

STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES

RULES FOR SURFACE WATER

NOVEMBER 2020

NEBRASKA ADMINISTRATIVE CODE

TITLE 457 – DEPARTMENT OF NATURAL RESOURCES
RULES FOR SURFACE WATER

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CHAPTER 1 - DEFINITIONS

001 APPROPRIATION. A permit to use water that has been perfected in accordance with terms stipulated by the Department.

002 DEPARTMENT. The Department of Natural Resources.

003 PERSON. Bodies politic and corporate, societies, communities, districts, individuals, partnerships, joint stock companies, associations and the federal government.

004 POINT OF DIVERSION. The location where water is diverted from a stream, reservoir, or lake.

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CHAPTER 2 - APPLICATIONS FOR NEW WATER APPROPRIATIONS

001 REQUIREMENTS. Separate applications for new water appropriations must be filed:

001.01 For impoundment of water (see Appendix A), use of impounded water (see Appendix B), use of natural flow from streams (see Appendix B), intentional underground water storage and recovery (see Appendix C), instream flow (see Appendix D), power (see Appendix E), and induced ground water recharge (see Appendix F).

001.02 For each type of use (i.e. natural flow for irrigation, natural flow for fish culture, storage use for irrigation, storage use for cooling). Storage is considered as a use and an impoundment with multiple purposes only requires one application.

001.03 When there are different sources of water.

001.04 For each landowner that has not formed any legal association that meets the definition of person in Chapter 1.

001.05 For each point of diversion, unless the diversion is made by a moveable pump and there are no intervening diversions owned by other parties or new sources of water.

001.06 For each storage facility except for fish rearing impoundments operated as one facility with one point of diversion.

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CHAPTER 3 - RELINQUISHMENTS

001 REQUIREMENTS. Any appropriation, or part of any appropriation, may be voluntarily relinquished. The relinquishment shall be made on a form provided by the Department (see Appendix G).

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CHAPTER 4 - CHANGE OF OWNERSHIP OF APPROPRIATION

001 NOTIFICATION. The Department shall be notified of any change in the ownership of an appropriation. When the appropriator is the landowner, notification shall be made either by completing a form provided by the Department or by recording a deed with the Department. Use the form shown as Appendix H, except if the property is located within the corporate limits of a municipality or the change of ownership occurred prior to July 20, 2002, the form shown as Appendix I shall be used. When the appropriator is an irrigation district, a reclamation district, water company or other entity formed to appropriate water for landowners, notification shall be in the form of a petition or the filing of a document showing the assignment of the right.

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CHAPTER 5 - CHANGE OF ADDRESS

001 NOTIFICATION. The Department shall be notified in writing of any change in the address of the owner of an appropriation.

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CHAPTER 6 - CHANGING POINT OF DIVERSION

001 PETITION. A petition shall be filed to change the point of diversion on a stream when the new point of diversion will be located within a different 40-acre government subdivision on the same stream. The petition shall be made on a form provided by the Department (see Appendix J). A separate petition must be filed for each appropriation and for each proposed diversion. A petition that is incomplete or incorrect shall be returned to the petitioner for correction. Failure to return the corrected petition within 90 days shall cause the petition to be dismissed. If the change in the point of diversion is from one source to another source, an application for a permit to transfer the use of water shall be filed (see Chapter 9 of Title 457).

002 REQUIREMENTS. The requested change shall not adversely affect any other water appropriator. A map may be required. Failure to file a required map within the time limit specified will cause dismissal of the petition.

003 NOTICE. If the Director finds that the requested change may affect another water appropriation, the Director shall publish notice of such petition at least once a week for three consecutive weeks in a newspaper of general circulation in the area of the stream segment and also in a newspaper of statewide circulation. As a minimum standard, the notice shall include the name of the petitioner, a description of the water appropriation, a description of the location of the original point of diversion, and a description of the location of the proposed point of diversion. The notice shall state that any person may file a written request for hearing (or if the Director is holding a hearing on his own motion, may file a written request to be made a party to the hearing) within two weeks from the date of final publication of the notice.

004 HEARING. If a hearing is held, the hearing will be conducted according to the Department's Rules of Practice and Procedure, Title 454 and § 61-206, R.R.S., 1943, as amended.

005 DECISION. The Director shall issue a written order. A copy of the order shall be delivered or mailed to all parties of record.

006 APPEAL. If the decision was issued at the conclusion of a hearing, parties to the hearing may request a rehearing as described in the Department's Rules of Practice and Procedure, Title 454, Chapter 11 or may appeal to the Nebraska Court of Appeals as described in § 61-207, R.R.S., 1943 as amended. Parties should not assume that filing a request for rehearing extends the deadline for appeal to the Court to Appeals. If the decision was based on the petition, without a hearing, the parties may request a hearing as described in the Department's Rules of Practice and Procedure, Title 454, Chapter 9.

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CHAPTER 7 - THEORETICAL HORSEPOWER

001 FEES. For fee purposes, theoretical horsepower shall be computed by multiplying the maximum amount of water sought in the application, expressed in cubic feet per second, by the total head expressed in feet, and dividing the product by eight and eight tenths (8.8).

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CHAPTER 8 - (Repealed)

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CHAPTER 9 - TRANSFERS AND CHANGES

001 EXPEDITED TRANSFERS IN LOCATION OF USE

001.01 Expedited Transfer Process may only be used when:

001.01A All the land involved in the transfer is under the same ownership or is within the same irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company.

001.01B The appropriation is used and will continue to be used exclusively for irrigation purposes.

