

Date: September 15, 2003

TO: McCook Gazette, North Platte Telegraph  
SUBJECT: Legal hearing notice  
FROM: Dan Smith, Manager

### Public Hearing Notice

The Middle Republican Natural Resources District will hold a public hearing for the purpose of receiving testimony with regard to revisions in the Rules and Regulations of the Ground Water Management Area. This hearing will be held at the American Legion Bldg in Curtis Nebraska on October 14<sup>th</sup>, 2003 at 7:00 P.M.

The Ground Water Management Area rules and regulations became effective in July of 1998 and were last revised in July of 2000. The purpose of the Ground Water Management Area is (1) to maintain, in accordance with the districts ground water management plan, a ground water reservoir life of at least seventy-five years; (2) protect ground water quality; and (3) allow for the integrated management of hydrologically connected ground water and surface water. This revision of the rules would provide for sections that deal with ground water quantity, and integrated management of ground water and surface water. The boundaries of the management remain the same. An abbreviated summary of the proposed new rules and revisions are as follows:

1. Definitions:
  - a. Certified Irrigated Acre – Any acre for which certification as an acre irrigated with ground water has been approved by the board pursuant to Rule 8 of the District's Rules and Regulations.
  - b. Certified Non-irrigation Use – Any use of ground water withdrawn from a regulated well other than an irrigation well and for which certification of the nature, location and quantity of ground water used has been approved by the board pursuant to Rule 8 of the District's Rules and Regulations.
2. A new Rule 8 to define the certification process for both irrigated and non-irrigated uses of ground water.
  - a. Beginning June 1, 2004 for irrigation wells and December 1, 2004 for wells used for other than irrigation purposes, no regulated well shall be operated unless it's use has been certified and approved by the board.
  - b. No later than January 1, 2004 each owner or operator of a regulated irrigation well shall certify its use.
  - c. No later than September 1, 2004 each owner or operator of a regulated well used for other than irrigation purposes shall certify its use.

- d. Only those acres and uses that are actually capable of being supplied with ground water through irrigation works, mechanisms or facilities existing at the time of certification may be approved as certified uses by the board.
  - e. Procedures to restrict, reject, modify or rescind the certification of a use.
  - f. Procedures to appeal a decision made by the board regarding a certified use.
3. A new Rule 9 to Limit or Prevent the Expansion of New Acres.
    - a. Beginning with the effective date of these rules, no irrigation well may be used to irrigate any acre that was not irrigated with ground water at some time between January 1, 1994 and the date these rules are adopted.
    - b. An exception may be made, with the prior approval of the board, only if an equal or greater number of certified acres are retired to provide for a new use.
  4. A revised rule on the violations of a cease and desist order to reflect the changes in civil penalties by LB 30.
  5. Realignment of rules on Variances, Severability and Waivers to reflect the addition of the new Rule 8. Certification and new Rule 9. Limit or Prevent the Expansion of New Acres.

Copies of the full text of these rules may be obtained by contacting the Middle Republican NRD, PO Box 81, Curtis Nebraska. The full text of the current rules are available on the district website at [www.mnrnd.org](http://www.mnrnd.org). The new revisions and new rules can also be found on this site. All persons are encouraged to attend the hearing and offer testimony. Written testimony may be presented at the hearing or received, by mail to the NRD, no later than 10 A. M. on October 14<sup>th</sup>, 2003.

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Publish for three (3) consecutive weeks with the first publication no later than September 23, 2003 and the last date of publication no later than October 7, 2003

Proposed Revisions to the

Middle Republican NRD  
Ground Water Management Area  
Rules and Regulations  
Effective July 1, 1998  
Revised July 1, 2000

**DEFINITIONS**

- 2.21 Certified Irrigated Acre: Any acre irrigated with ground water for which certification has been approved by the board pursuant to Rule 8 of the district's rules and regulations.
- 2.22 Certified Non-Irrigation Use: Any use of ground water withdrawn from a regulated well other than an irrigation well and for which certification of the nature of use, location and of the quantity of ground water used has been approved by the board pursuant to Rule 8 of the district's rules and regulations.

**RULE 8. CERTIFICATION**

- 8.1 Beginning June 1, 2004 for irrigation wells and December 1, 2004 for wells used for other than irrigation purposes, no regulated well shall be operated unless its use is certified and approved by the board pursuant to these rules and regulations and unless that use is consistent with the board's action relative to that certification. For regulated irrigation wells, the initial certification and approval shall be in accordance with sections 8.2 to 8.10 of these rules. For all other regulated wells, certification and approval shall be in accordance with sections 8.11 to 8.17.
- 8.2 No later than January 1, 2004 each owner or operator of a regulated irrigation well shall certify (1) the well registration number for that well; (2) the number and location of all acres irrigated at least once by that well between January 1, 1993 and December 31, 2002; (3) the maximum number of acres irrigated by that well in any one year within that time period; (4) the number and location of all acres irrigated by that well in 2003. Such certification shall be on forms provided by the district and shall be accompanied by applicable records from the Farm Service Agency and/or the County Assessor and such other information as the owner or operator believes will be useful to the district in verifying the information certified.
- 8.3 No later than May 15, 2004, the board shall take action to approve, modify and approve, or reject the certifications provided by owners and operators pursuant to section 8.2. The number and location of certified irrigated acres, which shall be approved for each such irrigation well, shall be determined at a public meeting of the board after consideration of the following:
- The information provided on and with the certification filed in accordance with section 8.2;
  - Any water use reports for that well filed in accordance with Rule 5;
  - U.S.D.A. Farm Service Agency records;

- County Assessor records;
  - Aerial photographs; and
  - Other information available to and deemed relevant by the board.
- 8.4 Only those acres that are actually capable of being supplied with ground water through irrigation works, mechanisms or facilities existing at the time of certification may be approved as certified acres by the board.
- 8.5 An irrigation well constructed before June 12, 2002 but not registered until after December 31, 2003, shall be approved for no more than, (1) its history of use or (2) 160 certified irrigated acres.
- 8.6 Replacement irrigation wells constructed after May 19, 2003 shall be approved for no more than the historic use between January 1, 1993 and December 31, 2002.
- 8.7 If no certification is filed pursuant to section 8.2 for an irrigation well constructed prior to January 1, 2004, the well shall be an “illegal well” as that term is defined in district Rule 2.
- 8.8 After January 1, 2004, with the prior approval of the board, an irrigation well that was constructed prior to June 12, 2002 but has not yet been used for irrigation, is inactive or unused may be granted certified acres. That approval may be granted only upon the written request of the well owner and when the board has determined (1) that the well is in conformance with all applicable rules and regulations of the district (2) the location and number of acres proposed to be irrigated by that well in the future will be limited to no more than 160 acres, the acres that the well is capable of serving or the certified use being replaced. This certified use includes supplementing existing surface water irrigated acres or replacing the use of active wells on certified irrigated acres.
- 8.9 The board shall not certify any irrigated acres for an illegal well, as that term is defined in district Rule 2., and that well shall receive no future allocation of water until such certification has been filed and until the board has approved or modified and approved that certification. Certification of acres can be approved for any such well if and when the deficiency that causes that well to be an illegal well is corrected.
- 8.10 The number of acres that may be certified and approved for a well from which the water is applied to the crop through a sprinkler system may be up to 5% greater than the actual area planted to crops if there are non-cropped areas under the sprinkler system.
- 8.11 No later than September 1, 2004, each owner or operator of a regulated well used for other than irrigation purposes shall certify: (1) the well registration number for that well; (2) the nature and location of the use of the water withdrawn from that well; (3) the measured or estimated average annual quantity of water withdrawn from that well between January 1, 1993 and December 31, 2002 and a description of the method used to determine that quantity; (4) the measured or estimated maximum quantity withdrawn from that well in any one year during that time period; (5) the measured or estimated quantity of water withdrawn from that well in 2003; (6) if the well was constructed before June 12, 2002 but has not yet been used for its intended purpose, the quantity of water proposed to be withdrawn from that well in the future; (7) if the well is a replacement well constructed after January 1, 1993, the information required by items (1) through (5) above for the well replaced; (8) if the well was constructed after June 12, 2002 the quantity withdrawn in 2003 and the

quantity of water proposed to be withdrawn from that well in the future; and (9) if the owner or operator of the well desires that the annual quantity of use to be certified for that well be in excess of the quantity historically withdrawn by that well, the quantity proposed and an explanation why that quantity is necessary to accomplish the purpose for which the well is used. Such certification shall be on forms provided by the district and shall be accompanied by such information as the owner or operator believes will be useful to the district in verifying the information certified.

