

**RULES AND REGULATIONS
FOR
GROUND WATER CONTROL
OF THE
UPPER REPUBLICAN
NATURAL RESOURCES DISTRICT
MANAGEMENT AREA
ORDER NO. 26**

**EFFECTIVE MAY 8, 2003
IN CONCERT WITH
REVISED PARTS IV AND VI OF THE
URNRD TECHNICAL MANUAL, TM - 26**

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**STATE OF NEBRASKA
UPPER REPUBLICAN NATURAL RESOURCES DISTRICT
AMENDMENTS TO RULES AND REGULATIONS
GROUNDWATER CONTROL -ORDER NO. 26**

Pursuant to Section 46-656.25, R.R.S. 1998, Rules and Regulations for Groundwater Control, Order No.26, and Technical Manual TM 26 adopted April 11, 2003, are amended as follows:

RULE I: DEFINITIONS

All words, terms and phrases used herein shall be given their common, every day meaning and usage. In addition:

- A. **Allocated Acres** shall mean the specific number of acres that have been Certified by the Board as eligible to be granted an allocation of groundwater.
- B. **Allocation** shall mean the amount of groundwater granted by the Board to a groundwater user, pursuant to these rules and regulations.
- C. **Board of Directors** or **Board** shall mean the elected Board of Directors of the Upper Republican Natural Resources District.
- D. **Certified Irrigated Acre** shall mean any acre of ground upon which groundwater is being applied for irrigation purposes, regardless of the source of the groundwater, that is properly equipped to apply groundwater for irrigation purposes, and that has an allocation and is certified as such by the Board. (Also see **Irrigated Acre**)
- E. **Certified Irrigated Tract** shall mean an irrigated tract, not exceeding 640 contiguous acres, consisting of Certified Irrigated Acres. (Also see **Irrigated Tract**)
- F. **Critical Township** shall mean any township within the Management Area designated as Critical under the criterion of Rule 4 herein, and in TM-26.
- G. **District** shall mean the Upper Republican Natural Resources District, which encompasses Chase, Dundy, and Perkins Counties, in the State of Nebraska.
- H. **Flowmeter** shall mean a device of a type or design approved by the Board, which, when installed, operated and maintained according to District specifications, measures and totalizes the amount of groundwater withdrawn.
- I. **Groundwater Irrigation Runoff** shall mean groundwater used for irrigation purposes which escapes from land owned, leased, or otherwise under the control of a groundwater user. Groundwater that becomes commingled with surface water runoff shall be treated as irrigation runoff; except that groundwater irrigation runoff, whether commingled with surface water or not, which reaches a stream becomes surface water and is not subject to these rules and regulations.
- J. **Improper Groundwater Irrigation Runoff** shall mean the occurrence of groundwater irrigation runoff which causes or contributes to the: accumulation of water upon or beneath the surface of the lands of any person to their detriment, damage, or inconvenience; deterioration of water quality by depositing sediment and/or associated chemicals in surface water within the Management Area; and/or flow of groundwater to waste. Improper groundwater irrigation runoff is subject to the General Enforcement Provisions of Order No.26 and TM-26.

- K. **Irrigated Acre** shall mean any acre with a demonstrated or proven history of having been or currently being irrigated.
- L. **Irrigated Tract** shall mean any acres with a demonstrated or proven history of having been or currently being irrigated.
- M. **Management Area** shall mean all of Perkins, Chase and Dundy Counties and shall include the rock unit known as the Ogallala Formation and all other deposits of more recent geological age.
- N. **Offset** shall mean any deduction from an allocation.
- O. **Permit** shall mean a permit, granted by the Board, with conditions specified by the Board, for construction of a new well or a replacement well pursuant to these rules and regulations. All new and replacement wells, except Domestic and Range Livestock, shall require a permit after September 1, 2002 prior to construction of the well.
- P. **Person** shall mean a natural person, a partnership, a limited liability company, an association, a corporation, a municipality, an agency or political subdivision of the State or of the United States. The male pronoun shall include the female.
- Q. **Pooling** shall mean any contract approved by the Board in which groundwater allocations are combined.
- R. **Technical Manual** shall mean a publication of the District that contains technical, administrative, procedural, regulatory and other materials, the contents of which are incorporated into these rules by reference herein. The Technical Manual is available to the public.
- S. **Transfer** shall mean any arrangement approved by the Board in which the point of withdrawal, the point of use, or the type of use of an allocation is altered.
- T. **State** shall refer to the State of Nebraska.
- U. **Well** shall mean any water well as defined in Nebraska statutes, Sections 46-601.01, 46-635.01, 46-1204.01, 46-1204.02, and 46-1212, R.R.S. For the purposes of these rules and regulations, wells are further defined and classified as follows:
1. **Domestic Wells** are wells used by a person or by a family unit or household for normal household uses and for the irrigation of lands not exceeding two acres in area for the growing of gardens, orchards, and lawns. Such wells are exempt from application of these rules.
 2. **Range Livestock Wells** are wells, which are used for the watering of range livestock, and other uses of water directly related to the operation of a pasture or range. Such wells are exempt from application of these rules except for Rule 1-U-8.
 3. **Irrigation Wells** are active wells that are fully equipped, and used for the pumping of groundwater to irrigated acres for the production of crops. Such wells must have a permit, Certified Acres, and an allocation; and be used in conjunction with a flowmeter located in the District

