

Surface Water Lease 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

1. Check One Below:

☐ Attached is a completed application (and attachments) for transfer described above for **privately** held appropriations, (DWEE Form SW-100)

OR

☐ Attached is a completed application (and attachments) for transfer described above for appropriations held by an Irrigation District, Reclamation District, Public Power and Irrigation District, Mutual Irrigation Company, Canal Company or the US Bureau of Reclamation. (DWEE Forms SW-200 & SW-201)

SECTION TWO:**Water Lease Contract Terms**

1. **Identification of Lessor(s) entering into Surface Water Lease Contract, name and address of appropriator should be identical to Item 1 on Transfer Application.**

(1) Name of Lessor(s)	(2) Mailing Address of Lessor(s)	(3) Telephone Number

2. **Identification of Lessee of water appropriation, name and address of entity with whom the Lessor is entering into a Water Lease Contract.**

(1) Name of Lessee	(2) Mailing Address of Lessee	(3) Telephone Number

3. **Surface water appropriation(s). List all valid surface water appropriations for which a transfer application has been completed and attached. This corresponds to Item 3 on Private Transfer Application (Form SW-100), or item 2 on District Transfer Application (Form SW-200).**

Enter Appropriation Numbers:			
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4. **The specific legal description from which the appropriation is being transferred is found on Item 10 of Private Transfer Application (Form SW-100), Item 6 of District Transfer Application (Form SW-200) and Item 1a of District Application Addendum (Form SW-201).**
5. **The specific legal description of the stream reach to which the appropriation is being transferred is found on Item 6 of Private Transfer Application (Form SW-100), or Item 4 of District Transfer Application (Form SW-200).**
6. **Amount of water (historic consumptive use) to be temporarily transferred with lease. Applicant must contact the Department of Water, Energy, and Environment (Department) for a preliminary meeting to discuss determination of consumptive use prior to final filing.**

a) Enter acre-feet of consumptive use being transferred per year : (If not a single amount, please see attached chart)	
b) Enter estimated accretion/depletion of the stream per year: (If not a single amount, please see attached chart)	

7. Associated groundwater:

☐ Check here if co-mingled groundwater is also used for irrigation purposes on lands from which the appurtenant surface water appropriation is being transferred.

8. Dry-year lease:

☐ Check here if this is a dry-year lease contract.

Note: Dry-year lease options and conditions should be attached to this lease document.

9. Water lease contract period

The term of the lease shall commence on _____ (not before execution by the parties) and continue through _____ for a total contract length of _____ years. The lease however will not be effective unless or until the Department approves the transfer application.

10. Early termination provision: please check the appropriate box:

☐ For this lease, the Lessor(s) and Lessee shall have the option of terminating the lease each year provided written notice is given to the other party and to the Department. The lease may be terminated by either party prior to the irrigation season by December 1st of the year prior to which the lease will be terminated. (See early termination fees.) After the notice is provided, the Department will issue a written Order to cancel the transfer and restore the appropriation to original purpose and location of use. No water may be diverted under the appropriation until such Order is issued.

☐ For this lease, the Lessor and Lessee shall not have the option of terminating the lease, without consent by all parties to the lease.

11. Filing of documents associated with a temporary transfer in the County Register of Deeds or County Clerk's office:

Once a temporary transfer application has been approved by the Department, the **applicant** is responsible for filing the appropriate documents in the County Register of Deeds or County Clerk's office, pursuant to *Nebraska Revised Statutes* §46-294.01. The **applicant** shall file with the Department, within ninety days after the Department's Order of approval, proof of filing with the county clerk or register of deeds. Failure to file such proof of filing within the ninety-day time period shall be grounds for the Director to negate any prior approval of the transfer.

12. Change in Ownership of Property from which the appropriation was transferred (Transfers of privately owned appropriations only):

In the event that the land subject to the temporary transfer is sold during the lease period and the new owner consents to assume the obligations of the surface water transfer, then an Agreement to Assign and Assume must be signed by all parties subject to the transfer of property and each signature notarized. The **Lessor (Seller)** is required to file the signed and notarized Agreement with the Department, along with the required Notice of Change of Ownership/Resources Update Notice, where it will become an amendment to the lease contract.

