

**11-1-03 Draft
Water Policy Task Force
Legislation to Codify
Recommended Process for Addressing Integrated Management
Of Groundwater and Surface Water
(Would Replace Section 46-656.28
And Sections 46-656.49 to 46-656.61)
Changes shown are to the 9-27 draft reviewed at the 10-21-03 EC
meeting**

Section 1. (1)(a) By January 1 of each year starting in 2005~~6~~ and except as otherwise provided herein, 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 groundwater uses in each of the state's river basins and shall issue a report that describes the results of that evaluation. For purposes of the evaluation and the report, a river basin may be divided into two or more sub-basins and/or reaches. Basins, sub-basins and reaches for which an integrated management plan has been or is being developed pursuant to Sections 5 through 11 of this act shall not be re-evaluated except as provided in subsection (2) of this Section. The report shall describe (i) the extent and nature of use of both surface water and groundwater in each basin, sub-basin or reach; (ii) the geographic area within which the Department preliminarily considers surface water and groundwater 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.

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

(c) In addition to its conclusion about whether a basin, sub-basin or reach is fully appropriated, the Department shall also include in its report prepared pursuant to Section 1(a), for information 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 developing the annual reports required by this Section, the Department shall rely on the best scientific data and information readily available. When so requested, state agencies, Natural Resources Districts, irrigation Districts, municipalities, and other water users and stakeholders shall provide the Department with relevant data and information in their possession. The Department 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 re-evaluation of a basin, sub-basin or reach for which an integrated management plan has been or is being prepared if it has reason to believe that a re-evaluation might lead to a different determination about whether that basin, sub-basin or reach is fully appropriated. A decision to re-evaluate 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 re-evaluation by the Department, any petition for re-evaluation must be accompanied by supporting information showing (a) that new scientific data or other information relevant to the determination of whether the basin, sub-basin or reach is fully appropriated has become available since the last evaluation of that basin, sub-basin or reach; (b) that the Department relied on incorrect or incomplete information when the basin, sub-basin or reach was last evaluated; or (c) that the Department erred in its interpretation or application of the information available when the basin, sub-basin or reach was last evaluated. If any petition for re-evaluation determined by the Department to be sufficient for the purposes of this subsection is filed before March 1 of any year, the re-evaluation of the basin, sub-basin or reach involved shall be included in the next annual report prepared in accordance with Section (1) of this Act. If any such petition is filed on or after March 1, the Department may defer the re-evaluation of the basin, sub-basin or reach involved until the second annual report after such filing.

(3) Within sixty days of the of the effective date of this Act, the Department shall designate those basins, sub-basins or reaches that are over-appropriated as defined in Section 2(2).

Section 2. (1) For purposes of this Act, a river basin, sub-basin or reach shall be considered fully appropriated if it is determined that then existing uses of hydrologically connected surface water and groundwater in the basin, sub-basin or reach now cause or will cause in the reasonably foreseeable future (1) the surface water supply to be insufficient to sustain, long-term, the beneficial or useful purposes for which existing natural flow, storage and instream appropriations were granted; (2) the streamflow to be insufficient to sustain, long-term, the beneficial uses from wells constructed in aquifers dependent on recharge from the river or stream involved; or (3) reductions in the flow of a river or stream sufficient to cause non-compliance by Nebraska with an interstate compact or decree, other formal state contract or agreement, or applicable state or federal laws.

(2) For purposes of this Act, 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.

Section 3. (1) Whenever the Department makes a preliminary determination that a basin, sub-basin or reach not previously determined to be fully appropriated is now fully appropriated or designates a basin, sub-basin or reach as overappropriated pursuant to Section 5, it shall place an immediate stay on the issuance by the Department of any new natural flow, storage or storage use appropriation in that basin, sub-basin or reach. It shall also provide prompt notice of that 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 that notice there shall be a stay on issuance by the Natural Resources District of well construction permits in the geographic area preliminarily determined by the Department to include hydrologically connected surface water and groundwater in that basin, sub-basin or reach. The Department shall also notify the public of that preliminary determination of full appropriation and of the geographic area involved. Such notice shall be provided by publication once each week for three consecutive weeks in at least one newspaper with statewide circulation and in such other newspaper or newspapers as are deemed appropriate by the Department to provide general circulation in the basin, sub-basin, or reach.

