

# LOWER LOUP NRD

## Groundwater Management Area Rules and Regulations



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## **RULES AND REGULATIONS**

### **FOR THE ENFORCEMENT OF THE NEBRASKA GROUND WATER MANAGEMENT AND PROTECTION ACT**

**Adopted by the Lower Loup Natural Resources District Board  
of Directors at a Public Hearing held on September 27, 2001.  
To be effective January 1, 2002**

**Rules 15, 16 and 17 approved at a Public Hearing held  
February 23, 2006**

**Approved Changes to Rules 2, 14, 15, 16, 17, and Adoption of Rules  
18 and 19 by The Board of Directors at a Public Hearing on  
September 27, 2007**

**Approved Changes to Rules 2, 11, 15, 16, and 19 by The Board of  
Directors at a Public Hearing on June 25, 2009**

### **GENERAL PROVISIONS AND PROCEDURES FOR ENFORCEMENT**

## **RULE 1**

General. The District shall enforce the provisions of the Ground Water Management and Protection Act, and all rules and regulations adopted pursuant thereto by the issuance of cease and desist orders in accordance with the procedure hereinafter specified and by bringing appropriate actions in the District Court of the county in which any violations occur for enforcement of such orders. Cease and desist orders may be issued for the following reasons:

- a. Operation of an irrigation system in a manner which allows for improper ground water irrigation runoff.
- b. Construction or operation of an illegal well as defined in these rules and regulations.
- c. Noncompliance with the controls, rules, and regulations adopted by the Board of Directors.
- d. Operation of a cropping system in a designated management area without appropriate certification of completion of the educational programs required by the Board of Directors.

## **RULE 2**

Definitions. As used in these rules and regulations of the Lower Loup Natural Resources District for administration of the Nebraska Ground Water Management and Protection Act:

- a. **Alleged Violator** shall mean any person that a complaint has been filed against in accordance with Rule 3.

- b. **Board** or **Board of Directors** shall mean the Board of Directors of the Lower Loup Natural Resources District and/or its employees and agents acting at the direction of the Board of Directors.
- c. **Common carrier** shall mean any carrier of water including a pipe, canal, ditch, or other means of piping or adjoining water for irrigation purposes.
- d. **Complainant** shall mean any person who files a complaint alleging a violation of these rules and regulations in accordance with Rule 3.
- e. **Compliance Officer** shall mean an employee, agent, or director of the District, authorized to perform the functions assigned thereto by these rules and regulations.
- f. **District** shall mean the Lower Loup Natural Resources District (Appendix A).
- g. **District Certified** shall mean the landowner or operator that has completed a nitrogen certification class approved by the District to be renewed every four (4) years.
- h. **Education Program** shall mean informational and educational training sessions designed to acquaint landowners and operators with the best management practices and general information to assist in the operation of their irrigation and cropping system.
- i. **Good Cause Shown** shall mean a reasonable justification for granting a variance that would otherwise be prohibited by law, statute, rule or regulation in which the Board 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 in which a variance is sought.
- j. **Ground Water** shall mean that water which occurs, moves, seeps, filters, or percolates through under the surface of the land.
- k. **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 at a rate in excess of 50 gallons per minute. Whenever the landowner and operator are different, the term 'ground water user' shall mean both the owner and operator.
- l. **Illegal Water Well** shall mean (a) any water well operated or constructed without or in violation of a permit required by the Nebraska Ground Water Management and Protection 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 sections 46-602 to 46-604, or (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.
- m. **Improper Irrigation Runoff** shall mean the occurrence of irrigation runoff water after January 1, 1977, (1) which causes or contributes to the accumulation of water upon or beneath the surface of the lands of any other person (s) to their detriment, damage, or

inconvenience; (2) which causes or contributes to the deterioration of water quality by depositing sediment and/or associated chemicals in surface water within the area; (3) which contributes to the flow of ground water to waste.

- n. **Inspector** shall mean an employee, agent, or director of the District authorized to perform the functions assigned thereto by these rules and regulations.
- o. **Irrigated Acre** Shall mean (a) any acre of land that is certified as such permitted in Rule 16 (b)
- p. **Irrigation Runoff 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. Ground water which becomes commingled with surface water runoff shall be treated as irrigation runoff.
- q. **Landowner** shall mean any person who owns or is in the process of purchasing land.
- r. **Nitrogen Fertilizer** shall mean a chemical compound in which the percentage of nitrogen is greater than the percentage of any other nutrient in the compound, or when applied, results in an average application rate of more than twenty (20) pounds of nitrogen per acre over the field to which it is being applied.
- s. **New Groundwater Irrigated Acre** shall mean an acre that is not certified to be irrigated or not off-set and is allowed to be irrigated by the variance process causing a new net depletion to the basin.
- t. **Off-set** shall mean that the effect of the new water use has been accounted for and has been determined that the same amount of water or less would be depleted from the stream over a 50-year period.
- u. **Operator** shall mean that person who has the most direct control over day-to-day farming operations of the land.
- v. **Person** shall mean a natural person, partnership, association, corporation, municipality, irrigation district, and any agency or political subdivision of the state.
- w. **Replacement Well** for purposes of this section, replacement water well means 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 permit from the department and any applicable rules and regulations of the natural resources district 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 (1) replaces a decommissioned water well within one hundred eighty days after the decommissioning of the original water well,(2) 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 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 (3) the original water well will continue to be used but will be modified and equipped within one hundred eighty days after such construction of the replacement water well to pump fifty gallons per minute or less and will be used only for livestock, monitoring, observation, or any other nonconsumptive or de minimis use approved by the applicable natural resources district.

