

**LOWER REPUBLICAN NATURAL RESOURCES DISTRICT**  
**AMENDED AND RESTATED**  
**GROUND WATER MANAGEMENT RULES AND REGULATIONS**

Amended Flow Meter Rule 6-4 effective May 1, 2013

Restated rules effective November 15, 2013

Amended by adding Enforcement **RULE 7-3** effective July 22, 2013

Amended by adding Pooling **RULE 7-14** effective March 21, 2014

Amended by changing date in **RULE 7-9** effective February 12, 2015

Amended by changing one year pumping maximum allocation in **RULE 7-14.12** effective May 14, 2015

Amended by changing one year pumping maximum allocation in **RULE 7-14.12** effective February 11, 2016

Amended by changing **RULE 7-2.3** and **RULE 7-14.12** effective March 9, 2017

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## **LOWER REPUBLICAN NATURAL RESOURCES DISTRICT GROUND WATER MANAGEMENT RULES AND REGULATIONS**

**AUTHORITY** – The Lower Republican Natural Resources District (LRNRD) adopts these Rules and Regulations pursuant to the authority granted in the Nebraska Ground Water Management and Protection Act, Chapter 46, Article 7.

**PURPOSE** – These Rules and Regulations are adopted for the following purposes: (1) to protect Ground Water quantity; (2) to prevent or resolve conflicts between Ground Water users and surface water appropriators in those areas where Ground Water and surface water are hydrologically connected; and (3) to implement the necessary controls to carry out the goals and objectives identified in the Integrated Management Plan (IMP) jointly adopted by the LRNRD and the Nebraska Department of Natural Resources (DNR).

### **CHAPTER 1 – DESIGNATION OF BOUNDARIES AND MANAGEMENT AREA**

These Rules and Regulations apply within the entire geographic boundary of the LRNRD. The stratigraphic boundary is from the land surface to the base of the underlying sand and gravel layers that contain the water bearing material. The base of the sand and gravel layers' rest on impervious layers of Niobrara Chalk, Pierre Shale or formations of the White River Group. The entire District has been designated a Management Area pursuant to *Neb. Rev. Stat.* § 46-712. The boundaries of the District and The Rapid Response Area, as defined in Rule 6.9.3, are illustrated on the map attached as Exhibit "A."

To the extent the provisions of these Rules and Regulations relate to and accommodate or provide for water short year regulatory action intended to achieve compliance with the Republican River Compact, these Rules and Regulations apply to portions of the Republican River Basin lying in the Nebraska counties of Furnas, Harlan, Franklin, Webster and Nuckolls, lying upstream of Guide Rock, Nebraska: those areas within the basin lying west of a line proceeding north from the Nebraska-Kansas state line and following the western edge of Webster County, Township 1, Range 9, Sections 34, 27, 22, 15, 10, and 3 through Webster County, Township 2, Range 9, Sections 34, 27, and 22; then proceeding west along the southern edge of Webster County, Township 2, Range 9, Sections 16, 17 and 18; then proceeding north following the western edge of Webster County, Township 2, Range 9, Sections 18, 7, and 6 through Webster County, Township 3, Range 9, Section 31, 30, 19, 18, 7 and 6 to its intersection with the northern boundary of Webster County.

### **CHAPTER 2 – ENFORCEMENT AND PENALTIES**

#### **RULE 2-1 ENFORCEMENT**

**2-1.1.** Penalties for violating certain provisions of these Rules and Regulations are identified below, which penalties may be enforced without the need for the LRNRD to issue a cease and desist order. To the extent that specific penalties are not identified below, these Rules and Regulations shall be enforced by the LRNRD through the use of cease and desist orders issued in accordance with the *Neb. Rev. Stat.* § 46-707(h).

- 2-1.2.** It is presumed that any Person subject to these Rules and Regulations has full knowledge of their contents, requirements, and prohibitions. No Person shall be able to use ignorance of the provisions of these Rules and Regulations as a defense in any enforcement action or penalty proceeding.

## **RULE 2-2 PENALTIES**

- 2-2.1.** Any Person who violates any cease and desist order issued by the LRNRD pursuant to Neb. Rev. Stat. § 46-707(h), or who violates any controls or Rules or Regulations adopted by the LRNRD relating to the Management Area, shall be subject to penalties imposed through the controls adopted by the LRNRD. Such controls include, but are not limited to, a reduction (in whole or in part) in that Person's Allocation of Ground Water, a reduction in the number of Certified Irrigated Acres, or a permanent forfeiture of certification. Notice and hearing shall be provided to such Person before the LRNRD takes any action. Specific penalties may be identified in rules and regulations for some violations. Any Person who violates a cease and desist order issued by the District pursuant to Neb. Rev. Stat. § 46-707(h) may be subject to a civil penalty assessed pursuant to Neb. Rev. Stat. § 46-745.
- 2-2.2.** In addition to the specific penalties identified below, there are circumstances under which a Person may be subject to additional penalties, up to and including a permanent forfeiture of Certified Irrigated Acres, and/or a permanent forfeiture of all future Allocations. Such circumstances include, but are not limited to the following: (1) a second violation of any particular Rule or Regulation, (2) repeated violations of these Rules and Regulations, (3) being in violation of more than one Rule at any particular time, (4) engaging in willful and wanton misconduct, or (5) certification by the record owner to the District of the non-irrigation status of certain Certified Irrigated Acres in order to opt-out of an Occupation Tax levied by the District, which status is later found to be false in whole or in part. The Board may also pursue such forfeiture of Certified Irrigated Acres and/or Allocation if a Person has been warned on more than one occasion that they are in violation of these Rules and Regulations.
- 2-2.3.** The District may issue cease and desist orders, following ten days' notice to the Person affected stating the contemplated action and in general the grounds for the action and following reasonable opportunity to be heard, enforce any of the provisions of the Act or of orders or permits issued pursuant to the Act, to initiate suits to enforce the provisions of orders issued pursuant to the Act, and to restrain the construction of illegal wells or the withdrawal or use of water from illegal wells, all as provided in *Neb. Rev. Stat.* §§ 46-707(h) and 46-746(1).

## **CHAPTER 3 – ACCESS**

### **RULE 3-1 ENTRY UPON LAND**

The LRNRD or authorized designee shall have the power and authority to enter upon the land, after notification to the landowner, for any and all reasons relative to the administration of the provisions of these Rules and Regulations and the Ground Water Management and Protection Act. This entry shall not be considered trespass.

### **RULE 3-2 NOTICE**

Notification for entry upon land may be accomplished by regular mail, certified mail or by oral communication.

### **RULE 3-3 ACCESS RELATED TO MEASURING DEVICES**

The LRNRD hereby notifies all Operators of its intent to enter onto property to verify the installation of flow meter devices (or other similar devices) used to measure the quantity of Ground Water pumped for irrigation, municipal, commercial and industrial purposes (referred to below as “measuring devices”) and to read, or to verify the readings of, all measuring devices that have been installed. The LRNRD hereby notifies all landowners and Operators of its intent to enter onto property to install cable seals to prevent the removal of such measuring devices.

## **CHAPTER 4 – DEFINITIONS**

- 4-1.1. Abandoned Well:** Any Water Well, the use of which has been accomplished or permanently discontinued, (1) which has been decommissioned as described in the rules and regulations of the Department of Health and Human Services Regulation and Licensure, and (2) for which a notice of decommissioning has been filed with the Department of Natural Resources.
- 4-1.2. Act:** The Nebraska Ground Water Management and Protection Act.
- 4-1.3. Additional Water Administration Year:** When water is needed for diversion at Guide Rock and the projected or actual irrigation supply is less than 130,000 acre-feet of storage available for use from Harlan County Lake as determined by the United States Bureau of Reclamation for the Republican River Compact Administration.
- 4-1.4. Allocation:** As it relates to water use for irrigation purposes, means the allotment of a specified total number of acre-inches of irrigation water per certified irrigated acre assigned to that Regulated Well over the Allocation Period. As it relates to other purposes, the allotment of a determined quantity of Ground Water.
- 4-1.5. Allocation Period:** The number of years over which an Allocation can be used.
- 4-1.6. Base Allocation:** This amount, in acre-inches, is derived from dividing the Allocation by the Allocation Period.

