

TITLE 457 - DEPARTMENT OF NATURAL RESOURCES

CHAPTER 9 - TRANSFERS AND CHANGES

002 NON EXPEDITED CHANGES

002.01 Applications:

002.01A A separate application on a form provided by the Department must be completed and filed:

002.01A1 For each appropriation to be modified.

002.01A2 For each appropriator.

002.01A3 For each type of use proposed.

002.01A4 For each point of diversion or stream reach proposed, unless the diversion proposed is a moveable pump, and there are multiple sites proposed with no intervening diversions or new sources of water.

002.01A5 For each different lessee.

002.01A6 For each change in type of appropriation.

002.01B Each application must be accompanied by a fee as required by Nebraska Revised Statutes Section 33-105(8).

002.01C Applicant must be the appropriator of record as shown in the Department's records.

002.01D Temporary Changes. If a change is approved as temporary, the duration of the use will be no less than one year and no more than thirty years. Temporary changes shall expire on September 30 of the last year of the proposed temporary change. If during the term of the temporary change, the appropriator and the lessee wish to have the appropriation revert back to the original place of use, a new change application shall be filed and processed. The appropriator of record may request a temporary change be renewed or otherwise extended at any time following the midpoint of the transfer or change term by filing a petition for renewal in the Department along with a copy of a new agreement signed by the parties. Such petition may not include changes to the original application except for the date of expiration of the change and the names of the parties involved, if applicable. The Department will process such petition in the same manner that it processed the original application. The renewal or extension period may not exceed 30 years from the date of approval of the petition.

002.01E Applications for change in type of appropriation may only be submitted for the following:

002.01E1 Natural flow appropriation for direct out-of-stream use to a natural-flow appropriation for aboveground reservoir storage.

002.01E2 Natural flow appropriation for direct out-of-stream use to a natural-flow appropriation for intentional underground water storage.

002.01E3 Natural flow appropriation for intentional underground water storage use to a natural-flow appropriation for direct out-of stream use.

002.01E4 Natural flow appropriation for intentional underground water storage use to a natural-flow appropriation for aboveground reservoir storage.

002.01E5 Natural flow appropriation for direct out-of-stream use to an instream appropriation subject to Nebraska Revised Statutes Sections 46-2,107 to 46-2,119.

002.01E6 Natural flow appropriation for aboveground reservoir storage use to an instream appropriation subject to Nebraska Revised Statutes Sections 46-2,107 to 46-2,119.

002.01E7 Natural flow appropriation for intentional underground water storage use to an instream appropriation subject to Nebraska Revised Statutes Sections 46-2,107 to 46,2,119.

002.01E8 Natural flow appropriation for direct out-of-stream use to induced ground water recharge.

002.01E9 Natural flow appropriation for aboveground reservoir storage use to induced ground water recharge.

002.01E10 Natural flow appropriation for intentional underground water storage use to induced ground water recharge.

002.01E11 Natural flow appropriation for incidental underground water storage, whether or not previously quantified, may be separated from the direct-use portion of the appropriation and may be changed to a natural-flow appropriation for intentional underground water storage at the same location.

002.01E12 Storage use appropriation for incidental underground water storage, whether or not previously quantified, may be separated from the direct-use portion of the appropriation and may be changed to a storage-use appropriation for intentional underground water storage at the same location.

002.01F Applications may not be submitted to change the location, change the type of appropriation, or change the purpose of use of any induced ground water recharge appropriation.

- a. 002.01G For purposes of Nebraska Revised Statutes 46-290(5), beneficial use for instream uses shall include: Water Quality Maintenance
- b. Water necessary for compliance with compacts, decrees or other state contracts.

002.01H Applications shall include the information enumerated in Nebraska Revised Statutes Section 46-290(1)(b) and the following:

002.01H1 The amount of water (both the instantaneous diversion rate and the total annual volume) requested to be transferred to the new location of use, the new type of use, or the new type of appropriation.

002.01H2 Names, addresses, and telephone numbers of all persons who should receive legal notices or orders concerning the appropriation and their association with the appropriation.

002.01H3 Historical water use made of the appropriation for each of the last five years, including:

002.01H3a If applicable, the number of acres irrigated.

002.01H3b The maximum diversion rate. If this rate varied from month to month, the maximum diverted on a monthly basis for each of the five years shall be provided.

