

**STATE OF NEBRASKA  
UPPER REPUBLICAN NATURAL RESOURCES DISTRICT  
RULES AND REGULATIONS ORDER 35  
FOR GROUND WATER CONTROL**

**Rule 1. DEFINITIONS**

All words, terms, and phrases used herein, unless specifically defined herein, shall be given their common, every day meaning and usage consistent with the context. The following terms are specifically defined:

**1.01 Allocated Acres** shall mean the specific number of certified irrigated acres that have been approved by the Board as eligible to be granted an allocation of ground water.

**1.02 Allocation** shall mean the total amount of ground water granted by the Board to a ground water user within the allocation period. For purposes of allocated certified irrigated acres within a certified irrigated tract, this amount includes the base allocation and the carryforward from prior allocation periods.

**1.03 Allocation Period** shall mean the number of years over which the allocation can be used.

**1.04 Annualized Allocation** shall mean an amount of ground water equal to the base allocation divided by the number of years in the allocation period.

**1.05 Base Allocation** shall mean the amount of ground water granted by the Board to a certified irrigated acre within a certified irrigated tract for an allocation period.

**1.06 Best Management Practices** shall mean activities, maintenance procedures, and other management practices utilized to prevent or reduce present and future contamination of ground water, which may include irrigation scheduling, proper rate and timing of fertilizer and pesticide application and other fertilizer and pesticide management programs.

**1.07 Board of Directors** or **Board** shall mean the elected Board of Directors of the Upper Republican Natural Resources District.

**1.08 Carryforward** shall mean any unused portion of an allocation that can be carried forward to the subsequent allocation period.

**1.09 Certified Irrigated Acre** shall mean any acre of ground upon which ground water is being applied for irrigation purposes, regardless of the source of the ground water, that has an allocation granted or that was certified as such by the Board on or before the 31<sup>st</sup> day of March, 1997. (See also Irrigated Acre)

**1.10 Certified Irrigated Tract** shall mean an irrigated tract, not exceeding six hundred and forty (640) contiguous acres, consisting of certified irrigated acres. (See also Irrigated Tract)

**1.11 Certified Laboratory** shall mean any laboratory within or outside the State of Nebraska certified and approved by the Nebraska Department of Environmental Quality.

**1.12 Chemical** shall mean any fertilizer, fungicide, herbicide, or pesticide mixed with the water supply for application through chemigation.

**1.13 Chemigation** shall mean any process whereby chemicals are applied to land or crops in or with water through an on farm irrigation distribution system.

**1.14 Compact Call Year** shall mean a year in which the Department's forecast procedures outlined in Section IX of the IMP indicate the potential for non-compliance if sufficient surface water and ground water controls and/or management actions are not taken.

**1.15 Consumptive Use**, for purposes of the water use activities described in these rules, shall mean the 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 is lawfully made.

**1.16 Contamination or Contamination of Ground Water** shall mean nitrate-nitrogen or other material that enters the ground water due to the action of any person and causes degradation of the quality of ground water sufficient to make such ground water unsuitable for present or reasonably foreseeable beneficial uses.

**1.17 District** shall mean the Upper Republican Natural Resources District, which encompasses Chase, Dundy, and Perkins Counties, in the State of Nebraska.

**1.18 Fertilizer** shall mean any formulation or product used as a plant nutrient and/or intended to promote plant growth distributed on lands in the District, containing one or more plant nutrients recognized by the Association of American Plant Food Control Officials in its official publications.

**1.19 Floating Township** shall mean a set of thirty-six (36) sections lying in a contiguous block, such that the area is six (6) sections east to west and six (6) sections north to south, designated by the section that forms the northwest corner of the floating township.

**1.20 Flowmeter** shall mean a measuring device of the type and design which shall meet the standards and specifications for installation, operation, and maintenance as established by the District. Every flowmeter shall be a District approved device which measures and totalizes the amount of ground water withdrawn.

**1.21 Ground Water Irrigation Runoff** shall mean ground water used for irrigation purposes which escapes from land owned, leased, or otherwise under the control of a ground water user. Ground water that becomes commingled with surface water runoff shall be treated as irrigation runoff; except that ground water 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.

**1.22 Ground Water Quality Controls** shall mean the rules and regulations proposed and adopted for ground water quality management based on the three (3) phase program defined in Rules 1.34, 1.35, 1.36.

**1.23 Ground Water User** shall mean any person who extracts, withdraws, or confines ground water for any use by any person. The term ground water user shall include the operator.

**1.24 Historic Consumptive Use** shall mean 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.

**1.25 Improper Ground Water Irrigation Runoff** shall mean the occurrence of ground water irrigation runoff which causes or contributes to the: (a) accumulation of water upon or beneath the surface of the lands of any person to their detriment, damage, or inconvenience; (b) deterioration of water quality by depositing sediment and/or associated chemicals in surface water within the Management Area; and/or (c) waste of ground water. Improper ground water irrigation runoff is subject to the General Enforcement Provisions of these rules and regulations.

**1.26 Installer** shall mean the person that installs meters on the ground water user's irrigation equipment.

**1.27 Irrigated Acre** shall mean any acre with a demonstrable or proven history of having been irrigated on or before May 8, 2003.

**1.28 Irrigated Tract** shall mean a defined area of land consisting of irrigated acres.

**1.29 Management Area** shall mean all of Perkins, Chase, and Dundy Counties.

**1.30 Manufacturer** shall mean the person that produces meters for the supplier or dealer.

**1.31 Meter** shall mean a District approved device that measures and totalizes the amount of water flowing from a well.

**1.32 Offset shall mean a water use retired in sufficient amounts, based on stream flow depletion factors and historical use, to allow for a new use to be granted.**

**1.33 Owner** shall mean any person that has an ownership interest in a tract.

**1.34 Person** shall mean a natural person, partnership, limited liability company, association, corporation, irrigation district, municipality, agency, or political subdivision of the State or department, agency, or bureau of the United States. The male pronoun shall include the female.

**1.35 Phase I Area** shall mean an area within the District in which the nitrate-nitrogen concentration is less than 5.0 mg/l.

**1.36 Phase II Area** shall mean an area within the District in which the nitrate-nitrogen concentration is between 5.0 mg/l and 10.0 mg/l, is decreasing over the past 5 years, and comprises more than 50% of six adjacent sections.

**1.37 Phase III Area** shall mean an area within the District in which the nitrate-nitrogen concentration is between 5.0 mg/l and 10.0 mg/l and increasing over the past 5 years and comprises more than 50% of six adjacent sections.

**1.38 Phase IV Area** shall mean an area within the District in which the nitrate-nitrogen concentration is greater than 10.0 mg/l and comprises more than 50% of six adjacent sections.

**1.39 Pipe** shall mean any device capable of transporting water.

**1.40 Point Source** shall mean any discernible, confined and discrete conveyance, including, but not limited to, any pipe, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel, other floating craft, or other conveyance over which the Department of Environmental Quality has regulatory authority and from which a substance which can cause or contribute to contamination of ground water is being or may be discharged.

**1.41 Pooling** shall mean any contract approved by the Board in which ground water allocations are combined.

**1.42 Rapid Response Area** shall mean the area with a stream flow depletion factor of ten (10) percent or more in a five (5) year period as illustrated in the attached map.

**1.43 Rotation** shall mean a recurring series of the use and non-use of an irrigation well or the irrigation of certified irrigated acres on an annual basis.

**1.44 State** shall mean the State of Nebraska.

**1.45 Subirrigation or Subirrigated Land** shall mean the occurrence of a ground water table within the root zone of agricultural vegetation, ten (10) feet or less below the surface of the ground.

**1.46 Statutory references** shall mean all references to Nebraska revised statutes contained herein and shall refer to the legislation in place as of the date of adoption of rules and subsequent statutory amendment or revision, except when otherwise allowed by law and expressly stated herein.

**1.47 Supplier or Dealer** shall mean the person that sells or provides meters to an installer, ground water user, or the District.