- 4-1.7. Baseline of Commercial or Industrial Use:** The amount of Ground Water used by a commercial or industrial user as computed in Rule 7-1.4.
- 4-1.8. Baseline of Municipal Use:** The amount of Ground Water used by a municipality as computed in Rule 7-5.1.2.
- 4-1.9 Beneficial Use:** That use by which water may be put to the benefit of humans and other species.
- 4-1.10. Board:** The elected Board of Directors of the Lower Republican Natural Resources District.
- 4-1.11 Carry-Forward:** That part of an Allocation that is unused during the base Allocation Period, which may be credited to a subsequent Allocation Period in accordance with District Rules and Regulations.
- 4-1.12. Certification:** The process whereby the beneficial uses of Ground Water for a Regulated Well is identified, recorded and approved by the District.
- 4-1.13. Certified Water Uses:** The beneficial uses of Ground Water for purposes other than irrigation that is identified by the District pursuant to rules adopted by the District.
- 4-1.14. Certified Irrigated Acres:** The number of acres or portion of an acre that the Board has approved for irrigation from Ground Water in accordance with the law and the District rules and regulations. .
- 4-1.15. Commercial Livestock Well:** A Water Well used for the watering of livestock and other uses directly related to the operation of a feedlot or other confined livestock operation or dairy.
- 4-1.16. Commercial Water User:** A Person who uses Ground Water for commercial purposes, including but not limited to, maintenance of the turf of a golf course.
- 4-1.17. Conjunctive Management of Water:** The use of both surface water and Ground Water on the same tract of land for irrigation purposes.
- 4-1.18. Consumptive Use:** That amount of water that is consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use are lawfully made.
- 4-1.19. Decommission:** When used in relation to a Water Well, shall mean the act of filling, sealing, and plugging a Water Well in accordance with the Department of Health and Human Services Regulation and Licensure Rules and Regulations.
- 4-1.20. Dewatering Well:** A Water Well which is constructed for the purpose of temporarily lowering the Ground Water surface elevation.



- 4-1.21. District, NRD, or LRNRD:** The Lower Republican Natural Resources District.
- 4-1.22. DNR or Department:** The Nebraska Department of Natural Resources.
- 4-1.23. Flow Meter:** A device, approved by the LRNRD, to measure the quantity of Ground Water pumped, withdrawn, or taken from a Water Well.
- 4-1.24. Good Cause Shown:** A reasonable justification for granting a Variance to consumptively use water that would otherwise be prohibited by rule or regulation, and which the LRNRD reasonably and in good faith believes will provide an economic, environmental, social or public health and safety benefit that is equal to or greater than the benefit resulting from the prohibition from which a Variance is sought.
- 4-1.25. Governmental Uses:** Any Ground Water supplied to a governmental entity, including school districts, counties, and other political subdivisions, state agencies, or federal agencies.
- 4-1.26. Ground Water:** That water which occurs in or moves, seeps, filters, or percolates through the ground under the surface of the land.
- 4-1.27. Historic Consumptive Use:** That amount of water that has previously been consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use was lawfully made.
- 4-1.28. History of Use:** As used in these Rules and Regulations shall mean the exercise of a Certified Water Use in four (4) of the previous six (6) years.
- 4-1.29. Illegal Water Well:** (a) any Water Well operated or constructed without or in violation of a permit required by the Act; (b) any Water Well not in compliance with Rules and Regulations adopted and promulgated pursuant to the Act; (c) any Water Well not properly registered in accordance with Neb. Rev. Stat. §§ 46-602 to 46-606; (d) any Water Well not in compliance with any other applicable laws of the State of Nebraska or with rules and regulations adopted and promulgated pursuant to such laws.
- 4-1.30. Integrated Management Plan:** Is a plan adopted pursuant to *Neb. Rev. Stat. 46-715*, the object of which is to manage a river basin, sub basin, or reach to achieve and sustain a balance between water uses and water supplies for the long-term. The District has adopted such a plan, as set forth in a separate document, effective October 1, 2011.
- 4-1.31. Inactive Status Well:** A Water Well that is not currently in use, but is in a good state of repair and for which the owner has provided evidence of intent for future use by maintaining the Water Well in a manner which meets the following requirements: (1) the Water Well does not allow impairment of the water quality in the Water Well or of the Ground Water encountered by the Water Well; (2) the top of the Water Well or Water Well casing has a water-tight welded or threaded cover or some other water-tight means to prevent its removal without the use of equipment or tools to prevent unauthorized access, to prevent a safety hazard to humans and animals, and to prevent illegal disposal of wastes

or contaminants into the Water Well; and (3) the Water Well is marked so as to be easily visible and located and is labeled or otherwise marked as to be easily identified as a Water Well and the area surrounding the Water Well is kept clear of brush, debris, and waste material. An inactive status Water Well shall be registered as such in the well registration records of the Nebraska DNR.

- 4-1.32. Incentive Program:** A program that may require agreements or covenants concerning the use of land or water as necessary to produce the benefits for which the program is established.
- 4-1.33. Industrial Water User:** A Person who uses Ground Water for industrial purposes, including but not limited to, manufacturing and power generation.
- 4-1.34. Industrial Well:** A Water Well designed and constructed to be used for industrial purposes including manufacturing, commercial and power generation uses of water. Commercial use includes, but is not limited to, maintenance of the turf of a golf course.
- 4-1.35. Integrated Management Area or Management Area:** The entirety of the LRNRD as stated in Chapter 1 of these Rules and Regulations.
- 4-1.36 Late Permit:** A permit applied for after construction has commenced on a regulated Water Well pursuant to *Neb. Rev. Stat.* § 46-735.
- 4-1.37 Little Blue Basin:** The Little Blue Basin is that area, delineated by the DNR, within the geographic confines of the LRNRD and located outside of the Republican River Basin.
- 4-1.38. Management Actions:** Any action taken by the Board that includes but is not limited to Ground Water or surface water leases, Ground Water or surface water purchases, augmentation projects, or any other program or project to ensure compliance with the District's Integrated Management Plan.
- 4-1.39. Occupation Tax:** The tax that the District may levy upon the activity of irrigation of agricultural lands on an annual basis, not to exceed ten dollars per irrigated acre.
- 4-1.40. Offset:** Any water that is used to compensate for Ground Water that has been withdrawn since the effective date of *Neb. Rev. Stat.* § 46-740 when such withdrawal is considered to be an expanded or new use. "Offset" may also include any water that the LRNRD requires an applicant to provide to compensate for Ground Water that will be withdrawn pursuant a Variance granted under Rule 5-1.
- 4-1.41. Offset Account:** A tracking system for the amount of credits and debits for a municipal or industrial/commercial user pursuant to Rule 7-5.
- 4-1.42. Operator:** The Person who controls the day-to-day operation of the Water Well.
- 4-1.43. Overlying Land:** The land that has been certified as being irrigated by a Regulated Well as per Rule 6-6.

- 4-1.44. Permit to Construct a Well:** A document that must be obtained from the LRNRD in accordance with Rule 6-2 before construction of a regulated Ground Water well may be commenced in the Management Area pursuant to Neb. Rev. Stat. § 46-735.
- 4-1.45. Person:** A natural Person, partnership, limited liability company, association, corporation, municipality, irrigation District, agency or political subdivision of the state, or a department, agency, or bureau of the United States.
- 4-1.46. Public Water Supplier:** A city, village, municipal corporation, metropolitan utilities district, rural water district, natural resources district, irrigation district, reclamation district, or sanitary improvement district which supplies or intends to supply water to inhabitants of cities, villages, or rural areas for domestic or municipal purposes.
- 4-1.47. Public Water System:** System for providing the public with water for human consumption, as further defined in 179 N.A.C. 2.
- 4-1.48. Range Livestock Well:** A Water Well that is used for the watering of range livestock and other uses of water directly related to the operation of a pasture or range.
- 4-1.49. Regulated Well:** A Water Well designed and constructed to pump more than fifty (50) gallons per minute. A series of Water Wells, with a combined discharge of more than fifty (50) gallons per minute, of which the water is commingled, combined, clustered or joined as a single unit for a single purpose, shall be considered as one Regulated Well.
- 4-1.50. Replacement Well:** A Water Well which is constructed to provide water for the same purpose as the original Water Well and is operating in accordance with any applicable rules and regulations of the District and with any applicable permit from the Department and, if the purpose is for irrigation, the replacement Water Well delivers water to the same tract of land served by the original Water Well and (a) replaces a decommissioned Water Well within one hundred eighty (180) days after the decommissioning of the original Water Well, (b) replaces a Water Well that has not been decommissioned but will not be used after construction of the new Water Well and the original Water Well will be decommissioned within one hundred eighty (180) days after such construction, except that in the case of a municipal Water Well, the original municipal Water Well may be used after construction of the new Water Well but shall be decommissioned within one year after completion of the replacement Water Well, or (c) the original Water Well will continue to be used but will be modified and equipped within one hundred eighty (180) days after such construction of the replacement Water Well to pump fifty (50) gallons per minute or less and will be used only for range livestock, monitoring, observation, or any other non-consumptive or de minimus use and approved by the District, and (d) would not be used to provide water to a use not certified with the well being replaced and (e) would not be used in such a way as to result in the consumption of more water than was historically consumed by the Water Well being replaced. A replacement well, as defined in Neb. Rev. Stat. § 46-602 or as further defined in LRNRD Rules and Regulations, is subject to the same provisions as the Water Well it replaces.

