



# Terms & Definitions

## **BORROW-AHEAD:**

Borrow-ahead refers to the ability to use a portion of your next allocation to supplement your current allocation. In the Upper Niobrara-White Natural Resources District example, they allow 2 acre-inches per acre to be borrowed from the next allocation period without penalty.

## **CARRY-OVER:**

Carry-over refers to an unused portion of your current allocation that can be used in the next allocation period. Allowing carry-over often results in growers using less than their total allocation because they like to save some “just in case.” In the Nebraska examples, this number ranges from 12.5% to 50% of the total allocation.

## **DRY-YEAR CONSIDERATIONS:**

Regulations could change by year depending on whether it is considered dry. For example, in the Lower Republican Natural Resources District, a maximum annual use is instated during dry years. How a dry year is determined would need to be discussed.

## **LENGTH OF ALLOCATION PERIOD:**

The length of time over which an allocation can be applied (e.g. annual, three-year, five-year). In Nebraska, allocation periods are often three or five years which allows for more flexibility than an annual allocation.

## **PENALTIES:**

Various actions that can be taken against a producer that exceeds their allocation. Examples of penalties include: losing two inches for every inch of overuse during their next allocation period, other reductions in allocation for the next period, cease and desist order, Board action, reduction of acres, well decommissioning, etc.

## **POOLING:**

Pooling refers to a farmer grouping separate parcels together. This gives the farmer flexibility to spread their allocation as they like across their properties, which can be helpful if they are growing a variety of crops. In Nebraska, pooling is often limited spatially by county, floating township, or other designated area. In a unique example, the Upper Big Blue Natural Resources District allows pooling between a group of farmers known as “agreement pools.”

## **TRADING:**

Water trading refers to a program where farmers can buy or sell their water to other farmers/entities. For example, if a farmer is nearing his or her allocation limit during the irrigation season, they can buy water from a fellow farmer to avoid penalties.

Notes:

## Breakout Session #1



### Discussion item one:

Flexibility vs. Certainty

Questions to consider:

- For you personally, where do you land on the flexibility/certainty quadrant map regarding an allocation program?
- Do you think MIUGSA should concentrate more on flexibility or certainty for an allocation program? For example, a 0.75 AF/A allocation would almost certainly be sustainable for the GSA, but is that too limiting?
- What do you see as the pros and cons of your ideal allocation program?
- Other thoughts?

Notes:

## Breakout Session #2



### Discussion item two:

Allocation Program Components

Questions to consider:

- What did you like from the examples regarding components like borrow-ahead, carry-over, dry-year considerations, length of allocation period, penalties, pooling, and trading? What did you not like?
- How would you adjust the examples you heard to work better for MIUGSA?
- What additional information do you feel you need to make decisions on these allocation program components?
- Other thoughts?

AMENDED AND RESTATED  
DISTRICTWIDE  
GROUND WATER MANAGEMENT AREA  
RULES AND REGULATIONS

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Amended and Restated by the Board of Directors: May 8, 2018  
Amended and Restated by the Board of Directors: April 13, 2021

5.8 Board Authorization to Initiate Court Action - The Board may authorize the initiation of appropriate legal actions to enforce any action or order of the District.

5.9 Cease and Desist Order; Violation; Penalty - As provided by the Act and the Chemigation Act, any violation of Cease and Desist Order issued by the District pursuant to the Act and the Chemigation Act may be subject to a civil penalty assessed pursuant to *Neb. Rev. Stat.* § 46-746.

**6. GROUND WATER QUANTITY CONTROLS** - The following rules apply to any Ground Water User, Landowner, or Operator in the South Platte NRD Districtwide Ground Water Management Area.

6.1 Moratorium on Well Construction Permits and on New or Expanded Uses - Except as provided hereinafter, no permits to construct a new Water Well in the Management Area will be issued unless a variance is granted by the Board. In addition, the expansion of Irrigated Acres or the increase in the Consumptive Use of Ground Water from any Water Well used for irrigation or any other beneficial purpose, except for the purpose of domestic or Range Livestock wells that pump less than fifty (50) gallons per minute, is prohibited, unless a Variance is granted by the Board or as otherwise provided by *Neb. Rev. Stat.* § 46-740.

6.2 Permit to Construct a Water Well - Any Person who intends to construct a Water Well within the Management Area for any purpose, except for Test Holes, Dewatering Wells with an intended use of ninety (90) calendar days or less, domestic or Range Livestock wells that pump less than fifty (50) gallons per minute, and monitoring or observation wells without a permanent pump installed, shall apply for a permit to construct such Water Well from the District.

6.2.1 Any Application for a permit must be completed by the applicant and filed with the District on forms provided by the District. Once the District receives a completed application, the District shall review the application and either approve, approve with conditions, or deny such permit, within thirty (30) calendar days after the completed application is received.

6.2.2 The applicant shall pay a nonrefundable application fee of fifty dollars (\$50) to the District.

6.2.3 Any Person who fails to obtain a permit required by Rule 6.2 shall make application for a Late Permit on forms provided by the District, and shall pay a nonrefundable late application fee of two-hundred and fifty dollars (\$250) to the District.

6.2.4 If an applicant receives a permit from the District, the applicant shall commence construction as soon as possible but in any event shall complete construction and installation of the equipment necessary to pump water from the Water Well no later than six (6) months after the approval of the permit.

6.2.5 If the applicant fails to complete the construction and installation of the equipment necessary to pump water from the well under the terms of the permit, the District may cancel the permit after ten (10) Working Days written notice to the applicant.

6.2.6 A permit application may be denied, among other reasons, if the District finds 1) that the location or operation of the proposed Water Well or other work is not in accordance with any regulations or Controls adopted by the District, 2) that the proposed use would not be for a beneficial purpose, or 3) if the applicant did not act in good faith in failing to obtain a timely permit.

6.3 Large User Permit - Any Industrial or Commercial User, any Non-Transient Non-Community Public Water Supplier, or any Transient Non-Community Public Water Supplier, who desires to withdraw and/or consumptively use Ground Water in amounts greater than twenty-five (25) million gallons per year, prior to commencing such use, expanding such use in amounts greater than twenty-five (25) million gallons per year, changing such use of any existing Ground Water well, commencing construction of any new or Replacement Water Well, or modifying any existing well to consumptively use greater than twenty-five (25) million gallons per year, shall apply for and receive from the District a permit to authorize such withdrawal and/or use of Ground Water ("Large User Permit").

