

Hearing Document

LOWER REPUBLICAN NATURAL RESOURCES DISTRICT GROUND WATER MANAGEMENT RULES AND REGULATIONS AND INTEGRATED MANAGEMENT PLAN

DRAFT

March 10, 2005

AUTHORITY - These Rules and Regulations are adopted pursuant to the authority granted in the Nebraska Ground Water Management and Protection Act, Chapter 46, Article 7 (Neb. Rev. Stat. Reissue 2004).

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

CHAPTER 1 – DESIGNATION OF BOUNDARIES AND MANAGEMENT AREA

These Rules and Regulations apply within the geographic boundary of the LRNRD. The stratigraphic boundary is from the land surface to the base of the underlying sand and gravel layers that contain the water bearing material. The base of the sand and gravel layers rest on impervious layers of Niobrara Chalk, Pierre Shale or formations from the White River Group. See Map 1. The area within the foregoing geographic and stratigraphic boundaries shall be referred to as “the Management Area.”

CHAPTER 2 – ENFORCEMENT AND PENALTIES

RULE 2-1 ENFORCEMENT

These Rules and Regulations shall be enforced by the LRNRD through the use of cease and desist orders issued in accordance with the Neb. Rev. Stat. § 46-707(7) (Reissue 2004).

RULE 2-2 PENALTIES

Any person who violates any cease and desist order issued by the LRNRD pursuant to Neb. Rev. Stat. § 46-707(7) (Reissue 2004), or any controls or Rules or Regulations adopted by the LRNRD relating to the Management Area, shall be subject to penalties imposed through the controls adopted by the LRNRD including, but not limited to, having any allocation of water granted, or irrigated acres certified, by the LRNRD reduced in whole or in part. Notice and hearing shall be provided to such person before the LRNRD takes any action. Specific penalties may be identified in rules and regulations for some violations. Any person who violates a cease and desist order issued by the District pursuant to Neb. Rev. Stat. § 46-707(7) (Reissue 2004) shall be subject to a civil penalty assessed pursuant to Neb. Rev. Stat. § 46-745 (Reissue 2004).

CHAPTER 3 – ACCESS

RULE 3-1 ENTRY UPON LAND

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

RULE 3-2 NOTICE

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

RULE 3-3 ACCESS RELATED TO MEASURING DEVICES

The LRNRD hereby notifies all operators of its intent to enter onto property to verify the installation of flow meter devices (or other similar devices) used to measure the quantity of ground water pumped for irrigation purposes (referred to below as “measuring devices”) and to read, or to verify the readings of, such measuring devices. The LRNRD hereby notifies all operators of its intent to enter onto property to install cable seals to prevent the removal of such measuring devices.

CHAPTER 4 – DEFINITIONS

- 4-1.1. Abandoned Well: Any water well, the use of which has been accomplished or permanently discontinued, (1) which has been decommissioned as described in the rules and regulations of the Department of Health and Human Services Regulation and Licensure, and (2) for which a notice of abandonment has been filed with the Department of Natural Resources.
- 4-1.2. Act: The Nebraska Ground Water Management and Protection Act.
- 4-1.3. Additional Water Administration Year: When water is needed for diversion at Guide Rock and the projected or actual irrigation supply is less than 130,000 acre-feet of storage available for use from Harlan County Lake as determined by the United States Bureau of Reclamation for the Republican River Compact Administration.
- 4-1.4. Allocation: As it relates to water use for irrigation purposes, means the allotment of a specified total number of acre-inches of irrigation water per certified irrigated acre over the allocation period. As it relates to other purposes, the allotment of a determined quantity of ground water.
- 4-1.5. Allocation Period: The number of years over which an allocation can be used.
- 4-1.6. Base Allocation: This amount, in acre-inches, is derived from dividing the allocation by the allocation period.
- 4-1.7. Board: The elected Board of Directors of the Lower Republican Natural Resources District.
- 4-1.8. Certification: The process whereby the annual use of ground water for a regulated well is reported to and verified by the District.

- 4-1.9. Certified Use: Any use of ground water in accordance with Rule 6-6.
- 4-1.10. Certified Irrigated Acre: Any acre that is certified as such pursuant to the LRNRD Rules and Regulations, and that is actually capable of being supplied water through irrigation works, mechanisms or facilities existing at the time of allocation.
- 4-1.11. Commercial Livestock Well: A water well used for the watering of livestock and other uses directly related to the operation of a feedlot or other confined livestock operation or dairy.
- 4-1.12. Consecutive Water Short Years: The second or following consecutive year of water short year designation.
- 4-1.13. Consumptive Use: That amount of water that is consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use are lawfully made.
- 4-1.14. Dewatering Well: A water well constructed for the purpose of temporarily lowering the ground water surface elevation.
- 4-1.15. District, NRD, LRNRD: The Lower Republican Natural Resources District.
- 4-1.16. DNR: The Nebraska Department of Natural Resources.
- 4-1.17. East of Guide Rock Acres: Those lands lying east of a line proceeding north from the Nebraska Kansas state line and following the western edge of Webster County, Township 1, Range 9, Sections 34, 27, 22, 15, 10, 3, through Webster County, Township 2, Range 9, Sections 34, 27, 22; then proceeding west along the southern edge of Webster County, Township 2, Range 9, Sections 16, 17, 18; then proceeding north following the western edge of Webster County, Township 2, Range 9, Sections 18, 7, 6, through Webster County, Township 3, Range 9, Sections 31, 30, 19, 18, 7, 6 to its intersections with the northern boundary of Webster County.
- 4-1.18. Flow Meter: A device, approved by the LRNRD, to measure the quantity of ground water pumped, withdrawn, or taken from a water well.
- 4-1.19. Good Cause Shown: A reasonable justification for granting a variance to consumptively use water that would otherwise be prohibited by rule or regulation, and which the LRNRD reasonably and in good faith believes will provide an economic, environmental, social or public health and safety benefit that is equal to or greater than the benefit resulting from the prohibition from which a variance is sought.
- 4-1.20. Ground Water: That water which occurs in or moves, seeps, filters, or percolates through the ground under the surface of the land.
- 4-1.21. Historic Consumptive Use: That amount of water that has previously been consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use was lawfully made.
- 4-1.22. History of Use: As used in these Rules and Regulations shall mean the exercise of a certified use in four (4) of the previous six (6) years.
- 4-1.23. Illegal Water Well: (a) any water well operated or constructed without or in violation of a permit required by the Act; (b) any water well not in compliance with Rules and Regulations adopted and promulgated pursuant to the Act; (c) any

