

LEGISLATIVE BILL 380

Approved by the Governor March 23, 1983

Introduced by Public Works Committee, Schait, 23,
Chairperson; Hoagland, 6; Lamb, 43;
Doyle, 14; Wesely, 26; DeCamp, 40

AN ACT to amend sections 46-229, 46-229.02, and 46-229.04, Reissue Revised Statutes of Nebraska, 1943, relating to surface water; to modify provisions relating to forfeiture, annulment, and cancellation of water appropriations; and to repeal the original sections.

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

Section 1. 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 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.

Sec. 2. That section 46-229.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-229.02. If it shall appear that any water appropriation has not been used for some beneficial or useful purpose, or having been so used at one time has ceased to be used for such purpose for more than three consecutive years, the department shall appoint a place and time of hearing, and shall serve notice upon the owners of such water appropriation or such ditch, canal, or other diverting works to show cause by such time and at such place why the water appropriation owned by such person should not be declared forfeited and annulled because such water appropriation had not been used for more than three consecutive years prior to receiving such notice, and shall also serve such notice upon the landowners under such water appropriation, ditch, or canal.

A water appropriation may be canceled by the

department without complying with sections 46-229.01 to 46-229.04 if the owner of such appropriation fails to comply with any of the conditions of approval in the permit.

Sec. 3. That section 46-229.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-229.04. At such hearing the verified report of the water commissioner or engineers of the department shall be prima facie evidence for the forfeiture and annulment of such water appropriation. If no one appears at the hearing, such water appropriation or unused part thereof shall be declared forfeited and annulled. If someone interested appears and contests the same, the department shall hear evidence, and if it appears that such water has not been put to a beneficial use, or has ceased to be used for such purpose for more than three consecutive years, the same shall be declared canceled and annulled unless the department finds that there has been sufficient cause for such nonuse. Sufficient cause shall be deemed to exist if during the period of nonuse:

(1) The land subject to the appropriation was placed under an acreage reserve or production quota program or otherwise withdrawn from use as required for participation in any federal or state program;

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

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

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

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

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

(7) The owner of the appropriation 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

(8) Legal proceedings prevented or restricted use of the water.

The department may specify by rule and regulation other circumstances which shall be deemed to constitute sufficient cause.

Sec. 4. That original sections 46-229,

LB 380 .

LB 380

46-229.02, and 46-229.04, Reissue Revised Statutes of
Nebraska, 1943, are repealed.