(2) If, pursuant to this Section, the Department has determined a basin, sub-basin or reach is fully appropriated and has identified the existence of hydrologically connected surface water and groundwater in said basin, sub-basin or reach, there also shall be stays (a) on the construction of any new water well for which such construction has not commenced whether or not a construction permit for that well was previously obtained from the Department or from a Natural Resources District and (b) on the use of an existing water well or an existing surface water appropriation to increase the number of acres historically irrigated. Such additional stays shall begin ten days after the first publication in a newspaper with statewide circulation of the notice of the Department's preliminary determination of full appropriation for that basin, sub-basin or reach. The stays imposed by this Section shall remain in effect until they are lifted pursuant to Section 4 of this Act.

(3) Exceptions to the stays imposed by this Section will 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 groundwater remediation plan pursuant to the Nebraska Environmental Protection Act; (e) water wells designed and constructed to pump fifty gallons per minute or less, provided that no two or more 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 Natural Resources District involved as replacement water wells, provided that 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; (i) new surface water uses and water wells to which a right or permit is transferred in accordance with state law, provided that 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 groundwater irrigated acres for which a variance is granted by the Natural Resources District involved for good cause shown; (k) surface water uses for which temporary public-use construction permits are issued pursuant to subsection (8) of Section 46-233 and (l) surface water uses and increases in surface water irrigated acres for which a variance is granted by the Department for good cause shown.

Section 4. (1) Except as otherwise provided by this Section, any stay imposed in accordance with Section 3 of this Act shall remain in effect for the basin, sub-basin or reach involved until the Department has made a final determination about whether the basin, sub-basin or reach is fully appropriated and, if the Department's final

determination is in the affirmative, until the Department and the Natural Resources District or Districts involved have decided, pursuant to this Section, whether the stays should be replaced with a temporary moratorium. Within that time period, the Department and the Natural Resources District or Districts involved shall consult with any irrigation district or municipality that relies on surface water from the basin, sub-basin or reach involved and with other water users and stakeholders as deemed appropriate by the Department or by the Natural Resources District or Districts. The Department shall also hold one or more public hearings not more than 90 days after the first publication of the notice required by Section 3 of this Act. Notice of the hearing or hearings shall be provided in the same manner as the notice required by Section 3 of this Act. Any interested person may appear at such hearing or hearings and present written or oral testimony and evidence concerning the appropriation status of the basin, sub-basin or reach involved, the Department's preliminary conclusions about the extent of the area within which surface water and groundwater supply for that basin, sub-basin or reach is determined to be hydrologically connected, and whether any stays on new uses should be replaced with a temporary moratorium on new surface water and/or new groundwater uses.

(2) Within 30 days after the hearing, if only one is held, or within 30 days after the final hearing, if more than one is held, the Department shall notify the Natural Resources District or Districts involved of its final determination concerning the appropriation status of that basin, sub-basin or reach. If the final determination is that the basin, sub-basin or reach is fully appropriated, the Department at the same time shall (a) decide whether to replace the stay on new surface water uses and increases in the number of surface water irrigated acres with a temporary moratorium on such uses or let the stay on such uses expire; and (b) delineate the geographic area within which the Department considers surface water and groundwater to be hydrologically connected in that basin, sub-basin or reach and describe the methods and criteria used in making that determination.

(3) If the Department's final determination is that the basin, sub-basin or reach is not fully appropriated, the stays imposed by Section 3 of this Act shall terminate immediately and no further action pursuant to this Section through Section 11 of this Act shall be required.

(4) Within 45 days of a final determination by the Department that a basin, sub-basin or reach is fully appropriated each Natural Resources District or Districts involved shall 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, and on increases in groundwater irrigated acres should be replaced with a temporary moratorium and, if so, over what geographic area. Notice of the hearing or hearings shall be provided by publication once each week for three consecutive weeks in such newspaper or newspapers as are deemed appropriate by the District to provide general circulation in that District's portion of the basin, sub-basin or reach involved.