001.01C The only lands involved in the proposed transfer are:

001.01C1 Lands within the quarter section of land to which the appropriation is appurtenant, or

001.01C2 Lands within such quarter section of land and one or more quarter sections of land each of which is contiguous to the quarter section of land to which the appropriation is appurtenant (for purposes of this section, contiguous shall mean any quarter section adjacent to, including those quarter sections which share corners with, the original quarter section(s) to which the appropriation is appurtenant), or

001.01C3 Lands within the boundaries or service area of and capable of service by the same irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company

001.01D After the transfer, the total number of acres irrigated under the appropriation will be no greater than the number of acres that could legally be irrigated under the appropriation prior to the transfer. There may be less acres irrigated after the transfer, if:

001.01D1 All of the current water appropriation is going to be placed on fewer acres and all water appropriations that exist at the new place of use after the proposed transfer do not exceed one-seventieth (1/70) of a cubic foot per second per acre. In such situations the Department will also reduce the maximum annual amount allowed under the appropriations pertaining to the proposed tract such that they do not exceed three-acre feet per acre per annum or that amount allowed under the appropriation, whichever is less.

001.01D2 The applicant relinquishes any remaining rights.

001.01E The transfer will not result in a change in the point of diversion.

001.01F The transfer will not diminish the water supply available for or otherwise adversely affect any other water appropriator. Rule 001.03 herein describes the criteria that must be met in order for the Department to make this determination as it relates to the expedited process.

001.01G The associated incidental underground water storage is to be transferred and the transfer is within the boundaries of the incidental underground water storage appropriation, or the Department has sufficient documentation to conclude that incidental underground storage can and will occur at the new location of use.

If applications are not found to meet the above criteria, they will be processed under the non-expedited process described in 46-291 R.R.S. 1943, as amended, and Department Rule Title 457, Chapter 9, subsection 002.

001.02 Applications:

001.02A Separate application on a form provided by the Department (see Appendices K, K-1, K-2, K-3) must be completed and filed:

001.02A1 For each appropriation to be modified

001.02A2 For each appropriator

001.02B Applicant must be the appropriator of record as shown in the Department's records.

001.02C Temporary Applications. If a transfer is approved as a temporary transfer, the duration of the use will be no less than one year and no more than thirty years. Temporary transfers shall expire on September 30 of the last year of the proposed temporary transfer. If during the term of the temporary transfer the appropriator wishes to revert back to the original place of use, a new transfer application shall be filed and processed.

001.02D Applications shall include the information described in 46-290(1)(b) R.R.S. 1943, as amended, and the following:

001.02D1 The amount of water (both the instantaneous diversion rate and the total annual volume) requested to be transferred to the new location of use.

001.02D2 For individual water rights (those not held by irrigation districts, reclamation districts, public power and irrigation districts, or irrigation or canal companies), the names, addresses, telephone numbers and title of persons, other than applicant, who should receive water administration notices during times of shortage for the appropriation. Examples may be tenants, farm managers, sons or daughters who are responsible for the irrigation or persons having power of attorney. If the appropriator of record is someone other than the landowner, the landowner must also be listed and must sign the application.

001.02D3 Historical water use made of the appropriation for each of the last five years, including number of acres irrigated and the maximum diversion or pumping rate. If the appropriation has not been used during the five years prior to the filing of the application because the land was enrolled in a government program, documentation of such enrollment shall accompany the application and information shall be provided as to the last five years of use of water under the appropriation.

001.02D4 For temporary transfers, copies of agreements or leases shall accompany the application forms. For individual water appropriations, the agreement shall be a statement by the individual appropriator as to the duration of the temporary use at the proposed location. For water appropriations held by an irrigation district, reclamation district, public power and irrigation district, or mutual canal or irrigation company, copies of leases or agreements shall be signed by all the landowners whose land is involved in the transfer and by the proper district or company official.

001.02D5 For applications filed by irrigation districts, reclamation districts, public power and irrigation districts, or mutual canal companies, the names, addresses, and signatures of the landowners agreeing to have the water appropriation transferred off of their land must be included.

001.02D6 For applications filed by an appropriator of record that is not the landowner (and is not an irrigation district, reclamation district, public power and irrigation district, or mutual canal company) the name(s), address(es), and signature(s) of the landowner(s) must be included.

001.02D7 If facilities are used that are not owned or operated by the applicant, documentation must be provided that the owner or operator of the facilities agrees to the transfer, or if the Applicant is an irrigation district, reclamation district, public power and irrigation district, mutual canal or irrigation company, the Applicant certifies that: (1) the proposed change is in compliance with any applicable contracts or agreements, or (2) that the owner of the facilities has approved the proposed change.

001.02D8 Whether the lands proposed to be irrigated have been cultivated or contain native grass.

001.02E Applications shall be accompanied by a current legible aerial photograph marked to indicate the location of lands proposed for irrigation by the transfer.

001.03 A transfer in location of use for irrigation water rights will not diminish the supply available for or otherwise adversely affect any other water appropriator, and may be processed as an expedited transfer if all of the following criteria are met:

001.03A Return flows from the irrigated fields at the proposed location of use (both surface flows and those that occur below the surface of the ground) will not be changed by the transfer such that they would adversely affect another appropriator.

001.03B If (1) There are no surface water users with a point of diversion within one mile downstream of the Applicant's point of diversion, or (2) There is a tributary source of water between the Applicant's point of diversion and the next surface water point of diversion that is reliable and sufficient to supply the downstream appropriators needs, or

(3) The Applicant submits a waiver of objection by all surface water users with a point of diversion within one mile downstream of the Applicant's point of diversion. These do not apply when the applicant is an irrigation district, reclamation district, public power and irrigation district or irrigation or mutual canal company.