6.3.1 If the user is supplied by a Municipality, an agreement must be in effect between the District and the Municipality regarding understandings, commitments, and joint responsibilities related to the Large User Permit before the issuance of a Large User Permit.

6.3.2 An application for a Large User Permit shall include the following information:

6.3.2.1 If not supplied by a Municipality, the name and post office address of each owner of the land where the well or wells are or will be located;

6.3.2.2 The name and address of the user or users of the Ground Water;

6.3.2.3 If not supplied by a Municipality, the legal description of the tract of land where the well or wells are or will be located or if supplied by a Municipality who will supply the Ground Water;

6.3.2.4 The legal description of the land on which the Ground Water will be used;

6.3.2.5 If any existing well will be used, the Department's Water Well registration number for the well, or if supplied by a Municipality, the name of the Municipality;

6.3.2.6 If a new or Replacement Water Well will be constructed, the District's Water Well construction permit number;

6.3.2.7 A detailed description of the nature of the proposed use;

6.3.2.8 If not supplied by a Municipality, the maximum rate of withdrawal from the well or wells;

6.3.2.9 If not supplied by a Municipality, the range of maximum and average amounts of water proposed to be withdrawn on an annual basis;

6.3.2.10 The amount of Ground Water to be consumptively used from the water pumped from the well or wells or from a Municipality and a detailed explanation of how the amount of consumptive use was calculated;

6.3.2.11 Identification of any alternative sources of surface water or Ground Water available to the applicant for the proposed use and the reasons why the alternative source or sources will not be used;

6.3.2.12 An assessment of the effects that the proposed withdrawal and/or consumptive use of Ground Water may have on existing Ground Water Users, on existing surface water users, and on Ground Water and surface water supplies needed to meet present or reasonable future demands within the state or to comply with any interstate water compact, decree, or any other formal state contract or agreement;

6.3.2.13 For a Non-Transient Non-Community Public Water Supplier or a Transient Non-Community Public Water Supplier a proposed Offset for the amount of Consumptive Use specified in accordance with 6.3.2.10 and a detailed explanation of how the proposed Offset was calculated;

6.3.2.14 If not supplied by a Municipality, an assessment of the effects of the proposed withdrawal and use on the environment in the vicinity of the proposed withdrawal and in the vicinity of the proposed use; and

6.3.2.15 Any other information the applicant deems relevant to the District's criteria for approval of the proposed withdrawal and/or use, which are listed in 6.3.3 and 6.3.4.

6.3.3 The District may deny an application or condition the approval of any Large User Permit when necessary to:

6.3.3.1 Ensure compliance with the District's Management Area;

6.3.3.2 Prevent adverse effects on other Ground Water Users or on surface water users;

6.3.3.3 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; and

6.3.3.4 Protect the public interest and prevent detriment to the public welfare.

6.3.4 To determine whether approval of an application for a Large User Permit is in the public interest or detrimental to the public welfare, the District shall consider the following:

6.3.4.1 Whether the proposed use is a beneficial use of Ground Water;

6.3.4.2 The availability to the applicant of alternative sources of surface water or Ground Water for the proposed use;

6.3.4.3 Any negative effect of the proposed withdrawal and/or use on Ground Water or surface water supplies needed to meet reasonable future demands for water within the state;

6.3.4.4 The cumulative effects of the proposed withdrawal and/or use relative to the matters listed in 6.3.4.1 through 6.3.4.3 when considered in conjunction with all other Ground Water uses;

6.3.4.5 Whether the proposed withdrawal and/or use is consistent with the integrated management plan; and

6.3.4.6 Any other factors that the District deems relevant to protect the public interest and prevent detriment to the public welfare.

6.3.5 All Large User Permits granted by the District shall be conditioned on the following:

6.3.5.1 If not supplied by a Municipality, the applicant's installation and maintenance of a District approved Flow Meter on the well or wells that will be used for withdrawal and/or use;

6.3.5.2 If not supplied by a Municipality, the applicant's submission of an annual report to the District, by October 1 of each year, containing the total volume of water pumped and total volume of Ground Water consumptively used in the preceding year (August 1 to July 31);

6.3.5.3 If supplied by a Municipality, the applicant's submission of an annual report to the District by October 1 of each year, containing the total volume of Ground Water consumptively used in the preceding year (August 1 to July 31); and/or

6.3.5.4 Compliance with all applicable statutes and rules and regulations, including any statutes or rules and regulations adopted after the District's approval of the Permit.

## 6.4 Certified Irrigated Uses

6.4.1 Certification of Irrigated Acres - Any Ground Water User, Landowner, or Operator who uses Ground Water to irrigate must obtain certification from the District for each irrigated tract of land. No Ground Water User, Landowner, or Operator may irrigate with Ground Water on a tract of land within the Management Area until he or she obtains the certification of irrigated acres from the District.

6.4.2 Consideration of Variance Request Applications and Decision on Certification - All applications for Variance requests must be submitted to the District's office on forms supplied by the District.

6.4.2.1 In considering each Variance request application, the District may take into consideration the following:

6.4.2.1.1 Information submitted with the application;

6.4.2.1.2 Records of the U.S. Department of Agriculture;

6.4.2.1.3 Records of the county assessor;

6.4.2.1.4 Evidence submitted by the applicant or the District's staff; and

6.4.2.1.5 Any other information deemed relevant by the District.

6.4.2.2 A majority vote by the members of the Board of Directors present at any public meeting of the Board shall be required for the approval of a Variance for certification. The Board, in its sole discretion, may reconsider any determination on certification.

6.4.3 Modification of Certified Irrigated Acres or Certified Irrigated Tracts - Upon the effective date of these amendments (April 10, 2015) the SPNRD will no longer allow additional Certified Irrigated Acres or Certified Irrigated Tracts.

6.4.3.1 Modifications of existing Certified Irrigated Acres and Certified Irrigated Tracts will be allowed through the Transfer(s) as outlined in Rules 6.7 and 8.2.

6.5 Flow Meters - Except as otherwise provided in this section (Rule 6.5), any Ground Water User, Landowner, or Operator, who uses any Water Well or wells capable of pumping greater than fifty (50) gallons per minute shall be required to install a Flow Meter on such well subject to the following terms and conditions.

6.5.1 A Water Well which serves two (2) or more uses, shall have a separate Flow Meter installed for each use, unless one of the uses is for domestic or Range Livestock. In such case, a Flow Meter will not be required on the domestic or Range Livestock use.