4. **Commercial Livestock Wells** are wells which are used for the watering of livestock and other uses directly related to the operation of a feedlot or other confined livestock operation or dairy. Such wells must have a District permit and water allocation; and be used in conjunction with a flowmeter located in the District.
5. **Back-up Wells** are wells designed for confined livestock and dairy operations and which operate only in emergencies when the main well fails. Back-up wells shall not be operated simultaneously with the commercial livestock wells, which they back up. Such wells must have a permit and any water pumped from such shall be accounted against the allocation for the well it backs up. Such well must be used in conjunction with a flowmeter located in the District.
6. **Industrial Wells** are wells used in manufacturing and commerce operations, and/or watering and maintenance of golf courses. Such wells must have a permit and an allocation; and be used in conjunction with a flowmeter located in the District.
7. **Municipal Wells** are wells owned and used by municipalities for public water supply. Such wells must have a permit and an allocation; and be used in conjunction with a flowmeter located in the District.
8. **Commingled Wells** are water wells that are commingled, combined, clustered, or joined with any other water well or wells or other water source, other than a water source used to water range livestock, after August 31, 1998. Such wells shall be considered one water well and the combined capacity shall be used as the rated capacity. Such wells must, prior to operation, have a permit and an allocation, and be used in conjunction with a flowmeter located in the District.
9. **Supplemental Well** is any well, the water from which is commingled with the water from any other well for irrigation purposes.
10. **Replacement Well** shall mean a well as defined by Section 46-602(3), R.R.S
11. **Abandoned Well** shall mean a well as defined by Section 46-1204.01, R.R.S.
12. **Inactive Status Well** shall mean a well as defined by Section 46-1207.02, R.R.S. The owner of any permitted well must notify the District when an active well is placed in inactive status.
13. **Monitoring Well** shall mean a well as defined by 178 NAC 12 at 002, Nebraska Department of Health and Human Services.
14. **Observation Well** shall mean a well as defined by 178 NAC 12 at 002, Nebraska Department of Health and Human Services.
15. **Illegal Well** shall mean a well as defined by Sections 46-656.07(5) and 46-1207.01, R.R.S.

See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule.

RULE 2: FLOWMETERS

After the effective date of Order 26, all wells requiring permits shall be equipped with flowmeters or other device or method approved by the Board. Owners or operators of such wells shall allow the District staff to determine from the flowmeters, by January 15 of each year, the amount of groundwater withdrawn from each well during the preceding calendar year.

See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule. See especially, "Flowmeters", pages 13 & 14, Part VI, TM-26.

RULE 3: IRRIGATED ACRES AND TRACTS

- A. The total number of acres irrigated in the District, belonging to or under the control of every groundwater user, must be reported annually to the District
- B. Wells drilled in Critical Townships after August 31, 1998, shall not be deemed to be irrigating more than 130 acres for groundwater allocation purposes, except for replacement wells, which shall be deemed to irrigate the same number of Certified Acres as the well being replaced. Wells without allocations that are returned to service after being idled, are subject to the 130-acre maximum limitation, or the previously irrigated acres if less than 130 acres.
- C. The Board will specify the number of Certified Irrigated Acres on each Certified Irrigated Tract for each groundwater user. Failure of the groundwater user to confirm the number of acres irrigated under his ownership or control shall preclude the Board from granting an allocation to such user.
- D. The number of non certified and non allocated acres irrigated on any tract or parcel of land shall not be increased without prior approval by the Board of Directors. Board approval is required to assure District compliance with the Republican River Compact and prevent unreasonable impairment on other water users.