001.03C No surface water appropriation will exist on the land (from which the water appropriation is proposed to be transferred) after the transfer that existed on the land prior to the transfer process.

001.03D Water diverted under the appropriation has been used at some time during the last five years to irrigate the same number of acres or more acres than the number of acres proposed to be irrigated after the transfer.

001.03E The total rate of all natural flow appropriations that will exist at the proposed location of use if the transfer is approved will not exceed a rate of one-seventieth of a cubic foot per second of water for each acre irrigated, nor will it exceed an annual volume of three acre-feet per acre.

001.03F If the land currently under appropriation is located in an area determined to be fully or over appropriated, the land currently under the appropriation will not be irrigated with ground water after the proposed transfer.

001.04 Review - An application that is incomplete or incorrect shall be returned to the applicant for correction. The corrected application must be refiled in the Department within 90 days of the date it is returned to the applicant. Failure to return the corrected application within 90 days shall cause the application for expedited transfer to be dismissed.

001.05 Decision

001.05A - If the application is determined not to meet the requirements of Chapter 9, 001.01 above, the Department will issue a written order notifying the applicant of its determination and including the specific findings supporting the Department's determination that the application cannot be processed under the expedited process. The applicant will be given 90 days to:

001.05A1 Submit further information in an attempt to satisfy the requirements of the expedited process,

001.05A2 Supply the additional information needed to meet the requirements of the non-expedited transfer process, and request that the application be considered under the non expedited process,

001.05A3 Request a hearing as described in the Department's Rules of Practice and Procedure, Title 454, Chapter 9 on the issue of whether the application should be allowed to proceed pursuant to the expedited process.

If the applicant fails to take any of the above three actions, the application shall be considered dismissed without any further action of the Department.

001.05B The Department shall issue a written order denying or approving the application. A copy of the order shall be delivered or mailed to all persons listed in the

application. A final project map, drawn in accordance with Title 457, Chapter 10, shall be required to be filed within six months of an order approving the application.

001.06 Filing Temporary Transfer Decisions in County – Copies of the original appropriation permit documents, the agreement by which the temporary transfer is to be effected, and the written decision approving the temporary transfer is required to be filed with the county clerk or register of deeds in the county where the appropriation was established prior to transfer within 60 days from issuance of the order of approval. The applicant shall pay the County for the costs of filing and indexing such documents to the land subject to the appropriation prior to the transfer. Within 90 days of the issuance of the order of approval, the applicant shall file proof of the county filing with the Department. Failure to provide proof of filing shall cause the prior approval to be negated.

001.07 Appeal. If the decision was issued at the conclusion of a hearing, parties to the hearing may request a rehearing as described in the Department Rule Title 454, Chapter 11 or may appeal to the Nebraska Court of Appeals as described in 61-207 R.R.S. 1943, as amended. Parties should not assume that filing a request for rehearing extends the deadline for appeal to the Court of Appeals. If the decision was based on the application, without a hearing, interested persons may request a hearing as described in the Department's Rules of Practice and Procedure, Title 454, Chapter 9.

002 NON EXPEDITED CHANGES

002.01 For purposes of 46-290(5) R.R.S. 1943, as amended, beneficial use for instream uses shall include:

- a. Water Quality Maintenance
- b. Water necessary for compliance with compacts, decrees or other state contracts.

002.02 To make a public interest determination as required in 46-294(1)(k)(1) R.R.S. 1943, as amended, the Director shall determine whether the benefits of the proposed transfer outweigh any adverse impacts that might occur giving consideration to the economic, social and environmental impacts and whether and under what conditions other sources of water are available for the uses to be made of the appropriation after the proposed transfer or change.

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CHAPTER 10 - PROJECT MAPS FOR THE USE OF WATER

001 REQUIREMENTS. Maps required for applications or claims to use the natural flow of streams, use impounded water, to change the point of diversion, or changes in location of use, type of use or type of appropriation shall conform to the following standards:

001.01 For appropriations held by individuals.

001.01A Certified Digital Orthophotography Quarter Quadrangles (DOQQs) produced by the Department of Natural Resources and certified by USGS using 1999 or newer aerial photography shall be used as the base data layer for producing the required maps. Compressed Orthophotography Quarter Quadrangles (COQQs) derived from the Department of Natural Resources DOQQs may also be used. DOQQs and COQQs can be obtained through Department of Natural Resources offices, the Department of Natural Resources website or other organizations capable of accessing digital information. Maps shall be drawn on an overlay form provided by the Department (see Appendix L). An unmarked copy of the aerial photograph shall be submitted with the overlay map tracing. The map shall be neat, clean, and clear and be drawn with black ink. All words shall be printed. The map shall be a true representation of actual conditions and be prepared by a person competent in the preparation of maps. If a project map was produced using GIS or drawing software such as ArcView, ArcMap or AutoCad, the computer files that were used in creating the project map should be provided to the Department of Natural Resources along with the map. All files used or generated in the creation of the project map should be copied onto recordable compact discs (CD-R) or other storage media acceptable to the Department. The CD should be labeled using an indelible marker with applicant's name, description of the project, date the CD was written, and the person and agency responsible for creating the map. Information identifying the year and source of base data (aerial photography) that was used in creating the project map should also be submitted. The map shall include the following:

001.01A1 The location of all points of diversion, power plants, reservoirs, or other major structures.

001.01A2 The alignment of streams, canals or supply pipelines. The name of the stream shall be labeled and an arrow used to show the direction of the streamflow.