If the new owner chooses not to assume this contract, the contract will be terminated and the **Lessor (Seller)** is responsible for all consequences including the payment of early termination fees.

13. Suspension of water use:

Lessor agrees to forego all use of surface water appropriation(s), or portions thereof, described in an approval of transfer Order, and listed above for the specified contract period, or if applicable, during an exercised dry year lease period. Lessor agrees that neither the landowner of the land to which the appropriation is appurtenant nor any other individual, other than the Lessee, may make any use of the leased surface water appropriation, or if applicable portions thereof, during the contract period.

14. Penalty for early termination:

In the event that the lease is terminated prior to completion of the lease period, the Lessor will be assessed a standard fee proportional to the number of remaining periods under the lease contract. If up-front payments were made under the lease terms, and the Lessor is the terminator of the lease, then the Lessor will owe the prorated portion of the lump-sum payment to the Lessee. In addition, the Lessor will be assessed a penalty equal to 10% of any payments made during the contract period.

15. Violation of lease terms and conditions:

Failure to comply with all laws and rules pertaining to surface water appropriations, any Orders issued by the Department, or the provisions of the lease may result in cancellation of part or all of the appropriation(s), temporary closing of the appropriation(s), administrative penalty, criminal prosecution, or any combination thereof.

16. Right to entry:

The Lessor grants the Department and/or its representative access to the appurtenant lands, without advance notice, at reasonable times to ensure compliance with the terms of this contract.

17. Dispute resolution:

Any dispute or claim in law or equity between the Lessor and Lessee arising out of this Lease contract, if not resolved by informal negotiation between the Parties, shall undergo a mediation process, following the Standards and Ethics for Center Mediators, Directors and Staff, as established by the Nebraska Office of Dispute Resolution. If mediation proves unsuccessful, the Parties may avail themselves of all other remedies available at law or in equity.

18. Signatures

I (we) understand that prior to Nebraska Department of Water, Energy, and Environment approval of a transfer, I (we) am (are) required to provide the following ownership information and evidence demonstrating that I (we) am (are) authorized to pursue the lease:

I (we) affirm that the information contained in this Lease Contract is true and accurate.

Signature of Lessor or Lessor's authorized agent (with proper documentation)	Name and title if applicable (print)	Date
Signature of Lessor or Lessor's authorized agent (with proper documentation)	Name and title if applicable (print)	Date

*If additional lines needed for Lessor signatures, see next page.

Acknowledgement

STATE OF NEBRASKA

COUNTY OF _____ s.s.
)

On this ____ day of _____, 20 ____, the foregoing instrument was acknowledged before me by _____ who either is known to me or who produced satisfactory evidence that he, she, (they) is (are) the person(s) who executed this instrument.

Notary Public

My seal expires _____

Signature of Lessee or Lessee's authorized agent (with proper documentation)	Name and title if applicable (print)	Date
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Acknowledgement

STATE OF NEBRASKA

COUNTY OF _____ s.s.
)

On this ____ day of _____, 20 ____, the foregoing instrument was acknowledged before me by _____ who either is known to me or who produced satisfactory evidence that he, she, (they) is (are) the person(s) who executed this instrument.

Notary Public

My seal expires _____

Attachments to Lease***Required Attachments to Lease:***

- i. A **report of ownership information** that has been prepared by a title company, within the three months prior to the filing of the transfer application in the Department, showing current land ownership of the subject lands;
- ii. Signed and completed Attachment A: Water lease price and payment terms (DWEE Form SW-310)

Optional Attachments to Lease:

- iii. Documentation attached for person signing on behalf of appropriator. If the Lessor identified in the report of ownership information or the individual or entity to whom the interest in the water right has been conveyed is not the applicant, then attach documentation demonstrating that the applicant is authorized to pursue the lease in the absence of the consent of the landowner.
- iv. Documentation attached for person signing on behalf of Lessee.
- v. Signed and completed Attachment B: Dry Year Lease Terms (DWEE Form SW-320)

Additional Lessor Signatures continued from previous page:

Signature of Lessor or Lessor's authorized agent (with proper documentation)	Name <i>and title if applicable</i> (print)	Date
Signature of Lessor or Lessor's authorized agent (with proper documentation)	Name <i>and title if applicable</i> (print)	Date
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