

Unless otherwise specified, the following rules and regulations apply to the entirety of the Upper Loup Natural Resources District which is designated as a Ground Water Management Area.

## **Rule 1: DEFINITIONS**

- 1.01 Abandoned Well** shall mean a water well 1) the use of which has been accomplished or permanently discontinued, 2) which has been decommissioned as described in the rules and regulations of the Department of Health and Human Services Regulation and Licensure, and 3) for which notice of abandonment required by Neb. Rev. Stat. § 46-602(8) has been filed with the Department by the licensed water well contractor or pump installation contractor who decommissioned the water well or by the water well owner if the owner decommissioned the water well.
- 1.02 Acre-inch** shall mean the amount of water necessary to cover an acre of land one inch deep.
- 1.03 Act** shall mean the Nebraska Ground Water Management and Protection Act, Neb. Rev. Stat. §§ 46-701 to 46-754, and may be referred to as “the Act”.
- 1.04 Active Status Water Well** shall mean a water well which is in use and which is not an illegal water well.
- 1.05 Alleged Violator** shall mean the landowner and/or operator of the land who allegedly has failed to comply with any of these rules and regulations.
- 1.06 Application for a Permit** shall mean an application on a written form supplied by the District for the construction of water well in accordance with Neb. Rev. Stat. §§ 46-735 to 46-738.
- 1.07 Application for a Late Permit** shall mean an application for a permit that was not timely filed. Such permit shall be reviewed by the District in accordance with Neb. Rev. Stat. § 46-736.
- 1.08 Application for a Transfer Permit** shall mean an application on a form supplied by the District for the physical transfer of ground water or the transfer of certified acres.
- 1.09 Back-up Well** shall mean a commercial livestock or industrial well which operate only in emergencies when the primary well fails. Back-up wells shall not be operated simultaneously with the primary well.
- 1.10 Base Allocation** shall mean the number of acre-inches of ground water per year per certified irrigated acre.
- 1.11 Beneficial Use** shall mean that use by which ground water may be put to use to the benefit of humans or other species.

- 1.12 Best Management Practices (BMPs)** shall mean the scheduling of activities, maintenance procedures and other management practices used for purposes of irrigation efficiency, to conserve or effect a savings of ground water, or to prevent or reduce present and future contamination of ground water. Best management practices may include but are not limited to such things as soil testing, water testing, manure testing, irrigation scheduling, monitoring of irrigation water applications, use of inhibitors, proper timing and rate of fertilizer and pesticide application, and other fertilizer and pesticide management programs. In determining the rate of fertilizer application, the District shall consult with the University of Nebraska or a certified crop advisor certified by the American Society of Agronomy.
- 1.13 Board or Board of Directors** shall mean the elected Board of Directors of the Upper Loup Natural Resources District.
- 1.14 Certification** shall mean a current certificate of completion issued by the District to the operator for completion of the necessary educational programs specified by the District.
- 1.15 Certified Irrigated Acre** shall mean any acre of land upon which ground water is being applied for irrigation purposes greater than two (2) acres in total, regardless of the source of the ground water, and that has been certified as such by the Board.
- 1.16 Certified Irrigated Tract** shall mean an irrigated tract, not exceeding six hundred and forty (640) contiguous acres, consisting of certified irrigated acres.
- 1.17 Certified Laboratory** shall mean any laboratory within or outside the State of Nebraska certified and approved by the Nebraska Department of Environmental Quality.
- 1.18 Chemical** shall mean any fertilizer, fungicide, herbicide, or pesticide mixed with the water supply for application through chemigation.
- 1.19 Chemigation** shall mean any process whereby chemicals are applied to land or crops in or with ground water through an on farm irrigation distribution system.
- 1.20 Commercial Livestock Well** shall mean a well used for watering of livestock and other uses directly related to the operation of a feedlot or other confined livestock or dairy operation that pumps over fifty (50) gallons per minute.
- 1.21 Commingled Wells** shall mean two or more water wells that are commingled, combined, clustered, or joined with any other water well or wells or other water source, other than a water source used to water range livestock. Such wells shall be considered one water well and the combined capacity shall be used as the rated capacity.
- 1.22 Complainant** shall mean any person who files a complaint alleging a violation of these rules and regulations.
- 1.23 Compliance Officer** shall mean an employee or agent of the District authorized by the District Manager to perform the functions assigned to him or her by these rules and regulations.

- 1.24 Conservation Assistance** shall mean any payments, technical, and/or planning assistance or other forms of compensation provided by the Upper Loup NRD utilizing District equipment and/or funds or utilizing funds from programs administered by the District.
- 1.25 Consumptive Use** 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.
- 1.26 Contamination or contamination of ground water** shall mean nitrate nitrogen or other material which enters the ground water due to 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.
- 1.27 Critical Area** shall mean a geographic area, designated by the Board within which ground water users shall be subject to regulations to protect ground water or surface water quality and supplies.
- 1.28 Decommission** when used in relation to a water well shall mean the act of filling, sealing, and plugging a water well in accordance with the Department of Health and Human Services Regulation and Licensure rules and regulations.
- 1.29 Department** shall mean the Nebraska Department of Natural Resources.
- 1.30 Dewatering Well** shall mean a water well constructed and used solely for the purpose of lowering the ground water table elevation.
- 1.31 District, ULNRD, or NRD** shall mean Upper Loup Natural Resources District.
- 1.32 Director** shall mean the Director of the Department of Natural Resources.
- 1.33 Domestic Well** shall mean a water well, designed and constructed to pump fifty (50) gallons per minute or less, 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 of domestic animals. Such wells are exempt from application of these rules and regulations.
- 1.34 Educational Programs** shall mean information and training programs designed to educate a landowner and/or operator of the land with best management practices in the operation of irrigation and cropping systems.
- 1.35 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.
- 1.36 Flow Meter** 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 flow meter shall be a mechanical or sensor device which measures and totalizes the amount of ground water withdrawn.

- 1.37 Formal Notice** shall mean written notice provided from the District to an alleged violator of an alleged violation of the rules and regulations.
- 1.38 Good Cause Shown** shall mean a reasonable justification for granting a variance from a consumptive use of water that would otherwise be prohibited by rule or regulation and which the District 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 rule or regulation from which a variance is sought.
- 1.39 Ground Water** shall mean that water which occurs or moves, seeps, filters, or percolates through ground under the surface of the land.
- 1.40 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.
- 1.41 Ground Water Management Area** shall mean any geographic area, up to and including the entire Upper Loup NRD that shall be designated by the Board pursuant to Neb. Rev. Stat. § 46-712.
- 1.42 Ground Water Management Plan** shall mean a plan developed by the Upper Loup NRD, and approved by the Department in accordance with Neb. Rev. Stat. §§ 46-709 to 46-711.
- 1.43 Ground Water Quality Controls** shall mean the rules and regulations adopted for ground water quality management based on the three (3) phase program defined in Rule 12.01.
- 1.44 Ground Water User** shall mean a person who at any time pumps, extracts, withdraws, or confines ground water for any use by any person at a rate in excess of fifty (50) gallons per minute. Whenever the landowner and operator are different persons or entities, the term ground water user shall include both the landowner and operator.
- 1.45 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.
- 1.46 Illegal Water Well** shall mean (a) any water well operated or constructed without or in violation of a permit required by the Act or these rules and regulations, (b) any water well not properly registered in accordance with Neb. Rev. Stat. §§ 46-602 to 46-604, (c) any water well in violation of spacing requirements specified by Neb. Rev. Stat. §§ 46-609 or 46-651, (d) any well located within fifty (50) feet of the bank of a channel of any natural stream and utilized for irrigation purposes without a permit required by Neb. Rev. Stat. § 46-637, (e) 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.

- 1.47 Inactive Well** shall mean a water well that is not currently in use and 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 as provided by Neb. Rev. Stat. § 46-1207.02. The well must be registered as being in inactive status with the Department.
- 1.48 Industrial Well** shall mean a water well that provides ground water for manufacturing, commercial, and power generation purposes. Commercial use shall include, but not limited to, maintenance of golf course turf.
- 1.49 Improper Irrigation Run-off** shall mean the occurrence of irrigation run-off water (1) within a designated management area; (2) which causes or contributes to the accumulation of water upon or beneath the surface of the lands of any other person(s) to their detriment, or (3) which causes or contributes to the deterioration of water quality by depositing sediment or associated chemicals in surface waters within the area.
- 1.50 Installer** shall mean the person that installs flow meters on the groundwater user's irrigation equipment.
- 1.51 Irrigated Acre** shall mean any acre of land that is assessed as irrigated with the County Assessor.
- 1.52 Irrigation Run-off Water** shall mean ground water used for irrigation purposes which escapes from land owned, leased, or otherwise under the direct supervision and control of a ground water user.
- 1.53 Irrigation Well** shall mean an active water well that is fully equipped, and used for the pumping of ground water to more than two (2) acres of crops and other plants.
- 1.54 Landowner** shall mean any person who owns real estate or has contracted to purchase or otherwise acquire title to real estate.
- 1.55 Livestock Well** shall mean a water well with pumping capacity of fifty (50) gallons per minute or less which is used for the watering of livestock and other uses of water directly related to the operation of a pasture, range, feedlot or other confined livestock or dairy operation. Such wells are exempt from application of these rules.
- 1.56 Monitoring Well** shall mean a water well from which ground water is withdrawn for purposes of monitoring the possible presence of contaminants.
- 1.57 Non-point Source Contamination** shall mean any source of pollution resulting from the dissolution and disbursement of widespread, relatively uniform contaminants of a non-specific origin.
- 1.58 Observation Well** shall mean a water well that is used for purposes of monitoring the static water level.
- 1.59 Operator** shall mean the person who has control over the day-to-day operations of the land in question, which shall include any landowner and/or any tenant.

- 1.60 Overlying Land** shall mean the tract of land where the well withdrawing the ground water is or will be located and any other tract of land that 1) is owned or controlled by the same person or persons as the tract of land where such well is or will be located, 2) is not completely separated from such tract of land by land owned by any other person, and 3) is located in the same government surveyed section as such well is located or will be located in or in a government surveyed section adjacent to the section where such well is or will be located.
- 1.61 Parts per Million (ppm)** shall mean a ratio used to describe the presence of any substance that may contaminate water, where one part of the contaminant is present among one million parts of water.
- 1.62 Permit to Construct a Water Well** 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 or replacement well.
- 1.63 Person** shall mean a natural person, a partnership, a limited liability company, an association, a corporation, a municipality, an irrigation district, an agency or political subdivision of the state, or a department, an agency, or a bureau of the United States.
- 1.64 Phase Area** shall mean a geographic area, designated by the Board, within which ground water users shall be subject to regulations to protect ground water quality.
- 1.65 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.
- 1.66 Public Water Supply Well** shall mean a water well used by villages, towns, cities, rural water districts, or other public water systems (as further defined in 179 Nebraska Administrative Code) for providing the public with ground water.
- 1.67 Replacement Well** shall mean a water well which is constructed to provide water for the same purpose as the original water well and is operating in accordance with any applicable permit from the Department and any applicable rules and regulations of the District and, if the purpose is for irrigation, delivers water to the same tract of land served by the original water well and (i) replaces a decommissioned water well within one hundred and eighty (180) days after the decommissioning of the original water well, (ii) replaces a water well that has not been decommissioned but will not be used after construction of the new water well and the original water well will be decommissioned within one hundred eighty (180) days after such construction, except that in the case of a municipal water well, the original municipal water well may be used after construction of the new water well but shall be decommissioned within one (1) year after completion of the replacement water well, or (iii) the original water well will continue to be used but will be modified and equipped within one hundred eighty (180) days after such construction of the replacement water well to pump fifty (50) gallons per minute or less and will be used only for livestock, monitoring, observation, or any other non-consumptive or de-minimis use approved by the District. In addition, the replacement well shall not irrigate more acres than were irrigated by the original well.

- 1.68 State** shall mean the State of Nebraska.
- 1.69 Supplemental Well** shall mean 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.
- 1.70 Test Hole** shall mean a hole designed solely for the purpose of obtaining information on hydrologic or geologic conditions.
- 1.71 Transfer** shall mean any arrangement approved by the Board through the granting of a permit in which the location of use or location of certified irrigated acres is altered.
- 1.72 Transport** shall mean the actual movement of water from one point to another by physical and or mechanical means.
- 1.73 Variance** shall mean the approval of the District to act in a manner contrary to existing rules or regulations of the District, whose rule or regulation is otherwise applicable.
- 1.74 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 reductions of irrigated acres certified previously by the District.
- 1.75 Water Well** shall mean 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 fluid as defined in Neb. Rev. Stat. § 81-1502 into the underground water reservoir. Water well includes any excavation made for any purpose if ground water flows into the excavation under natural pressure and a pump or other device is placed in the excavation for the purpose of withdrawing water from the excavation for irrigation. For such excavations, construction means placing a pump or other device into the excavation for the purpose of withdrawing water for irrigation. Water well shall not include (i) 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 Commission or (ii) any structure requiring a permit by the Department used to exercise a surface water appropriation.

## **Rule 2: VARIANCES**

- 2.01** The District may grant variances from the strict application of these Rules and Regulations upon good cause shown.
- 2.02** All requests for a variance shall be made on forms provided by the Upper Loup NRD and shall be reviewed by the District..

### **Rule 3: ACCESS**

- 3.01** The Upper Loup NRD 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 these Rules and Regulations and provisions of the Act. This entry shall not be considered trespass.
- 3.02** Notification will be attempted first by regular mail, certified mail or oral communication. Notification may also occur through local newspaper.
- 3.03** The District hereby notifies all operators of its intent to enter onto property, to perform water quality tests, including chemigation inspections and or to verify the installation of flow meters or other devices and to read or verify the readings of flow meters or other device used to measure quantity of ground water used for irrigation.

### **Rule 4: SEVERABILITY OF RULES**

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

### **Rule 5: ENFORCEMENT**

- 5.01** The District shall enforce the Act and all rules and regulations adopted pursuant thereto by the issuance of cease and desist orders in accordance with the procedures hereinafter specified and by bringing appropriate actions in the District Court of the county in which any violation occurs for the enforcement of such orders. The District may can an approved permit pursuant to Rule 19 if it is determined that a violation of such Rule has occurred.
- 5.02** Action of ground water user, landowner or operator following issuance of cease and desist order:
- 5.02.1** A ground water user, landowner or operator who has been served with a cease and desist order for a violation of these rules and regulations shall be allowed seven (7) days (excluding Saturdays, Sundays, and legal holidays) following receipt of such order, to submit a schedule of compliance.
- 5.02.2** The District will review the schedule of compliance and within its sole discretion shall determine if such plan satisfies these rules and regulations. If the plan fails to comply with these rules and regulations, the District shall proceed with the enforcement of the cease and desist order.
- 5.03** The Board may initiate appropriate legal actions to enforce any action or orders of the District.
- 5.04** As provided by the Act, any violation of a cease and desist order issued by the District pursuant to the Act may be subject to a civil penalty assessed pursuant to Neb. Rev. Stat. § 46-746.

## **Rule 6: INSPECTIONS**

- 6.01** A compliance officer may conduct an inspection to confirm compliance with or investigate the alleged violation of these rules and regulations.
- 6.02** A compliance officer may conduct a field inspection upon showing proper identification and after informing the ground water user, landowner, or operator, either in person, by certified mail, return receipt requested, or by leaving notice posted at the ground water user, landowner or operators' last known address of the suspected violation(s) and the purpose of the inspection.
- 6.03** A compliance officer shall be authorized to enter upon the land if necessary for the purpose of making an investigation of the alleged violation pursuant to these rules and regulations.
- 6.04** Upon completion of the investigation of records or field activities, the compliance officer shall file a written report of his or her findings in the District office and shall deliver a copy of the report to the ground water user, landowner, or operator.
- 6.05** If the compliance officer finds that there is reasonable cause to believe that the ground water user, landowner, or operator is in violation of these rules and regulations, the compliance officer's report shall be accompanied by a formal notice to the ground water user, landowner, or operator of the alternative actions available to the alleged violator. Alternative actions include the following:
- 6.05.1** Agree with and accept as true and correct the compliance officer's findings that the alleged violation(s) has in fact occurred or is occurring and consent in writing to cease and desist from continuing or allowing the recurrence of such violation; and submit a schedule for corrective action pursuant to Rule 18.06; or
- 6.05.2** Reject the findings of the compliance officer's report and request in writing within seven (7) days (excluding Saturdays, Sundays, and legal holidays) of the receipt of said report that a formal hearing be scheduled and conducted in accordance with the rules and regulations of the District.
- 6.06** If the alleged violator agrees with the compliance officer's findings and further agrees to submit a plan to conform with these rules and regulations, the ground water user, landowner, or operator shall submit a plan within ten (10) days (excluding Saturdays, Sundays, and legal holidays) following the notification provided by the District. Failure to submit a plan within ten (10) days shall be deemed a rejection of the findings and shall be deemed a request for a formal hearing.
- 6.07** Subsequent to the submission of a plan to take corrective action, the District shall review the investigation report, the plan, and any other related or pertinent document necessary to evaluate the plan.
- 6.08** The District within its sole discretion shall determine whether the actions agreed to by the ground water user, landowner, or operator will, when implemented, bring the ground water user, landowner, or operator into compliance with these rules and regulations. If the District determines that the proposed actions of the ground water user, landowner, or operator are adequate and will prevent future violations within a reasonable time period, such action or plan will be approved and the District shall notify the ground water user,

landowner, or operator of the District's approval and provide a schedule of compliance to complete the plan.

- 6.09** If the District within its sole discretion determines that implementation of the proposed plan or schedule of compliance would be inadequate to prevent further violation of the rules and regulations, the District shall inform the ground water user, landowner, or operator of its disapproval and shall make proposed changes or additions to the plan to obtain conformance with these rules and regulations. An alleged violator shall have five (5) days (excluding Saturdays, Sundays, and legal holidays) from the receipt of the proposed changes from the District to consent to such additions or changes, agree to negotiate appropriate changes, or reject such changes and request a formal hearing.
- 6.10** If voluntary measures cannot be agreed upon between the compliance officer and the ground water user, landowner, or operator, or if the ground water user, landowner, or operator rejects the findings of the compliance officer's report set forth in Rule 18.05.2, then the alleged ground water user, landowner, or operator shall be given an opportunity to contest the investigation report, or the schedule of compliance required by the District, at a Board hearing or formal public hearing to be held no sooner than fifteen (15) days and not more than forty-five (45) days after receipt of the initial notice provided pursuant to Rule 18.05. Notice of the hearing shall be provided to the ground water user, landowner, or operator and any other necessary person. The District's rules for formal hearings shall govern the conduct of all such hearings. The ground water user, landowner, or operator shall be further notified that if he or she fails to respond to any notice and fails to appear at the scheduled hearing, the Board shall proceed to make a final determination as to the alleged violation of these rule and regulations and shall determine if a formal cease and desist order shall be issued and enforced against the ground water user, landowner or operator.
- 6.11** The Board may take any and all actions as it deems necessary to cause the ground water user, landowner or operator to comply with these rules and regulations. A cease and desist order may be issued at the conclusion of the hearing if deemed necessary and appropriate by the Board.

## **Rule 7: PERMIT TO CONSTRUCT WATER WELL**

- 7.01** Except as provided in Rule 7.02 any person who intends to construct a new or replacement water well on land in the ground water management area which he or she owns shall, before commencing construction, apply with the District for a permit on a form provided by the District. The District shall review such applications and issue the approved permit, with or without conditions, or deny the permit within thirty (30) days after the application is properly prepared and received. An incomplete or defective application shall be returned for correction. If correction is not made within sixty (60) days the application shall be cancelled.
- 7.02** Exceptions. No permit shall be required for:
- 7.02.1** Test holes;
  - 7.02.2** Dewatering wells with an intended use of ninety (90) days or less;
  - 7.02.3** A single water well designed and constructed to pump 50 gallons per minute or less; or
  - 7.02.4** Monitoring or observation wells.

- 7.03** A permit is required for a water well designed and constructed to pump fifty (50) gallons per minute or less if such water is commingled, combined, clustered, or joined with any other water well or wells or other water source, other than a water source used to water range livestock. Such wells shall be considered one (1) well and the combined capacity shall be used as the rated capacity.
- 7.04** 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.
- 7.05** The application shall be accompanied by a fifty dollar (\$50.00) filing fee payable to the District and shall contain:
- 7.05.1** The name and post office address of the well owner;
  - 7.05.2** The nature of the proposed use;
  - 7.05.3** The intended location of the proposed water well or other means of obtaining ground water;
  - 7.05.4** The intended size, type and description of the proposed water well and the estimated depth, if known;
  - 7.05.5** The estimated capacity in gallons per minute;
  - 7.05.6** The acreage and location by legal description of the land where the ground water will be used;
  - 7.05.7** A description of the proposed use;
  - 7.05.8** The registration number of the well being replaced, if applicable;
  - 7.05.9** The certified use of the well being replaced, if applicable; and
  - 7.05.10** Such other information as the District may require.
- 7.06** 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 District.
- 7.07** The application for a late permit shall be accompanied by a two hundred and fifty (\$250.00) late fee payable to the District and shall contain the same information required in Rule 7.05.
- 7.08** The application for a permit shall be denied if (1) the location or operation of the proposed water well or other work would conflict with any regulations or controls adopted by the District, (2) the proposed use would not be a beneficial use, or (3) in the case of a late permit only, that the applicant did not act in good faith in failing to obtain a timely permit.
- 7.09** No refund of any application fees shall be made regardless of whether the permit is issued, canceled, or denied.
- 7.10** The issuance, by the District, of a permit or the registration of a water well with the Department shall not vest in any person the right to violate any District 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.
- 7.11** 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 District.

