's standing in the event of interstate dispute.

To facilitate optimum beneficial use of water by the people of Nebraska, the Legislature recognizes the need for authorizing the recognition

of incidental underground water storage, for authorizing intentional underground water storage, and for authorizing the levying and collection of fees and assessments on persons who withdraw or otherwise use or benefit from intentional underground water storage as provided in sections 46-299 to 46-2,106.

Nothing in sections 46-202, 46-226.01, 46-226.02, 46-233, 46-240, 46-241, 46-242, 46-295 to 46-2,106, and 46-544, and 46-656.23 and section 52 of this act shall be construed to alter existing statutes regarding the relationship between naturally occurring surface and ground water.

Sec. 27. Section 46-296, Revised Statutes Supplement, 2002, is amended to read:

46-296. ~~As used in~~ For purposes of sections 33-105, 46-202, and 46-295 to 46-2,106, unless the context otherwise requires:

(1) Department means the Department of Natural Resources;

(2) Director means the Director of Natural Resources;

(3) Person means a natural person, partnership, limited liability company, association, corporation, municipality, or agency or political subdivision of the state or of the federal government;

(4) Underground water storage means the act of storing or recharging water in underground strata. Such water shall be known as water stored underground but does not include ground water as defined in section ~~46-656.07~~ 46 of this act which occurs naturally;

(5) Intentional underground water storage means underground water storage which is an intended purpose or result of a water project or use. Such storage may be accomplished by any lawful means such as injection wells, infiltration basins, canals, reservoirs, and other reasonable methods; and

(6) Incidental underground water storage means underground water storage which occurs as an indirect result, rather than an intended or planned purpose, of a water project or use and includes, but is not limited to, seepage from reservoirs, canals, and laterals, and deep percolation from irrigated lands.

Sec. 28. Section 46-2,112, Revised Statutes Supplement, 2002, is amended to read:

~~46-2,112. The director shall set a time and place for hearing every fifteen years from the date a~~ A permit to appropriate water for instream flows shall be subject to review every fifteen years after it is granted. Notice of the hearing a pending review shall be given to the parties to the original application and shall be published in a newspaper published or of general circulation in the area involved at least once each week for three consecutive weeks, the last publication to be not less than seven days prior to the hearing later than fourteen years and ten months after the permit was granted or after the date of the director's action following the last such review, whichever is later. The notice shall state that any interested person may file comments relating to the review of the instream appropriation or may request a hearing to present evidence relevant to such review. Any such comments or request for hearing shall be filed in the headquarters office of the department within six weeks after the date of final publication of the notice. If requested by any interested person, the director shall schedule a hearing. The purpose of the hearing shall be to receive evidence regarding whether the water appropriated under the permit still provides the beneficial uses for which the permit was granted and whether the permit is still in the public interest. The hearing shall proceed under the rebuttable presumption that the appropriation continues to provide the beneficial uses for which the permit was granted and that the appropriation is in the public interest. After the hearing, the director may by order modify or cancel, in whole or in part, the instream appropriation.

Sec. 29. Section 46-2,119, Revised Statutes Supplement, 2002, is amended to read:

~~46-2,119. Instream appropriations shall be administered in the same manner as prescribed by Chapter 46, article 2, for other appropriations. Reservoirs, except that existing reservoirs shall not be required by the director to release, for the benefit of an instream appropriation, water previously impounded in accordance with section 46-241 or 46-243. Reservoirs with storage rights senior to an instream appropriation shall not be required to pass, for the benefit of that instream appropriation, inflows that could be stored by such reservoir if the instream appropriation were not in effect. Notwithstanding subsection (5) of section 46-241, a reservoir with storage rights senior to an instream appropriation also shall not be required to pass inflows for downstream direct irrigation if the appropriation for direct irrigation is junior to and would be denied water because of that instream appropriation.~~ impounded water for instream appropriations. Instream flow appropriations shall not be superior to existing storage rights as provided in

~~section 46-241.~~ Instream appropriations may be canceled as provided in ~~section 46-229.04~~ sections 46-229.02 to 46-229.05.

Sec. 30. Section 46-2,127, Reissue Revised Statutes of Nebraska, is amended to read:

46-2,127. After obtaining approval of an application for transfer and map pursuant to sections 46-2,122 to 46-2,126, the board of directors of any irrigation district, reclamation district, public power and irrigation district, rural water district, or mutual irrigation or canal company may transfer an appropriation of water distributed for agricultural purposes from a tract or tracts of land within the district or served by the company to another tract or tracts of land within the boundaries of the district or served by the company if:

(1) The district or company finds that the transferring tract of land has received and had water, delivered by the district or company pursuant to a valid ~~water~~ appropriation, beneficially applied in ~~(a)~~ at least one of the preceding ~~three~~ five consecutive years or ~~(b)~~ at least one of the preceding ten consecutive years if the district or company finds that there has been sufficient cause for nonuse in the same manner as provided in section 46-229.04;

(2) The owner of the land to which the water appropriation is attached consents in writing to the transfer of the appropriation from his or her tract of land;

(3) The water appropriation, or portion thereof, proposed to be transferred has not been transferred by the board of directors of the district or company in the previous four years;

(4) The water allotment on the receiving tract of land will not exceed the amount that can be beneficially used for the purposes for which the appropriation was made and will not exceed the least amount of water that experience may indicate is necessary, in the exercise of good husbandry, for the production of crops; and

(5) After the transfer, the aggregate water use within the district or company will not exceed the aggregate water appropriation held by the district or company for the benefit of owners of land to which the water appropriations are attached.

Sec. 31. Section 46-2,132, Revised Statutes Supplement, 2002, is amended to read:

46-2,132. (1) The members of the Water Policy Task Force shall include: (a) Twenty irrigators, with at least one irrigator from each of the state's thirteen river basins, giving consideration to maintaining a balance between surface water users and ground water users. Three irrigators shall be selected from the Republican River Basin, two irrigators shall be selected from the North Platte River Basin, two irrigators shall be selected from the middle Platte River Basin, two irrigators shall be selected from the Loup River Basin, two irrigators shall be selected from the Elkhorn River Basin, two irrigators shall be selected from the Big Blue River Basin, one irrigator shall be selected from the South Platte River Basin, one irrigator shall be selected from the lower Platte River Basin, one irrigator shall be selected from the Little Blue River Basin, one irrigator shall be selected from the Nemaha River Basin, one irrigator shall be selected from the Niobrara River Basin, one irrigator shall be selected from the White Hat River Basin, and one irrigator shall be selected from the Missouri tributaries basin; (b) three representatives from differing agricultural organizations; (c) three representatives from differing environmental organizations; (d) two representatives from differing recreational organizations; (e) three representatives to represent the state at large; (f) five representatives suggested for the Governor's consideration by the Nebraska Association of Resources Districts; (g) four representatives suggested for the Governor's consideration by the Nebraska Power Association; (h) five representatives suggested for the Governor's consideration by the League of Nebraska Municipalities, with consideration given to maintaining a balance between larger and smaller municipalities; and (i) such other members as the Governor deems appropriate to provide the task force with adequate and balanced representation. The Governor shall notify the Legislature upon completion of the appointments.

(2) Additional members of the task force shall be: (a) One representative from the Department of Natural Resources to coordinate as appropriate with other state agencies; (b) one representative from the Attorney General's office; (c) the chairperson of the Natural Resources Committee of the Legislature; and (d) the vice chairperson of the Natural Resources Committee of the Legislature. Other members of the Legislature may participate as desired.

(3) If any member of the task force is unable to serve for any

reason, the Governor shall appoint a successor to such member. The successor shall represent the same constituency as the member such successor replaces.

Sec. 32. Section 46-2,135, Revised Statutes Supplement, 2002, is amended to read:

46-2,135. The Water Policy Task Force shall meet at least ~~four times~~ twice each year to consider the proposals and recommendations of the executive committee and any other additional times as the executive committee determines to be necessary to accomplish the objectives established in section 46-2,131.

Sec. 33. Sections 46-2,131 to 46-2,137 terminate December 31, 2009.

Sec. 34. Section 46-601.01, Revised Statutes Supplement, 2002, is amended to read:

46-601.01. For purposes of Chapter 46, article 6:

(1) Water well means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting ~~water~~ fluid as defined in section 81-1502 into the underground water reservoir. Water well does not include any excavation made for obtaining or prospecting for oil or natural gas or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission; and

(2) Common carrier means any carrier of water including a pipe, canal, ditch, or other means of piping or adjoining water for irrigation purposes.

Sec. 35. Section 46-602, Revised Statutes Supplement, 2003, is amended to read:

46-602. (1) Each water well completed in this state on or after July 1, 2001, excluding test holes and dewatering wells to be used for less than ninety days, shall be registered with the Department of Natural Resources as provided in this section within sixty days after completion of construction of the water well. The water well contractor as defined in section 46-1213 constructing the water well, or the owner of the water well if the owner constructed the water well, shall file the registration on a form made available by the department and shall also file with the department the information from the well log required pursuant to section 46-1241. The department shall, by January 1, 2002, provide water well contractors with the option of filing such registration forms electronically. No signature shall be required on forms filed electronically. The fee required by subsection (3) of section 46-1224 shall be the source of funds for any required fee to a contractor which provides the on-line services for such registration. Any discount in the amount paid the state by a credit card, charge card, or debit card company or a third-party merchant bank for such registration fees shall be deducted from the portion of the registration fee collected pursuant to section 46-1224.

(2)(a) If the newly constructed water well is a replacement water well, the registration number of the water well it replaces, if applicable, and the date the original water well was or will be decommissioned shall be included on the registration form. For purposes of this section, replacement water well means a water well which (i) replaces an abandoned water well within three years after the last operation of the abandoned water well or replaces a water well that will not be used after construction of the new water well and the original water well will be abandoned within one year after such construction and (ii) is constructed to provide water to the same tract of land served by the water well being replaced.

(b) No water well shall be registered as a replacement water well until the Department of Natural Resources has received a properly completed notice of abandonment for the water well being replaced. Such notice shall be completed by (i) the water well contractor as defined in section 46-1213 who decommissions the water well, (ii) the pump installation contractor as defined in section 46-1209 who decommissions the water well, or (iii) the owner if the owner decommissions a driven sandpoint well which is on land owned by him or her for farming, ranching, or agricultural purposes or as his or her place of abode. The Department of Health and Human Services Regulation and Licensure shall, by rule and regulation, determine which contractor or owner shall be responsible for such notice in situations in which more than one contractor or owner may be required to provide notice under this subsection.

(3) For a series of two or more water wells completed and pumped into a common carrier as part of a single site plan for irrigation purposes, a registration form and a detailed site plan shall be filed for each water well. The registration form shall include the registration numbers of other water wells included in the series if such water wells are already registered.

(4) A series of water wells completed for purposes of installation of a ground heat exchanger for a structure for utilizing the geothermal properties of the ground shall be considered as one water well. One registration form and a detailed site plan shall be filed for each such series.

(5) One registration form shall be required along with a detailed site plan which shows the location of each such water well in the site and a log from each such water well for water wells constructed as part of a single site plan for (a) monitoring ground water, obtaining hydrogeologic information, or extracting contaminants from the ground, (b) water wells constructed as part of remedial action approved by the Department of Environmental Quality pursuant to section 66-1525, 66-1529.02, or 81-15,124, and (c) water well owners who have a permit issued pursuant to the Industrial Ground Water Regulatory Act and also have an underground injection control permit issued by the Department of Environmental Quality.

(6) The department shall be notified by the owner of any change in the ownership of a water well required to be registered under this section. Notification shall be in such form and include such evidence of ownership as the Director of Natural Resources by rule and regulation directs. The department shall use such notice to update the registration on file. The department shall not collect a fee for the filing of the notice.

(7) The water well contractor or pump installation contractor responsible therefor shall notify the department on a form provided by the department of any pump installation or any modifications to the construction of the water well or pump, after the initial registration of the well. A water well owner shall notify the department on a form provided by the department of any other changes or any inaccuracies in recorded water well information, including, but not limited to, changes in use. The department shall not collect a fee for the filing of the notice.

(8) Whenever a water well becomes an illegal water well as defined in section ~~46-656.07~~ 46 of this act, the owner of the water well shall either correct the deficiency that causes the well to be an illegal water well or shall cause the proper decommissioning of the water well in accordance with rules and regulations adopted pursuant to the Water Well Standards and Contractors' Licensing Act. The water well contractor who decommissions the water well, the pump installation contractor who decommissions the water well, or the owner if the owner decommissions a driven sandpoint well which is on land owned by him or her for farming, ranching, or agricultural purposes or as his or her place of abode, shall provide a properly completed notice of abandonment to the Department of Natural Resources within sixty days. The Department of Health and Human Services Regulation and Licensure shall, by rule and regulation, determine which contractor or owner shall be responsible for such notice in situations in which more than one contractor or owner may be required to provide notice under this subsection. The Department of Natural Resources shall not collect a fee for the filing of the notice.

(9) Except for water wells which are used solely for domestic purposes and were constructed before September 9, 1993, and for test holes and dewatering wells used for less than ninety days, each water well which was completed in this state before July 1, 2001, and which is not registered on that date shall be an illegal water well until it is registered with the Department of Natural Resources. Such registration shall be completed by a water well contractor or by the current owner of the water well, shall be on forms provided by the department, and shall provide as much of the information required by subsections (1) through (5) of this section for registration of a new water well as is possible at the time of registration.

(10) Water wells which are or were used solely for injecting any fluid other than water into the underground water reservoir, which were constructed before the operative date of this section, and which have not been properly decommissioned on or before the operative date of this section shall be registered on or before July 1, 2005.

Sec. 36. Section 46-609, Reissue Revised Statutes of Nebraska, is amended to read:

46-609. (1) ~~No~~ Except as otherwise provided by this section or section 46-610, no irrigation water well shall be drilled upon any land in this state within six hundred feet of any registered irrigation water well ~~except (a) any water well the water from which is used solely for domestic, culinary, stock use on a ranch or farm, or the watering of lawns and gardens for family use or profit where the area to be irrigated does not exceed two acres, (b) as provided in section 46-610, and (c) that any irrigation water well which replaces an irrigation water well and no existing nonirrigation water well within six hundred feet of any registered irrigation water well shall be used for irrigation purposes. Such spacing requirement shall not~~

apply to (a) any well used to irrigate two acres or less or (b) any replacement irrigation water well if it is drilled within fifty feet of the irrigation water well being replaced and if the water well being replaced was drilled prior to September 20, 1957, and which is less than six hundred feet from a registered irrigation water well. shall be drilled within fifty feet of the old water well.

(2) The spacing protection of subsection (1) of this section shall apply to an unregistered water well for a period of ~~thirty~~ sixty days after completion of such water well.

Sec. 37. Section 46-613.02, Revised Statutes Supplement, 2002, is amended to read:

46-613.02. Any person violating any provision of sections 46-601 to 46-613.01 or furnishing false information under such sections shall be guilty of a Class IV misdemeanor. The Department of Natural Resources may enforce such sections by instituting proceedings, actions, and prosecutions. Each day of a violation may be considered a separate offense. The Attorney General and the county attorneys may pursue appropriate proceedings pursuant to this section when notified by the Director of Natural Resources that such a violation has occurred.

Sec. 38. Section 46-651, Reissue Revised Statutes of Nebraska, is amended to read:

46-651. (1) Except as provided in section 46-653 or 46-654, (a) no irrigation or industrial water well or water well of any other public water supplier shall be drilled within one thousand feet of any registered water well of any public water supplier, (b) no water well of any such public water supplier shall be drilled within one thousand feet of any registered irrigation or industrial water well, (c) no irrigation water well shall be drilled within one thousand feet of a registered industrial water well, and (d) no industrial water well shall be drilled within one thousand feet of a registered irrigation or industrial water well. Such prohibitions shall not apply to water wells owned by the same person.

(2) An existing water well for which a change in the intended use is proposed shall be subject to any spacing requirement in subsection (1) of this section that would apply to the drilling of a new water well at the same location for the new use intended.

(3) The well-spacing protection of ~~subsection (1)~~ subsections (1) and (2) of this section shall apply to an unregistered water well for a period of only ~~thirty~~ sixty days following completion of such water well.

(4) The spacing requirements in subsection (1) of this section shall not apply to any replacement water well if that water well is drilled within fifty feet of the water well being replaced and if the water well being replaced was drilled prior to the operative date of this section, was in compliance with any applicable spacing statute when drilled, and is less than one thousand feet from the registered water well for which spacing protection is provided.

Sec. 39. Section 46-653, Revised Statutes Supplement, 2002, is amended to read:

46-653. Any person may apply to the Director of Natural Resources for a special permit to drill or to change the intended use of a water well without regard to the spacing requirements of section 46-651. Such application shall be on a form prescribed and furnished by the director and shall contain a statement of the precise location of the water well or proposed water well, facts justifying the request for such special permit, the size or proposed size of such water well, expressed in gallons per minute, to the extent that capacity is susceptible of advance determination, and, if applicable, the name of the person who is actually going to drill the water well. A separate application shall be submitted for each water well for which a special permit is sought, and each application shall be accompanied by a fee of twelve dollars and fifty cents which shall be remitted to the State Treasurer for credit to the General Fund. When considering the approval or rejection of any such application, the director shall consider the facts offered as justification of the need for the special permit, the known ground water supply, and such other pertinent information as may be available. Such application may be approved or disapproved in whole or in part and the special permit issued or refused accordingly.

Sec. 40. (1) A public water supplier as defined in section 46-638 may obtain protection for a public water supply wellfield from encroachment from other water wells by filing with the Department of Natural Resources a notice of intent to consider a wellfield. The notice of intent shall include:

(a) The legal description of the land being considered as a public water supply wellfield; and

(b) Written consent of the owner of the land considered for a public

water supply wellfield, allowing the public water supplier to conduct an evaluation as to whether such land is suitable for a public water supply wellfield.