**1.48 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.

**1.49 Transport** shall mean the actual movement of water from one point to another by physical and/or mechanical means.

**1.50 Violation** shall mean the disregard of or noncompliance with any cease and desist order issued by the District pursuant to these rules and regulations, the Ground Water Management, and Protection Act or any other orders, controls, rules, or regulations adopted by the District. Any person who commits a violation shall be subject to any enforcement provisions and

sanctions provided by law and to the controls, rules, regulations, and remedies enacted by the District, including, but not limited to the reduction of any allocation or of irrigated acres certified previously by the District.

**1.51 Water Short Year** shall mean 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.

**1.52 Well** shall mean any water well, as defined in Neb. Rev. Stat. §§ 46-601.01, 46-635.01, 46-1204.01, 46-1204.02, and 46-1212 (Reissue 2004). All wells shall be registered as provided by Nebraska law. For the purposes of these rules and regulations, wells are further defined and classified as follows:

**1.52.01 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 (2) acres in area for the growing of gardens, orchards, and lawns, and keeping domestic animals. Such wells are exempt from application of these rules.

**1.52.02 Range Livestock Wells** are wells which are used for the watering of range livestock and other uses, other than for irrigation purposes, directly related to the operation of a pasture or range. Such wells are exempt from allocation restrictions in these rules except for Rule 1.51.08.

**1.52.03 Irrigation Wells** are wells that are used for the pumping of ground water to irrigated acres for the production of forage or crops. Such wells must have certified irrigated acres, and all water pumped by such wells must be measured with a flowmeter located in the District.

**1.52.04 Commercial Livestock Wells** are wells used for the watering of livestock and other uses directly related to the operation of a feedlot or other confined livestock or dairy operation. Such wells serving more than 12,000 animal unit months per year must have an allocation, and all water pumped by such wells must be measured with a flowmeter located in the District.

**1.52.05 Back-up Wells** are commercial livestock or industrial wells which operate only in emergencies when the primary well fails. Back-up wells shall not be operated simultaneously with the primary well. Any water pumped from back-up wells shall be counted against the allocation for the well it backs up and must be measured with a flowmeter located in the District.

**1.52.06 Industrial Wells** are wells used in manufacturing and commercial operations, and/or watering and maintenance of golf courses. Such wells must have an allocation, and all water pumped by such wells must be measured with a flowmeter located in the District.

**1.52.07 Public Water System Wells** are wells used by villages, towns, cities, or rural water districts for providing the public with water, as further defined in 179 Nebraska

Administrative Code. Such wells must have an allocation and all water pumped by such wells must be measured with a flowmeter located in the District.

**1.52.08 Commingled Wells** are water wells that are commingled, combined, clustered, or joined with another water well or wells or other water source after August 31, 1998. Such wells shall be considered one (1) water well and the combined pumping capacity shall be used as the rated capacity. Such wells with a combined capacity of fifty (50) gallons per minute or more, must have an allocation, and all water pumped by such wells must be measured with a flowmeter located in the District. Commingled wells used for range livestock or domestic purposes are not required to be metered or have an allocation.

**1.52.09 Supplemental Well** is any well, the water from which is commingled with the water from any other well, used for irrigation purposes.

**1.52.10 Replacement Well** shall mean a water well which (i) replaces a previously abandoned water well within one (1) year of the last operation of the abandoned water well, or (ii) 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 (i) is constructed to provide water to the same tract of land served by the water well being replaced, (ii) would not be used to provide water to a use not certified with the well being replaced and (iii) 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 District Rules and Regulations, is subject to the same provisions as the water well it replaces.

**1.52.11 Abandoned Well** shall mean a well as defined by Neb. Rev. Stat. § 46-1204.01 (Reissue 2004).

**1.52.12 Inactive Status Well** shall mean a well as defined by Neb. Rev. Stat. § 46-1207.02 (Reissue 2004). The owner of any permitted well must notify the District and the Nebraska Department of Natural Resources when an active well is placed in inactive status.

**1.52.13 Monitoring Well** shall mean a well as defined by 178 NAC 12.002, Nebraska Health and Human Services System.

**1.52.14 Observation Well** shall mean a well as defined by 178 NAC 12.002, Nebraska Health and Human Services System.

**1.52.15 Illegal Well** shall mean a well as defined by Neb Rev. Stat. § 46-706(5) and 46-1207.01 (Reissue 2004).

**1.53 Well Permit** shall mean the written authorization, granted by the Board with conditions specified by the Board pursuant to these rules and regulations, for construction of a new well or a replacement well. All new and replacement wells, except domestic wells and range livestock wells designed and constructed to pump fifty gallons per minute or less, shall require a permit prior to construction.

## **Rule 2. FLOWMETERS**

**2.01** Each well requiring a permit shall be equipped with a flowmeter which shall be installed, operated, and maintained in accordance with the following standards and specifications:

- 2.01.01** Meters must be approved by the District prior to installation and be made of noncorrosive materials. The meter shall have a means of sealing the meter in the pipe and of sealing the registry to prevent unauthorized tampering or removal. Flow meters that require an external power source are not approved for use in the District.
- 2.01.02** Each meter shall be installed and calibrated to pipe size.
- 2.01.03** The meter registry shall have a visual volume recording totalizer, which shall record in acre-feet, acre-inches, or U.S. gallons.
- 2.01.04** The meter registry shall be protected from the elements. Totalizers shall have sufficient capacity to record the quantity of water diverted from each well for a period of one (1) year. Totalizers shall be direct reading and the multiplier, by which the rate of flow can be determined by timing, shall be clearly indicated.
- 2.01.05** The meter shall have a rated accuracy of plus or minus two (2) percent of actual flow within the range of flow for which the meter is designed. The meter shall be capable of accurately registering the expected operating range of discharge.
- 2.01.06** The meter shall have a pressure rating to fit the application used within its designed pressure range.
- 2.01.07** The meter size, serial number, and the direction of flow shall be clearly stamped on the body of the meter. The inside pipe diameter for which the meter has been calibrated shall be clearly shown on the meter to the nearest 0.001 of an inch.
- 2.01.08** The meter shall be installed in accordance with the manufacturer's specifications and in such manner that there will be a full pipe flow of water at all times while water is being measured.
- 2.01.09** The meter shall be placed in the pipe, with the centerline of the meter shaft not less than five (5) pipe diameters downstream from any valve, elbow or other obstructions, which might create turbulent flow, or as recommended by the manufacturer. There shall also be at least one (1) pipe diameter of unobstructed flow on the downstream side of the meter propeller.
  - (a) Installations that are unable to meet the above spacing requirements may be approved by the District, upon testing and certification with an ultrasonic flowmeter.
  - (b) Flow straightening devices may be required in installations where minimum spacing is not met and the District determines the installed flowmeter to be inaccurate without such devices installed.

**2.01.10** The meter propeller shaft shall be positioned parallel to and aligned with the centerline of the pipe.

**2.01.11** Meters should be kept clear of debris and other material which might impede operation.

**2.02** When meters are removed for servicing or replacement, records of meter readings shall be kept.

**2.03** It shall be unlawful for any person to willfully injure, alter, remove, reset, adjust, manipulate, obstruct, or in any manner interfere with or tamper with any flowmeter within the Management Area for the purpose or with the intent of producing an incorrect, inaccurate, or misleading measurement, or to cause, procure, or direct any other person to do so.

**2.04** The District staff shall periodically check flowmeters on a random basis for reading and proper operation. The District staff may seal all flowmeters within the Management Area. No seal shall be removed without prior approval of the District.

**2.05** Any malfunctioning flowmeter must be reported to the District Office at Imperial, Nebraska, within twenty-four (24) hours after discovery. During the malfunctioning period, a substitute meter from the District, if available, shall be used to determine water pumpage. If no such meter is available, any reasonable method, as determined by the District, of determining water pumpage may be utilized.

