

Surface Water Lease Contract *Instructions*

Definitions of Terms Used in Lease

Contract Period: The specified period of time set out in this contract

Landowner: The individual(s), partnership, limited liability company, corporation, association, or other entity that (a) holds legal title to the eligible irrigated land and (b) has entered into or applied to enter into a water lease agreement (Lessor), and (c) has authority to agree that the amount of surface water transferred will not be put to any use on any land under his/her/its control, or otherwise transferred, sold or exchanged, except as required pursuant to this contract.

Historical Consumptive Use: The amount of water “consumed” by the crops grown on the land for a certain period of time. The Nebraska Department of Water, Energy, and Environment (Department) has adopted a standard method of calculation for the determination of consumptive use. The applicant may use this method or the applicant is free to use any method deemed scientifically valid but the applicant must demonstrate validity.

Lessor: Is the water appropriator, who during the term of the lease, agrees that surface water use will be suspended and transferred for usage by the Lessee. The Lessor may be the landowner or an irrigation district, reclamation district, public power and irrigation district, mutual canal company, canal company or the United States Bureau of Reclamation.

Lessee: The entity compensating the Lessor for the surface water right specified in this contract.

The Water Lease Contract is comprised of two sections:

Section 1 is the completed application for transfer of the appropriation with attachments.

Section 2 is the specific lease contract terms with attachments.

SECTION ONE:

Application for a Transfer of the Type of Use and Transfer of the Location of Use

Approval of an Application for a Transfer of the Type of Use and the Location of Use is REQUIRED in order for surface water appropriators to participate in the Nebraska Water Lease Program.

An application for this type of transfer MUST accompany this lease. Section 1 of the Lease asks you to indicate whether the attached transfer application is for appropriation(s) held privately (Form SW-100), or by an irrigation district, reclamation district, public power and irrigation district, mutual canal company, canal company or the United States Bureau of Reclamation (Form SW-200 and SW-201). All attachments and addendums, to the applications should be included as necessary.

SECTION TWO:

Terms of the Lease.

Items listed below correspond to the item number(s) on the Lease:

1. The information that should be provided on Item 1 on Lease Form (Name and address of appropriator) depends on the entity that holds the appropriation.
 - *If the lease and associated transfer applications are regarding an appropriation held by a **private landowner:***

Provide the name and address of the appropriator of record and contact information. The appropriator will be the "Lessor" in the contract. The Lessor should be listed on the lease as it appears on the **deed to the property**, and should match Section 1 of DWEE Form SW-100, Temporary Transfer of Private Appropriation.

OR

- *If the lease and associated transfer applications are regarding an appropriation held by an irrigation district, reclamation district, public power and irrigation district, mutual irrigation company, canal company, or the U.S. Bureau of Reclamation:*

Provide the name of the entity which holds the water appropriation.

The appropriator will be the “Lessor” in the contract. The Lessor should be listed on the lease as the name of the District, etc., and should match Section 1 of DWEE Form SW-200, Temporary Transfer of Appropriation held by a District.

2. Provide the name, address and contact information for the individual or entity leasing the surface water appropriation (the “Lessee”).
3. List all surface water appropriations to be leased under this contract. (Separate Transfer Application forms for each appropriation number must be provided.)
4. The number of acres and the legal description of the land from which the appropriations are being transferred will be described on the attached transfer application(s).
5. The legal description of the stream reach to which the appropriations are being transferred will be described on the attached transfer application(s).
6. Amount of Water (historic consumptive use.)

Nebraska State Statute states:

The calculation of consumptive use shall be limited to no more than the appropriated quantity to which the holder of the water appropriation is entitled. Only the historical consumptive use portion of the appropriation may be transferred. (Neb. Rev. Stat. §46-294(1)(e))

The Department has adopted a standard method of calculation for the determination of consumptive use. The applicant may use this method or the applicant may use any method deemed scientifically valid, but the applicant must demonstrate the method’s validity.

Calculations should include both the estimated consumptive use and also an estimate of any accretions/depletions due to the proposed transfer.

The information required and methods adopted to calculate the historic consumptive use of the appropriation will be identified at the Pre-Application meeting with Department staff. If a pre-application meeting did not occur, and if using the Department’s method of calculation for the determination of consumptive use, refer to the consumptive use calculation guide, available on the surface water forms page of the website (<http://dnr.ne.gov/docs/surfaceforms.html>). If using another method please provide the history of use and the calculations as an attachment and enter total acre feet (AF) of consumptive use from those calculations.

7. In those instances in which surface water and groundwater are commingled on the associated land involved in the lease agreement, check the box. Please complete the appropriate section of the consumptive use calculation guide for commingled water use, available on the surface water forms page of the website(<http://dnr.ne.gov/docs/surfaceforms.html>)
8. If this lease has a dry-year lease option, indicate such by checking the box, complete and attach **“Attachment B: Dry-year lease options and conditions”** (Form SW-320) to the lease.

