

## LEGISLATIVE BILL 302

Approved by the Governor June 10, 1993

Introduced by Wickersham, 49; Baack, 47; Bernard-Stevens, 42;  
Bohlke, 33; Cudaback, 36; Elmer, 38; Fisher, 35;  
Hillman, 48; Jones, 43; McKenzie, 34

AN ACT relating to water; to amend section 46-229, Reissue Revised Statutes of Nebraska, 1943; to authorize the transfer of certain appropriations as prescribed; to provide procedures for termination of appropriations; to provide a termination date; to repeal the original section; and to declare an emergency.

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

Section 1. Any water appropriation which has not been canceled or annulled and which is attached to a tract of land which has not had water beneficially applied to it for more than three consecutive years may be transferred in accordance with sections 46-288 to 46-294 and shall be exempt from being declared forfeited and annulled or canceled and annulled pursuant to sections 46-229 to 46-229.05 if the tract of land under the appropriation is:

(1) A contiguous parcel of less than twenty acres which, due to its irregular shape or size, is impractical for irrigation or cultivation using modern farming equipment;

(2) A ditch, lateral, canal, or right-of-way therefor;

(3) A public road or public road right-of-way;

(4) A railway or railway right-of-way;

(5) A utility right-of-way;

(6) A shelterbelt or woodlot;

(7) A homestead or farmstead;

(8) A livestock feedlot; or

(9) A tract which has had water under its appropriation beneficially applied to a receiving tract or tracts of the same cumulative acreage or less within the boundaries of an irrigation district, mutual irrigation company, or public power and irrigation district in at least one of the years prior to the effective date of this act, by virtue of an official action taken prior to August 26, 1983, by an irrigation district, mutual irrigation company, public power and irrigation district, or the United States Bureau of Reclamation pursuant to the Federal Reclamation Act of 1902 and the amendments thereto, except that:

(a) The water appropriation may not be transferred unless water has been beneficially applied to the receiving tract or tracts in at least one of the preceding three consecutive years, except as provided in subdivision (9)(b) or (d) of this section;

(b) If the period of nonuse has not exceeded ten

consecutive years, sufficient cause shall be deemed to exist to permit the transfer if such nonuse was the result of one or more of the following:

(i) The receiving tract or tracts of land were placed under an acreage reserve program or production quota program or otherwise withdrawn from use as required for participation in any federal or state programs;

(ii) Federal, state, or local laws, rules, or regulations temporarily prevented or restricted such use;

(iii) The available water supply was inadequate to enable the owner to use the water for a beneficial useful purpose;

(iv) Use of the water was unnecessary because of climatic conditions;

(v) Circumstances were such that a prudent person, following the dictates of good husbandry, would not have been expected to use the water;

(vi) The works, diversions, or other facilities essential to the water were destroyed by a cause not within the control of the owner and good faith efforts to repair or replace the works, diversions, or facilities have been or are being made;

(vii) The owner of the receiving tract or tracts was in active involuntary service in the armed forces of the United States or was in active voluntary service during a time of crisis; or

(viii) Legal proceedings prevented or restricted the use of the water;

(c) If it is determined that water has not been put to a beneficial use on the receiving tract or tracts for more than ten consecutive years, the water appropriation shall not be transferred except as provided in subdivision (9)(d) of this section; or

(d) If it is determined that nonuse on the initial receiving tract or tracts occurred as specified in subdivisions (1) through (8) of this section, the water right may be transferred.

Under no circumstances shall the amount or the rate of diversion be increased above the amount or rate specified for each original appropriation in the records of the Department of Water Resources.

This section shall terminate on December 31, 1996. An appropriation which is the subject of an application to transfer filed after such date may be canceled and annulled for nonuse.

Sec. 2. That section 46-229, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-229. All appropriations for water must be for some beneficial or useful purpose and, except as provided in sections 46-290 to 46-294, when the appropriator or his or her successor in interest ceases to use it for such purpose for more than three consecutive years, the right ceases may be terminated only by the Director of Water Resources following a hearing pursuant to sections 46-229.02 to 46-229.05.

Sec. 3. That original section 46-229, Reissue Revised Statutes of Nebraska, 1943, is repealed.

Sec. 4. Since an emergency exists, this act shall be in full

force and take effect, from and after its passage and approval, according to law.