**2.06** The District may require any ground water user to provide information to enable the District staff to determine the amount of energy used to operate any well on which a meter is required. The ground water user shall provide such information, or the ground water user shall authorize the District staff to procure such information from the power provider. The District staff shall seek such information in the event a flowmeter is malfunctioning, or if either the owner or operator or the District staff has reason to believe the flowmeter reading is incorrect. If any power source on any well within the Management Area is equipped with an hour meter, the District may require the ground water user to provide appropriate readings from said hour meter.

**2.07** Diversions from wells connected to serve multiple points of use shall not be made prior to the water passing through the meter for the individual wells, where wells are commingled.

### **Rule 3. IRRIGATED ACRES AND TRACTS**

**3.01** Every person shall annually report to the District, as requested on District forms, information on lands owned by them or under their control, crops grown, and application rates of fertilizer and chemicals and other practices as needed for the District to carry out its responsibilities related to groundwater management..

**3.02** Certified irrigated tracts shall be identified by government survey descriptions. In all cases, the description of each ground water user's irrigated tract or tracts, as contained in any recorded deed or lease shall be definitive.



**3.03** Any replacement well shall be deemed to irrigate the same number of certified acres as the well it replaced.

**3.04** No additional acres shall be irrigated without prior approval by the District. The District shall consider the District's proportional responsibility for maintaining Nebraska's compliance with the Republican River Compact and any impairment to other water users prior to granting any such approval.

#### **Rule 4. WELL SPACING**

**4.01** Spacing of all wells for which District permits are required, regardless of ownership and classification, must be approved by the Board prior to drilling the well. New wells must comply with Neb. Rev. Stat. §§ 46-609 and 46-651 (Reissue 2004) in addition to the District's spacing requirements below:

**4.01.01** New Wells - Any irrigation well, commercial livestock well, industrial well, or public water system well must be at least 600 feet from any domestic well or range livestock well, 2,640 feet from any public water supply well, and 1,000 feet from any other well not belonging to the owner or controller of the land upon which the new well is established.

**4.01.02** Replacement Wells - Except as provided in 4.01.02(a), any replacement irrigation well, replacement commercial livestock well, replacement industrial well, or replacement public water system well must be at least 600 feet from any domestic well or range livestock well, 2,640 feet from any public water supply well, and 1,000 feet from any irrigation well, commercial livestock well, or industrial well not belonging to the owner or controller of the land upon which the replacement well is constructed.

(a) If the well to be replaced is within 600 feet of a domestic well or range livestock well, within 2,640 feet of any public water supply well, or within 1,000 feet of any irrigation well, commercial livestock well, or industrial 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.

No new or replacement well may be drilled closer to an existing well than provided above, unless all owner(s) of any existing well(s) execute a notarized waiver of the spacing protection provided by this rule which shall be filed with the District. In no event shall a well be drilled within 150 feet of any domestic or range livestock well owned by another individual.

#### **Rule 5. INACTIVE STATUS WELLS**

**5.01** The Board shall maintain a record of all wells registered as inactive status by the Nebraska Department of Natural Resources.

**5.01.01** All wells placed into an inactive status shall conform with all relevant State statutes, including those specifications defined in Neb. Rev. Stat. § 46-1207.02 (Reissue 2004) as follows:

- (a) The water well does not allow impairment of the water quality in the well or of the ground water encountered by the well;
- (b) 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
- (c) The water well shall be marked so as to be easily visible and located and labeled or otherwise marked so as to be easily identified as a water well and the area surrounding the water well shall be kept clear of brush, debris, and waste material.

**5.01.02** The well shall be marked in a permanent form with the Nebraska Department of Natural Resources 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.

**5.01.03** Both the Nebraska Department of Natural Resources and the District must be notified within sixty (60) calendar days of the change to inactive condition and of any subsequent changes to the condition of the well.

**5.01.04** Any well registered as inactive status shall:

- (a) Maintain the previously granted number of certified irrigated acres and certified irrigated tract associated with such well;
- (b) Maintain the amount of allocation as it existed at the time the well was placed on inactive status;
- (c) Not accumulate any additional allocation while on inactive status; and
- (d) When returned to active status, be provided an allocation consisting of the amount of carryforward at the time it was placed on inactive status, plus the annualized base allocation for each year remaining in the allocation period.

## **Rule 6. CONNECTING WELLS**

**6.01** No wells shall be connected for any purpose or use without prior approval of the District, except those used for range livestock purposes or those used for domestic purposes. In considering a request for such approval, the Board shall consider impairment of other water users, ownership, Nebraska Department of Natural Resources registration, the annual allowable withdrawal formula, and any other relevant information.

**6.01.01** All wells proposed to be connected shall be legally registered with the Nebraska Department of Natural Resources, with ownership current prior to the submission of any request.

## **Rule 7. TRANSPORT OF WATER ACROSS NRD BOUNDARIES**

**7.01** Ground water transported from another natural resources district to this District, or from this District to one or more other natural resources districts, shall be subject to the Rules and Regulations of all involved natural resources districts.

## **Rule 8. ALLOCATIONS OF GROUND WATER**

**8.01** Commencing on January 1, 2018, each allocated acre within a certified irrigated tract is hereby granted a base allocation of 65 acre-inches, an annualized allocation of 13 acre-inches, for the allocation period ending December 31, 2022, unless otherwise provided herein.

**8.02** Ground water users pumping less than the total of their base allocation and their carryforward from prior allocations may carryforward the unused balance to subsequent allocation periods at the expiration of the current allocation period.

**8.02.01** If, at the termination of the allocation period, any ground water user has exceeded the base allocation by more than seven and a half (7.5) inches per acre, the carryforward shall be reduced by the amount by which the ground water user exceeded his base allocation up to seven and a half (7.5) inches and by two (2) inches for each inch in excess of seven and a half (7.5) inches. If the overuse exceeds the amount of carryforward available, the next year's base allocation shall be reduced by two (2) inches for each inch in excess of the amount of carryforward available.

**8.02.02** In lieu of the two (2) for one reduction of allocation in 8.02.01 the reduction in allocation shall be one (1) to one (1) for the amount by which the ground water user underuses their base allocation in the following allocation period.

**8.02.03** Certified irrigated acres in any land or irrigation retirement program including, but not limited to Federal Conservation Reserve Program, EQIP, CREP, or other incentive programs shall not receive an allocation while enrolled. Certified irrigated acres being removed from any retirement program shall be granted a base allocation prorated to the years remaining in the current allocation period. In addition, upon removal from the land or irrigation retirement program, each certified irrigated acre shall receive the total of the carryforward accumulated at the time of enrollment in the program.

**8.03** All industrial wells shall have an allocation prior to operation. The owner of each industrial well shall, prior to operation, apply for an allocation. Additional allocation for industrial use requested after December 31, 2007, shall be granted only if a full offset is provided by the well owner, for any allocation in excess of 10 acre-feet.

### **8.03.01**

**8.04** Commercial livestock wells shall be allocated an annual maximum of 22 acre-feet per 1000 animal units based on the capacity approved by the District for the 2007 year. Additional

allocation for commercial livestock use shall be granted only if a full offset is provided by the well owner, for any allocation in excess of 40 acre-feet.

**8.05** Each municipality is hereby granted without further application, an annual allocation computed as designated in Rule 8.05.01.

**8.05.01** An allocation in gallons equal to the number produced by multiplying the population of the municipality, as determined by the most recent Federal Census or any other Board approved population estimate by 91,250, and an additional allocation 125,000 gallons per non-agricultural acre of land within the municipality. Each municipality shall report the total number of non-agricultural acres within its limits to the Board at the time of any annexation or elimination of territory to or from its limits.

**8.06** Allocations for any and all wells may be amended, reduced, increased, or made subject to limitations or conditions by the Board upon notice and hearing.

