

Required Components of a Basin-Wide Plan

Nebraska Revised Statutes § 46-755 (Reissue 2016)

GOALS AND OBJECTIVES

46-755 (4) A basin-wide plan shall (a) have 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) ensure that compliance with any interstate compact or decree or other formal state contract or agreement or applicable state or federal law is maintained, and (c) set forth a timeline to meet the goals and objectives as required under this subdivision, but in no case shall a timeline exceed thirty years after April 17, 2014.

46-755 (5)(b) ...measurable hydrologic objectives...

- Sustain a balance between supply and use and associated economic impact.
- Comply with state and federal laws.
- 30 year maximum plan timeline.

METHODOLOGY

46-755 (5)(a) A basin-wide plan developed under this section shall utilize the best generally-accepted methodologies and available information, data, and science to evaluate the effect of existing uses of hydrologically connected water on existing surface water and ground water users. The plan shall include a process to gather and evaluate data, information, and methodologies to increase understanding of the surface water and hydrologically connected ground water system within the basin, subbasin, or reach and test the validity of the conclusions, information, and assumptions upon which the plan is based.

- Use best methods and available data.
- Increase understanding of hydrologically connected water.
- Evaluate the plan.

TIMELINE

46-755 (5)(b) A basin-wide plan developed under this section shall include a schedule indicating the end date by which the stated goals and objectives are to be achieved and the management actions to be taken to achieve the goals and objectives. To ensure that reasonable progress is being made toward achieving the final goals and objectives of the plan, the schedule shall also include measurable hydrologic objectives and intermediate dates by which the objectives are expected to be met and monitoring plans to measure the extent to which the objectives are being achieved. Such intermediate objectives shall be established in a manner that, if achieved on schedule, will provide a reasonable expectation that the goals of the plan will be achieved by the established end date.

- Schedule of dates to measure progress toward objectives and goals.

EVALUATION

46-755 (5)(d) Within five years after the adoption of the basin-wide plan, and every five years thereafter, the department and affected natural resources districts shall conduct a technical analysis of the actions taken in a river basin to determine the progress towards meeting the goals and objectives of the plan. The analysis shall include an examination of (i) available supplies, current uses, and changes in long-term water availability, (ii) the effects of conservation practices and natural causes, including, but not limited to, drought, and (iii) the effects of the plan in meeting the goal of sustaining a balance between water uses and water supplies. The analysis shall determine if changes or modifications to the basin-wide plan are needed to meet the goals and objectives pursuant to subdivision (4)(a) of this section. The department and affected natural resources districts shall present the results of the analysis and any recommended modifications to the plan at a public meeting and shall provide for at least a thirty-day public comment period before holding a public hearing on the recommended modifications. The department shall submit a report to the Legislature of the results of this analysis and the progress made under the basin-wide plan. The report shall be submitted electronically. Any official participant or stakeholder may submit comments to the department and affected natural resources districts on the final basin-wide plan adopted by the department and affected natural resources districts, which shall be made a part of the report to the Legislature

- Perform an evaluation every five years and determine if changes to the plan are needed.

DRAFT Example Basin-Wide Plan Table of Contents

1. Introduction
 - a. Authority and effective date
 - b. Background, purpose, and intent
 - c. Integrated management planning process or framework
 - i. Stakeholder process
 - ii. Meetings
 - iii. Parties to the plan
2. Plan Area
 - a. Map
 - b. Land use
 - c. Local hydrology
 - d. Surface water
 - e. Groundwater
3. Goals and Objectives
 - a. Timeline
4. Actions Items and Controls
 - a. Action items for each of the goals
 - b. Surface water controls
 - c. Groundwater controls
5. Incentive Programs
6. Monitoring
 - a. Tracking and reporting
 - b. Five Year Review and Evaluation
7. Modifications to the plan
8. Information considered during plan development
 - a. Data and methods
9. Definitions or Glossary of Terms

Required components are in blue font

Additional components are in black font

DRAFT plan language: areas of agreement

Based on areas of agreement as voted on at August 2016 Stakeholder Advisory Committee meeting

Goal 1: Maintain Nebraska's compliance with the Republican Basin Compact and applicable state laws	
Objectives	Action Items
1.1. Coordinate basin-wide plan management actions with Nebraska's Compact compliance efforts	1.1.1. Review each basin-wide plan management action prior to implementation to ensure it does not negatively impact efforts to achieve Compact compliance in the most efficient and cost-effective way practicable and adherence to state laws
	1.1.2. Determine appropriate offsets for any basin-wide plan action that would increase Nebraska's consumptive use under the Compact

Goal 2: Positive public relations, including information sharing, within and outside the Basin	
Objectives	Action Items
2.1. Improve information sharing with decision-makers about solutions formed within the Basin	2.1.1. Use existing resources to share information about Basin progress and activities with outside entities.
	2.1.2. Educate civic leaders and the public on implementation efforts within the Basin.