- x. **Water Concern Area** for the purpose of these rules and regulations, shall be a delineated portion of the District set by the Board of Directors. This area will have indicated that there is a potential water management problem.
- y. **Water Well** shall mean 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 section 81-1502 into the underground water reservoir, (b) 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 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. (c) Water well does not include (i) any excavation made for obtaining or prospecting for oil or natural gas or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission or (ii) any structure requiring a permit by the Department of Natural Resources used to exercise surface water appropriation.

### **RULE 3**

**Complaints.** Any person who owns land, leases land, or resides within the District; or any nonresident person who can show that the actions of any operator or ground water irrigator within the District directly affects him; or the District compliance officer; or the Board on its own motion may file a written complaint. Said complaint shall be filed against an operator or groundwater user alleging a violation of these rules and regulations or that such operator or ground water user is constructing or operating an illegal well. Complaints shall be filed at the office of the District, 2620 Airport Drive, Hadar Industrial Park, Ord, Nebraska 68862-0210 on complaint forms

prepared by said 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.

#### **RULE 4**

Inspections. 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 purposes of making an inspection of the alleged violation. Upon completion of the inspection, the inspector shall file a report of his or her findings in the District office and shall deliver a copy of the complaint and said report to the alleged violator and to the complainant, if other than the Board, in person, or shall transmit the same by certified restricted mail.

#### **RULE 5**

Submission of Inspection Report alleging violation and alleged violators' alternatives. If the inspector finds in his or her report that there is reasonable cause to believe that an operator or ground water user is, at the time of inspection or was at the time complained of, in violation of these rules and regulations, then said inspector's report, prepared and delivered in accordance with Rule 4 of this section, shall be accompanied by a formal notice of the alternative actions available to the alleged violator. Alternative actions shall be:

- a. Agree with and accept as true and correct the inspector's findings that the alleged violation has in fact occurred or is occurring; consent to cease and desist from

continuing or allowing the reoccurrence of such violation; and submit a schedule of compliance in accordance with Rule 6; or

- b. Reject 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.

The alleged violator shall be granted not less than seven (7) days (excluding Saturdays, Sundays, and legal holidays) from the date that said report and notice is provided to him to respond and to indicate any actions intended.

### **RULE 6**

If the alleged violator agrees under Rule 5, Part (a), he or she shall submit a schedule of compliance which 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 future violations of these Rules and Regulations.

### **RULE 7**

Action Subsequent to Alleged Violators Consent to Cease and Desist. When an alleged violator has been notified in accordance with Rule 4 of this section and has consented to cease and desist in accordance with Rule 5, Part (a), the District compliance officer shall review the complaint, the inspector's report, the schedule of compliance, and any other related or pertinent documents.

The compliance officer shall determine whether the actions agreed to by the alleged violator will, when applied, bring such user into compliance with these rules and regulations. If the compliance officer determines that proposed actions of the alleged violator are adequate and will prevent future noncompliance within a reasonable time period, the compliance officer shall approve such action or plan and approve the schedule of compliance.

If the District compliance officer determines that implementation of the proposed schedule of compliance would be inadequate to prevent future compliance, the compliance officer shall indicate the additions or changes he deems necessary.

The alleged violator shall have five (5) days (excluding Saturdays, Sundays, and legal holidays) to consent to such additions or changes or reject such additions or changes and request a formal hearing. The original actions under Rule 5, Part (a), 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 consideration.

The complainant shall be notified of any action by the District compliance officer. The complainant shall have five (5) days (excluding Saturdays, Sundays, and legal holidays) to object to said approval or changes.

If no objections to the action taken are received, the proposed schedule of compliance shall be considered approved.

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.

### **RULE 8**

Board Action Subsequent to Alleged Violator, Complainant, or Board Member Request for Hearing. In accordance with Rule 5 or Rule 7, the Board shall hold a formal hearing when requested by an alleged violator, complainant, or Board member.

If, following a hearing the Board determines that the alleged violator has violated these rules and regulations, it shall adopt an order directing such user 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 restricted mail.

### **RULE 9**

Board Action if Alleged Violator Fails to Respond or Appear. When an alleged violator has been notified of Board action in accordance with Rule 5 or Rule 8 of this section and such alleged violator has failed to respond thereunder, or has failed to appear at any properly scheduled formal hearing, the Board shall:

- a. Review the complaint and the Inspector's Report, as well as any other pertinent information; and
- b. Issue such order or orders in accordance with these rules and regulations as it deems appropriate.