- 4-1.51. Test Hole:** A hole designed solely for the purpose of obtaining information on hydrologic or geologic conditions.
- 4-1.52. Unregulated Well:** A Water Well designed and constructed to pump fifty (50) gallons per minute or less and is not commingled, combined, clustered or joined with other Water Wells.
- 4-1.53. Variance:** (a) an approval to deviate from a restriction imposed under subsection (1), (2), (8), or (9) of *Neb. Rev. Stat.* § 46-714 or (b) the approval to act in a manner contrary to existing rules or regulations of the District, which rule or regulation is otherwise applicable.
- 4-1.54. Water Short Year:** A year in which the projected or actual irrigation supply is less than 119,000 acre-feet of storage available for use from Harlan County Lake as determined by the United States Bureau of Reclamation for the Republican River Compact Administration.
- 4-1.55. Water Well:** Any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for Ground Water, monitoring Ground Water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting fluid as defined in *Neb. Rev. Stat.* § 81-1502 into the underground water reservoir. Water well includes any excavation made for any purpose if Ground Water flows into the excavation under natural pressure and a pump or other device is placed in the excavation for the purpose of withdrawing water from the excavation for irrigation. For such excavations, construction means placing a pump or other device into the excavation for the purpose of withdrawing water for irrigation. Water well does not include (a) any excavation made for obtaining or prospecting for oil or natural gas or for inserting media to re-pressurize oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission or (b) any structure requiring a permit by the Department used to exercise a surface water appropriation.

## **CHAPTER 5 – GENERAL PROVISIONS**

### **RULE 5-1 VARIANCES**

- 5-1.1.** The Board may grant Variances from the strict application of these Rules and Regulations upon Good Cause Shown. The Board may also consider whether the request for a Variance will result in the conservation of Ground Water or surface water within the District.
- 5-1.2.** All requests for a Variance shall be made on forms provided by the LRNRD and shall be acted upon at a formal adjudicatory hearing before the Board. This hearing shall be advertised in newspaper(s) of general circulation within the LRNRD. All known interested parties will be provided notice of the hearing. The well owner or his or her representative shall be present at the hearing, except that, with prior notification to the LRNRD, written testimony may be provided if the well owner cannot be present in Person.

## **RULE 5-2 SEVERABILITY**

If any Rule or Regulation or any part of any Rule or Regulation herein shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

## **CHAPTER 6 – GENERAL MANAGEMENT**

### **RULE 6-1 MORATORIUM**

- 6-1.1.** The LRNRD hereby closes the entire Management Area to the issuance of new permits for Regulated Wells except as provided in Rules 6-1.2, 6-1.3, and 6-1.4.
- 6-1.2.** The LRNRD hereby closes the entire Management Area to the initiation or expansion of Consumptive Uses with the exception of (1) those uses that pertain to human health, safety, and welfare, or range livestock, (2) those uses for which an Offset has been or will be provided as described in Rule 7-5 below, or (3) those uses for which an Offset will be provided to compensate for Ground Water that will be withdrawn pursuant a Variance granted under Rule 5-1.
- 6-1.3.** Wells for new or expanded municipal, commercial and industrial uses are governed by Rule 7-5 below.
- 6-1.4.** Replacement wells and wells for the expansion of range livestock use are not subject to the moratoriums.

### **RULE 6-2 PERMIT TO CONSTRUCT A WATER WELL**

- 6-2.1.** Except as provided in Rule 6-2.2, any Person who intends to construct a regulated Water Well on land in the Management Area that he or she owns or controls shall, before commencing construction, apply with the LRNRD for a permit on a form provided by the LRNRD. Within thirty (30) days after the application is properly prepared and filed, the LRNRD shall either issue the approved permit (with or without conditions) or deny the permit application. An incomplete or defective application shall be returned for correction. If correction is not made within sixty (60) days, the application shall be canceled.
- 6-2.2.** Exceptions. No permit shall be required for:
  - 6-2.2.1.** Test holes;
  - 6-2.2.2.** Dewatering wells with an intended use of ninety (90) days or less;
  - 6-2.2.3.** A single Water Well designed and constructed to pump fifty (50) gallons per minute or less.

- 6-2.3.** Applications for a permit to construct a Water Well that require consideration of a Variance request shall not be deemed as properly filed and complete until such time as the Board has acted to approve the Variance request.
- 6-2.4.** A Person shall apply for a permit before he or she modifies a Water Well, for which a permit was not required when the well was constructed, into one for which a permit would otherwise be required.
- 6-2.5.** The permit application shall be accompanied by a \$50.00 filing fee payable to the LRNRD and shall contain:
- 6-2.5.1.** The name and post office address of the well owner;
  - 6-2.5.2.** The nature of the proposed use;
  - 6-2.5.3.** The intended location of the proposed Water Well or other means of obtaining Ground Water;
  - 6-2.5.4.** The intended size, type and description of the proposed Water Well and the estimated depth, if known;
  - 6-2.5.5.** The estimated capacity in gallons per minute;
  - 6-2.5.6.** The acreage and location by legal description of the land involved if the intended use is for irrigation;
  - 6-2.5.7.** A description of the proposed use, if other than irrigation;
  - 6-2.5.8.** The registration number of the well being replaced, if applicable;
  - 6-2.5.9.** The certified use of the well being replaced, if applicable;
  - 6-2.5.10.** The Historic Consumptive Use of the well being replaced, if applicable; and
  - 6-2.5.11.** Such other information as the District may require.
- 6-2.6.** Any Person who has failed or in the future fails to obtain a permit before construction is commenced shall make application for a late permit on forms provided by the LRNRD. The application for a late permit shall be accompanied by a \$250.00 fee payable to the District and shall contain the same information required in Rule 6-2.5.
- 6-2.7.** The application for a permit shall be denied if (a) the location or operation of the proposed Water Well or other work would conflict with any regulations or controls adopted by the LRNRD; (b) the proposed use would not be a beneficial use; or (c) in the case of a late permit only, that the applicant did not act in good faith in failing to obtain a timely permit.

- 6-2.8.** No refund of any application fees shall be made regardless of whether the permit is issued, canceled, or denied.
- 6-2.9.** The issuance, by the LRNRD, of a permit or the registration of a Water Well with the DNR shall not vest in any Person the right to violate any LRNRD rule, regulation, or control in effect on the date of issuance of the permit or the registration of the Water Well, or to violate any rule, regulation, or control properly adopted after such date.
- 6-2.10.** The applicant shall commence construction as soon as possible after the date of approval and shall complete construction and equip the Water Well prior to the date specified in the conditions of approval, which shall not be more than one (1) year from the date of approval, unless it is clearly demonstrated in the application that one (1) year is an insufficient period of time for such construction. Failure to complete the project under the terms of the permit may result in the withdrawal of the permit by the LRNRD.

### **RULE 6-3 WELL SPACING**

- 6-3.1.** No regulated irrigation well shall be constructed upon any land in this District within six hundred (600) feet of any registered regulated irrigation well of different ownership, except, any irrigation Water Well that replaces an irrigation Water Well that was drilled prior to September 20, 1957, and which is less than six hundred (600) feet from a registered irrigation well may be located closer than six hundred (600) feet from another Regulated Well if it is drilled within fifty (50) feet of the Water Well being replaced.
- 6-3.2.** No regulated irrigation, industrial or public water supply well shall be constructed upon any land in this District within one thousand (1000) feet of any registered regulated industrial or public water supply well of different ownership.
- 6-3.3.** A replacement well must be constructed within one thousand three hundred twenty (1320) feet of the well that it is replacing.
- 6-3.4.** The well spacing required by Rule 6-3.1 shall also apply to the distance between a proposed new Regulated Well and an unregistered regulated Water Well but only for a period of sixty (60) days to allow for registration of such unregistered Water Well.

### **Rule 6-4 FLOW METERS (Amended Effective May 1, 2013)**

- 6.4.1.** Flow meters meeting accuracy specifications established in Rule 6-4.2 shall be installed on all Regulated Wells by April 1, 2005, except that, before any inactive wells are placed in service, a flow meter shall be installed, the LRNRD shall be notified of the well's status change, and the status of the well in the well registration records of the DNR shall be updated to reflect its active status. All inactive wells that have a pump and pump column in place must be metered.
- 6-4.1.1.** No such well shall be operated within the District without a properly installed and operational flow meter.