See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule. See especially "Irrigated Acres and Tracts", page 14 & 15, Part VI; TM-26.

RULE 4: CRITICAL TOWNSHIPS

Critical Townships are those townships that have a three-year average annual decline of the groundwater table exceeding one-fourth of one percent of the saturated thickness of the aquifer in that township as determined by yearly groundwater measurements of observation and continuous recorder wells throughout the Management Area. Townships designated as Critical are listed in the District Technical Manual; and shall remain designated as Critical for a minimum of five years.

See District Technical Manual for a list of designated Critical Townships; and technical, administrative, procedural, regulatory, and other materials related to this Rule. See especially "Critical Townships", pages 15,16 & 17, Part VI; TM-26.

RULE 5: WELL SPACING

Spacing of all wells, for which District permits are required, and regardless of ownership and classification, must be approved by the Board prior to drilling the well. The following regulation applies to the spacing of all wells subject to these rules and regulations and receiving permits from the District:

A. In Non-Critical Townships:

1. New Wells - Any irrigation, commercial livestock, industrial, or municipal well drilled in a Non-Critical Township after August 31, 2000, must be at least 1,320 feet from any domestic, livestock, irrigation, commercial livestock, industrial or municipal well not belonging to the owner or controller of the land upon which the new well is established.
2. Replacement Wells -With the exception of A.2.(a), any irrigation, commercial livestock, industrial, or municipal well drilled in a Non-Critical Township as a replacement well after August 31,2000, must be at least 1,320 feet from any domestic, livestock, irrigation, commercial livestock, industrial or municipal well not belonging to the owner or controller of the land upon which the replacement well is to be established.
 - (a) If the well to be replaced is within 1,320 feet of a domestic, livestock, irrigation, commercial livestock, industrial or municipal well not belonging to the owner or controller of the land upon which the replacement well is to be established, the replacement well must be drilled within 150 feet of the well it replaces.

B. In Critical Townships:

1. New Wells - Any irrigation, commercial livestock, industrial, or municipal well drilled in a Critical Township after August 31, 2000, must be at least 1,320 feet from any domestic or livestock well, and 5,280 feet from any other well not belonging to the owner or controller of the land upon which the new well is established.
2. Replacement Wells -With the exception of B.2.(a), any irrigation, commercial livestock, industrial, or municipal well drilled in a Critical Township as a replacement well after August 31, 2000, must be at least 1,320 feet from any domestic or livestock well and 5,280 feet from any irrigation, commercial livestock, industrial or municipal well not belonging to the owner or controller of the land upon which the replacement well is established.
 - (a) If the well to be replaced is within 1,320 feet of a domestic or livestock well, or within 5,280 feet of any irrigation, commercial livestock, industrial or municipal well not belonging to the owner or controller of the land upon which the replacement well is to be established, the replacement well must be drilled within 150 feet of the abandoned well it replaces.

- C. In the event any Statute of the State of Nebraska prescribes any well spacing requirement that is more stringent or restrictive than the well spacing requirement of Rule 9, the State Statute shall prevail.

See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule. See especially "Well Spacing", pages 17 & 18, Part VI, TM-26.

RULE 6: INACTIVE STATUS WELLS

The Board may approve the placing of Active Wells into Inactive Status at the request of the well owner or their legally appointed representative.

- A. All wells being placed into an Inactive Status shall conform to all relevant State statutes including those specifications defined in Section 46-1207.02 as follows:
1. The water well does not allow impairment of the water quality in the well or of the Groundwater encountered by the 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 waste 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 so 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.
- B. The well shall be marked in a permanent form with the Registration Number as a clearly legible engraving, raised metal embossing of the characters, or on a metal plate permanently welded, riveted or bolted to the casing.
- C. Both the State and the District must be notified within 60 calendar days of when the change to Inactive Status is achieved and any subsequent changes of the status of the well.
- D. While in a Board approved Inactive Status the Well will
- 1) maintain the approved Certified Irrigated Acres and Certified Irrigated Tract associated with it;
 - 2) maintain the Allocation amount current at the time the Board approved the Well being made Inactive:
 - 3) NOT accumulate additional Allocation amounts for the years it is in Inactive Status; and
 - 4) Re-enter Active Status with the Allocation amount it went into Inactive Status with plus any remaining Allocation left for the Allocation period in which it is made Active again.
- E. Failure to comply with and maintain the provisions of A, B, and C above will make the Well an Illegal Well.

See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule.