**8.07** The District shall institute formal adjudicatory proceedings and initiate any action provided by law to prohibit further withdrawal of ground water in the event any ground water user shall exhaust or exceed his allocation prior to the termination of the applicable allocation period or shall in any other manner violate the amount, limitation, or any other conditions as established by these rules and regulations or by order of the District.

## **Rule 9. REPUBLICAN RIVER COMPACT COMPLIANCE**

**9.01 Compact Call Year Determination:** No later than the 15th day of November of each year, the Nebraska Department of Natural Resources shall inform the District of a potential designation of a Compact Call Year for the upcoming irrigation season. Upon receipt of such determination, the District shall provide notice of such designation to irrigators and all other interested parties, as provided by these rules and regulations and Nebraska law. The Board shall consider and adopt any additional actions necessary to meet the District's proportional responsibility for maintaining Nebraska's compliance with the Republican River Compact.

**9.02** Additional controls and actions may consist of, but are not limited to incentive programs, regulations (inclusive of curtailments of groundwater pumping by wells within the Rapid Response Area), augmentation, management practices, and any other relevant activity.

**9.02.01** Municipal and other public water systems, industrial, and commercial livestock allocations shall be exempt from Compact Call Year controls.

**9.03** For the wells within the Rapid Response Area the allocation during a Compact Call Year shall be set at the maximum allowable that would not cause the District's depletions to streamflow to exceed the District's allowable groundwater depletions after taking into consideration other actions and controls that the District would implement. As outlined in the IMP, the Nebraska Department of Natural Resources will perform all calculations relating to the District's forecasted allowable groundwater depletions, forecasted depletions, and potential yield from implementing actions and controls.

## **Rule 10. POOLING**

**10.01** The Board may approve pooling of ground water allocations granted to irrigated tracts with a common interest in ownership or tenancy.

**10.01.01** Pooling contracts approved prior to the adoption of these rules and regulations will remain in force, unless the owner requests the pool be dissolved.

**10.01.02** All pooling contracts shall be subject to the following stipulations:

- (a) As of the effective date of these rules the allocation granted to all tracts in a pool shall be equalized (averaged) across each floating township(s) or township(s) of the pool and a pool with multiple townships or floating townships shall thereafter be considered separate pools. A pool with multiple floating townships may be averaged across all tracts at the request of all landowners on or by July 1<sup>st</sup>, 2013.
- (b) The annual average use of all pooled tracts shall be assigned to each tract in the pool at the end of each irrigation season.
- (c) No pool shall include more than one township or floating township.
- (d) A pooling contract shall not result in more ground water being withdrawn from the aquifer within a township or floating township than the ground water user has been allocated for certified irrigated acres in certified irrigated tracts within that township or floating township.
- (e) A floating township shall include all certified irrigated tracts watered by wells located within the floating township, except those tracts included in another floating township in the case where floating townships overlap.
- (f) A tract must have a positive remaining allocation to be included in a new pooling contract.
- (g) An existing floating township must have a positive remaining allocation in order for the tracts in the floating township to be included in a new pooling contract.
- (h) The carryforward allocation of any tract added to a pool shall be limited to three (3) years of annualized allocation.
- (i) Certified irrigated tracts will not be eligible to be moved from one floating township to any other floating township within a pooling contract, except when the change is the result of adding or removing tracts from the contract due to change of ownership.
- (j) The pooling contract application shall be denied or conditioned to the extent that it is necessary to (1) ensure the consistency of the contract with the purpose or purposes for which the Management Area was designated, (2) prevent adverse effects on other ground water users or on surface water appropriators, (3) meet the District's proportional responsibility for maintaining Nebraska's compliance with the Republican

River Compact, and (4) otherwise protect the public interest and prevent detriment to the public welfare.

- (k) An incomplete pooling contract application shall be returned for correction. If correction is not made within sixty (60) days, the application shall be cancelled.

**10.01.03** Pooling contracts between individuals, partnerships, corporations, and other owners of certified irrigated tracts require the signature of the owner or a party with appropriate power of attorney, together with proof of ownership for each irrigated tract included in the pooling contract.

**10.01.04** Proof of ownership for each irrigated tract must be provided prior to termination of any pooling contract.

**10.01.05** Certified irrigated acres enrolled in any land or irrigation retirement program including, but not limited to Federal Conservation Reserve Program, EQIP, or CREP shall not be included in a pooling contract.

**10.01.06** If a change of ownership of any certified irrigated tract in a pooling contract occurs the unused ground water allocation shall remain with that tract and the remaining tracts shall remain pooled.

**10.01.07** If a pool is dissolved, or a tract is removed from a pool at the request of the owner the unused ground water allocation for the certified irrigated tracts shall remain with each tract.

## **Rule 11. TRANSFERS**

**11.01** Board approval to the transfer of all or a portion of any ground water allocation or acres to another tract or use must be received prior to changing the point of withdrawal or use.

**11.01.01** Transfer of acres or ground water allocation is limited to transfers within a floating township.

**11.01.02** Transfers of allocation will not be permitted from one pool to another, unless as the result of a change in ownership.

**11.01.03** Carryforward allocation associated with transferred certified irrigated acres will be limited to three (3) years of annual allocation.

- (a) Transfer of certified irrigated acres within a tract of ground without changing the point of withdrawal is exempt from limitations on carryforward.

**11.01.04** Transfer of acres outside of a floating township may be approved when the following conditions are met;

- (a) The transfer is from a higher SDF to a lower SDF and,

- (b) The transfer is to certified non-allocated irrigated acres or
- (c) The transfer stipulates that the number of acres irrigated shall not be increased and the resulting certified irrigated acres will not be more than 125% of the acres allowed to be irrigated.

**11.02** No transfer may occur without the knowledge and consent of the owners of all lands involved, including any lands over which the ground water is transported.

**11.03** Transfers shall be denied or conditioned to the extent that it is necessary to (1) ensure the consistency of the contract with the purpose or purposes for which the Management Area was designated, (2) prevent adverse effects on other ground water users or on surface water appropriators, (3) meet the District's proportional responsibility for Nebraska's compliance with the Republican River Compact, and (4) otherwise protect the public interest and prevent detriment to the public welfare.

**11.04** Transfer of less than all of the acres of a certified tract shall require the remaining acres allocation to be reduced such that no increase from historical use shall occur.

**11.04.01** Except, acres being transferred to a more efficient irrigation method, shall not be subject to the reduction in 11.04. (i.e. Flood irrigation to pivot or high pressure endgun to low pressure pivot)

**11.05** The board shall require offsets and limit transfers to historical use.

**11.05.01** Historical use shall be calculated as the most recent 5 year average of use for the acres being transferred.

**11.05.02** Transfers shall be offset, by decertifying sufficient certified irrigated acres, so that any transfer to higher streamflow depletion is reduced by the difference in streamflow depletion percentages, utilizing fifty (50) year streamflow depletion estimates or an increase in pumping from the historical use of the certified irrigated acres to be transferred.

**11.06** In making its decision, the Board may use the following information, including, but not limited to:

**11.06.01** The trend of change in the level of the aquifer over time from District records;

**11.06.02** Other transfers into the area in proximity to the receiving well;

**11.06.03** The total usage in proximity to the receiving well; and

**11.06.04** Other factors that would increase the rate of consumptive use in the area of the receiving well in making its decision.

**11.06.05** Any other relevant information the Board deems reasonable and meritorious.

**11.06.06** Nothing set forth in this section (Rule 11.05) shall be construed as allowing development of any new wells or prohibiting a person seeking a transfer from pursuing a variance from these rules and regulations, as provided herein.

**11.07** Applications may be made to the Board to withdraw ground water from a well within the District, transport that water off the overlying land, and use it to augment water supplies in any stream or wetland within the District for the purpose of benefiting fish or wildlife or producing other environmental or recreational benefits. Any such application shall be evaluated in consideration of all the factors described in this section and of those considerations described in Neb. Rev. Stat. § 46-691.03 (Reissue 2004). Any permit authorizing a transfer for such purposes shall be subject to conditions imposed by the Board and to all requirements of Neb. Rev. Stat. § 46-691.03 (Reissue 2004).