water well not properly registered in accordance with Neb. Rev. Stat. 46-602 to 46-606 (Reissue 2004); (d) any water well not in compliance with any other applicable laws of the State of Nebraska or with rules and regulations adopted and promulgated pursuant to such laws.

- 4-1.24. Inactive Status Well: A water well that is not currently in use, but is in a good state of repair and for which the owner has provided evidence of intent for future use by maintaining the water well in a manner which meets the following requirements: (1) the water well does not allow impairment of the water quality in the water well or of the ground water encountered by the water well; (2) the top of the water well or water well casing has a water-tight welded or threaded cover or some other water-tight means to prevent its removal without the use of equipment or tools to prevent unauthorized access, to prevent a safety hazard to humans and animals, and to prevent illegal disposal of wastes or contaminants into the water well; and (3) the water well is marked so as to be easily visible and located and is labeled or otherwise marked as to be easily identified as a water well and the area surrounding the water well is kept clear of brush, debris, and waste material. An inactive status water well shall be registered as such in the well registration records of the Nebraska DNR.
- 4-1.25. Incentive Program: A program that may require agreements or covenants concerning the use of land or water as necessary to produce the benefits for which the program is established.
- 4-1.26. Industrial Well: A water well designed and constructed to be used for industrial purposes including manufacturing, commercial and power generation uses of water. Commercial use includes, but is not limited to, maintenance of the turf of a golf course.
- 4-1.27. Late Permit: A permit applied for after construction has commenced on a regulated water well pursuant to Neb. Rev. Stat. 46-735 (Reissue 2004).
- 4-1.28. Little Blue Basin: The Little Blue Basin is that area, delineated by the DNR, within the geographic confines of the LRNRD and located outside of the Republican River Basin.
- 4-1.29. Management Area: The entirety of the LRNRD as per Chapter 1 of these Rules and Regulations.
- 4-1.30. Operator: The person who controls the day-to-day operation of the water well.
- 4-1.31. Overlying Land: The land that has been certified as per Rule 6-6.
- 4-1.32. Permit to Construct a Well: A document that must be obtained from the LRNRD in accordance with Rule 6-2 before construction of a regulated ground water well may be commenced in the Management Area pursuant to Neb. Rev. Stat. § 46-735 (Reissue 2004).
- 4-1.33. Person: A natural person, partnership, limited liability company, association, corporation, municipality, irrigation district, agency or political subdivision of the state, or a department, agency, or bureau of the United States.
- 4-1.34. Public Water System: System for providing the public with water for human consumption, as further defined in 179 N.A.C. 2.

- 4-1.35. Range Livestock Well: A water well that is used for the watering of range livestock and other uses of water directly related to the operation of a pasture or range.
- 4-1.36. Regulated Well: A water well designed and constructed to pump more than fifty (50) gallons per minute. A series of water wells, with a combined discharge of more than fifty (50) gallons per minute, of which the water is commingled, combined, clustered or joined as a single unit for a single purpose, shall be considered as one regulated well.
- 4-1.37. Replacement Well: A water well that (a) replaces a previously abandoned water well within one (1) year of the last operation of the abandoned water well, or (b) replaces a water well that will not be used after construction of the new water well and the original water well will be decommissioned within one (1) year of construction of the new water well. A replacement well is one that (a) is constructed to provide water to the same tract of land served by the water well being replaced, (b) would not be used to provide water to a use not certified with the well being replaced and (c) would not be used in such a way as to result in the consumption of more water than was historically consumed by the water well being replaced. A replacement well, as defined in Neb. Rev. Stat. § 46-602 (Reissue 2004) or as further defined in LRNRD Rules and Regulations, is subject to the same provisions as the water well it replaces.
- 4-1.38. Reserve: That part of an allocation that is unused during the base allocation period.
- 4-1.39. Supplemental Well: A water well that provides supplemental ground water to acres that are normally irrigated by surface water. Annual use is not a requirement to be considered a supplemental well.
- 4-1.40. Test Hole: A hole designed solely for the purpose of obtaining information on hydrologic or geologic conditions.
- 4-1.41. Unregulated Well: A water well designed and constructed to pump fifty (50) gallons per minute or less and is not commingled, combined, clustered or joined with other water wells.
- 4-1.42. Variance: Approval to act in a manner contrary to existing rule or regulation obtained from a governing body whose rule or regulation is otherwise applicable.
- 4-1.43. Water Short Year: A year in which the projected or actual irrigation supply is less than 119,000 acre feet of storage available for use from Harlan County Lake as determined by the United States Bureau of Reclamation for the Republican River Compact Administration.
- 4-1.44. Water Well: Any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information or extracting water from or injecting water into the underground water reservoir. Water well does not include 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.

CHAPTER 5 – GENERAL PROVISIONS

RULE 5-1 VARIANCES

- 5-1.1. The Board may grant variances from the strict application of these Rules and Regulations upon good cause shown.
- 5-1.2. All requests for a variance shall be made on forms provided by the LRNRD and shall be acted upon at a formal adjudicatory hearing before the Board. This hearing shall be advertised in newspaper(s) of general circulation within the LRNRD. All known interested parties will be provided notice of the hearing. The well owner or his or her representative shall be present at the hearing, except that, with prior notification to the LRNRD, written testimony may be provided if the well owner cannot be present in person.