### **RULE 10**

Alleged Violators Actions Following Issuance of Cease and Desist Order. Any alleged violator against which a cease and desist order has been issued in accordance with these rules and regulations may within seven (7) days (excluding Saturdays, Sundays, and legal holidays) following receipt of such order, submit a schedule of compliance. The schedule of compliance shall be approved by the District compliance officer if it is in accordance with said cease and desist order.

### **RULE 11**

Board Authorization to Initiate Court Action. The Board may initiate appropriate legal actions in the District Court of the county in which the violation has occurred whenever necessary to enforce any action or orders of the District. In accordance with the provisions of NEB.REV. STAT. §46-707 and NEB. REV. STAT. §46-745 (Reissue 2004), any person who violates a cease and desist order issued by the district shall be subject to a civil penalty of not less than one thousand dollars (\$1,000.00) and not more than five thousand dollars (\$5,000.00) for each day an intentional violation occurs.

**RULE 12**

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 improper irrigation 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 improper irrigation runoff water. If the District terminates the agreement, written notice shall be provided to both parties. If one of the parties to the agreement causes the termination, written notice shall be provided to the other party and to the District.

**RULE 13**

Water Well Permits. Any person intending to construct a water well (new or replacement) on land which he/she owns, leases, or controls in any manner at any location within the Lower Loup Natural Resources District management area, shall, before commencing construction, apply for a well construction permit on forms provided by the District, with the following exemptions:

- a. No permit shall be required for test holes or dewatering wells with an intended use of ninety (90) days or less; and
- b. No permit shall be required for water wells designed and constructed to pump fifty (50) gallons per minute or less.

A well which falls under exemptions a) or b) above, shall be required to have a permit if such well is modified into a well for which a permit is required in these rules and regulations. The permit shall be obtained prior to commencement of modification.

The applicant for such a permit shall pay a nonrefundable fee, as set in accordance with the Ground Water Management and Protection Act, to the District upon filing the permit application. Any person who fails to obtain a permit as required by this rule shall apply for a late permit on forms provided by the District, accompanied by a nonrefundable filing fee, as set in accordance with the Ground Water Management and Protection Act. The District shall review permit applications and either issue or deny permits within thirty (30) days after the application is filed (Section 46-656.29).

A permit provided for by this rule, whether late or otherwise, shall be granted unless the District finds:

- a. The location or operation of the proposed water well in question or other work would conflict with any regulations or controls adopted by the District;
- b. The proposed use would not be a beneficial use of water for domestic, agricultural, manufacturing, or industrial purposes; 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.

If the District finds that the application for a permit is incomplete or needs corrections, it shall return the application to the applicant for any necessary corrections. Corrections must be made within sixty (60) days or the application will be cancelled.

A permit issued shall specify all regulations and controls adopted by the District relevant to the construction or utilization of the proposed water well. The District shall transmit one copy of each permit issued to the Nebraska Department of Natural Resources.

The issuance by the District of a permit shall not vest in any person the right to violate any District rule, regulation, or control, whether in effect on the date of issuance of the permit or adopted thereafter. Obtaining a permit pursuant to this rule shall not relieve any person from the requirement to register a well with the Nebraska Department of Natural Resources, pursuant to Nebraska Law (Sections 46-601 to 46-613.02).

When any permit is approved, the applicant shall commence construction of the water well as soon as possible after the date of permit approval, which date shall not be more than one (1) year after the date of approval. If the applicant fails to complete the well under the terms of the permit, the District may cancel the permit.

#### **RULE 14**

Groundwater Quality Management Area Designation and Controls. The Lower Loup Natural Resources District recognizes the potential threat of non-point source pollution to the groundwater. Thus, the District has established a network of water wells to monitor the groundwater quality. This monitoring program, along with additional research programs, has identified nitrate contamination problems within the District. Other contaminants have also been identified; however, they are isolated, and the levels are below the Environmental Protection Agency's Maximum Contaminant Levels (MCLs).

Triazine. The District plans to begin a random sampling program in approximately 32 locations for the triazine family of pesticide. If at any time 50% or more of the samples indicate greater than 75% of the maximum contaminant level for that pesticide family, the District will increase the sampling to 64 tests; and if the same results occur after the increased sampling, the District will consult with the Nebraska Department of Environmental Quality and the Nebraska

Department of Health on the sampling results and possible future action to increase sampling or to regulate.

Nitrates. To address nitrate problems, the District has adopted controls to prevent further, or reverse present, nitrate levels in the groundwater. In 1985, the Lower Loup Natural Resources District adopted its Groundwater Management Plan. In 1995, the District adopted the Water Quality Section Revision to the Groundwater Management Plan.

