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Subject: Latest Draft of Municipal Water Legislation

Attached you will find the latest draft of the municipal water law legislation.

Lash

12/21/2005

DNR 014471

TASK FORCE MUNICIPAL SUBCOMMITTEE/LEAGUE OF MUNICIPALITIES
PROPOSAL (12-19-05)

Nebraska Revised Statutes § 46-740. Add new subsection (3), (4) and (5).

(3) Unless established prior to November 1, 2005, no integrated management plan, rule or order shall limit the use of ground water by a municipality, within an area designated by the department as fully- or over-appropriated, until January 1, 2026 *except* as specified in this section.

(A) Any allocations to a municipality that have been made as of November 1, 2005 of this act shall remain in full force and effect unless changed by the appropriate natural resources district.

(B) For any municipality that has not received an allocation, the minimum annual allocation may be the greater of either: (1) the amount of ground water authorized by a permit issued pursuant to Neb. Rev. Stat. § 46-638 et seq.; or (2) the commercial and industrial uses as described below *plus* a per capita allowance.

(1) The per capita allowance shall be based on the location of the municipality, increasing in equal increments from east to west and shall not be less than 200 gallons per person per day at 95°19'00" longitude and not less than 250 gallons per person per day at 104°04'00" longitude. Persons served by a municipality outside of its corporate limits shall be considered part of the municipality's population provided such service begins prior to January 1, 2026.

NOTE: the word "governmental" was in the previous draft to the preceding section to accommodate uses such as colleges, universities, prisons, system maintenance and other public uses that do not fall within traditional definitions of commercial, domestic and industrial. Concerns were raised about using the word "governmental" and it was suggested that such uses do fall within the traditional definitions. Parties should consider this issue to determine whether the issue is to be addressed.

(2) Prior to January 1, 2026, any ^{new} or expanded single commercial or single industrial development served ^{by} any municipality within the fully- or over-appropriated area that, after the effective date of this provision, commences water use resulting in the consumptive use of water in amounts greater than 25,000,000 gallons annually, ~~may be subject to controls adopted pursuant to~~

~~Neb. Rev. Stat. § 46-715.~~

shall be subject to 46-715 and may be subject to NRD rules.

(C) Prior to January 1, 2026, increases in the consumptive use of water by a municipality that result in a decrease in streamflow shall be addressed pursuant to controls and/or incentive programs adopted pursuant to Neb. Rev. Stat. § 46-715. Any conservation of water or reduction in irrigated acres associated with municipal, industrial and commercial growth during the period between the

ground water?

effective date of this provision and January 1, 2026 shall accrue to the benefit of the natural resources district within which such municipality is located.

(D) To qualify for the exemption specified in subsection (3) of this section, all municipalities of the first class and/or and larger shall file with the department and natural resources district a conservation plan as presently required by the Department of Health and Human Services pursuant to Neb. Rev. Stat. § 71-5304(e). Municipalities smaller than cities of the first class shall not be required to submit a plan to be exempt from water use limitations.

3, above

(4) After January 1, 2026, the base amount for an annual allocation to a municipality shall be determined as the greater of either (1) the amount of water authorized by a permit issued pursuant to Neb. Rev. Stat. § 46-638 et seq.; or (2) the commercial and industrial uses as of January 1, 2026 that are specified in subsection (B) of this subsection ~~plus~~ the per capita allowance specified in subsection (B) of this section. Each municipality may be subject to controls adopted pursuant to Neb. Rev. Stat. § 46-715 for amounts in excess of the allocations specified herein.

(3) above

(5) Unless established by a natural resources district prior to the effective date of this provision, no integrated management plan, rule or order shall limit the use of ground water by a non-municipal commercial or industrial water user within an area designated by the department as fully- or over-appropriated, until January 1, 2026 *except* as specified in this section.

(A) Prior to January 1, 2026, the minimum annual allocation for a non-municipal commercial or industrial user shall be the greater of either: (1) the amount specified in a permit issued pursuant to Neb. Rev. Stat. § 46-675 et seq.; or (2) the amount necessary to achieve the commercial or industrial use including all new or expanded uses that consume less than 25,000,000 gallons annually. Any such increases shall be subject to the controls and/or incentive programs adopted pursuant to Neb. Rev. Stat. § 46-715.

(B) Any increase in consumptive use of water greater than 25,000,000 gallons annually by a new or expanded non-municipal commercial or industrial user within a fully- or over-appropriated area that result in a decrease in streamflow shall be subject to the controls and/or incentive programs adopted pursuant to Neb. Rev. Stat. § 46-715.

(C) After January 1, 2026, the base amount for an annual allocation to a non-municipal commercial or industrial user within a fully- or over-appropriated area shall be the amount specified in (A) and/or (B) of this subsection.

New (D) Any conservation of water or reduction in irrigated acres associated with non-municipal industrial and/or commercial growth during the period between the effective date of this provision and January 1, 2026 shall accrue to the benefit of the natural resources district within which such user is located.

ground water