RULE 5-2 SEVERABILITY

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

CHAPTER 6 – GENERAL MANAGEMENT

RULE 6-1 MORATORIUM

- 6-1.1. The LRNRD hereby closes the entire Management Area to the issuance of new permits for regulated wells except as provided in Rule 6-1.2.
- 6-1.2. Replacement wells, wells for the expansion of industrial and public water system purposes and range livestock wells are not subject to the moratorium.

RULE 6-2 PERMIT TO CONSTRUCT A WATER WELL

- 6-2.1. Except as provided in Rule 6-2.2, any person who intends to construct a regulated water well on land in the Management Area that he or she owns or controls shall, before commencing construction, apply with the LRNRD for a permit on a form provided by the LRNRD. Within thirty (30) days after the application is properly prepared and filed, the LRNRD shall either issue the approved permit (with or without conditions) or deny the permit application. An incomplete or defective application shall be returned for correction. If correction is not made within sixty (60) days, the application shall be canceled.
- 6-2.2. Exceptions. No permit shall be required for:
- 6-2.2.1. Test holes
 - 6-2.2.2. Dewatering wells with an intended use of ninety (90) days or less.
 - 6-2.2.3. A single water well designed and constructed to pump fifty (50) gallons per minute or less.
- 6-2.3. Applications for a permit to construct a water well that require consideration of a variance request shall not be deemed as properly filed and complete until such time as the Board has acted to approve the variance request.

- 6-2.4. A person shall apply for a permit before he or she modifies a water well, for which a permit was not required when the well was constructed, into one for which a permit would otherwise be required.
- 6-2.5. The permit application shall be accompanied by a \$50.00 filing fee payable to the LRNRD and shall contain:
- 6-2.5.1. The name and post office address of the well owner;
 - 6-2.5.2. The nature of the proposed use;
 - 6-2.5.3. The intended location of the proposed water well or other means of obtaining ground water;
 - 6-2.5.4. The intended size, type and description of the proposed water well and the estimated depth, if known;
 - 6-2.5.5. The estimated capacity in gallons per minute;
 - 6-2.5.6. The acreage and location by legal description of the land involved if the intended use is for irrigation;
 - 6-2.5.7. A description of the proposed use, if other than irrigation;
 - 6-2.5.8. The registration number of the well being replaced, if applicable;
 - 6-2.5.9. The certified use of the well being replaced, if applicable;
 - 6-2.5.10. The historic consumptive use of the well being replaced, if applicable; and
 - 6-2.5.11. Such other information as the District may require.
- 6-2.6. Any person who has failed or in the future fails to obtain a permit before construction is commenced shall make application for a late permit on forms provided by the LRNRD. The application for a late permit shall be accompanied by a \$250.00 fee payable to the District and shall contain the same information required in Rule 6-2.5.
- 6-2.7. The application for a permit shall be denied if (a) the location or operation of the proposed water well or other work would conflict with any regulations or controls adopted by the LRNRD; (b) the proposed use would not be a beneficial use; or (c) in the case of a late permit only, that the applicant did not act in good faith in failing to obtain a timely permit.
- 6-2.8. No refund of any application fees shall be made regardless of whether the permit is issued, canceled, or denied.
- 6-2.9. The issuance, by the LRNRD, of a permit or the registration of a water well with the DNR shall not vest in any person the right to violate any LRNRD rule, regulation, or control in effect on the date of issuance of the permit or the registration of the water well, or to violate any rule, regulation, or control properly adopted after such date.
- 6-2.10. The applicant shall commence construction as soon as possible after the date of approval and shall complete construction and equip the water well prior to the date specified in the conditions of approval, which shall not be more than one (1) year from the date of approval, unless it is clearly demonstrated in the application that one (1) year is an insufficient period of time for such construction. Failure to complete the project under the terms of the permit may result in the withdrawal of the permit by the LRNRD.

RULE 6-3 WELL SPACING

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

Rule 6-4 FLOW METERS

- 6-4.1. Flow meters meeting accuracy specifications established in Rule 6-4.2 shall be installed on all regulated wells by April 1, 2005 except that, before any inactive wells are placed in service, a flow meter shall be installed, the LRNRD shall be notified of the well's status change, and the status of the well in the well registration records of the DNR shall be updated to reflect its active status. No such well shall be operated thereafter without a properly installed and operational flow meter.
- 6-4.2. All meters shall be tested for accuracy using recognized industry testing methods and certified by the manufacturer according to those standards. At any rate of flow within the normal flow limits, the meter shall register not less than ninety eight (98) percent nor more than one hundred and two (102) percent of the water actually passing through the meter. All meters shall have a register or totalizer and shall read in U. S. gallons, acre-feet or acre-inches.
- 6-4.3. Installation – The operator shall, on forms provided by the LRNRD, report the location, by legal description, and certify the proper installation of flow meters. The LRNRD may, at a time of its own choosing, verify the location and proper installation of flow meters. The proper installation of a meter is such that it meets the manufacturer's specifications and/or more restrictive specifications developed by the LRNRD as reflected in this Rule.
- 6-4.3.1. Whenever a manufacturer's or dealer's instructions and/or specifications are more restrictive, they shall govern.
- 6-4.3.2. In no case may a meter be installed with less than five (5) unobstructed pipe diameters upstream of the meter or less than one (1) unobstructed pipe diameter downstream of the meter.
- 6-4.3.3. If the meter is installed downstream of a mainline check valve, there must be at least ten (10) pipe diameters upstream of the