## **Rule 12. GROUND WATER QUALITY**

**12.01** The Board shall implement procedures to monitor and protect the quality of the aquifers underlying the District. The District will conduct two sampling programs to determine and address nitrate-nitrogen concentration concerns within the District. One program will examine the general “health” of the aquifer by analyzing the nitrate-nitrogen concentration in the District’s aquifer caused by farm practices and the other program will target human health concerns.

### **12.02** Aquifer Health Program

#### **12.02.01** Phase Designations

- (a) The District is divided into four phase designations based on the nitrate-nitrogen concentration and whether the concentration is increasing or decreasing. Each phase designation has different fertilizer and farm management recommendations and/or requirements. Phase I, Phase II, Phase III, and Phase IV areas are defined in Rule 1 of these rules and regulations.
- (b) The purpose of the phase designation is to identify and monitor the nitrate-nitrogen concentration in the District’s ground water caused by non-point sources, such as farm practices, and improve aquifer water quality throughout the District.
- (c) The District has developed a ground water sampling program to sample registered irrigation wells throughout the District. A sample from each well in the program will be collected and analyzed to determine the nitrate-nitrogen concentration in the ground water at that location. Samples will be collected annually in the summer.
- (d) The sampling network is designed to minimize uncertainty in developing a nitrate-nitrogen concentration map of the District. Wells in the network are located relatively uniformly throughout the District. Additional wells were added to the network to better



identify the boundaries of the Phase III and Phase IV designation areas. The intent is to sample the same wells each year, but it is understood that the network may change over time if well use discontinues or if phase boundaries need to be redefined.

- (e) Nitrate-nitrogen concentration trends and phase designations will be determined every five years beginning with samples taken in the summer of 2018.

#### **12.02.02 Phase I Designation Area**

- (a) Nitrate-nitrogen concentration is less than 5.0 mg/l (ppm).
- (b) The District recommends that applicators/operators enroll in and review the University of Nebraska-Lincoln (UNL) Extension on-line training program - Irrigation and Nitrogen Management User Education/Certification Program, although the District does not require or offer certification in this program.
- (c) The District recommends that applicators/operators perform soil testing, analyze groundwater quality, and apply nitrogen fertilizer based on the UNL-recommended rates.
- (d) The District recommends that operators use nitrogen inhibitors, slow-release coated fertilizer, or split applications and do not apply fertilizer in fall or winter on row crops.

#### **12.02.03 Phase II Designation Area**

- (a) Area where the nitrate-nitrogen concentration is between 5 mg/l and 10 mg/l, is decreasing over the past 5 years, and comprises more than 50% of six adjacent sections.
- (b) All Phase I requirements apply.
- (c) Prior to November 1 (for the subsequent growing season), applicators/operators may not apply commercial nitrogen fertilizer or liquid manure for row crops
- (d) After November 1, applicators/operators must use split applications (i.e. pre-plant/pre-emergent and sidedress (post-emergent)) for applications greater than 100 pounds of actual nitrogen/acre or use a nitrification inhibitor or slow-release coated fertilizer. The operator must furnish dealer certification and documentation that the inhibitor or slow-release coated fertilizer was used at the recommended rate, if requested.

#### **12.02.04 Phase III Designation Area**

- (a) Area where the nitrate-nitrogen concentration is between 5 mg/l and 10 mg/l, is increasing over the past 5 years, and comprises more than 50% of six adjacent sections.
- (b) All Phase II requirements apply.
- (c) Prior to November 1, applicators/operators may not apply commercial nitrogen fertilizer or liquid manure for row crops.

- (d) After November 1 and prior to March 1, applicators/operators may not apply commercial nitrogen fertilizer or liquid manure, except application rates of less than 20 pounds/acre of actual nitrogen on fall or spring seeded crops will be allowed.
- (e) After March 1, applicators/operators must use split applications (i.e. pre-plant/pre-emergent and sidedress (post-emergent)) for applications greater than 100 pounds of actual nitrogen/acre or use a nitrification inhibitor or slow-release coated fertilizer. The operator must furnish dealer certification and documentation that the inhibitor or slow-release coated fertilizer was used at the recommended rate and attached to the report form. The report form will be completed on-line through a portal on the District's website.
- (f) Applicators/operators shall not apply nitrogen fertilizer at rates that exceed crop need based on UNL-recommended fertilizer rates for corn, wheat, potatoes, sorghum, and soybeans.
- (g) Applicators/operators must take annual soil samples from fields in which nitrogen fertilizer or manure will be applied. Surface (0 inches to 8 inches) and sub-surface (8 inches to 24 inches) samples must be taken for residual nitrate/nitrogen on each field or 80-acre tract, whichever is smaller, with the analysis to be conducted by a laboratory participating in the University of Nebraska Soil Testing Program. The results of the analysis shall be attached to the report form.
- (h) Applicators/operators must conduct irrigation scheduling.
- (i) If manure or sludge is applied to the field, applicators/operators must use a credit for the nitrogen in the manure or sludge used in the calculation for the nitrogen fertilizer recommendation. A laboratory analysis must be conducted for each source of manure or sludge and attached to the report form.
- (j) If the previous year's crop was a legume (e.g. beans, alfalfa, etc.), applicators/operators must use a credit in the nitrogen fertilizer recommendation.
- (k) Owner/operator must submit an annual report to the District which include crops, applicable test results, water applied, N applied, etc.
- (l) Applicators/operators must attend a nitrate and irrigation management education program provided by the URNRD. This program will be informal and brief.

**12.02.05** Phase IV Designation Area

- (a) Area where the nitrate-nitrogen concentration is greater than 10 mg/l and comprises more than 50% of six adjacent sections.
- (b) All Phase III requirements apply.
- (c) Prior to March 1, applicators/operators may not apply commercial nitrogen fertilizer or liquid manure for row crops.

- (d) After March 1, applicators/operators must use split applications (i.e. pre-plant/pre-emergent and sidedress (post-emergent)) for applications greater than 100 pounds of actual nitrogen/acre or use a nitrification inhibitor or slow-release coated fertilizer. The operator must furnish dealer certification and documentation that the inhibitor or slow-release coated fertilizer was used at the recommended rate and attached to the report form.

### **12.03 Human Health Program**

**12.03.01** The purpose of this program is to reduce the health risk of the District's population from drinking ground water with a high nitrate-nitrogen concentration.

**12.03.02** The District will sample and analyze water samples from all registered domestic wells once every five years.

**12.03.03** The District will send a letter to each well owner informing them of the nitrate-nitrogen test results.

**12.03.04** If a well's nitrate-nitrogen concentration was greater than 10 mg/l, then the District will review the well's available construction information and request to visit the well site. The purpose of the site visit will be to evaluate whether the high nitrate-nitrogen concentrations may have been caused by a nitrate point source (i.e. fertilizer spill, feed lot, etc.).

**12.03.05** After the site visit, the District will write letter to the well owner regarding concerns, potential causes, and solutions to the high nitrate-nitrogen concentration in their well.

**12.03.06** Additional sampling may be performed as part of the program.

- (a) An owner may request that their registered domestic well be sampled before their scheduled year. The District will meet this request, and reschedule subsequent well samples, so the well is sampled once every five years after the requested sample date.
- (b) The District will sample unregistered domestic wells or stock wells upon request, but the owner must register the well before the well is sampled.
- (c) If a spill event occurs that may cause point source contamination of a well or wells, then the District will sample adjacent wells to estimate the current and future effect of the spill.

## **Rule 13. CHEMIGATION**

**13.01** These rules and regulations are adopted pursuant to the authority granted in Neb. Rev. Stat. §§46-701-754, the Nebraska Ground Water Management and Protection Act, and Neb. Rev.

Stat. §§46-1101-1148, the Nebraska Chemigation Act and Title 195 N.A.C. These rules and regulations are intended to apply district-wide.