(2) A notice of intent filed under this section shall be limited to a contiguous tract of land. No public water supplier shall have more than three notices of intent under this section on file with the department at any one time.

(3) A notice of intent filed under this section shall expire one year after the date of filing and may be renewed for one additional year by filing with the department a notice of renewal of the original notice of intent filed under this section before expiration of the original notice of intent.

(4) At the time a notice of intent or a notice of renewal is filed with the department, the public water supplier shall:

(a) Provide a copy of the notice to the owners of land adjoining the land being considered for a wellfield;

(b) Provide a copy of the notice to the natural resources district or districts within which the land being considered for a wellfield is located; and

(c) Publish a copy of the notice in a newspaper of general circulation in the area in which the wellfield is being considered.

(5)(a) Except as provided in subdivisions (b) and (c) of this subsection, during the time that a notice of intent under this section is in effect, no person may drill or construct a water well, as defined in section 46-601.01, within the following number of feet of the boundaries of the land described in the notice of intent, whichever is greater:

(i) One thousand feet; or

(ii) The maximum number of feet specified in any applicable regulations of a natural resources district that a well of a public water supplier must be spaced from another well.

(b) Any person who, at least one hundred eighty days prior to filing a notice of intent, obtained a valid permit from a natural resources district to drill or construct a water well within the area subject to the protection provided by this section is not prohibited from drilling or constructing a water well.

(c) The public water supplier may waive the protection provided by this section and allow a person to drill or construct a new or replacement water well within the area subject to the protection provided by this section.

(6) Within thirty days after the public water supplier reaches a determination that the land described in a particular notice of intent is not suitable for a public water supply wellfield, the public water supplier shall notify the Department of Natural Resources, the owner of the land described in the notice of intent, and the owners of the contiguous tracts of land of such determination. Upon receipt by the department of the notice of such determination, the notice of intent that contains the description of such tract of land shall terminate immediately, notwithstanding any other provision of this section.

Sec. 41. Section 46-656.01, Revised Statutes Supplement, 2003, is amended to read:

~~46-656.01.~~ Sections ~~46-656.01 to 46-656.67~~ 41 to 93 of this act shall be known and may be cited as the Nebraska Ground Water Management and Protection Act.

Sec. 42. Section 46-656.02, Revised Statutes Supplement, 2003, is amended to read:

~~46-656.02.~~ The Legislature finds that ownership of water is held by the state for the benefit of its citizens, that ground water is one of the most valuable natural resources in the state, and that an adequate supply of ground water is essential to the general welfare of the citizens of this state and to the present and future development of agriculture in the state. The Legislature recognizes its duty to define broad policy goals concerning the utilization and management of ground water and to ensure local implementation of those goals. The Legislature also finds that natural resources districts have the legal authority to regulate certain activities and, except as otherwise specifically provided by statute, as local entities are the preferred regulators of activities which may contribute to ground water depletion.

Every landowner shall be entitled to a reasonable and beneficial use of the ground water underlying his or her land subject to the provisions of Chapter 46, article 6, and the Nebraska Ground Water Management and Protection Act and the correlative rights of other landowners when the ground water supply is insufficient for all users. The Legislature determines that the goal shall be to extend ground water reservoir life to the greatest extent

practicable consistent with beneficial use of the ground water and best management practices.

The Legislature further recognizes and declares that the management, protection, and conservation of ground water and the beneficial use thereof are essential to the economic prosperity and future well-being of the state and that the public interest demands procedures for the implementation of management practices to conserve and protect ground water supplies and to prevent the contamination or inefficient or improper use thereof. The Legislature recognizes the need to provide for orderly management systems in areas where management of ground water is necessary to achieve locally determined ground water management objectives and where available data, evidence, or other information indicates that present or potential ground water conditions, including subirrigation conditions, require the designation of areas with special regulation of development and use.

~~Nothing in the Nebraska Ground Water Management and Protection Act relating to the contamination of ground water is intended to limit the powers of the Department of Environmental Quality provided in Chapter 81, article 15-~~

Sec. 43. Section 46-656.05, Revised Statutes Supplement, 2002, is amended to read:

~~46-656.05.~~ The Legislature further finds:

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

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

(3) Natural resources districts already have significant legal authority to regulate activities which contribute to declines in ground water levels and to nonpoint source contamination of ground water and are the preferred entities to regulate, through ground water management areas, ground water related activities which are contributing to or are, in the reasonably foreseeable future, likely to contribute to conflicts between ground water users and surface water appropriators or ~~which may be necessary in order to resolve disputes over interstate compacts or decrees, or to carry out the provisions of other formal state contracts or agreements to water supply shortages in fully appropriated or overappropriated river basins, subbasins, or reaches;~~

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

~~(4) (5) The Department of Natural Resources is responsible for regulation of surface water resources and local surface water project sponsors are responsible for much of the structured irrigation utilizing surface water supplies, and these entities should be responsible for regulation of surface water related activities which contribute to such conflicts between ground water users and surface water appropriators or to water supply shortages in fully appropriated or overappropriated river basins, subbasins, or reaches; or provide opportunities for such dispute resolution;~~

~~(5) The department, following review and concurrence of need by the Interrelated Water Review Committee of the Nebraska Natural Resources Commission, should also be given authority to regulate ground water related activities to mitigate or eliminate disputes over interstate compacts or decrees or difficulties in carrying out the provisions of other formal state contracts or agreements if natural resources districts do not utilize their ground water management authority in a reasonable manner to prevent or minimize such disputes or difficulties; and~~

(6) All involved natural resources districts, the department, and surface water project sponsors should cooperate and collaborate on the identification and implementation of management solutions to ~~such conflicts or provide opportunities for mitigation or elimination of such disputes or difficulties between ground water users and surface water appropriators or to water supply shortages in fully appropriated or overappropriated river basins, subbasins, and reaches; and~~

~~(7) An Interrelated Water Review Board is needed to resolve any conflicts between the department and the involved natural resources districts~~

concerning the content, implementation, or enforcement of integrated management plans for fully appropriated and overappropriated river basins, subbasins, and reaches.

Sec. 44. Section 46-656.03, Reissue Revised Statutes of Nebraska, is amended to read:

~~46-656.03.~~ The Legislature also finds that:

(1) The levels of nitrate nitrogen and other contaminants in ground water in certain areas of the state are increasing;

(2) Long-term solutions should be implemented and efforts should be made to prevent the levels of ground water contaminants from becoming too high and to reduce high levels sufficiently to eliminate health hazards;

(3) Agriculture has been very productive and should continue to be an important industry to the State of Nebraska;

(4) Natural resources districts have the legal authority to regulate certain activities and, as local entities, are the preferred regulators of activities which may contribute to ground water contamination in both urban and rural areas;

(5) The Department of Environmental Quality should be given authority to regulate sources of contamination when necessary to prevent serious deterioration of ground water quality;

(6) The powers given to districts and the Department of Environmental Quality should be used to stabilize, reduce, and prevent the increase or spread of ground water contamination; and

(7) There is a need to provide for the orderly management of ground water quality in areas where available data, evidence, and other information indicate that present or potential ground water conditions require the designation of such areas as management areas.

Sec. 45. Section 46-656.04, Reissue Revised Statutes of Nebraska, is amended to read:

~~46-656.04.~~ Nothing in ~~sections 46-656.35 to 46-656.48~~ the Nebraska Ground Water Management and Protection Act shall be construed to limit the powers of the Department of Health and Human Services Regulation and Licensure provided in the Nebraska Safe Drinking Water Act.

Nothing in the Nebraska Ground Water Management and Protection Act relating to the contamination of ground water is intended to limit the powers of the Department of Environmental Quality provided in Chapter 81, article 15.

Sec. 46. Section 46-656.07, Revised Statutes Supplement, 2003, is amended to read:

~~46-656.07.~~ For purposes of the Municipal and Rural Domestic Ground Water Transfers Permit Act, the Nebraska Ground Water Management and Protection Act, and sections 46-601 to 46-613.02, 46-636, 46-637, and 46-651 to 46-655, unless the context otherwise requires:

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

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

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

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

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

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

(7) Management area ~~shall mean~~ means any area so designated by a district pursuant to section ~~46-656.20~~ 52 or 58 of this act, by the Director of Environmental Quality pursuant to section ~~46-656.39~~ 65 of this act, or by the ~~Director of Natural Resources~~ Interrelated Water Review Board pursuant to section ~~46-656.52~~ 59 of this act. Management area ~~shall include~~ includes a

control area or a special ground water quality protection area designated prior to July 19, 1996;

(8) Management plan ~~shall mean~~ means a ground water management plan developed by a district and submitted to the Director of Natural Resources for review pursuant to ~~sections 46-656.12 to 46-656.15~~ section 51 of this act;

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

(10) Board ~~shall mean~~ means the board of directors of a district;

~~(11) Irrigated acre shall mean any acre that is certified as such pursuant to rules and regulations of the district and that is actually capable of being supplied water through irrigation works, mechanisms, or facilities existing at the time of the allocation;~~

~~(12) (11) Acre-inch shall mean~~ means the amount of water necessary to cover an acre of land one inch deep;

~~(13) (12) Subirrigation or subirrigated land shall mean~~ means the natural occurrence of a ground water table within the root zone of agricultural vegetation, not exceeding ten feet below the surface of the ground;

~~(14) (13) Best management practices shall mean~~ means schedules of activities, maintenance procedures, and other management practices utilized to prevent or reduce present and future contamination of ground water which may include irrigation scheduling, proper rate and timing of fertilizer application, and other fertilizer and pesticide management programs. In determining the rate of fertilizer application, the district shall consult with the University of Nebraska or a certified crop advisor certified by the American Society of Agronomy;

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

~~(16) (15) Allocation, as it relates to water use for irrigation purposes, means shall mean~~ the allotment of a specified total number of acre-inches of irrigation water per irrigated acre per year or an average number of acre-inches of irrigation water per irrigated acre over any reasonable period of time;

~~(17) (16) Rotation shall mean~~ means a recurring series of use and nonuse of irrigation wells on an hourly, daily, weekly, monthly, or yearly basis;

~~(18) (17) Water well shall have~~ has the same meaning as in section 46-601.01; ~~and~~

~~(19) (18) Surface water project sponsor shall mean~~ means an irrigation district created pursuant to Chapter 46, article 1, a reclamation district created pursuant to Chapter 46, article 5, or a public power and irrigation district created pursuant to Chapter 70, article 6;

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

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

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

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

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

~~(24) Historic consumptive use means the amount of water that has~~

previously been consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use was lawfully made;

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

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

(27) Overall difference between the current and fully appropriated levels of development means the extent to which existing uses of hydrologically connected surface water and ground water and conservation activities result in the water supply available for purposes identified in subsection (3) of section 53 of this act to be less than the water supply available if the river basin, subbasin, or reach had been determined to be fully appropriated in accordance with section 54 of this act;

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

(29) Variance means the approval to act in a manner contrary to existing rules or regulations from a governing body whose rule or regulation is otherwise applicable.

Sec. 47. Section 46-656.08, Reissue Revised Statutes of Nebraska, is amended to read:

~~46-656.08.~~ Regardless of whether or not any portion of a district has been designated as a management area, in order to administer and enforce the Nebraska Ground Water Management and Protection Act and to effectuate the policy of the state to conserve ground water resources, a district may:

(1) Adopt and promulgate rules and regulations necessary to discharge the administrative duties assigned in the act;

(2) Require such reports from ground water users as may be necessary;

(3) Require meters to be placed on any water wells for the purpose of acquiring water use data;

(4) Require decommissioning of water wells that are not properly classified as active status water wells as defined in section 46-1204.02 or inactive status water wells as defined in section 46-1207.02;

(5) Conduct investigations and cooperate or contract with agencies of the United States, agencies or political subdivisions of this state, public or private corporations, or any association or individual on any matter relevant to the administration of the act;

~~(5)~~ (6) Report to and consult with the Department of Environmental Quality on all matters concerning the entry of contamination or contaminating materials into ground water supplies; and

~~(6)~~ (7) Issue cease and desist orders, following ten days' notice to the person affected stating the contemplated action and in general the grounds for the action and following reasonable opportunity to be heard, to enforce any of the provisions of the act or of orders or permits issued pursuant to the act, to initiate suits to enforce the provisions of orders issued pursuant to the act, and to restrain the construction of illegal water wells or the withdrawal or use of water from illegal water wells.

Before any rule or regulation is adopted pursuant to this section, a public hearing shall be held within the district. Notice of the hearing shall be given as provided in section 83 of this act.

Sec. 48. Section 46-656.11, Reissue Revised Statutes of Nebraska, is amended to read:

~~46-656.11.~~ (1) In order to conserve ground water supplies and to prevent the inefficient or improper runoff of such ground water, each person who uses ground water irrigation in the state shall take action to control or prevent the runoff of water used in such irrigation.

(2) Each district shall adopt, following public hearing, notice of which shall be given in the manner provided in section ~~46-656.19~~ 83 of this act, rules and regulations necessary to control or prohibit surface runoff of water derived from ground water irrigation. Such rules and regulations shall prescribe (a) standards and criteria delineating what constitutes the inefficient or improper runoff of ground water used in irrigation, (b) procedures to prevent, control, and abate such runoff, (c) measures for the construction, modification, extension, or operation of remedial measures to prevent, control, or abate runoff of ground water used in irrigation, and (d) procedures for the enforcement of this section.

(3) Each district may, upon ten days' notice to the person affected,

stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, issue cease and desist orders to enforce any of the provisions of this section or rules and regulations issued pursuant to this section.

Sec. 49. Section 46-656.12, Revised Statutes Supplement, 2003, is amended to read:

~~46-656.12.~~ Each district shall ~~prepare~~ maintain a ground water management plan based upon the best available information and ~~submit~~ shall submit amendments to such plan to the Director of Natural Resources for review and approval.

The plan shall include, but not be limited to, the identification to the extent possible of:

(1) Ground water supplies within the district including transmissivity, saturated thickness maps, and other ground water reservoir information, if available;

(2) Local recharge characteristics and rates from any sources, if available;

(3) Average annual precipitation and the variations within the district;

(4) Crop water needs within the district;

(5) Current ground water data-collection programs;

(6) Past, present, and potential ground water use within the district;

(7) Ground water quality concerns within the district;

(8) Proposed water conservation and supply augmentation programs for the district;

(9) The availability of supplemental water supplies, including the opportunity for ground water recharge;

(10) The opportunity to integrate and coordinate the use of water from different sources of supply;

(11) Ground water management objectives, including a proposed ground water reservoir life goal for the district. For management plans adopted or revised after July 19, 1996, the ground water management objectives may include any proposed integrated management objectives for hydrologically connected ground water and surface water supplies but a management plan does not have to be revised prior to the adoption or implementation of a ~~joint action plan pursuant to section 46-656.28~~ an integrated management plan pursuant to section 58 or 59 of this act;

(12) Existing subirrigation uses within the district;

(13) The relative economic value of different uses of ground water proposed or existing within the district; and

(14) The geographic and stratigraphic boundaries of any proposed management area.

If the expenses incurred by a district preparing or amending a ground water management plan exceed twenty-five percent of the district's current budget, the district may make application to the Nebraska Resources Development Fund for assistance.

Each district's ground water management plan shall also identify, to the extent possible, the levels and sources of ground water contamination within the district, ground water quality goals, long-term solutions necessary to prevent the levels of ground water contaminants from becoming too high and to reduce high levels sufficiently to eliminate health hazards, and practices recommended to stabilize, reduce, and prevent the occurrence, increase, or spread of ground water contamination.

~~If a control area, management area, or special ground water quality protection area has been designated in a district prior to July 19, 1996, the area shall be designated a management area but the district shall not be required to adopt or amend its existing rules, regulations, action plan, or ground water management plan, due to that change in designation, for the geographical area of the district included in such control area, management area, or special ground water quality protection area. A district may change references from control area or special ground water quality protection area to management area without holding a public hearing. Before taking any action described in the remainder of this section, a district shall hold a public hearing within the district. Notice of the hearing shall be given as provided in section 46-656.19. If the changes made by Laws 1996, LB 108, require substantive changes to the district's rules, regulations, or plans, the district shall enact appropriate amendments to such rules, regulations, or plans. A district in which a special ground water quality protection area was designated prior to July 19, 1996, shall insure compliance with section 46-656.29. A district in which a control area, management area, or special ground water quality protection area was designated prior to July 19, 1996,~~

may adopt any of the controls permitted by section 46-656.25.

Sec. 50. Section 46-656.13, Reissue Revised Statutes of Nebraska, is amended to read:

~~46-656.13.~~ During preparation or modification of a ground water management plan, the district shall actively solicit public comments and opinions and shall utilize and draw upon existing research, data, studies, or any other information which has been compiled by or is in the possession of state or federal agencies, natural resources districts, or any other subdivision of the state. State agencies, districts, and other subdivisions shall furnish information or data upon the request of any district preparing or modifying such a plan. A district shall not be required to initiate new studies or data-collection efforts or to develop computer models in order to prepare or modify a plan.

Sec. 51. Section 46-656.14, Revised Statutes Supplement, 2002, is amended to read:

~~46-656.14.~~ (1) The Director of Natural Resources shall review any ground water management plan or plan modification submitted by a district to ensure that the best available studies, data, and information, whether previously existing or newly initiated, were utilized and considered and that such plan is supported by and is a reasonable application of such information. If a management area is proposed and the primary purpose of the proposed management area is protection of water quality, the director shall consult with the Department of Environmental Quality regarding approval or denial of the management plan. The director shall consult with the Conservation and Survey Division of the University of Nebraska and such other state or federal agencies the director shall deem necessary when reviewing plans. Within ninety days after receipt of a plan, the director shall transmit his or her specific findings, conclusions, and reasons for approval or disapproval to the district submitting the plan.