- meter. If there are not at least ten (10) pipe diameters upstream of the meter, straightening vanes must be installed.
- 6-4.3.4. Meters must be located so as to prevent damage to the meter from excessive vibration.
 - 6-4.3.5. Meters must be installed so that the removal of the meter for service or maintenance can be performed with the use of normal tools and does not require excessive or unusual removal of hardware or other appurtenances.
 - 6-4.3.6. Meters shall not be removed except for service or maintenance.
 - 6-4.3.7. The LRNRD may establish a method by which the installed meter is tagged, sealed, marked or otherwise protected from tampering.
- 6-4.4. Improperly Installed Meters – The installation of meters that do not meet the manufacturers' or LRNRD standards must be corrected. Failure to provide for proper installation may result in the loss of allocation for the next crop year.
 - 6-4.5. Inoperative Meters – Landowners shall notify the LRNRD of an inoperative meter within one (1) working day from the time the defect is noted. The LRNRD shall repair or temporarily replace the inoperative meter and charge the well owner for the service. Failure to report inoperative meters shall result in the loss of allocation for the next crop year.
 - 6-4.6. Tampering with an installed flow meter – Following a hearing before the Board, if it is found that tampering so as to affect the accuracy or true use of the meter has occurred, the LRNRD shall withhold the allocation for the next crop year and may prorate the allocation for the current year.
 - 6-4.7. Service – It is the responsibility of the operator to provide for service and to maintain the flow meter according to either the manufacturer's standards or more restrictive standards developed by the LRNRD. The operator may grant permission for this service to be provided by the LRNRD, at a cost to the operator. A form, provided by the LRNRD, shall authorize this service and the LRNRD may enter onto property to provide this service. This service shall be provided in the off-season and will not interfere with the normal operation of the meter or the well.
 - 6-4.8. The LRNRD may establish a program to randomly inspect the serviceability and to verify use of a meter. The LRNRD may correct discrepancies noted at the time of the inspection. Discrepancies that require the repair of a meter may be performed by the LRNRD, at a cost to the well owner, with the prior permission of the well owner.

RULE 6-5 REPORTS

- 6-5.1. Owners and operators of regulated irrigation wells shall allow District staff to determine from the flow meters, by January 15 of each year, the total water withdrawn from that well since the last report.
- 6-5.2. Each operator of a regulated irrigation well shall report by November 15 of each year, on forms provided by the District, the acres irrigated by that well during the preceding irrigation season and the type of crop grown on such acres.

- 6-5.3. Each operator of a regulated well, other than an irrigation well, shall report by January 15 of each year, on forms provided by the LRNRD, the total water withdrawn from that well during the preceding calendar year and the nature of the use of that water.
- 6-5.4. Failure to allow the District staff or authorized designee to read the meter or to provide the reports identified in Rules 6-5.2 and 6-5.3 shall result in the loss of allocation for the next crop year or current year, in the case of a regulated well other than an irrigation well.
- 6-5.5. In order to ensure compliance with the Republican River Compact Accounting procedures, additional reports may be required from operators.

RULE 6-6 CERTIFICATION OF USES

- 6-6.1. After December 31, 2004, no regulated well shall be operated until its use is certified and approved by the Board pursuant to these Rules and Regulations.
- 6-6.2. Any operator aggrieved by a determination of the Board regarding approval of certification of irrigated acres or of non-irrigation uses 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 LRNRD 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 LRNRD'S Rules and Regulations for the Enforcement of the Ground Water Management and Protection Act. The burden of proof shall be on the person requesting the hearing to establish that the Board's decision should be modified.
- 6-6.3. The Board may review each certification for all uses no less often than every five (5) years. Errors or inconsistencies discovered during that review shall be resolved to the satisfaction of the Board before any new allocation is made to the previously certified uses. Following notice and a hearing, the Board may rescind any previously approved certification and any previously granted allocation to a well for which false or misleading information was used to obtain the certification required by Rule 6-6.5 or 6-6.12.
- 6-6.4. Any change in farming operation or ownership that would result in a change in the number or location of certified irrigated acres shall be reported to the LRNRD no later than December 31 of the calendar year in which the change occurred. Any change in use of a regulated well used for purposes other than irrigation that would result in a change in that well's certification shall be reported to the LRNRD no later than December 31 of the calendar year in which the change occurred. 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.
- 6-6.5. No later than January 1, 2005 each owner or operator of a regulated irrigation well shall certify (a) the well registration number for that well, (b) the number and location of all acres irrigated at least once by that well between January 1, 1999 and December 31, 2004, and (c) the maximum number of acres irrigated by that well in any one (1) year within that time period. Such certification shall be on

- forms provided by the LRNRD and shall be accompanied by applicable records from the U.S.D.A. Farm Service Agency and/or the County Assessor and such other information as requested by the LRNRD to verify the information certified.
- 6-6.6. The Board may take action to approve, modify and approve, or reject the certifications provided by owners and/or operators pursuant to Rule 6-6.4. 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:
- 6-6.5.1. The information provided on and with the certification filed in accordance with Rule 6-6.4;
 - 6-6.5.2. Any water use reports for that well filed in accordance with Rule 6-5;
 - 6-6.5.3. U.S.D.A. Farm Service Agency records or County Assessor records;
 - 6-6.5.4. Aerial photographs; and
 - 6-6.5.5. Other information available to and deemed relevant by the Board.
- 6-6.7. 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.
- 6-6.8. Any acres that are changed from irrigated to non-irrigated in the County Assessor's office, shall no longer be considered certified acres for purposes of allocating water for irrigation.
- 6-6.9. If certification is not filed pursuant to Rule 6-6.5 to 6-6.7 for an irrigation well constructed prior to July 26, 2004, the well shall be an illegal water well as that term is defined in Rule 4-1.23.
- 6-6.10. The Board shall not certify any irrigated acres for an illegal water well, as that term is defined in Rule 4-1.23, and an illegal water 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 caused that well to be an illegal water well is corrected.
- 6-6.11. The Board may approve a change in the location of certified irrigated acres on contiguous property when the owner or operator of a regulated well changes to the use of a center pivot system or changes the location of a center pivot system. New acres not previously irrigated or certified may be certified if previously certified acres are removed from certification and the new acres are on the same contiguous property as the previously certified acres. The number of acres to be removed from certification must equal twice the number of newly certified acres to qualify for approval. The number of newly certified acres must be less than five percent of the total number of acres irrigated by the center pivot system.
- 6-6.12. No later than June 1, 2005, each owner or operator of a regulated well used for purposes other than irrigation 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, 2004, and December 31, 2004, 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 (1) year during that time period, (5) the measured or estimated quantity of water withdrawn from that well in 2004, (6) if the well was constructed before December 9, 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, and (7) 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 LRNRD and shall be accompanied by such information as requested by the LRNRD to verify the information certified.