002.01H3c The total annual volume diverted detailed on a monthly basis. The consumptive use which has occurred in the last five years. If the last five years are not representative of the consumptive use which has occurred under the appropriation during the last 20 years, additional information on such use may be provided along with an explanation as to why the last five years does not accurately represent the use. An applicant may provide actual data and analysis or can ask the Department to use standard methods as described in this subsection. In situations where there are multiple appropriations at the current location of use, sufficient information must be provided to allow for a determination of how much water was provided for use from each appropriation on a monthly basis for each of the last five years.

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002.01H3d If the appropriation has not been used during the five years prior to the filing of the application, information shall be provided as to the last use of water under the appropriation and any excusable reasons for nonuse that may apply as described in Nebraska Revised Statutes Section 46-229.04.

002.01H4 For temporary transfers, copies of proposed agreements or leases shall accompany the application forms. Such proposed agreements must be fully executed by the parties, and contain a provision conditioning effectiveness on the Department's approval of the transfer. For water appropriations held by an irrigation district, reclamation district, public power and irrigation district, or mutual canal or irrigation company, copies of leases or agreements shall be signed by all the landowners whose land is involved in the transfer and by the proper district or company official.

002.01H5 For applications filed by irrigation districts, reclamation districts, public power and irrigation districts, or mutual canal companies, which request changes to appropriations that have attached to individual landowner(s) property, written documentation indicating the names, addresses, and signatures of the landowners agreeing to have the water appropriation transferred off of their land, to have the type of use changed, or to have the type of appropriation changed, must be included.

002.01H6 For applications filed by an appropriator of record that is not the landowner (and is not an irrigation district, reclamation district, public power and irrigation district or mutual canal company) the name(s), address(es), and signature(s) of the landowner(s) must be included.

002.01H7 If facilities are used that are not owned or operated by the applicant at either the current place of use or the proposed place of use, documentation must be provided that the owner or operator of the facilities agrees to the transfer.

002.01H8 Sufficient information for the Director to make a determination of public interest as described in Rule \_\_\_\_ .

002.01H9 Mitigation of anticipated adverse impacts. Sufficient information must be provided to indicate the proposed project will not diminish the supply of water available for or otherwise adversely affect any other water appropriator and will not significantly adversely affect any riparian water user who files an objection in writing.

002.01H10 For applications for irrigation projects where, if approved, the total of all appropriations allowed on one tract of land would exceed the rate of one-seventieth of a cubic foot per second per acre, or would exceed three acre-feet

per acre annually, information on the type of soil and type of crop at the proposed location.

002.01H11 If the application requests a change in location of use for incidental underground water storage outside the approved boundary, sufficient hydrologic information to identify the extent and scope of the underground water storage and naturally occurring ground water, including but not limited to:

002.01H11a A map showing the new boundary of the proposed area of recharge. The total number of acres within the boundary shall be labeled.

002.01H11b A water table map showing current water levels.

002.01H11c A narrative evaluating the geologic and hydrologic conditions of the proposed recharge area.

002.01H11d Cross sections of the recharge area showing the geologic and hydrologic conditions.

002.01H11e A list of the registered wells within the proposed recharge area.

002.01H11f A map showing the location of registered wells within the proposed recharge area.

002.01H11g A map showing the location of existing or proposed surface water facilities, including diversion structures, canals, pipelines and recharge pits.

002.01H11h A narrative description of the actual or proposed operation of the surface water project including diversions, deliveries and returns to the river.

002.01H12 Whether and under what conditions other sources of water are available for the current approved use and the proposed use.

002.01H13 If the proposed change is of a storage-use appropriation and the owner of that appropriation is different from the owner of the associated storage appropriation, a written agreement signed by the owner of the storage appropriation approving the proposed project.

002.01H14 If the proposed change is of a natural-flow or storage-use appropriation for incidental underground water storage to an intentional underground water storage at the same location, information concerning the

water that was consumed prior to the change and the amount of water that will be consumed after the change.

002.01H15 Whether the lands proposed for use have been cultivated or contain native grass.

002.01H16 The present point of diversion or stream reach and, if applicable, the proposed point of diversion or stream reach.

002.01H17. If the application proposes to change the point of diversion upstream or downstream of another appropriator's diversion location, or if the application proposes to move from one stream or tributary to another stream or tributary, the Applicant shall provide with the application:

002.01H17a Written agreement from each appropriator located between the present point of diversion and the proposed point of diversion, or written agreement of each appropriator who might be affected by such move, or

002.01H17b A detailed analysis of how the Applicant proposes to mitigate impacts of such change in location of diversion.

002.01H18. To satisfy the provisions of Neb. Rev. Stat. §46-294(e) when applicable, the applicant shall state whether they want the Department to use its methods for determination of consumptive use, or shall provide an analysis of consumptive use; or shall affirm that the project is to transfer an irrigation appropriation to another location for irrigation and the number of acres to be irrigated will not increase after the transfer, and therefore, no consumptive use calculation is required. See Rule????? for an explanation of the Department's methods of determining consumptive use when no analysis is provided by the Applicant.

02.02.1.1 For Irrigation uses:

02.02.1.2 For Municipal uses:

02.02.1.3 For industrial uses:

02.02.1.4 For domestic uses:

02.02.1.5 For storage appropriations: The presumptive consumptive use from a storage reservoir shall be the median net evaporation off of the water surface of the reservoir in each area of the state for the last 20 years.

002.01I Applications shall be accompanied by current legible aerial photograph(s) marked to indicate the location of the proposed use.

02.03 Review – An application that is incomplete or incorrect shall be returned to the applicant for correction. The corrected application must be refiled in the Department within 90 days of the date it is returned to the applicant. Failure to return the corrected application within 90 days shall cause the application for non expedited change to be dismissed.

02.03.1 Department staff will conduct a field investigation .

02.03.2 Department staff will consult with the Nebraska Game and Parks Commission under the provisions of Neb. Rev. Stat. § 37-807.

002.03.3 Applications shall be reviewed to determine whether they meet the requirements for approval stated in Neb. Rev. Stat. § 46-294.

002.03 Notice –Notice of the application shall be provided in accordance with Neb. Rev. Stat. § 46-291(2)(3)and (4). Notice of the application shall also be provided to:

002.03a the county or counties where the appropriation is appurtenant and where the appropriation is proposed to be used,

002.03b Nebraska Department of Environmental Quality,

002.03c the Nebraska Health and Human Services System, and

002.03d the Nebraska Game and Parks Commission.

002.04 County Comments - Such filings shall include the following:

002.04a The name and address of the County Board

002.04b Statements concerning the economic impact on the county and any substantiating information necessary

002.04c The name, address, and telephone number of the person or persons who, if required, should be called as witnesses in a hearing or proceeding to explain such information provided.

002.04e The signature of the Chairperson of the Board or of the County Clerk

002.04f The application number of the action the comments are discussing.

002.05 Agency Comments - Such filings shall include the following:

002.05a The name and address of the agency

002.05b Statements concerning the environmental impact, social impact or economic impact of the proposed project as it relates to programs administered by the agency.

002.05c The name, address, and telephone number of the person or persons who, if required, should be called as witnesses in a hearing or proceeding to explain such information provided.

002.05d The signature and title of the agency employee responsible for the filing

002.05e The application number of the action the comments are discussing.

002.06 Hearings-A hearing may be held on the Department's motion or in response to objections or comments received pursuant to 46-291 (4) or (5). If the hearing is held on the Department's own motion, costs of the hearing will be borne by the Department. If the hearing is held at the request of a party, costs of the hearing will be borne by the parties in accordance with §61-206.

002.07 Decision.

002.07a To make a public interest determination as required in Nebraska Revised Statute 46-294(1)(k)(1), the Director shall determine whether the benefits of the proposed transfer outweigh any adverse impacts that might occur giving consideration to the economic, social and environmental impacts and whether and under what conditions other sources of water are available for the uses to be made of the appropriation after the proposed transfer or change.

002.07b A written order shall be issued which shall contain findings related to the requirements of §46-294.

002.08 Map - A final project map drawn according to Department Rules, Title 457, Chapter 10 must be submitted within six months of any approval. Failure to file a final map will cause the original approval to be negated.

002.09 Filing Temporary Transfer Decisions in County – Copies of the original appropriation permit documents, the agreement by which the temporary transfer is to be effected, and the written decision approving the temporary transfer is required to be filed with the county clerk or register of deeds in the county where the appropriation was established prior to transfer within 60 days from issuance of the order of approval. The applicant shall pay the County for the costs of filing and indexing such documents to the land subject to the appropriation prior to the transfer. Within 90 days of the issuance of the order of approval, the applicant shall file proof of the county filing in the Department. Failure to provide proof of filing shall cause the prior approval to be negated.

002.10 Appeal – If the decision was issued at the conclusion of a hearing, parties to the hearing may request a rehearing as described in the Department Rule Title 454, Chapter 11 or may appeal to the Nebraska Court of Appeals as described in 61-207. Parties should not assume that filing a request for rehearing extends the deadline for appeal to the Court of Appeals. If the decision was based on the application, without a hearing, interested persons may request a hearing as described in the Department's Rules of Practice and Procedure, Title 454, Chapter 9.