- 6-4.1.2.** The penalty for the first time that a Person is found to be operating a well without a properly installed and operational flow meter shall be the loss of the base Allocation for the following year and the well will not be allowed to be pumped until the required flow meter is installed and/or made properly operative and free from any tampering.
- 6-4.1.3.** Any Person who is found to be operating a well without a properly installed and operational flow meter, after having once been penalized pursuant to Rule 6-4.1.2, may be subject to a permanent forfeiture of the certification for those acres that are irrigated by that well.
- 6-4.2.** All meters shall be tested for accuracy using recognized industry testing methods and certified by the manufacturer according to those standards. At any rate of flow within the normal flow limits, the meter shall register not less than ninety-eight (98) percent nor more than one hundred two (102) percent of the water actually passing through the meter. All meters shall have a register or totalizer and shall read in U. S. gallons, acre-feet or acre-inches.
- 6-4.3. Installation.** The Operator shall, on forms provided by the LRNRD, report the location, by legal description, and certify the proper installation of flow meters. The LRNRD may, at a time of its own choosing, verify the location and proper installation of flow meters. The proper installation of a meter is such that it meets the manufacturer's specifications and/or more restrictive specifications developed by the LRNRD as reflected in this Rule.
- 6.4.3.1.** Whenever a manufacturer or dealer instructions and/or specifications are more restrictive, they shall govern.
- 6-4.3.2.** In no case, may a meter be installed with less than five (5) unobstructed pipe diameters upstream of the meter or less than one (1) unobstructed pipe diameter downstream of the meter.
- 6-4.3.3.** If the meter is installed downstream of a mainline check valve, there must be at least ten (10) pipe diameters upstream of the meter. If there are not at least ten (10) pipe diameters upstream of the meter, straightening vanes must be installed.
- 6-4.3.4.** Meters must be located so as to prevent damage to the meter from excessive vibration.
- 6-4.3.5.** Meters must be installed so that the removal of the meter for service or maintenance can be performed with the use of normal tools and does not require excessive or unusual removal of hardware or other appurtenances.
- 6-4.3.6.** Meters shall not be removed except for service or maintenance.
- 6-4.3.7.** The LRNRD may establish a method by which the installed meter is tagged, sealed, marked or otherwise protected from tampering.



- 6-4.4. Improperly Installed Meters.** The installation of meters that do not meet the manufacturers' or LRNRD standards must be corrected. If the LRNRD determines that a meter has been improperly installed, it will send a certified letter to the well owner and Operator requesting correction within fourteen (14) days. Failure to provide for proper installation, or to correct a problem identified by the LRNRD in its certified letter, may result in the imposition of the penalties as described in Rules 6-4.1.2 and 6-4.1.3 above.
- 6-4.5. Inoperative Meters.** Well owners and/or Operators shall notify the LRNRD of an inoperative meter within one (1) working day from the time the defect is noted. The LRNRD shall repair or temporarily replace the inoperative meter and charge the well owner for the service. Failure to report inoperative meters shall result in the imposition of penalties as described in Rules 6-4.1.2 and 6-4.1.3 above.
- 6-4.6. Tampering with an Installed Flow Meter.** Well owners and/or Operators who are found to have tampered with a meter so as to affect the accuracy or true use of that meter shall be subject to the penalties described in Rules 6-4.1.2 and 6-4.1.3 above and may lose their remaining Allocation for the current year.
- 6-4.7. Removing a Cable Seal or Removing a Flow Meter.** Removing a cable seal and/or removing a flow meter without written approval by the District staff shall result in the imposition of the penalties described in Rules 6-4.1.2 and 6-4.1.3 above.
- 6-4.8. Service.** It is the responsibility of the Operator to provide for service and to maintain the flow meter according to either the manufacturer's standards or more restrictive standards developed by the LRNRD. The Operator may grant permission for this service to be provided by the LRNRD, at a cost to the Operator. A form, provided by the LRNRD, shall authorize this service and the LRNRD may enter onto property to provide this service. This service shall be provided in the off-season and will not interfere with the normal operation of the meter or the well.
- 6-4.9.** The LRNRD may establish a program to randomly inspect the serviceability and to verify use of a meter. The LRNRD may correct discrepancies noted at the time of the inspection. Discrepancies that require the repair of a meter may be performed by the LRNRD, at a cost to the well owner, with the prior permission of the well owner. The penalties described in Rules 6-4.1.2 and 6-4.1.3 may be imposed if the inspections performed pursuant to this Rule reveal the violation of any of the flow meter requirements set forth in Rule 6-4.
- 6-4.10.** Beginning on March 1, 2014, any flow meter required to be installed on any well located within the District must be a mechanical flow meter. Non-mechanical flow meters shall not be allowed on any well after February 28, 2014.
- 6-4.11.** Only mechanical flow meters are allowed to be installed after the effective date of these rules.
- 6-4.12.** Any well that does not have the required flow meter shall be considered an "illegal Water Well" as defined in Rule 4-1.29.

## **RULE 6-5 REPORTS**

- 6-5.1.** Owners and Operators of regulated irrigation wells shall allow District staff to determine from the flow meters, by January 15 of each year, the total water withdrawn from that well since the last reading.
  - 6-5.1.1.** If the owner and/or Operator of a regulated irrigation well dispute the amount of total water withdrawn from the well during the year as read by District staff, the owner and/or Operator shall have until April 1 of the following year to file an objection with the District.
- 6-5.2.** Failure to allow the District staff or authorized designee to inspect and/or read any flow meter shall result in the loss of Allocation for the next crop year or current year.
- 6-5.3** Each Operator of a Regulated Well not used for irrigation purposes, shall report on forms provided by the District, by January 15 of each year, the total amount of water withdrawn from that well during the preceding calendar year and the nature of the water use.
- 6-5.4.** In order to ensure compliance with the Republican River Compact Accounting procedures, additional information may be required from Operators.

## **RULE 6-6 CERTIFICATION OF ACRES AND NON-IRRIGATION USES**

- 6-6.1.** No later than January 1, 2005, each owner or Operator of a regulated well used for irrigation purposes shall certify (a) the well registration number for that well, (b) the number and location of all acres irrigated at least once by that well between January 1, 1999, and December 31, 2004, and (c) the maximum number of acres irrigated by that well in any one (1) year within that time period. Such certification shall be on forms provided by the LRNRD and shall be accompanied by applicable records from the U.S.D.A. Farm Service Agency and/or the County Assessor and such other information as requested by the LRNRD to verify the information certified.
  - 6-6.1.1.** Once acres have been certified by the Board as Certified Irrigated Acres, such certification shall attach to the land upon which such acres are irrigated, regardless of whether or not the Water Well used to irrigate such acres is located on such land.
- 6-6.2.** After December 31, 2004, no Regulated Well used for irrigation purposes shall be operated unless its acres and use are certified pursuant to Rule 6-6.
- 6-6.3.** Only those acres that are actually capable of being supplied with Ground Water through irrigation works, mechanisms or facilities existing at the time of certification may be considered to be "Certified Irrigated Acres" pursuant to the District Rules and Regulations.
- 6-6.4.** Any change in the number or location of Certified Irrigated Acres shall be submitted to the LRNRD prior to such change. The Board may reject any change if it finds that such change would cause an increase in Nebraska's Consumptive Use as calculated pursuant to the

Republican River Compact or would have a detrimental effect on other Ground Water users or on surface water appropriators.

- 6-6.5.** On or before December 31, 2008, all Certified Irrigated Acres must be classified as either “irrigated” or “irrigable” by the County Assessor. Any acres that are thereafter classified as anything other than “irrigated” or “irrigable” by the County Assessor shall lose their status as Certified Irrigated Acres and will suffer a forfeiture of any existing Allocation and remain ineligible for any future Allocation of Ground Water for irrigation purposes. Notwithstanding anything to the contrary stated in the Section 6.6, the Board may grant a Variance from the strict application of Rule 6.6 upon Good Cause Shown. However, it is the responsibility of the landowner and/or Operator to ensure that the County Assessor has the information necessary to classify the land as either irrigated or irrigable and the correct number and location of acres. The District may review the County Assessors’ records on a yearly basis to compare the information from such Assessor with the information contained in the District’s records regarding the number and location of Certified Irrigated Acres. However, this review will not relieve the landowner or Operator of the responsibility imposed by Rule 6.6.
- 6-6.6.** If a landowner or Operator of a Regulated Well used for irrigation purposes fails to certify the information required by Rule 6-6 for an irrigation well which has been constructed prior to July 26, 2004, then the well shall be deemed an illegal Water Well as that term is defined in Rule 4-1.29.
- 6-6.7.** The Board shall not approve any acres as Certified Irrigated Acres if such acres are irrigated from an illegal Water Well, as that term is defined in Rule 4-1.29, and such acres shall not receive any future Allocation of Ground Water unless the situation which caused the well to become illegal has been corrected and the Board approves the acres as Certified Irrigated Acres.
- 6-6.8.** The Board may approve a change in the location or use of Certified Irrigated Acres when the owner or Operator of a Regulated Well changes the use to a different delivery system or changes the location of the current delivery system. In addition, any new acres not previously approved as Certified Irrigated Acres may be certified if Certified Irrigated Acres, which have been previously approved by the Board, are substituted for the new acres and the location of such acres are in an area contiguous to the previously Certified Irrigated Acres. The number of acres that are substituted must be equal to the number of newly certified acres to qualify for approval by the Board.
- 6-6.9.** Any new or expanded municipal, commercial or industrial use shall be considered to be a “certified” use so long as it is Offset pursuant to the procedures described in Rule 7-5.
- 6-6.10.** Certification shall not be approved by the Board for any regulated non-irrigation well that is an illegal Water Well as that term is defined by Rule 4-1.29 of the LRNRD’s Rules and Regulations. The Board may approve such certification if and when the deficiency that caused the well to become an illegal Water Well is corrected.

