

LEGISLATIVE BILL 545

Approved by the Governor April 5, 1979

Introduced by Public Works Committee, Kremer, 34, Chmn.;
Cullan, 49; Clark, 47; Goodrich, 20; Kennedy,
21

AN ACT to amend section 46-238, Reissue Revised Statutes
of Nebraska, 1943, relating to irrigation; to
change application requirements as prescribed;
and to repeal the original section.

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

Section 1. That section 46-238, Reissue Revised
Statutes of Nebraska, 1943, be amended to read as
follows:

46-238. (1) Within six months after the approval
of any application for water for irrigation, power, or
other useful purpose by the Department of Water Resources
the person making such application shall commence the
excavation or construction of the works in which it is
intended to divert the water, and the actual construction
of any water power plant and reservoir or reservoirs for
storage in connection therewith, and shall vigorously,
diligently, and uninterruptedly prosecute such work to
completion unless temporarily interrupted by some
unavoidable and natural cause. A failure to comply with
the provisions of this section shall work a forfeiture of
the appropriation and all rights thereunder. The cost of
promotion and engineering work shall not be considered a
part of the cost of construction and the progress of the
construction work shall be such that one-tenth of the
total work shall have been completed within one year from
the date of approval of the application. The applicant
shall, ~~at the end of six months after the allowance of~~
his application when required by the department, furnish
to the department a detailed report of the total amount
of work necessary to complete the project, which report
shall conform to the requirements of the department, and
satisfactory evidence that the work of construction has
been begun. The construction of all work required in
connection with the proposed project shall be prosecuted
in the manner above described and with such a force as
shall assure the average rate of constructional progress
necessary to complete such work or works within the time
stipulated in the approval of such application,
notwithstanding the ordinary delays and casualties that
must be expected and provided against. In the case of an
applicant for an appropriation granted for the
development of water power, the appropriator shall, ~~on or~~

~~before the tenth day of each month after the date fixed for the commencement of such work when required by the department,~~ report, under oath, to the department, the actual amount of money expended upon such power development during the preceding calendar month for right-of-way and land, labor, salaries, material, and machinery, not including construction or equipment delivered upon the ground, and such report shall be made in form, detail, and manner prescribed by the department. A failure to carry on the construction of either an irrigation or water power project, as outlined above, or in the case of a water power development, a failure to file the above reports ~~within the time~~ when required, shall work a forfeiture of the appropriation and all rights thereunder, and the department shall cancel such appropriation within thirty days of such failure. The department shall have free access to all records, books, and papers of any irrigation or water power company and shall have the right to go upon the right-of-way and land of any such company, and shall inspect the work to see that it is being done according to plans and specifications approved by the department, and shall also keep a record of the cost of construction work, where the same is deemed advisable for physical valuation purposes.

(2) The department may extend for reasonable lengths of time, the time for completion of works, the application of water to a beneficial use, or any of the other requirements for completing or perfecting an application for flow or storage rights, or all of them, as fixed in the approval of an application, or otherwise, for the appropriation of water. Such extension may be granted after a hearing upon the petition to the department and the showing of reasonable cause. Any interested person may be made a party to such action. Subsequent extensions may be made in the same manner. Any extension so granted shall be endorsed by the department on the application filed in its records. Any person directly affected adversely by the granting of any such extension may appeal direct to the Supreme Court.

(3) Any order heretofore made by the department granting an extension of time for the completion of works, the application of water to beneficial use, or for the performance of any other requirements, which has not been vacated or otherwise abrogated, is hereby ratified, validated, and confirmed. Any application for an appropriative right which is deficient by reason of past failure to comply with any of the requirements of sections 46-233 and 46-238 for the perfection of an appropriative right, which application has not been dismissed or denied, is also hereby ratified and confirmed; unless, within one year from September 20,

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1957, a petition to vacate such an order granting an extension of time, or a petition to forfeit, cancel, or otherwise invalidate such an application for an appropriative right, shall have been filed with the department by a person affected adversely thereby. All rights and defenses which heretofore shall have accrued in favor of the grantee of such an extension shall be preserved. Such ratification and confirmation shall not extend to or be operative as to extensions of time which the courts have held to be void and as to such extensions no proceeding for cancellation need be commenced. Any person directly affected adversely may appeal from the decision of the department direct to the Supreme Court.

Sec. 2. That original section 46-238, Reissue Revised Statutes of Nebraska, 1943, is repealed.