001.01A3 If for irrigation, the area in each 40-acre government subdivision actually intended to be irrigated shall be shown by a crosshatch pattern. The actual number of acres proposed for irrigation shall be indicated by a number in each 40-acre subdivision.

001.01A4 Additional drawings shall be submitted to show diversion facilities, other than pumps; permanent structures such as dams for raising level of water; regulating pits; and ponds or raceways used for aquaculture. The drawings shall be legible and neat and be on 8½-inch by 11-inch white paper or folded to such size. Dimensions, elevations and construction materials shall be noted on the drawings.

001.02 For districts and large water companies:

001.02A The maps shall be made with good quality India ink on sheets of tracing cloth or mylar, fourteen (14) inches by sixteen (16) inches and having a three (3) inch margin on the left side and one (1) inch margins on the other sides, or on mylar copies of United States Geological Survey quadrangle maps. The maps shall be neat, clean and clear. All words shall be printed. If a project map was produced using GIS or drawing software such as ArcView, ArcMap or AutoCad, the computer files that were used in creating the project map should be provided to the Department of Natural Resources along with the map. All files used or generated in the creation of the project map should be copied onto recordable compact discs (CD-R). The CD should be labeled using an indelible marker with applicant's name, description of the project, date the CD was written, and the person and agency responsible for creating the map. Information identifying the year and source of base data (aerial photography) that was used in creating the project map should also be submitted.

001.02B The maps shall be true representations of actual conditions and be prepared by a person competent in the preparation of maps.

001.02C The maps, at a scale of not less than two (2) inches to the mile, shall depict an overhead or plan view including the following:

001.02C1 The location of all points of diversion, power plants, reservoirs, or other major structures.

001.02C2 The alignment of streams, canals or supply pipelines. The name of the stream shall be labeled and an arrow used to show the direction of the streamflow.

001.02C3 If for irrigation, the area in each 40-acre government subdivision actually intended to be irrigated shall be shown by a crosshatch pattern. The actual number of acres proposed for irrigation shall be labeled in each 40-acre subdivision.

001.02C4 Additional drawings shall be submitted to show new diversion facilities, other than pumps; new permanent structures such as dams for raising level of water; new regulating pits; and new ponds or raceways used for aquaculture. The drawings shall be legible and neat and be on 14-inch by 16-inch mylar. Dimensions, elevations and construction materials shall be noted on the drawings.

001.03 An applicant shall have 90 days in which to refile a map returned for correction by the Department. Failure to file a corrected map within 90 days will cause cancellation or dismissal of the application.

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CHAPTER 11 - PROJECT MAPS FOR STORAGE PERMITS

001 REQUIREMENTS. This rule applies to storage permits for surface water impoundments not subject to the Safety of Dams and Reservoirs Act (Neb. Rev. Stat. § 46-1600 et. seq.)

002 A project map of the storage facility shall be submitted within six months of the date of the order of approval of the application for a storage permit. The map shall consist of two layers and shall conform to the following standards:

002.01 The base data layer shall be created by using either:

002.01A Certified Digital Orthophotography Quarter Quadrangles (DOQQs) produced by the Department of Natural Resources and certified by USGS using 1999 or newer aerial photography shall be used as the base data layer for producing the required maps, or

002.01B Compressed Orthophotography Quarter Quadrangles (COQQs) derived from the Department of Natural Resources DOQQs.

DOQQs and COQQs can be obtained through Department of Natural Resources offices, the Department of Natural Resources website or other organizations capable of accessing digital information.

002.02 The overlying map layer shall be based upon the DOQQs or COQQs and drawn on an overlay form provided by the Department. An unmarked copy of the DOQQs or COQQs used shall be submitted with the overlay map layer.

002.03 If a project map was produced using GIS or drawing software such as ArcView, ArcMap or AutoCad, the computer files that were used in creating the project map should be provided to the Department of Natural Resources along with the project map. All files used or generated in the creation of the project map should be copied onto recordable compact discs (CD-R). The CD should be labeled using an indelible marker with applicant's name, description of the project, date the CD was written, and the person and agency responsible for creating the map. Information identifying the year and source of base data (aerial photography) that was used in creating the project map should also be submitted.

002.04 The map shall be neat, clean, and clear and be drawn with black ink. All words shall be printed.

002.05 The map shall be prepared by a registered professional engineer, assisted by qualified engineering geologists, geotechnical engineers, geologists, and other specialists as necessary, and shall include the following information:

002.05A. A topographic map with 2-foot contour intervals, or less, within the reservoir area as determined by on-site or photogrammetric surveys.

002.05B. A table showing the reservoir surface area and incremental and cumulative reservoir storage at 2-foot elevation intervals and at the crest elevation of the drawdown, the principal and auxiliary spillways, other outlets and the top of the structure elevation.

002.05C. A map showing the outside limits of the reservoir water line at maximum storage elevation and at normal storage elevation, the structure location, the government subdivisions in which the structure and reservoir are located including the quarter section, section, township, range and county; the location and name of any stream source and, if applicable, the location of any pump used to provide water to the reservoir.

002.05D. If there are multiple owners or there are easements appurtenant to the land where the impounding structure and reservoir are located, the location of such ownerships or easements shall be delineated on the plans.

002.05E. The source of water, course of any supply canals or pipelines.

002.05F. If the project includes a dam, a statement, certified by a registered professional engineer, as to the hazard classification of the dam and whether it is subject to the Safety of Dams and Reservoirs Act.