- 6-6.13. No later than July 15, 2005, the Board shall take action to approve, modify and approve, or reject the certifications provided by the owners and/or operators of non-irrigation wells pursuant to Rule 6-6.12. 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 LRNRD'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.
- 6-6.14. 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 uses by the Board.
- 6-6.15. If no certification is filed pursuant to Rule 6-6.12 for a regulated well constructed prior to June 1, 2005, and used for other than irrigation purposes, that well shall not be used until such certification has been filed with the LRNRD and approved by the Board.
- 6-6.16. Certification shall not be approved by the Board for any regulated non-irrigation well, which is an illegal water well as that term is defined by Rule 4-1.23 of the LRNRD's Rules and Regulations. The Board may approve such certification if and when the deficiency that caused the well to be an illegal water well is corrected.

RULE 6-7 WATER SHORT YEAR ADMINISTRATION

- 6-7.1. No later than October 1, 2005 and October 1 of each following year, the DNR shall notify the LRNRD of the potential for a Water Short Year. Notification of updates to such determinations shall be provided monthly, or more often as requested, through the following June 30th at which time the final determination shall be made.
- 6-7.2. Upon receiving notice of the potential designation of a Water Short Year, the LRNRD shall provide notice to irrigators of this designation by publishing said

notice in newspapers of general circulation in the LRNRD and shall place said notice on the LRNRD website.

- 6-7.3. Consecutive Water Short Years may require additional reductions in certified acres or reductions in the base allocation. Consecutive Water Short Year reductions will come from Federal, State, or Local incentive programs such as, but not limited to, the Conservation Reserve Enhancement Program (CREP) and the Environmental Quality Incentives Program (EQIP), if available. Water imported into the Republican River Basin from the Platte River Basin may be applied to further reductions.
- 6-7.4. Following the designation of a consecutive Water Short Year, the Board shall adopt additional controls as needed to maintain compliance with the Republican River Compact. There will be no further Consecutive Water Short Year reductions without Board approval following a Public Hearing.
- 6-7.5. Additional Water Short Year controls may be mitigated by the active participation in incentive programs.

RULE 6-8 INCENTIVE PROGRAM

Unless permitted by the rules and regulations established by individual incentive programs, no certified acres may be enrolled in incentive programs sponsored by or funded by the District if such certified acres do not have a history of use in four (4) of the previous six (6) years.

These incentive programs may include any Federal, State, or Local programs that have the effect of reducing the LRNRD's overall consumptive use. Subject to State law, the LRNRD may also raise the money necessary to provide cost share for incentive programs it utilizes. If sufficient irrigated acres are retired, through the use of incentive programs, above what is needed to meet the requirements of the Republican River Compact, the LRNRD may re-evaluate and alter the allocation previously set per irrigated acre.

Participation in an incentive program shall not result in the permanent loss of an allocation. Upon completion of the enrollment period required by the incentive program, the certified irrigated acres will be granted an allocation prorated to the years remaining in the allocation period.

CHAPTER 7 – MANAGEMENT OF USES

RULE 7-1 TRANSFERS DISALLOWED

- 7-1.1. The LRNRD finds that the transfer of ground water off of the overlying land for irrigation purposes may contribute to conflicts between ground water users and surface water appropriators, and to disputes over the Republican River Compact. For those reasons, the LRNRD hereby closes all of the Management Area to the withdrawal and transfer of ground water off the overlying land or otherwise changing the location of use of ground water, for irrigation purposes.
- 7-1.2. Allocations of ground water shall not be transferred except as provided pursuant to Rule 6-6.11.

- 7-1.3. Transfers for which permits have been obtained from the DNR pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act are allowed.
- 7-1.4. Transfers for which permits or approval for transfer have been obtained pursuant to the Industrial Ground Water Regulatory Act are allowed.

RULE 7-2 ALLOCATION

7-2.1. The use of ground water from all regulated water wells, except as provided in Rule 7-2.12, shall be allocated by the LRNRD. Allocations will be set after considering: (1) the relationship between wells and surface waters and the impact of well usage on stream flow; (2) whether ground water levels are declining; and (3) such other factors as the Board determines may be relevant to the appropriate amount of water to be withdrawn. Due to the variability of climatic conditions within the District and the resulting difference in irrigation requirements for crops, the Board has elected to establish different allocations for the areas west of U.S. Highway 183 and the areas east of U.S. Highway 183, in accordance with Neb. Rev. Stat. § 46-739(4) (Reissue 2004), which allows a District to establish different provisions for ground water use due to varying conditions within the management area.