(2) If the Director of Natural Resources disapproves a ground water management plan, the district which submitted the plan shall, in order to establish a management area, submit to the director either the original or a revised plan with an explanation of how the original or revised plan addresses the issues raised by the director in his or her reasons for disapproval. Once a district has submitted an explanation pursuant to this section, such district may proceed to schedule a hearing pursuant to section 52 of this act.

Sec. 52. Section 46-656.19, Revised Statutes Supplement, 2002, is amended to read:

~~46-656.19.~~ Prior to proceeding toward establishing a management area, a (1) A natural resources district may establish a ground water management area in accordance with this section to accomplish any one or more of the following objectives: (a) Protection of ground water quantity; (b) protection of ground water quality; or (c) prevention or resolution of conflicts between users of ground water and appropriators of surface water, which ground water and surface water are hydrologically connected.

(2) Prior to establishment by a district of a management area other than a management area being established in accordance with section 58 of this act, the district's management plan shall have been approved by the Director of Natural Resources or the district shall have completed the requirements of subsection (2) of section 46-656.15 51 of this act. If necessary to determine whether a management area should be designated, the district may initiate new studies and data-collection efforts and develop computer models. In order to establish a management area, the district shall fix a time and place for a public hearing to consider the management plan information supplied by the director and to hear any other evidence. The hearing shall be located within or in reasonable proximity to the area proposed for designation as a management area. Notice of the hearing shall be published as provided in section 83 of this act, and the hearing shall be conducted in accordance with such section.

(3)(a) Within ninety days after the hearing, the district shall determine whether a management area shall be designated. If the district determines that no management area shall be established, the district shall issue an order to that effect.

(b) If the district determines that a management area shall be established, the district shall by order designate the area as a management area and shall adopt one or more controls authorized by section 79 of this act to be utilized within the area in order to achieve the ground water management objectives specified in the plan. Such an order shall include a geographic and stratigraphic definition of the area. The boundaries and controls shall take into account any considerations brought forth at the hearing and administrative factors directly affecting the ability of the district to implement and carry out local ground water management.

(c) The controls adopted shall not include controls substantially different from those set forth in the notice of the hearing. The area designated by the order shall not include any area not included in the notice of the hearing.

(4) Modification of the boundaries of a district-designated management area or dissolution of such an area shall be in accordance with the procedures established in this section. Hearings for such modifications or for dissolution may not be initiated more often than once a year. Hearings for modification of controls may be initiated as often as deemed necessary by the district, and such modifications may be accomplished using the procedure in this section.

(5) A district shall, prior to adopting or amending any rules or regulations for a management area, consult with any holders of permits for intentional or incidental underground water storage and recovery issued pursuant to section 46-226.02, 46-233, 46-240, 46-241, 46-242, or 46-297. at the expense of the district in a newspaper published or of general circulation in the area involved at least once each week for three consecutive weeks, the last publication to be not less than seven days prior to the hearing. The notice shall provide a general description of the contents of the plan and of the area which will be considered for inclusion in the management area and a general description of all controls proposed for adoption or amendment by the district and shall identify all locations where a copy of the full text of the proposed controls may be obtained. The full text of all controls shall be available to the public upon request not later than the date of first publication.

All interested persons shall be allowed to appear and present testimony. The hearing shall include testimony of a representative of the Department of Natural Resources and, if the primary purpose of the proposed management area is protection of water quality, of the Department of Environmental Quality and shall include the results of any studies or investigations conducted by the district.

Sec. 53. (1)(a) By January 1 of each year beginning in 2006 and except as otherwise provided in this section and section 60 of this act, the Department of Natural Resources shall complete an evaluation of the expected long-term availability of hydrologically connected water supplies for both existing and new surface water uses and existing and new ground water uses in each of the state's river basins and shall issue a report that describes the results of the evaluation. For purposes of the evaluation and the report, a river basin may be divided into two or more subbasins or reaches. A river basin, subbasin, or reach for which an integrated management plan has been or is being developed pursuant to sections 55 to 57 of this act or pursuant to section 59 of this act shall not be evaluated unless it is being reevaluated as provided in subsection (2) of this section. For each river basin, subbasin, or reach evaluated, the report shall describe (i) the nature and extent of use of both surface water and ground water in each river basin, subbasin, or reach, (ii) the geographic area within which the department preliminarily considers surface water and ground water to be hydrologically connected and the criteria used for that determination, and (iii) the extent to which the then-current uses affect available near-term and long-term water supplies. River basins, subbasins, and reaches designated as overappropriated in accordance with subsection (4) of this section shall not be evaluated by the department.

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

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

(d) In preparing the report, the department shall rely on the best scientific data and information readily available. Upon request by the department, state agencies, natural resources districts, irrigation districts, reclamation districts, public power and irrigation districts, mutual

irrigation companies, canal companies, municipalities, and other water users and stakeholders shall provide relevant data and information in their possession. The Department of Natural Resources shall specify by rule and regulation the types of scientific data and other information that will be considered for making the preliminary determinations required by this section.

(2) The department shall complete a reevaluation of a river basin, subbasin, or reach for which an integrated management plan has been or is being prepared if the department has reason to believe that a reevaluation might lead to a different determination about whether such river basin, subbasin, or reach is fully appropriated or overappropriated. A decision to reevaluate may be reached by the department on its own or in response to a petition filed with the department by any interested person. To be considered sufficient to justify a reevaluation, a petition shall be accompanied by supporting information showing that (a) new scientific data or other information relevant to the determination of whether the river basin, subbasin, or reach is fully appropriated or overappropriated has become available since the last evaluation of such river basin, subbasin, or reach, (b) the department relied on incorrect or incomplete information when the river basin, subbasin, or reach was last evaluated, or (c) the department erred in its interpretation or application of the information available when the river basin, subbasin, or reach was last evaluated. If a petition determined by the department to be sufficient is filed before March 1 of any year, the reevaluation of the river basin, subbasin, or reach involved shall be included in the next annual report prepared in accordance with subsection (1) of this section. If any such petition is filed on or after March 1 of any year, the department may defer the reevaluation of the river basin, subbasin, or reach involved until the second annual report after such filing.

(3) A river basin, subbasin, or reach shall be deemed fully appropriated if the department determines that then-current uses of hydrologically connected surface water and ground water in the river basin, subbasin, or reach cause or will in the reasonably foreseeable future cause (a) the surface water supply to be insufficient to sustain over the long term the beneficial or useful purposes for which existing natural flow or storage appropriations were granted and the beneficial or useful purposes for which, at the time of approval, any existing instream appropriation was granted, (b) the streamflow to be insufficient to sustain over the long term the beneficial uses from wells constructed in aquifers dependent on recharge from the river or stream involved, or (c) reduction in the flow of a river or stream sufficient to cause noncompliance by Nebraska with an interstate compact or decree, other formal state contract or agreement, or applicable state or federal laws.

(4)(a) A river basin, subbasin, or reach shall be deemed overappropriated if, on the operative date of this section, the river basin, subbasin, or reach is subject to an interstate cooperative agreement among three or more states and if, prior to such date, the department has declared a moratorium on the issuance of new surface water appropriations in such river basin, subbasin, or reach and has requested each natural resources district with jurisdiction in the affected area in such river basin, subbasin, or reach either (i) to close or to continue in effect a previously adopted closure of all or part of such river basin, subbasin, or reach to the issuance of additional water well permits in accordance with subdivision (1)(k) of section 46-656.25 as such section existed prior to the operative date of this section or (ii) to temporarily suspend or to continue in effect a temporary suspension, previously adopted pursuant to section 46-656.28 as such section existed prior to the operative date of this section, on the drilling of new water wells in all or part of such river basin, subbasin, or reach.

(b) Within sixty days after the operative date of this section, the department shall designate which river basins, subbasins, or reaches are overappropriated. The designation shall include a description of the geographic area within which the department has determined that surface water and ground water are hydrologically connected and the criteria used to make such determination.

Sec. 54. (1) Whenever the Department of Natural Resources makes a preliminary determination that a river basin, subbasin, or reach not previously designated as overappropriated and not previously determined to be fully appropriated has become fully appropriated, the department shall place an immediate stay on the issuance of any new natural-flow, storage, or storage-use appropriations in such river basin, subbasin, or reach. The department shall also provide prompt notice of such preliminary determination to all licensed water well contractors in the state and to each natural resources district that encompasses any of the geographic area involved. Immediately upon receipt of such notice by the natural resources district,

there shall be a stay on issuance of water well construction permits in the geographic area preliminarily determined by the department to include hydrologically connected surface water and ground water in such river basin, subbasin, or reach. The department shall also notify the public of the preliminary determination that the river basin, subbasin, or reach is fully appropriated and of the affected geographic area. Such notice shall be provided by publication once each week for three consecutive weeks in at least one newspaper of statewide circulation and in such other newspaper or newspapers as are deemed appropriate by the department to provide general circulation in the river basin, subbasin, or reach.

(2) If the department preliminarily determines a river basin, subbasin, or reach to be fully appropriated and has identified the existence of hydrologically connected surface water and ground water in such river basin, subbasin, or reach, stays shall also be imposed (a) on the construction of any new water well in the area covered by the determination if such construction has not commenced prior to the determination, whether or not a construction permit for such water well was previously obtained from the department or a natural resources district, and (b) on the use of an existing water well or an existing surface water appropriation in the affected area to increase the number of acres historically irrigated. Such additional stays shall begin ten days after the first publication, in a newspaper of statewide circulation, of the notice of the preliminary determination that the river basin, subbasin, or reach is fully appropriated.

(3) Exceptions to the stays imposed pursuant to subsection (1), (2), (9), or (10) of this section shall exist for (a) test holes, (b) dewatering wells with an intended use of one year or less, (c) monitoring wells, (d) wells constructed pursuant to a ground water remediation plan under the Environmental Protection Act, (e) water wells designed and constructed to pump fifty gallons per minute or less, except that no two or more water wells that each pump fifty gallons per minute or less may be connected or otherwise combined to serve a single project such that the collective pumping would exceed fifty gallons per minute, (f) water wells for range livestock, (g) new surface water uses or water wells that are necessary to alleviate an emergency situation involving the provision of water for human consumption or public health and safety, (h) water wells defined by the applicable natural resources district as replacement water wells, but the consumptive use of any such replacement water well can be no greater than the historic consumptive use of the water well it is to replace or, if applicable, the historic consumptive use of the surface water use it is to replace, (i) new surface water uses and water wells to which a right or permit is transferred in accordance with state law, but the consumptive use of any such new use can be no greater than the historic consumptive use of the surface water use or water well from which the right or permit is being transferred, (j) water wells and increases in ground water irrigated acres for which a variance is granted by the applicable natural resources district for good cause shown, (k) to the extent permitted by the applicable natural resources district, increases in ground water irrigated acres that result from the use of water wells that were constructed within the nine months prior to the effective date of the stay but were not used for irrigation prior to that effective date, (l) to the extent permitted by the applicable natural resources district, increases in ground water irrigated acres that result from the use of water wells that are constructed after the effective date of the stay in accordance with a permit granted by that natural resources district prior to the effective date of the stay, (m) surface water uses for which temporary public-use construction permits are issued pursuant to subsection (8) of section 46-233, (n) surface water uses and increases in surface water irrigated acres for which a variance is granted by the department for good cause shown, and (o) water wells for which permits have been approved by the Department of Natural Resources pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act prior to the effective date of the stay.

(4) Except as otherwise provided in this section, any stay imposed pursuant to subsections (1) and (2) of this section shall remain in effect for the affected river basin, subbasin, or reach until the department has made a final determination regarding whether the river basin, subbasin, or reach is fully appropriated and, if the department's final determination is that the river basin, subbasin, or reach is fully appropriated, shall remain in effect as provided in subsection (12) of this section. Within the time period between the dates of the preliminary and final determinations, the department and the affected natural resources districts shall consult with any irrigation district, reclamation district, public power and irrigation district, mutual irrigation company, canal company, or municipality that relies on water from the affected river basin, subbasin, or reach and with other water users and

stakeholders as deemed appropriate by the department or the natural resources districts. The department shall also hold one or more public hearings not more than ninety days after the first publication of the notice required by subsection (1) of this section. Notice of the hearings shall be provided in the same manner as the notice required by such subsection. Any interested person may appear at such hearing and present written or oral testimony and evidence concerning the appropriation status of the river basin, subbasin, or reach, the department's preliminary conclusions about the extent of the area within which the surface water and ground water supplies for the river basin, subbasin, or reach are determined to be hydrologically connected, and whether the stays on new uses should be terminated.

(5) Within thirty days after the final hearing under subsection (4) of this section, the department shall notify the appropriate natural resources districts of the department's final determination with respect to the appropriation status of the river basin, subbasin, or reach. If the final determination is that the river basin, subbasin, or reach is fully appropriated, the department, at the same time, shall (a) decide whether to continue or to terminate the stays on new surface water uses and on increases in the number of surface water irrigated acres and (b) designate the geographic area within which the department considers surface water and ground water to be hydrologically connected in the river basin, subbasin, or reach and describe the methods and criteria used in making that determination. The department shall provide notice of its decision to continue or terminate the stays in the same manner as the notice required by subsection (1) of this section.

(6) If the department's final determination is that the river basin, subbasin, or reach is not fully appropriated, the department shall provide notice of such determination as provided in subsection (1) of this section, the stays imposed pursuant to subsections (1) and (2) of this section shall terminate immediately, and no further action pursuant to subsections (7) through (12) of this section and sections 55 to 59 of this act shall be required.

(7) Within ninety days after a final determination by the department that a river basin, subbasin, or reach is fully appropriated, an affected natural resources district may hold one or more public hearings on the question of whether the stays on the issuance of new water well permits, on the construction of new water wells, or on increases in ground water irrigated acres should be terminated. Notice of the hearings shall be published as provided in section 83 of this act.

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

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

(10) Beginning ten days after the first publication of notice under subsection (9) of this section in a newspaper of statewide circulation, there shall also be stays (a) on the construction of any new water well in the hydrologically connected area if such construction has not commenced prior to

such date and if no permit for construction of the water well has been issued previously by either the department or the natural resources district, (b) on the use of an existing water well in the hydrologically connected area to increase the number of acres historically irrigated, and (c) on the use of an existing surface water appropriation to increase the number of acres historically irrigated in the affected area.

(11) Within ninety days after a designation by the department of a river basin, subbasin, or reach as overappropriated, a natural resources district that encompasses any of the hydrologically connected area designated by the department may hold one or more public hearings on the question of whether to terminate the stays on (a) the construction of new water wells within all or part of its portion of the hydrologically connected area, (b) the issuance of new water well construction permits in such area, or (c) the increase in ground water irrigated acres in such area. Notice of any hearing for such purpose shall be provided pursuant to section 83 of this act. Prior to the scheduling of a natural resources district hearing on the question of whether to terminate any such stay, the department and the affected natural resources district shall consult with any irrigation district, reclamation district, public power and irrigation district, mutual irrigation company, canal company, or municipality that relies on water from the affected river basin, subbasin, or reach and with other water users and stakeholders as deemed appropriate by the department or the natural resources district.

(12) Any stay issued pursuant to this section shall remain in effect until (a) the stay has been terminated pursuant to subsection (5), (6), (8), or (11) of this section, (b) an integrated management plan for the affected river basin, subbasin, or reach has been adopted by the department and the affected natural resources districts and has taken effect, (c) an integrated management plan for the affected river basin, subbasin, or reach has been adopted by the Interrelated Water Review Board and has taken effect, (d) the department has completed a reevaluation pursuant to subsection (2) of section 53 of this act and has determined that the affected river basin, subbasin, or reach is not fully appropriated or overappropriated, or (e) the stay expires pursuant to this subsection. Such stay may be imposed initially for not more than three years following the department's designation of the river basin, subbasin, or reach as overappropriated or the department's final determination that a river basin, subbasin, or reach is fully appropriated and may be extended thereafter on an annual basis by agreement of the department and the affected natural resources district for not more than two additional years if necessary to allow the development, adoption, and implementation of an integrated management plan pursuant to sections 55 to 59 of this act.

Sec. 55. (1) Whenever the Department of Natural Resources has designated a river basin, subbasin, or reach as overappropriated or has made a final determination that a river basin, subbasin, or reach is fully appropriated, the natural resources districts encompassing such river basin, subbasin, or reach and the department shall jointly develop an integrated management plan for such river basin, subbasin, or reach. The plan shall be completed, adopted, and take effect within three years after such designation or final determination unless the department and the natural resources districts jointly agree to an extension of not more than two additional years.

(2) In developing an integrated management plan, the effects of existing and potential new water uses on existing surface water appropriators and ground water users shall be considered. An integrated management plan shall include the following: (a) Clear goals and objectives with a purpose of sustaining a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the river basin, subbasin, or reach can be achieved and maintained for both the near term and the long term; (b) a map clearly delineating the geographic area subject to the integrated management plan; (c) one or more of the ground water controls authorized for adoption by natural resources districts pursuant to section 79 of this act; and (d) one or more of the surface water controls authorized for adoption by the department pursuant to section 56 of this act. The plan may also provide for utilization of any applicable incentive programs authorized by law. Nothing in the integrated management plan for a fully appropriated river basin, subbasin, or reach shall require a natural resources district to regulate ground water uses in place at the time of the department's preliminary determination that the river basin, subbasin, or reach is fully appropriated, but a natural resources district may voluntarily adopt such regulations.

(3) The ground water and surface water controls proposed for adoption in the integrated management plan pursuant to subsection (1) of this section shall, when considered together and with any applicable incentive programs, (a) be consistent with the goals and objectives of the plan, (b) be

sufficient to ensure that the state will remain in compliance with applicable state and federal laws and with any applicable interstate water compact or decree or other formal state contract or agreement pertaining to surface water or ground water use or supplies, and (c) protect the ground water users whose water wells are dependent on recharge from the river or stream involved and the surface water appropriators on such river or stream from streamflow depletion caused by surface water uses and ground water uses begun after the date the river basin, subbasin, or reach was designated as overappropriated or was preliminarily determined to be fully appropriated in accordance with section 53 of this act.