**6-6.11.** Following notice and a hearing, the Board may revoke and/or cancel any previously approved certification or irrigated acres or any previously granted Allocation to an irrigation well and/or a non-irrigation well for which false or misleading information was used to obtain the certification required by these Rules and Regulations, or for which false or misleading information was provided under Rules 6 or 7 of these Rules and Regulations.

**6-6.12.** After July 18, 2009, the Board will not consider or approve any future requests to certify irrigated acres, unless a Variance has been applied for and approved by the Board.

## **RULE 6-7 WATER SHORT YEAR ADMINISTRATION**

**6-7.1.** DNR has informed the District that

**6.7.1.1.** No later than October 15, 2005, and October 15 of each year thereafter, it will notify the LRNRD of the potential for a Water Short Year, and

**6.7.1.2.** Notification of updates to such determinations will be provided monthly, or more often as requested, through June 30, of 2005 and June 30 of each year thereafter, at which time the final determination shall be made.

**6-7.2.** Upon receiving notice of the potential designation of a Water Short Year, the LRNRD shall provide notice to irrigators of this designation by publishing notice in newspapers of general circulation in the LRNRD and by posting the notice on the LRNRD website.

**6-7.3.** The LRNRD has the authority to make necessary adjustments to Ground Water use to assure compliance with the Republican River Compact, but will take no action to reduce any Allocation of Ground Water or the number of Certified Irrigated Acres without a public hearing followed by approval of the Board.

## **RULE 6-8 INCENTIVE PROGRAMS**

**6.8.1.** The District may establish and implement financial or other Incentive Programs as permitted under the Ground Water Protection and Management Act. As a condition for participation in an Incentive Program, the District may require water users or landowners to enter into and perform such agreements or covenants concerning the use of land or water as are necessary to produce the benefits for which the Incentive Program is established and shall further condition participation upon satisfaction of the requirements of section 46-739.01(which provides for a title report and approval of lien holder).

**6.8.2.** Any lands enrolled in an Incentive Program of any kind, whether federal, state, or local, will not be eligible to receive an Allocation during such enrollment period. Participation in an Incentive Program; however, will not result in the permanent loss of an Allocation unless the status of the acres involved are reclassified by the County Assessor from irrigated or irrigable to non-irrigated. Upon completion of any enrollment period required by the Incentive Program, any Certified Irrigated Acres that were enrolled in such program will be re-eligible for an Allocation, prorated to the number of years remaining in the

Allocation Period. During the time that any lands are enrolled in an Incentive Program, such lands will not be entitled to any Carry-Forward for subsequent Allocation Periods.

- 6.8.3.** Any participant in a Federally Funded Incentive Program shall not be eligible to participate in any Incentive Program funded by the District or any other program funded by the District where payments are made to landowners who have Certified Irrigated Acres in a Rapid Response Area.

## **RULE 6-9 REPUBLICAN RIVER COMPACT COMPLIANCE**

- 6.9.1.** Integrated Management Plan. The Department and the District adopted an Integrated Management Plan (IMP), effective October 1, 2011, in accordance with the Nebraska Ground Water Management and Protection Act, *Neb. Rev. Stat. §§ 46-701 et seq.*, and the Republican River Compact. The IMP is a separate document which can be found on the District's web-site or a copy obtained from the District's office.
- 6.9.2.** Compact call year shall mean a year in which the Department's forecast procedures set forth in Section IX of the IMP indicate the potential for non-compliance if sufficient surface water and Ground Water controls and/or management actions are not taken.
- 6.9.3.** Rapid Response Area shall mean the area with a stream flow depletion factor of ten (10) percent or more in a two-year period as illustrated in the map attached hereto as Exhibit "A."
- 6.9.4.** Compact Call Year Determination. As provided in the IMP, no later than the 15<sup>th</sup> day of November each year, the Department shall inform the District of a potential designation of a Compact Call Year for the upcoming irrigation season. Upon receipt of such determination, the District shall provide notice of such designation to irrigators and other interested parties, as provided by these rules and regulations and Nebraska law. The Board shall consider and adopt any additional controls and actions necessary to meet the District's proportional responsibility for maintaining Nebraska's compliance with the Republican River Compact.
- 6.9.5.** Additional controls and actions may consist of, but are not limited to, Incentive Programs, regulations (inclusive of curtailments of Ground Water pumping in the Rapid Response Area), augmentation, and other relevant activity.
- 6.9.5.1.** Municipal and other public water system and industrial Allocations shall be exempt from Compact Call Year Controls.
- 6.9.6.** Within the Rapid Response Area, the Allocation during a Compact Call Year shall be set at the maximum allowable that would not cause the District's depletions to streamflow to exceed the District's allowable Ground Water depletions after taking into consideration other actions and controls that the District would implement. As set forth in the IMP, the Department will perform all calculations relating to the District's forecasted allowable Ground Water depletions, forecasted depletions, and potential yield from implementing actions and controls.

## **CHAPTER 7 – MANAGEMENT OF USES**

### **RULE 7-1 GROUND WATER TRANSFER FOR IRRIGATION, PUBLIC WATER SUPPLIES AND INDUSTRIAL PURPOSES**

- 7-1.1. Transfers for Irrigation Purposes.** The LRNRD finds that the transfer of Ground Water off of the overlying land for irrigation purposes may contribute to conflicts between Ground Water users and surface water appropriators, and to disputes over the Republican River Compact. For those reasons, and except as provided in Rule 6-6.8, the LRNRD hereby closes all of the Management Area to the withdrawal and transfer of Ground Water off the overlying land or otherwise changing the location of use of Ground Water for irrigation purposes.
- 7-1.2. Transfers by Public Water Suppliers.** Pursuant to Neb. Rev. Stat. §§ 46-739(k) and 46-742, the District is required to allow the withdrawal and transport of Ground Water when a public water supplier providing water for municipal purposes receives a permit from the Department pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act. Except to the extent that a public water supplier has obtained a permit under the Municipal and Rural Domestic Ground Water Transfers Permit Act, the LRNRD hereby closes all of the Management Area to the withdrawal and transfer of Ground Water off of the overlying land or otherwise changing the location of use of Ground Water for municipal purposes. A public water supplier shall notify the District at the time that it files an application with the Department for a permit under the Municipal and Rural Domestic Ground Water Transfers Permit Act.
- 7-1.3. Transfers by Commercial and Industrial Water Users.** The District will allow industrial Ground Water users to transfer water pursuant to a permit granted by the Department, or pursuant to written notice filed with the DNR, as provided for in the Industrial Ground Water Regulatory Act. Except to the extent that a commercial or industrial water user has obtained a permit from the Department under the Industrial Ground Water Regulatory Act, the LRNRD hereby closes all of the Management Area to the withdrawal and transfer of Ground Water off of the overlying land or otherwise changing the location of use of Ground Water for commercial or industrial uses. A commercial or industrial water user shall notify the District at the time that it files an application with the Department for a permit under the Industrial Ground Water Regulatory Act.
- 7-1.4. Department Review of Permit Applications.** Upon receipt of an application by a public water supplier seeking a permit under the Municipal and Rural Domestic Ground Water Transfers Permit Act, an application by a commercial or industrial water user under the Industrial Ground Water Regulatory Act, or a Person seeking a permit to transfer Ground Water to another state, the Department is required by statute to consult with the District. As part of that consultation, the District shall provide the Department with whatever relevant information that it may have in its possession, including but not limited to, the following:
- 7-1.4.1.** The applicant's unmet Offset obligations, if any;

- 7-1.4.2. The amount of water in the applicant's "Offset account" as defined in Rule 7-5 below;
- 7-1.4.3. Whether the applicant will need to provide an Offset for the proposed water use in order to maintain compliance with the Republican River Compact; and
- 7-1.4.4. Whether the applicant will need to mitigate any adverse effects to surrounding Ground Water users or surface water appropriators.

