

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 714

Introduced by Stinner, 48.

Read first time January 06, 2016

Committee: Natural Resources

- 1 A BILL FOR AN ACT relating to irrigation and regulation of water; to
- 2 amend section 46-229.04, Reissue Revised Statutes of Nebraska; to
- 3 provide for and change a provision relating to sufficient cause for
- 4 nonuse of a water appropriation; and 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 such nonuse was caused by the unavailability
19 of water for that use. For a river basin, subbasin, or reach that has
20 been designated as overappropriated pursuant to section 46-713 or
21 determined by the department to be fully appropriated pursuant to section
22 46-714, the period of time within which sufficient cause for nonuse
23 because of the unavailability of water may be deemed to exist may be
24 extended beyond thirty years by the department upon petition therefor by
25 the owner of the appropriation if the department determines that an
26 integrated management plan being implemented in the river basin,
27 subbasin, or reach involved is likely to result in restoration of a
28 usable water supply for the appropriation.

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

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

4 (b) The appropriation is a storage appropriation and there was an
5 inadequate water supply to provide the water for the storage
6 appropriation or less than the full amount of the storage appropriation
7 was needed to keep the reservoir full; or

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

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

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

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

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

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

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

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

28 (g) The land subject to the appropriation is under an acreage
29 reserve program or production quota or is otherwise withdrawn from use as
30 required for participation in any federal, ~~or~~ state, or local program or
31 such land previously was under such a program but currently is not under

1 such a program and there have been not more than five consecutive years
2 of nonuse on that land since that land was last under that program; or -

3 (h) The appropriation is temporarily transferred to a natural
4 resources district or other competent authority for the purpose of
5 depletion offsets, aquifer recharge, stream augmentation, or maintenance
6 of instream flows.

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

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

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

16 (6) When it is determined by the director that an appropriation, for
17 which the location of use has been temporarily transferred in accordance
18 with sections 46-290 to 46-294, has not been used at the new location for
19 more than five years and that no sufficient cause for such nonuse exists,
20 the right to use that appropriation at the temporary location of use
21 shall be terminated. Notice of that 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 right to reinitiate
24 use of that appropriation at the location of use prior to the temporary
25 transfer shall continue to exist for five years after the director's
26 determination, but if such use is not reinitiated at that location within
27 such five-year period, the appropriation shall be subject to cancellation
28 in accordance with sections 46-229 to 46-229.04.

29 (7) If at the time of a hearing conducted in accordance with
30 subsection (1) of this section there is an application for incidental or
31 intentional underground water storage pending before the department and

1 filed by the owner of the appropriation, the proceedings shall be
2 consolidated.

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