(4)(a) In any river basin, subbasin, or reach that is designated as overappropriated, when the designated area lies within two or more natural resources districts, the department and the affected natural resources districts shall jointly develop a basin-wide plan for the area designated as overappropriated. Such plan shall be developed using the consultation and collaboration process described in subdivision (b) of this subsection, shall be developed concurrently with the development of the integrated management plan required pursuant to subsections (1) through (3) of this section, and shall be designed to achieve, in the incremental manner described in subdivision (d) of this subsection, the goals and objectives described in subsection (2) of this section. The basin-wide plan shall be adopted after hearings by the department and the affected natural resources districts.

(b) In any river basin, subbasin, or reach designated as overappropriated and subject to this subsection, the department and each natural resources district encompassing such river basin, subbasin, or reach shall jointly develop an integrated management plan for such river basin, subbasin, or reach pursuant to subsections (1) through (3) of this section. Each integrated management plan for a river basin, subbasin, or reach subject to this subsection shall be consistent with any basin-wide plan developed pursuant to subdivision (a) of this subsection. Such integrated management plan shall be developed after consultation and collaboration with irrigation districts, reclamation districts, public power and irrigation districts, mutual irrigation companies, canal companies, and municipalities that rely on water from within the affected area and that, after being notified of the commencement of the plan development process, indicate in writing their desire to participate in such process. In addition, the department or the affected natural resources districts may include designated representatives of other stakeholders. If agreement is reached by all parties involved in such consultation and collaboration process, the department and each natural resources district shall adopt the agreed-upon integrated management plan. If agreement cannot be reached by all parties involved, the integrated management plan shall be developed and adopted by the department and the affected natural resources district pursuant to sections 55 to 58 of this act or by the Interrelated Water Review Board pursuant to section 59 of this act.

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

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

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

(ii) The department and the affected natural resources districts may amend an integrated management plan subject to this subsection (4) as necessary based on an annual review of the progress being made toward

achieving the goals for that increment;

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

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

(v) If necessary, the steps described in subdivisions (d)(ii) through (iv) of this subsection shall be repeated until the department and the affected natural resources districts agree that the goals and objectives identified pursuant to subsection (2) of this section have been met and the overall difference between the current and fully appropriated levels of development identified in subdivision (4)(c) of this section has been addressed so that the river basin, subbasin, or reach has returned to a fully appropriated condition.

Sec. 56. (1) The surface water controls that may be included in an integrated management plan and may be adopted by the Department of Natural Resources are: (a) Increased monitoring and enforcement of surface water diversion rates and amounts diverted annually; (b) the prohibition or limitation of additional surface water appropriations; (c) requirements for surface water appropriators to apply or utilize reasonable conservation measures consistent with good husbandry and other requirements of section 46-231 and consistent with reasonable reliance by other surface water or ground water users on return flows or on seepage to the aquifer; and (d) other reasonable restrictions on surface water use which are consistent with the intent of section 55 of this act and the requirements of section 46-231.

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

Sec. 57. (1) In developing an integrated management plan, the Department of Natural Resources and the affected natural resources districts shall utilize the best scientific data and other information available and shall review and consider any rules and regulations in effect in any existing ground water management area that encompasses all or part of the geographic area to be encompassed by the plan. Consideration shall be given to the applicable scientific data and other information relied upon by the department in preparing the annual report required by section 53 of this act and to other types of data and information that may be deemed appropriate by the department. The department, after seeking input from the affected natural resources districts, shall specify by rule and regulation the types of scientific data and other information that will be considered in developing an integrated management plan. The natural resources districts shall adopt similar rules and regulations specifying the types of scientific data and other information necessary for purposes of this section. Existing research, data, studies, or any other relevant information which has been compiled by or is in possession of other state or federal agencies, other natural resources districts, and other political subdivisions within the State of Nebraska shall

be utilized. State agencies and political subdivisions shall furnish information or data upon request of the department or any affected natural resources district. Neither the department nor the natural resources districts shall be required to conduct new research or to develop new computer models to prepare an integrated management plan, but such new research may be conducted or new computer models developed within the limits of available funding if the additional information is desired by the department or the affected natural resources districts.

(2) During preparation of an integrated management plan for a fully appropriated river basin, subbasin, or reach, the department and the affected natural resources districts shall consult with any irrigation district, reclamation district, public power and irrigation district, mutual irrigation company, canal company, or municipality that relies on water from the affected river basin, subbasin, or reach and with other water users and stakeholders as deemed appropriate by the department or by the affected natural resources districts. They shall also actively solicit public comments and opinions through public meetings and other means.

Sec. 58. (1) If the Department of Natural Resources and the affected natural resources districts preparing an integrated management plan reach agreement on (a) the proposed goals and objectives of the plan for the affected river basin, subbasin, or reach, (b) the proposed geographic area to be subject to controls, and (c) the surface water and ground water controls and any incentive programs that are proposed for adoption and implementation in the river basin, subbasin, or reach, they shall schedule one or more public hearings to take testimony on the proposed integrated management plan and the proposed controls. Such hearings shall be held within forty-five days after reaching agreement and within or in reasonable proximity to the area to be affected by implementation of the integrated management plan. Notice of such hearings shall be published as provided in section 83 of this act. The costs of publishing the notice shall be shared between the department and the affected natural resources districts. All interested persons may appear at the hearings and present testimony or provide other evidence relevant to the issues being considered.

(2) Within sixty days after the final hearing under this section, the department and the affected natural resources districts shall jointly decide whether to implement the plan proposed, with or without modifications, and whether to adopt and implement the surface water and ground water controls and incentive programs proposed in the plan. If the department and the natural resources districts agree to implement the plan and to adopt and implement the proposed controls, the natural resources districts shall by order designate a ground water management area for integrated management or, if the geographic area subject to the integrated management plan is already in a ground water management area, the order shall designate an integrated management subarea for that area. The order shall include a geographic and stratigraphic definition of the ground water management area or integrated management subarea and shall adopt the controls in the integrated management plan that are authorized for adoption by the natural resources district pursuant to section 79 of this act. The department shall by order adopt the controls in the integrated management plan that are authorized for adoption by the department pursuant to section 56 of this act. Neither the controls adopted by the district nor those adopted by the department shall include controls substantially different from those set forth in the notice of hearing. The area designated as a ground water management area or an integrated management subarea by the natural resources district shall not include any area that was not identified in the notice of the hearing as within the area proposed to be subject to the controls in the plan. The department and the natural resources district shall each cause a copy of its order to be published in the manner provided in section 84 of this act.

(3) If at any time during the development of a basin-wide plan or an integrated management plan either the department or the affected natural resources districts conclude that the parties will be unable to reach a timely agreement on the basin-wide plan or on (a) the goals and objectives of the integrated management plan for the affected river basin, subbasin, or reach, (b) the geographic area to be subject to controls, or (c) the surface water or ground water controls or any incentive programs to be proposed for adoption and implementation in the affected river basin, subbasin, or reach, the Governor shall be notified and the dispute shall be submitted to the Interrelated Water Review Board as provided in subsection (2) of section 59 of this act.

Sec. 59. (1)(a) The Interrelated Water Review Board is created for the purposes stated in subsections (2) through (5) of this section. The board shall consist of five members. The board, when appointed and convened, shall

continue in existence only until it has resolved a dispute referred to it pursuant to such subsections. The Governor shall appoint and convene the board within forty-five days of being notified of the need to resolve a dispute. The board shall be chaired by the Governor or his or her designee, which designee shall be knowledgeable concerning surface water and ground water issues. The Governor shall appoint one additional member of his or her choosing and shall appoint the other three members of the board from a list of no fewer than six nominees provided by the Nebraska Natural Resources Commission within twenty days after request by the Governor for a list of nominees.

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

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

(2)(a) If the Department of Natural Resources and the affected natural resources districts cannot resolve disputes over the content of a basin-wide plan or an integrated management plan by utilizing the process described in sections 55 to 58 of this act, the Governor shall be notified and the dispute submitted to the Interrelated Water Review Board. When the board has been appointed and convened to resolve disputes over a basin-wide plan, the department and each affected district shall present their proposed basin-wide plans to the board. When the board has been convened to resolve disputes over an integrated management plan, the department and each affected natural resources district shall present their (i) proposed goals and objectives for the integrated management plan, (ii) proposed geographic area to be subject to controls, and (iii) proposed surface water and ground water controls and any proposed incentive program for adoption and implementation in the river basin, subbasin, or reach involved. The department and each affected natural resources district shall also be given adequate opportunity to comment on the proposals made by the other parties to the dispute.

(b) When the Interrelated Water Review Board concludes that the issues in dispute have been fully presented and commented upon by the parties to the dispute, which conclusion shall be made not more than forty-five days after the board is convened, the board shall select the proposals or portions of proposals that the board will consider for adoption and shall schedule one or more public hearings to take testimony on the selected proposals. The hearings shall be held within forty-five days after the board's selection of proposals to consider for adoption and shall be within or in reasonable proximity to the area that would be affected by implementation of any of the proposals to be considered at the hearings. Notice of the hearings shall be published as provided in section 83 of this act. The cost of publishing the notice shall be shared by the department and the affected natural resources districts. All interested persons may appear at the hearings and present testimony or provide other evidence relevant to the issues being considered.

(c) Within forty-five days after the final hearing pursuant to subdivision (b) of this subsection, the Interrelated Water Review Board shall by order, as applicable, adopt a basin-wide plan or an integrated management plan for the affected river basin, subbasin, or reach and, in the case of an integrated management plan, shall designate a ground water management plan for integrated management or an integrated management subarea for such river basin, subbasin, or reach. An integrated management plan shall be consistent with subsection (2) of section 55 of this act, and the surface water and ground water controls and any applicable incentive programs adopted as part of that plan shall be consistent with subsection (3) of section 55 of this act. The controls adopted by the board shall not be substantially different from those described in the notice of hearing. The area designated as a ground water management area or an integrated management subarea shall not include any area that was not identified in the notice of the hearing as within the area proposed to be subject to the controls in the plan.

(d) The order adopted under this subsection shall be published in the manner prescribed in section 84 of this act.

(e) Surface water controls adopted by the Interrelated Water Review Board shall be implemented and enforced by the department. Ground water controls adopted by the Interrelated Water Review Board shall be implemented

and enforced by the affected natural resources districts.

(3) Whether an integrated management plan is adopted pursuant to section 58 of this act or by the Interrelated Water Review Board pursuant to subsection (2) of this section, the department or a natural resources district responsible in part for implementation and enforcement of an integrated management plan may propose modification of the goals or objectives of that plan, of the area subject to the plan, or of the surface water controls, ground water controls, or incentive programs adopted to implement the plan. The department and the affected natural resources districts shall utilize the procedures in sections 55 to 58 of this act in an attempt to reach agreement on and to adopt and implement proposed modifications. If agreement on such modifications cannot be achieved utilizing those procedures, either the department or an affected natural resources district may notify the Governor of the dispute. The Interrelated Water Review Board shall be appointed and convened in accordance with subsection (1) of this section to resolve the dispute and, if applicable, to adopt any modifications utilizing the procedures in subsection (2) of this section.

(4) The department and the affected natural resources districts may also raise objections concerning the implementation or enforcement of previously adopted surface water or ground water controls. The department and the affected natural resources districts shall utilize the procedures in sections 55 to 58 of this act in an attempt to reach agreement on such implementation or enforcement issues. If agreement on such issues cannot be achieved utilizing such procedures, either the department or an affected natural resources district may notify the Governor of the dispute. The Interrelated Water Review Board shall be appointed and convened in accordance with subsection (1) of this section. After permitting each party to fully express its reasons for its position on the disputed issues, the board may either take no action or conclude (a) that one or more parties needs to modify its approach to implementation or enforcement and direct that such modifications take place or (b) that one or more parties either has not made a good faith effort to implement or enforce the portion of the plan or controls for which it is responsible or is unable to fully implement and enforce such portion and that such party's jurisdiction with respect to implementation and enforcement of the plan and controls shall be terminated and reassigned to one or more of the other parties responsible for implementation and enforcement. A decision by the Interrelated Water Review Board to terminate and reassign jurisdiction of any portion of the plan or controls shall take effect immediately upon that decision. Notice of such reassignment shall be published at least once in one or more newspapers as necessary to provide general circulation in the area affected by such reassignment.

(5) The board may be reconvened in accordance with subsection (1) of this section at a later date upon request to the Governor by the party for which jurisdiction for implementation and enforcement was terminated if such party desires to have its jurisdiction reinstated, but no such request shall be honored until at least one year after the termination and not more than once per year thereafter. The board may reinstate jurisdiction to that party only upon a clear showing by such party that it is willing and able to fully implement and enforce the plan and any applicable controls. Notice that a party's jurisdiction has been reinstated shall be provided in the same manner that notice of the earlier termination was given.

Sec. 60. (1) The Legislature finds that, prior to the operative date of this section, actions were taken by the Department of Natural Resources and by one or more natural resources districts pursuant to section 46-656.28, as such section existed immediately prior to such date, for the purpose of addressing circumstances that are, after such date, to be addressed in accordance with sections 53 to 59 of this act. It is the intent of the Legislature that actions taken pursuant to section 46-656.28, as such section existed immediately prior to the operative date of this section, should not be negated and that transition from the authorities and responsibilities granted by such section to those granted by sections 53 to 59 of this act should occur in as efficient a manner as possible. Such transition shall be therefor governed by subsections (2) through (5) of this section, and all references in such subsections to section 46-656.28 shall be construed to mean section 46-656.28 as such section existed immediately prior to the operative date of this section.

(2) If, prior to the operative date of this section, (a) a natural resources district requested pursuant to subsection (1) of section 46-656.28 that affected appropriators, affected surface water project sponsors, and the department consult and that studies and a hearing be held but (b) the Director of Natural Resources has not made a preliminary determination relative to that request pursuant to subsection (2) of section 46-656.28, no further action on

the district's request shall be required of the department. If under the same circumstances a temporary suspension in the drilling of certain water wells has been imposed by the district pursuant to subsection (16) of section 46-656.28 and remains in effect immediately prior to the operative date of this section, such temporary suspension shall remain in effect for thirty days after the department issues its first annual report under section 53 of this act, except that (i) such temporary suspension shall not apply to water wells for which a permit has been obtained pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act and (ii) to the extent any such temporary suspension is in effect for all or part of a hydrologically connected area for a river basin, subbasin, or reach designated as overappropriated by the department, such temporary suspension shall remain in effect only until it is superseded by the stays imposed pursuant to subsections (9) and (10) of section 54 of this act. To the extent that any such temporary suspension applies to a geographic area preliminarily considered by the department to have ground water hydrologically connected to the surface water of a fully appropriated river basin, subbasin, or reach, such temporary suspension shall be superseded by the stays imposed pursuant to subsections (1) and (2) of section 54 of this act.

(3)(a) If prior to the operative date of this section (i) the director has made a preliminary determination pursuant to subsection (2) of section 46-656.28 that there is reason to believe that the use of hydrologically connected ground water and surface water in a specific geographic area is contributing to or is in the reasonably foreseeable future likely to contribute to any conflict, dispute, or difficulty listed in such subsection, (ii) the director has not made a determination pursuant to subsection (4) of section 46-656.28 that a joint action plan should not be prepared, and (iii) preparation of a joint action plan pursuant to subsections (5) through (9) of such section has not been completed, the geographic area involved shall become subject to sections 53 to 59 of this act on the operative date of this section and the department need not evaluate such geographic area in its first annual report issued pursuant to section 53 of this act.

(b) For purposes of this subsection and section 54 of this act and except as otherwise provided in this section, (i) the operative date of this section shall result in the imposition in any geographic area subject to this subsection of the stays required by subsections (1) and (2) of section 54 of this act, (ii) such stays shall be imposed in the manner required by such section, and (iii) the operative date of this section shall be treated as if it were the date of a departmental preliminary determination pursuant to section 53 of this act that such area is a geographic area within which ground water and surface water of a fully appropriated river basin, subbasin, or reach are hydrologically connected. Notwithstanding the other provisions of this subsection, if a temporary suspension in the drilling of certain new water wells has previously been imposed by the affected natural resources district, (A) the stays on construction of new water wells and on the increase in ground water irrigated acres shall be limited in geographic extent to only that part of the affected area within which the temporary suspension was in effect unless the director determines that inclusion of additional area is necessary because ground water and surface water are hydrologically connected in such additional area and (B) the stays on construction of certain new water wells shall not apply to a water well constructed in accordance with the terms of a water well construction permit approved by the district prior to the operative date of this section unless such well was subject to the district's temporary suspension. If, prior to the operative date of this section, the director has held a hearing on a report issued pursuant to subsection (3) of section 46-656.28 but has not yet determined whether a joint action plan should be prepared, no departmental hearing shall be required pursuant to subsection (4) of section 54 of this act before a final determination is made about whether the river basin, subbasin, or reach involved is fully appropriated. If, prior to the operative date of this section, the director has determined pursuant to subsection (4) of section 46-656.28 that a joint action plan should be prepared, such determination shall have the same effect as a final departmental determination pursuant to subsection (5) of section 54 of this act that the affected river basin, subbasin, or reach is fully appropriated and no separate determination to that effect shall be required. If, after the operative date of this section, the department determines that all or part of the area subject to this subsection is in an overappropriated river basin, subbasin, or reach, that portion of the area shall thereafter be subject to the provisions of the Nebraska Ground Water Management and Protection Act applicable to an overappropriated river basin, subbasin, or reach and stays that have previously taken effect in accordance with this

subsection shall continue in effect as stays for an overappropriated river basin, subbasin, or reach without additional action or publication of notice by the department. Any temporary suspension in the drilling of certain water wells that has been imposed in the geographic area involved by a natural resources district pursuant to subsection (16) of section 46-656.28 prior to the operative date of this section shall remain in effect until superseded by the stays imposed pursuant to subsections (1) and (2) of section 54 of this act.

