

AMENDMENTS TO LB1038

Introduced by Schilz, 47.

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

3 Section 1. Section 46-290, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 46-290 (1)(a) Except as provided in this section and sections
6 46-2,120 to 46-2,130, any person having a permit to appropriate water for
7 beneficial purposes issued pursuant to sections 46-233 to 46-235,
8 46-240.01, 46-241, 46-242, or 46-637 and who desires (i) to transfer the
9 use of such appropriation to a location other than the location specified
10 in the permit, (ii) to change that appropriation to a different type of
11 appropriation as provided in subsection (3) of this section, or (iii) to
12 change the purpose for which the water is to be used under a natural-
13 flow, storage, or storage-use appropriation to a purpose not at that time
14 permitted under the appropriation shall apply for approval of such
15 transfer or change to the Department of Natural Resources.

16 (b) The application for such approval shall contain (i) the number
17 assigned to such appropriation by the department, (ii) the name and
18 address of the present holder of the appropriation, (iii) if applicable,
19 the name and address of the person or entity to whom the appropriation
20 would be transferred or who will be the user of record after a change in
21 the location of use, type of appropriation, or purpose of use under the
22 appropriation, (iv) the legal description of the land to which the
23 appropriation is now appurtenant, (v) the name and address of each holder
24 of a mortgage, trust deed, or other equivalent consensual security
25 interest against the tract or tracts of land to which the appropriation
26 is now appurtenant, (vi) if applicable, the legal description of the land
27 to which the appropriation is proposed to be transferred, (vii) if a

1 transfer is proposed, whether other sources of water are available at the
2 original location of use and whether any provisions have been made to
3 prevent either use of a new source of water at the original location or
4 increased use of water from any existing source at that location, (viii)
5 if applicable, the legal descriptions of the beginning and end of the
6 stream reach to which the appropriation is proposed to be transferred for
7 the purpose of augmenting the flows in that stream reach, (ix) if a
8 proposed transfer is for the purpose of increasing the quantity of water
9 available for use pursuant to another appropriation, the number assigned
10 to such other appropriation by the department, (x) the purpose of the
11 current use, (xi) if a change in purpose of use is proposed, the proposed
12 purpose of use, (xii) if a change in the type of appropriation is
13 proposed, the type of appropriation to which a change is desired, (xiii)
14 if a proposed transfer or change is to be temporary in nature, the
15 duration of the proposed transfer or change, and (xiv) such other
16 information as the department by rule and regulation requires.

17 (2) If a proposed transfer or change is to be temporary in nature, a
18 copy of the proposed agreement between the current appropriator and the
19 person who is to be responsible for use of water under the appropriation
20 while the transfer or change is in effect shall be submitted at the same
21 time as the application.

22 (3) Regardless of whether a transfer or a change in the purpose of
23 use is involved, the following changes in type of appropriation, if found
24 by the Director of Natural Resources to be consistent with section
25 46-294, may be approved subject to the following:

26 (a) A natural-flow appropriation for direct out-of-stream use may be
27 changed to a natural-flow appropriation for aboveground reservoir storage
28 or for intentional underground water storage;

29 (b) A natural-flow appropriation for intentional underground water
30 storage may be changed to a natural-flow appropriation for direct out-of-
31 stream use or for aboveground reservoir storage;

1 (c) A natural-flow appropriation for direct out-of-stream use, for
2 aboveground reservoir storage, or for intentional underground water
3 storage may be changed to an instream appropriation subject to sections
4 46-2,107 to 46-2,119 if the director determines that the resulting
5 instream appropriation would be consistent with subdivisions (2), (3),
6 and (4) of section 46-2,115;

7 (d) A natural-flow appropriation for direct out-of-stream use, for
8 aboveground reservoir storage, or for intentional underground water
9 storage may be changed to an appropriation for induced ground water
10 recharge if the director determines that the resulting appropriation for
11 induced ground water recharge would be consistent with subdivisions (2)
12 (a)(i) and (ii) of section 46-235;~~and~~

13 (e) An appropriation for manufacturing of hydropower may be changed
14 in the full amount to an instream basin-management appropriation to be
15 held jointly by the Game and Parks Commission and any natural resources
16 district or combination of natural resources districts to maintain the
17 functional stream flow for conservation of fish and wildlife and for
18 recreation that existed by the manufacturing of hydropower and to assist
19 in the implementation of integrated management of ground water and
20 surface water resources; and

21 (f e) The incidental underground water storage portion, whether or
22 not previously quantified, of a natural-flow or storage-use appropriation
23 may be separated from the direct-use portion of the appropriation and may
24 be changed to a natural-flow or storage-use appropriation for intentional
25 underground water storage at the same location if the historic
26 consumptive use of the direct-use portion of the appropriation is
27 transferred to another location or is terminated, but such a separation
28 and change may be approved only if, after the separation and change, (i)
29 the total permissible diversion under the appropriation will not
30 increase, (ii) the projected consequences of the separation and change
31 are consistent with the provisions of any integrated management plan

1 adopted in accordance with section 46-718 or 46-719 for the geographic
2 area involved, and (iii) if the location of the proposed intentional
3 underground water storage is in a river basin, subbasin, or reach
4 designated as overappropriated in accordance with section 46-713, the
5 integrated management plan for that river basin, subbasin, or reach has
6 gone into effect, and that plan requires that the amount of the
7 intentionally stored water that is consumed after the change will be no
8 greater than the amount of the incidentally stored water that was
9 consumed prior to the change. Approval of a separation and change
10 pursuant to this subdivision (f e) shall not exempt any consumptive use
11 associated with the incidental recharge right from any reduction in water
12 use required by an integrated management plan for a river basin,
13 subbasin, or reach designated as overappropriated in accordance with
14 section 46-713.

