

Water Rights ADJUDICATION PROCESS

Nebraska applies the “**use it or lose it**” principle to surface water rights. Persons who have surface water appropriations **must use the water for the purpose specified in the appropriation permit at least every five years or the appropriation may be canceled** by the Department of Natural Resources. There are reasons considered “sufficient cause for nonuse” which will prevent the cancellation of a water right if the owners of the appropriation can prove the reasons apply to their situation. If the owner does not have an acceptable reason for not using the water, the appropriation will be canceled so it can be put to beneficial use by someone else.



The process used to cancel an appropriation is sometimes referred to as an adjudication. It begins with the Department conducting a **field investigation or reviewing information** received from the public or other government entities and information in the Department’s files. Based on the information gathered during the review or investigation, the Department may make a **preliminary determination** that the water right has not been used in the last five years and that there is no apparent reason

why the water right should not be canceled. The owner of the appropriation is given notice of the Department’s preliminary determination and an opportunity to contest it. The Department will provide the landowner with a **contest form that must be filled out and filed with the Department within 30 days of issuance**. The form lists the reasons considered **sufficient cause for nonuse**. The owner can check off any reasons that apply to his or her situation and then write down all the facts and other information that will help the Department understand the reasons why the water was not used.

The Department will review the contest form and may change its preliminary determination based on the information provided in the form. **If the preliminary determination is changed, the cancellation process is ended.** If the Department does not consider the information provided in the form adequate to show sufficient cause for nonuse, it will **schedule a hearing** to give the appropriation owners a chance to prove that there were sufficient reasons why they did not use the water.



The hearing is considered a contested case hearing and is conducted by a hearing officer in much the same manner as a court trial. The owners may wish to hire an attorney to represent them at the hearing but it is not required. The hearing will be recorded by a court reporter and all witnesses will be required to take an oath. Evidence will be received and all witnesses are subject to cross examination. **Based on the evidence given at the hearing, the hearing officer will make a recommendation to the director of the Department** about whether or not the appropriation or part of it should be canceled. The director will issue an order



canceling all or part of the appropriation or an order dismissing the cancellation procedure. If the director cancels the appropriation, the owner may have the director’s decision reviewed by the Court of Appeals by filing an appeal within 30 days of the director’s decision.

If the owner of the appropriation receives the notice of the Department’s preliminary determination that his or her water right is subject to cancellation and does not return the contest form, the Department will cancel the water right without holding a hearing.

Sufficient cause for nonuse exists for up to fifteen consecutive years for the following:

1. Federal, state, or local laws, rules or regulations temporarily prevented or restricted such use;
2. Use of the water was unnecessary because of climatic conditions;
3. Circumstances were such that a prudent person, following the principles of good husbandry, would not have been expected to use the water;
4. The works, diversions, or other facilities essential to use 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;
5. 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;
6. Legal proceedings prevented or restricted use of the water; or
7. The land is under an acreage reserve program or production quota or is otherwise withdrawn from use as required for participation in any federal or state program or such land previously was under such a program but currently is not under such a program and there have been not more than five consecutive years of nonuse on that land since that land was last under that program.



Information that may be helpful to you at a hearing:

- Aerial photograph showing all lands that have been irrigated from the questioned appropriation.
- Year each plot was last irrigated.
- What crops have been grown on the questioned area.
- Why the questioned area has not been irrigated.
- What equipment is available to irrigate the questioned area.
- Any documents showing why the appropriation was or was not used.
- Records from irrigation districts, county taxes or Natural Resources Conservation Service.
- Any documents or information that may help prove your case.

Sufficient cause for nonuse exists for up to thirty consecutive years if the cause for the nonuse was the unavailability of water for the purpose listed in the appropriation permit. In fully appropriated and overappropriated basins sufficient cause may extend beyond thirty years.