Goal 3: Increase certainty for long range planning, decrease conflicts between water users, and reduce the need for regulatory actions	
Objectives	Action Items
3.1. Increase water supply through interbasin transfers during periods of high flows	3.1.1. For each new project, study hydrologic and regulatory feasibility and evaluate potential economic and environmental impacts
	3.1.2. Where feasible and beneficial, apply for necessary permits, establish new or utilize existing infrastructure, then begin operations.
	3.1.3. Operate interbasin transfers as opportunities arise.
3.2. Improve water availability through conjunctive management projects within the Basin, such as: 1. Canal recharge 2. Reservoir recharge 3. Augmentation projects	3.2.1. For each new project, conduct a feasibility study and evaluate potential economic and environmental impacts.
	3.2.2. Where feasible and beneficial, apply for necessary permits, establish new or utilize existing infrastructure, then begin operations.
	3.2.3. Operate conjunctive management projects as opportunities arise.
	3.2.4. Where appropriate, work with partners such as the Bureau of Reclamation to identify, evaluate, and operate potential new projects.

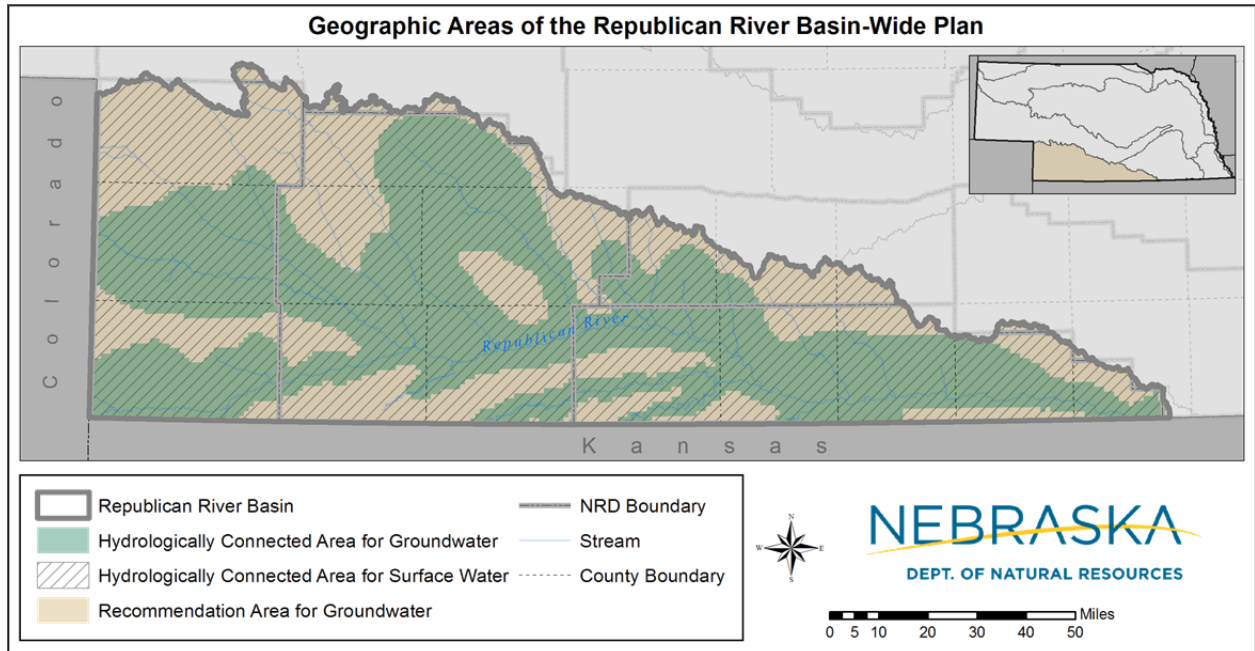
Goal 4: Basin-wide coordination of locally controlled water management to maximize Nebraska's beneficial consumptive use of its portion of the water supply
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Actions agreed upon by vote at August 2016 Stakeholder Advisory Committee meeting		Relationship to draft plan language
There will be language in the plan to address these challenges. NeDNR and the NRDs will draft language that will be brought back to the stakeholders for consideration and a vote.		Goals (Goal), objectives (Obj.), and action items (Act.)
INCLUDE IN THE PLAN	1. Inequitable distribution of compact compliance burden	
	The Plan will include opportunities to increase water supplies so that the burden of compact compliance is less reliant on regulatory actions on the water users across the basin.	Goal 3, Obj. 3.1, Obj. 3.2
	c. State Plan for recharge to aquifer	
	e. Excess water in the Platte needs to be transferred to the Republican	
	i. When there's excess water in the Platte and we need water here, why is the burden on wells and surface water	
	The Plan will follow the law while minimizing the burden on water users.	Goal 1, Obj. 1.1, Act. 1.1.1, Act. 3.1.1
	g. Should have a plan to avoid 2 year compliance test	
	The Plan will ensure compact compliance and will consider strategies to maximize Nebraska's beneficial consumptive use of its portion of the water supply	Goal 1, Obj. 1.1, Act. 1.1.1, Goal 4
	5. Compact compliance and accounting always a challenge	
	a. Must comply	
	b. Can we build a reserve?	
	The Plan will include solutions that come from within the basin .	Goal 2, Obj. 2.1, Obj. 3.2, Goal 4
	6. Someone else will fix our problem (east) if we don't fix it ourselves	
	a. Lincoln is watching us	
	b. This is a basin problem, there needs to be some compromise here	
	c. We've gotten more efficient and reduced our pumping. So we're not just paying \$10/acre. I've paid \$1000 to be more efficient	
	The Plan will include solutions that increase certainty for agricultural planning.	Goal 3, Obj. 3.1, Obj. 3.2
	7. Lack of certainty for agricultural planning	
	a. Certainty of knowing surface water receives an allocation. Notice so we can plan long range	
	b. Reliability for planning and community viability	
	c. How many surface H2O acres have underground well? Did original federal permits guarantee a certain supply of H2O	
	The Plan will include consideration of the economic impacts of proposed solutions.	Act. 3.1.1, Act. 3.2.1
	8. Loss of economic returns on investments in irrigated agriculture	
	a. Effects on economy as a whole	
b. This is a likely reality if based on false or absent water supply		
c. H2O = life		