RULE 7: CONNECTING WELLS

Wells shall not be connected for any purpose or use without prior approval of the Board of Directors. Board approval is required to prevent unreasonable impairment on other water users.

1) All wells proposed to be connected shall be legally registered with ownership current prior to submission of any request.

2) Plans to join wells will be evaluated using the Annual Allowable Withdrawal Formula and other data, as available.

See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule.

RULE 8: PUMPING OF WATER ACROSS NRD BOUNDARIES

Groundwater pumped from another NRD to this District, or from this District to one or more other Districts, shall be subject to the Rules and Regulations of all involved Districts.

See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule.

RULE 9: ALLOCATIONS OF GROUNDWATER

A. Each Certified Irrigated Acre within a Certified Irrigated Tract is hereby granted a basic allocation of 72.5 acre inches for the period commencing January 1, 2003 and terminating December 31, 2007.

1. Groundwater users pumping less than the total basic allocation together with unused carryforward from prior allocation periods may carry the total forward to subsequent allocation periods.

2. If, at the termination of the allocation period, any groundwater user has exceeded his allocation and banked carryforward, his basic allocation for the next allocation period shall be reduced by the number of acre-inches by which he exceeded said allocation and carryforward.

3. Certified Acres in the Federal Conservation Reserve Program (CRP) shall not receive an allocation during the term enrolled. Certified Irrigated Acres being removed from the CRP shall be granted an allocation prorated to the years remaining in the allocation period. In addition, upon removal from the CRP, each Certified Acre shall receive the total of the carryforward brought into the 5-year allocation period in effect at the time of enrollment plus the sum of the annualized allocation of 14.5 inches minus the inches used for each year of the allocation period prior to the year of enrollment.

4. On or before March 1, 2006 the Board of Directors shall commence deliberations concerning groundwater allocations for the succeeding allocation period to start January 1, 2008. Such deliberations shall be completed before August 31, 2006, and an allocation for the succeeding allocation period shall be established.

B. All Industrial Wells shall have an allocation prior to operation. The owner of each industrial well shall, on or before January 15 of each year, apply for an allocation for that calendar year on forms provided by the District.

- C. Commercial Livestock Wells may be allocated an annual maximum of 22-acre feet per 1000 animal units, designated for an approved capacity.
- D. Each municipality is hereby granted without further application, an annual allocation computed as designated in the District Technical Manual.
- E. Allocations for any and all wells may be amended, reduced, increased, or made subject to limitations or conditions upon notice and hearing.
- F. The District may institute formal adjudicatory proceedings, or take any other legal action authorized or permitted by law, to prohibit further withdrawal of groundwater whenever any groundwater user has exhausted his allocation during or before termination of any allocation period; or has in any other way violated the amount, limitations, or conditions of his allocation. In the event of such action, no groundwater may be withdrawn until the groundwater user has adhered to District Rules and Regulations.

See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule. See especially "Allocations of Groundwater", pages 19 & 20, Part VI, TM-26.

RULE 10: POOLING

The Board may approve pooling of groundwater allocations. The Board will consider the utility of replacing Pooling, as it now exists, with a Transfer system. The Transfer system, if approved, would be in place by January 1, 2004.

- A. No new pooling contract shall be approved which contains any Certified Irrigated Tract, which has no unused allocation or carryforward of groundwater .
- B. Pooling contracts involving lands within a Critical Township and a non-Critical Township can only be accomplished if such lands are contiguous.
- C. Pooling contracts will be permitted only between individuals, partnerships and corporations and other owners of Certified Irrigated Tracts when accompanied by proof of ownership or an appropriate power of attorney.
- D. A pooling contract shall not result in more groundwater being withdrawn from the aquifer within a Critical Township than the groundwater user has been allocated for Certified Irrigated Acres in Certified Irrigated Tracts within that Critical Township.
- E. Upon the termination of any pooling contract, proof of ownership must be provided
- F. Pooling contracts, or changes to pooling contracts, must be submitted in writing with all required signatures to the District on or before March 31 of the year and approved by the Board before they are implemented.
- G. Certified Irrigated acres in the Federal Conservation Reserve Program, or any successor thereto, may not be involved in any pooling contract.
- H. A Certified Irrigated Tract removed from the Federal Conservation Reserve Program may not be part of a pooling contract within five (5) years of the date said Tract is removed.