## **13.02** Definitions

- 13.02.01** Applicator shall mean any person engaged in the application of chemicals by means of chemigation. Applicator shall include any person operating equipment used for chemigation whether for himself or herself or on behalf of the permitholder for the land on which the chemigation will take place.
- 13.02.02** Chemical shall mean any fertilizer, herbicide, or pesticide mixed with the water supply.
- 13.02.03** Chemigation shall mean any process whereby chemicals are applied to land or crops in or with water through an on farm irrigation distribution system.
- 13.02.04** Council shall mean the Environmental Quality Council.
- 13.02.05** Department shall mean the Department of Environmental Quality.
- 13.02.06** Director shall mean the Director of Environmental Quality.
- 13.02.07** District shall mean the Upper Republican Natural Resources District, which encompasses Chase, Dundy, and Perkins Counties, in the State of Nebraska.
- 13.02.08** Fertilizer shall mean any formulation or product used as a plant nutrient which is intended to promote plant growth and contains one or more plant nutrients recognized by the Association of American Plant Food Control Officials in its official publication.
- 13.02.09** Injection location shall mean each site where chemicals will be applied through an irrigation distribution system.
- 13.02.10** Irrigation distribution system shall mean any device or combination of devices having a hose, pipe, or other conduit, which connects directly to any source of ground or surface water, through which water or a mixture of water and chemicals is drawn and applied for agricultural or horticultural purposes. Irrigation distribution system shall not include any hand-held hose sprayer or other similar device which is constructed so that an interruption in water flow automatically prevents any backflow to the water source.
- 13.02.11** Open discharge system shall mean a system in which the water is pumped or diverted directly into a ditch or canal in such a manner that the force of gravity at the point of discharge into the ditch or canal cannot cause water to flow back to the point from which the water was pumped or diverted.
- 13.02.12** Permitholder shall mean the owner or operator of land who applies or authorizes the application of chemicals to such land by means of chemigation. The permitholder shall be the party primarily responsible for any liability arising from chemigation on the property.

**13.02.13** Pesticide shall mean any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, insect, rodent, nematode, fungus, weed, or other form of plant or animal life or virus, except viruses on or in living humans or animals, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

**13.02.14** Restricted Use Pesticide shall mean a pesticide classified as a restricted-use pesticide by the United States Environmental Protection Agency, a state-limited-use pesticide, or any pesticide for which an exemption under section 136p of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136, et seq., has been granted.

**13.02.15** Working day shall mean Monday through Friday but shall not include Saturday, Sunday, or a federal or state holiday. In computing two working days, the day of receipt of the permit is not included and the last day of the two working days is included.

### **13.03** Chemigation Application

**13.03.01** No person shall chemigate, or authorize the application of chemicals to land or crops through the use of chemigation, unless such person obtains authorization from the District, via permit, authorizing such chemigation. No permit is required to pump or divert water to or through an open discharge system. Each injection location must be permitted on an annual basis, using forms provided by the District. Each permit expires on June 1 of each year, and the permitholder is solely responsible for renewal.

**13.03.02** An application for a chemigation permit shall be considered received by the District on the date it is either hand delivered or received by mail, so long as the application is properly completed as per Nebraska Administrative Code Title 195, signed by the permitholder, and the permitholder has paid the requisite fee (see Section 13.10: Chemigation Permit Fee Schedule). Any incomplete, unsigned, or unpaid applications will be returned to the applicant.

### **13.04** Certification

**13.04.01** Pursuant to Title 195, Chapter 13, Nebraska Department of Environmental Quality, all chemigation applicators must undergo and maintain certification. Training programs shall be offered through the University of Nebraska Cooperative Extension Service. The director shall issue a certificate acknowledging the competency, determined through the use of a written examination prepared and administered by the department. Each applicator's certificate, shall be valid for a period of four years, and shall expire on January 1 of the fourth year after the date of issuance.

### **13.05** Original Permit Process

**13.05.01** The District shall review each completed permit application, conduct an inspection, and approve or deny the application within 45 days after the application is filed.

**13.05.02** No chemigation permit, except a Special permit, shall be issued or renewed by the district, if any of the following conditions occur:

- a. The applicant has failed to provide the required information, as specified in Title 195, Chapter 2, 002, Nebraska Department of Environmental Quality on the application form;
- b. The irrigation distribution system does not comply with the equipment standards set forth in Title 195, Chapters 9 and 10, Nebraska Department of Environmental Quality;
- c. The applicator has not been certified as a chemigation applicator by the Department; or
- d. Failure of the applicant to remit the appropriate fee

**13.05.03** Changes in application information shall be provided to the District within 10 days.

### **13.06** Renewal Process

**13.06.01** All permits must be renewed annually. If a renewal form has not been completed and filed with the requisite fee (see Section 13.10: Chemigation Permit Fee Schedule), the permit shall not be renewed without filing an original application. Since permits expire on June 1, all renewable applications must be on file with the District by May 31. Each application for renewal is subject to inspection of equipment and site to determine compliance with the Chemigation Act and these rules and regulations. If an inspection reveals noncompliance, renewal shall be refused, suspended, or revoked until compliance is achieved, as determined by the District. Under no circumstances may a permit be transferred.

### **13.07** Special Permits

**13.07.01** If the chemigation system does not need all the safety equipment, as determined by District inspection, the District shall forward such information to the Department for review. If the Department agrees with the District's inspection, the Department shall grant the District authority to issue a special permit. Before issuing any special permit, the District shall obtain information for special permits specified by N.A.C. Title 195, Ch. 5.

### **13.08** Emergency Chemigation Permit Approval

**13.08.01** A person may file an application for an emergency permit as established in Title 195, Chapter 6, Nebraska Department of Environmental Quality. The District shall have two working days to review the permit before issuing or denying. “Two working days” shall mean Monday through Friday, but does not include Saturday, Sunday, or a federal or state holiday. The day the District receives the permit application is not included in the two working days. On the second working day, the District shall complete its review and either issue or deny the permit. If the District has not denied the permit within two working days, the permit shall be deemed issued.

**13.08.02** Emergency permits shall be valid for a period of forty five (45) days from the date of issuance.

**13.08.03** Any holder of an emergency permit or an applicator applying chemicals pursuant thereto who violates any of the provisions of the Nebraska Chemigation Act or standards, rules and regulations adopted under it, shall have such permit automatically revoked by the district or the Department, without a hearing and shall be guilty of a Class II misdemeanor

### **13.09** Permit Revocation

**13.09.01** The District shall immediately suspend any and all permitted chemigation systems if there is an actual or imminent threat of danger to the public or environment due to the operation of the chemigation system.

**13.09.02** The District shall suspend or deny any and all permits if: a permit was obtained fraudulently; a permitholder fails to notify the district of equipment replacement or alteration within seventy-two hours; Applicator or permitholder fails to notify the District and Department of actual or suspected spill or accident within 24 hours; Permitholder fails to carry out cleanup measures developed by the Department within the time specified.

**13.09.03** Should a violation of the Nebraska Chemigation Act or rules and regulations promulgated pursuant to the Act occur, the District shall notify the person in violation. The violator has 10 days to remedy the violation or request a hearing before the District’s Board of Directors. If the violation has not been corrected in the 10-day period, the District shall notify the Department of the violation. If after a preliminary investigation, the Department determines there is a violation, then the person’s permit shall be revoked until compliance is met. For systems operated by a permitholder, the District may, but shall not be required to, establish a compliance schedule in lieu of the 10-day compliance deadline.

### **13.10** Chemigation Permit Fee Schedule

**13.10.01** As required by Title 195, Chapter 3, Nebraska Department of Environmental Quality, the District shall review applications, conduct inspections, and approve or deny

permits. No permit may be approved without payment of the requisite permit fee, which shall reflect the cost of administration and inspections.

