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Section 5. (4)(a) For purposes of this act a basin, sub-basin or reach may be over-appropriated as defined in this Act. This subsection shall apply only to those over-appropriated basins, sub-basins or reaches that are subject to an interstate Cooperative Agreement between three or more States on the effective date of this Act.

(b) For any basin, sub-basin or reach designated as over appropriated and subject to this subsection in which a Natural Resource District has not adopted a temporary moratorium, there shall be issued an immediate stay and further action on a temporary moratorium will be taken as provided for in Sections 3 and 4 of this Act. (Make consistent with Sections 3, 4 and 14)

(c) In any basin, sub-basin or reach designated as over-appropriated and subject to this subsection that includes two or more Natural Resources Districts encompassing that basin, sub-basin or reach, the Department and Natural Resources Districts shall jointly develop, using the consultation and collaboration process in Section 5(4)(d) and concurrent with the development of the integrated management plan, a basin-wide plan for the area designated as over-appropriated to achieve the goals and objectives in Section 5(2)(a). The basin-wide plan shall be adopted after hearings before the Department and Natural Resource Districts. The integrated management plans in areas governed by this subsection shall be consistent with any basin-wide plan developed pursuant to this subsection. (Access to IWRB).

(d) In any basin, sub-basin or reach designated as over-appropriated and subject to this subsection and the Department and each individual Natural Resources District encompassing that basin, sub-basin or reach shall jointly develop an integrated management plan for that basin, sub-basin or reach pursuant to subsections (1)-(3) of section 5 of this Act. Such integrated management plan shall be developed after consultation and collaboration with interested irrigation districts, power districts, and municipalities within the affected area. In addition, the Department or affected Natural Resources District(s) may include designated representatives of other affected stakeholders. If agreement is reached by that process the Department and each individual Natural Resources District(s) will adopt the agreed upon integrated management plan. If agreement

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cannot be reached the Department and each individual Natural Resources District(s) will adopt an integrated management plan.

(e) Any integrated management plan developed under this subsection shall identify the overall difference between the current and fully appropriated state of development. This determination shall take into account cyclical supply, including drought, identify the portion of difference that is due to conservation measures, identify the depletions to stream flow from water use initiated prior to the date used in subsection (f) of Section 5(4) of this Act, and shall be developed using the same process as set forth in Section 1(a)(i)-(iii) of this Act.

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

- (i) the first increment goal shall be to address the impacts of stream flow depletions to (A) surface water rights and (B) wells constructed in aquifers dependent on recharge from stream flow, caused by water use begun after July 1, 1997, or to prevent stream flow depletions which would cause non-compliance by Nebraska with an interstate compact or decree or other formal state contract or agreement entered into no earlier than July 1, 1997. During the first increment, the department and affected Natural Resources Districts will also pursue voluntary efforts, subject to the availability of funds, to offset any stream flow depletive effects from uses initiated prior to July 1, 1997, but which occur after such date. The Department and affected Natural Resources District may use other appropriate measure to offset any stream flow depletive effects from uses initiated prior to July 1, 1997;
- (ii) an integrated management plan adopted under this section shall be completed, adopted and take effect within three years of the designation of the basin as over-appropriated unless the Department and the affected Natural Resource Districts jointly agree to an extension not to exceed two additional years;

- (iii) The Department and affected Natural Resource District may make amendments to the plan as necessary based on an annual review of the integrated management plan's progress in achieving the increment goals;
- (iv) Within 10 years after adoption of an integrated management plan under this subsection, or within 10 years after the adoption of any subsequent increments of the integrated management plan, the Department and affected Natural Resources District shall conduct a technical analysis of the actions taken in the increment to determine the progress towards meeting the goals and objectives adopted in Section 5(2)(a). Included in the analysis will be 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 difference identified in Section 5(4)(e).The analysis shall determine if a subsequent increment is necessary in the integrated management plan to meet the goals and objectives adopted in Section 5(2)(a) and reduce the difference between the current and fully appropriated status identified in subsection (4)(e).
- (v) Based on the determination made in subsection (f)(iv), the Department and affected Natural Resources Districts, using the consultative process outlined in Section 5(4)(d), will, if necessary, identify goals for a subsequent increment of the integrated management plan. Subsequent increments shall be completed, adopted and take effect no longer than 10 years after adoption of the previous increment; and
- (vi) if necessary, steps (iii) through (v) shall be repeated until the Department and affected Natural Resources Districts agree the goals identified in Section 5(2)(a) have been met and the difference identified in subsection (4)(e) has been addressed such that the basin, sub-basin or reach has returned to a fully appropriated state.

Definition of over-appropriated basin.

Over-appropriated basin – A basin, sub-basin or reach will be considered over-appropriated if the Department has declared a moratorium on granting surface water permits and has requested that the Natural Resources Districts in the affected area adopt a temporary suspension. The Department shall designate within sixty days of the effective date of this Act those basins, sub-basins or reaches that are over-appropriated.