- I. If a change of ownership of any Certified Irrigated Tract in a pooling contract occurs, the unused groundwater allocation for said Tract shall remain with said Irrigated Tract. The Board may, upon the written request of the owner or owners of the Tract(s), equalize the unused groundwater allocation among the irrigated acres in each involved.
- J. Purchased Certified Irrigated Tracts or purchased dry land tracts to be developed for irrigation, will not be eligible to be pooled with any other Certified Irrigated Tracts or Tracts for a period of three (3) irrigation seasons from the date the purchase is made. Tracts that are purchased may be pooled if originally in the same pooling contract.
See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule

RULE 11: TRANSFERS

Board approval must be received for transfer of all or a portion of any groundwater allocation to another tract or use.

Transfers will only be allowed to wells in those areas where the Board, after reviewing all the available and relevant information, determines that the water level in the area proposed to receive the transfer will not decline at a rate in excess of .0026 percent of the Saturated Thickness of the aquifer in the next 3 years.

In making its decision the Board may use the following information obtained by application of the Annual Allowable Withdrawal Model as described on pages 8 and 9 of Technical Manual 26. The Board may use information including but not limited to the trend of change in the level of the aquifer over time from District records, other transfers into the area in proximity to the receiving well, the total usage in proximity to the receiving well, and other factors that would increase the rate of consumptive use in the area of the receiving well in making its decision.

See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule. See especially "Transfers", page 20, Part VI; TM-26.

RULE 12: OFFSETS

The Board may establish Offsets as fees for the transfer of allocations or as part of establishing and operating a District Water Banking program.

See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related in this Rule.

RULE 13: GROUNDWATER QUALITY

The Board shall implement procedures to monitor and protect the quality of the aquifers underlying the District. All areas in the District shall be considered as Phase I areas until at least June 1, 2004.

See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule. See especially "Groundwater Quality", pages 20, 21, & 22, Part VI; TM-26.

RULE 14: MORATORIUM

- A. The Board having found that depletion of the groundwater supply in the Management Area is so excessive that the public interest cannot be protected solely through the implementation of the controls adopted pursuant to Nebraska State Statutes, Chapter 46, Article 6, no additional well permits, except as provided for in Paragraph C below, shall be issued within the Management Area for the period May 8, 2003 through August 31, 2004.
- B. Additional groundwater allocations may not be granted, except as provided for in Paragraph C below, within the Management Area for the period May 8, 2003 through August 31, 2004.
- C. The Board may, upon further deliberation, and notice and hearing, open designated areas of the District to additional well permits and allocations, subject to the application of a quantitative method for specifying allowable withdrawal for the area, total allocations granted for the area, and any additional withdrawals that may be allowed in the area, as specified by the quantitative method adopted by the Board. The adopted method shall consider estimates of the following factors for the area under consideration: allowable depletion; specific yield; the shape and dimensions of the spatial area under consideration for management purposes; average saturated thickness of the aquifer within the area; proportion of the saturated thickness the Board will allow to be depleted in 100 years; precipitation recharge; recharge from irrigation application; and the amount of recharge that is available for appropriation in the area.

See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule.

RULE 15: VARIANCES

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

See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule.

RULE 16: PENALTIES

Any groundwater user found to be in violation of these rules and regulations may be required to cease and desist withdrawing groundwater until such time as he is in compliance.

See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule.

RULE 17: GENERAL ENFORCEMENT PROVISIONS

The District shall enforce these rules and regulations in conformance with the General Enforcement Provisions set out in Part VI of the District Technical Manual (TM-26).

See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule. See especially "General Enforcement Provisions", page 23, Part VI TM-26.

RULE 18: FORMAL ADJUDICATORY HEARINGS

Formal Adjudicatory Hearings shall be conducted in conformance with the procedures set out in the District Technical Manual (TM-26).

See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule. See especially "Formal Adjudicatory Hearing", page 24, Part VI TM- 26.

RULE 19: DISTRICT TECHNICAL MANUAL

Supplemental Rules and Regulations specified in Part VI of the District Technical Manual (TM-26) are incorporated into, and considered as an integral part of these rules and regulations and are applicable in concert with the rules and regulations specified herein as the Rules and Regulations for Groundwater Control of the Upper Republican Natural Resources District Management Area.

RULE 20: SEVERABILITY OF RULES

If any rule or any part of any rule herein and/or in the District Technical Manual shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Adopted this 11th day of April, 2003.

This amendment to Rules and Regulations for Groundwater Control of the Upper Republican Natural Resources District Management Area shall be effective commencing May 8, 2003.

UPPER REPUBLICAN NATURAL RESOURCES DISTRICT

By _____
Robert Ambrosek, Chairman

ATTEST:
