

LEGISLATIVE BILL 21

Approved by the Governor February 25, 1983

Introduced by Schmit, 23

AN ACT to amend section 46-122, Reissue Revised Statutes of Nebraska, 1943, relating to surface water and irrigation; to modify provisions relating to certain water rights; to authorize a change of location; to provide duties; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 46-122, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-122. It is hereby expressly provided that all water distributed for irrigation purposes shall attach to and follow the tract of land to which it is applied, unless a change of location has been approved pursuant to section 6 of this act.

The ; Provided, however, the board of directors may by the adoption of appropriate bylaws by-laws provide for the suspension of water delivery to any land in such district upon which the irrigation taxes levied and assessed thereon shall remain due and unpaid for two years. It shall be the duty of the directors to make all necessary arrangements for right-of-way for laterals from the main canal to each tract of land subject to assessment, and when necessary the board shall exercise its right of eminent domain to procure right-of-way for the laterals and shall make such rules in regard to the payment for such right-of-way as may be just and equitable.

Sec. 2. Any person having a permit to appropriate water for beneficial purposes issued pursuant to Chapter 46 who desires to transfer the use of such water appropriation to a different location within the same river basin than that specified in the permit shall apply for approval of such change to the Department of Water Resources.

Sec. 3. Upon receipt of an application filed under section 2 of this act, the Director of Water Resources shall cause a notice of such application to be published at the applicant's expense at least once a

week for three weeks in at least one newspaper of general circulation in each county containing lands on which the water appropriation is or is proposed to be located and a newspaper of general circulation in Nebraska.

Such notice shall be published at least once a week for three consecutive weeks, and shall contain a description of the water appropriation, the number assigned such permit in the records of the department, the date of priority, a description of the lands to which such water appropriation is proposed to be applied, and any other relevant information.

The notice shall state that any person may in writing object to and request a hearing on the application at any time prior to the elapse of two weeks from the date of final publication.

Sec. 4. The department may hold a hearing on an application filed under section 2 of this act on its own motion, and shall hold a hearing if requested by any person.

Sec. 5. Any hearing held pursuant to section 4 of this act shall be conducted in accordance with sections 46-209 and 46-210.

Sec. 6. The Director of Water Resources shall approve an application filed pursuant to section 2 of this act if:

(1) The requested change of location is within the same river basin and will not adversely affect any other water appropriator and will not significantly adversely affect any riparian water user who files an objection in writing prior to the hearing;

(2) The requested change will use water from the same source of supply as the current use;

(3) The quantity of water to be transferred to the new location will not exceed the amount consumptively used under the current use;

(4) The water will be applied to a use in the same preference category as the current use, as provided in section 46-204; and

(5) The requested change is in the public interest.

The applicant shall have the burden of proving that the change of location will comply with subdivisions (1) to (5) of this section, except that the burden shall be on the riparian user to demonstrate his or her riparian status and to demonstrate a significant adverse effect on his or her use in order to prevent approval of an application.

In approving an application, the director may impose any reasonable conditions deemed necessary to protect the public interest. An approved change of location shall retain the same priority date as that of the original water right.

Sec. 7. That original section 46-122, Reissue Revised Statutes of Nebraska, 1943, is repealed.