





DEPARTMENT OF NATURAL RESOURCES

CONCEPT PAPER FOR SURFACE WATER AND GROUND WATER SUBCOMMITTEE

Points of Diversion for Expedited Transfers

April 2007

STATUTE REFERENCE: § 46-291(1)(e) the transfer will not result in a change in the point of diversion.

CONCEPT: We are finding many instances where the farmer comes in to do the paper work on a transfer that has occurred and the point of diversion where he is pumping is not where the approved point of diversion was located. In many of these instances, there is no intervening appropriator, no new source of water from a tributary, drain or return, and we cannot see any harm to any downstream appropriator. Yet under existing law, this person would have to go through a non-expedited transfer and only be able to move the consumptive use portion of the original appropriation.

An example that was before us was a situation where the original appropriation was in one person's name. When that person died, two separate relatives obtained different parts of the same appropriation. The appropriation had only one approved point of diversion. One of the owners wanted his own point of diversion on his own property about a half mile downstream. There were no new sources of surface water and no intervening appropriator's points of diversion. Yet this person lost part of his appropriation because of the existing requirement.

Suggestion is to change law to allow for expedited transfers when there are no intervening points of diversion and no intervening sources of new surface water (we are not talking about return flows or gaining streams) and when the Department finds that the change in point of diversion causes no harm. We could further define the no harm in statute if needed, or could have Department define it by rule.

An example of possible harm is when a person wants to transfer the point of diversion downstream on a senior permit to directly above where a junior permit takes out water and there is insufficient water to satisfy both appropriations at that location.

PROPOSED STATUTORY CHANGES - CLEANUP

46-230(2) Whenever requested by the department, the owner of any appropriation not held by an irrigation district, reclamation district, public power and irrigation district, the U.S. Bureau of Reclamation, a mutual irrigation or canal company, a public water supplier, or a natural resources district shall provide the department with the name, address, and telephone number of any tenant or other person who is authorized by the owner to receive opening and closing notices and other departmental communications relating to the appropriation. Each appropriation owner shall also notify the department any time there is a change in any of such names, addresses, or telephone numbers. Notice of ownership changes may be provided to the department in the manner provided in section 76-2,124 or in any other manner authorized by the department. If notice of an ownership change is provided other than in accordance with such section, the notice shall include such evidence of ownership as the director may require. Notice of all other changes may be provided in any manner authorized by the department. Upon receipt of any new information, the department shall update its records. The department shall not collect a fee for the filing of any such information or for updating its records.

46-297 Any person who has an approved, unperfected appropriation pursuant to Chapter 46, Article 2, may apply to the department for a modification of such permit to include intentional underground water storage associated with the appropriation. The application shall be made on a form prescribed and furnished by the department without cost to the applicant. Upon receipt of such an application, the department shall proceed in accordance with rules and regulations adopted and promulgated by the department, subject to section 46-226.02.

46-637 The use of water described in section 46-636 may only be made after securing a permit from the Department of Natural Resources for such use. In approving or disapproving applications for such permits, the Director of Natural Resources shall take into account the effect that such pumping may have on the amount of water in the stream and its ability to meet the requirements of appropriators from the stream. This section does not apply to (1) water wells located within fifty feet of the bank of a channel of any natural stream which were in existence on July 1, 2000, and (2) replacement water wells as defined in section 46-602 that are located within fifty feet of the banks of a channel of a stream if the water wells being replaced were originally constructed prior to July 1, 2000, and were located within fifty feet of the bank of a channel of any natural stream.

~~46-2111 (1) The Legislature finds that instream appropriations for recreation, fish, and wildlife should consider preferences among different uses and that all appropriations should consider the possible legal relationship between surface water and ground water. Thus the Legislature finds that, since such issues have not been fully considered, the director shall not grant any permit to appropriate water, except as specified in subsection (2) of this section, before January 1, 1997, for any application pending on or filed after June 2, 1995.~~

~~(2) The director may grant applications for (a) appropriations for flood control or sediment control structures which will not make or cause to be~~

~~made any consumptive use of the impounded water, (b) applications for temporary appropriations for public construction that are five cubic feet per second or less, or (c) applications by public water suppliers for induced ground water recharge appropriations pursuant to sections 46-233 to 46-238.~~

~~46-692 Wells; measuring devices; cost share assistance. (1) For purposes of this section:~~

~~(a) Measuring device means any accurate method used to measure total volume of water pumped or diverted annually; and~~

~~(b) Well means a water well to be used for other than domestic purposes which is capable of pumping more than fifty gallons per minute and which is located in the alluvial aquifer of the Republican River Basin as determined and delineated on a map provided by the Department of Natural Resources.~~

~~(2) It is the intent of the Legislature to appropriate five hundred thousand dollars each year for FY 1998-99, FY 1999-00, and FY 2000-01 for a cost share program to install measuring devices on wells in the alluvial aquifer of the Republican River Basin and on surface water diversion works from the Republican River and its tributaries. The money shall be appropriated to a separate account within the Nebraska Soil and Water Conservation Fund for cost sharing on the purchase and installation of measuring devices if every natural resources district covering any portion of the alluvial aquifer of the Republican River Basin has established by ninety percent of active eligible wells by June 1, 2001, and adopts and promulgates rules and regulations within a reasonable time governing the program.~~

~~(3) To be eligible for cost share assistance under this section, a surface water diversion works must have a valid surface water appropriation and a well must meet the definition of a well in subsection (1) of this section and the measuring device shall be purchased, installed, and operational by June 1, 2001. If eligible for cost sharing under this section, fifty percent of the cost of purchase and installation of the measuring device, up to a maximum state share of six hundred dollars per well or diversion works, may be provided through the cost share program.~~

~~(4) Any owner or operator of a well upon which cost share funds are expended under this section shall be responsible for reporting water use to the natural resources district in which the well is located in a manner prescribed by the natural resources district. Any owner or operator of a surface water diversion works upon which cost share funds are expended under this section shall be responsible for reporting water use to the Department of Natural Resources in a manner prescribed by the department.~~

~~(5) If the requirements of subsections (2) and (3) of this section have not been met by June 1, 2001, the natural resources district shall remit to the state an amount equal to the cost share assistance provided to the natural resources district under such subsections. Any owner or operator of a well upon which cost share funds are expended shall not be responsible for any repayment requirements under this section.~~