Draft Geographic Areas of the Republican River Basin-Wide Plan

As discussed by NeDNR and the NRDs at the September and October 2016 Coordination Meetings

The basin-wide plan will examine and make recommendations for the entire Basin. Surface water controls, funding, and studies may apply specifically to the hydrologically connected area for surface water. Groundwater controls, funding, and studies may apply specifically to the hydrologically connected area for groundwater, the extent of which is defined by the Nebraska Department of Natural Resources (as shown in the figure below).



Nebraska Revised Statute § 46-755(1)

"If a river basin as described in subdivision (2)(a) of section 2-1504 includes three or more natural resources districts that, pursuant to subdivision (1)(a) of section 46-715, have been or are required to develop an integrated management plan for all or substantially all (eighty-five percent) of the district, such natural resources districts shall, jointly with the department and the natural resources districts within the same basin, develop and adopt a basin-wide plan for the areas of a basin, subbasin, or reach determined by the department to have hydrologically connected water supplies, except that any natural resources district that has developed and implemented a basin-wide plan pursuant to subsection (5) of section 46-715 shall not be affected by this section. If deemed appropriate by the department and the affected natural resources districts, the basin-wide plan may combine two or more river basins."

Department of Natural Resources Rules of Practice and Procedure, Title 454 Neb. Admin. Code. Chapter 24, § 001.02

"The geographic area within which the Department preliminarily considers surface water and ground water to be hydrologically connected for the purpose prescribed in Section 46-713(3) is the area within which pumping of a well for 50 years will deplete the river or a base flow tributary thereof by at least 10 percent of the amount pumped in that time.

Legal Opinion

Question:

Does *Neb. Rev. Stat.* §46-755 allow for the development of a basin-wide plan to include surface and groundwater uses within the entire Republican River Basin?

Answer:

Yes

Statutes Discussion:

Neb. Rev. Stat. §46-755(1) specifies that identified "...natural resources districts shall, jointly with the department and the natural resources districts within the same basin, develop and adopt a basin-wide plan for the areas of a basin ... determined by the department to have hydrologically connected water supplies ..." Hydrologically connected is defined in Nebraska Administrative Code Title 457 chapter 24 001.02 for purposes of 46-713(3) as "...the area within which pumping of a well for 50 years will deplete the river or a base flow tributary thereof by at least 10 percent of the amount pumped in that time." This definition would appear to limit the area for which ground water regulation would be necessary. However, *Neb. Rev. Stat.* §46 755(4) states: "A basin-wide plan shall (a) have 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* [emphasis added]...can be achieved and maintained for both the near term and the long term, (b) ensure that compliance with any interstate compact or decree or other formal state contract or agreement or applicable state or federal law is maintained, ..."

Additionally, the language in *Neb. Rev. Stat.* §46-755 is very similar to language found in 46-715 (1) and (2). However, 46-715 (2) includes "... The applicable natural resources district may decide to include *all* [emphasis added] water users within the district boundary in an integrated management plan." Similar language is not found in 46-755. However, *Neb. Rev. Stat.* §46-715(2) was amended by LB1098 by adding the requirement to amend an existing integrated management plan if necessary by including regulating existing ground water uses that existed at the time of the determination of a fully appropriated basin *if that is necessary to carry out the goals and objectives of a basin-wide plan pursuant to 46-755*. The adoption of this provision demonstrates the critical importance of the role played by the goals and objectives of the basin-wide plan. A purpose of the goals and objectives is sustaining a balance between water uses and water supplies.