(5) Within 45 days after a Natural Resources District's hearing, if only one is held, or within 45 days of the final hearing, if more than one is held, the Natural Resources District shall decide whether to (a) allow the stay on new water wells to expire or replace it with a temporary moratorium, applicable in all or part of that District's portion of the basin, sub-basin or reach delineated as including hydrologically connected surface water and groundwater by the Department, on the issuance of construction permits for new wells or, in areas where well permits are not required, on the construction of new wells;

and (b) allow the stay on increases in groundwater irrigated acres to expire or replace it with a temporary moratorium on such increases, applicable in all or part of that District's portion of the basin, sub-basin or reach delineated as including hydrologically connected surface water and groundwater by the Department. If the District decides to impose a temporary moratorium on new water wells in all or part of the area subject to the stay, the District shall also decide whether to exempt from that temporary moratorium the construction of water wells for which permits were issued prior to the stay but for which construction had not commenced prior to that stay. If construction of water wells for which permits were issued prior to the stay is then 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. The kinds of water uses excepted from the stay pursuant to Section 3 of this Act also shall be excepted from the provisions of any temporary moratorium adopted in accordance with this Section.

(6) Any temporary moratorium adopted in accordance with this Section shall remain in effect until (a) an integrated management plan for the basin, sub-basin or reach involved has been adopted by the Department and the District or Districts involved and has taken effect; (b) an integrated management plan for the basin, sub-basin or reach involved has been adopted by the Interrelated Water Review Board and has taken effect; or (c) the Department, pursuant to subsection (2) of Section 1 of this Act, has completed a reevaluation and has determined that the basin, sub-basin or reach involved is not fully appropriated; provided that such temporary moratorium may be imposed initially for not to exceed three years and may be extended thereafter on an annual basis by the adopting entity for not to exceed two more years if necessary to allow the development, adoption and implementation of an integrated management plan in accordance with Sections 8 through 11 of this Act.

Section 5. (1) Whenever the Department has made a final determination that a basin, sub-basin or reach is fully appropriated, the Natural Resources District or Districts encompassing that basin, sub-basin or reach and the Department shall jointly develop an integrated management plan for that basin, sub-basin or reach. Such plan is to be completed, adopted and take effect within three years of the Department's final determination unless the Department and the District or Districts involved jointly agree to an extension of not to exceed 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 groundwater users must be considered. An integrated management plan must include the following: (a) clear goals and objectives the purpose of which is to sustain a balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the basin, sub-basin or reach can be achieved and maintained for both the near term and the long term; (b) a map clearly delineating the area subject to the integrated management plan; (c) one or more of the groundwater controls authorized for adoption by the Natural Resources Districts by Section 46-656.25; and (d) one or more of the surface water controls authorized for adoption by the Department by Section 6 of this Act. The plan may also provide for utilization of any applicable incentive programs authorized by law.

(3) The groundwater and surface water controls proposed for adoption in the plan pursuant to ~~Section 5(a)~~ subsection (1) of this section must, when considered together, (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, decree, or other formal state contract or agreement pertaining to surface water or groundwater use or supplies; and (c) protect the ground water users whose wells are dependent on recharge from the river or stream involved and the surface water appropriators on that river or stream from streamflow depletions caused by surface water uses and groundwater uses begun after the date the basin, sub-basin or reach was preliminarily declared fully appropriated in accordance with Section 4. ~~(Note: the compensation sub-committee is still working on remedies for the basins that are already overappropriated.)~~

(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 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.

Section 6. (1) The surface water controls that may be included in an integrated management plan and may be adopted by the Department 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 groundwater users on return flows or on seepage to the aquifer; and (d) other reasonable restrictions on surface water use that are consistent with the intent of Section 46-656.05 and the requirements of Section 46-231.

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 180 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 such other proposed restrictions

Section 7. (1) In developing an integrated management plan the Department and the Natural Resources District or Districts involved shall utilize the best scientific data and other information available and shall review and consider any rules and regulations in effect in any then existing groundwater 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 1 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 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 the possession of other state or federal agencies, other Natural Resources Districts and other political subdivisions within the state shall be utilized. State agencies and political subdivisions shall furnish information or data upon the request of the Department or any involved District. Neither the Department nor the District or 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 may be developed within the limits of available funding if the additional information to be produced by that research or model is desired by the Department and the District or Districts involved.