- A. An original application fee of \$ 30.00 and \$ 40.00 beginning in 2016 for each new permit shall be paid to the District, of which \$5.00 shall be paid to the Department of Environmental Quality.
- B. A special permit application fee of \$ 50.00 shall be paid to the District, of which \$5.00 shall be paid to the Department of Environmental Quality.
- C. The annual renewal fee of \$ 20.00 and \$ 40.00 beginning in 2016 shall be paid to the District, of which \$2.00 shall be paid to the Department of Environmental Quality.
- D. An emergency permit application fee of \$ 200.00 shall be paid to the District, of which \$10.00 shall be paid to the Department of Environmental Quality.

### **13.11 Inspections**

**13.11.01** District and Department employees shall have reasonable access to inspect all chemigation systems and to otherwise carry out their duties pursuant to the Act; specifically, Neb. Rev.Stat. § 46-1124. The District shall conduct an inspection of each injection location for which the permit is sought in order to ensure compliance with the equipment standards set forth herein and in Title 195, Chapters 9 and 10, Nebraska Department of Environmental Quality.

**13.11.02** The District shall conduct an inspection of replaced or altered equipment and shall approve the continuance of chemigation so long as the inspected equipment is deemed to be in compliance with the Act. The District shall not collect a new fee for an inspection of previously approved injection locations.

Timing of inspections:

- Inspections for original applications shall be conducted within 45 days of filing.
- Inspections for special permits shall be conducted prior to permit renewal.
- Inspections for an emergency permit shall be conducted during the 45 day effective period if no inspection was conducted prior to the permit issuance.
- The District has the right to inspect any location up for renewal to determine compliance. Should an inspection determine noncompliance with the Act, the District shall refuse the application until compliance with the Act is demonstrated.

### **13.12 Equipment**

**13.12.01** Irrigation distribution systems with chemigation capabilities shall be equipped with the following devices:

- A. Check valve



- B. Vacuum relief valve
- C. Inspection port
- D. Low pressure drain
- E. Chemical injection line check valve
- F. Simultaneous interlock device

**13.12.02** Equipment shall be in compliance with Title 195, Chapters 9 &10, Nebraska Department of Environmental Quality and any rules and regulations promulgated by the District.

**13.12.03** All permitholders shall maintain the above listed equipment in good working condition at all times of chemigation.

### **13.13** Posting

**13.13.01** All permitholders shall post signs on chemigated fields when using any herbicide or pesticide, or a chemical for which the label requires posting. A sign with the words, “KEEP OUT, CHEMICAL APPLICATION THROUGH IRRIGATION WATER SYSTEM” shall be posted by the permitholder at each point of entry into the treated area, adjoining farmstead, or residential area, along any public road where public exposure may occur, and at the point of chemical inject if such point is outside the treated area. The signs shall conform to District rules and regulations as well as Title 195, Chapter 12, 002.04, Nebraska Department of Environmental Quality.

### **13.14** Enforcement

**13.14.01** The District shall enforce the provisions of Neb. Rev. Stat. §§ 46-601, 46-602.01, the Groundwater Management and Protection Act, the Nebraska Chemigation Act, and all its own orders and rules and regulations adopted pursuant thereto through the issuance of a formal notice of an alleged violation, cease and desist orders issued and enforced against operators or landowners, as determined by the Board of Directors, and/or by bringing an appropriate action in the district court in the county where the violation occurs for the reasons and by the procedures as follows. Absent an immediate threat, the District shall give 3 days’ notice to the affected person and an opportunity to be heard before issuing a cease and desist order to enforce the Ground Water Management Protection Act or the Chemigation Act.

**13.14.02** In the event the District finds an adverse effect caused by an actual or suspected accident related to chemigation, the District may require the permitholder to carry out a cleanup and recovery plan pursuant to Neb. Rev. Stat. §46-1131.

**13.14.03** The District shall make reasonable efforts to obtain voluntary compliance before compelling compliance through the legal system.

### **13.15 Reporting**

**13.15.01** The applicator or permitholder shall report any actual or suspected accident related to the use of chemigation in his or her system to the Department and the District within twenty-four hours of its discovery. Notification shall be made by telephone to the Department and the District during office hours, from 8:00 a.m. to 5:00 p.m., Monday through Friday. After hours, weekdays, and holidays, reports shall be made to the Nebraska State Patrol. All information known about the accident at the time of discovery shall be included, such as time of occurrence, quantity and type of material, location and any corrective or cleanup actions presently being taken.

**13.15.02** Permitholders shall notify the District and the Department of any actual or suspected accident resulting from the use of chemigation within 24 hours. Failure to do so may result in a civil penalty of not more than five hundred dollars or a guilty verdict of a Class III misdemeanor. Permitholders shall note the District and Department consider each day a single, separate violation.

**13.15.03** Permitholders who either replace or alter or authorize such replacement or alteration of chemigation equipment previously approved by the District shall notify the District within 72 hours of such replacement or alteration. The District shall conduct an inspection of the replaced or altered equipment.

### **Rule 14. MORATORIUM**

**14.01** Pursuant to Neb. Rev. Stat. §46-739(1) (Reissue 2004), to achieve the purposes for which the Management Area was designated, there shall be no additional permits to construct a new water well issued nor shall there be an increase of irrigated acres within the entirety of the District.

**14.01.01** Industrial, public water system wells, and all wells that do not require a permit are exempt from Rule 13.01.

(a) Exemption under Rule 13.01.01 does not imply exemption from well spacing requirements (Rule 6), nor imply a new allocation will be granted (Rule 8).

### **Rule 15. GENERAL ENFORCEMENT PROVISIONS**

**15.01** The District may at any time order the District staff to investigate any matter within the jurisdiction of the Board or may order any hearing which the Board is authorized either by law or inherent power to conduct. The Board may require the attendance of any person at such hearing.

**15.02** The Board, at its discretion, may grant variances from the strict application of these rules and regulations upon good cause shown.

**15.03** Owners or operators of wells shall allow the District staff to enter upon any land, after requiring notice as provided by law, for the following purposes:

**15.03.01** To determine the amount of ground water withdrawn by any well;

**15.03.02** To inspect any flowmeter to insure proper installation, operation, and maintenance;

**15.03.03** To inspect any chemigation system to insure proper installation, operation, registration, and maintenance; and

**15.03.04** For any other reason necessary to implement, administer, and discharge the duty of the District, as mandated by order, rule, regulation, control, or statute.

**15.04** The District shall enforce the provisions of the Ground Water Management and Protection Act, the Chemigation Act, and its own orders, rules, and regulations by the issuance of cease and desist orders and by bringing or defending appropriate legal actions, in the district court of the county where the violations occur, for enforcement of such orders. Such enforcement actions may consist of, but are not limited to, any one or more of the following sanctions:

**15.04.01** Issuance of a cease and desist order pursuant to the Ground Water Management and Protection Act;

**15.04.02** Reduction of allocation, in whole or in part, for a period to be specified by the Board, but not limited to the current allocation period;

**15.04.03** Reduction of carryforward allocation carried forward from previous allocation periods, in whole or in part;

**15.04.04** Reduction in the number of certified irrigated acres on the tract, in whole or in part; and

**15.04.05** Revocation of a chemigation applicator's permit.

**15.05** Any person who increases irrigated acres without consent of the Board, or who fails to comply with conditional requirements of any variances granted, shall be subject to one or any combination of the sanctions set forth in Rule 14.04.

**15.06** Any person who chemigates without either an applicator's certificate or proper chemigation equipment pursuant to the Chemigation Act shall be subject to one or any combination of the sanctions set forth in Rule 14.04.

**15.07** Owners of irrigated tracts receiving an allocation on certified irrigated acres are responsible for installing, inspecting, and maintaining the proper installation and operation of flowmeter(s) pursuant to these rules. Failure to do so shall subject the owner to one or any combination of the sanctions set forth in Rule 14.04.