6.5.2 Any Ground Water User may temporarily defer the installation of a Flow Meter if the well will not be used for a period of no more than five (5) years. Such Ground Water User shall notify the District on forms supplied by the District of such non-use and specify the period up to five (5) years ("temporary deferment"). A temporary deferment may be renewed for an additional five (5) year period.

6.5.2.1 For all Irrigation Water Wells that are placed in Temporary Deferment.

6.5.2.1.1 The District staff, upon receiving such notice of Temporary Deferment, shall inspect such well and tag it with a red tag, which shall signify that the Temporary Deferment has been approved and that such well cannot be used during the time period specified in such notice.

6.5.2.1.2 The number of Certified Irrigated Acres and/or tracts which have been temporarily deferred will remain with the well-used to irrigate such acres and/or tracts, during the Temporary Deferment and cannot be transferred or used during such time.



6.5.2.1.2.1 Any Certified Irrigated Acres and/or tracts that have been temporarily deferred will not receive an Allocation during such time.

6.5.2.1.3 If during the period of Temporary Deferment, a Ground Water User, desires to terminate the Temporary Deferment, he or she shall notify the District of such termination and a Flow Meter shall be installed on any such well within fifteen (15) days of such notification. After the Flow Meter has been installed, District staff shall remove the red tag and the well may then be used.

6.5.2.1.3.1 A Temporary Deferment may only be terminated during the time period between November 1 through February 28 of each year.

6.5.2.1.4 When the well is returned to active status, the Allocation amount for the well and the corresponding Certified Irrigated Acres will be prorated on the basis of the portion of the Allocation remaining in the Allocation Period.

6.5.2.2 For all Industrial Water Wells that are placed in Temporary Deferment.

6.5.2.2.1 The District staff, upon receiving such notice of Temporary Deferment, shall inspect such well and tag it with a red tag, which shall signify that the Temporary Deferment has been approved and that such well may not be used during the time period approved by the District.

6.5.2.2.2 Any Industrial Water Well that has been approved for Temporary Deferment by the District, which shall include a well which has been granted a Large User Permit pursuant to Rule 6.3, may only be returned to service after approval by the District.

6.5.2.2.3 Once approval has been granted, a Flow Meter shall be installed within 15 days of such approval.

6.5.2.2.4 The baseline established for the well will remain with the well during Temporary Deferment. Once the well is returned to active service, the baseline amount will become active and adjustments made for the current five (5) year accounting period.

6.5.3 Flow Meter Specifications and Requirements - Any Flow Meter that a Ground Water User installs, operates, or maintains for the purpose of compliance with these rules and regulations.

6.5.3.1 Shall be selected from a list and in conformance with a **technical manual**, compiled and approved by the Board of Directors of the District. The Board may amend this list and manual from time to time without amending these rules and regulations. The approved list and manual shall be available for inspection at the District office during regular business hours.

6.5.3.2 All Flow Meters shall comply with the specifications and requirements stated herein. The meter(s) shall be accurate to within five (5) percent of a meter operated and maintained by District staff. In any event, all non-complying Flow Meters must either be repaired or replaced in a reasonable time period agreed upon by the District.

6.5.3.3 Each Flow Meter shall be installed by a **technician approved by the District** according to the manufacturer's specifications and calibrated to the pipe size on each well. All Flow Meters shall be permanently mounted, or installed to enable the District to seal the Flow Meter. Calibration shall be maintained at an accuracy of plus or minus two (2) percent of a normal flow range.

6.5.3.3.1 Each Flow Meter shall be maintained by a technician approved by the District at least once every three (3) years, no later than the end of the third calendar year, unless the Ground Water User has received an exemption by the District.

6.5.3.3.1.1 A maintenance exemption will be granted if a well has not been operated in the past three (3) years and has no plans to operate during the next Water Year.

6.5.3.3.1.2 If the Ground Water User intends to return the well to active service, he or she shall notify the District and such Flow Meter shall receive maintenance at that time and subsequently follow the three (3) year maintenance schedule.

6.5.3.4 For wells that pump more than fifty (50) gallons per minute, 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.

6.5.3.5 For wells that pump fifty (50) gallons per minute or less, the meter registry of each Flow Meter shall have a visual volume recording totalizer, which shall record the volume of water in gallons, acre-feet or Acre-Inches.

6.5.3.6 The registry of each Flow Meter shall be protected from the elements of weather.

6.5.3.7 Totalizers shall have sufficient capacity to record the quantity of water withdrawn from each well or Commingled Water Wells for the period of one (1) year.

6.5.3.8 District personnel shall seal each Flow Meter. No seal shall be removed, broken, or unfastened without prior approval of the District. If a seal becomes damaged, the Ground Water User shall notify the District by the close of business the following day.

6.5.3.9 Each Flow Meter shall measure the entire amount of water pumped by a well or Commingled Water Wells in conformance with all specifications and requirements contained within these rules and regulations. In the event that water from two (2) or more wells is commingled, one (1) Flow Meter may be installed at a point after the water has been commingled.

#### 6.5.4 Flow Meter Readings, Inspections and Maintenance

6.5.4.1 The District shall have the power and authority, pursuant to *Neb. Rev. Stat. § 2-3232(1)*, to enter upon any land, after notifying the owner or occupier thereof, for the purpose of conducting studies, investigations, surveys, and research to carry out its authorized purposes.

6.5.4.2 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.

6.5.4.3 A Ground Water User, subject to these rules and regulations shall ensure that each Flow Meter installed on each well is fully functional, properly maintained, and in good working condition.

6.5.4.4 Any malfunctioning Flow Meter shall be reported to the District office at Sidney, Nebraska, by the Ground Water User, within twenty-four (24) hours after discovery, unless such discovery is on a weekend or holiday. In that event, such malfunction shall be reported before the office closes on the first Working Day following the holiday. During the time when such Flow Meter is malfunctioning or removed from the well for service, repair, or replacement, the Ground Water User, shall use a method approved by the District to determine the volume of water withdrawn from the well. The Ground Water User shall use his or her best efforts to put the Flow Meter back into service in a reasonable time period agreed upon by the District.

6.5.4.5 The District may require any Ground Water User to provide information that will enable District staff to determine the amount of energy used to operate any well on which a Flow Meter has been installed. Such information shall be provided upon request, or the Ground Water User may authorize District staff to obtain such information from the utility providing electricity to the well. District staff may request such information if a Flow Meter is malfunctioning, or grounds exist to believe the Flow Meter reading is incorrect. If any power source on a well within the

Management Area is equipped with an hour meter, the District may require a Ground Water User, to provide appropriate readings from said hour meter.