Sufficient cause for nonuse shall be deemed to exist indefinitely if such nonuse was the result of one or more of the following:

1. For any tract of land under separate ownership, the available supply was used but on only part of the land under the appropriation because of an inadequate water supply;
2. The appropriation is a storage appropriation and there was an inadequate water supply to provide the water for the storage appropriation or less than the full

- amount of the storage appropriation was needed to keep the reservoir full; or
3. The appropriation is a storage-use appropriation and there was an inadequate water supply to provide the water for the appropriation or use of the storage water was unnecessary because of climatic conditions.

Permit holders who have additional questions regarding their water appropriation permit are encouraged to contact Department of Natural Resources personnel at the Lincoln office.



Additional information on surface water rights and other responsibilities of the **Nebraska** Department of Natural Resources may be found on our web site at



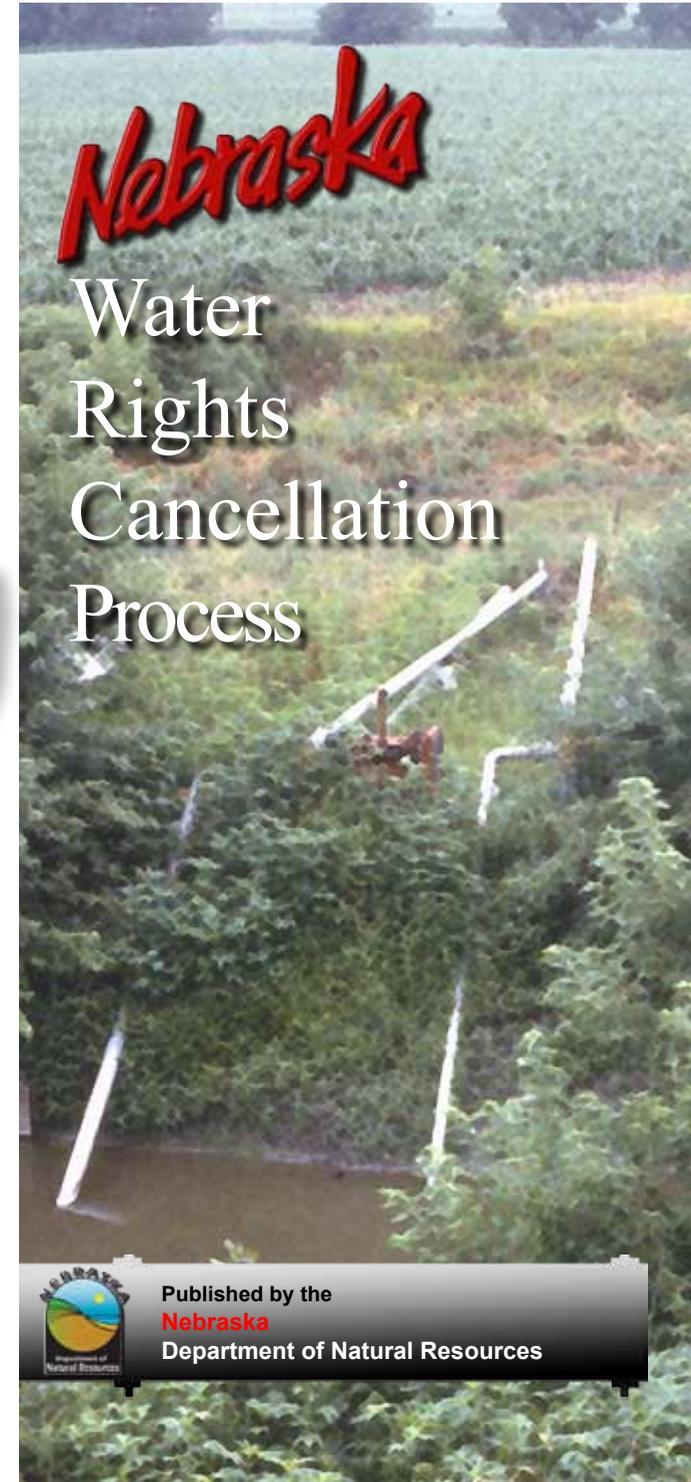
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