Any dam located within three miles of the jurisdictional limits of a city of the metropolitan class or primary class, or any dam within two miles of the jurisdictional limits of a city of the first class, or any dam within one mile of the jurisdictional limits of a city of the second class or a village, shall be classified as high hazard. Classification can be mitigated or adjusted if development in the breach route area is sufficiently curtailed due to zoning restrictions, easements, deed restrictions, or other methods of restriction acceptable.

002.06. The map shall be a true representation of actual conditions.

003 An applicant shall have 90 days in which to refile a map returned for correction by the Department. Failure to file a corrected map within 90 days shall cause cancellation or dismissal of the application.

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CHAPTER 12 - (Repealed)

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TITLE 457 - DEPARTMENT OF NATURAL RESOURCES

CHAPTER 13 - (Repealed)

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CHAPTER 14 - (Repealed)

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TITLE 457 - DEPARTMENT OF NATURAL RESOURCES

CHAPTER 15 - (Repealed)

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CHAPTER 16 - INCIDENTAL AND INTENTIONAL UNDERGROUND WATER STORAGE

001. CONFERENCE. The applicant shall attend a conference with Department staff prior to submitting an application. The purpose of the conference will be to discuss the scope of information required. Applications submitted by persons who have not complied with this requirement will not be filed and will be returned to the applicant.

002. APPLICATION. For incidental underground water storage, one application may request modification of multiple appropriations associated with a specific project. All information shall be compiled and submitted in a loose-leaf binder with maximum dimensions of 11 inches by 11 inches by 4 inches. Maps, plans and drawings must be of a size sufficient to clearly depict the subject matter, but must be folded to dimensions not to exceed 11 inches by 11 inches. If a project map was produced using GIS or drawing software such as ArcView, ArcMap or AutoCad, the computer files that were used in creating the project map should be provided to the Department of Natural Resources along with the map. All files used or generated in the creation of the project map should be copied onto recordable compact discs (CD-R) or other storage media acceptable to the Department. The CD should be labeled using an indelible marker with applicant's name, description of the project, date the CD was written, and the person and agency responsible for creating the map. Information identifying the year and source of base data (aerial photography) that was used in creating the project map should also be submitted. A complete table of contents for the application shall be provided. The application shall consist of the following:

002.01 Completed application form (see Appendix C).

002.02 A narrative description of the project and method of underground water storage.

002.03 Sufficient hydrologic information to identify the extent and scope of the underground water storage and naturally occurring ground water, including, but not limited to:

002.03A A map showing the boundary of the proposed area of recharge. The total number of acres within the boundary shall be labeled.

002.03B Water table map showing current water levels.

002.03C A narrative evaluating the geologic and hydrologic conditions of the proposed recharge area.

002.03D Cross sections of the recharge area showing the geologic and hydrologic conditions.

002.03E A list of the registered wells within the proposed recharge area.

002.03F A map showing the location of registered wells within the proposed recharge area.

002.03G A map showing the location of existing or proposed surface water facilities, including diversion structures, canals, pipelines and recharge pits.

002.03H A narrative description of the actual or proposed operation of the surface water project including diversions, deliveries and returns to the river.

002.03I If the application is for incidental underground water storage:

- (1) The historical record of surface water diversions associated with the project;
- (2) The historical record of any measured returns to the river;
- (3) A map showing the location and the number of acres actually served by surface water directly delivered by applicant within the last five years;
- (4) A map showing the location and the number of acres served by water stored underground and not served with surface water directly delivered by applicant within the last five years;
- (5) A summary of the project's surface water appropriations, including date of priority, the amount of the water appropriation, the use, and location of use, if applicable.

003. CORRECTION. If the application is incomplete, the Director shall list the deficiencies and specify a time limit for refiling the corrected application. Failure to refile the corrected application within the time limit specified shall cause the application to be dismissed.

004. NOTICE. Upon receiving a completed application for incidental or intentional underground water storage and recovery, the Director or Director's designee shall prepare a notice of the application. As a minimum standard, the notice shall include the name of the applicant and the proposed area of recharge. The notice shall be published once a week for three consecutive weeks in a newspaper of general circulation in each county containing lands involved in the application, and a newspaper of general circulation in Nebraska. The notice shall state that any person may file a written request for a hearing (or, if the Director is holding a hearing on his own motion, may file a written request to be made a party to the hearing) within two weeks from the date of final publication of the notice.

005. HEARING. If a hearing is held, the hearing will be conducted according to the Department's Rules of Practice and Procedure, Title 454 and § 61-206 R.R.S., 1943, as amended.

006. DECISION. The Director shall issue a written order. A copy of the order shall be delivered or mailed to all parties of record.

007. APPEAL. If the decision was issued at the conclusion of a hearing, parties to the hearing may request a rehearing as described in the Department's Rules of Practice and Procedure, Title 454, Chapter 11 or may appeal to the Nebraska Court of Appeals as described in § 61-207 R.R.S. 1943, as amended. Parties should not assume that filing a request for rehearing extends the deadline for appeal to the Court of Appeals. If the decision was based on the application, without a hearing, the parties may request a hearing as described in the Department's Rules of Practice and Procedure, Title 454, Chapter 9.

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CHAPTER 17 - AUTHORITY TO LEVY FEES

001. CORRECTION. Application shall be on a form provided by the Department (see Appendix O). An application that is incomplete or incorrect shall be returned to the applicant for correction. Failure to return the corrected application within the time limit specified shall cause the application to be dismissed.

002. NOTICE. Upon receiving an application for authority to levy fees, the Director or Director's designee shall prepare a notice of the application. The notice shall be published once a week for three consecutive weeks in a newspaper of general circulation in each county containing lands involved in the application, and a newspaper of general circulation in Nebraska. The notice shall state that any person may file a written request for hearing (or if the Director is holding a hearing on his own motion, may file a written request to be made a party to the hearing) within two weeks from the date of final publication of the notice.