#### 6.5.5 Damage to or Tampering with Flow Meters

6.5.5.1 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 Management Area, 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 6.5.5.1.

6.6 Allocation System for Agricultural Uses - The hydrologic characteristics of each subarea were considered in arriving at the amounts for Allocation purposes. Those subareas are shown on the maps attached as Appendix C and C-1.

#### 6.6.1 Allocations for Irrigation Uses

6.6.1.1 Allocation amounts in Acre-Inches by subarea for the 2019 through 2021 Allocation Period are as follows:

		<u>Allocation Periods</u>
Subarea A – Wyoming State Line to Oliver Reservoir (Road 27)	= 42”	(3-year total)
Subarea B – Oliver Reservoir (Road 27) to Buffalo Bend (Road 87)	= 42”	(3-year total)
Subarea C – Buffalo Bend (Road 87) to Sidney (Road 115)	= 42”	(3-year total)
Subarea D – Sidney (Road 115) to Colorado State Line	= 48”	(3-year total)
Subarea E – South Platte Valley	= 48”	(3-year total)
Subarea F – Tablelands	= 39”	(3-year total)

6.6.1.1.1 Allocations in Subareas A, B, C, D, E and F will have a three (3) year allocation period.

6.6.1.1.1.1 In 2021, the Board will set Allocations for a new three (3) year Allocation Period, to commence in 2022 for all subareas.

6.6.1.2 Allocation amounts in Acre-Inches by subarea for the 2022 through 2024 Allocation Period are as follows:

		<u>Allocation Periods</u>
Subarea A – Wyoming State Line to Oliver Reservoir (Road 27)	= 42”	(3-year total)
Subarea B – Oliver Reservoir (Road 27) to Buffalo Bend (Road 87)	= 42”	(3-year total)
Subarea C – Buffalo Bend (Road 87) to Sidney (Road 115)	= 42”	(3-year total)
Subarea D – Sidney (Road 115) to Colorado State Line	= 48”	(3-year total)
Subarea E – South Platte Valley	= 48”	(3-year total)
Subarea F – Tablelands	= 39”	(3-year total)

6.6.1.2.1 Allocations in subareas A, B, C, D, E and F will have a three (3) year Allocation Period.

6.6.1.2.1.1 In 2024, the Board will set Allocations for a new three (3) year Allocation Period, to commence in 2025 for all subareas.

6.6.1.3 The Board intends to set each Allocation approximately one (1) year in advance of each new Allocation Period.

6.6.1.4 Carryforward of up to ten (10) Acre-Inches is allowed following the three (3) year Allocation Period in Subareas A, B, C, D, E and F, and every Allocation Period thereafter. The cap on the amount of Carryforward (“Carryforward Cap”) that may be accumulated over multiple Allocation Periods and used in subsequent Allocation Periods is ten (10) Acre-Inches.

- 6.6.1.5 Use that exceeds the total Allocation shall result in the following penalties:
- 6.6.1.5.1 For every inch that exceeds the total Allocation up to a maximum of three (3) additional inches per acre, an equal number of inches shall be subtracted from the next Allocation Period; and
  - 6.6.1.5.2 For every inch that exceeds the three (3) inches per acre maximum established in Rule 6.6.1.5.1, twice the number of inches shall be subtracted from the next Allocation Period.

6.6.1.6 Any Certified Irrigated Tract that is enrolled in any federal and/or state water conservation program, shall not receive an Allocation for the period of time that such tract is enrolled in such program. Provided however, if such tract is removed from such program, then it will become eligible to receive a prorated Allocation for the remaining year(s) of the Allocation Period.

6.6.1.7 A Ground Water User shall not be entitled to use Ground Water for any Allocation Period, unless such user shall have a positive balance in his or her Total Allocation at the end of each year for any such Allocation Period. The District will notify Ground Water Users, following the District's annual reading of Flow Meters, whether they have a positive balance in their Total Allocation.

6.6.1.8 Supplemental Water Well - The Allocations listed for Subareas A, B, C, D and E in accordance with Rule 6.6.1.1 and 6.6.1.2, will not be reduced by any amount of surface water delivered to or transferred to Certified Irrigated Acres that would otherwise be irrigated from such Supplemental Water Well.

#### 6.6.2 Allocations for Aquaculture Uses

6.6.2.1 Any Landowner or Operator using Ground Water for Aquaculture purposes shall be required to provide the District with records showing Consumptive Use for the period between August 1, 2001 through July 31, 2006.

6.6.2.2 The Board shall determine an Allocation to the Aquaculture facility based upon records submitted and select the highest amount of water consumptively used for a twelve (12) month period. If no records are available, all water supplied to the Aquaculture use shall be metered and conditioned upon Offsets approved by the Board, prior to any water delivery to the Aquaculture facility.

### 6.7 Transfers

#### 6.7.1 General Conditions for Transfers Permitted by the District

6.7.1.1 Any Person who seeks to Transfer water use from one location to another shall apply to the Board for a transfer permit using forms provided by the District. No Transfer shall be commenced unless and until the District grants the permit application.

6.7.1.2 The Board shall not approve a Transfer unless all Certified Irrigated Tracts have either unused Allocation or Carryforward.

6.7.1.3 Transfers shall be conditioned upon and limited to those in which the land where the right is transferred from remains in dryland agricultural use, or such other non-consumptive uses as have been approved by the District. This restriction shall run with the land, and apply to the transferors' heirs, successors, and assigns. The owner of the land will be required to sign an affidavit and acceptance of Offset/mitigation obligations that a new Consumptive Use will not be

created on the land from where the right was transferred. Such affidavit will be filed with the county land records.

6.7.1.4 Any well from which the Board has approved a Transfer shall not be used to irrigate land, which is not certified for Ground Water irrigation. If the well is no longer used to irrigate land certified for Ground Water irrigation, then the well shall be decommissioned within one hundred and eighty (180) days of the Transfer or modified and equipped within the same period of time to pump fifty (50) gallons per minute or less. Any modified well may only be used for Range Livestock, monitoring, observation, or any other non-consumptive or deminimis use approved by the Board.

6.7.1.5 Any Person who seeks to Transfer a water use from one location to another shall have the burden of establishing to the satisfaction of the Board each of the requirements set forth above.

