

# STATE OF NEBRASKA DEPARTMENT OF NATURAL RESOURCES

## Instruction Sheet for:

### **Application for a Temporary Change of Location of Use and Purpose of Appropriation to Augment the Flow in a Specific Stream Reach** (DNR form SW-200)

- This application form is for appropriations that are held by an Irrigation District, Reclamation District, Public Power and Irrigation District, Mutual Irrigation Company, Canal Company or the US Bureau of Reclamation.
- This application form has been created for a specific type of temporary transfer that involves changing the location of use and purpose of a natural flow or storage use permit for irrigation to an in-stream use to augment the streamflow of a specific stream reach.
- It is recommended that all applicants call and set up a pre-application meeting with staff in the surface water section of the Department of Natural Resources (Department).

#### Form Item Number:

- 1. Appropriator of Record:** Name and contact information of organization that holds the surface water appropriation to be transferred.
- 2. Surface Water Appropriation to be Transferred:**
  - a) List the surface water appropriation number that this application proposes to modify. File a separate transfer application for each appropriation.
  - b) Indicate if the appropriation has incidental underground storage (IUS) associated with it. If applicable, the applicant must address the anticipated changes to the IUS portion. If the IUS portion is not currently quantified and will be transferred to a use other than temporary augmentation of a specific stream reach, the applicant is responsible for providing calculations to quantify the IUS portion of the appropriation. The application for such a transfer should be filed on separate Non-Expedited Transfer forms (DNR Forms 962-9, 962-11 and 962-12 among others as needed).

*Nebraska Revised Statutes § 46-290(3)(f): “The incidental underground water storage portion, whether or not previously quantified, of a natural-flow or storage-use appropriation may be separated from the direct-use portion of the appropriation and may be changed to a natural-flow or storage-use appropriation for intentional underground water storage at the same location if the historic consumptive use of the direct-use portion of the appropriation is transferred to another location or is terminated, but such a separation and change may be approved only if, after the separation and change, (i) the total permissible diversion under the appropriation will not increase, (ii) the projected consequences of the separation and change are consistent with the provisions of any integrated management plan adopted in accordance with section 46-718 or 46-719 for the geographic area involved, and (iii) if the location of the proposed intentional underground water storage is in a river basin, subbasin, or reach designated as overappropriated in accordance with section 46-713, the integrated management plan for that river basin, subbasin, or reach has gone into effect, and that plan requires that the amount of the intentionally stored water that is consumed after the change will be no greater than the amount of the incidentally stored water that was consumed prior to the change. Approval of a separation and change pursuant to this subdivision (e) shall not exempt any consumptive use associated with the incidental recharge right from any reduction in water use required by an integrated management plan for a river basin, subbasin, or reach designated as overappropriated in accordance with section 46-713.”*

*Nebraska Revised Statutes § 46-290(6): “A quantified or unquantified appropriation for incidental underground water storage may be transferred to a new location along with the direct-use appropriation with which it is recognized if the director finds such transfer to be consistent with section 46-294 and determines that the geologic and other relevant conditions at the new location are such that incidental underground water storage will occur at the new location. The director may request such information from the applicant as is needed to make such determination and may modify any such quantified appropriation for incidental underground water storage, if necessary, to reflect the geologic and other conditions at the new location.”*

*Nebraska Revised Statutes § 46-290(7): “Unless an incidental underground water storage appropriation is changed as authorized by subdivision (3)(f) of this section or is transferred as authorized by subsection (6) of this section or subsection (1) of section 46-291, such appropriation shall be canceled or modified, as appropriate, by the director to reflect any reduction in water that will be stored underground as the result of a transfer or change of the direct-use appropriation with which the incidental underground water storage was recognized prior to the transfer or change.”*

3. **Current Point of Diversion:** List the canal name, river or stream name, and legal description of the current point of diversion (headgate).
4. **Stream Reach and Location of Proposed Flow Augmentation:** List the name of the river/stream and the legal description of the beginning and ending points of the river/stream reach intended to be augmented by this transfer.

5. **Current Status of Appropriation:**

**Appurtenant:** If (the portion of) appropriation is currently assigned to a specific legal description it is considered appurtenant. If (the portion of) the appropriation subject to this transfer is currently appurtenant, the Addendum form SW Form 200-A must be completed in its entirety for each landowner, including the landowner signature(s), mortgage holder information, list of land and history of use. Attach as many addendum forms as are needed to provide complete information for the appurtenant (portion of) the appropriation subject to the transfer.

**Non Appurtenant:** If (the portion of) the appropriation subject to this transfer has been previously relinquished and has been cancelled by order of the Department within the last 5 years, it is considered non-appurtenant. List the date that the cancellation order was signed for (the portion of) the appropriation subject to this transfer application. It is important to include the legal descriptions of land to which the appropriation was appurtenant to prior to cancellation, and the history of use for the most recent 10 years for (the portion of) the non-appurtenant appropriation subject to this transfer. The list of land and history of each tract may be submitted on the Addendum form, SW Form 200-A, but the landowner signature and mortgage holder information may be omitted.

6. **Transfer Timeframe:** List the dates during which the transfer will remain in effect. This must include at least one or more irrigation seasons.
  - a) Date transfer is requested to begin. The actual begin date will not be before an application is approved.
  - b) Date transfer is requested to end.
  - c) Length in years that the transfer will be in effect.
7. **Consumptive Use:** Only the amount of water determined to be the Historic Consumptive Use (HCU) is eligible for transfer by this application. The Department has adopted a standard method to calculate the HCU for a tract of land under irrigation where actual records of use are unavailable. The Department will work with applicants to determine the transferrable amount in the pre-application meeting.

The applicant may calculate the amount HCU for the proposed transfer and request that amount on the application. All information and methodology used by the applicant to determine the HCU must be submitted with the transfer application. The Department will use the adopted standard method to calculate the HCU to verify the requested transferable amount and reserves the right to adjust that amount.

The applicant may request the Department to calculate HCU using the adopted method to determine the amount of the appropriation subject to the transfer. The applicant must provide information regarding crops, water use history and other relevant information.

8. **Other Sources of Water:** Provide information regarding the availability and type of other sources of water that could be used at the original location of use and steps, if any, taken to curtail the use of water from those sources.

*Nebraska Revised Statutes § 46-290(1)(b)(vii): “if a transfer is proposed, whether other sources of water are available at the original location of use and whether any provisions have been made to prevent either use of a new source of water at the original location or increased use of water from any existing source at the location”*

*Nebraska Revised Statutes § 46-294(d): "Except as otherwise provided in subsection (4) of this section, the proposed transfer or change, alone or when combined with any new or increased use of any other source of water at the original location or within the same irrigation district, reclamation district, public power and irrigation district, or mutual irrigation or canal company for the original or other purposes, will not diminish the supply of water available or otherwise adversely affect any other water appropriator and will not significantly adversely affect any riparian water user who files an objection in writing pursuant to section 46-291"*

- 9. Required Documentation:** Attachments as described that provide supporting information in regard to the application.
- 10. Acknowledgement by Organization:** Certifies that the information contained in this form and all attachments is true and accurate, that all attachments have been initialed by the signatory, that the organization agrees to pay for the costs associated with publication of legal notice, filing in the County Register of Deeds, and if necessary a portion of hearing costs.