The goal of the District is:

**Groundwater Quality: It shall be the goal of the Lower Loup Natural Resources District to maintain the quality of the groundwater in the groundwater reservoir to within maximum contaminant levels for all chemicals and compounds established by the Nebraska Department of Environmental Quality and the Nebraska Department of Health and Human Services. Also to establish a public information, education, and management program designed to reduce existing and potential non-point source contamination of the groundwater reservoir.**

The District, to achieve these goals has been divided into twenty-eight (28) Ground Water Quality Management Sub Areas. There will be three (3) levels of controls set by the District within the management sub areas. These three (3) levels are referred to as Phases.

**Phase I** areas are set with median nitrate nitrogen levels of 0 to 6.5 mg/l (milligrams per liter).

**Phase II** areas are set with median nitrate nitrogen levels of 6.6 to 8.5 mg/l over a continuous four (4) year period beginning with the 1994 test results.

**Phase III** areas are set with median nitrate nitrogen levels of over 8.6 mg/l over a continuous four (4) year period beginning with the 1994 test results.

Prior to placing any management sub area into a higher phase or lower phase, there will be a public hearing held by the Lower Loup Natural Resources District Board of Directors.

**Groundwater Quality Management Area Phase I** --The entire Lower Loup Natural Resources District Groundwater Management Areas will be designated Phase I. (Appendix A)

The specific control is:

- a. Establish information and education programs.

**Groundwater Quality Management Sub Area Phase II** -- The Lower Loup Natural Resources District will designate a Groundwater Quality Management Sub Area into Phase II when the median nitrate nitrogen level is 6.6 mg/l to 8.5 mg/l for four (4) consecutive years beginning with the 1994 test results. The specific controls are:

- a. Phase I requirements will continue unless modified or negated by Phase II requirements.
- b. Farm operators using nitrogen fertilizers must attend and pass a certification class conducted by the Lower Loup NRD or an adjoining Natural Resources District.
- c. Fall and winter application of nitrogen fertilizer is prohibited on sandy soils being planted to corn, grain sorghum, soybeans and potatoes. Nitrogen fertilizers can be applied on sandy soils after March 1<sup>st</sup>.
- d. Nitrogen fertilizer with a nitrogen inhibitor will be permitted on non-sandy soils after November 1<sup>st</sup>. The operators will be required to furnish documentation that a labeled nitrogen inhibitor was used at the recommended rate.
- e. An operator must:
  - 1) Supply an annual water analysis for nitrogen concentrations for all wells irrigating corn, grain sorghum, soybeans and potatoes.
  - 2) Obtain one composite deep soil analysis (0-36") for each 80-acre field of irrigated corn, grain sorghum, soybeans and potatoes.
  - 3) Obtain one manure analysis for total nitrogen for each manure source applied to irrigated corn, grain sorghum, soybeans, and potatoes.
  - 4) Submit, on forms provided by the District, a report of yearly water tests, soil tests, crops planted, yield goals, nitrogen applied, and other field information required to be reported prior to January 31<sup>st</sup>.
  - 5) Monitor water application with a water meter, or a electrical meter, hour meter or other measuring device that has been calibrated to the output of the irrigation distribution system so operators can more effectively manage fertilizer applications. This will be implemented over a four (4) year period.

**Groundwater Quality Management Sub Area Phase III** -- The Lower Loup Natural Resources District will designate a Groundwater Quality Management Sub Area into Phase III when the median nitrate nitrogen level is 8.6 mg/l or greater for four (4) consecutive years beginning with the 1994 test results. The specific controls are:

- a. Phase II requirements will continue unless modified or negated by Phase III requirements.
- b. Farm operators using nitrogen fertilizers must attend and pass a certification class conducted by the Lower Loup NRD or an adjoining Natural Resources District.
- c. Require operators who preplant apply nitrogen fertilizer to furnish documentation from a dealer that a labeled nitrogen inhibitor was used at the recommended rate.
- d. Application of nitrogen fertilizer is prohibited on all soils being planted to corn, grain sorghum, soybeans and potatoes until after March 1<sup>st</sup>. Spring application of nitrogen fertilizer must be in accordance with guidelines set up by the Lower Loup Natural Resources District, as follows:
  - 1) Split applications are authorized, either preplant or preemergent/postemergent, when no more than 50% of actual nitrogen is being applied as preplant or preemergent.
  - 2) If more than 50% is applied as preplant or preemergent, the operator is required to furnish dealer documentation that a labeled nitrogen inhibitor was used at the recommended rate.
  - 3) In cases where the total application is 80 pounds of actual nitrogen or less, a labeled nitrogen inhibitor is not required.
  - 4) No restrictions if nitrogen fertilizer is applied postemergent.
- e. An operator must:
  - 1) Supply an annual water analysis for nitrogen concentrations for all wells irrigating corn, grain sorghum, soybeans and potatoes.
  - 2) Obtain one composite deep soil analysis (0-36") for each 80-acre field of irrigated corn, grain sorghum, soybeans and potatoes.
  - 3) Obtain one manure analysis for total nitrogen for each manure source applied to irrigated corn, grain sorghum, soybeans, and potatoes.
  - 4) Submit, on forms provided by the District, a report of yearly water tests, soil tests, crops planted, yield goals, nitrogen applied, and other field operations required prior to January 31<sup>st</sup>.
  - 5) Monitor water application with a water meter, or a electrical meter, hour meter or other measuring device that has been calibrated to the output of the irrigation distribution system so operators can more effectively manage fertilizer applications. This will be implemented over a four (4) year period.