003. HEARING. If a hearing is held, the hearing will be conducted according to the Department's Rules of Practice and Procedure, Title 454 and § 61-206 R.R.S. 1943, as amended.

004. DECISION. The Director shall issue a written order. A copy of the order shall be delivered or mailed to all parties of record.

005. APPEAL. If the decision was issued at the conclusion of a hearing, parties to the hearing may request a rehearing as described in the Department's Rules of Practice and Procedure, Title 454, Chapter 11 or may appeal to the Nebraska Court of Appeals as described in § 61-207 R.R.S. 1943, as amended. Parties should not assume that filing a request for rehearing extends the deadline for appeal to the Court of Appeals. If the decision was based on the application, without a hearing, the parties may request a hearing as described in the Department's Rules of Practice and Procedure, Title 454, Chapter 9.

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CHAPTER 18 - INSTREAM FLOWS

001. APPLICATION. All information shall be compiled and submitted in loose-leaf binder(s) with maximum dimensions of 11 inches by 11 inches by 4 inches. Maps, plans and drawings must be of a size sufficient to clearly depict the subject matter, but must be folded to dimensions not to exceed 11 inches by 11 inches. The application shall consist of the following items:

001.01 Completed application form. (Form provided by the Department, see Appendix D)

001.02 A copy of any study conducted by the natural resources district or the Game and Parks Commission to quantify the instream flow needs in the identified stream segment.

001.03 A list of persons who testified at the hearing and their addresses required by Section 46-2,110 R.R.S. 1943, as amended.

001.04 U.S. Geological Survey topographic quadrangle map(s) showing the location of the stream reach.

001.05 An evaluation of the availability of unappropriated water.

001.06 An evaluation of how the proposed appropriation would effect senior appropriations.

001.07 An evaluation of whether the proposed appropriation is in the public interest, including economic, social, and environmental issues.

002. CORRECTION. An application that is incomplete or incorrect shall be returned to the applicant for correction. Failure to return the corrected application within the time specified shall cause the application to be dismissed.

003. NOTICE. Notice shall be issued as provided in § 46-2,114 R.R.S. 1943, as amended.

004. HEARING. If a hearing is held, the hearing will be conducted according to the Department's Rules of Practice and Procedure, Title 454 and § 61-206 R.R.S. 1943, as amended.

005. DECISION. The Director shall issue a written order. A copy of the order shall be delivered or mailed to all parties of record.

006. APPEAL. If the decision was issued at the conclusion of a hearing, parties to the hearing may request a rehearing as described in the Department's Rules of Practice and Procedure, Title 454, Chapter 11 or may appeal to the Nebraska Court of Appeals as described in § 61-207 R.R.S. 1943, as amended. Parties should not assume that filing a request for rehearing extends the deadline for appeal to the Court of Appeals. If the decision was based on the application, without a hearing, the parties may request a hearing as described in the Department's Rules of Practice and Procedure, Title 454, Chapter 9.

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CHAPTER 19 - (Repealed)

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TITLE 457 - DEPARTMENT OF NATURAL RESOURCES

CHAPTER 20 - (Repealed)

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CHAPTER 21 - PERMIT TO CONDUCT WATER IN STREAM CHANNELS

001. APPLICATIONS

001.01 Separate applications must be filed:

001.01A For each separate location where water is conducted into a stream;

001.01B For each separate location where water being conducted is diverted out of a stream;

001.01C For each separate stream reach where the purpose of conducting the water is for instream use;

001.01D For each separate source of water to be conducted in the stream.

001.02 All information shall be compiled and submitted on 8½-inch by 11-inch paper, or paper folded to that size and shall be typed or neatly printed in black ink. The application shall consist of the following items:

001.02A Completed application form (form provided by Department, see Appendix P).

001.02B Map showing location of contributing source (stream, pump, well, reservoir); location where water is conducted into the stream; the entire stream reach; location of diversion out of the stream or, in case of instream uses, location where such protection of the water is to end; and location of use of water. The base map shall be a U.S. Geological Survey topographic quadrangle map (or copy of such map), or aerial photograph(s). Maps shall be neatly drawn.

001.02C Detailed explanation of intended times and maximum amounts of water that will be conducted along such streams or channels.

001.02D Analysis of expected losses in transit.

002. CORRECTION. An application that is incomplete or incorrect shall be returned to the applicant for correction. Failure to return the corrected application within 90 days shall cause the application to be dismissed.

003. DECISION. The Director shall issue a written order. A copy of the order shall be delivered or mailed to all parties of record.

004. FINAL MAP. A final project map drawn according to Department Rules, Title 457, Chapter 10 must be submitted within six months of any approval. Failure to file a final map will cause the original approval to be negated.

005. APPEAL. If the decision was issued at the conclusion of the hearing, parties to the hearing may request a rehearing as described in the Department's Rules of Practice and Procedure, Title 454, Chapter 11 or may appeal to the Nebraska Court of Appeals as described in § 61-207 R.R.S. 1943, as amended. Parties should not assume that filing a request for rehearing extends the deadline for appeal to the Court of Appeals. If the decision was based on the application, without a hearing, the parties may request a hearing as described in the Department's Rules of Practice and Procedure, Title 454, Chapter 9.