### **Rule 8: WELL SPACING**

- 8.01** Spacing of all wells for which District well construction permits are required shall be approved by the Board prior to drilling the well. New wells must comply with Neb. Rev. Stat. §§ 46-609 and 46-651 in addition to the District's spacing requirements below:
- 8.01.1** No new well requiring a well construction permit except for a backup well shall be constructed upon any land in this District within one thousand three hundred and twenty (1,320) feet of any other irrigation, industrial, commercial, or public water supply well, regardless of ownership.
- 8.01.2** Any replacement irrigation water well that replaces an irrigation water well drilled after January 1, 2008, must be constructed within one thousand three hundred and twenty (1,320) feet of the well that is being replaced.
- 8.02** The well spacing required by Rule 3.01 shall also apply to the distance between a proposed new well requiring a well construction permit and unregistered irrigation, industrial, commercial, or public water supply water well but only for a period of sixty (60) days to allow for registration of such unregistered water well.

### **Rule 9: FLOW METERS**

- 9.01** All wells requiring well construction permits that were constructed after January 1, 2008, shall be equipped with a flow meter. Any inactive wells placed in service after January 1, 2008, shall have a flow meter installed.
- 9.02** All industrial/commercial and public water supply wells shall be equipped with a flow meter, or some other approved recording device, by January 1, 2009.
- 9.03** Each flow meter shall be installed according to the manufacturer's specifications and meet the further specifications listed below:
- 9.03.1** 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;
- 9.03.2** 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;
- 9.03.3** Meters must be located so as to prevent damage to the meter from excessive vibration;
- 9.03.4** Meters mounted in tubes or piping that can be easily removed or are routinely removed at the end of the irrigation season must be identified with the District. In order to verify the meter reading, the District shall be notified seven (7) calendar days prior to the removal of the meter;
- 9.03.5** 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;

- 9.03.6** The District may establish a method by which the installed meter is tagged, sealed, marked or otherwise protected from tampering; and
- 9.03.7** Electronic meters or any meter with a digital readout must have an uninterruptible power supply.
- 9.04** The meter registry of each flow meter shall have a visual volume recording totalizer, which shall record the volume of water in acre-inches. Each flow meter shall also have a clearly visible and readable analog or digital display that provides a real time reading of the rate of flow of water through the flow meter.
- 9.05** The registry of each flow meter shall be protected from the elements of weather. Totalizers shall have sufficient capacity to record the quantity of water withdrawn from each well or commingled wells for the period of one (1) year.
- 9.06** District staff shall have access, on an annual basis, to each well or commingled wells and flow meter(s) at any reasonable time for the purposes of reading and recording information displayed on the flow meter.
- 9.07** In addition to the annual reading of the flow meter, District staff shall also have access to each flow meter at any reasonable time for the purpose of determining the performance, accuracy, and whether such meter has been tampered with.
- 9.08** Each flow meter shall be kept in good working condition and clear of debris, vegetative growth, or other material that could interfere with or impede the operation or performance of such flow meter.
- 9.09** It is the responsibility of the operator to provide for service and to maintain the flow meter according to either manufacturer's standards or standards of the District. When meters are removed for servicing or replacement, records of meter readings should be kept.
- 9.10** Any malfunctioning flow meter shall be reported to the District office at Thedford, Nebraska, by the ground water user, landowner or operator within twenty-four (24) hours after discovery, unless such discovery is on a weekend or holiday recognized by the State of Nebraska. In that event, such malfunction shall be reported before the office closes on the first working day following the discovery. During the time when such flow meter is malfunctioning or removed from the well for service, repair or replacement, the ground water user, landowner or operator shall use a method approved by the District to determine the volume of water withdrawn from the well. The ground water user, landowner or operator shall use best efforts to put the flow meter back in service as soon as possible.
- 9.11** It shall be a violation of these rules and regulations for any person to willfully damage, alter, remove, reset, adjust, manipulate, obstruct, or in any manner interfere with or tamper with any flow meter within the ground water management area for the purpose or with the intent to produce an incorrect, inaccurate or misleading measurement, or to cause, procure or direct any other person to do so. Removing, damaging or unfastening a seal affixed to a flow meter by District staff will be considered as tampering with a flow meter within the meaning of this subsection.

## **Rule 10: TRANSFERS**

- 10.01** Physical transfer of ground water out of State: Requests for transfer of ground water out of state pursuant to Neb. Rev. Stat. § 46-613.01 by any ground water user, shall not be acted upon by the District until such time as the approval or denial, by the Department, of the required transfer permit.
- 10.02** Physical transfer of ground water into the District: Ground water withdrawn outside the District by any ground water user, shall not be transported for use inside the District unless the District from which the ground water is withdrawn approves the withdrawal and transport in advance. Use of the transported water must be in accordance with these rules.
- 10.03** Physical transfer out of or within the District: Any ground water user who desires to withdraw ground water from wells located within the District and transport that ground water off of the overlying land for use elsewhere is required before making such transfer, to apply and receive approval from the Board for the transfer. If the ground water user has received a permit from the Department pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act or the Industrial Ground Water Regulatory Act, the District will approve the transfer.
- 10.04** Transfer of certified irrigated acres: Permanent or temporary transfers of certified irrigated acres may occur only if:
- 10.04.1** Such transfers are within county lines;
  - 10.04.2** All such transfers are approved by the Board (all transfers are subject to conditions imposed by the Board).
  - 10.04.3** An application for a transfer of certified acres shall include, but not be limited to the following:
    - 10.04.3.1** Application form (available from the District);
    - 10.04.3.2** Proof of ownership from tax assessor for each certified irrigated tract to be involved in the transfer request; and
    - 10.04.3.3** Aerial photograph showing tracts to be involved in the transfer.