## **RULE 7-2 ALLOCATION**

**7-2.1.** The use of Ground Water from all regulated Water Wells shall be allocated by the LRNRD. Allocations will be set after considering the following: (1) the relationship between wells and surface waters and the impact of well usage on stream flow; (2) whether Ground Water levels are declining; and (3) such other factors as the Board determines may be relevant to the appropriate amount of water to be withdrawn.

### **7-2.2. General Provisions:**

- 7-2.2.1. Allocation. Forty-five (45) acre-inches for the Allocation Period.
- 7-2.2.2. Base Allocation. Nine (9) acre-inches per year for all Regulated Wells used for irrigating Certified Irrigated Acres.
- 7-2.2.3. Maximum Allocation. Thirteen (13) inches per effective Certified Irrigated Acre in all years designated as Compact Call year pursuant to Rule 6.9.4
- 7-2.2.4. Allocation Period. Five (5) years; beginning on January 1, 2008 and ending on December 31, 2012 and beginning on January 1, 2013 and ending on December 31, 2017.
- 7-2.2.5. Base Certification. 326,931 Certified Irrigated Acres
- 7-2.2.6. Base Allocation Year. January 1<sup>st</sup> to December 31<sup>st</sup>
- 7-2.2.7. The LRNRD's net depletions shall not exceed twenty-six percent (26%) of the State's allowable Ground Water depletions as determined by the Republican River Compact Administration Ground Water Model. It may be necessary to adjust the base Allocation, as defined in Rule 7-2.2.2., within the five-year Allocation Period in order to meet this requirement.
- 7-2.2.8. The District's base Allocation may be increased or decreased proportionately with any increase or decrease in the water supply conditions. Such increase or decrease will become effective only after the Board holds a public hearing.
- 7-2.2.9. Pursuant to Neb. Rev. Stat. § 46-739, the LRNRD may establish different provisions for restriction of Water Wells that were constructed after January 1, 2001.

### **7-2.3. Conjunctive Management of Water:**

- 7-2.3.1.** It is the intent of the Board to promote the conservation of water by discouraging the expansion of irrigated acres within the District. The District therefore encourages the Conjunctive Management of Water and discourages the transfer of surface water for irrigation purposes to a tract of land which has no record of Consumptive Use for irrigation purposes.
  - 7-2.3.2.** If a landowner or Operator engages in the Conjunctive Management of Water during any irrigation season, such landowner or Operator shall retain the unused portion of the base Allocation of Ground Water for that irrigation season and may Carry-Forward such unused portion to subsequent irrigation seasons within the Allocation Period.
    - 7-2.3.2.1** This subsection shall also apply to surface water leased or purchased by either the District or DNR.
  - 7-2.3.3.** If a landowner or Operator transfers the location of the surface water from the Conjunctive Management tract of land to a tract of land which has no record of Consumptive Use for irrigation purposes, such landowner or Operator shall notify the District in writing at the time of the transfer and shall forfeit the entire base Allocation of Ground Water for each year that such surface water transfer remains in force on the tract which has no record of Consumptive Use for irrigation purposes.
  - 7-2.3.4.** The failure of the landowner or Operator to notify the District of the transfer of surface water may result in the forfeiture of future Allocations of Ground Water on the Conjunctive Management tract of land.
  - 7-2.3.5.** The District may at some future date, in order to promote the conservation of water, provide an incentive to landowners or Operators to integrate the surface water and Ground Water systems into a single more efficient center pivot irrigation system.
  - 7-2.3.6.** If a landowner or Operator loses the right to use surface water for irrigation purposes because of non-use, such landowner or Operator shall not forfeit the base Allocation of Ground Water.
- 7-2.4. Penalties.** If at the end of an Allocation Period, subject to the requirement of Rule 7.2.5, an Operator has exceeded his or her Allocation, the Allocation for the next Allocation Period shall be reduced by the number of acre-inches by which said Allocation was exceeded in the prior Allocation Period for the first three (3) inches of overuse and by twice the number of inches of overuse for the fourth and subsequent inches of overuse.



- 7-2.5. An Operator must have a positive balance in his or her Allocation account before using water in any year of an Allocation Period. The LRNRD shall notify landowners and/or Operators anytime the balance of their Allocation goes below zero.
- 7-2.6. For irrigation purposes, if at the end of the Allocation Period, an Operator has consumed less than his or her Allocation, he or she may carry the reserve or unused portion forward to the subsequent Allocation Period (the Carry-Forward), not to exceed the annual base Allocation. Any Carry-Forward must be used for the same Certified Irrigated Acres for which the water was originally allocated.
- 7-2.7. Any landowner with Certified Irrigated Acres participating in the federal Conservation Reserve Program (CRP), EQIP, or similar programs, or who certifies to the District the non-irrigation status of such acres pursuant to *Neb. Rev. Stat. § 2-3226.05(2)*, shall not receive an Allocation during the period of time that such Certified Irrigated Acres are in a non-irrigation status. At such time that landowners of Certified Irrigated Acres terminate any federal Conservation Reserve Program and recommence irrigating the Certified Irrigated Acres, such Certified Irrigated Acres will become eligible for an Allocation, on a prorated basis for the remaining years of the Allocation Period; provided however, that those acres must be classified as irrigated or irrigable land by the County Assessor.
- 7-2.8. The LRNRD may review any Allocation or reduction control imposed and shall adjust the Allocation or reduction to accommodate or otherwise reflect findings of such review consistent with the integrated management objectives. Such review shall consider more accurate data or information that was not available at the time of the Allocation or reduction order, designation of a Water Short Year and such other factors as the LRNRD deems appropriate.
- 7-2.9. The LRNRD may institute formal adjudicatory proceedings or take any other legal action authorized or permitted by law to prohibit further withdrawal of Ground Water from any Regulated Well whenever an Operator has exhausted his or her Allocation during or before the end of any Allocation Period or has in any other way violated the amount, limitations, or conditions of his or her Allocation or violated any other rules of the LRNRD. In the event of such action, no Ground Water may be withdrawn until the Operator has adhered to LRNRD Rules and Regulations.

**RULE 7-3 GENERAL PROVISIONS AND PROCEDURES FOR ENFORCEMENT**  
**(Amended Effective July 22, 2013)**

- 7.3.1. In order to administer and enforce the Nebraska Ground Water Management and Protection Act and to effectuate the policy of the state to conserve ground water resources, the District may issue cease and desist orders to enforce any of the provisions of the act or orders or permits issued pursuant to the act, to initiate suits to enforce the provisions of orders issued pursuant to the act, and to restrain the construction of illegal water wells or the withdrawal or use of water from illegal water wells. Cease and desist orders may be issued for but not limited to the following reasons:

- (a) Operation of an irrigation system in a manner that allows for inefficient or improper ground water irrigation run-off.
- (b) Operation or construction of an illegal well as defined in these rules and regulations.
- (c) Operation or construction of illegal water well in a Management Area.
- (d) Any activity that is in violation of a rule and regulation of a Management Area.
- (e) Non-compliance with District Rules and Regulations adopted pursuant to the Ground Water Management and Protection Act.

**7-3.2. Definitions.** As used in these rules and regulations:

- 7-3.2.1.** Irrigation run-off water shall mean ground water used for irrigation purposes, which escapes from land, owned, leased or otherwise under the direct supervision and control of a ground water user.
- 7-3.2.2.** Ground water user shall mean a person, who at any time extracts, withdraws or confines ground water for any use by himself or allows such use by other persons. Whenever the landowner and operator are different, the term "ground water user" shall mean both the owner and the operator.
- 7-3.2.3.** Landowner shall mean any person who owns or is in the process of purchasing land.
- 7-3.2.4.** Inefficient or Improper irrigation run-off shall mean the occurrence of irrigation run-off water derived from ground water, (a) which contributes to the accumulation of water upon or beneath the surface of land of another person(s) to their detriment, damage or inconvenience; (b) which causes or contributes to the deterioration of water quality by depositing sediment and/or associated chemicals in surface water within the area; (c) which contributes to the flow of ground water to waste.
- 7-3.2.5.** Compliance officer shall mean employee, agent or director of the District authorized to perform the functions assigned by these rules and regulations.
- 7-3.2.6.** Inspector shall mean an employee, agent, or director of the District authorized to perform the functions assigned by these rules and regulations.
- 7-3.2.7.** Complainant shall mean any person who files a complaint alleging a violation of these rules.
- 7-3.2.8.** Alleged violator shall mean any person against which a complaint has been filed.
- 7-3.2.9.** Management area shall mean any area within the District.