6.7.1.6 Transfers are prohibited within two (2) miles of a city limit, and within the city limit. The following Transfers shall not be permitted for any area located within city limits and two (2) miles of any city of the First Class, which shall be determined at the time that the Transfer is sought to be approved:

- 6.7.1.6.1 The withdrawal and Transfer of Ground Water Off the Overlying Land;
- 6.7.1.6.2 The change of the location of the use of Ground Water for irrigation purposes;
- 6.7.1.6.3 The permanent Transfer of Certified Irrigated Acres;
- 6.7.1.6.4 The permanent Transfer of Allocation; and
- 6.7.1.6.5 The permanent Transfer of Type of Use or Addition of Use.

6.7.1.7 Transfers are prohibited within one (1) mile of a city of Second Class or Village limit, and within the city of Second Class or Village limit. The following Transfers shall not be permitted for any area located within one (1) mile of a city of the Second Class or Village limit, and within any city of the Second Class or Village limit, which shall be determined at the time that the Transfer is sought to be approved:

- 6.7.1.7.1 The withdrawal and Transfer of Ground Water Off the Overlying Land;
- 6.7.1.7.2 The change of the location of the use of Ground Water for irrigation purposes;
- 6.7.1.7.3 The permanent Transfer of Certified Irrigated Acres;
- 6.7.1.7.4 The permanent Transfer of Allocation; and
- 6.7.1.7.5 The permanent Transfer of Type of Use or Addition of Use.

6.7.1.8 Unless otherwise provided in the following Rules in this 6.7.1.8, any Person requesting a Transfer is required to comply with Rule 6.7.8, 6.7.9, 6.7.10 and 6.7.11.

**6.7.2 Physical Transfer of Ground Water Off Overlying Land Located in the District; Permit Required** - Except as provided in Rule 6.7.3 below, any Person who withdraws Ground Water from a well located within the District and physically Transfers or intends to Transfer such water off the overlying land shall before commencing the Transfer apply for and receive a Transfer permit from the District. An application for a Transfer shall be submitted on forms provided by the District.

6.7.2.1 Permits will not be granted under this section if the Ground Water is discharged into an open ditch and transported by such ditch to a location other than the overlying land.

6.7.2.2 Permits will be required from the Department when Ground Water is discharged into a natural stream or channel and transported by such natural stream or channel for use elsewhere.

6.7.2.3 **Changes in Certified Irrigated Tracts or Certified Irrigated Acres** - Whenever the location of any Certified Irrigated Tract or the number of Certified Irrigated Acres change as a result of the physical Transfer of Ground Water off the land where the water is withdrawn, pursuant to Rule 6.7.2, the Landowner or Person in control of any Certified Irrigated Tract or Certified

Irrigated Acres shall notify the District in writing of such change within thirty (30) days of the initiation of the Transfer.

6.7.3 Exceptions to Rule 6.7.2 No Transfer permit shall be required pursuant to Rule 6.7.2 if the withdrawal and physical Transfer of Ground Water complies with any one or more of the following exceptions; provided however, that notice of such Transfer shall be given to the District within thirty (30) days of the commencement of such Transfer:

6.7.3.1 The withdrawal and Transfer of Ground Water was begun prior to the effective date of Rule 6.7.2 and was at that time in compliance with all applicable District rules and regulations and all applicable state statutes and regulations.

6.7.3.2 The proposed withdrawal and Transfer of Ground Water is for domestic purposes only as set forth in *Neb. Rev. Stat.* § 46-691.01.

6.7.3.3 The proposed withdrawal and Transfer of use is solely for the purpose of providing water to Range Livestock.

6.7.3.4 The withdrawal and Transfer has been approved by the Department prior to July 16, 2004.

6.7.3.5 The proposed withdrawal and Transfer is for agricultural purposes, or for any purpose pursuant to a Ground Water remediation plan as required under the Nebraska Environmental Protection Act, pursuant to *Neb. Rev. Stat.* § 46-291, and all locations where the water will be used for such purposes are no more than two (2) miles from the location(s) of the well(s) from which the Ground Water is withdrawn.

6.7.3.6 If a Replacement Water Well is constructed, the original well may be modified and equipped to pump fifty (50) gallons per minute or less and be used only for Range Livestock, monitoring, observation, or any other non-consumptive or de minimis use approved by the District.

6.7.3.7 Water Distribution Systems owned by a Municipality will be exempt from Rule 6.7.1.6 and 6.7.1.7.

6.7.4 Transfer of Type of Use or Addition of Use of Ground Water - Any Person who withdraws Ground Water from a well located within the District and intends to Transfer the type of use of that water (e.g. irrigation to industrial) or adds a type of use of Ground Water to the well (e.g. adds an industrial use to an existing irrigation well), shall before commencing the Transfer apply on forms provided by the District, and receive a Transfer permit from the District.

6.7.4.1 No change in the type of use of Ground Water shall be approved unless such change results in no increase in the Historic Consumptive Use or an Offset is provided for any increase in Historic Consumptive Use of the Ground Water to be transferred. If a type of use of Ground Water is added to the well, the transfer permit will not be approved unless there is no increase in Historic Consumptive Use or an Offset is provided for any increase in Historical Consumptive Use.

6.7.4.1.1 In the case where a type of use of Ground Water is added to the well, a separate Flow Meter will be required for each use, unless one of the uses is for domestic or Range Livestock. In such case, a Flow Meter will not be required on the domestic or Range Livestock use.

6.7.4.2 No Person shall use a water well for purposes other than its registered purpose until the Water Well registration has been changed to the intended new use or the additional use has been added to the registration.

6.7.4.2.1 In the case of a Replacement Water Well, a Person may modify and equip the original Water Well to be used for Range Livestock, monitoring, observation, or any other non-consumptive or deminimis use approved by the District.

6.7.4.3 The change to a new use or the addition of a use shall be made by filing a Water Well registration modification with the Department and the change must be in conformance with *Neb. Rev. Stat.* §§ 46-609(1) and 46-651.