15 Whenever any change in type of appropriation is approved pursuant to
16 this subsection and as long as that change remains in effect, the
17 appropriation shall be subject to the statutes, rules, and regulations
18 that apply to the type of appropriation to which the change has been
19 made.

20 (4) The Legislature finds that induced ground water recharge
21 appropriations issued pursuant to sections 46-233 and 46-235 and instream
22 appropriations issued pursuant to section 46-2,115 are specific to the
23 location identified in the appropriation. Neither type of appropriation
24 shall be transferred to a different location, changed to a different type
25 of appropriation, or changed to permit a different purpose of use.

26 (5) In addition to any other purposes for which transfers and
27 changes may be approved, such transfers and changes may be approved if
28 the purpose is (a) to maintain or augment the flow in a specific stream
29 reach for any instream use that the department has determined, through
30 rules and regulations, to be a beneficial use or (b) to increase the
31 frequency that a diversion rate or rate of flow specified in another

1 valid appropriation is achieved.

2 For any transfer or change approved pursuant to subdivision (a) of
3 this subsection, the department shall be provided with a report at least
4 every five years while such transfer or change is in effect. The purpose
5 of such report shall be to indicate whether the beneficial instream use
6 for which the flow is maintained or augmented continues to exist. If the
7 report indicates that it does not or if no report is filed within sixty
8 days after the department's notice to the appropriator that the deadline
9 for filing the report has passed, the department may cancel its approval
10 of the transfer or change and such appropriation shall revert to the same
11 location of use, type of appropriation, and purpose of use as prior to
12 such approval.

13 (6) A quantified or unquantified appropriation for incidental
14 underground water storage may be transferred to a new location along with
15 the direct-use appropriation with which it is recognized if the director
16 finds such transfer to be consistent with section 46-294 and determines
17 that the geologic and other relevant conditions at the new location are
18 such that incidental underground water storage will occur at the new
19 location. The director may request such information from the applicant as
20 is needed to make such determination and may modify any such quantified
21 appropriation for incidental underground water storage, if necessary, to
22 reflect the geologic and other conditions at the new location.

23 (7) Unless an incidental underground water storage appropriation is
24 changed as authorized by subdivision (3)(f e) of this section or is
25 transferred as authorized by subsection (6) of this section or subsection
26 (1) of section 46-291, such appropriation shall be canceled or modified,
27 as appropriate, by the director to reflect any reduction in water that
28 will be stored underground as the result of a transfer or change of the
29 direct-use appropriation with which the incidental underground water
30 storage was recognized prior to the transfer or change.

31 (8) Any appropriation for manufacturing of hydropower changed under

1 subdivision (3)(e) of this section to an instream basin-management
2 appropriation shall maintain the priority date and preference category of
3 the original appropriation but shall be subject to condemnation and
4 subordination pursuant to sections 70-668 and 70-669, except that any
5 person who held a subordination agreement or condemnation award prior to
6 the transfer shall be allowed to enter into a new subordination agreement
7 for the original term of subordination agreement or condemnation award at
8 no additional cost.

9 Sec. 2. Section 70-668, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 70-668 In applying the provisions of law relating to the
12 appropriation of water, priority of appropriation shall give the better
13 right as between those using the water for the same purpose, but when the
14 waters of any natural stream are not sufficient for the use of all those
15 desiring to use the same, those using the water for domestic purposes
16 shall have preference over those claiming it for any other purpose. Those
17 using the water for agricultural purposes shall have the preference over
18 those using the same for manufacturing purposes, and those using the
19 water for agricultural purposes shall have the preference over those
20 using the same for power purposes, where turbine or impulse water wheels
21 are installed, or for instream basin-management purposes.

22 Sec. 3. Section 70-669, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 70-669 No inferior right to the use of the waters of this state
25 shall be acquired by a superior right without just compensation therefor
26 to the inferior user. The just compensation paid to those using water for
27 power purposes shall not be greater than the cost of replacing the power
28 which would be generated in the plant or plants of the power user by the
29 water so acquired. The just compensation to be paid to a holder of an
30 instream basin-management appropriation shall be the cost per acre-foot
31 of water subordinated for the hydropower appropriation at the time of

1 approval of transfer. The amount of compensation shall be adjusted
2 annually in accordance with the Consumer Price Index or, if publication
3 of the Consumer Price Index is discontinued, a comparable index selected
4 by the Director of Natural Resources.

5 Sec. 4. Original sections 46-290, 70-668, and 70-669, Reissue
6 Revised Statutes of Nebraska, are repealed.