### **7-3.3. Complaints**

- 7-3.3.1.** COMPLAINTS. Any person who owns land, leases land, or resides within the District; or any nonresident person who can show that actions are in violation of these rules, the Ground Water Management and Protection Act or rules and regulations adopted pursuant to the Act by any person within the District directly affects him; or the Board on its own motion may file a written complaint. Said complaint shall be filed against a ground water user or other person specifying the alleged violation.
- 7-3.3.2.** COMPLAINTS of non-compliance may be filed by the Board on its own motion or District staff representing the Board may file complaints asserting non-compliance with rules and regulations adopted by the District to administer the Ground Water Management and Protection Act or rules and regulations adopted pursuant to the Act.
- 7-3.3.3.** Complaints shall be filed at the office of the District, 30 North John St., P.O. Box 618 Alma, Nebraska 68902 on complaint forms prepared by the District. Forms shall be made available at such office or at such other office or offices, as from time to time the Board of Directors shall designate.
- 7-3.3.4.** For complaints alleging improper irrigation run-off, it will be the policy of the District to request an informal meeting at the problem site with the complainant, alleged violator and representative(s) of the District before receiving a signed complaint. The purpose of this meeting is to seek a solution to the problem by mutual agreement outside the formal process of these rules and regulations.

### **7-3.4. Actions following the filing of a complaint**

- 7-3.4.1.** Complaints received by the District will be reviewed by the compliance officer to determine if the information is complete. The compliance officer will also determine if inspections should be made. The compliance officer will insure that complaints filed on behalf of the District are complete and that notice of filing of a complaint is served according to these rules.
- 7-3.4.2.** Inspections. If necessary, the land where the alleged violation occurred shall be inspected by the Inspector within five (5) days after the complaint is filed (excluding Saturdays, Sundays and legal holidays). The Inspector, upon proper identification and after informing the person in control of the land of the complaint and the Inspector's purpose, is authorized to enter upon the land for the purpose of making an inspection of the alleged violation.
- 7-3.4.3.** Upon completion of the inspection, the inspector shall file a report of his finding in the District office.
- 7-3.4.4.** If the inspector finds in his report that there is reasonable cause to believe that a person is, at the time of inspection or was at the time complained of, in

violation of rules and regulations, then the inspector's report shall be prepared and delivered in accordance with Paragraph 7-3.4.5 of this section and shall accompany the notice of filing to the alleged violator.

**7-3.4.5.** Notice of Filing. The District shall notify the alleged violator of the complaint filing, provide the alleged violator with a schedule of compliance and inform the alleged violator of the contemplated actions and the general grounds for the action by the District with regard to the filing. This notice will be delivered in person, or by registered or certified mail. The District shall provide the complainant, if other than the District, with copies of the correspondence with the alleged violator.

**7-3.4.6.** Complainant shall be notified if a complaint is considered not actionable under these rules.

#### **7-4     ACTIONS FOLLOWING DETERMINATION OF ALLEGED VIOLATION**

**7-4.1.** The alleged violator may agree with and accept as true and correct the complaint and the inspector's findings that the alleged violation has in fact occurred or is occurring; and consent to cease and desist from continuing or allowing the reoccurrence of such violation and shall accept the schedule of compliance offered by the District; or

**7-4.2.** The alleged violator may agree with and accept as true and correct the complaint and the inspector's findings that the alleged violation has in fact occurred or is occurring; and consent to cease and desist from continuing or allowing the reoccurrence of such violation and requests to submit a schedule of compliance; or

**7-4.3.** Reject the complaint or the findings of the inspector's report and request that a formal hearing be scheduled and conducted in accordance with the rules and regulations of the District.

**7-4.4.** The alleged violator shall be granted not less than ten (10) days from the date that said report and notice is provided to him to respond to the District and to indicate any actions intended.

#### **7-5     SCHEDULE OF COMPLIANCE - DISTRICT**

**7-5.1.** If the alleged violator agrees under Paragraph 7-4.1 above, he or she shall accept the schedule of compliance provided by the District and shall provide for the discontinuance and/or non-reoccurrence of the violation. If appropriate, such schedule of compliance shall include the identification and description of all proposed procedures or measures to prevent, control, or abate inefficient or improper ground water irrigation runoff. For inefficient or improper runoff, such schedule may include but not be limited to: limitation of water applied; construction of runoff collection and/or retention systems such as furrow dikes, reuse pits or dugouts; blocking of end rows; or execution and performance of an agreement with his neighbor(s) in accordance with Paragraph 7-11 below.

- 7-5.2.** The alleged violator shall agree to implement and abide by the terms of such schedule. If such schedule involves structural measures, the alleged violator shall include such measures on the schedule of compliance. The schedule of compliance shall provide for the submission of a work order within ten (10) days following approval of the plan in the manner hereinafter provided.

**7-6     SCHEDULE OF COMPLAINEE – ALLEGED VIOLATOR.**

- 7-6.1.** When an alleged violator has been notified in accordance with Paragraph 7-3.4.4 of this section and has consented to cease and desist in accordance with Paragraph 7-4.2, the District compliance officer shall review the complaint, the inspector's report, the alleged violator's schedule of compliance and any other related or pertinent documents.
- 7-6.2.** The compliance officer shall determine whether the actions agreed to by the alleged violator will, when applied, bring such alleged violator into compliance with these rules and regulations. If the compliance officer determines that the proposed actions of the alleged violator are adequate and will prevent future non-compliance within a reasonable time period, he shall approve such action or plan and approve the schedule of compliance.
- 7-6.3.** If the District compliance officer determines that implementation of the alleged violators proposed schedule of compliance would be inadequate, he shall deny the submitted schedule of compliance and indicate the additions or changes he deems necessary. The District shall inform the alleged violator of the denial within ten (10) days of receipt of the submitted schedule of compliance.
- 7-6.4.** The alleged violator shall have ten (10) days to consent to such additions and changes or request a formal hearing. The original actions under Paragraph 7-5 of this section and the documents filed in accordance therewith by the alleged violator shall not be considered at such hearing unless the alleged violator consents to such a consideration.
- 7-6.5.** If no objections to the action taken are received, the proposed schedule of compliance shall be considered approved.
- 7-6.6.** If said complainant objects to the approval by the compliance officer, he or she may request a formal hearing or agree to negotiated changes in the approved schedule.

**7-7     REQUEST FOR HEARING.**

- 7-7.1.** In accordance with these rules, the Board shall hold a formal hearing when requested by an alleged violator, complainant or Board member.
- 7-7.2.** If following a hearing the Board determines that there has been a violation of these rules and regulations, it shall adopt an order directing the alleged violator to immediately cease and desist from all activities determined by the Board to be violations, specifying any actions deemed necessary and appropriate. Said order shall be transmitted to the alleged violator in person or by certified or registered mail.

**7-8 FAILURE TO RESPOND OR APPEAR.**

**7-8.1.** When an alleged violator has been notified of District or Board action in accordance with these rules and such alleged violator has failed to respond thereunder, or has failed to appear at any properly scheduled formal hearing, the Board shall:

**7-8.1.1.** Review the complaint and the Inspector's Report, if appropriate, as well as any other pertinent information; and

**7-8.1.2.** Issue such order or orders in accordance with these rules and regulations, as it deems appropriate.

**7-9 ACTIONS FOLLOWING ISSUANCE OF CEASE AND DESIST ORDER.**

**7-9.1.** Any person against whom a cease and desist order has been issued in accordance with these rules and regulations may within three (3) days following receipt of such order, accept the original schedule of compliance or submit a schedule of compliance. A submitted schedule of compliance shall be reviewed by the District's compliance officer and approved if it corrects the situation that led to the filing of said cease and desist order.

**7-10 BOARD AUTHORIZATION TO INITIATE COURT ACTION.**

**7-10.1.** The Board may initiate appropriate legal actions in the District Court of the County where the violation has occurred whenever necessary to enforce any action or orders of the District in accordance with these rules and regulations.

**7-11 INEFFICIENT OR IMPROPER RUNOFF AGREEMENT.**

**7.11.1.** A ground water user, whose irrigation runoff water is capable of being captured and utilized by another person in a manner which will prevent waste of such water, deterioration of surface water quality, and accumulation of water upon the land of any other person without his consent, may have such water excluded from the definition of inefficient or improper runoff water by submitting to the district an agreement providing for such capture and utilization signed by all affected parties, on forms provided by the District. When such agreement is approved by the District it will show the District's concurrence that the ground water user's irrigation runoff water is under adequate control. The agreement may be terminated at any time by either party or by the District whenever it determines that such agreement no longer prevents or controls inefficient or improper irrigation runoff water. If the District terminates the agreement, written notice shall be provided to all parties by the District.

