

AMENDMENTS TO LB 295

Introduced by Natural Resources

1           1. Strike the original sections and insert the following  
2 sections:

3           Section 1. Section 46-229.04, Revised Statutes Cumulative  
4 Supplement, 2006, is amended to read:

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

21           (2) Sufficient cause for nonuse shall be deemed to exist  
22 for up to thirty consecutive years if such nonuse was caused by the  
23 unavailability of water for that use. For a river basin, subbasin,

1 or reach that has been designated as overappropriated pursuant  
2 to section 46-713 or determined by the department to be fully  
3 appropriated pursuant to section 46-714, the period of time within  
4 which sufficient cause for nonuse because of the unavailability  
5 of water may be deemed to exist may be extended beyond thirty  
6 years by the department upon petition therefor by the owner of  
7 the appropriation if the department determines that an integrated  
8 management plan being implemented in the river basin, subbasin, or  
9 reach involved is likely to result in restoration of a usable water  
10 supply for the appropriation.

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

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

17 (b) The appropriation is a storage appropriation and  
18 there was an inadequate water supply to provide the water for the  
19 storage appropriation or less than the full amount of the storage  
20 appropriation was needed to keep the reservoir full; or

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

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

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

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

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

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

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

16           (f) Legal proceedings prevented or restricted use of the  
17 water; or

18           (g) The land subject to the appropriation is under  
19 an acreage reserve program or production quota or is otherwise  
20 withdrawn from use as required for participation in any federal or  
21 state program or such land previously was under such a program but  
22 currently is not under such a program and there have been not more  
23 than five consecutive years of nonuse on that land since that land  
24 was last under that program.

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

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

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

14 (6) When it is determined by the director that an  
15 appropriation, for which the location of use has been temporarily  
16 transferred in accordance with sections 46-290 to 46-294, has not  
17 been used at the new location for more than five years and that  
18 no sufficient cause for such nonuse exists, the right to use that  
19 appropriation at the temporary location of use shall be terminated.  
20 Notice of that termination shall be posted on the department's  
21 web site and shall be given in the manner provided in subsection  
22 (2), (3), or (4) of section 46-229.03. The right to reinitiate  
23 use of that appropriation at the location of use prior to the  
24 temporary transfer shall continue to exist for five years after the  
25 director's determination, but if such use is not reinitiated at  
26 that location within such five-year period, the appropriation shall  
27 be subject to cancellation in accordance with sections 46-229 to

1 46-229.04.

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

7 Sec. 2. Section 46-602, Revised Statutes Cumulative  
8 Supplement, 2006, is amended to read:

9 46-602 (1) Each water well completed in this state on  
10 or after July 1, 2001, excluding test holes and dewatering wells  
11 to be used for less than ninety days, shall be registered with  
12 the Department of Natural Resources as provided in this section  
13 within sixty days after completion of construction of the water  
14 well. The water well contractor as defined in section 46-1213  
15 constructing the water well, or the owner of the water well if  
16 the owner constructed the water well, shall file the registration  
17 on a form made available by the department and shall also file  
18 with the department the information from the well log required  
19 pursuant to section 46-1241. The department shall, by January 1,  
20 2002, provide water well contractors with the option of filing such  
21 registration forms electronically. No signature shall be required  
22 on forms filed electronically. The fee required by subsection (3)  
23 of section 46-1224 shall be the source of funds for any required  
24 fee to a contractor which provides the on-line services for such  
25 registration. Any discount in the amount paid the state by a credit  
26 card, charge card, or debit card company or a third-party merchant  
27 bank for such registration fees shall be deducted from the portion

1 of the registration fee collected pursuant to section 46-1224.

2 (2)(a) If the newly constructed water well is a  
3 replacement water well, the registration form shall include  
4 (i) the registration number of the water well being replaced,  
5 if applicable, and (ii) the date the original water well was  
6 decommissioned or a certification that the water well will be  
7 decommissioned within one hundred eighty days or a certification  
8 that the original water well will be modified and equipped to  
9 pump fifty gallons per minute or less and will be used only for  
10 livestock, monitoring, observation, or any other nonconsumptive  
11 use or de ~~minimus~~ minimis use approved by the applicable natural  
12 resources district.