## **Rule 11: GROUND WATER TRANSFER PERMITS**

- 11.01** Any ground water user who intends to withdraw ground water, and transfer that ground water off the overlying land which he or she owns or controls or change the location of certified irrigated acres shall, before making such transfer, apply for a permit from the District.
- 11.02** Application for Transfer Permit(s) shall include the following information:
- 11.02.1** The name and post office address of each owner of the land where the well(s) are or will be located,
  - 11.02.2** The legal description of the point of withdrawal,
  - 11.02.3** The legal description of the location of use,
  - 11.02.4** The registration number of the water well(s) involved,
  - 11.02.5** The nature of the proposed use,
  - 11.02.6** Identification of any alternative sources of surface water or ground water available to the applicant for the proposed use and the reasons why use of such alternative source or sources is not being sought;

**11.02.7** Any other information the applicant deems relevant to the District's criteria for approval of the proposed withdrawal, transfer, and use.

**11.03** An incomplete application shall be returned to the applicant for corrective action. If a properly completed application is not returned within sixty (60) days thereafter, the application shall be denied without prejudice.

**11.04** Application Fees - In accordance with Neb. Rev. Stat. § 46-691.03, an application for a permit for the withdrawal, transport and use of groundwater off the overlying land to augment water supplies in any Nebraska wetland or natural stream for the purpose of benefiting fish or wildlife or for producing other environmental or recreational benefits shall be accompanied by a nonrefundable fee of fifty dollars (\$50.00) payable to the District. No fee shall be required for the filing of an application for any other proposed withdrawal, transfer and use.

**11.05** Additional Information Requested - Prior to taking action on any application for a permit the District may request the applicant to provide additional information to support his or her application such as an assessment of the effects of the proposed withdrawal, transfer and use on existing ground water users, on existing surface water appropriators, and on ground water and surface water supplies needed to meet present or reasonable future demands or an assessment of the effects of the proposed withdrawal, transfer and use on the environment in the vicinity of the proposed withdrawal and in the vicinity of the proposed use. Failure of the applicant to provide the requested information may be grounds for denying the permit.

**11.06** Transfer permits will expire upon a change of land ownership, a change in transfer location, at landowner's request, or if the Board determines transfers are no longer in the best interest of the public.

**11.07** Approval of Transfers - In accordance with Neb. Rev. Stat. § 46-739(k) the District shall deny or condition the approval of any such transfer when and to the extent such action is necessary to: (1) Ensure the consistency of the transfer with the purpose(s) for which the District's ground water management area was designated, (2) Prevent adverse effects on other ground water users or on surface water appropriators, (3) Prevent adverse effects on the state's ability to comply with an interstate compact or decree or to fulfill the provisions of any other formal state contract or agreement, (4) Whether the proposed use is a beneficial use of ground water, (5) The availability to the applicant of alternative sources of surface water or ground water for the proposed withdrawal, transport, and use, (6) Any negative effect of the proposed withdrawal, transfer and use on ground water or surface water supplies needed to meet reasonable future demands for water within the state, (7) If the ground water will be transferred to and used in any other natural resources district, whether that District has approved such transfer and use and whether such transfer and use would be consistent with the rules and regulations of such other District, and (8) Any other factors, which the District deems relevant to protect the public interest and prevent detriment to the public welfare.

## **Rule 12: INACTIVE WELL STATUS**

**12.01** The Board shall maintain a record of all wells registered as inactive status by the Department.

- 12.02** Both the Department 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.
- 12.03** If an active well has certified irrigated acres associated with it and is placed in inactive status, the certified irrigated acres will remain with the well while it is in inactive status unless rescinded by the Board or relinquished by the ground water user.

### **Rule 13: SUPPLEMENTAL WELLS**

- 13.01** If a new well is constructed and used to supplement surface water to irrigate acres that were irrigated with surface water in the last two (2) years, as a condition of the well construction permit, the owner of the well shall agree to the following: (1) that the new well will only be used to supplement the surface water supply for the tract involved and will only be used when that supply had been exhausted and is no longer available to the operator at his or her normal rotation of schedule time(s); (2) to not relinquish the surface water right and to take reasonable measures to protect it from adjudication because of non use; (3) that the number of acres collectively irrigated with surface water and through use of the new supplemental well will not exceed the maximum number of acres irrigated with surface water in any one of the last two (2) years; and (4) any other requirement or condition the Board may impose consistent with the purposes of these Rules and Regulations.