(2) During preparation of an integrated management plan, the Department and the District or Districts involved shall consult with any irrigation District or municipality that relies on surface water from the basin, sub-basin or reach involved and with other water users and stakeholders as deemed appropriate by the Department or by the Natural Resources District or Districts involved. They also shall actively solicit public comments and opinions through public meetings and other means. **(Note: A question raised at the task force meeting was whether a more formal involvement process is needed for the parties listed in this paragraph; that decision was deferred until more is known about what the Equity/Compensation Subcommittee is going to propose.)**

Section 8. If the Department and the District or Districts involved reach agreement on (1) the proposed goals and objectives of the integrated management plan for the basin, sub-basin or reach involved; (2) the proposed geographic area to be subject to controls; and (3) the surface water and groundwater controls that are proposed for adoption and implementation in that basin, sub-basin or reach, they shall schedule one or more public hearings to take testimony on the proposed plan and the proposed controls. Such hearing or hearings shall be held within forty-five days of the agreement and within or in reasonable proximity to the area to be affected by implementation of the plan. Notice of the hearing or hearings shall be published once each week for three consecutive weeks in a newspaper of general circulation in the state and in such other newspaper or newspapers as are deemed appropriate by the Department to provide general circulation in the area to be affected. The last notice shall be published at least seven days prior to the hearing. The notice shall provide a general description of the contents of the integrated management plan and of the area proposed to be subject to the controls in the plan, and shall also provide either the text of the controls proposed or a general description of those controls. If the notice does not provide the text of the controls proposed, it shall identify all locations where a copy of the full text of the proposed controls may be obtained. The costs of publishing the notice shall be shared between the Department and the District or Districts involved. All interested persons may appear at the hearing or hearings and present testimony or provide other evidence relevant to the issues being considered.

Within 60 days after the hearing or hearings, the Department and the District or Districts involved shall jointly decide whether to implement the plan proposed, with or without modifications, and whether to adopt the surface water and groundwater controls proposed in the plan. If the Department and the District or Districts agree to implement the plan and to adopt and implement the controls proposed, the District or Districts shall by order designate a management area for integrated management or, if the geographic area subject to the plan is already in a management area, the order shall designate an integrated management subarea for that management area. The District's order shall include a geographic and stratigraphic definition of the area or subarea involved and shall adopt the control or controls in the plan that are authorized for adoption by the District by Section 46-656.25. The Department shall by order adopt the control or controls in the plan that is authorized for adoption by the Department by Section 6 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 the hearing. The area designated as a management area or subarea by the 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 District shall each cause a copy of its order to be published once each week for three consecutive weeks in a local newspaper or newspapers 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 by the Department or the District as the effective date of that order.

Section 9. If at any time during the development of the integrated management plan either the Department and/or the District or Districts involved conclude that the parties are not going to be able to cannot-reach a timely agreement on (1) the goals and objectives of the integrated management plan for the basin, sub-basin or reach involved; (2) the geographic area to be subject to controls; or (3) the surface water or groundwater controls to be proposed for adoption and implementation in that basin, sub-basin or reach, either that partye Department or a District involved may initiate a non-binding alternative dispute resolution process by submitting a description of the disputed issues in writing to the Governor. Such an alternative dispute resolution shall be initiated by the Department if agreement on the proposed plan has not been reached by 270 days prior to the deadline established in accordance with subsection (1) of this section for the plan to become effective. Regardless of how ~~If the alternative dispute resolution process is not initiated, jointly by the Department and all Districts involved,~~ any party other than the initiating party may, within ten days of the initiation of the process, submit to the Governor in writing any additional issue or issues considered by that party to be in dispute. ~~The Governor shall select the mediator and shall arrange for the participation in the mediation process of at least one additional person who is familiar with the relevant scientific and policy issues but is not otherwise involved directly or indirectly in the dispute. The mediation process shall be convened within thirty days of the last written submission of issues and shall last no longer than ninety days unless extended by mutual agreement of the parties. The Department and the District or Districts involved shall share the costs of the mediation process.~~

If the differences between the Department and the District or Districts involved are resolved through the mediation process, the integrated management plan shall be completed and the process for considering its adoption and implementation shall continue as provided in Section 8 of this Act.