**RULE 15**Variances

The Board of Directors may grant variances from the strict application of these rules and regulations upon good cause shown.

- a. An application for a variance shall be made on forms provided by the District and the application will be acted upon by the Variance Committee. The applicant or his or her representative shall be present at the Variance Committee meeting. With prior notification to the District, written testimony may be provided if the applicant cannot be present.
- b. Variance Committee: The 5-member Variance Committee meets with all individuals who request a variance from the rules and regulations of the Board. The Committee reports to the Board at the regular Board meeting. The variance requests are reviewed by the Board and placed on the agenda for the next regular Board meeting for decision.
  1. The Manager will distribute all information concerning the variance to the Variance Committee, all other Board members, and person(s) requesting the variance.
  2. The Variance Committee will meet with person(s) requesting a variance at the time set by the Manager to hear the variance request.
  3. The Variance Committee will report to the Board at a regular or special Board meeting the information received for the variance requested.
  4. The variance request will be voted on at the next regular Board meeting. At that time, the Variance Committee will make a recommendation to the Board concerning the variance request.
- c. The Board, at its discretion, may designate conditions under which specific requests for a variance may be approved by methods other than the Variance Committee process. A variance granted under these conditions shall be referred to as an “expedited variance.”

An expedited variance shall be applied for using forms provided by the District. An expedited variance may be granted by the Lower Loup Natural Resources District General Manager, or his designated representative, for the purpose of approving an expedited variance for:

- a. Alternative methods used for public education and/or demonstration projects.
- b. A water well that is used to supplement an irrigation well that irrigates land already irrigated with groundwater, provided that the irrigated acres do not exceed the acres currently irrigated.
  1. Written agreement that the acres irrigated will not exceed the acres irrigated before the suspension.

- c. New wells that irrigate land currently irrigated with surface water on the condition that the landowner provides the following:
  - 1. Written agreement from the landowner that the well will only be used when the surface water supply has been exhausted and is no longer available to the operator at the normal rotation or scheduled time.
  - 2. Written agreement that the landowner will maintain the surface water right.
  - 3. Written agreement that the irrigated acres will not exceed the acres currently irrigated.
  
- d. Land previously irrigated but currently enrolled in a federal, state, or local government conservation program may receive an expedited variance from the raised seal original record of irrigated acres from the County Assessor as long as:
  - 1. Acres were irrigated just before being enrolled in a program.
  - 2. Acres are not assessed as irrigated within that county.
  - 3. Acres are certified through the Irrigated Acres Certification process following the conservation program contract termination.
  
- e. New groundwater irrigated acre development will be based on the ranking method described in these rules and regulations. A total of 10,000 new groundwater irrigated acres, with a goal of 2500 acres per year, shall be allowed to be certified and irrigated within the hydrologically connected area designated within the 10% in 50 year line by December 31, 2012. The process that allows the development of new groundwater irrigated acres shall be as follows:
  - 1. The application period to apply for the new groundwater irrigated acres shall be from September 1 to September 20th.
  - 2. The applicants will be notified of the status of their request by December 1 of the application year.
  - 3. The application shall be made on forms provided by the district.
    - i. The application shall include an Aerial photo delineating the new irrigated acres being sought.
    - ii. The application shall be accompanied with a non-refundable filing fee based as follows:
      - 1. 25 acres or less - \$75.00
      - 2. over 25 acres - \$3.00/acre
    - iii. The application shall be signed by the landowner.
    - iv. An incomplete application may be declined.

4. The applications shall be ranked based on criteria set by the Board of directors. The criteria will be set to allow development of irrigated acres based on the best use of the water resource. Items to be considered may be, but are not limited to:
  - i. Irrigation System
  - ii. Groundwater/Surface water Status
  - iii. Irrigation concentration
  - iv. Soil Classification
  - v. Stream Depletion Factors
  - vi. Other
- f. Variances that include transfers of irrigated acres or water use transfers will require a title search and approval from all lien holders.
  1. Fees associated with these actions will be charged back to the Landowner(s)

### **RULE 16**

#### **Irrigated Acres Certification**

Certification of irrigated acres is required by January 1, 2008, by each landowner or his or her representative that owns irrigated land within the Lower Loup NRD (Appendix A). The certification records provided by the landowner will include completed District certification form, raised seal original record of irrigated acres from County Assessor, and FSA aerial photo delineating irrigated acres. The County Assessor's records will be used as the final base for irrigated acre certification. In cases that the acres being certified are not accepted by the General Manager or his or her designated representative, the landowner or his or her representative may request to present his or her information to the Variance Committee for their recommendation to the Board.

All or any of the following sources of information will be used in the variance process to resolve a dispute:

- U.S.D.A. Farm Service Agency records
- Aerial photographs
- Crop insurance records
- Personal documentation
- Other requested information

The Board may take action to approve, modify and approve, or reject the certification provided by the landowner and his or her representative.