(4) If, prior to the operative date of this section, preparation of a joint action plan has been completed pursuant to subsections (5) through (9) of section 46-656.28 but the plan has not yet been adopted pursuant to subsection (11) of such section, the department need not evaluate the affected geographic area in its first annual report issued pursuant to section 53 of this act. The department and the affected natural resources district shall review the completed joint action plan for its compliance with sections 55 to 57 of this act. If the joint action plan is determined to be in compliance with sections 55 to 57 of this act or if agreement is reached on the revisions necessary to bring it into such compliance, the department and the district shall adopt the plan and implement the controls as provided in section 58 of this act. If the joint action plan is determined not to be in compliance with sections 55 to 57 of this act and agreement on the proposed plan or the proposed controls cannot be reached pursuant to section 58 of this act, section 59 of this act shall apply. Except to the extent that any portion of the affected area is designated as all or part of an overappropriated river basin, subbasin, or reach, any temporary suspension in the drilling of certain water wells imposed in the affected geographic area by a natural resources district pursuant to subsection (16) of section 46-656.28 shall remain in effect until (a) the department and the affected district have jointly decided to implement the plan, with or without modifications, and controls have been adopted and taken effect or (b) the Interrelated Water Review Board, pursuant to section 59 of this act, has adopted an integrated management plan for the affected river basin, subbasin, or reach and the controls adopted by the board have taken effect. To the extent that any portion of the affected area is designated as all or part of an overappropriated river basin, subbasin, or reach, any temporary suspension in the drilling of water wells shall be superseded by the stays imposed pursuant to subsections (9) and (10) of section 54 of this act.

(5) If, before the operative date of this section, a joint action plan has been adopted and implemented pursuant to subsections (10) through (12) of section 46-656.28 and is in effect immediately prior to such date, the department need not evaluate the geographic area subject to the plan in the department's first annual report issued pursuant to section 53 of this act. For purposes of the Nebraska Ground Water Management and Protection Act, (a) the plan adopted shall be considered an integrated management plan adopted pursuant to section 58 of this act, (b) the management area designated shall be considered an integrated management area or subarea designated pursuant to section 58 of this act, and (c) the controls adopted shall be considered controls adopted pursuant to section 58 of this act and shall remain in effect until amended or repealed pursuant to section 58 or 59 of this act.

Sec. 61. Section 46-656.35, Reissue Revised Statutes of Nebraska, is amended to read:

~~46-656.35.~~ Each state agency and political subdivision shall promptly report to the Department of Environmental Quality any information which indicates that contamination is occurring.

Sec. 62. Section 46-656.36, Reissue Revised Statutes of Nebraska, is amended to read:

~~46-656.36.~~ If, as a result of information provided pursuant to section ~~46-656.35~~ 61 of this act or studies conducted by or otherwise available to the Department of Environmental Quality and following preliminary investigation, the Director of Environmental Quality makes a preliminary determination (1) that there is reason to believe that contamination of ground water is occurring or likely to occur in an area of the state in the reasonably foreseeable future and (2) that the natural resources district or districts in which the area is located have not designated a management area or have not implemented adequate controls to prevent such contamination from occurring, the department shall, in cooperation with any appropriate state agency and district, conduct a study to determine the source or sources of the contamination and the area affected by such contamination and shall issue a written report within one year of the initiation of the study. During the study, the department shall consider the relevant water quality portions of the management plan developed by each district pursuant to sections ~~46-656.12~~ ~~to 46-656.16~~ 49 to 51 of this act, whether the district has designated a

management area encompassing the area studied, and whether the district has adopted any controls for the area.

Sec. 63. Section 46-656.37, Reissue Revised Statutes of Nebraska, is amended to read:

~~46-656.37.~~ If the Director of Environmental Quality determines from the study conducted pursuant to section ~~46-656.36~~ 62 of this act that one or more sources of contamination are point sources, he or she shall expeditiously use the procedures authorized in the Environmental Protection Act to stabilize or reduce the level and prevent the increase or spread of such contamination.

Sec. 64. Section 46-656.38, Revised Statutes Supplement, 2002, is amended to read:

~~46-656.38.~~ If the Director of Environmental Quality determines from the study conducted pursuant to section ~~46-656.36~~ 62 of this act that one or more sources of contamination are not point sources and if a management area, a purpose of which is protection of water quality, has been established which includes the affected area, the Director of Environmental Quality shall consider whether to require the district which established the management area to adopt an action plan as provided in sections ~~46-656.39 to 46-656.43~~ 65 to 69 of this act.

If the Director of Environmental Quality determines that one or more of the sources are not point sources and if such a management area has not been established or does not include all the affected area, he or she shall, within thirty days after completion of the report required by section ~~46-656.36~~ 62 of this act, consult with the district within whose boundaries the area affected by such contamination is located and fix a time and place for a public hearing to consider the report, hear any other evidence, and secure testimony on whether a management area should be designated or whether an existing area should be modified. The hearing shall be held within one hundred twenty days after completion of the report. Notice of the hearing shall be given as provided in section 83 of this act, and the hearing shall be conducted in accordance with such section. , shall be open to the public, and shall be located within or in reasonable proximity to the area considered in the report. Notice of the hearing shall be published in a newspaper published or of general circulation in the area involved at least once each week for three consecutive weeks, the last publication to be not less than seven days prior to the hearing. The notice shall provide a general description of all areas which will be considered for inclusion in the management area.

At the hearing, all interested persons shall be allowed to appear and present testimony. The Conservation and Survey Division of the University of Nebraska, the Department of Health and Human Services Regulation and Licensure, the Department of Natural Resources, and the appropriate district may offer as evidence any information in their possession which they deem relevant to the purpose of the hearing. After the hearing and after any studies or investigations conducted by or on behalf of the Director of Environmental Quality as he or she deems necessary, the director shall determine whether a management area shall be designated.

Sec. 65. Section 46-656.39, Reissue Revised Statutes of Nebraska, is amended to read:

~~46-656.39.~~ (1) When determining whether to designate or modify the boundaries of a management area or to require a district which has established a management area, a purpose of which is protection of water quality, to adopt an action plan for the affected area, the Director of Environmental Quality shall consider:

(a) Whether contamination of ground water has occurred or is likely to occur in the reasonably foreseeable future;

(b) Whether ground water users, including, but not limited to, domestic, municipal, industrial, and agricultural users, are experiencing or will experience within the foreseeable future substantial economic hardships as a direct result of current or reasonably anticipated activities which cause or contribute to contamination of ground water;

(c) Whether methods are available to stabilize or reduce the level of contamination;

(d) Whether, if a management area has been established which includes the affected area, the controls adopted by the district pursuant to section ~~46-656.25~~ 79 of this act as administered and enforced by the district are sufficient to address the ground water quality issues in the management area; and

(e) Administrative factors directly affecting the ability to implement and carry out regulatory activities.

(2) If the Director of Environmental Quality determines that no such area should be established, he or she shall issue an order declaring that no management area shall be designated.

(3) If the Director of Environmental Quality determines that a management area shall be established, that the boundaries of an existing management area shall be modified, or that the district shall be required to adopt an action plan, he or she shall consult with relevant state agencies and with the district or districts affected and determine the boundaries of the area, taking into account the effect on political subdivisions and the socioeconomic and administrative factors directly affecting the ability to implement and carry out local ground water management, control, and protection. The report by the Director of Environmental Quality shall include the specific reasons for the creation of the management area or the requirement of such an action plan and a full disclosure of the possible causes.

(4) When the boundaries of an area have been determined or modified, the Director of Environmental Quality shall issue an order designating the area as a management area, specifying the modified boundaries of the management area, or requiring such an action plan. Such an order shall include a geographic and stratigraphic definition of the area. Such order shall be published in the manner provided in section 84 of this act.

Sec. 66. Section 46-656.40, Revised Statutes Supplement, 2002, is amended to read:

~~46-656.40.~~ (1) Within one hundred eighty days after the designation of a management area or the requiring of an action plan for a management area, a purpose of which is protection of water quality, the district or districts within whose boundaries the area is located shall prepare an action plan designed to stabilize or reduce the level and prevent the increase or spread of ground water contamination. Whenever a management area or the affected area of such a management area encompasses portions of two or more districts, the responsibilities and authorities delegated in this section shall be exercised jointly and uniformly by agreement of the respective boards of all districts so affected.

(2) Within thirty days after an action plan has been prepared, a public hearing on such plan shall be held by the district. Notice of the hearing shall be given as provided in section 83 of this act, and the hearing shall be conducted in accordance with such section. ~~in reasonable proximity to the area to be affected. Notice of the hearing shall be published in a newspaper published or of general circulation in the area involved at least once each week for three consecutive weeks, the last publication to be not less than seven days prior to the hearing. The notice shall provide a general description of all areas to be affected by the proposed action plan and shall provide the text of all controls proposed for adoption by the district.~~

(3) Within thirty days after the hearing, the district shall adopt and submit an action plan to the Department of Environmental Quality. Notice of the district's order adopting an action plan shall be published as required by section 84 of this act.

Sec. 67. Section 46-656.41, Reissue Revised Statutes of Nebraska, is amended to read:

~~46-656.41.~~ An action plan filed by a district pursuant to section ~~46-656.40~~ 66 of this act shall include the specifics of an educational program to be instituted by the district to inform persons of methods available to stabilize or reduce the level or prevent the increase or spread of ground water contamination. The action plan shall include one or more of the controls authorized by section ~~46-656.25~~ 79 of this act.

Sec. 68. Section 46-656.42, Reissue Revised Statutes of Nebraska, is amended to read:

~~46-656.42.~~ (1) In adopting or amending an action plan authorized by subsection (2) of this section, the district's considerations shall include, but not be limited to, whether it reasonably appears that such action will mitigate or eliminate the condition which led to designation of the management area or the requirement of an action plan for a management area or will improve the administration of the area.

(2) The Director of Environmental Quality shall approve or deny the adoption or amendment of an action plan within one hundred twenty days after the date the plan is submitted by the district. He or she may hold a public hearing to consider testimony regarding the action plan prior to the issuance of an order approving or disapproving the adoption or amendment. In approving the adoption or amendment of the plan in such an area, considerations shall include, but not be limited to, those enumerated in subsection (1) of this section.

(3) If the director denies approval of an action plan by the district, the order shall list the reason the action plan was not approved. A district may submit a revised action plan within sixty days after denial of its original action plan to the director for approval subject to section

~~46-656.45~~ 71 of this act.

Sec. 69. Section 46-656.43, Reissue Revised Statutes of Nebraska, is amended to read:

~~46-656.43.~~ Following approval of the action plan by the Director of Environmental Quality, the district shall cause a copy of ~~each control the order~~ adopted pursuant to section ~~46-656.42~~ 68 of this act to be published ~~once each week for three consecutive weeks in a newspaper published or of general circulation in the area involved, the last publication of which shall be not less than seven days prior to the date when such control becomes effective in the manner provided in section 84 of this act.~~

Sec. 70. Section 46-656.44, Reissue Revised Statutes of Nebraska, is amended to read:

~~46-656.44.~~ Each district in which a management area has been designated or an action plan for a management area has been required pursuant to section ~~46-656.39~~ 65 of this act shall, in cooperation with the Department of Environmental Quality, establish a program to monitor the quality of the ground water in the area and shall if appropriate provide each landowner or operator of an irrigation system with current information available with respect to fertilizer and chemical usage for the specific soil types present and cropping patterns used.

Sec. 71. Section 46-656.45, Reissue Revised Statutes of Nebraska, is amended to read:

~~46-656.45.~~ (1) The power to specify controls authorized by section ~~46-656.25~~ 79 of this act shall vest in the Director of Environmental Quality if (a) at the end of one hundred eighty days following the designation of a management area or the requiring of an action plan for a management area pursuant to section ~~46-656.39~~ 65 of this act, a district encompassed in whole or in part by the management area has not completed and adopted an action plan, (b) a district does not submit a revised action plan within sixty days after denial of its original action plan, or (c) the district submits a revised action plan which is not approved by the director.

(2) If the power to specify controls in such a management area is vested in the Director of Environmental Quality, he or she shall within ninety days adopt and promulgate by rule and regulation such measures as he or she deems necessary for carrying out the intent of the Nebraska Ground Water Management and Protection Act. He or she shall conduct one or more public hearings prior to the adoption of controls. Notice of any such additional hearings shall be given in the manner provided in section ~~46-656.40~~ 83 of this act. The enforcement of controls adopted pursuant to this section shall be the responsibility of the Department of Environmental Quality.

Sec. 72. Section 46-656.46, Reissue Revised Statutes of Nebraska, is amended to read:

~~46-656.46.~~ The controls in the action plan approved by the Director of Environmental Quality pursuant to section ~~46-656.42~~ 68 of this act shall be exercised by the district for the period of time necessary to stabilize or reduce the level of contamination and prevent the increase or spread of ground water contamination. An action plan may be amended by the same method utilized in the adoption of the action plan.

Sec. 73. Section 46-656.47, Reissue Revised Statutes of Nebraska, is amended to read:

~~46-656.47.~~ A district may petition the Director of Environmental Quality to remove the director's designation of the area as a management area or the requirement of an action plan for a management area or to modify the boundaries of a management area designated pursuant to section ~~46-656.39~~ 65 of this act. If the director determines that the level of contamination in a management area has stabilized at or been reduced to a level which is not detrimental to beneficial uses of ground water, he or she may remove the designation or action plan requirement or modify the boundaries of the management area.

Sec. 74. Section 46-656.48, Reissue Revised Statutes of Nebraska, is amended to read:

~~46-656.48.~~ The Environmental Quality Council shall adopt and promulgate, in accordance with the Administrative Procedure Act, such rules and regulations as are necessary to the discharge of duties under sections ~~46-656.35 to 46-656.47~~ 61 to 73 of this act.

Sec. 75. Section 46-656.29, Revised Statutes Supplement, 2003, is amended to read:

~~46-656.29.~~ (1) Any person who intends to construct a water well in a management area in this state on land which he or she owns or controls shall, before commencing construction, apply with the district in which the water well will be located for a permit on forms provided by the district, except that (a) no permit shall be required for test holes or dewatering wells

with an intended use of ninety days or less, (b) no permit shall be required for a single water well designed and constructed to pump fifty gallons per minute or less, and (c) a district may provide by rule and regulation that a permit need not be obtained for water wells defined by the district to be replacement water wells. A district may require a permit for a water well designed and constructed to pump fifty gallons per minute or less if such water well is commingled, combined, clustered, or joined with any other water well or wells or other water source, other than a water source used to water range livestock. Such wells shall be considered one water well and the combined capacity shall be used as the rated capacity. A district may by rule and regulation require that a permit be obtained for each water well or for one or more categories of water wells designed and constructed to pump fifty gallons per minute or less, other than a water source required for human needs as it relates to health, fire control, and sanitation or used to water range livestock, in ground water management areas in which regulations have been imposed to control declining ground water levels. Forms shall be made available at each district in which a management area is located, in whole or in part, and at such other places as may be deemed appropriate. The district shall review such application and issue or deny the permit within thirty days after the application is filed.

(2) A person shall apply for a permit under this section before he or she modifies a water well for which a permit was not required under subsection (1) of this section into one for which a permit would otherwise be required under such subsection.

(3) The application shall be accompanied by a fifty-dollar filing fee payable to the district and shall contain (a) the name and post office address of the applicant or applicants, (b) the nature of the proposed use, (c) the intended location of the proposed water well or other means of obtaining ground water, (d) the intended size, type, and description of the proposed water well and the estimated depth, if known, (e) the estimated capacity in gallons per minute, (f) the acreage and location by legal description of the land involved if the water is to be used for irrigation, (g) a description of the proposed use if other than for irrigation purposes, (h) the registration number of the water well being replaced if applicable, and (i) such other information as the district requires.

(4) Any person who has failed or in the future fails to obtain a permit required by subsection (1) or (2) of this section shall make application for a late permit on forms provided by the district.

(5) The application for a late permit shall be accompanied by a two-hundred-fifty-dollar fee payable to the district and shall contain the same information required in subsection (3) of this section.

Sec. 76. Section 46-656.30, Revised Statutes Supplement, 2003, is amended to read:

~~46-656.30.~~ An application for a permit or late permit for a water well in a management area shall be denied only if the district in which the water well is to be located finds (1) that the location or operation of the proposed water well or other work would conflict with any regulations or controls adopted by the district, (2) that the proposed use would not be a beneficial use of water, or (3) in the case of a late permit only, that the applicant did not act in good faith in failing to obtain a timely permit.

If the district finds that the application is incomplete or defective, it shall return the application for correction. If the correction is not made within sixty days, the application shall be canceled. All permits shall be issued with or without conditions attached or denied not later than thirty days after receipt by the district of a complete and properly prepared application.

A permit issued shall specify all regulations and controls adopted by a district relevant to the construction or utilization of the proposed water well. No refund of any application fees shall be made regardless of whether the permit is issued, canceled, or denied. The district shall transmit one copy of each permit issued to the Director of Natural Resources.

Sec. 77. Section 46-656.31, Revised Statutes Supplement, 2002, is amended to read:

~~46-656.31.~~ The issuance by the district of a permit pursuant to section ~~46-656.30~~ 76 of this act or registration of a water well by the Director of Natural Resources pursuant to section 46-602 shall not vest in any person the right to violate any district rule, regulation, or control in effect on the date of issuance of the permit or the registration of the water well or to violate any rule, regulation, or control properly adopted after such date.