### **Rule 14: CERTIFICATION OF IRRIGATED ACRES**

- 14.01** Beginning January 1, 2008, the Upper Loup Natural Resources District will be designated a Ground Water Management Area (GWMA) and begin a process of certifying irrigated acres.
- 14.02** Beginning January 1, 2010, any ground water user who irrigates with ground water is required to have obtained certification from the District for all irrigated acres. No groundwater user may irrigate with ground water within the GWMA until he or she obtains certification from the District, *except* in those circumstances whereby, through no fault of the ground water user, the District has been unable to complete the certification process.
- 14.03** Application process:
- 14.03.1** The District will send a letter to all known irrigators and an application form for the certification of irrigated acres.
  - 14.03.2** The application process will be done annually.
- 14.04** The application shall include:
- 14.04.1** Location of each irrigated parcel of land by legal description to the nearest quarter section.
  - 14.04.2** Aerial photograph or map of the parcel of land delineating irrigated acres.
  - 14.04.3** DNR registration number(s) of any well(s) used to irrigate each parcel of land.
  - 14.04.4** Identification of any sources of irrigation water other than ground water.
  - 14.04.5** Documentation of assessed irrigated acres from the county assessor's office.

- 14.05** Any change in farming or ranching operation or ownership that would result in a change in the number or location of certified irrigated acres shall be reported to the District within thirty (30) days of the change and will require recertification. The recertification process will follow the procedure for certifying acres as described in Rule 9.
- 14.06** All applications for certification must be submitted to the District's office on forms supplied by the District. In considering each application, the District may take into account the following:
- 14.06.1** Information submitted with the application.
  - 14.06.2** Records of the U.S. Department of Agriculture.
  - 14.06.3** Records of the County Assessor.
  - 14.06.4** Evidence submitted by the applicant or the District's staff.
  - 14.06.5** Any other information deemed relevant by the District, such as size, location, soil suitability of an irrigated tract of land, or the amount and purpose of other uses in the calendar year.
  - 14.06.6** Any potential detrimental effects on other ground water users or on surface water appropriators.
- 14.07** The application for acre certification may be denied if (1) Information on the permit is found to be untrue (2) the well is illegal (3) the acres are not assessed as irrigated on the county tax role. The District may, in its sole discretion, grant temporary certification if there is not enough time or information for final determination. The District, in its sole discretion, may re-evaluate any determination on certification.

#### **Rule 15: GROUND WATER WELL USE REPORTING REQUIREMENTS**

- 15.01** Each city or village within the ground water management area that owns operates or controls a public water supply well shall provide to the District an annual water use report to establish a baseline water use per capita within such city or village.
- 15.02** Municipality reporting requirements – on or before January 1 of each year, after the effective date of these rules and regulations, a village or a city must report the following information to the District:
- 15.02.1** The water wells operated by the village or city and the Department's registration number.
  - 15.02.2** Total acres within village or city jurisdiction limits and any acres outside the village or city jurisdictional limits served by the public water supply system.
  - 15.02.3** The number of people served by the public water supply system.
  - 15.02.4** Total amount of water pumped by each well.
  - 15.02.5** Any other information deemed appropriate by the District.
- 15.03** Industrial uses – to establish a baseline for water use by industries, each industrial user of water that does not obtain its water from a city or village shall be required to report on an annual basis to the District.
- 15.04** Industrial reporting requirements – on or before January 1 of each year, after the effective date of these rules and regulations, an industrial user must report the following information to the District if it has not already been obtained from ULNRD personnel:
- 15.04.1** The water wells operated by the industrial user and the Department's registration number.

- 15.04.2 Total amount of water pumped by each well.
- 15.04.3 The purpose for which the ground water is used.
- 15.04.4 The location of use.
- 15.04.5 Any other information deemed appropriate by the District.

15.05 Irrigation Users - Each irrigation user of ground water is encouraged to report by January 1 of each year to the District the total amount of water pumped by each irrigation well for the previous irrigation season.

#### **Rule 16: GROUND WATER QUALITY SAMPLING PROGRAM**

- 16.01 A ground water analysis for nitrate-nitrogen content in all registered domestic, irrigation, industrial, and public water supply wells will be accomplished once within a four (4) year cycle, with the exception of those wells listed on DEQs Current Statewide Ground Water Monitoring Network which will be tested annually.
- 16.02 The landowner/operator must allow the ground water sample for nitrate-nitrogen analysis to be collected and analyzed by the Upper Loup NRD using approved methods.
- 16.03 Results of the nitrate-nitrogen analysis will be mailed to the operator and/or the landowner. These results will give the landowner/operator knowledge of the nitrogen present in the ground water.
- 16.04 If a sample is found to contain one hundred percent (100%) of the maximum contaminant level (ten (10) parts per million) of nitrate-nitrogen, a second sample will be sent to a reputable lab for verification and quantification prior to any quality phase area designation.
- 16.05 Five percent (5%) of all wells sampled within a four (4) year period will be sent to a reputable lab for analysis of other potential contaminants.
- 16.06 If there is reason to believe that contaminants other than nitrate-nitrogen may be present, samples will be taken to test for those contaminants.

#### **Rule 17: GROUND WATER QUALITY PHASE AREA CRITERIA & DESIGNATION**

- 17.01 The boundaries for Phase I, Phase II and Phase III areas will be determined by averaging the ground water sample test results for all Upper Loup NRD sampled wells within a county. Outliers (wells that consistently test more than 10 ppm higher or lower than surrounding wells) will be excluded from the county average. Any outliers will be analyzed separately to determine whether it is necessary to change the phase area designation in an area smaller than a county. Criteria for designation of Ground Water Management Area regulation phase areas are as follows:
  - 17.01.1 **Phase I Area** – counties where the average ground water nitrate content is between zero (0) and seven (7) parts per million (ppm)
  - 17.01.2 **Phase II Area** – counties where the average ground water nitrate content is between eight (8) and nine (9) ppm **OR** if the average ground water nitrate increases at least one (1) ppm within a four (4) year period of time. Phase II management areas will be designated only after providing public notice, holding public hearings, and receiving public comment.

