

Lower Loup NRD Groundwater Management Area Rules & Regulations

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

PURPOSE – These Rules and Regulations are adopted for the following purposes: (1) to protect Ground Water quantity; (2) to protect Ground Water quality; (3) 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 (4) to implement the necessary controls to carry out the goals and objectives identified in the Voluntary Integrated Management Plan (“IMP”) jointly adopted by the LLNRD 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 LLNRD. 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 entire District is designated a Ground Water Management Area pursuant to Neb. Rev. Stat. § 46-712. The boundaries of the District are described in Appendix “A.”

CHAPTER 2 - DEFINITIONS

I. **Ground Water Quality Management Sub-Area** means a geographical area with the Ground Water Quality Management Area designated by the District as such and for which controls specific to that Ground Water Quality Management Sub-Area have been adopted in accordance with these Rules & Regulations.

J. **Ground Water Quantity Management Area** means all areas within the District designated as such by the District pursuant to Neb. Rev. Stat. § 46-712 or 46-718.

K. **Ground Water Quantity Management Sub-Area** means a geographical area with the Ground Water Quantity Management Area designated by the District as such and for which controls specific to that Ground Water Quantity Management Sub-Area have been adopted in accordance with these Rules & Regulations

CHAPTER 3 – ENFORCEMENT AND PENALITES

RULE 3-1 – ENFORCEMENT

A. Penalties for violating certain provisions of these Rules and Regulations are identified below, listed penalties may be enforced without the need for the LLNRD 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 LLNRD through the use of cease and desist orders issued in accordance with the NEB. REV. STAT. § 46-707(h).

B. The following persons may file a complaint against a ground water user or other person within the District for non-compliance with the Act or these Rules and Regulations:

1. Any person who owns land, leases land, or resides within the District;
2. Any person directly affected by the alleged violator
3. District staff; or
4. The Board by its own motion.

C. The complaint should include as much information as known by the filer, including, but not limited to:

1. The name of the filer;
2. The name of the alleged violator;
3. The provision or rule allegedly violated; and
4. A clear and concise statement of the factual basis for the alleged violation, including any evidence available to the filer to support a finding that the provision or rule was violated.

D. Complaints must be submitted to the District in writing on a form provided by the District.

E. Upon the receipt of a complaint, the District shall review the complaint for completeness and, if necessary, conduct an investigation for the purpose of determining the extent of the alleged violation and obtaining any additional information that may be reasonably necessary for the Board to determine whether a violation has occurred. If an investigation is conducted, an investigation report summarizing the investigation and any evidence gathered shall be attached to the complaint and submitted to the Board with the complaint for consideration.

F. If the Compliance Officer, upon receipt of the complaint and/or investigation report, determines that there is sufficient cause to open a proceeding against the alleged violator, the District shall notify the alleged violator in writing of its intent to issue a cease and desist order. The notice of intent to issue a cease and desist order shall include the general grounds for the action, the contemplated action, and a date and time for a hearing no less than ten days after the

date of issuance where the alleged violator may have a reasonable opportunity to be heard before the Board. A copy of the complaint and/or investigation report shall be attached thereto.

G. The hearing shall afford both the District and the Alleged Violator the opportunity to present testimony and evidence regarding the allegations contained within the complaint, investigation report, or notice of intent to issue a cease and desist order.

H. If an alleged violator or an agent thereof is unable to appear at the date and time of the hearing provided in the notice of intent to issue a cease and desist order for reasons that are satisfactory to the General Manager and/or the Chairman of the Board, and with notice, the General Manager and/or the Chairman of the Board may issue a notice of hearing in writing stating a new date and time where the alleged violator may have a reasonable opportunity to be heard before the Board.

I. When the notice of intent to issue a cease and desist order has provided notice of a properly scheduled formal hearing and the alleged violator has failed to appear or respond, the Board may:

1. Review the complaint and/or the inspection report, as well as any other pertinent information; and
2. Issue a cease and desist order or other order, if appropriate.

J. Pursuant to NEB. REV. STAT. §§ 46-707(h) and 46-746(1), the Board may issue cease and desist orders to enforce any of the provisions of the Act, orders or permits issued pursuant to the Act, or the District's Rules and Regulations, 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.