A dry- year lease shall be for the lease of a water right in years when stream flow is expected to be low and/or anticipated snow melt is expected too low. In such an agreement, the lessee has options on how to pay for the lease including a one-time up-front payment for the option to use water with potential annual payments to secure the option agreement to lease the water right in water-short years and another potential payment in water-short years in which the option is exercised.

9. The proposed beginning date, ending date and the total number of years of the temporary transfer. (This corresponds with Item 7 of the privately held transfer application and Item 8 of the District transfer application.) The lease will not become effective unless or until the Department approves the transfer application.
10. For this lease, identify whether either party (Lessor or Lessee) will have the option of terminating the lease in any year. If the Lease has this provision, the terminating party is required to provide written notice to the Department and all parties involved in the contract on or before December 1st of the year prior to which the lease will be cancelled. A Lessor initiating early termination will be assessed early termination penalties.

If the lease does not have this provision, all parties must agree to early termination. A Lessor initiating early termination will be assessed early termination penalties.
11. This section contains standard lease language documenting the **applicant's** requirement to file the appropriation, transfer and lease documents in the corresponding county register of deeds or county clerk's office following approval of transfer. **And the applicant's** requirement to provide proof of said county filing to the Department.
12. This section contains standard lease language to covering responsibilities of the Lessor in the case of land transfers to new ownership during the period in which the lease is active. This pertains only to a lease of a privately held appropriation.
13. This section contains standard lease language covering the suspension of water use by the Lessor and all unauthorized parties throughout the duration of the contract period.
14. This section contains standard lease language covering penalties which will result from early termination of the lease.
15. This section contains standard lease language discussing penalties associated with the violation of lease terms.
16. This section contains standard lease language discussing rights of entry for monitoring of lease compliance.
17. This section contains standard lease language discussing dispute resolution.
18. The Lease Contract must be signed by ALL landowners/Lessors (or their representatives) listed on the deed. If the landowner/Lessor identified in the required report of ownership information

is **not** the person signing the Lease Contract, then attach documentation demonstrating that the person signing the Lease Contract is authorized to pursue the lease in the absence of the consent of the landowner. If Lessor is irrigation district, reclamation district, public power and irrigation district, mutual irrigation company, canal company, or the U.S. Bureau of Reclamation, the person signing must indicate their title for that entity.

The Lease Contract will not be in force until such time as the landowner/Lessor is granted approval of a temporary transfer by the Department. The Lessor and Lessee can then finalize the lease contract, and insert the appropriate contract period.

19. Please attach all required attachments. See list below.

Your complete Lease/Transfer packet must include:

A. Transfer Application (signed and completed)

Either DWEE Form SW-100, OR DWEE Forms SW-200 and SW-201.

a. Required Attachments to transfer:

Aerial photograph of tract(s) described in transfer application.

Document attached describing the actual method of transfer, timing and amounts of water proposed to be transferred. Describe any effects that this transfer may have, including on other appropriators.

Documentation of the history of water use, and historic consumptive use calculations for the tracts subject to the transfer, as discussed in the pre-application meeting with the Department.

b. Optional Attachments to Transfer:

Addendum attached describing the use of the remaining water appropriation.

Addendum(s) attached to describe additional tracts of land (use DWEE Form 962-18).

Addendum(s) attached for additional history of use.

Addendum attached describing reasons for non-use during the last five (5) years.

Addendum(s) attached for additional landowner(s) signatures (use DWEE Form 962-24B).

Documentation attached for person signing on behalf of appropriator.

Analysis to determine amount of historical consumptive use portion, subject to transfer.

Other attachment(s) as needed.

B. Completed Lease document DWEE Form SW-300.**a. Required Attachments to Lease:**

A report of ownership that has been prepared by a qualified Abstractor or Title company no more than three months from the date of filing the Transfer and Lease.

Signed and completed Attachment A: Water lease price and payment terms DWEE Form SW-310

b. Optional Attachments to Lease:

Documentation attached for person signing on behalf of appropriator.

Signed and completed Attachment B: Dry Year Lease Terms DWEE Form SW-320

Additional Information:

- If a landowner is a trust, a copy of the trust agreement, the name of the trust, and the names and addresses of ALL trustees are required.
- If a landowner is a corporation, indicate the capacity of the person signing the form (i.e., *president*). Additional contact information may be required.
- Persons signing as attorney-in-fact (power of attorney) must submit a copy of the document granting the power of attorney.
- Persons signing as the personal representative must submit a copy of the court order appointing the person or entity as the personal representative.
- If the person signing the transfer application as appropriator of record is (one of) the landowner(s), that person must have an interest in the property, as listed on the deed to the property, and shown by the certificate of title. The Department will consider the person signing the application form to be the primary contact, unless otherwise instructed.
- All landowners listed on the deed to the property, and shown by the certificate of title, must sign the Lease Contract.