7-2.2. GENERAL PROVISIONS:

- 7-2.2.1. Allocation - 36 acre-inches for the allocation period for all regulated wells constructed prior to January 1, 2001, located west of U.S. Highway 183.
- 7-2.2.2. Allocation - 30 acre-inches for the allocation period for all regulated wells constructed on or after January 1, 2001, located west of U.S. Highway 183.
- 7-2.2.3. Base Allocation - 12 acre-inches per year for all regulated wells constructed prior to January 1, 2001, located west of U.S. Highway 183.
- 7-2.2.4. Base Allocation - 10 acre-inches per year for all regulated wells constructed on or after January 1, 2001, located west of U.S. Highway 183.
- 7-2.2.5. Allocation - 33 acre-inches for the allocation period for all regulated wells constructed prior to January 1, 2001, located east of U.S. Highway 183.
- 7-2.2.6. Allocation - 27 acre-inches for the allocation period for all regulated wells constructed on or after January 1, 2001, located east of U.S. Highway 183.
- 7-2.2.7. Base Allocation - 11 acre-inches per year for all regulated wells constructed prior to January 1, 2001, located east of U.S. Highway 183.
- 7-2.2.8. Base Allocation - 9 acre-inches per year for all regulated wells constructed on or after January 1, 2001, located east of U.S. Highway 183.
- 7-2.2.9. Allocation Period - Three (3) years

7-2.2.10. Base Certification – One hundred (100) percent of certified irrigated acres

7-2.2.11. Base Allocation Year – January 1st to December 31st

7-2.3. PROVISIONS FOR SUB AREAS:

7-2.3.1. Little Blue Basin Sub Area – For the period commencing January 1, 2005 and ending December 31, 2007:

7-2.3.1.1. Allocation – not applicable

7-2.3.1.2. Base allocation – not applicable

7-2.3.1.3. Allocation period – not applicable

7-2.3.1.4. Base certification – One hundred (100) percent of certified irrigated acres

7-2.4. SUPPLEMENTAL WELLS:

7-2.4.1. If it can be documented that land on which a surface water appropriation exists was irrigated solely with ground water from a regulated well for at least one irrigation season during the period of 1998-2002, such regulated well is eligible to elect to receive the full ground water allocation. If such an election is made, the surface water that would have been permitted on those acres may be used on other lands on which a surface water appropriation is held under the same ownership. The land served by the regulated well shall not then be entitled to use any of the surface water to which it may have otherwise been entitled for the entirety of the allocation period.

7-2.4.2. If land with a surface water appropriation is also served by a regulated well, and if 7-2.4.1. is not applicable, that regulated well may receive a ground water allocation. The ground water allocation for that regulated well will be the allocation made in accordance with 7-2.2.1, 7-2.2.2., 7-2.2.5, or 7-2.2.6, minus the amount of surface water that is projected to be applied annually to the land during the allocation period. The surface water may be applied to the land with the regulated well or to other lands on which a surface water appropriation is held under the same ownership. The owner of the regulated well shall provide notification of the projected annual amount of surface water to be applied to the land to the LRNRD in writing before March 31st of each year. The LRNRD shall provide notification of all such projected annual surface water to be applied to the DNR by April 15th of each year.

7-2.4.3. If an election is made to apply surface water on other lands owned by the same person or entity under 7-2.4.1., the transfer or application of the surface water will be subject to any applicable rules and regulations of any irrigation district in which the land is situated, and to all statutory and regulatory provisions administered by the Nebraska Department of Natural Resources.

- 7-2.5. PENALTY: If at the end of an allocation period an operator has exceeded his or her allocation, the allocation for the next allocation period shall be reduced by the number of acre-inches by which said allocation was exceeded in the prior allocation period for the first three inches of overuse and by twice the number of inches of overuse for the fourth and subsequent inches of overuse.
- 7-2.6. PENALTY: Overuse of the base allocation during a Water Short Year shall result in the reduction of twice the number of acre-inches overused in the next allocation period.
- 7-2.7. An operator must have a positive balance in his or her allocation before using water in any year of an allocation period. The LRNRD shall notify landowners and/or operators anytime the balance of their allocation goes below zero.
- 7-2.8. For irrigation purposes, if at the end of the allocation period, an operator has consumed less than his or her allocation, he or she may carry the reserve or unused portion forward to the subsequent allocation period. However, the maximum amount of reserve cannot exceed the base allocation of the completed period. Reserve ground water must be used for the same certified acres for which the water was originally allocated.
- 7-2.9. Certified irrigated acres participating in the Federal Conservation Reserve Program (CRP), EQIP, prevented planting or similar programs shall not receive an allocation during the term of participation. Certified irrigated acres removed from these programs shall be granted an allocation that is prorated for the remaining years of the allocation period.
- 7-2-10. The LRNRD may review any allocation or reduction control imposed and shall adjust allocations or reductions to accommodate or otherwise reflect findings of such review consistent with the ground water management objectives. Such review shall consider more accurate data or information that was not available at the time of the allocation or reduction order, designation of a Water Short Year and such other factors as the LRNRD deems appropriate.
- 7-2.11. The LRNRD may institute formal adjudicatory proceedings or take any other legal action authorized or permitted by law to prohibit further withdrawal of ground water from any regulated well whenever an operator has exhausted his or her allocation during or before the end of any allocation period or has in any other way violated the amount, limitations, or conditions of his or her allocation or violated any other rules of the LRNRD. In the event of such action, no ground water may be withdrawn until the operator has adhered to LRNRD Rules and Regulations.
- 7-2.12. MUNICIPAL, INDUSTRIAL AND LIVESTOCK USES: In order to comply with the Republican River Compact, it may become necessary to establish allocations for municipal, industrial and/or livestock uses. The LRNRD shall hold hearings before the adoption of such allocations.

RULE 7-3 REDUCTION OF ALLOCATION

- 7-3.1. No later than November 15 after the designation of the potential for a Water Short Year, the LRNRD shall notify operators, by mail, of the potential requirement to

reduce the allocation per certified irrigated acre pursuant to the process identified in Rule 6-7.