Section 10. There is hereby created, for the purposes specified in Sections 11, 12, and 13 of this Act, a five member Interrelated Water Review Board. The board shall not be permanent in nature but, when appointed and convened, shall continue to exist only until it has resolved a dispute referred to it in accordance with Section 11, 12, or 13 of this Act. The Governor shall appoint and convene the Interrelated Water Review Board within 45 days of being notified of the need therefore. The board shall be chaired by the Governor or by a person who is designated as chairperson by the Governor and who is knowledgeable concerning surface water and groundwater issues. The Governor shall appoint one additional member of his or her own choosing and shall appoint the other three members from a list of no less than six nominees provided by the Natural Resources Commission within twenty days of the Governor's request for such list of nominees. No more than two members may reside in the geographic area involved in the appeal or dispute. An individual shall not be eligible for membership on the board if the decisions to be made by the board would or could cause financial benefit or detriment to him or her, a member of his or her immediate family, or a business with which he or she 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 provisions of the Sections 84-1408 through 84-1414. For purposes of Sections 11 and 12 of this Act, action may be taken by a vote of three of the board's five members. For purposes of Section 13 of this Act, action may be taken only by a vote of at least four of the board's five members.

Section 11. If the Department and the District or Districts involved cannot resolve disputes over the content of an integrated management plan by utilizing the mediation process described in Section 9 of this Act, the Governor shall be notified and the dispute shall be submitted to the Interrelated Water Review Board. When the board has been appointed and convened, the Department and the District or Districts involved shall each present to the board that party's (1) proposed goals and objectives for the integrated management plan; (2) proposed geographic area to be subject to controls; and (3) proposed surface water and groundwater controls for adoption and implementation in the basin, sub-basin or reach involved. Each party also shall be given adequate opportunity to comment on the proposals made by the other party or parties.

When the Interrelated Water Review Board concludes that the disputed issues have been fully aired by the parties, which shall be not more than 45 days after the board is first convened, the board shall select those proposals or portions of proposals that it will consider for adoption and shall schedule a public hearing or hearings to take testimony on the proposal or proposals selected. Such hearing or hearings shall be held within forty-five days of the Interrelated Water Review 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 hearing. The notice of the hearing or hearings shall include the information required for notices published pursuant to Section 8 of this Act and shall be published in the manner required by that Section. The costs of publishing the notice shall be shared by the Department and the District or Districts involved. All interested persons may appear at the hearing or hearings and present testimony or provide other evidence relevant to the issues being considered.

Within 45 days after the hearing or hearings, the Interrelated Water Review Board shall by order adopt an integrated management plan for the basin, sub-basin or reach involved. Such plan must be consistent with subsection (2) of Section 5 of this Act and the groundwater and surface water controls that are adopted as part of that plan must be consistent with subsection (3) of Section 5 of this Act. None of the controls adopted by the board shall be substantially different from those set forth in the notice of the hearing. The area designated as a management area or 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.

The board's order shall be published once each week for three consecutive weeks in a local newspaper or newspapers 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 by the board as the effective date of that order.

Surface water controls adopted by the board shall be implemented and enforced by the Department the same as if they had been adopted by the Department. Groundwater controls adopted by the board shall be implemented and enforced by the District or Districts involved the same as if they had been adopted by the District or Districts.

Section 12. Regardless of whether an integrated management plan was adopted pursuant to Section 8 of this Act or by the Interrelated Water Review Board pursuant to Section 11 of this Act, 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 or groundwater controls that were adopted to implement that plan. The Department and the District or Districts involved shall utilize the procedures in Sections 5 through 9 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 a District involved may notify the Governor of the dispute. The Interrelated Water Review Board shall be appointed and convened in accordance with Section 10 of this Act to resolve the dispute and, if applicable, to adopt any modifications utilizing the procedures in Section 11 of this Act.