#### 6.7.5 Transfer of Certified Irrigated Acres

6.7.5.1 Permanent or temporary Transfers of Certified Irrigated Acres may occur only if the following conditions are met:

6.7.5.1.1 No Transfer shall cross county boundaries within that portion of an Allocation Subarea (Allocation Subareas and county lines are shown on the attached maps in Appendix C and C1);

6.7.5.1.2 No Transfer shall be allowed between Allocation Subareas or across a different Allocation Subarea;

6.7.5.1.3 Any Transfer within that portion of an Allocation Subarea shall be limited to Transfers within a Floating Township (Allocation Subareas and county lines are shown on the attached maps in Appendix C and C1); and

6.7.5.1.4 Any Transfer must be approved by the Board and is subject to conditions that may be imposed by the Board.

6.7.5.2 Unless the Board approves a Variance, Transfers of Certified Irrigated Acres are prohibited until 1) three (3) irrigation seasons following installation of a Flow Meter on the affected well have been completed in order to provide an irrigation history, and 2) an Allocation system has been implemented pursuant to these rules.

6.7.5.3 In order to Transfer one hundred percent (100%) of the Certified Irrigated Acres, at least fifty percent (50%) or more of the Allocation must have been used during the Allocation Period, and proof of such use must accompany the application submitted to the Board.

6.7.5.4 Transfers of less than one hundred percent (100%) of the Certified Irrigated Acres may occur when less than fifty percent (50%) of the Allocation has been used during the Allocation Period. In such instances, the applicant may apply to Transfer the amount of the Certified Irrigated Acres equal to the percent use of the Allocation for the Allocation Period.

6.7.5.5 The permanent Transfer of Certified Irrigated Acres may be accomplished by decertifying the Certified Irrigated Acres and recertifying the transferred acres.

6.7.5.6 Transfers of Ground Water Certified Irrigated Acres from land that is also served by surface water will not be permitted unless the surface water appropriation is relinquished for that parcel of land, an Offset is provided for the new acres to be irrigated, or that surface water right is transferred to the same acres the Ground Water is being transferred to.

#### 6.7.5.7 Certified Irrigated Acres served by Ground Water and Surface Water

6.7.5.7.1 Transfers of Ground Water Certified Irrigated Acres from land that is also served by surface water will not be permitted unless the surface water appropriation is relinquished for that land, an Offset is provided for the new acres to be irrigated, or the Ground Water Certified Irrigated Acres are being transferred to the same acres to which the surface water right is transferred.

6.7.5.7.2 Ground Water Certified Irrigated Acres served by a Supplemental Well will be decertified or proportionately reduced whenever a surface water right is transferred or otherwise eliminated, unless a provision is made to prevent an increase in the Consumptive Use of Ground Water, an Offset is provided for the increased Consumptive Use of Ground Water, or the Ground Water Certified Irrigated Acres are transferred to the same acres to which the surface water right is transferred.

6.7.5.8 An application for a Transfer of Certified Irrigated Acres shall include, but not be limited to the following:

6.7.5.8.1 Application submitted on a District form;

6.7.5.8.2 Proof of ownership from the tax assessor for each Certified Irrigated Tract involved in the Transfer; and

6.7.5.8.3 An aerial photograph showing tracts to be involved in the Transfer.

6.7.5.9 Nothing contained in Rule 6.7.5 is intended or shall be construed as:

6.7.5.9.1 Permitting the development of any new well; or

6.7.5.9.2 Prohibiting a Person from pursuing a Variance from these rules and regulations, pursuant to Rule 8.

#### 6.7.6 Transfer of Allocation

6.7.6.1 Permanent or temporary Transfers of Allocation may occur only if the following conditions are met:

6.7.6.1.1 No Transfer shall cross county boundaries within that portion of an Allocation Subarea (Allocation Subareas and county lines are shown on the attached maps in Appendix C and C1);

6.7.6.1.2 No Transfer shall be allowed between Allocation Subareas or across a different Allocation Subarea;

6.7.6.1.3 Any Transfer within that portion of an Allocation Subarea shall be limited to Transfers within a Floating Township (Allocation Subareas and county lines are shown on the attached maps in Appendix C and C1); and

6.7.6.1.4 Any Transfer must be approved by the Board and is subject to conditions that may be imposed by the Board.

6.7.6.2 Temporary full or partial Transfers of Allocation may occur; however, if the temporary full Transfer of Allocation is requested, the well, that would otherwise be used if the Transfer was not requested, may not be used during the period covered by the Transfer and must be configured to prevent the possibility of contamination of the Ground Water and/or the Flow Meter must remain in place.

6.7.6.3 Permanent full or partial Transfers of Allocation may occur; however, if the permanent full Transfer of Allocation is requested, the well, that would otherwise be used if the Transfer was not requested, shall 1) be decommissioned or modified and equipped to be used for Range Livestock, monitoring, observation, or any other non-consumptive or deminimis use approved by the District, 2) if applicable, be abandoned with a notice of abandonment submitted to the Department or modified according to its new use by submitting a modification form to the Department, and 3) have its Certified Irrigated Acres decertified by the District.

6.7.6.4 Nothing contained in Rule 6.7.6 is intended or shall be construed as:

6.7.6.4.1 Permitting the development of any new well; or

6.7.6.4.2 Prohibiting a Person from pursuing a Variance from these rules and regulations, pursuant to Rule 8.



6.7.7 Transfers of Ground Water from Outside the District to Inside the District - District approval is required before Ground Water is transferred from a well located outside the District for use within the District, unless such Transfer began before the effective date of these rules and regulations or the water is used solely for domestic or Range Livestock purposes. Such approval shall be granted if the proposed Transfer of the Ground Water is not inconsistent with the District's rules and regulations and if the applicant agrees that such approval may be conditioned on the water use being in conformance with District rules and regulations relating to the use of water withdrawn inside the District. The applicant shall provide the District with such information as the District deems necessary to make such determinations.

#### 6.7.8 Municipal Transfer Permits

6.7.8.1 The District shall approve the withdrawal and transport of Ground Water when a public water supplier providing water for municipal purposes receives a permit from the Department pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act. Any public water supplier filing an application for a permit with the Department under the Municipal and Rural Domestic Ground Water Transfers Permit Act, shall at the same time submit a copy of the application to the District.

6.7.8.1.1 Any Variance approved by the Board before a Permit is granted by the Department shall be forwarded to the Department. If the Variance is granted with any condition, such condition including any monitoring and/or compliance conditions shall be clearly stated on the Variance.

6.7.8.1.2 When the Department initiates consultation with the District regarding a permit application, the District shall advise the Department of any unmet obligations on the part of the applicant (e.g. Variance not yet applied for/or granted).

6.7.8.2 Any public water supply that crosses a municipal boundary and is not permitted under the Municipal and Rural Domestic Ground Water Transfers Permit Act is required to obtain a transfer permit from the District in accordance with Rule 6.7.2.

