

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 48**

FINAL READING

Introduced by Stinner, 48.

Read first time January 10, 2019

Committee: Natural Resources

- 1 A BILL FOR AN ACT relating to water; to amend section 46-229.04, Reissue
- 2 Revised Statutes of Nebraska; to change provisions relating to a
- 3 finding of sufficient cause for nonuse of a water appropriation; and
- 4 to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-229.04, Reissue Revised Statutes of Nebraska,  
2 is amended to read:

3 46-229.04 (1) At a hearing held pursuant to section 46-229.03, the  
4 verified field investigation report of an employee of the department, or  
5 such other report or information that is relied upon by the department to  
6 reach the preliminary determination of nonuse, shall be prima facie  
7 evidence for the forfeiture and annulment of such water appropriation. If  
8 no person appears at the hearing, such water appropriation or unused part  
9 thereof shall be declared forfeited and annulled. If an interested person  
10 appears and contests the same, the department shall hear evidence, and if  
11 it appears that such water has not been put to a beneficial use or has  
12 ceased to be used for such purpose for more than five consecutive years,  
13 the same shall be declared canceled and annulled unless the department  
14 finds that (a) there has been sufficient cause for such nonuse as  
15 provided for in subsection (2), (3), or (4) of this section or (b)  
16 subsection (5) or (6) of this section applies.

17 (2) Sufficient cause for nonuse shall be deemed to exist for up to  
18 thirty consecutive years if:

19 (a) Such ~~such~~ nonuse was caused by the unavailability of water for  
20 that use. For a river basin, subbasin, or reach that has been designated  
21 as overappropriated pursuant to section 46-713 or determined by the  
22 department to be fully appropriated pursuant to section 46-714, the  
23 period of time within which sufficient cause for nonuse because of the  
24 unavailability of water may be deemed to exist may be extended beyond  
25 thirty years by the department upon petition therefor by the owner of the  
26 appropriation if the department determines that an integrated management  
27 plan being implemented in the river basin, subbasin, or reach involved is  
28 likely to result in restoration of a usable water supply for the  
29 appropriation; or -

30 (b) The land subject to the appropriation is under an acreage  
31 reserve program or production quota or is otherwise withdrawn from use as

1 required for participation in any federal, state, or natural resources  
2 district program, or such land was previously under such a program but  
3 currently is not under such a program and there have been not more than  
4 five consecutive years of nonuse on such land subsequent to when that  
5 land was last under such program.

6 (3) Sufficient cause for nonuse shall be deemed to exist  
7 indefinitely if such nonuse was the result of one or more of the  
8 following:

9 (a) For any tract of land under separate ownership, the available  
10 supply was used but on only part of the land under the appropriation  
11 because of an inadequate water supply;

12 (b) The appropriation is a storage appropriation and there was an  
13 inadequate water supply to provide the water for the storage  
14 appropriation or less than the full amount of the storage appropriation  
15 was needed to keep the reservoir full; or

16 (c) The appropriation is a storage-use appropriation and there was  
17 an inadequate water supply to provide the water for the appropriation or  
18 use of the storage water was unnecessary because of climatic conditions.

19 (4) Sufficient cause for nonuse shall be deemed to exist for up to  
20 fifteen consecutive years if such nonuse was a result of one or more of  
21 the following:

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

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

25 (c) Circumstances were such that a prudent person, following the  
26 principles of good husbandry, would not have been expected to use the  
27 water;

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

1 (e) The owner of the appropriation was in active involuntary service  
2 in the armed forces of the United States or was in active voluntary  
3 service during a time of crisis; or

4 (f) Legal proceedings prevented or restricted use of the water. ~~;~~ ~~or~~

5 ~~(g) The land subject to the appropriation is under an acreage~~  
6 ~~reserve program or production quota or is otherwise withdrawn from use as~~  
7 ~~required for participation in any federal or state program or such land~~  
8 ~~previously was under such a program but currently is not under such a~~  
9 ~~program and there have been not more than five consecutive years of~~  
10 ~~nonuse on that land since that land was last under that program.~~

11 The department may specify by rule and regulation other  
12 circumstances that shall be deemed to constitute sufficient cause for  
13 nonuse for up to fifteen years.

14 (5) When an appropriation is held in the name of an irrigation  
15 district, a reclamation district, a public power and irrigation district,  
16 a mutual irrigation company or canal company, or the United States Bureau  
17 of Reclamation and the director determines that water under that  
18 appropriation has not been used on a specific parcel of land for more  
19 than five years and that no sufficient cause for such nonuse exists, the  
20 right to use water under that appropriation on that parcel shall be  
21 terminated and notice of the termination shall be posted on the  
22 department's web site and shall be given in the manner provided in  
23 subsection (2), (3), or (4) of section 46-229.03. The district or company  
24 holding such right shall have five years after the determination, or five  
25 years after an order of cancellation issued by the department following  
26 the filing of a voluntary relinquishment of the water appropriation that  
27 has been signed by the landowner and the appropriator of record, to  
28 assign the right to use that portion of the appropriation to other land  
29 within the district or the area served by the company, to file an  
30 application for a transfer in accordance with section 46-290, or to  
31 transfer the right in accordance with sections 46-2,127 to 46-2,129. The

1 department shall issue its order of cancellation within sixty days after  
2 receipt of the voluntary relinquishment unless the relinquishment is  
3 conditioned by the landowner upon an action of a governmental agency. If  
4 the relinquishment contains such a provision, the department shall issue  
5 its order of cancellation within sixty days after receipt of notification  
6 that such action has been completed. The department shall be notified of  
7 any such assignment within thirty days after such assignment. If the  
8 district or company does not assign the right to use that portion of the  
9 appropriation to other land, does not file an application for a transfer  
10 within the five-year period, or does not notify the department within  
11 thirty days after any such assignment, that portion of the appropriation  
12 shall be canceled without further proceedings by the department and the  
13 district or company involved shall be so notified by the department.  
14 During the time within which assignment of a portion of an appropriation  
15 is pending, the allowable diversion rate for the appropriation involved  
16 shall be reduced, as necessary, to avoid inconsistency with the rate  
17 allowed by section 46-231 or with any greater rate previously approved  
18 for such appropriation by the director in accordance with section  
19 46-229.06.

20 (6) When it is determined by the director that an appropriation, for  
21 which the location of use has been temporarily transferred in accordance  
22 with sections 46-290 to 46-294, has not been used at the new location for  
23 more than five years and that no sufficient cause for such nonuse exists,  
24 the right to use that appropriation at the temporary location of use  
25 shall be terminated. Notice of that termination shall be posted on the  
26 department's web site and shall be given in the manner provided in  
27 subsection (2), (3), or (4) of section 46-229.03. The right to reinitiate  
28 use of that appropriation at the location of use prior to the temporary  
29 transfer shall continue to exist for five years after the director's  
30 determination, but if such use is not reinitiated at that location within  
31 such five-year period, the appropriation shall be subject to cancellation

1 in accordance with sections 46-229 to 46-229.04.

2 (7) If at the time of a hearing conducted in accordance with  
3 subsection (1) of this section there is an application for incidental or  
4 intentional underground water storage pending before the department and  
5 filed by the owner of the appropriation, the proceedings shall be  
6 consolidated.

7 Sec. 2. Original section 46-229.04, Reissue Revised Statutes of  
8 Nebraska, is repealed.