RULE 7-4 LIMIT OR PREVENT THE EXPANSION OF NEW ACRES

7-4.1. Beginning on January 1, 2005, no irrigation well may be used to irrigate any acre that was not irrigated with ground water at some time between January 1, 1999 and December 31, 2004.

INTEGRATED MANAGEMENT PLAN

INTEGRATED MANAGEMENT PLAN Jointly Developed by the DEPARTMENT OF NATURAL RESOURCES And the LOWER REPUBLICAN NATURAL RESOURCES DISTRICT March 10, 2005

AUTHORITY

This Integrated Management Plan (IMP) was prepared by the Board of Directors of the Lower Republican Natural Resources District (LRNRD) and the Nebraska Department of Natural Resources (DNR) in accordance with Neb. Rev. Stat. §§ 46-715, 46-716, 46-717, and 46-720 (Reissue 2004).

BACKGROUND

In 1943 the States of Colorado, Kansas and Nebraska entered into the Republican River Compact (hereinafter the Compact) with the approval of Congress. The Compact provides for the equitable apportionment of the "virgin water supply" of the Republican River Basin. Following several years of dispute about Nebraska's consumptive use of water within the Basin, Kansas filed an original action in the United States Supreme Court against the states of Nebraska and Colorado in 1998. After several rulings by the Court and its Special Master and several months of negotiation, all three states entered into a comprehensive Settlement Agreement. That Agreement was approved by the Court on May 19, 2003 and the Special Master's final report approving the Joint Groundwater Model developed by all three states for use in computing stream flow depletions resulting from ground water use was submitted to the Court on September 17, 2003.

In July, 1996, the LRNRD and the other three Natural Resources Districts in the Republican River Basin, pursuant to then Neb. Rev. Stat. § 46-656.28 (Reissue 1998), initiated a joint action planning process with the Department of Water Resources (DWR), the predecessor agency to DNR. In accordance with that process, DWR first made a preliminary determination in 1996 that "there was reason to believe that the use of hydrologically connected ground water and surface water resources is contributing to or is in the reasonably foreseeable future likely to contribute to disputes over the Republican River Compact." When the studies required by Neb. Rev. Stat. § 46-656.28 (Reissue 1998) had been completed, DNR issued its conclusions on May 20, 2003 in the form of a report entitled: "Republican River Basin, Report of Preliminary Findings." Those conclusions included the following determination:

Pursuant to Neb. Rev. Stat. § 46-656.28 (Reissue 2004) and the preliminary findings in this report, the DNR determines that present and future Compact disputes

arising out of the use of hydrologically connected ground water and surface water resources in the Republican River Basin can be eliminated or reduced through the adoption of a joint action plan.

Following four hearings on that report, DNR made final the preliminary conclusions in the report and the four Basin Natural Resources Districts were so informed. The LRNRD and the other three Districts each then adopted orders to proceed with developing a joint action plan for integrated management of hydrologically connected surface water and ground water resources in the Basin; preparation of a joint action plan for the LRNRD began soon thereafter.

The 2004 Nebraska Legislature adopted LB962 in April of 2004 and it was signed by Governor Johanns on April 15, 2004 and became operative on July 16, 2004. That bill repealed Neb. Rev. Stat. § 46-656.28 (Reissue 1998) and replaced it with legislation providing for a revised process for addressing hydrologically connected surface water and ground water resources. In order to avoid the need to begin anew the integrated management planning processes that had been commenced but not completed under Neb. Rev. Stat. § 46-656.28 (Reissue 1998), LB962 provided for the transition of those ongoing planning processes into the newly enacted process codified now as Neb. Rev. Stat. §§ 46-713 to 46-719 (Reissue 2004). The LRNRD and DNR agreed that preparation of a joint action plan had not been completed prior to July 16, 2004; therefore, subsection (3) of what is codified as Neb. Rev. Stat. § 46-720 (Reissue 2004), governs that transition. Completion of this plan proceeded under the new process and this plan is being proposed for adoption in accordance with Neb. Rev. Stat. § 46-718 (Reissue 2004).

GOALS AND OBJECTIVES

Pursuant to Neb. Rev. Stat. § 46-715 (Reissue 2004), an integrated management plan must include clear goals and objectives with a purpose of sustaining balance between water uses and water supplies so that the economic viability, social and environmental health, safety, and welfare of the Republican River Basin can be achieved and maintained for both the near term and the long term. The LRNRD and the DNR have adopted the following Goals and Objectives to achieve that purpose.

Goals:

1. To assist the State of Nebraska, in cooperation with the other Basin Natural Resources Districts, in maintaining compliance with the Republican River Compact as adopted in 1943 and as implemented in accordance with the Settlement Agreement approved by the United States Supreme Court on May 19, 2003.
2. Ensure that ground water and surface water users within the LRNRD assume their share of the responsibility to keep Nebraska in compliance with the Republican River Compact. Neither the LRNRD or DNR will require the integrated

management plan to be amended solely for the purpose of changing the responsibility of water users within the LRNRD based on the failure of the other Basin NRDs to implement or enforce an integrated management plan to meet their share of the responsibility to keep Nebraska in compliance with the Republican River Compact.

3. Provide that LRNRD's share of that responsibility be distributed in an equitable manner and, by minimizing to the extent possible, adverse economic, social and environmental consequences.

