

## LEGISLATIVE BILL 356

Approved by the Governor March 2, 1987

Introduced by Elmer, 38; Langford, 36; Abboud, 12

AN ACT relating to water rights; to amend section 46-229.04, Reissue Revised Statutes of Nebraska, 1943; to change considerations in the adjudication of water rights; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 46-229.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

46-229.04. (1) At such hearing the verified report of the water commissioner or engineers of the department shall be prima facie evidence for the forfeiture and annulment of such water appropriation. If no one appears at the hearing, such water appropriation or unused part thereof shall be declared forfeited and annulled. If someone interested appears and contests the same, the department shall hear evidence, and if it appears that such water has not been put to a beneficial use, or has ceased to be used for such purpose for more than three consecutive years, the same shall be declared canceled and annulled unless the department finds that there has been sufficient cause for such nonuse as provided for in subsection (3) of this section.

(2) If it is determined that such water has not been put to beneficial use or has ceased to be used for such purpose for more than ten consecutive years, the water right shall be declared canceled and annulled, except that for any water appropriation or part of a water appropriation on any tract of land under separate ownership, sufficient cause for nonuse shall be deemed to exist even if the period of nonuse was for more than ten consecutive years if the landowner used the available water supply on only part of the land under the water appropriation because of an inadequate water supply.

(3) Sufficient cause shall be deemed to exist if during If the period of nonuse did not exceed ten consecutive years, sufficient cause shall be deemed to exist if such nonuse was a result of one or more of the following:

(a) ~~(1)~~ The land subject to the appropriation was placed under an acreage reserve or production quota program or otherwise withdrawn from use as required for participation in any federal or state program;

(b) ~~(2)~~ Federal, state, or local laws, rules, or regulations temporarily prevented or restricted such use;

(c) ~~(3)~~ The available water supply was inadequate to enable the owner to use the water for a beneficial or useful purpose;

(d) ~~(4)~~ Use of the water was unnecessary because of climatic conditions;

~~(5)~~ (e) Circumstances were such that a prudent person, following the dictates of good husbandry, would not have been expected to use the water;

~~(6)~~ (f) The works, diversions, or other facilities essential to use of the water were destroyed by a cause not within the control of the owner of the appropriation, and good faith efforts to repair or replace the works, diversions, or facilities have been and are being made;

~~(7)~~ (g) The owner of the appropriation was in active involuntary service in the armed forces of the United States or was in active voluntary service during a time of crisis; or

~~(8)~~ (h) Legal proceedings prevented or restricted use of the water.

The department may specify by rule and regulation other circumstances which shall be deemed to constitute sufficient cause.

Sec. 2. That original section 46-229.04, Reissue Revised Statutes of Nebraska, 1943, is repealed.