Section 13. The Department and the District or Districts involved also may raise objections concerning the implementation or enforcement, by one or more of the other parties, of a previously adopted surface water or groundwater control or controls. The Department and the District or Districts involved shall utilize the procedures in Sections 5 through 9 of this Act in an attempt to reach agreement on such implementation or enforcement issues. If agreement on such issues cannot be achieved utilizing those procedures, either the Department or a District may notify the Governor of the dispute. The Interrelated Water Review Board shall be appointed and convened in accordance with Section 10 of this Act. After allowing each party full opportunity to express its reasons for its position on the issue at hand, the board may either take no action or it may (1) conclude that one or more parties needs to modify its approach to implementation or enforcement and direct that such modifications take place; or (2) conclude 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 that portion and that such party's jurisdiction relative to implementation and enforcement of the plan and any applicable controls shall be terminated and be reassigned to one or more of the other parties responsible for implementation and enforcement. A decision by the 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 such newspaper or newspapers as are necessary to provide general circulation in the area affected by that reassignment.

The board may be reconvened in accordance with Section 10 of this Act 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 nor more often than once per year thereafter. The board may reinstate jurisdiction to that party only upon a clear showing by that party that it is then 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.

Section 14. (1) Prior to the effective date of this Act, actions have been taken by the Department and by one or more Natural Resources Districts pursuant to previous

Section 46-656.28. Those actions were taken for the purpose of addressing circumstances that are hereafter to be addressed in accordance with Sections 1 through 13 of this Act. It is the legislature's intent that actions taken pursuant to Section 46-656.28 prior to the repeal of that Section should not be negated and that transition from the authorities and responsibilities granted by Section 46-656.28 to those granted by Sections 1 through 13 of this Act should occur in as efficient a manner as possible. It is provided therefore that such transition shall be governed by subsections (2) through (5) of this Section. For the purposes of this Section, all references to Section 46-656.28 shall be to Section 46-656.28 as it existed immediately prior to being repealed by this Act.

(2) If prior to the effective date of this Act (a) a Natural Resources District has made a request pursuant to subsection (1) of previous Section 46-656.28 that affected appropriators, affected surface water project sponsors and the Department consult and that studies and that a hearing be held, but (b) the director has not made a preliminary determination relative to that request pursuant to subsection (2) of that Section, no further action on the District's request shall be required by the Department. However, if a temporary suspension in the drilling of certain wells has been imposed by the District pursuant to subsection (16) of Section 46-656.28 and remains in effect immediately prior to this Act taking effect, such temporary suspension shall remain in effect for thirty days after the Department has issued its first annual report pursuant to Section 1 of this Act. To the extent that any such temporary suspension applies to a geographic area preliminarily considered by the Department to have groundwater hydrologically connected to the surface water of a fully appropriated basin, sub-basin or reach, such temporary suspension shall be superceded by the stays imposed pursuant to Section 3 of this Act.

(3) If prior to the effective date of this Act (a) 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 groundwater and surface water in a specific geographic area is contributing to or is in the reasonably foreseeable future likely to contribute to any of the types of conflicts, disputes or difficulties listed in that subsection; (b) 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, but (c) preparation of a joint action plan pursuant to subsections (5) through (9) of that Section has not been completed, the geographic area involved shall become subject to Sections 3 through 11 of this Act immediately on the effective date of this Act and the Department will not need to evaluate such geographic area in its first annual report issued pursuant to Section 1 of this Act. For the purposes of this subsection and Sections 3 through 5 of this Act and except as provided below, (a) the effective date of this Act shall result in the imposition in any geographic area subject to this subsection of the stays required by Section 3; (b) such stays shall be imposed in the manner required by that Section; and (c) the effective date of this Act shall be treated as though it were the date of a Departmental preliminary determination pursuant to Section 1 of this Act that such area is a geographic area within which groundwater and surface water of a fully appropriated basin, sub-basin or reach are hydrologically connected. If, prior to the effective date of this Act, 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 Section 4 of this Act before a final determination is made about whether the basin, sub-basin or reach involved is fully appropriated. If, prior to the effective date of this Act, the director has determined pursuant to subsection (4) of

Section 46-656.28 that a joint action plan should be prepared, that determination shall have the same effect as a final Departmental determination, pursuant to Section 4 of this Act, that the basin, sub-basin or reach involved is fully appropriated and no separate determination to that effect shall be required. Any temporary suspension in the drilling of certain 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 effective date of this Act shall remain in effect for thirty days after the effective date of this Act but shall thereafter be superceded by the stays imposed by Section 3 of this Act.