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CHAPTER 22 - INDUCED GROUND WATER RECHARGE

001. APPLICATION. All information shall be compiled and submitted in a loose-leaf binder with maximum dimensions of 11 inches by 11 inches by 4 inches. Maps, plans and drawings must be of a size sufficient to clearly depict the subject matter, but must be folded to dimensions not to exceed 11 inches by 11 inches. A complete table of contents shall be provided. The application shall consist of the following:

001.01 Completed application form (form must be provided by Department, see Appendix F).

001.02 A table of all existing and proposed production wells included under the application identifying (if applicable) well registration numbers; exact location by 40-acre subdivision, section, township and range; total depth; pumping capacity; and date each was completed.

001.03 A quantification of aquifer properties and how each was determined.

001.04 Assuming that combination of wells expected to create the greatest induced recharge, a tabulation showing computed drawdown and induced recharge and how it was determined.

001.05 A geologic log, to include an indication of static water level, for each production and test well.

001.06 For each production well, a log showing the size and vertical placement of each pump, all plain casing and screened sections and any artificial gravel pack.

001.07 A table showing the times of the year and the expected rates (in gallons per minute or cubic feet per second) and volumes (expressed in acre-feet) when induced recharge is expected to occur.

001.08 A narration of the minimum flow necessary to sustain satisfactory operation of the well field facilities within that stream reach where induced recharge is intended and the period of time that well field facilities would continue to meet minimal essential needs of the public water supplier if there were no flow in the source of supply.

001.09 Scaled maps showing:

001.09A All production and test wells and the stream reach where induced recharge is intended.

001.09B A depiction of the aquifer piezometric surface under nonpumping conditions and for pumping conditions assuming that combination of wells expected to create the greatest induced recharge.

001.09C. The areal extent and a cross-section of that portion of the aquifer analyzed for this application.

001.09D Location and identification of use of any wells not included in this application with a cone of depression that may intersect applicant's well field.

001.10 Applications for wells constructed on or after September 9, 1993, shall include information on public interest factors described in § 46-235(2)(a)(iii) R.R.S. 1943, as amended.

001.11 The following information may be submitted at the discretion of the applicant:

001.11A A statement indicating rate and volume of induced ground water recharge presently used and anticipated use for the next 25 years.

001.11B A statement indicating rate and volume of ground water use anticipated from well field during the next 25 years.

002. CORRECTION. Within 90 days of the filing of an application for induced ground water recharge, the Director shall accept the application as a completed application or return the application as an incomplete application. If the application is incomplete, the Director shall list the deficiencies and return the application for correction. Failure to refile the corrected application within 90 days shall cause the application to be dismissed.

003. NOTICE. Upon receiving a completed application for induced ground water recharge, the Director or Director's designee shall prepare a notice of the application. As a minimum standard, the notice shall include the name of the applicant, the proposed area of induced ground water recharge, and the amount of water requested for appropriation. The notice shall be published once a week for three consecutive weeks in a newspaper of general circulation in each county containing lands involved in the application, and in a newspaper of general circulation in Nebraska. The notice shall state that any person may file a written request for a hearing (or, if the Director is holding a hearing on his own motion, may file a written request to be made a party to the hearing) within two weeks from the date of final publication of the notice.

004. HEARING. If a hearing is held, the hearing will be conducted according to the Department's Rules of Practice and Procedure, Title 454 and § 61-206 R.R.S. 1943, as amended.

005. DECISION. The Director shall issue a written order. A copy of the order shall be delivered or mailed to all parties of record.

006. APPEAL. If the decision was issued at the conclusion of a hearing, parties to the hearing may request a rehearing as described in the Department's Rules of Practice and Procedure, Title 454, Chapter 11 or may appeal to the Nebraska Court of Appeals as described in § 61-207, R.R.S. 1943, as amended. Parties should not assume that filing a request for rehearing extends the deadline for appeal to the Court of Appeals. If the decision was based on the application, without a hearing, the parties may request a hearing as described in the Department's Rules of Practice and Procedure, Title 454, Chapter 9.

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CHAPTER 23 - MORATORIUM AREA VARIANCES FOR SURFACE WATER APPROPRIATIONS

001. PETITION FOR LEAVE TO FILE OR CONSIDER AN APPLICATION. Any person wanting to apply for a new surface water appropriation within a moratorium or stay area must file a petition in the Department requesting leave to file an application. The petition must be accompanied by a **copy** of the completed proposed application. The application shall not be considered filed at the time it is submitted with the petition. Anyone who currently has an unapproved application on file in the Department for a new appropriation for a project that is within a moratorium or stay area must file a petition requesting a variance to the moratorium or stay. The fee for filing the petitions shall be that described in § 33-105(8) R.R.S. 1943, as amended.

The petition shall include sufficient information to indicate:

001.01 The proposed project is for a non-consumptive use; or

001.02 The applicant has a credible proposal for replacing any consumptive use that will occur in a manner such that the project will not harm other users; or

001.03 The applicant has credible information that indicates there **may be** unappropriated water available at the proposed location at the time the depletion is likely to occur; or

001.04 The project existed prior to any informal moratorium, formal moratorium or stay.

001.05 There is a public safety issue that must be addressed and the proposed project addresses such issue.

001.06 The proposed use is a temporary use for public construction and the total volume requested is less than ten (10) acre-feet.

002. REVIEW. The Department shall review the information provided with the petition and shall make a determination as to whether it is sufficient to indicate good cause for allowing further consideration of the application.

003. DECISION. A written decision shall be issued. The decision shall either deny the petition and state the reasons for such denial, or grant the petition and state either (a) the petitioner may file the application and supporting documentation, or (b) the Department will proceed to process the existing filed application. Any decision approving a petition shall not bind the Director to approve any application to which it relates, or in any way be used as evidence of prejudice for the Director's future decisions concerning the specific approval requirements of such application. Allowance of a leave to file does not negate the necessity to meet the specific approval requirements for an appropriation.