K. 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.

L. 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 District Rules and Regulations.

RULE 3-2 – PENALTIES

A. Unless otherwise provided, imposition of penalties shall be at the discretion of the Board and may include, but are not limited to:

1. A reduction of, or limitation upon, in whole or in part, a Person's right to irrigate property located within a Ground Water Management Area
2. A reduction (in whole or in part) of a Person's Certified Irrigated Acres; and
3. Decommissioning of Water Wells.

B. 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.

CHAPTER 4 – ACCESS

RULE 4-1 – ENTRY UPON LAND

A. The LLNRD or authorized designee shall have the power and authority to enter upon the land, after notification to the landowner or operator, for any and all reasons relative to the administration of the provisions of these rules and regulations and the Act. This entry shall not be considered trespass.

B. Notice for entry upon land may be accomplished by rule, oral communication, regular mail, certified mail, or personal service.

Rule 4-2 – NOTICE

A. The LLNRD hereby notifies all landowners and operators of its intent to enter onto property for the following purposes relating to flow meter devices or other similar devices used to measure the quantity of ground water pumped for irrigation, municipal, commercial, and industrial purposes (“measuring devices”):

1. Verify the installation of measuring devices;
2. Read, or verify readings of, all installed measuring devices; or
3. Any other inspection or installation required to ensure proper use and maintenance of measuring devices.

B. The LLNRD hereby notifies all landowners and operators of its intent to enter onto the property for the purpose of conducting static water well measurements and for the purpose of any inspections, measurements, evaluations, or sample collection undertaken pursuant to state law.

RULE 7 – GROUNDWATER QUALITY MANAGEMENT SUB-AREAS; DESIGNATION; CONTROLS

A. The Nebraska Legislature declared the various purposes of the natural resources districts to include pollution control. See Neb. Rev. Stat. § 2-3229(7). The Board of Directors adopted water quality and pollution control as one of its goals in the District's Master Plan. The Board of Directors adopted water quality as Priority 1 in the District's Long-Range Implementation Plan.

C. To achieve its water quality and pollution control goals, the District shall be divided into Ground Water Quality Management Sub-Areas which may be modified by the District from time to time. (See Appendix B). **The District shall have the authority to draw, re-draw, or modify the geographical boundaries for Sub-Areas to encompass areas including but not limited to:**

- a. Areas in which Ground Water quality testing performed by District personnel indicates nitrate contamination levels generally consistent with the Phase I, Phase II, or Phase III triggers set forth in Rule 7.D;
- b. Areas with similar soil and land use conditions;
- c. Counties, sections, townships, or other political subdivisions;
- d. Natural geographic boundaries; or
- e. Any other delineation deemed logical by the District and consistent with the goals and objectives of the Ground Water Management and Protection Act or the District's Ground Water Management Plan.

G. The following controls shall apply to Phase III Sub-Areas:

4. Application of nitrogen fertilizer is prohibited on all soils being planted to corn, grain sorghum, soybeans and potatoes until after March 1st of each year. Spring application of nitrogen fertilizer must be in accordance with guidelines set up by the Lower Loup Natural Resources District, as follows:
 - i. Split applications are authorized; either preplant or preemergent/**post-emergent**, when no more than 50% of actual nitrogen is being applied as preplant or preemergent;
 - iv. No restrictions if nitrogen fertilizer is applied **post-emergent**.

H. **Unless otherwise provided, the entire Lower Loup Natural Resources District Groundwater Management Area shall be designated Phase I.**

I. Prior to the designation of any Sub-Area, modification of the boundaries of any existing Sub-Area, or modification of the controls to which any particular Sub-Area is subject, the Board of Directors shall hold a public hearing.

J. The boundaries of all Sub-Areas shall be designated on a map, updated from time to time, in the District Office. The map will be available for public inspection during regular office hours and copies will be provided upon request.

**RULE 8 - GROUNDWATER QUANTITY MANAGEMENT SUB-AREAS;
DESIGNATION; CONTROLS**

A. The Nebraska Legislature declared the various purposes of the natural resources districts to include development, management, utilization, and conservation of ground water and surface water. See Neb. Rev. Stat. § 2-3229(6). The Ground Water Management and Protection Act authorizes the District to require meters to be placed on any water wells for the purpose of acquiring water use data. See Neb. Rev. Stat. § 46-707.