**15.08** Any person who tampers, obstructs, modifies, or takes any action for the purpose of producing an inaccurate or incorrect flowmeter reading or who takes any other action that would prevent the District from obtaining an accurate estimate of actual water use shall be subject to one or any combination of the sanctions set forth in Rule 14.04.

**15.09** In assessing a sanction, the District shall consider the degree and extent of the violation, the size of the operation, whether the violator has been previously determined to have violated a cease and desist order, controls, rules, or regulations of the District, the urgency of remedial action, and any economic benefit derived from noncompliance.

**15.10** Any person within the District, or the Board on its own motion, may file a written complaint alleging violations of these rules and regulations, or of Board orders or controls, or any provision for enforcement delegated to Natural Districts by Nebraska Revised Statutes.

**15.10.01** Complaints shall be filed at the District office, 511 East 5<sup>th</sup> Street, P.O. Box 1140, Imperial, Nebraska 69033.

**15.10.02** Nothing in this Rule shall prohibit the District from investigating violations discovered by District staff without a written complaint.

**15.11** Upon receipt of a complaint described in Rule 14.10, the District staff shall investigate the potential violation or violations. If the District staff finds reasonable grounds to believe that a ground water user is, or was, at the time specified in the complaint, in violation of District rules, regulations, controls, or orders, then the District staff shall prepare a report of the investigation and the report shall be filed with the Board. A copy of the report shall be served in person or by certified mail, on the alleged violator and the complainant if other than the District.

**15.12** If the report indicates the investigation discloses there is reasonable cause to believe the ground water user is, or was, at the time specified in the complaint, in violation of District rules, regulations, controls or orders, the report shall be accompanied by a formal notice of the alleged violation and the alternatives available to the alleged violator. Upon receipt of the report and formal notice of violations, the alleged violator shall:

**15.12.01** Accept the report and District staff's findings that the alleged violation or violations has occurred or is occurring, consent to cease and desist from continuing or allowing the reoccurrence of such violation or violations, and within 15 days from the date of service of the report and formal notice of alleged violations, submit a plan and schedule of compliance. If the Board, sitting as a quasi-judicial body, determines the plan and schedule of compliance are adequate, it shall approve the proposed plan and schedule of compliance. If the Board, sitting as a quasi-judicial body, determines the plan and schedule of compliance are inadequate, it shall allow the alleged violator to amend or revise the plan and schedule of compliance. Once a plan and schedule of compliance have been approved by the Board, the Board shall address the issue of the imposition of sanctions as provided by the District's rules, regulations or orders, or by Nebraska Revised Statutes.

**15.12.02** Within 15 days from the date of service of the report and formal notice, reject the report and findings, and request a formal adjudicatory hearing.

**15.13** If the alleged violator shall fail to either accept or reject the report and District staff's findings within 15 days of the date of service of the report and formal notice, the Board shall:

**15.13.01** Review the report and any other relevant information; and

**15.13.02** Following the Board's review of the report and other relevant information- may issue such orders as it deems appropriate. The Board may also impose such sanctions as provided by the District's rules, regulations and orders, or as provided by Nebraska Revised Statutes.

**15.14** If the complaint is filed by a person within the District, the person shall be notified of the Board's proposed action. If the complainant objects to the proposed action by the Board, the complainant shall request a formal adjudicatory hearing within 15 days of date of service of the notification of proposed action. If the complainant fails to object to the proposed action and request a formal adjudicatory hearing within 15 days of the date of service of notification, the Board's action shall be deemed final.

## **Rule 16. FORMAL ADJUDICATORY HEARINGS**

**16.01** Formal Adjudicatory Hearings will be conducted by the District in a manner determined by the District for the following purposes:

**16.01.01** Any purpose as provided by the District's rules, regulations and orders.

**16.01.02** On the request of any party aggrieved by final action of the Board. Provided, that such request is made within the time prescribed by these rules and regulations.

**16.01.03** On the Board's motion, to resolve matters governed by the District's rules, regulations and orders or delegated to enforcement by Natural Resources Districts by Nebraska Revised Statutes.

## **Rule 17. ADDITIONAL CONSIDERATIONS**

**17.01** The Board shall authorize the exploration of alternative means of supplying additional water to the Republican River Basin and, if warranted, any necessary research, investigation, or other activities necessary to pursue alternatives determined by the Board to be plausible, efficient, and feasible. Areas of such additional supply to be investigated include, but are not limited to:

**17.01.01** Transbasin diversions and transport of water from sources outside the Republican River Basin for the benefit of the District; and

**17.01.02** Augmentation of water supplies to the Republican River Basin through the mechanical, chemical, or other removal of trees and other phreatophytes depleting the ground water or surface water flows to the Republican River Basin.

### **Rule 18. GENERAL PROVISIONS**

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

**18.02** These rules and regulations may be amended at any time upon proper notice and hearing as provided by law.

**18.03** These amended rules and regulations shall supersede and prompt all prior orders, including any and all tech manuals.

# Appendix

**Table 1.** Conversion factors

1-acre-foot	325,851 gallons
1 acre-inch	27, 154 gallons
1 acre-foot covers 1 acre of land 1 foot deep	
1 acre-inch covers 1 acre of land 1 inch deep	
10.833 acre-feet	1 in./ac. on 130 acres
140.829 acre-feet	13 in./ac. on 130 acres
98.05 hr. @ 600 gpm	1 in./ac. on 130 acres
73.54 hr. @ 800 gpm	1 in./ac. on 130 acres
58.83 hr. @ 1000 gpm	1 in./ac. on 130 acres

**Table 2.** Animal Unit Equivalents

Slaughter Steer/Heifer	1.0
Cow --1000 Pounds	1.0
Dairy Cow	1.4
Cow/Calf Pair	1.4
Sheep (Ewe )	0.1
Swine- -Under 55 pounds	0.05
Swine --Over 55 pounds	0.4
Horse --{Medium Size)	1.0

**Table 3. Well Spacing Requirements**

<b>Minimum Spacing Requirements</b>			
	New Wells	Replacement Wells	
		Well to be replaced is not within 600 ft. of another land owner's domestic or range livestock, 2640 ft. from any public water supply well or 1000 ft. of any other well	Well to be replaced is within 600 ft. of another land owner's domestic or range livestock well, 2640 ft. from any public water supply well or 1000 ft. of any other well
Domestic	Not regulated	Not regulated	Not regulated
Livestock	Not regulated	Not regulated	Not regulated
Commercial Livestock	600 ft. from domestic and range livestock wells, 2640 ft. from any public water supply well & 1000 ft. from all other well(s) owned by others	600 ft. from domestic and range livestock wells, 2640 ft. from any public water supply well & 1000 ft. from all other well(s) owned by others	Replacement well must be drilled within 150 ft. of well to be replaced
Irrigation	600 ft. from domestic and range livestock wells, 2640 ft. from any public water supply well & 1000 ft. from all other well(s) owned by others	600 ft. from domestic and range livestock wells, 2640 ft. from any public water supply well & 1000 ft. from all other well(s) owned by others	Replacement well must be drilled within 150 ft. of well to be replaced
Industrial	600 ft. from domestic and range livestock wells, 2640 ft. from any public water supply well & 1000 ft. from all other well(s) owned by others	600 ft. from domestic and range livestock wells, 2640 ft. from any public water supply well & 1000 ft. from all other well(s) owned by others	Replacement well must be drilled within 150 ft. of well to be replaced
Municipal	600 ft. from domestic and range livestock wells, 2640 ft. from any public water supply well & 1000 ft. from all other well(s) owned by others	600 ft. from domestic and range livestock wells, 2640 ft. from any public water supply well & 1000 ft. from all other well(s) owned by others	Replacement well must be drilled within 150 ft. of well to be replaced

\* No new or replacement well may be drilled closer to an existing well than provided above, unless all owner(s) of any existing well(s) execute a notarized waiver of the spacing protection provided by this rule which shall be filed with the District. In no event shall a well be drilled within 150 feet of any domestic or range livestock well owned by another individual.



