

NEBRASKA ADMINISTRATIVE CODE

TITLE 457 – DEPARTMENT OF NATURAL RESOURCES  
RULES FOR SURFACE WATER

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### Title 457 - DEPARTMENT OF NATURAL RESOURCES RULES FOR SURFACE WATER

#### Chapter 24 - DETERMINATION OF FULLY APPROPRIATED BASINS, SUB-BASINS OR REACHES

001 FULLY APPROPRIATED. Pursuant to Neb. Rev. Stat. § 46-713(3) (Reissue 2004, as amended), a river basin, subbasin, or reach shall be deemed fully appropriated if the Department of Natural Resources 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.

001.01 For purposes of Section 46-713(3)(a), the surface water supply for a river basin, subbasin, or reach shall be deemed insufficient, if, after considering the impact of the lag effect from existing groundwater pumping in the hydrologically connected area that will deplete the water supply within the next 25 years, it is projected that during the period of May 1 through September 30, inclusive, any irrigation right will be unable to divert sufficient surface water to meet on average eighty-five percent of the annual crop irrigation requirement, or, during the period of July 1 through August 31, inclusive, will be unable to divert sufficient surface water to meet at least sixty-five percent of the annual crop irrigation requirement.

For purposes of this rule, the “annual crop irrigation requirement” will be determined by the annual irrigation requirement for corn. This requirement is based on the average evapotranspiration of corn that is fully watered to achieve the maximum yield and average amount of precipitation that is effective in meeting the crop water requirements for the area.

The availability of stream flow will be based on the percentage of time junior rights were able to divert water during the previous 20 year period and the projected impacts of depletions on stream flow from existing wells over the next 25 years.

In the event that the junior water rights are not irrigation rights, the Department will utilize a standard of interference appropriate for the use, taking into account the purpose for which the appropriation was granted.

Use of the method described in this rule is not intended to express or imply any mandate or requirement that the method used herein must be included in the goals and objectives of any integrated management plan adopted for a river basin, subbasin or reach determined to be fully appropriated under this rule. Further, nothing in this section is intended to express or imply a priority of use between surface water uses and ground water uses.

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% of the amount pumped in that time.

002 INFORMATION CONSIDERED. For making preliminary determinations required by Neb. Rev. Stat. Section 46-713 (Reissue 2004, as amended) the Department will use the best scientific data and information readily available to the Department at the time of the determination. Information to be considered will include:

Surface water administrative records

Department Hydrographic Reports

Department and United States Geological Survey stream gage records

Department's registered well data base

Water level records and maps from Natural Resources Districts, the Department, the University of Nebraska, the United States Geological Survey or other publications subject to peer review

Technical hydrogeological reports from the University of Nebraska, the United States Geological Survey or other publications subject to peer review

Ground water models

Current rules and regulations of the Natural Resources Districts

The Department shall review this list periodically, and will propose amendments to this rule as necessary to incorporate scientific data and information that qualifies for inclusion in this rule, but was not available at the time this rule was adopted.