**17.01.3 Phase III Area** – counties where the average ground water nitrate content is greater than ten (10) ppm **OR** if the area is designated a Phase II area for a period of four (4) consecutive years with no decline by a least one (1) ppm during that four (4) year period of time. Phase III management areas will be designated only after providing public notice, holding public hearings, and receiving public comment.

**17.02** The Board of Directors may re-designate all or any part of a phase area from one phase to another, following a public hearing, in order to protect ground water quality.

### **Rule 18: GROUND WATER QUALITY PHASE I AREA RULES & REGULATIONS**

**18.01** Phase I Rules and Regulations - the following regulations shall apply to all landowners and operators of irrigated farm land in Ground Water Management Areas with a Phase area designation of Phase I:

**18.01.1** Well construction Permits will be required from the District.

**18.01.2** A water analysis for nitrogen content for irrigation wells will be done as described in Rule 11.

**18.01.3** The District will encourage operators to attend classes for fertilizer and irrigation water management and to perform deep soil testing for residual nutrients.

**18.01.4** The District will encourage operators to not apply nitrogen fertilizer on sandy soils in the fall or winter.

**18.01.5** The NRD will expand education activities relating to ground water.

### **Rule 19: LIMITATION ON EXPANSION OF IRRIGATED ACRES**

**19.01** In accordance with Neb. Rev. Stat. § 46-714(12), the purpose of Rule 19 is to limit the number of total new ground water well construction permits and/or new ground water irrigated acres so that the total of new ground water irrigated acres does not exceed 2,500 acres annually or 10,000 acres in the four (4) year period.

**19.02** The geographic area within the District subject to Rule 19, beginning in 2009 and ending in 2012, is the area designated in the Department's April 8, 2009, Order of Final Determination that the Lower Platte River Basin as not Fully Appropriated and the geographic areas listed in Appendix A. The geographic area within the District subject to Rule 19 beginning in 2012 and ending in 2015 is the area designated in the Department's June 29, 2011, Order of Final Determination that the Niobrara River Basin as not Fully Appropriated. Total new groundwater irrigated acres in the Niobrara River Basin reversal area shall not exceed 174 acres annually or 696 acres in a four (4) year period beginning in 2012 and ending in 2015.

**19.03** There shall be no expansion of ground water irrigated acres within the geographic area of the District described in Rule 19.02 unless the expansion is approved by the District in accord with Rule 19.

**19.04** In order for expansion of ground water irrigated acres to be considered for approval by the District, the landowner must file an application with the District on forms provided by the District.

**19.04.1** The application process shall be as follows:

**19.04.2** An application must be filed with the District by December 31 of each year 2012.

- 19.04.3** The application shall include:
- 19.04.3.1** The most recent aerial photo delineating the new acres to be irrigated; and
  - 19.04.3.2** The location of the existing well(s) to be used and the corresponding DNR registration number or, if applicable, the proposed location of the new well(s); and
  - 19.04.3.3** If applicable, the identification of any sources of irrigation water other than ground water; and
  - 19.04.3.4** The signature of the current landowner or power of attorney.
- 19.04.4** The application shall be accompanied by a one-time non-refundable administrative fee of \$15.00.
- 19.04.5** Applicants will be notified on the status of their application within 30 days following the end of the application period each year (December 31).

**19.05** Acres approved for expansion pursuant to Rule 19 must subsequently be certified in accordance with Rule 14.

**19.06** A flow meter must be installed on any new and/or existing well(s) serving the acres that have been approved for expansion pursuant to Rule 19. Flow meters must be in compliance with Rule 9.

**19.07** If a new well(s) is to be constructed for expansion of irrigated acres, the application pursuant to Rule 19 must be approved prior to construction of the new well. Such construction must be in accordance with Rule 7.

**19.08** If the total amount of expanded irrigated acres applied for within the geographic area described in Rule 19.2 exceeds 2,500 acres per application period, the District shall rank each application to determine whether the application will be approved or denied.

**19.08.1** Each application for expansion of irrigated acres will be ranked according to the following criteria:

**19.08.2** Irrigation type (e.g. pivot, sprinkler, gravity, flood); and

**19.08.3** Ground water quality in the vicinity; and

**19.08.4** Water levels in the vicinity; and

**19.08.5** Density of irrigated acres within the vicinity; and

**19.08.6** NRCS soil classification (e.g. Highly Erodible Lands, or HEL); and

**19.08.7** Stream depletion factor; and

**19.08.8** Conservation practices employed by applicant on existing lands; and

**19.08.9** Any other criteria and/or considerations deemed relevant by the District.

## Appendix A

County	Township	Range	Section(s)
Grant	21	38	6, 7, 18, 19, 30, 31
	21	39	1-36
	21	40	1-36
	21	41	1-3, 10-12, 13-15, 22-24, 25-27, 34-36
	22	38	31
	22	39	20, 21, 28-36
	22	40	4-9, 14-23, 25-36
	22	41	1-3, 10-12, 13-15, 22-24, 25-27, 34-36
	23	40	7, 18, 19, 30-33
	23	41	2, 3, 10-12, 13-15, 22-24, 25-27, 34-36
	24	41	1-3, 10-12, 13-15, 22-24, 25-27, 34-36
McPherson	17	30	29-32
	17	31	1-36
	18	31	1-36
	19	31	1-36
	20	31	27-34
Cherry	25	40	3-9, 17-20
	26	40	5-8, 17-20, 29-32
	27	40	9, 16, 20, 21, 28-33