6.7.8.2.1 Any Variance or permit application for municipal use granted or submitted to the District shall be forwarded to the Department for review.

6.7.8.2.2 A Water Well construction permit shall not be issued until the Board has granted a Variance to the moratorium on the issuance of Water Well construction permits and has approved the Transfer permit.

6.7.8.2.3 In considering the granting of a Transfer permit for a municipal Transfer, the District shall examine the factors found in Rules 6.7.11.9, 6.7.11.10, and 6.7.11.11 including, the following:

6.7.8.2.3.1 Whether the proposed withdrawal, use, and Transfer is reasonable;

6.7.8.2.3.2 Whether the proposed withdrawal, use, and Transfer is not contrary to the conservation and beneficial use of Ground Water;

6.7.8.2.3.3 Whether the proposed withdrawal, use, and Transfer is not otherwise detrimental to the public welfare; and

6.7.8.2.3.4 Nature of the proposed use.

6.7.8.2.4 Any permit granted for the construction of a well and the Transfer of Ground Water shall be filed with the Department, along with the applicant's Water Well registration.

#### 6.7.9 Industrial Transfer Permits

6.7.9.1 Any Commercial or Industrial Water User who has obtained a Transfer permit or approval from the Department pursuant to the Industrial Ground Water Regulatory Act is not required to obtain a Transfer permit from the District; provided however, such user shall advise the District at the time an application is submitted to the Department.

6.7.9.1.1 Any Variance approved by the Board for the Industrial or Commercial Water User before or during the permitting process before the Department shall be forwarded to the Department. Any condition or monitoring and/or compliance provisions of the Variance shall be clearly stated on the Variance.

6.7.9.1.2 When the Department initiates consultation with the District regarding a permit application, the District shall advise the Department of any unmet obligations on the part of the applicant (e.g. Variance not yet applied for/or granted).

6.7.9.1.3 A water well construction permit shall not be issued to any applicant until the industrial transfer permit has been granted or approved by the Department, a copy of the permit is on file with the District, and a Variance to the moratorium on the issuance of Water Well construction permits has been granted by the Board.

6.7.9.2 Industrial transfers that are not required to be permitted under the Industrial Ground Water Regulatory Act shall require a Transfer permit from the District.

6.7.9.2.1 Copies of any Variances or District permit applications for industrial uses shall be forwarded to the Department for review.

6.7.9.2.2 A Water Well construction permit shall not be granted or approved until the Board has granted a Variance to the moratorium on the issuance of Water Well construction permits and has approved a Transfer permit.

6.7.9.2.3 In considering any Transfer permit application, the District shall examine the factors found in Rules 6.7.11.9, 6.7.11.10, and 6.7.11.11 in addition to the following:

6.7.9.2.3.1 Possible adverse effects on existing surface or Ground Water Users;

6.7.9.2.3.2 Effect on surface or Ground Water supplies needed to meet reasonably anticipated domestic and agricultural demands in the area of the proposed withdrawal;

6.7.9.2.3.3 Economic benefit of the proposed use;

6.7.9.2.3.4 Social and economic benefits of existing uses of surface or Ground Water in the area;

6.7.9.2.3.5 Any waivers of liability from existing users filed with the District;

6.7.9.2.3.6 Effects on any interstate compacts or formal state agreements; and

6.7.9.2.3.7 Other factors reasonably affecting the equity of granting the permit.

6.7.9.2.4 Copies of both the Water Well construction permit and the Transfer permit granted or approved by the District shall be filed by the applicant along with the Water Well registration with the Department.

#### 6.7.10 Transfer Out of State

6.7.10.1 Any application for the Transfer of Ground Water out of state pursuant to *Neb. Rev. Stat. § 46-613.01* requires approval of the District, but will not be considered until the Department has approved or denied the required transfer permit.

6.7.10.2 Any Person wishing to Transfer Ground Water to an adjoining state shall advise the District of the proposed Transfer at the same time that such Person submits a permit application to the Department.

6.7.10.3 When the Department initiates consultation with the District regarding a permit application, the District shall respond with the following:

6.7.10.3.1 The District shall advise the Department of any unmet obligations on the part of the applicant under District rules (e.g. Variance not yet applied for or granted);

6.7.10.3.2 Any formal action taken by the Board adopting any Offset for uses other than municipal and industrial uses determined by the District or the Department to be necessary to maintain compliance with any interstate compacts or formal state agreements or to mitigate any effects to surrounding Ground Water Users or surface water appropriators; and

6.7.10.3.3 The nature of any required Offset and any enforcement provisions of such Offsets.

6.7.10.4 A water well construction permit shall not be granted or approved until a permit to Transfer Ground Water to an adjoining state has been obtained from the Department and a copy of the permit has been furnished to the District.

#### 6.7.11 Application and Procedures for Transfer Permit(s)

6.7.11.1 An application for a District permit to Transfer under Rules 6.7.2, 6.7.4, 6.7.5, 6.7.6, 6.7.7, 6.7.8.2, and 6.7.9.2 shall include the following information:

6.7.11.1.1 The name and post office address of each owner of the land where the well or wells are or will be located, and if another Person or Persons operate such well, the name and address of such Person or Persons;

6.7.11.1.2 The name and post office address of the owner or owners of the land where the water is to be transferred for use;

6.7.11.1.3 The legal description of the tract of land where the well or wells are or will be located;

6.7.11.1.4 The legal description of the tract of land where the water is to be transferred for use;

6.7.11.1.5 If an existing well will be used, the Department Water Well registration number for such well;

6.7.11.1.6 The nature of the proposed use;

6.7.11.1.7 The maximum rate of withdrawal from the well or wells to be used as the source of water for the Transfer;

6.7.11.1.8 The range of the maximum and average amounts of water proposed to be withdrawn and transferred on an annual basis;

6.7.11.1.9 If the withdrawal and Transfer is temporary, the time period for which a District permit is being sought;

6.7.11.1.10 An aerial photo or photos showing the proposed point(s) of withdrawal, the proposed point(s) of delivery, and the Transfer route(s);

6.7.11.1.11 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;

6.7.11.1.12 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 within the state or to comply with any interstate water compact or decree or with any other formal state contract or agreement;

6.7.11.1.13 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; and

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

6.7.11.2 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.

#### 6.7.11.3 Application Fees

6.7.11.3.1 Subject to Rule 6.7.2 and in accordance with *Neb. Rev. Stat.* § 46-691.03, an application for a permit for the withdrawal, transport, and use of Ground Water 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 non-refundable fee of fifty dollars (\$50) payable to the District.