(4) If prior to the effective date of this Act preparation of a joint action plan has been completed pursuant to subsections (5) through (9) of Section 46-656.28 but has not yet been adopted pursuant to subsection (11) of that Section, the Department will not need to evaluate the geographic area involved in its first annual report issued pursuant to Section 1 of this Act. The Department and the District involved shall review the completed joint action plan for its conformance with Sections 5, 6 and 7 of this Act. If the joint action plan is determined to be in conformance with Sections 5, 6, and 7 or if agreement is reached on the revisions necessary to bring it into such conformance, the Department and the District shall proceed to adopt the plan and implement the controls as provided in Section 8 of this Act. If the joint action plan is determined to be in nonconformance with Sections 5, 6 and 7 of this Act and agreement on the proposed plan or the proposed controls cannot be reached pursuant to Section 8 of this Act, Sections 9 through 11 of this Act shall apply. Any temporary suspension in the drilling of certain wells that has been imposed in the geographic area involved by a Natural Resources District pursuant to subsection (16) of Section 46-656.28 shall remain in effect until (a) the Department and the District have jointly decided to implement the plan, with or without modifications, and controls have been adopted and have taken effect; or (b) the Interrelated Water Review Board, pursuant to Section 11 of this Act, has adopted an integrated management plan for the basin, sub-basin or reach involved and the controls adopted by the board have taken effect.

(5) If, prior to the effective date of this Act, 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 this Act taking effect, the Department will not need to evaluate the geographic area subject to that plan in its first annual report issued pursuant to Section 1 of this Act. That plan shall, for purposes of this Act, be considered an integrated management plan and thereafter shall be subject to the provisions of Sections 12 and 13 of this Act.

Other modifications to the Groundwater Management and Protection Act needed to provide consistency with the process in Sections 1 through 13 above

- **A definitions Section is being considered—David Cookson is working on that.**
- Modify Section 46-656.01 (defines the Groundwater Management and Protection Act by reference to the Sections included within it) to delete the Sections repealed and to add those added by this legislation.
- Either repeal subsection (5) of Section 46-656.05 or modify it to make it consistent with the authority given the Interrelated Water Review Board in Section 13 to reassign implementation and enforcement authorities to other parties if either DNR or an NRD fail to implement and enforce its part of an integrated management plan.

- Modify subsection (7) of Section 46-656.07 to delete the reference to 46-656.52 and to add references to the authority of the IWRB to designate a management area in accordance with Section 11 of this legislation.
- Amend Section 46-656.19 by adding the following new sentence at the beginning of that Section: "A District may establish a management area (1) to prevent or reduce the depletion of ground water;(2) to prevent or reduce ground water contamination;(3) to prevent or reduce conflicts between ground water users and surface water users or other disputes involving the use of hydrologically connected surface water and groundwater; or (4) to accomplish any two or more of such purposes in the same geographic area." Also, the first sentence now in Section 46-656.19 needs to be modified by inserting "pursuant to this Section and Sections 46-656.20 and 46-656.21" after "management area" to make it clear that the management plan does not have to be amended if the management area is being adopted in accordance with the joint integrated management planning process provided for in Sections 1 through 13 of this legislation. That would be consistent with similar language added to Section 46-656.12 by LB619 in the 2003 legislative session.
- Delete subsection (9) of Section 46-656.25. That subsection, which prevents consideration of instream flow appropriations when conflicts between ground water users and surface water appropriators are being considered, is inconsistent with Sections 1 through 13 of this legislation.
- Repeal Section 46-656.28.
- Repeal Sections 46-656.49 through 46-656.61.
- Either repeal or modify Section 46-656.63 (dealing with penalties) or modify it to be consistent with Section 46-656.10 as modified by LB30 in the 2003 legislative session.