#### **Irrigated Acres to be certified must**

- a. actually be capable of being supplied with groundwater or surface water through irrigation works, mechanisms or facilities existing at the time of certification before being approved; or
- b. had been irrigated at least 2 out of 10 years prior to January 1, 2008. The proof of irrigation shall be the responsibility of the landowner; or
- b. Land previously irrigated but currently enrolled in a federal, state, or local government conservation program; or
- d. granted by Rule 15 Variances.

No acres shall be certified for an illegal water well, as that term is defined in Rule 2 of the Lower Loup NRD Rules and Regulations.

The information on the forms needs to be corrected and kept current by the landowner or his or her representative.

**RULE 17****Closure in the Issuance of Permits and Closure to the Expansion of Irrigated Acres**

There is a closure in the issuance of permits to construct new wells and Effective January 1, 2008 a closure to the expansion of irrigated acres within the Lower Loup NRD (Appendix A).

Wells not subject to these rules are:

- a. Test holes.
- b. Dewatering wells with an intended use of less than 90 days.
- c. Water wells constructed to pump 50 gpm or less, provided that if two or more water wells have individual pumping capacities of 50 gpm or less but a combined capacity of more than 50 gpm, and if those wells are to be clustered or joined for a single purpose or if the water there from is to be commingled or combined for a single purpose, those wells shall be considered as one well and shall be subject to Rule 16.
- d. Water wells to be used as Replacement wells.
- e. Wells with permits approved before February 23, 2006, may be constructed if the construction of the well is completed before the expiration date of the permit.
- f. The construction of a well for monitoring groundwater or an observation well for obtaining water levels or hydrologic information. A monitoring/observation well shall not have a permanent pump installed.
- g. The construction of wells for the purpose of groundwater contamination treatment. The application shall include a copy of an approved site plan.
- h. Water wells that are intended to supply water for municipal, industrial, or commercial use.

Except as provided in these Rules and Regulations of the District, only irrigated land which has been certified in accordance with the provisions of Rule 16 may:

- a. be irrigated with groundwater on or after January 1, 2008
- b. be eligible for District programs

This suspension shall remain in effect unless rescinded by the Board of Directors.

## **Rule 18**

### Transfer Permits

For Agriculture purposes, any person who intends to withdraw groundwater and transfer that groundwater off the overlying land which he or she owns or controls or otherwise change the location of use of groundwater shall, before making such transfer, apply for a permit on forms provided by the District.

The District shall approve the withdrawal and transport of groundwater when a public water supplier providing water for municipal purposes receives a permit from the Nebraska Department of Natural Resources pursuant to the Municipal and Rural Domestic Groundwater Transfers Permit Act.

Transfers for which permits or approval for transfer have been obtained pursuant to the Industrial Groundwater Regulatory Act are not required to apply for a transfer permit from the district.

The applicant shall be required to provide access to his or her property at reasonable times for purposes of inspection by officials of the District.

An application for a permit to transfer shall contain, but not be limited to, the following information:

- a. The name and address of the well owner(s) and landowner(s)
- b. The point of withdrawal
- c. The point of transfer
- d. The registration number of the well(s) involved
- e. Explanation of the proposed activities.
- f. An aerial photo with the proposed field(s), well(s), pipeline(s), etc. delineated
- g. Include approved copy of irrigated acres certification form(s).
- h. Legal description(s) of affected properties.
- i. Landowner(s) and/or well owner(s) signature(s).

The application for a transfer permit shall be denied or conditioned to the extent that it is necessary to:

- a. Ensure the consistency of the transfer with the purpose or purposes for which the management area was designated.
- b. Prevent adverse effects on other groundwater users or on surface water appropriators.
- c. Prevent conflict with any regulations or controls adopted by the District.
- d. Ensure the proposed transfer would be a reasonable and beneficial use.

The issuance, by the District, of a transfer permit shall not vest in any person the right to violate a District rule, regulation, or control in effect on the date of issuance of the permit or to violate any rule, regulation, or control properly adopted after such date.

The issuance, by the District, of a transfer permit shall not vest in any person the right to violate any statute, state agency or other jurisdictional agency's rule, regulation, or control in effect on the date of issuance of the permit or to violate any rule, regulation, or control properly adopted after such date. It is the responsibility of the applicant to ensure compliance with other rules and regulations.

The District shall review such applications and issue, with or without conditions, or deny the permit within sixty (60) days after the application is properly filed. An incomplete or defective application shall be returned for correction and shall not be considered properly filed. If correction is not made within one hundred twenty (120) days of the return date, the application shall be cancelled.

### **Rule 19**

#### **Transfers**

**Transfers out of District-** Any person who desires to withdraw groundwater from wells located within the District and transport that groundwater out of the District for use elsewhere in the state shall obtain a transfer permit in accordance with rule 18. Use of the withdrawn water must be approved by the Natural Resources District within which the water will be used.