13 (b) For purposes of this section, replacement water well  
14 means a water well which is constructed to provide water for  
15 the same purpose as the original water well and is operating in  
16 accordance with any applicable permit from the department and any  
17 applicable rules and regulations of the natural resources district  
18 and, if the purpose is for irrigation, the replacement water well  
19 delivers water to the same tract of land served by the original  
20 water well and (i) replaces ~~an abandoned~~ a decommissioned water  
21 well within ~~three years~~ one hundred eighty days after the last  
22 ~~operation~~ decommissioning of the ~~abandoned~~ original water well, and  
23 ~~the original water well is decommissioned either before or within~~  
24 ~~one hundred eighty days after such construction,~~ (ii) replaces a  
25 water well that has not been ~~abandoned~~ decommissioned but will not  
26 be used after construction of the new water well and the original  
27 water well will be decommissioned within one hundred eighty days

1 after such construction, except that in the case of a municipal  
2 water well, the original municipal water well may be used after  
3 construction of the new water well but shall be decommissioned  
4 within one year after completion of the replacement water well, or  
5 (iii) the original water well will continue to be used but will  
6 be modified and equipped within one hundred eighty days after such  
7 construction of the replacement water well to pump fifty gallons  
8 per minute or less and will be used only for livestock, monitoring,  
9 observation, or any other nonconsumptive or de ~~minimus~~ minimis use  
10 and approved by the applicable natural resources district.

11 (c) No water well shall be registered as a replacement  
12 water well until the Department of Natural Resources has received  
13 a properly completed notice of decommissioning for the water well  
14 being replaced on a form made available by the department, or  
15 properly completed notice, prepared in accordance with subsection  
16 (7) of this section, of the modification and equipping of the  
17 original water well to pump fifty gallons per minute or less  
18 for use only for livestock, monitoring, observation, or any other  
19 nonconsumptive or de ~~minimus~~ minimis use approved by the applicable  
20 natural resources district. Such notices, as required, shall be  
21 completed by (i) the water well contractor as defined in section  
22 46-1213 who decommissions the water well or modifies and equips  
23 the water well, (ii) the pump installation contractor as defined  
24 in section 46-1209 who decommissions the water well or modifies  
25 and equips the water well, or (iii) the owner if the owner  
26 decommissions a driven sandpoint well which is on land owned by him  
27 or her for farming, ranching, or agricultural purposes or as his



1 or her place of abode. The Department of Health and Human Services  
2 Regulation and Licensure shall, by rule and regulation, determine  
3 which contractor or owner shall be responsible for such notice  
4 in situations in which more than one contractor or owner may be  
5 required to provide notice under this subsection.

6 (3) For a series of two or more water wells completed and  
7 pumped into a common carrier as part of a single site plan for  
8 irrigation purposes, a registration form and a detailed site plan  
9 shall be filed for each water well. The registration form shall  
10 include the registration numbers of other water wells included in  
11 the series if such water wells are already registered.

12 (4) A series of water wells completed for purposes  
13 of installation of a ground heat exchanger for a structure  
14 for utilizing the geothermal properties of the ground shall be  
15 considered as one water well. One registration form and a detailed  
16 site plan shall be filed for each such series.

17 (5) One registration form shall be required along with  
18 a detailed site plan which shows the location of each such water  
19 well in the site and a log from each such water well for water  
20 wells constructed as part of a single site plan for (a) monitoring  
21 ground water, obtaining hydrogeologic information, or extracting  
22 contaminants from the ground, (b) water wells constructed as part  
23 of remedial action approved by the Department of Environmental  
24 Quality pursuant to section 66-1525, 66-1529.02, or 81-15,124, and  
25 (c) water well owners who have a permit issued pursuant to the  
26 Industrial Ground Water Regulatory Act and also have an underground  
27 injection control permit issued by the Department of Environmental

1 Quality.

2 (6) The Department of Natural Resources shall be notified  
3 by the owner of any change in the ownership of a water well  
4 required to be registered under this section. Notification shall be  
5 in such form and include such evidence of ownership as the Director  
6 of Natural Resources by rule and regulation directs. The department  
7 shall use such notice to update the registration on file. The  
8 department shall not collect a fee for the filing of the notice.

9 (7) The water well contractor or pump installation  
10 contractor responsible therefor shall notify the department within  
11 sixty days on a form provided by the department of any pump  
12 installation or any modifications to the construction of the water  
13 well or pump, after the initial registration of the well. For  
14 a change of use resulting in modification and equipping of an  
15 original water well which is being replaced in accordance with  
16 subsection (2) of this section, the water well contractor or pump  
17 installation contractor shall notify the department within sixty  
18 days on a form provided by the department of the water well and  
19 pump modifications and equipping of the original water well. A  
20 water well owner shall notify the department within sixty days on  
21 a form provided by the department of any other changes or any  
22 inaccuracies in recorded water well information, including, but not  
23 limited to, changes in use. The department shall not collect a fee  
24 for the filing of the notice.