004. APPEAL. If the petitioner wishes to appeal the decision of the Department, he or she may request a hearing before the Department within 15 days of the date the decision is rendered in accordance with the Department's Rules of Practice and Procedure, Title 454.

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CHAPTER 24 - DETERMINATION OF FULLY APPROPRIATED BASINS, SUB-BASINS OR REACHES

001. FULLY APPROPRIATED. Pursuant to Neb. Rev. Stat. § 46-713(3) (Reissue 2004, as amended), a river basin, subbasin, or reach shall be deemed fully appropriated if the Department of Natural Resources determines that then-current uses of hydrologically connected surface water and ground water in the river basin, subbasin, or reach cause or will in the reasonably foreseeable future cause (a) the surface water supply to be insufficient to sustain over the long term the beneficial or useful purposes for which existing natural flow or storage appropriations were granted and the beneficial or useful purposes for which, at the time of approval, any existing instream appropriation was granted, (b) the streamflow to be insufficient to sustain over the long term the beneficial uses from wells constructed in aquifers dependent on recharge from the river or stream involved, or (c) reduction in the flow of a river or stream sufficient to cause noncompliance by Nebraska with an interstate compact or decree, other formal state contract or agreement, or applicable state or federal laws.

001.01A Except as provided in 001.01C below, for purposes of Section 46-713(3)(a), the surface water supply for a river basin, subbasin, or reach shall be deemed insufficient, if after considering the impact of the lag effect from existing groundwater pumping in the hydrologically connected area that will deplete the water supply within the next 25 years, it is projected that during the period of May 1 through September 30, inclusive, the most junior irrigation right will be unable to divert sufficient surface water to meet on average eighty-five percent of the annual crop irrigation requirement, or, during the period of July 1 through August 31, inclusive, will be unable to divert sufficient surface water to meet at least sixty-five percent of the annual crop irrigation requirement.

For purposes of this rule, the “annual crop irrigation requirement” will be determined by the annual irrigation requirement for corn. This requirement is based on the average evapotranspiration of corn that is fully watered to achieve the maximum yield and the average amount of precipitation that is effective in meeting the crop water requirements for the area.

The inability to divert will be based on stream flow data and diversion records, if such records are available for the most junior surface water appropriator. If these records are not available, the inability to divert will be based on the average number of days within each time period (May 1 to September 30 and July 1 to August 31) that the most junior surface water appropriation for irrigation would have been closed by the Department and therefore could not have diverted during the previous 20 year period. In making this

calculation, if sufficient stream flow data and diversion data are not available, it will be assumed that if the appropriator was not closed, the appropriator could have diverted at the full permitted diversion rate. In addition the historical record will be adjusted to include the impacts of all currently existing surface water appropriations and the projected future impacts from currently existing ground water wells. The projected future impacts from ground water wells to be included shall be the impacts from ground water wells located in the hydrologically connected area that will impact the water supply over the next 25 year period.

001.01B In the event that the junior water rights are not irrigation rights, the Department will utilize a standard of interference appropriate for the use, taking into account the purpose for which the appropriation was granted.

001.01C If, at the time of the priority date of the most junior appropriation, the surface water appropriation could not have diverted surface water a sufficient number of days on average for the previous 20 years to satisfy the requirements of 001.01A, the surface water supply for a river basin, subbasin, or reach in which that surface water appropriation is located shall be deemed insufficient only if the average number of days surface water could have been diverted over the previous 20 years is less than the average number of days surface water could have been diverted for the 20 years previous to the time of the priority date of the appropriation.

When making this comparison, the calculations will follow the same procedures as described in 001.01A. When calculating the number of days an appropriator could have diverted at the time of the priority date of the appropriation, the impacts of all appropriations existing on the priority date of the appropriation and the impacts of wells existing on the priority date of the appropriation shall be applied in the same manner as in 001.01A. As in 001.01A above, in making this calculation, if sufficient stream flow data and diversion data are not available, it will be assumed that if the appropriator was not closed, the appropriator could have diverted at the full permitted diversion rate.

Use of the method described in this rule is not intended to express or imply any mandate or requirement that the method used herein must be included in the goals and objectives of any integrated management plan adopted for a river basin, subbasin or reach determined to be fully appropriated under this rule. Further, nothing in this section is intended to express or imply a priority of use between surface water uses and ground water uses.

001.02 The geographic area within which the Department preliminarily considers surface water and ground water to be hydrologically connected for the purpose prescribed in Section 46-713(3) is the area within which pumping of a well for 50 years will deplete the river or a base flow tributary thereof by at least 10 percent of the amount pumped in that time.

002. INFORMATION CONSIDERED. For making preliminary determinations required by Neb. Rev. Stat. Section 46-713 (Reissue 2004, as amended) the Department will use the best scientific data and information readily available to the Department at the time of the determination. Information to be considered will include:

Surface water administrative records

Department Hydrographic Report

Department and United States Geologic Survey stream gage records

Department's registered well data base

Water level records and maps from Natural Resources Districts, the Department, the University of Nebraska, the United States Geological Survey or other publications subject to peer review

Technical hydrogeological reports from the University of Nebraska, the United States Geological Survey or other publications subject to peer review

Ground water models

Current rules and regulations of the Natural Resources Districts

The Department shall review this list periodically, and will propose amendments to this rule as necessary to incorporate scientific data and information that qualifies for inclusion in this rule, but was not available at the time this rule was adopted.