Objectives:

1. With limited exceptions, prevent the initiation of new or expanded uses of water that increase Nebraska's computed beneficial consumptive use of water within the LRNRD;
2. Cause the required reductions in water use to be achieved through a combination of regulatory and incentive programs designed to reduce beneficial consumptive use;
3. The DNR shall ensure that administration of surface water appropriations in the Basin is in accordance with the Compact and in full compliance with Nebraska law;
4. Reduce existing ground water use within the LRNRD by five (5) percent from the baseline of use that is established by utilizing 1998 to 2002 ground water pumping estimates and the associated stream flow depletions as computed through use of the Republican River Compact Administration Ground Water Model.
5. After taking into account any reduction in beneficial consumptive use achieved through basin-wide incentive programs, make such additional reductions in ground water use in Water Short Years as are necessary to achieve a reduction in beneficial consumptive use in the LRNRD in an amount proportionate to the total reduction in consumptive use that is needed in Nebraska above Guide Rock in such years. Basin-wide incentive programs will be used to achieve reductions in beneficial consumptive use in Consecutive Water Short Years. There will be no further reductions without Board approval following a Public Hearing.
6. The LRNRD and the DNR will investigate or explore methods to manage the impact of vegetative growth on stream flow.

MAP

The area subject to this IMP is the geographic area within the boundaries of the Lower Republican Natural Resources District.

GROUND WATER CONTROLS

The authority for the ground water component of this IMP is Neb. Rev. Stat. §§ 46-715 and 46-739 (Reissue 2004). The ground water controls that will be adopted and implemented by the LRNRD are those found in the **LOWER REPUBLICAN NATURAL RESOURCES DISTRICT GROUND WATER MANAGEMENT RULES AND REGULATIONS**.

SURFACE WATER CONTROLS – DEPARTMENT OF NATURAL RESOURCES

The authority for the surface water component of this IMP is Neb. Rev. Stat. §§ 46-715 and 46-716 (Reissue 2004). The surface water controls that will be continued and/or begun by the DNR are as follows:

1. The DNR will do the following additional surface water administration as required by the Settlement Agreement:
 - A. To provide for regulation of natural flow between Harlan County Lake and Superior-Courtland Diversion Dam, Nebraska will recognize a priority date of February 26, 1948 for Kansas Bostwick Irrigation District, the same priority date as the priority date held by the Nebraska Bostwick Irrigation District's Courtland Canal water right.
 - B. When water is needed for diversion at Guide Rock and the projected or actual irrigation supply is less than 130,000 acre feet of storage available for use from Harlan County Lake as determined by the Bureau of Reclamation using the methodology described in Harlan County Lake Operation Consensus Plan attached as Appendix K to the Settlement Agreement, Nebraska will close junior, and require compliance with senior, natural flow diversions of surface water between Harlan County Lake and Guide Rock.
 - C. Nebraska will protect storage water released from Harlan County Lake for delivery at Guide Rock from surface water diversions.
 - D. Nebraska, in concert with Kansas and in collaboration with the United States, and in the manner described in Appendix L to the Settlement Agreement, will take actions to minimize the bypass flows at Superior-Courtland Diversion Dam.
2. Metering of all surface water diversions at the point of diversion from the stream will continue to be required. For surface water canals that are not part of a Bureau of Reclamation project, farm turnouts will be required to install and maintain a DNR approved measuring device by the start of the

2005 irrigation season. All measuring devices shall meet DNR standards for installation, accuracy and maintenance. All appropriators will be monitored to ensure that neither the rate of diversion nor the annual amount diverted exceeds that allowed by the applicable permit or by statute.

3. The DNR's moratorium on the issuance of new surface water permits was made formal by Order of the Director dated July 14, 2004. Exceptions may be granted by the DNR to the extent permitted by Neb. Rev. Stat. § 46-714(3) (Reissue 2004) or to allow issuance of permits for existing reservoirs that currently do not now have such permits. Such reservoirs are limited to those identified through the Settlement Agreement required inventory of reservoirs with over 15 acre-feet capacity.
4. All proposed transfers of surface water rights shall be subject to the criteria for such transfers as found in Neb. Rev. Stat. §§ 46-290 to 46-294.04 (Reissue 2004) and related DNR rules or the criteria found in Neb. Rev. Stat. §§ 46-2,120 to 46-2,130 (Reissue 2004) and related DNR rules.
5. The DNR completed the adjudication process within the LRNRD upstream of Guide Rock for the individual appropriators in the Republican River Basin in 2004. The results of that adjudication provided up-to-date records of the number and location of acres irrigated with surface water by such appropriators. Those records will be used by the DNR to monitor use of surface water and to make sure that unauthorized irrigation is not occurring. The DNR shall also be proactive in initiating subsequent adjudications whenever information available to the DNR indicates the need for adjudication as outlined by state statutes.
6. At this time, due to the already limited availability of surface water supplies, the DNR shall not require that surface water appropriators apply or utilize additional conservation measures or that they be subject to other new restrictions on surface water use. However, the DNR reserves the right to request, in the future, that this IMP be modified to require any such additional measures. In the event such a request is made, the DNR shall "allow the affected surface water appropriators and surface water project sponsors a reasonable amount of time, not to exceed one hundred eighty (180) days, unless extended by the DNR, to identify the conservation measures to be applied or utilized, to develop a schedule for such application and utilization, and to comment on any other proposed restrictions." Neb. Rev. Stat. § 46-716(2) (Reissue 2004).

INCENTIVE PROGRAMS

The LRNRD and DNR intend to establish and implement financial or other incentive programs to reduce beneficial consumptive use of water within the LRNRD. As a condition for participation in an incentive program, water users or landowners, and the LRNRD may be required to enter into and perform such agreements or covenants concerning the use of land or water as are necessary to produce the benefits for which the incentive program is established.

Such incentive programs may include any program authorized by state law and/or Federal programs such as, but not limited to, the Conservation Reserve Enhancement Program (CREP) and Environmental Quality Incentives Program (EQIP) operated by the U.S. Department of Agriculture.

INFORMATION CONSIDERED

Information used in the preparation and to be used in the implementation of this integrated management plan can be found in the simulation runs of the Republican River Compact Administration Ground Water Model, the data tables of the Final Settlement Stipulation for the Republican River Compact, Chapters 3, 6 and 7 of the 1994 Lower Republican NRD Ground Water Management Plan and additional data on file with the LRNRD and the DNR.