25 (8) Whenever a water well becomes an illegal water well  
26 as defined in section 46-706, the owner of the water well shall  
27 either correct the deficiency that causes the well to be an

1 illegal water well or shall cause the proper decommissioning of  
2 the water well in accordance with rules and regulations adopted  
3 pursuant to the Water Well Standards and Contractors' Licensing  
4 Act. The water well contractor who decommissions the water well,  
5 the pump installation contractor who decommissions the water well,  
6 or the owner if the owner decommissions a driven sandpoint well  
7 which is on land owned by him or her for farming, ranching, or  
8 agricultural purposes or as his or her place of abode, shall  
9 provide a properly completed notice of ~~abandonment~~ decommissioning  
10 to the Department of Natural Resources within sixty days. The  
11 Department of Health and Human Services Regulation and Licensure  
12 shall, by rule and regulation, determine which contractor or owner  
13 shall be responsible for such notice in situations in which more  
14 than one contractor or owner may be required to provide notice  
15 under this subsection. The Department of Natural Resources shall  
16 not collect a fee for the filing of the notice.

17 (9) Except for water wells which are used solely for  
18 domestic purposes and were constructed before September 9, 1993,  
19 and for test holes and dewatering wells used for less than ninety  
20 days, each water well which was completed in this state before  
21 July 1, 2001, and which is not registered on that date shall be an  
22 illegal water well until it is registered with the Department of  
23 Natural Resources. Such registration shall be completed by a water  
24 well contractor or by the current owner of the water well, shall  
25 be on forms provided by the department, and shall provide as much  
26 of the information required by subsections (1) through (5) of this  
27 section for registration of a new water well as is possible at the

1 time of registration.

2 (10) Water wells which are or were used solely for  
3 injecting any fluid other than water into the underground water  
4 reservoir, which were constructed before July 16, 2004, and which  
5 have not been properly decommissioned on or before July 16, 2004,  
6 shall be registered on or before July 1, 2005.

7 Sec. 3. Section 46-609, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9 46-609 (1) Except as otherwise provided by this section  
10 or section 46-610, no irrigation water well shall be drilled  
11 constructed upon any land in this state within six hundred feet of  
12 any registered irrigation water well and no existing nonirrigation  
13 water well within six hundred feet of any registered irrigation  
14 water well shall be used for irrigation purposes. Such spacing  
15 requirement shall not apply to (a) any well used to irrigate two  
16 acres or less or (b) any replacement irrigation water well if it is  
17 drilled constructed within fifty feet of the irrigation water well  
18 being replaced and if the water well being replaced was drilled  
19 constructed prior to September 20, 1957, and is less than six  
20 hundred feet from a registered irrigation water well.

21 (2) The spacing protection of subsection (1) of this  
22 section shall apply to an unregistered water well for a period of  
23 sixty days after completion of such water well.

24 (3) No person shall use a water well for purposes other  
25 than its registered purpose until the water well registration  
26 has been changed to the intended new use, except that a person  
27 may use a water well registered for purposes other than its

1 intended purpose for a de minimis use for livestock, monitoring,  
2 observation, or any other nonconsumptive use approved by the  
3 applicable natural resources district. The change to a new use  
4 shall be made by filing a water well registration modification with  
5 the department and shall be approved only if the water well is in  
6 conformity with subsection (1) of this section and with section  
7 46-651.

8           Sec. 4. Section 46-644, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10           46-644 Permits granted by the Director of Natural  
11 Resources shall be valid for a period of five years after the  
12 granting of a permit and as long thereafter as the water for  
13 which the permit is granted is used. For the purposes of the  
14 Municipal and Rural Domestic Ground Water Transfers Permit Act,  
15 the commencement of construction of facilities to provide water  
16 for beneficial use shall be deemed the date of the commencement of  
17 beneficial use. If it appears that the holder of a permit granted  
18 under the act has not used water for a beneficial purpose and in  
19 accordance with the terms of the permit for more than ~~three~~ five  
20 years, such permit may be revoked or modified by the director. The  
21 procedure for such revocation or modification shall be the same as  
22 that provided for in sections 46-229.02 to 46-229.05.

23           Sec. 5. Original sections 46-609 and 46-644, Reissue  
24 Revised Statutes of Nebraska, and sections 46-229.04 and 46-602,  
25 Revised Statutes Cumulative Supplement, 2006, are repealed.