Sec. 78. Section 46-656.32, Reissue Revised Statutes of Nebraska, is amended to read:

~~46-656.32.~~ When any permit is approved pursuant to section ~~46-656.30~~ 76 of this act, the applicant shall commence construction as soon as possible after the date of approval and shall complete the construction and equip the water well prior to the date specified in the conditions of approval, which date shall be not more than one year after the date of approval, unless it is clearly demonstrated in the application that one year is an insufficient period of time for such construction. If the applicant fails to complete the project under the terms of the permit, the district may withdraw the permit.

Sec. 79. Section 46-656.25, Revised Statutes Supplement, 2002, is amended to read:

~~46-656.25.~~ (1) A district in which a management area has been designated shall by order adopt one or more of the following controls for the management area:

(a) ~~It may determine the permissible total withdrawal of ground water for each day, month, or year and allocate such withdrawal among the ground water users~~ allocate the amount of ground water that may be withdrawn by ground water users;

(b) It may adopt a system of rotation for use of ground water;

(c) It may adopt well-spacing requirements more restrictive than those found in sections 46-609 and 46-651;

(d) It may require the installation of devices for measuring ground water withdrawals from water wells;

(e) It may adopt a system which requires reduction of irrigated acres pursuant to subsection (2) of section ~~46-656.26~~ 80 of this act;

(f) ~~It may limit or prevent the expansion of irrigated acres or otherwise limit or prevent increases in the consumptive use of ground water withdrawals from water wells used for irrigation or other beneficial purposes;~~

(g) It may require the use of best management practices;

(h) It may require the analysis of water or deep soils for fertilizer and chemical content;

(i) ~~It may provide educational requirements, including impose mandatory educational requirements,~~ designed to protect water quality or to stabilize or reduce the incidence of ground water depletion, conflicts between ground water users and surface water appropriators, disputes over interstate compacts or decrees, or difficulties fulfilling the provisions of other formal state contracts or agreements;

(j) It may require water quality monitoring and reporting of results to the district for all water wells within all or part of the management area;

(k) ~~It may require district approval of (i) transfers of ground water off the land where the water is withdrawn or (ii) transfers of rights to use ground water that result from district allocations imposed pursuant to subdivision (1)(a) of this section or from other restrictions on use that are imposed by the district in accordance with this section. Such approval may be required whether the transfer is within the management area, from inside to outside the management area, or from outside to inside the management area, except that transfers for which permits have been obtained from the Department of Natural Resources prior to the operative date of this section or pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act shall not be subject to district approval pursuant to this subdivision. If the district adopts rules and regulations pursuant to this subdivision, such regulations shall require that the district deny or condition the approval of any such transfer when and to the extent such action is necessary to (A) ensure the consistency of the transfer with the purpose or purposes for which the management area was designated, (B) prevent adverse effects on other ground water users or on surface water appropriators, (C) prevent adverse effects on the state's ability to comply with an interstate compact or decree or to fulfill the provisions of any other formal state contract or agreement, and (D) otherwise protect the public interest and prevent detriment to the public welfare;~~

(l) ~~It may require, when conditions so permit, that new or replacement water wells to be used for domestic or other purposes shall be constructed to such a depth that they are less likely to be affected by seasonal water level declines caused by other water wells in the same area;~~

(m) ~~It may close all or a portion of the management area to the issuance of additional permits or may condition the issuance of additional permits on compliance with other rules and regulations adopted and promulgated by the district to achieve the purpose or purposes for which the management area was designated; and - This subdivision may be implemented whenever the district determines the impact on surface water supplies or the depletion or contamination of the ground water supply in the management area or any portion of the management area cannot be protected through implementation of~~

~~reasonable controls specified in subdivisions (1)(a) through (1)(j) of this section, and~~

~~(1)~~ (n) It may adopt and promulgate such other reasonable rules and regulations as are necessary to carry out the purpose for which a management area was designated.

(2) In adopting, amending, or repealing any control authorized by subsection (1) of this section or sections ~~46-656.26 and 46-656.27~~ 80 and 81 of this act, the district's considerations shall include, but not be limited to, whether it reasonably appears that such action will mitigate or eliminate the condition which led to designation of the management area or will improve the administration of the area.

(3) Upon request by the district or when any of the controls being proposed are for the purpose of integrated management of hydrologically connected ground water and surface water, the Director of Natural Resources shall review and comment on the adoption, amendment, or repeal of any authorized control in a management area. The director may hold a public hearing to consider testimony regarding the control prior to commenting on the adoption, amendment, or repeal of the control. The director shall consult with the district and fix a time, place, and date for such hearing. In reviewing and commenting on an authorized control in a management area, the director's considerations shall include, but not be limited to, those enumerated in subsection (2) of this section.

(4) If because of varying ground water uses, varying surface water uses, different irrigation distribution systems, or varying climatic, hydrologic, geologic, or soil conditions existing within a management area the uniform application throughout such area of one or more controls would fail to carry out the intent of the Nebraska Ground Water Management and Protection Act in a reasonably effective and equitable manner, the controls adopted by the district pursuant to this section may contain different provisions for different categories of ground water use or portions of the management area which differ from each other because of varying climatic, hydrologic, geologic, or soil conditions. Any differences in such provisions shall recognize and be directed toward such varying ground water uses or varying conditions. ~~Except as otherwise provided in this section, the provisions of all controls for different categories of ground water use shall be uniform for all portions of the area which have substantially similar climatic, hydrologic, geologic, and soil conditions~~ Except as otherwise provided in this section, if the district adopts different controls for different categories of ground water use, those controls shall be consistent with section 46-613 and shall, for each such category, be uniform for all portions of the area which have substantially similar climatic, hydrologic, geologic, and soil conditions.

(5) The district may establish different water allocations for different irrigation distribution systems.

(6)(a) The district may establish different provisions for different hydrologic relationships between ground water and surface water.

(b) For management areas a purpose of which is the integrated management of hydrologically connected ground water and surface water, the district may establish different provisions for water wells constructed before the designation of a management area for integrated management of hydrologically connected ground water and surface water and for water wells constructed on or after the designation date or any other later date or dates established by the district.

(c) For a management area in a river basin or part of a river basin that is or was the subject of litigation over an interstate water compact or decree in which the State of Nebraska is a named defendant, the district may establish different provisions for restriction of water wells constructed after January 1, 2001, if such litigation was commenced before or on May 22, 2001. If such litigation is commenced after May 22, 2001, the district may establish different provisions for restriction of water wells constructed after the date on which such litigation is commenced in federal court. An appeal from a decision of the district under this subdivision shall be in accordance with the hearing procedures established in the Nebraska Ground Water Management and Protection Act.

(d) ~~The~~ Except as otherwise authorized by law, the district shall make a replacement water well as defined in section 46-602, or as further defined in district rules and regulations, subject to the same provisions as the water well it replaces.

(7) If the district has included controls delineated in subdivision ~~(1)(k)~~ (1)(m) of this section in its management plan, but has not implemented such controls within two years after the initial public hearing on the controls, the district shall hold a public hearing, as provided in section

~~46-656.19~~ 52 of this act, regarding the controls before implementing them.

(8) Whenever a management area designated under section ~~46-656.39~~ 52 or 65 of this act or ~~46-656.52~~ sections 53 to 59 of this act encompasses portions of two or more districts, the responsibilities and authorities delegated in this section and sections ~~46-656.26 and 46-656.27~~ 80 and 81 of this act shall be exercised jointly and uniformly by agreement of the respective boards of all districts so affected. Whenever management areas designated by two or more districts adjoin each other, the districts are encouraged to exercise the responsibilities and authorities jointly and uniformly by agreement of the respective boards.

(9) ~~For the purpose of determining whether conflicts exist between ground water users and surface water appropriators, surface water appropriators under the Nebraska Ground Water Management and Protection Act does not include holders of instream flow appropriations under sections 46-2,107 to 46-2,119.~~ In addition to the controls listed in subsection (1) of this section, a district in which a management area has been designated may also adopt and implement one or more of the following measures if it determines that any such measures would help the district and water users achieve the goals and objectives of the management area: (a) It may sponsor nonmandatory educational programs; and (b) it may establish and implement financial or other incentive programs. As a condition for participation in an incentive program, the district may require water users or landowners to enter into and perform such agreements or covenants concerning the use of land or water as are necessary to produce the benefits for which the incentive program is established.

Sec. 80. Section 46-656.26, Revised Statutes Supplement, 2002, is amended to read:

~~46-656.26.~~ (1) If allocation is adopted for use of ground water for irrigation purposes in a management area, the permissible withdrawal of ground water shall be allocated equally per irrigated acre except as permitted by subsections (4) through (6) of section ~~46-656.25~~ 79 of this act. Such allocation shall specify the total number of acre-inches that are allocated per irrigated acre per year, except that the district may allow a ground water user to average his or her allocation over any reasonable period of time. A ground water user may use his or her allocation on all or any part of the irrigated acres to which the allocation applies or in any other manner approved by the district.

(2) ~~If~~ Except as permitted pursuant to subsections (4) through (6) of section 79 of this act, if annual rotation or reduction of irrigated acres is adopted for use of ground water for irrigation purposes in a management area, the nonuse of irrigated acres shall be a uniform percentage reduction of each landowner's irrigated acres within the management area or a subarea of the management area. Such uniform reduction may be adjusted for each landowner based upon crops grown on his or her land to reflect the varying consumptive requirements between crops.

Sec. 81. Section 46-656.27, Revised Statutes Supplement, 2002, is amended to read:

~~46-656.27.~~ A district may review any allocation, rotation, or reduction control imposed in a management area and shall adjust allocations, rotations, or reductions to accommodate new or additional uses or otherwise reflect findings of such review, consistent with the ground water management objectives. Such review shall consider new development or additional ground water uses within the area, more accurate data or information that was not available at the time of the allocation, rotation, or reduction order, the availability of supplemental water supplies, any changes in ground water recharge, and such other factors as the district deems appropriate.

Sec. 82. Section 46-656.24, Revised Statutes Supplement, 2003, is amended to read:

~~46-656.24.~~ (1) Whenever a natural resources district pursuant to subsection (16) of section ~~46-656.28~~ has temporarily suspended the drilling of new wells in all or part of the district has been stayed pursuant to section 54 of this act, ground water withdrawn outside the affected area shall not be transported for use inside such area unless (a) such withdrawal and transport began before the temporary suspension stay took effect, (b) the water is used solely for domestic purposes, or (c) such withdrawal and transport is approved in advance by the district ~~imposing the temporary suspension in which the stay is in effect~~ and, if the water is withdrawn in another natural resources district, by the other district.

(2) Whenever a natural resources district pursuant to subdivision ~~(1)-(k)~~ (1)(m) of section ~~46-656.25~~ 79 of this act has closed all or part of the district to the issuance of additional well permits, ground water withdrawn outside the affected area shall not be transported for use inside

such area unless (a) such withdrawal and transport began before the affected area was closed to the issuance of additional well permits, (b) the water is used solely for domestic purposes, or (c) such withdrawal and transport is approved in advance by the district that closed the affected area to additional well permits and, if the water is withdrawn in another natural resources district, by the other district.

(3) If a proposed withdrawal and transport of water under subsection (1) or (2) of this section is intended for municipal purposes, the natural resources district shall approve the withdrawal and transport of ground water into the affected area when a public water supplier providing water for municipal purposes receives a permit from the Department of Natural Resources pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act.

Sec. 83. Any public hearing required under the Nebraska Ground Water Management and Protection Act shall comply with the following requirements:

(1) The hearing shall be located within or in reasonable proximity to the area proposed for designation as a management area or affected by the proposed rule or regulation;

(2) Notice of the hearing shall be published in a newspaper published or of general circulation in the affected area at least once each week for three consecutive weeks, the last publication of which shall be not less than seven days prior to the hearing;

(3) As to the designation of a management area, adoption or amendment of an action plan or integrated management plan, or adoption or amendment of controls, the notice shall provide, as applicable, a general description of (a) the contents of the plan, (b) the geographic area which will be considered for inclusion in the management area, and (c) a general description of all controls proposed for adoption or amendment and shall identify all locations where a copy of the full text of the proposed plan or controls may be obtained;

(4) For all other rules and regulations, the notice shall provide a general description of the contents of the rules and regulations proposed for adoption or amendment and shall identify all locations where a copy of the full text of the proposed rules and regulations may be obtained;

(5) The full text of all controls, rules, or regulations shall be available to the public upon request not later than the date of first publication;

(6) All interested persons shall be allowed to appear and present testimony; and

(7) The hearing shall include testimony of a representative of the Department of Natural Resources and, if the primary purpose of the proposed management area is protection of water quality, testimony of a representative of the Department of Environmental Quality and shall include the results of any relevant water quality studies or investigations conducted by the district.

Sec. 84. Section 46-656.21, Reissue Revised Statutes of Nebraska, is amended to read:

~~46-656.21.~~ The district shall cause a copy of any order adopted pursuant to section ~~46-656.20~~ ~~to~~ 52, 58, 59, 65, or 66 of this act shall be published once each week for three consecutive weeks in a local newspaper published or of general circulation in the area involved, the last publication of which shall be not less than seven days prior to the date set for the effective date of the order. The publication shall provide a general description of the text of all controls adopted or amended by the district and shall identify all locations where a copy of the full text of the proposed controls may be obtained. The full text of all controls adopted shall be available to the public upon request at least thirty days prior to the effective date of the controls.

Such order shall become effective on the date specified by the adopting district, department, or board, as applicable.

Sec. 85. Section 46-656.10, Revised Statutes Supplement, 2003, is amended to read:

~~46-656.10.~~ (1) Any person who violates a cease and desist order issued by a district pursuant to section ~~46-656.08~~ 47 of this act shall be subject to a civil penalty of not less than one thousand dollars and not more than five thousand dollars for each day an intentional violation occurs. In assessing the amount of the civil penalty, the court shall consider the degree and extent of the violation, the size of the operation, whether the violator has been previously convicted or subjected to a civil penalty under this section, and any economic benefit derived from noncompliance. Any civil penalty assessed and unpaid shall constitute a debt to the state which may be

collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The court shall, within thirty days after receipt, remit the civil penalty to the State Treasurer for credit to the permanent school fund.

(2)(a) Prior to issuing a cease and desist order against a public water supplier as defined in section 46-638, the district shall consult with the Attorney General. If the Attorney General determines that the district does not have sufficient grounds to issue a cease and desist order, the district shall abide by such determination and shall not issue a cease and desist order. The Attorney General shall have exclusive authority to enforce actions under this subsection.

(b) Any determination as to whether a water well is properly registered under sections 46-602 to 46-604 or whether a water well is properly permitted under the Municipal and Rural Domestic Ground Water Transfers Permit Act shall be made by the Department of Natural Resources.

(3) When the Attorney General, a county attorney, or a private attorney brings an action on behalf of a district to recover a civil penalty under this section, the district shall recover the costs of the action if a civil penalty is awarded. Any recovered costs of the action shall be: (a) Remitted to the State Treasurer for credit to the Department of Justice Natural Resources Enforcement Fund if the action is brought by the Attorney General; (b) credited to the applicable county fund if the action is brought by the county attorney; and (c) remitted to the district if the action is brought by the district's private attorney.

(4) The Department of Justice Natural Resources Enforcement Fund is created. The fund shall consist of money credited pursuant to subsection (3) of this section. Money in the fund shall be used to reimburse the office of the Attorney General for the costs incurred in enforcing this section. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 86. Section 46-656.63, Revised Statutes Supplement, 2002, is amended to read:

~~46-656.63.~~ (1) Any person who violates any cease and desist order issued by a district pursuant to section 47 of this act or any controls, rules, or regulations adopted by a natural resources district relating to a management area shall be subject to the imposition of penalties imposed through the controls adopted by the district, including, but not limited to, having any allocation of water granted or irrigated acres certified by the district reduced in whole or in part. Before a district takes any action, notice and hearing shall be provided to such person.

(2) Any person who violates any of the provisions of sections ~~46-656.35 to 46-656.62~~ 61 to 73 of this act for which a penalty is not otherwise provided, other than the requirements imposed on a district, the Director of Natural Resources, or the Department of Natural Resources, shall be subject to a civil penalty of not more than five hundred dollars. Each day of continued violation shall constitute a separate offense.

Sec. 87. Section 46-656.64, Reissue Revised Statutes of Nebraska, is amended to read:

~~46-656.64.~~ All hearings conducted pursuant to the Nebraska Ground Water Management and Protection Act shall be of record and available for review.

Sec. 88. Section 46-656.62, Revised Statutes Supplement, 2002, is amended to read:

~~46-656.62.~~ The Director of Natural Resources shall adopt and promulgate, in accordance with the Administrative Procedure Act, such rules and regulations as are necessary to the discharge of duties assigned to the director or the Department of Natural Resources by the Nebraska Ground Water Management and Protection Act.

Sec. 89. Section 46-656.65, Revised Statutes Supplement, 2002, is amended to read:

~~46-656.65.~~ In the administration of the Nebraska Ground Water Management and Protection Act, all actions of the Director of Environmental Quality, the Director of Natural Resources, and the districts shall be consistent with the provisions of section 46-613.

Sec. 90. Section 46-656.66, Revised Statutes Supplement, 2002, is amended to read:

~~46-656.66.~~ Any person aggrieved by any order of the district, the Director of Environmental Quality, or the Director of Natural Resources issued pursuant to the Nebraska Ground Water Management and Protection Act may appeal the order. The appeal shall be in accordance with the Administrative

Procedure Act.