- 8.12 No later than November 1, 2004, the board shall take action to approve, modify and approve, or reject the certifications provided by the owners and operators of non-irrigation wells pursuant to section 8.11. Such action shall be taken after reviewing the information provided by the owner or operator of the well and any other information available to and deemed relevant by the board. The board's approval of the certification for such a well shall not, by itself, limit the quantity of water that can be withdrawn by that well in 2005 or any subsequent year. Any such limitations on the quantity that can be withdrawn annually from that well will be imposed through the board's allocation of water to that well pursuant to the district's rules and regulations. The board may use the information provided through such certification if and when it determines the amount to be allocated to that well.
- 8.13 Only those non-irrigation uses that are actually capable of being supplied with ground water through works, mechanisms or facilities existing at the time of certification may be approved as certified acres by the board.
- 8.14 If no certification is filed pursuant to section 8.11 for a regulated well used for other than irrigation purposes and constructed prior to September 1, 2004, that well shall not be used and shall not receive any allocation from the board, until such certification has been filed with the district and approved by the board.
- 8.15 No certification shall be approved by the board for any regulated non-irrigation well which is an "illegal well" as that term is defined by Rule 2 of the district's rules and regulations. The board can approve such certification if and when the deficiency that causes the well to be an illegal well is corrected.
- 8.16 Certification of the use of an inactive or unused non-irrigation well will be approved only when that well is returned to active status and is in compliance with all applicable rules and regulations of the district.
- 8.17 The board shall review each irrigated acre certification and each non-irrigation certification no less often than every five years. Errors or inconsistencies discovered during that review shall be resolved to the satisfaction of the board before any new allocation is made for irrigation or other use as applicable. The board may rescind any previously approved certification and any previously granted allocation to a well for which it is determined that false or misleading information was contained in the certification required by section 8.2 or 8.11
- 8.18 Any change in farming operation or ownership that would result in a change in the number or location certified irrigated acres shall be reported to the district. Any change in use of a regulated well used for other than irrigation that would result in a change in that well's certification shall be reported to the district. The board may reject such changes if it finds that such changes would cause an increase in Nebraska's consumptive use as calculated pursuant to the Republican River Compact

or would have detrimental effects on other ground water users or on surface water appropriators.

- 8.19 Any ground water user aggrieved by a determination of the board regarding approval of certification of irrigated acres or of non-irrigation use may request a hearing before the board for the purpose of reconsidering that determination. Such request shall be filed on a form provided by the district within thirty (30) days of the board's action on the certification. Such hearing shall be a formal adjudicatory hearing and shall be conducted in accordance with the district's Rules and Regulations for the Enforcement of the Ground Water Management and Protection Act. The burden of proof shall be on the ground water user to document that the board's decision should be modified.

## **RULE 9. LIMIT OR PREVENT THE EXPANSION OF NEW ACRES**

- 9.1 Beginning on (the effective date of these rules) and except as provided by sections 8.8 and 9.2, no irrigation well may be used to irrigate any acre that was not irrigated with groundwater at some time between January 1, 1993 and (the date these rules are adopted).
- 9.2 With the prior approval of the board, acres not irrigated with groundwater between January 1, 1993 and (the date these rules are adopted) may be irrigated only if the board determines that irrigation has been or will be discontinued on an equal or greater number of acres that were irrigated with ground water between January 1, 2000 and (the dates these rules were adopted). In deciding whether to approve any such proposed substitution of ground water irrigated acres, the board shall consider the extent to which, if at all, such substitution of acres would adversely affect other ground water users or surface water appropriators or would cause an increase in Nebraska's consumptive use as calculated pursuant to the Republican River Compact.

RULE 10. Variances (Current Rule 8)

RULE 11. Severability (Current Rule 9)

RULE 12. Violations

These rules and regulations shall be enforced by the district through the use of cease and desist orders issued in accordance with the "Rules and Regulations for the Enforcement of the Nebraska Ground Water Management and Protection Act", adopted on March 27<sup>th</sup> 2000, and section II, subsection E, Rule 4 of the "General Policy Statement". Any person who violates a cease and desist order issued by the district shall be subject to a civil penalty assessed pursuant to section 46-656.10, Reissue Revised Statutes of Nebraska as amended by LB30, Ninety-Eighth Legislature, First Session (2003).

RULE 13. Waiver. (Current Rule 11.)