**Transfers into the District-** Groundwater withdrawn outside the District shall not be transported for use inside the District unless the Natural Resources District from which the groundwater is withdrawn approves the withdrawal and transport in advance. Use of the transported water must be in accordance with these rules.

**Permanent Transfer-** A permanent transfer may be accomplished by decommissioning the well(s) and discontinuing the certified use and transferring the right to that use to another owner. The new well shall be limited to number of acres associated with the certified acres from the well being replaced.

Transfers within the District shall be restricted to the following:

- a. Acre had to have been irrigated at least 2 out of 10 years prior to January 1, 2008. The proof of irrigation shall be the responsibility of the landowner.
- b. Land that is currently certified with the District as irrigated
- c. The original irrigated acres that are being transferred must be converted to a non-irrigated use.
- d. Transfers shall be based on Stream Depletion Factors and shall not cause an increase in Stream Depletion.
- e. Acres shall not be allowed to be transferred into an area designated as a water concern area by the Board of Directors.
- f. Staff may defer approval of a transfer application to the Variance Committee.
- j. Transfers of irrigated acres or water use transfers will require a title search and approval of all lien holders.
  - a. Fees associated with these actions will be charged back to the Landowner(s)
- g. May be subject to Rule 15 Variance Process

**Appendix A**

## LOWER LOUP NRD

Commencing on the Custer-Dawson County line at the SW corner of Sec. 31, T13N, R20W of the 6th PM; thence northerly to the SW corner of Sec. 31, T14N, R20W of the 6th PM; thence westerly to the SW corner of Sec. 34, T14N, R21W of the 6th PM; thence northerly to the SW corner of Sec. 15, T14N, R21W of the 6th PM; thence westerly to the SW corner of Sec. 18, T14N, R21W of the 6th PM; thence northerly to the SW corner of Sec. 31, T15N, R21W of the 6th PM; thence westerly to the SW corner of Sec. 31, T15N, R22W of the 6th PM; thence southerly to the SE corner of Sec. 36, T14N, R23W of the 6th PM; thence westerly to the SW corner of Sec. 31, T14N, R23W of the 6th PM; thence northerly to the SW corner of Sec. 18, T14N, R23W of the 6th PM; thence westerly to the SW corner of Sec. 15, T14N, R24W of the 6th PM; thence northerly to the SW corner of Sec. 34, T15N, R24W of the 6th PM; thence westerly to the west Custer County line at the SW corner of Sec. 31, T15N, R25W of the 6th PM; thence northerly to the NW corner of Custer County at the NW corner of T20N, R25W of the 6th PM; thence easterly along the 5th standard parallel to the SW corner of Sec. 31, T21N, R20W of the 6th PM; thence northerly to the NW corner of Loup County at the NW corner of Sec. 6, T24N, R20W of the 6th PM; thence easterly on the north Loup County line to the SW corner of Rock County at the SW corner of Sec. 33, T25N, R20W of the 6th PM; thence northerly to the NW corner of Sec. 4, T26N, R20W of the 6th PM; thence easterly to the NE corner of Sec. 1, T26N, R19W of the 6th PM; thence southerly to the NE corner of Sec. 1, T25N, R19W of the 6th PM; thence easterly to the Rock-Holt County line at the NE corner of Sec. 1, T25N, R17W of the 6th PM; thence southerly on the Rock-Holt County line to the SE corner of Rock County at the SE corner of Sec. 36, T25N, R17W of the 6th PM; thence easterly on the south Holt County line

to the NE corner of T24N, R13W of the 6th PM; thence southerly to the NE corner of T23N, R13W; thence easterly to the east Wheeler County line at the NE corner of T23N, R9W of the 6th PM; thence southerly to the NW corner of Boone County at the NW corner of T22N, R8W of the 6th PM; thence easterly on the Boone-Antelope County line to the NE corner of Sec. 5, T22N, R6W of the 6th PM; thence southerly to the NE corner of Sec. 29, T22N, R6W of the 6th PM; thence easterly to the NE corner of Sec. 25, T22N, R6W of the 6th PM; thence southerly to the NE corner of Sec. 24, T21N, R6W of the 6th PM; thence easterly to the NE corner of Sec. 21, T21N, R5W of the 6th PM; thence southerly to the NE corner of Sec. 21, T20N, R5W of the 6th PM; thence easterly to the Boone-Platte County line at the NE corner of Sec. 24, T20N, R5W of the 6th PM; thence easterly to the NE corner of Sec. 22, T20N, R4W of the 6th PM; thence southerly to the NE corner of Sec. 34, T20N, R4W of the 6th PM; thence easterly to the NE corner of Sec. 31, T20N, R3W of the 6th PM; thence southerly to the NE corner of Sec. 30, T19N, R3W of the 6th PM; thence easterly to the NE corner of Sec. 27, T19N, R3W of the 6th PM; thence southerly to the NE corner of Sec. 10, T18N, R3W of the 6th PM; thence easterly to the NE corner of Sec. 7, T18N, R2W of the 6th PM; thence southerly to the NE corner of Sec. 18, T18N, R2W of the 6th PM; thence easterly to the NE corner of Sec. 17, T18N, R2W of the 6th PM; thence southerly to the NE corner of Sec. 20, T18N, R2W of the 6th PM; thence easterly to the NE corner of Sec. 22, T18N, R2W of the 6th PM; thence southerly to the NE corner of Sec. 27, T18N, R2W of the 6th PM; thence easterly to the NE corner of Sec. 25, T18N, R2W of the 6th PM; thence southerly to the NE corner of Sec. 36, T18N, R2W of the 6th PM; thence easterly to the east Platte County line at the NE corner of Sec. 36, T18N, R1E of the 6th PM; thence southerly on the Platte-Colfax County line to where it intersects the south bank of the Platte River; thence westerly along said south bank to a point where the dividing line between Townships 16 and 17N intersects the same; thence westerly on the 4th standard parallel to the point where the Platte County line intersects the

Nance-Merrick County line on the southern boundary of Sec. 31, T17N R3W of the 6th PM; thence southerly on the Nance-Merrick County line to the southern boundary of Sec. 7, T16N, R3W of the 6th PM; thence westerly to the SW corner of Sec. 10, T16N, R5W of the 6th PM; thence southerly to the SE corner of Sec. 16, T16N, R5W of the 6th PM; thence westerly to the SW corner of Sec. 16, T16N, R5W of the 6th PM; thence southerly to the SE corner of Sec. 20, T16N, R5W of the 6th PM; thence westerly to the SW corner of Sec. 24, T16N, R6W of the 6th PM; thence southerly to the SE corner of Sec. 26, T16N, R6W of the 6th PM; thence westerly to the SW corner of Sec. 26, T16N, R6W of the 6th PM; thence southerly to the SE corner of Sec. 3, T15N, R6W of the 6th PM; thence westerly on the Nance-Merrick County line to the point on the southern boundary of Sec. 6, T15N, R6W of the 6th PM where the east-west Nance-Merrick County line turns north-south; thence southerly on the Nance-Merrick County line to the southern boundary of Sec. 7, T15N, R6W of the 6th PM; then westerly on the Nance-Merrick County line to the point on the southern boundary of Sec. 10, T15N, R7W of the 6th PM where the east-west Nance-Merrick County line turns north-south; thence southerly on the Nance-Merrick County line to the southern boundary of Sec. 15, T15N, R7W of the 6th PM; thence westerly on the Nance-Merrick County line to the point where the county line intersects the eastern boundary of Sec. 13, T15N, R8W of the 6th PM in Merrick County; thence southerly to the SE corner of T15N, R8W of the 6th PM; thence westerly to the SW corner of Sec. 34, T15N, R8W of the 6th PM; thence southerly to the SE corner of Sec. 9, T14N, R8W of the 6th PM; thence westerly to the SW corner of Sec. 7, T14N, R8W of the 6th PM, thence southerly to the SE corner of Sec. 25, T14N, R9W of the 6th PM; thence westerly to the SW corner of Sec. 25, T14N, R9W of the 6th PM; thence southerly to the SE corner of Sec. 35, T14N, R9W of the 6th PM; thence westerly to the SW corner of Sec. 32, T14N, R9W of the 6th PM; thence southerly to the SE corner of Sec. 6, T13N, R9W of the 6th PM; thence westerly to the SW corner of Sec. 2, T13N, R10W of the 6th PM;

thence southerly to the SE corner of Sec. 15, T13N, R10W of the 6th PM; thence westerly to the SW corner of Sec. 15, T13N, R10W of the 6th PM; thence southerly to the SE corner of Sec. 28, T13N, R10W of the 6th PM; thence westerly to the SW corner of Sec. 29, T13N, R10W of the 6th PM; thence southerly to the SE corner of Sec. 31, T13N, R10W of the 6th PM; thence westerly along the 3rd standard parallel to the SW corner of Sec. 34, T13N, R12W of the 6th PM, thence southerly to the SE corner of Sec. 5, T12N, R12W of the 6th PM; thence westerly to the SW corner of Sec. 5, T12N, R12W of the 6th PM; thence southerly to the SE corner of Sec. 18, T12N, R12W of the 6th PM; thence westerly to the SW corner of Sec. 18, T12N, R12W of the 6th PM; thence southerly to the SE corner of T12N, R13W of the 6th PM; thence westerly to the SW corner of T12N, R13W of the 6th PM; thence southerly to the SE corner of T11N, R14W of the 6th PM; thence westerly to the SW corner of T11N, R16W of the 6th PM; thence northerly to the NW corner of Sec. 19, T11N, R16W of the 6th PM; thence westerly to the SW corner of Sec. 18, T11N, R17W of the 6th PM; thence northerly to the NW corner of T11N, R17W of the 6th PM; thence westerly to the SW corner of T12N, R18W of the 6th PM; thence northerly to the NW corner of T12N, R18W of the 6th PM; thence westerly to the point of beginning.

Revised 9/27/07