Sec. 91. Section 46-656.33, Revised Statutes Supplement, 2002, is amended to read:

~~46-656.33.~~ All fees paid to the Director of Natural Resources ~~in accordance with the terms of~~ pursuant to the Nebraska Ground Water Management and Protection Act shall be ~~paid into~~ remitted to the State Treasurer for credit to the Ground Water Management Fund which is hereby created and which shall be administered by the director. Any money credited to the fund may be utilized by the director for payments of expenses incurred in the administration of the act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 92. Section 46-656.67, Revised Statutes Supplement, 2002, is amended to read:

~~46-656.67.~~ The Interrelated Water Management Fund is created. The State Treasurer shall credit to the fund, for the purpose of conducting studies to determine the cause of current or potential conflicts between ground water users and surface water appropriators, disputes over interstate compacts or decrees, or difficulties fulfilling the provisions of other formal state contracts and agreements, such money as is specifically appropriated and such funds, fees, donations, gifts, or services or devises or bequests of real or personal property received by the Department of Natural Resources from any federal, state, public, or private source, to be used by the department for the purpose of funding studies as described in this section. The department may use its budget authority to request appropriations specifically for the purpose of funding studies described in this section. The department shall allocate money from the fund for use by the department, by any state agency, board, or commission, or by any political subdivision of the state, by agreement, or by private organizations or firms as may be contracted with by the department. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 93. (1) The Water Resources Trust Fund is created. The State Treasurer shall credit to the fund such money as is specifically appropriated thereto by the Legislature and such funds, fees, donations, gifts, or bequests received by the Department of Natural Resources from any federal, state, public, or private source for expenditure for the purposes described in the Nebraska Ground Water Management and Protection Act. Money in the fund shall not be subject to any fiscal-year limitation or lapse provision of unexpended balance at the end of any fiscal year or biennium. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

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

(3) Money in the fund may be expended by the department for costs incurred by the department, by natural resources districts, or by other political subdivisions in (a) determining whether river basins, subbasins, or reaches are fully appropriated in accordance with section 53 of this act, (b) developing or implementing integrated management plans for such fully appropriated river basins, subbasins, or reaches or for river basins, subbasins, or reaches designated as overappropriated in accordance with section 53 of this act, (c) developing or implementing integrated management plans in river basins, subbasins, or reaches which have not yet become either fully appropriated or overappropriated, or (d) attaining state compliance with an interstate water compact or decree or other formal state contract or agreement.

(4) Except for funds paid to a political subdivision for forgoing or reducing its own water use or for implementing projects or programs intended to aid the state in complying with an interstate water compact or decree or other formal state contract or agreement, a political subdivision that receives funds from the fund shall provide, or cause to be provided, matching funds in an amount at least equal to twenty percent of the amount received from the fund by that natural resources district or political subdivision. The department shall monitor programs and activities funded by the fund to ensure that the required match is being provided.

Sec. 94. Section 46-676, Revised Statutes Supplement, 2002, is amended to read:

46-676. For purposes of the Industrial Ground Water Regulatory Act:

(1) The definitions found in section ~~46-656.07~~ 46 of this act are used;

(2) Department means the Department of Natural Resources; and

(3) Director means the Director of Natural Resources.

Sec. 95. Section 46-678.01, Revised Statutes Supplement, 2002, is amended to read:

46-678.01. Any person who desires to withdraw and transfer a total of less than one hundred fifty acre-feet of ground water per year from aquifers located in the State of Nebraska for industrial purposes to other property within the state which is owned or leased by such person shall provide written notice to the department and install a water meter or meters that meet the approval of the department. Such notice shall include the amount of the proposed transfer, the point of withdrawal, and the point of delivery and shall be published once each week for three consecutive weeks in a newspaper of general circulation in the county or counties in which the point of withdrawal is located. The withdrawal and transfer may be made without a permit issued under the Industrial Ground Water Regulatory Act so long as (1) the property which includes the point of withdrawal and the property which includes the point of delivery are owned or leased by the same person, (2) the water is used by such person, and (3) a total of less than one hundred fifty acre-feet of ground water per year is transferred from all sources to the property which includes the point of delivery.

Sec. 96. Section 46-680, Reissue Revised Statutes of Nebraska, is amended to read:

46-680. (1) After the director has accepted the application made under section 46-677 as a completed application, the director shall ~~set a time and place for a public hearing on the application. The hearing shall be held within or in reasonable proximity to the area in which the water wells would be located. The hearing shall be scheduled within ninety days after the application is accepted by the director~~ cause a notice of such application to be published at the applicant's expense at least once a week for three consecutive weeks in a legal newspaper published or of general circulation in each county containing land on which one or more water wells are proposed to be located. The notice shall include (a) the amount of ground water the applicant proposes to use, (b) a description of the proposed use and location of that use, (c) the number of water wells proposed at each location of withdrawal, and (d) any other information deemed necessary by the director to provide adequate notice of the application to interested persons. The notice shall state that any interested person may object to and request a hearing on the application by filing written objections stating the grounds for each objection within two weeks after the date of final publication of the notice. Such objections shall be filed in the headquarters office of the department.

(2) The director may hold a hearing on an application made under section 46-677 at his or her discretion and shall hold a hearing on such an application if requested by any interested person pursuant to subsection (1) of this section.

Sec. 97. (1) Any person intending to withdraw ground water from any water well located in the State of Nebraska, transport that water off the overlying land, and use it to augment water supplies in any Nebraska wetland or natural stream for the purpose of benefiting fish or wildlife or producing other environmental or recreational benefits may do so only if the natural resources district in which the water well is or would be located allows withdrawals and transport for such purposes and only after applying for and obtaining a permit from such natural resources district. An application for any such permit shall be accompanied by a nonrefundable fee of fifty dollars payable to such district. Such permit shall be in addition to any permit required pursuant to section 75 of this act.

(2) Prior to taking action on an application pursuant to this section, the district shall provide an opportunity for public comment on such application at a regular or special board meeting for which advance published notice of the meeting and the agenda therefor have been given consistent with the Open Meetings Act.

(3) In determining whether to grant a permit under this section, the board of directors for the natural resources district shall consider:

(a) Whether the proposed use is a beneficial use of ground water;

(b) The availability to the applicant of alternative sources of surface water or ground water for the proposed withdrawal, transport, and use;

(c) Any negative effect of the proposed withdrawal, transport, and use on ground water supplies needed to meet present or reasonable future demands for water in the area of the proposed withdrawal, transport, and use, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;

(d) Any negative effect of the proposed withdrawal, transport, and use on surface water supplies needed to meet present or reasonable future

demands for water within the state, to comply with any interstate compact or decree, or to fulfill the provisions of any other formal state contract or agreement;

(e) Any adverse environmental effect of the proposed withdrawal, transport, and use of the ground water;

(f) The cumulative effects of the proposed withdrawal, transport, and use relative to the matters listed in subdivisions (3)(c) through (e) of this section when considered in conjunction with all other withdrawals, transports, and uses subject to this section;

(g) Whether the proposed withdrawal, transport, and use is consistent with the district's ground water quantity and quality management plan and with any integrated management plan previously adopted or being considered for adoption in accordance with sections 53 to 59 of this act; and

(h) Any other factors consistent with the purposes of this section which the board of directors deems relevant to protect the interests of the state and its citizens.

(4) Issuance of a permit shall be conditioned on the applicant's compliance with the rules and regulations of the natural resources district from which the water is to be withdrawn and, if the location where the water is to be used to produce the intended benefits is in a different natural resources district, with the rules and regulations of that natural resources district. The board of directors may include such reasonable conditions on the proposed withdrawal, transport, and use as it deems necessary to carry out the purposes of this section.

(5) The applicant shall be required to provide access to his or her property at reasonable times for purposes of inspection by officials of any district where the water is to be withdrawn or to be used.

Sec. 98. Section 46-1207.01, Reissue Revised Statutes of Nebraska, is amended to read:

46-1207.01. (1) Illegal water well shall mean any water well which has not been properly decommissioned and which meets any of the following conditions:

(a) The water well is in such a condition that it cannot be placed in active or inactive status;

(b) Any necessary operating equipment has been removed and the well has not been placed in inactive status;

(c) The water well is in such a state of disrepair that continued use for the purpose for which it was constructed is impractical;

(d) The water well was constructed after October 1, 1986, but not constructed by a licensed water well contractor or by an individual on land owned by him or her and used by him or her for farming, ranching, or agricultural purposes or as his or her place of abode;

(e) The water well poses a health or safety hazard; ~~or~~

(f) The water well is an illegal water well in accordance with section ~~46-656.07~~ 46 of this act; or

(g) The water well has been constructed after October 1, 1986, and such well is not in compliance with the standards developed under the Water Well Standards and Contractors' Licensing Act.

(2) Whenever the department classifies a water well as an illegal water well, the landowner may petition the department to reclassify the water well as an active status water well, an inactive status water well, or an abandoned water well.

Sec. 99. Section 46-1207.02, Reissue Revised Statutes of Nebraska, is amended to read:

46-1207.02. Inactive status water well shall mean a water well that is in a good state of repair and for which the owner has provided evidence of intent for future use by maintaining the water well in a manner which meets the following requirements:

(1) The water well does not allow impairment of the water quality in the water well or of the ground water encountered by the water well;

(2) The top of the water well or water well casing has a water-tight welded or threaded cover or some other water-tight means to prevent its removal without the use of equipment or tools to prevent unauthorized access, to prevent a safety hazard to humans and animals, and to prevent illegal disposal of wastes or contaminants into the water well;

(3) All entrances and discharge piping to the water well are effectively sealed to prevent the entrance of contaminants; and

~~(3)~~ (4) The water well is marked so as to be easily visible and located and is labeled or otherwise marked so as to be easily identified as a water well and the area surrounding the water well is kept clear of brush, debris, and waste material.

Sec. 100. Section 46-1212, Reissue Revised Statutes of Nebraska, is

amended to read:

46-1212. Water well shall mean any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting ~~water~~ fluid as defined in section 81-1502 into the underground water reservoir. Water well shall not include any excavation made for obtaining or prospecting for oil or natural gas or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission.

Sec. 101. Section 46-1228, Reissue Revised Statutes of Nebraska, is amended to read:

46-1228. The department shall have (1) authority to inspect water wells constructed, water wells decommissioned, and water well locations, (2) access to ~~such water~~ wells and accompanying pumps and pumping equipment at all reasonable times, and (3) power of inspection in regard to the construction and decommissioning of all water wells.

Sec. 102. Section 61-206, Reissue Revised Statutes of Nebraska, is amended to read:

61-206. (1) The Department of Natural Resources is given jurisdiction over all matters pertaining to water rights for irrigation, power, or other useful purposes except as such jurisdiction is specifically limited by statute. Such department shall adopt and promulgate rules and regulations governing matters coming before it. It may refuse to allow any water to be used by claimants until their rights have been determined and made of record. It may request information relative to irrigation and water power works from any county, irrigation, or power officers and from any other persons. It ~~shall have public~~ may have hearings on complaints, petitions, or applications in connection with any of such matters. Such hearings ~~may~~ shall be had at the time and place designated by the department. The department shall have power to certify official acts, compel attendance of witnesses, take testimony by deposition as in suits at law, and examine books, papers, documents, and records of any county, party, or parties interested in any of the matters mentioned in this section or have such examinations made by its qualified representative and shall make and preserve a true and complete transcript of its proceedings and hearings. If a final decision is made without a hearing, a hearing shall be held at the request of any party to the proceeding if the request is made within fifteen days after the decision is rendered. If a hearing is held at the request of one or more parties, the department may require each such requesting party and each person who requests to be made a party to such hearing to pay the proportional share of the cost of such transcript. Upon any hearing, the department shall receive any evidence relevant to the matter under investigation and the burden of proof shall be upon the person making the complaint, petition, and application. After such hearing and investigation, the department shall render a decision in the premises in writing and shall issue such order or orders duly certified as it may deem necessary.

(2) The department shall serve as the official agency of the state in connection with water resources development, soil and water conservation, flood prevention, watershed protection, and flood control.

(3) The department shall:

(a) Offer assistance as appropriate to the supervisors or directors of any subdivision of government with responsibilities in the area of natural resources conservation, development, and use in the carrying out of any of their powers and programs;

(b) Keep the supervisors or directors of each such subdivision informed of the activities and experience of all other such subdivisions and facilitate cooperation and an interchange of advice and experience between such subdivisions;

(c) Coordinate the programs of such subdivisions so far as this may be done by advice and consultation;

(d) Secure the cooperation and assistance of the United States, any of its agencies, and agencies of this state in the work of such subdivisions;

(e) Disseminate information throughout the state concerning the activities and programs of such subdivisions;

(f) Plan, develop, and promote the implementation of a comprehensive program of resource development, conservation, and utilization for the soil and water resources of this state in cooperation with other local, state, and federal agencies and organizations;

(g) When necessary for the proper administration of the functions of the department, rent or lease space outside the State Capitol; and

(h) Assist such local governmental organizations as villages,

cities, counties, and natural resources districts in securing, planning, and developing information on flood plains to be used in developing regulations and ordinances on proper use of these flood plains.

Sec. 103. Section 66-1501, Reissue Revised Statutes of Nebraska, is amended to read:

66-1501. Sections 66-1501 to 66-1531 and section 104 of this act shall be known and may be cited as the Petroleum Release Remedial Action Act.

Sec. 104. Beginning July 1, 2009, the owner of any new tank at a site where tanks have not been previously located shall be fully insured through private insurance to cover the costs of any remedial action to such tank or the site on which such tank is located after such date.

Sec. 105. Section 66-1519, Reissue Revised Statutes of Nebraska, is amended to read:

66-1519. (1) There is hereby created the Petroleum Release Remedial Action Cash Fund to be administered by the department. Revenue from the following sources shall be remitted to the State Treasurer for credit to the fund:

(a) The fees imposed by sections 66-1520 and 66-1521;

(b) Money paid under an agreement, stipulation, cost-recovery award under section 66-1529.02, or settlement; and

(c) Money received by the department in the form of gifts, grants, reimbursements, property liquidations, or appropriations from any source intended to be used for the purposes of the fund.

(2) Money in the fund may be spent for: (a) Reimbursement for the costs of remedial action by a responsible person or his or her designated representative and costs of remedial action undertaken by the department in response to a release first reported after July 17, 1983, and on or before June 30, ~~2005~~ 2009, including reimbursement for damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred; (b) payment of any amount due from a third-party claim; (c) fee collection expenses incurred by the State Fire Marshal; (d) direct expenses incurred by the department in carrying out the Petroleum Release Remedial Action Act; (e) other costs related to fixtures and tangible personal property as provided in section 66-1529.01; (f) interest payments as allowed by section 66-1524; (g) expenses incurred by the technical advisory committee created in section 81-15,189 in carrying out its duties pursuant to section 81-15,190; (h) claims approved by the State Claims Board authorized under section 66-1531; (i) a grant to a city of the metropolitan class in the amount of three hundred thousand dollars, provided within five days after October 1, 2003, to carry out the federal Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4851 et seq., as such act existed on October 1, 2003; and (j) methyl tertiary butyl ether testing, to be conducted randomly at terminals within the state for up to two years ending June 30, 2003. The amount expended on the testing shall not exceed forty thousand dollars. The testing shall be conducted by the Department of Agriculture. The department may enter into contractual arrangements for such purpose. The results of the tests shall be made available to the Department of Environmental Quality.

(3) Transfers may be made from the Petroleum Release Remedial Action Cash Fund to the General Fund at the direction of the Legislature. Transfers may be made from the Petroleum Release Remedial Action Cash Fund to the Water Policy Task Force Cash Fund at the direction of the Legislature.

(4) Any money in the Petroleum Release Remedial Action Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 106. Section 66-1523, Reissue Revised Statutes of Nebraska, is amended to read:

66-1523. (1) Except as provided in subsection (2) of this section, the department shall provide reimbursement from the fund in accordance with section 66-1525 to eligible responsible persons for the cost of remedial action for releases reported after July 17, 1983, and on or before June 30, ~~2005~~ 2009, and for the cost of paying third-party claims. The reimbursement for the cost of remedial action shall not exceed nine hundred seventy-five thousand dollars per occurrence. The total of the claims paid under section 66-1531 and the reimbursement for third-party claims shall not exceed one million dollars per occurrence. The responsible person shall pay the first ten thousand dollars of the cost of the remedial action or third-party claim, twenty-five percent of the remaining cost of the remedial action or third-party claim not to exceed fifteen thousand dollars, and the amount of any reduction authorized under subsection (5) of section 66-1525. If the

department determines that a responsible person was ordered to take remedial action for a release which was later found to be from a tank not owned or operated by such person, (a) such person shall be fully reimbursed and shall not be required to pay the first cost or percent of the remaining cost as provided in this subsection and (b) the first cost and percent of the remaining cost not required to be paid by the person ordered to take remedial action shall be paid to the fund as a cost of remedial action by the owner or operator of the tank found to be the cause of the release. In no event shall reimbursements or payments from the fund exceed the annual aggregate of one million nine hundred seventy-five thousand dollars per responsible person. Reimbursement of a cost incurred as a result of a suspension ordered by the department shall not be limited by this subsection if the suspension was caused by insufficiency in the fund to provide reimbursement.

(2) Upon the determination by the department that the responsible person sold no less than two thousand gallons of petroleum and no more than two hundred fifty thousand gallons of petroleum during the calendar year immediately preceding the first report of the release or stored less than ten thousand gallons of petroleum in the calendar year immediately preceding the first report of the release, the department shall provide reimbursement from the fund in accordance with section 66-1525 to such an eligible person for the cost of remedial action for releases reported after July 17, 1983, and on or before June 30, ~~2005~~ 2009, and for the cost of paying third-party claims. The reimbursement for the cost of remedial action shall not exceed nine hundred eighty-five thousand dollars per occurrence. The total of the claims paid under section 66-1531 and the reimbursement for third-party claims shall not exceed one million dollars per occurrence. The responsible person shall pay the first five thousand dollars of the cost of the remedial action or third-party claim, twenty-five percent of the remaining cost of the remedial action or third-party claim not to exceed ten thousand dollars, and the amount of any reduction authorized under subsection (5) of section 66-1525. If the department determines that a responsible person was ordered to take remedial action for a release which was later found to be from a tank not owned or operated by such person, (a) such person shall be fully reimbursed and shall not be required to pay the first cost or percent of the remaining cost as provided in this subsection and (b) the first cost and percent of the remaining cost not required to be paid by the person ordered to take remedial action shall be paid to the fund as a cost of remedial action by the owner or operator of the tank found to be the cause of the release. In no event shall reimbursements or payments from the fund exceed the annual aggregate of one million nine hundred eighty-five thousand dollars per responsible person. Reimbursement of a cost incurred as a result of a suspension ordered by the department shall not be limited by this subsection if the suspension was caused by insufficiency in the fund to provide reimbursement.

