

STATE OF NEBRASKA
DEPARTMENT OF NATURAL RESOURCES
INSTRUCTION SHEET FOR EXPEDITED TRANSFER PROCESS

See: Department Rules, Title 457, Chapter 9 for Expedited Transfers and Nebraska Revised Statutes §§46-290 to 46-294.

The expedited transfer process can only be used when:

1. 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.
2. The appropriation is used and will continue to be used exclusively for irrigation purposes.
3. The only lands involved in the proposed transfer are:
 - a. Lands within the quarter section of land to which the appropriation is appurtenant, or
 - b. 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, or
 - c. 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.
4. 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:
 - a. 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 ($1/70^{\text{th}}$) of a cubic foot per second. 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.
 - b. The applicant relinquishes any remaining rights.
5. The transfer will not result in a change in the point of diversion, or (pursuant to 46-291(1)(e)) the point of diversion will be changed but meets the following requirements (i) The new point of diversion is on the same named stream, the same tributary, or the same river or creek as the approved point of diversion; (ii) the proposed point of diversion will not move above or below an existing diversion point owned by another appropriator; and (iii) the proposed point of diversion will not move above or below a tributary stream or a constructed river return or a constructed drain.

6. The transfer will not diminish the water supply available for or otherwise adversely affect any other water appropriator. The Department has determined that if the following criteria are met, the transfer will not diminish the supply available for or otherwise adversely affect any other water appropriator and may be processed as an expedited transfer:
 - a. 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 appropriation.
 - b. In a basin or subbasin that has been declared to be fully or over-appropriated groundwater will not be used to irrigate those lands from which the water appropriation is being transferred. This limitation will not apply in a basin or subbasin that has been declared to be fully or over-appropriated and the integrated management plan and corresponding rules for ground water use within the area expressly provides for the use or increased use of ground water on lands from which the surface water appropriation has been transferred.
 - c. 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.
 - d. 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 for irrigation after the transfer. There shall be one exception to this criteria – if the land was in a government set aside program and documentation of such is provided with the application.
 - e. The total rate of all natural flow appropriation that will exist at the proposed location of use if the transfer is approved will not exceed a rate of seventieth ($1/70^{\text{th}}$) 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.
7. 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.

APPLICATION FORMS:

Complete items one through 17 by **printing in ink, typing or completing the online form** with the appropriate information and by placing a mark in the appropriate boxes.

Applications must be submitted on forms provided by the Department. A separate application is required for each appropriation to be modified and a separate application is required for each appropriator of record. The applicant (person filing and signing application) must be the appropriator of record in the Department. In most instances, except for irrigation districts, reclamation districts, public power and irrigation districts, or mutual canal or irrigation companies, the appropriator of record will be the landowner(s).

Applications filed by irrigation districts, reclamation districts, public power and irrigation districts, or mutual canal companies, must include the names, addresses, and signatures of the landowners agreeing to have the water appropriation transferred off their land. See **DNR form 962-6**.

Applications that are incomplete or incorrect shall be returned to the applicant for correction. The corrected application must be **refiled in the Department within 90 days**. Failure to file a corrected application shall cause the application to be dismissed.

If the application is determined not to meet the requirements for an expedited transfer, the Department will issue a written order notifying the applicant of its determination and the specific findings why the application cannot be processed under the expedited process. The applicant will be given 90 days to:

- a. Submit further information in an attempt to satisfy the requirements of the expedited process,
- b. Supply the additional information needed to meet the requirement of the non-expedited transfer process, and request that the application be considered under the non-expedited process,
- c. Request a hearing as described in the Department's Rules of Practice and Procedure, Title 454 on the issue of whether the application should be allowed to proceed pursuant to the expedited process.

Explanation for specific items included on application form:

Item No. 3. It is very important that the Department know who is associated with an appropriation and what their association is. This way, when issues arise concerning an appropriation, we can contact the proper person.

Item No. 5. Every appropriation has as part of the conditions of the appropriation, specific point or points of diversion approved and shown on the project maps. If the current point of diversion is not one which has been approved, or the point of diversion will change because of the transfer requested, the application may not be able to be processed as an expedited transfer. Contact the Department with any questions.

Item No. 8. Temporary transfers can be allowed for no less than one year and no more than 30 years, and can be extended at the request of the appropriator after the midpoint of the transfer. Any renewal or extension is subject to review and approval in accordance with statutes and Department rules.

Item No. 14. If the lands currently approved for irrigation under the appropriation have been in a government program that prohibited the use of the water, applicant shall provide documentation of such enrollment with the application.