**RULE 7-12 LIMIT OR PREVENT THE EXPANSION OF NEW ACRES**

**7.12.1.** Beginning on January 1, 2005, no irrigation well may be used to irrigate any acre that was not irrigated with Ground Water at some time between January 1, 1999, and December 31, 2004.

## **RULE 7-13 MUNICIPAL USE AND ACCOUNTING**

**7-13.1** The District, pursuant to *Neb. Rev. Stat.* § 46-740, adopts the following rules regarding municipal use and accounting.

**7-13.2.** The District will calculate a baseline Consumptive Use for each municipality based on historic Consumptive Use data for an appropriate interval. Consumptive use will be determined from Ground Water pumping volumes and, where applicable, wastewater discharge volumes, and converted to a per capita volume. The baseline per capita volume, plus the annual population growth estimated by the Nebraska Department of Economic Development and/or U.S. Census Bureau will be used to determine annual increases and decreases in Consumptive Uses. These changes in Consumptive Use will be tracked annually for each municipality through a reporting system administered by the District.

**7-13.3.** Once each five (5) years, the District will re-calculate the per capita Consumptive Use based upon similar, but updated, data described in section 7-13.2 above, and make any necessary adjustments to their per capita Offset requirements.

**7-13.4.** Each year the municipality shall be responsible for reporting to the District any Ground Water use that exceeds the amount authorized by a permit that was issued pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act and any new or expanded single commercial/industrial Consumptive Use if that new or expanded Consumptive Use is greater than twenty-five (25) million gallons per year.

**7-13.5.** Each year, the District will evaluate the potential need to Offset increases from the baseline Consumptive Use as estimated by population growth. This evaluation may consider the amount, timing, and location of the increased Consumptive Use as well as other considerations deemed appropriated by the District. In the event that the municipality's water use exceeds the amount of Ground Water authorized by a permit that was issued pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act, or the increase is related to any new or expanded single commercial/industrial Consumptive Uses of more than twenty-five (25) million gallons per year, the District will consult with the municipality or commercial/industrial user to evaluate the potential need for an appropriate Offset.

**7-13.6.** Any permanent reduction in Consumptive Use of water associated with municipal growth including governmental, industrial, and commercial growth (e.g., by taking irrigated acres out of production), between July 14, 2006, and January 1, 2026, shall accrue to the District's benefit to be used in whole or in part to Offset increased municipal Consumptive Use within the District. Acres taken out of production must be decertified and shall accrue to the District's benefit.

**7-13.7.** Non-Municipal Industrial Use and Accounting.

**7-13.7.1.** The District will calculate baseline Consumptive Use for each non-municipal commercial/ industrial user in the District based on historic Consumptive Use data for an appropriate interval. Consumptive use will be determined from

Ground Water pumping volumes and, where applicable, wastewater discharge volumes. The baseline will be used to determine changes in Consumptive Use annually.

- 7-13.7.2. These changes in Consumptive Use will be tracked for each non-municipal commercial/industrial user annually through a reporting system administered by the District.
- 7-13.7.3. If the new or expanded single commercial/industrial use is less than or equal to twenty-five (25) million gallons per year, the District will evaluate the potential need to Offset increases from the baseline Consumptive Use. This evaluation may consider the amount, timing, and location of the increased Consumptive Use as well as other considerations deemed appropriate by the District.
- 7-13.7.4. If the new or expanded non-municipal commercial/industrial use exceeds twenty-five (25) million gallons per year and they do not have a transfer permit, the user will be responsible for the Offset of all new or expanded Consumptive Uses. If the new or expanded non-municipal commercial/industrial use has a transfer permit, the user is responsible for Offsetting all new or expanded uses above the amount granted in the industrial transfer permit.
- 7-13.7.5. Any permanent reduction in Consumptive Use of water associated with a new non-municipal commercial or industrial use of less than twenty-five million gallons (e.g., by taking irrigated acres out of production), between July 14, 2006, and January 1, 2026, shall accrue to the District's benefit to be used in whole or in part to Offset Increased Consumptive Use within the District. Acres taken out of production must be decertified and transferred to the District's benefit.

## **RULE 7-14 POOLING ARRANGMENTS OR AGREEMENTS AND ALLOCATION OF GROUND WATER**

### **Introduction.**

**In an effort to conserve ground water within the District the Board adopts this rule on pooling which provides greater flexibility for ground water users.**

- 7-14.1 **Pooling Arrangement** means the approval by the District on forms provided by the District of an arrangement by a single landowner to combine more than one tract of land under common ownership for the purpose of allocating ground water among the total combined Certified Irrigated Acres identified in the arrangement.
- 7-14.2. **Pooling Agreement** means the approval by the District on forms provided by the District of an agreement between two or more landowners for the purpose of allocating ground water among the total combined Certified Irrigated Acres identified in such agreement.



- 7-14.3.** Any person who owns land within the District which has Certified Irrigated Acres may elect to enter into a Pooling Arrangement or Pooling Agreement. Any Pooling Arrangement or Pooling Agreement shall be submitted to the District on or before June 1 of any irrigation season. No Pooling Arrangement or Pooling Agreement shall be utilized until District approval has been obtained. Any amendments or revisions to a Pooling Arrangement or Pooling Agreement made after June 1 will not be considered by the District until the next irrigation season.
- 7-14.4.** The Application for pooling shall include the following information:
- (a) The name of all persons involved including any tenants;
  - (b) A map or maps from the Natural Resources Conservation Service or the District showing the location of all Certified Irrigated Acres and wells. Identification of all wells including the well registration number and the serial number of each flow meter;
  - (c) Proof of ownership from Farm Service Agency, title company, County Assessor or other recognized source;
  - (d) The legal description of each tract of land included in Pooling Arrangement or Pooling Agreement;
  - (e) All signatures on the Pooling Arrangement or Pooling Agreement, including tenants, if any, must be notarized.
- 7-14.5.** If any land containing Certified Irrigated Acres identified in the Pooling Arrangement or Pooling Agreement has been leased, the tenant of such leased land shall signify approval by signing the Pooling Arrangement or Pooling Agreement.
- 7-14.6.** No person owning land containing Certified Irrigated Acres within the District shall apply more than eleven (11.0) inches of ground water per effective Certified Irrigated Acre during the 2014 irrigation season; **provided, however**, if a Pooling Arrangement or Pooling Agreement has been approved, then such owner or owners shall apply no more than ten (10.0) inches multiplied by the total number of effective Certified Irrigated Acres identified in either the Pooling Arrangement or Pooling Agreement, which may be allocated among the number of effective Certified Irrigated Acres, at the discretion of such owner or owners.
- 7-14.7.** This rule 7-6 shall supersede the Allocations provided in Rule 7-2 for the remaining Allocation Period which expires on December 31, 2017.
- 7-14.8.** Any person who uses more than the annual Allocation of ground water on any effective Certified Irrigated Acre, or the total Allocation (number of inches x total Certified Irrigated Acres) on all effective Certified Irrigated Acres identified in any Pooling Arrangement or Pooling Agreement, for any one irrigation season where there has been a maximum established for that year, shall have any remaining allocation for the Allocation Period reduced by three (3) times any amount used over such maximum.
- 7-14.9.** If the Board does not impose a maximum annual allocation, then Rule 7-2.4 will apply to any use which exceeds the permissible Allocation.

- 7-14.10.** The Board, in its sole discretion, may deny any application for approval of a Pooling Agreement or Pooling Arrangement based on the level of ground water decline within a certain geographic area within the District. In making such a determination the District may rely on ground water statistics of any state or federal governmental agency, including but not limited to, the Conservation and Survey Division of the University of Nebraska.
- 7.14.11.** This Rule 7.14.11 limits the distance between tracts of land which may be subject to pooling under this Rule 7-14. Tracts of land which may be pooled shall be located in one county; provided, however, if a person or persons owning such land in one county desires to pool tracts in more than that one county, such tracts shall be located in an adjoining or contiguous county or counties. Pooling Arrangement or Pooling Agreements which do not comply with this Rule shall be denied.
- 7-14.12.** The Board reserves the right to set a one-year pumping maximum allocation in accordance with Section B 2 of its Integrated Management Plan and Section 6-7.3 of its Rules, which will be applicable to all Certified Irrigated Acres, including those identified in any Pooling Agreement or Pooling Arrangement.
- 7-14.13.** Any person who has entered into a Pooling Arrangement or Pooling Agreement may terminate such arrangement or agreement by notifying the District if an arrangement and the other parties and the District if an agreement, in writing prior to May 1 of any irrigation season.