(3) The department may make partial reimbursement during the time that remedial action is being taken if the department is satisfied that the remedial action being taken is as required by the department.

(4) If the fund is insufficient for any reason to reimburse the amount set forth in this section, the maximum amount that the fund shall be required to reimburse is the amount in the fund. If reimbursements approved by the department exceed the amount in the fund, reimbursements with interest shall be made when the fund is sufficiently replenished in the order in which the applications for them were received by the department, except that an application pending before the department on January 1, 1996, submitted by a local government as defined in section 13-2202 shall, after July 1, 1996, be reimbursed first when funds are available. This exception applies only to local government applications pending on and not submitted after January 1, 1996.

(5) Applications for reimbursement properly made before, on, or after April 16, 1996, shall be considered bills for goods or services provided for third parties for purposes of the Prompt Payment Act.

(6) Notwithstanding any other provision of law, there shall be no reimbursement from the fund for the cost of remedial action or for the cost of paying third-party claims for any releases reported on or after July 1, ~~2005~~ 2009.

(7) For purposes of this section, occurrence shall mean an accident, including continuous or repeated exposure to conditions, which results in a release from a tank.

Sec. 107. Section 66-1525, Reissue Revised Statutes of Nebraska, is amended to read:

66-1525. (1) Any responsible person or his or her designated representative who has taken remedial action in response to a release first reported after July 17, 1983, and on or before June 30, ~~2005~~ 2009, or against

whom there is a third-party claim may apply to the department under the rules and regulations adopted and promulgated pursuant to section 66-1518 for reimbursement for the costs of the remedial action or third-party claim. Partial payment of such reimbursement to the responsible person may be authorized by the department at the approved stages prior to the completion of remedial action when a remedial action plan has been approved. If any stage is projected to take more than ninety days to complete partial payments may be requested every sixty days. Such partial payment may include the eligible and reasonable costs of such plan or pilot projects conducted during the remedial action.

(2) No reimbursement may be made unless the department makes the following eligibility determinations:

(a) The tank was in substantial compliance with any rules and regulations of the United States Environmental Protection Agency, the State Fire Marshal, and the department which were applicable to the tank. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the rules and regulations may have had on the tank thereby causing or contributing to the release and the extent of the remedial action thereby required;

(b) Either the State Fire Marshal or the department was given notice of the release in substantial compliance with the rules and regulations adopted and promulgated pursuant to the Environmental Protection Act and the Petroleum Products and Hazardous Substances Storage and Handling Act. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the notice provisions of the rules and regulations may have had on the remedial action being taken in a prompt, effective, and efficient manner;

(c) The responsible person reasonably cooperated with the department and the State Fire Marshal in responding to the release;

(d) The department has approved the plan submitted by the responsible person for the remedial action in accordance with rules and regulations adopted and promulgated by the department pursuant to the Environmental Protection Act or the Petroleum Products and Hazardous Substances Storage and Handling Act or that portion of the plan for which payment or reimbursement is requested. However, responsible persons may undertake remedial action prior to approval of a plan by the department or during the time that remedial action at a site was suspended at any time after April 1995 because the fund was insufficient to pay reimbursements and be eligible for reimbursement at a later time if the responsible person complies with procedures provided to the responsible party by the department or set out in rules and regulations adopted and promulgated by the Environmental Quality Council;

(e) The costs for the remedial action were actually incurred by the responsible person or his or her designated representative after May 27, 1989, and were eligible and reasonable;

(f) If reimbursement for a third-party claim is involved, the cause of action for the third-party claim accrued after April 26, 1991, and the Attorney General was notified by any person of the service of summons for the action within ten days of such service; and

(g) The responsible person or his or her designated representative has paid the amount specified in subsection (1) or (2) of section 66-1523.

(3) The State Fire Marshal shall review each application prior to consideration by the department and provide to the department any information the State Fire Marshal deems relevant to subdivisions (2)(a) through (g) of this section. The State Fire Marshal shall issue a determination with respect to an applicant's compliance with rules and regulations adopted and promulgated by the State Fire Marshal. The State Fire Marshal shall issue a compliance determination to the department within thirty days after receiving an application from the department.

(4) The department may withhold taking action on an application during the pendency of an enforcement action by the state or federal government related to the tank or a release from the tank.

(5) Reimbursements made for a remedial action may be reduced as much as one hundred percent for failure by the responsible person to comply with applicable statutory or regulatory requirements. In determining the amount of the reimbursement reduction, the department shall consider:

(a) The extent of and reasons for noncompliance;

(b) The likely environmental impact of the noncompliance; and

(c) Whether noncompliance was negligent, knowing, or willful.

(6) Except as provided in subsection (4) of this section, the

department shall notify the responsible person of its approval or denial of the remedial action plan within one hundred twenty days after receipt of a remedial action plan which contains all the required information. If after one hundred twenty days the department fails to either deny, approve, or amend the remedial action plan submitted, the proposed plan shall be deemed approved. If the remedial action plan is denied, the department shall provide the reasons for such denial.

Sec. 108. Section 66-1529.02, Reissue Revised Statutes of Nebraska, is amended to read:

66-1529.02. (1) The department may undertake remedial actions in response to a release first reported after July 17, 1983, and on or before June 30, ~~2005~~ 2009, with money available in the fund if:

(a) The responsible person cannot be identified or located;

(b) An identified responsible person cannot or will not comply with the remedial action requirements; or

(c) Immediate remedial action is necessary, as determined by the Director of Environmental Quality, to protect human health or the environment.

(2) The department may pay the costs of a third-party claim meeting the requirements of subdivision (2)(f) of section 66-1525 with money available in the fund if the responsible person cannot or will not pay the third-party claim.

(3) Reimbursement for any damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred shall be considered as part of the cost of remedial action involving the site where the release or suspected release occurred. The costs shall be reimbursed from money available in the fund. If such reimbursement is deemed inadequate by the party claiming the damages, the party's claim for damages caused by the department shall be filed as provided in section 76-705.

(4) All expenses paid from the fund under this section, court costs, and attorney's fees may be recovered in a civil action in the district court of Lancaster County. The action may be brought by the county attorney or Attorney General at the request of the director against the responsible person. All recovered expenses shall be deposited into the fund.

Sec. 109. Section 77-27,137.02, Reissue Revised Statutes of Nebraska, is amended to read:

77-27,137.02. ~~Except as provided in section 46-656.17, the~~ The appropriation provided for in section 77-27,136 for aid to natural resources districts shall be distributed to the various natural resources districts of the state on the basis of the ratio of the total amount of property taxes levied by the particular natural resources district to the total amount of property taxes levied by all natural resources districts within the state based on amounts stated in the most recent certificate of taxes levied statement and schedules submitted by each county to the Tax Commissioner pursuant to section 77-1613.01. The Tax Commissioner shall determine the amount to be distributed to the various natural resources districts and certify such amounts by voucher to the Director of Administrative Services. Each amount shall be distributed in seven as nearly as possible equal monthly payments between the fifth and twentieth day of each month beginning December 1, 1982, and each December thereafter. The State Treasurer shall, between the fifth and twentieth day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund for payment purposes. The Director of Administrative Services shall, upon receipt of such notification and vouchers, draw warrants against funds appropriated. The proceeds of the payments received by the various natural resources districts shall be credited to the general fund of the district.

Sec. 110. Section 77-3442, Reissue Revised Statutes of Nebraska, is amended to read:

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

(2)(a) Except as provided in subdivision (2)(b) of this section, school districts and multiple-district school systems may levy a maximum levy of (i) one dollar and five cents per one hundred dollars of taxable valuation of property subject to the levy for fiscal years 2003-04 and 2004-05 and (ii) one dollar per one hundred dollars of taxable valuation of property subject to the levy for all fiscal years except fiscal years 2003-04 and 2004-05. Excluded from this limitation are amounts levied to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment and amounts levied to pay for special

building funds and sinking funds established for projects commenced prior to April 1, 1996, for construction, expansion, or alteration of school district buildings. For purposes of this subsection, commenced means any action taken by the school board on the record which commits the board to expend district funds in planning, constructing, or carrying out the project.

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

(c) Beginning with school fiscal year 2002-03 through school fiscal year 2004-05, school districts and multiple-district school systems may, upon a three-fourths majority vote of the school board of the school district, the board of the unified system, or the school board of the high school district of the multiple-district school system that is not a unified system, exceed the maximum levy prescribed by subdivision (2)(a) of this section in an amount equal to the net difference between the amount of state aid that would have been provided under the Tax Equity and Educational Opportunities Support Act without the changes made by Laws 2002, LB 898, for the ensuing school fiscal year for the school district or multiple-district school system and the amount provided under the act as amended by Laws 2002, LB 898. The State Department of Education shall certify to the school districts and multiple-district school systems the amount by which the maximum levy may be exceeded pursuant to subdivision (2)(c) of this section on or before May 15, 2002, for school fiscal year 2002-03, June 30, 2003, for school fiscal year 2003-04, and February 15, 2004, for school fiscal year 2004-05.

(3) Community colleges may levy a maximum levy on each one hundred dollars of taxable property subject to the levy of seven cents for fiscal year 2000-01 and each fiscal year thereafter, plus amounts allowed under subsection (7) of section 85-1536.01.

(4) Natural resources districts may levy a maximum levy of four and one-half cents per one hundred dollars of taxable valuation of property subject to the levy. Natural resources districts shall also have the power and authority to levy a tax equal to the dollar amount by which their restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed their restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2003-04, not to exceed one cent on each one hundred dollars of taxable valuation annually on all of the taxable property within the district.

(5) Educational service units may levy a maximum levy of one and one-half cents per one hundred dollars of taxable valuation of property subject to the levy.

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

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

(7) Sanitary and improvement districts which have been in existence for more than five years may levy a maximum levy of forty cents per one hundred dollars of taxable valuation of property subject to the levy, and sanitary and improvement districts which have been in existence for five years or less shall not have a maximum levy. Unconsolidated sanitary and improvement districts which have been in existence for more than five years

and are located in a municipal county may levy a maximum of eighty-five cents per hundred dollars of taxable valuation of property subject to the levy.

(8) Counties may levy or authorize a maximum levy of fifty cents per one hundred dollars of taxable valuation of property subject to the levy, except that five cents per one hundred dollars of taxable valuation of property subject to the levy may only be levied to provide financing for the county's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The maximum levy shall include amounts levied to pay for sums to support a library pursuant to section 51-201 or museum pursuant to section 51-501. The county may allocate up to fifteen cents of its authority to other political subdivisions subject to allocation of property tax authority under subsection (1) of section 77-3443 and not specifically covered in this section to levy taxes as authorized by law which do not collectively exceed fifteen cents per one hundred dollars of taxable valuation on any parcel or item of taxable property. The county may allocate to one or more other political subdivisions subject to allocation of property tax authority by the county under subsection (1) of section 77-3443 some or all of the county's five cents per one hundred dollars of valuation authorized for support of an agreement or agreements to be levied by the political subdivision for the purpose of supporting that political subdivision's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. If an allocation by a county would cause another county to exceed its levy authority under this section, the second county may exceed the levy authority in order to levy the amount allocated.

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

(10) Property tax levies for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a political subdivision which require or obligate a political subdivision to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a political subdivision, for preexisting lease-purchase contracts approved prior to July 1, 1998, for bonded indebtedness approved according to law and secured by a levy on property, and for payments by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport are not included in the levy limits established by this section.

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

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

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

Sec. 111. Section 81-15,174, Revised Statutes Supplement, 2003, is amended to read:

81-15,174. The Nebraska Environmental Trust Fund is created. The fund shall be maintained in the state accounting system as a cash fund. Except as otherwise provided in this section, the fund shall be used to carry out the purposes of the Nebraska Environmental Trust Act, including the payment of administrative costs. Money in the fund shall include proceeds credited pursuant to section 9-812 and proceeds designated by the board pursuant to section 81-15,173. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The State Treasurer shall transfer nine hundred twenty-five thousand dollars from the Nebraska Environmental Trust Fund to the Department of Natural Resources Water Issues Cash Fund, as administratively created pursuant to section 81-1111.04, on or after July 1, 2003, but no later than July 10, 2003.

The State Treasurer shall transfer one million dollars from the Nebraska Environmental Trust Fund to the Water Resources Trust Fund on July 1, 2004.

Sec. 112. The State Treasurer shall transfer one million five hundred thousand dollars from the Petroleum Release Remedial Action Cash Fund to the General Fund on July 1, 2004.

Sec. 113. Section 81-15,176, Revised Statutes Supplement, 2002, is

amended to read:

81-15,176. (1) Subject to subsection (3) of this section, the board shall establish environmental priorities for the trust. The board, after allowing opportunity for public comment, shall designate as priorities those environmental goals which most affect the natural physical and biological environment in Nebraska, including the air, land, ground water and surface water, flora and fauna, prairies and forests, wildlife and wildlife habitat, and areas of aesthetic or scenic values. In designating environmental priorities, the board shall attempt to focus on the areas which promise the greatest opportunities for effective action to achieve and preserve the future environmental quality in the state. The board shall establish priorities for five-year periods beginning July 1, 1995, except that the board may make annual modifications to refine and clarify its priorities. The board shall provide for public involvement in developing the priorities for such five-year periods, including public meetings in each of the three congressional districts.

(2) The board shall establish criteria for determining the eligibility of projects for grant assistance, which criteria shall include the following:

(a) The grants shall not provide direct assistance to regulatory programs or to implement actions mandated by regulations except remediation;

(b) No more than sixty percent of grant allocations in any year shall assist remediation of soils or ground water, and no grants for this purpose shall occur unless all other available sources of funding are, in the opinion of the board, being substantially utilized;

(c) The grants shall not pay for projects which provide primarily private benefits or relieve private liability for environmental damage;

(d) The grants shall not pay for projects which have direct beneficiaries who could afford the costs of the benefits without experiencing serious financial hardship;

(e) The grants should assist those projects which offer the greatest environmental benefits relative to cost;

(f) The grants should assist those projects which provide clear and direct environmental benefits;

(g) The grants should assist those projects which will make a real contribution to achieving the board's environmental priorities;

(h) The grants should assist those projects which offer the greatest public benefits; and

(i) The grants shall not pay for land or easements acquired without the full and express consent of the landowner.

(3) Until the first five-year priorities become effective on July 1, 1995, the board shall observe the following priorities for allocating grants:

(a) Critical habitat areas, including wetlands acquisition, preservation, and restoration and acquisition and easements of areas critical to rare or endangered species;

(b) Surface water quality, including actions to preserve lakes and streams from degradation;

(c) Ground water quality, including fostering best management practices as defined in section ~~46-656.07~~ 46 of this act, actions to preserve ground water from degradation, and remediation of soils or ground water; and

(d) Development of recycling markets and reduction of solid waste volume and toxicity.

(4) The board may refine and clarify these initial priorities.

Sec. 114. Sections 3, 4, 93, 110, and 117 of this act become operative on July 1, 2004. This section and sections 111, 112, 115, 116, and 120 of this act become operative on their effective date. The other sections of this act become operative three calendar months after the adjournment of this legislative session.

Sec. 115. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 116. Original section 81-15,174, Revised Statutes Supplement, 2003, is repealed.

Sec. 117. Original sections 2-3225 and 77-3442, Reissue Revised Statutes of Nebraska, and section 13-520, Revised Statutes Supplement, 2002, are repealed.

Sec. 118. Original sections 2-1586, 46-229.02, 46-229.03, 46-2,127, 46-609, 46-651, 46-656.03, 46-656.04, 46-656.08, 46-656.11, 46-656.13, 46-656.21, 46-656.32, 46-656.35 to 46-656.37, 46-656.39, 46-656.41 to 46-656.48, 46-656.64, 46-680, 46-1207.01, 46-1207.02, 46-1212, 46-1228, 61-206, 66-1501, 66-1519, 66-1523, 66-1525, 66-1529.02, and 77-27,137.02, Reissue Revised Statutes of Nebraska, sections 2-1588, 46-226.03, 46-229,

46-229.04, 46-230, 46-235.04, 46-237, 46-261, 46-290 to 46-296, 46-2,112, 46-2,119, 46-2,132, 46-2,135, 46-601.01, 46-613.02, 46-653, 46-656.05, 46-656.14, 46-656.19, 46-656.25 to 46-656.27, 46-656.31, 46-656.33, 46-656.38, 46-656.40, 46-656.62, 46-656.63, 46-656.65 to 46-656.67, 46-676, 46-678.01, and 81-15,176, Revised Statutes Supplement, 2002, and sections 46-241, 46-602, 46-656.01, 46-656.02, 46-656.07, 46-656.10, 46-656.12, 46-656.24, 46-656.29, and 46-656.30, Revised Statutes Supplement, 2003, are repealed.

Sec. 119. The following sections are outright repealed: Sections 46-656.06, 46-656.09, 46-656.17, 46-656.18, 46-656.20, 46-656.22, 46-656.23, and 46-656.49, Reissue Revised Statutes of Nebraska, and sections 46-656.15, 46-656.16, 46-656.28, and 46-656.50 to 46-656.61, Revised Statutes Supplement, 2002.

Sec. 120. Since an emergency exists, this act takes effect when passed and approved according to law.