B. The Board of Directors adopted development and management of groundwater and surface water for beneficial uses has one of its goals in the District's Master Plan. The Board of Directors has adopted water quantity as a Priority in the District's Long-Range Implementation Plan.

C. The District's Ground Water Management Plan provides for the requirement of flow meters and reports of usage as an option for control in Ground Water Quantity Management Areas.

D. To achieve its water quantity control goals, the District may be divided into Ground Water Quantity Management Sub-Areas, which may be modified by the District from time to time. (See Appendix C). The District shall have the authority to draw, re-draw, or modify the geographical boundaries for Sub-Areas to encompass areas including but not limited to:

- a. Areas with similar soil and land use conditions;
- b. Counties, sections, townships, or other political subdivisions;
- c. Natural geographic boundaries; or
- d. Any other delineation deemed logical by the District and consistent with the goals and objectives of the Ground Water Management and Protection Act or the District's Ground Water Management Plan.

E. Each Ground Water Quantity Management Sub-Area may be subject to water quality controls in separate Phases, which controls will be specified by rule or regulation promulgated by the District after a public hearing and opportunity for comment.

F. Within twenty-four (24) months of the District's designation of a Ground Water Quantity Management Sub-Area, operators shall be required to install a Flow Meter on all water wells within the Sub-Area which are designed to pump more than fifty (50) gallons per minute. Withdraw of Ground Water from any water well subject to this provision shall be strictly prohibited without a properly installed and function Flow Meter.

RULE 9 – FLOW METERS

A. For a water well, Common Carrier, and/or surface water source with a discharge pipe of less than or equal to 4-inch outside diameter, an alternative measuring device or method may be used with District approval.

B. All District approved Flow Meters must meet the minimum requirements of plus or minus two percent (2%) of the actual water flow; and when maintenance is required, the flow meter shall be calibrated to the same standard.

C. Flow Meter installation shall be subject to the following requirements:

1. The installation of the Flow Meter shall be done to meet manufacturer's specifications and shall be constructed so all water pumped by the water well, Common Carrier, and/or surface water source will pass through the flow meter to the irrigation system;
2. The District may, at the time of its own choosing, verify the location, readings, and proper installation of flow meters;
3. The District may seal flow meters to prevent tampering. The District may consider whether or not to seal a flow meter when doing so may cause unnecessary inconvenience for the user or the District;
4. The landowner shall notify the District prior to changing the location of a flow meter; and
5. It shall be the responsibility of the District to provide for service and maintenance of the flow meter according to manufacturer standards. The owner of the flow meter will be required to pay for the expense of maintaining the flow meter.

D. It shall be a violation of these Rules and Regulations for any person to damage, alter, adjust, or otherwise tamper with any Flow Meter required under these Rules and Regulations.

E. Flow Meters may be periodically inspected by District staff or their agent for proper installation, function, and operation. The District shall report the results of the inspection, including any corrections required for proper installation or operation of the Flow Meter to the operator. Failure to repair or otherwise correct any deficiency identified by the District as a result of inspection of a Flow Meter within thirty (30) days shall constitute a violation of these Rules and Regulations.

F. Operators shall notify the District in writing within five (5) business days following the discovery of a malfunctioning or otherwise improperly operating Flow Meter.

G. Operators shall provide the District a written copy of a certification from any person who repairs and/or calibrates any Flow Meter installed pursuant to these Rules and Regulations. Such certification must indicate the repaired or calibrated Flow Meter meets the manufacturer's original specifications.

RULE 14 – MUNICIPAL USE AND ACCOUNTING

A. The District, pursuant to NEB. REV. STAT. § 46-740, adopts the following rules regarding municipal use and accounting.

B. The District will calculate a Baseline of Municipal 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.

C. Once each five (5) years, the District will re-calculate the per capita Consumptive Use based upon similar, but updated data described in subsection (B).

D. 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.

E. 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.

RULE 15 – COMMERCIAL OR INDUSTRIAL USE AND ACCOUNTING

A. The District will calculate Baseline of Commercial and Industrial Use for each Commercial or Industrial Water 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.

B. Changes in Consumptive Use will be tracked for each commercial or industrial user annually through a reporting system administered by the District.

C. Any permanent reduction in Consumptive Use of water associated with a new 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.