6.7.11.3.2 Except for Rule 6.7.2, any Transfer application filed pursuant to Rule 6.7 shall be accompanied by a non-refundable fee of two-hundred dollars (\$200.00) payable to the District.

6.7.11.3.3 No other fees are imposed for the filing of an application, except as otherwise provided in these Rules and Regulations.

6.7.11.4 Public Comment on Applications - Prior to action taken on any application subject to *Neb. Rev. Stat.* § 46-691.03, the District shall provide an opportunity for the public to comment on such application at a regular or special meeting of the Board.

6.7.11.5 Additional Information Requested - Prior to taking action on any application for a permit governed by Rule 6.7, the District may request the applicant to provide additional information to support the application. Failure of the applicant to provide the requested information may be grounds for denying the permit.

6.7.11.6 Ownership and Encumbrances - The District shall not approve the Transfer of any Certified Water Uses or Certified Irrigated Acres or allow a Ground Water User or Landowner to participate in a financial or other incentive program established pursuant to subsection (8) of *Neb. Rev. Stat.* § 46-739 unless the Person seeking such Transfer or participant in such program has submitted to the District a current report of title issued by an attorney or a registered abstractor, on a form provided by the District, stating: 1) the owner and legal description of the land from which the Certified Water Uses or Certified Irrigated Acres are to be transferred or which is the subject of such program; and 2) the existence of all liens evidenced by the filing of a mortgage, trust deed, or other equivalent consensual security interest, against the land from which the Certified Water Uses or Certified Irrigated Acres are to be transferred, or which is the subject of such program.

6.7.11.6.1 This subsection does not apply to a transfer of certified water uses or certified irrigated acres resulting from: A one-time transfer of four (4) acres or less; participation in a financial or other incentive program that involves the transfer, purchase, or retirement of four acres or less; or a transfer that involves one landowner on a single tract of land in which there is no reduction or increase in certified water uses or certified irrigated acres and the transfer involves an improvement in irrigation efficiency. Irrigation Efficiency is defined in the paper: Howell, Terry A. 2003. Irrigation Efficiency. Encyclopedia of Water Science. DOI:10.1081/E-EWS 120010252. Marcel Dekker, Inc., New York, NY.

6.7.11.7 Lienholder's Consent - For those lands that are the subject of a lien, an applicant shall provide a completed *Lienholder's Consent To Transfer Certified Irrigated Acres* form that is signed by the current lienholder.

6.7.11.8 Recording of the Transfer of Certified Water Uses or Certified Irrigated Acres - Pursuant to *Neb. Rev. Stat.* § 46-739.02, an instrument of Transfer of the right to use Ground Water shall be recorded by the District with the register of deeds in each county in which is situated the real estate, or any part thereof, from which a Transfer of Certified Water Uses or Certified Irrigated Acres occurred, and which a Transfer of Certified Water Uses or Certified Irrigated Acres has been approved by the Board.

6.7.11.8.1 The instrument of Transfer of the right to use Ground Water shall include a description of the real estate to and from which the Certified Water Uses or Certified Irrigated Acres were transferred, the number of Certified Irrigated Acres transferred, the nature of the Transfer, and the date on which the Transfer occurred.

6.7.11.8.2 The District may recover the cost of filing the instrument of Transfer from the Person seeking the Transfer.

6.7.11.8.3 The instrument of Transfer shall be executed, acknowledged, and recorded in the same manner as conveyances of real estate.

6.7.11.9 Approval of Transfers - Pursuant to *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:

6.7.11.9.1 Ensure the consistency of the Transfer with the purpose or purposes for which the District's Management Area was designated;

6.7.11.9.2 Prevent adverse effects on other Ground Water users or on surface water appropriators;

6.7.11.9.3 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; and

6.7.11.9.4 Otherwise protect the public interest and prevent detriment to the public welfare.

6.7.11.10 District Considerations Relative to Public Interest and Public Welfare - When determining whether it would be in the public interest or detrimental to the public welfare to approve an application for a withdrawal and Transfer subject to Rules 6.7.2, 6.7.4, 6.7.5, 6.7.6, 6.7.7, 6.7.8.2, and 6.7.9.2, the District shall consider the following:

6.7.11.10.1 Whether the proposed use is a beneficial use of Ground Water;

6.7.11.10.2 The availability to the applicant of alternative sources of surface water or Ground Water for the proposed withdrawal, transport, and use;

6.7.11.10.3 Any adverse 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;

6.7.11.10.4 Any adverse environmental impacts;

6.7.11.10.5 The cumulative effects of the proposed withdrawal, Transfer and use relative to the matters listed in 6.7.11.10.1 to 6.7.11.10.4;

6.7.11.10.6 Whether the proposed withdrawal, Transfer, and use is consistent with any integrated management plan of the District;

6.7.11.10.7 If the Ground Water will be transferred to and used in any other Natural Resources District, whether that NRD has approved such Transfer and use and whether such Transfer and use would be consistent with the rules and regulations of such other NRD; and

6.7.11.10.8 Any other factors which the District deems relevant to protect the public interest and prevent detriment to the public welfare.

6.7.11.11 In making its decisions regarding transfer applications, the Board may consider relevant information, including, but not limited to:

6.7.11.11.1 Information obtained through using best available scientific information including, but not limited to, modeling efforts;

6.7.11.11.2 The trend of change in the depth of the water level in an aquifer over time, obtained from District records;

6.7.11.11.3 Other Transfers into the area in proximity to the impacted well;

6.7.11.11.4 The total usage in proximity to the impacted well; and

6.7.11.11.5 Other factors that would increase the rate of consumptive use in the area of the impacted well.

6.7.11.12 Conditions on Permits Issued - All permits issued by the District for Transfers subject to Rules 6.7.2, 6.7.4, 6.7.5, 6.7.6, 6.7.7, 6.7.8.2, and 6.7.9.2 shall be conditioned on:

6.7.11.12.1 The applicant's installation and maintenance of a Flow Meter on the well or wells that will be used for withdrawal;

6.7.11.12.2 The applicant's submission of an annual report concerning the total volume of water pumped from said well or wells in the preceding year;

6.7.11.12.3 Compliance with all applicable statutes and rules and regulations, including any statutes or rules and regulations adopted after the District's approval of the permit; and

6.7.11.12.4 The District shall otherwise condition the approval of any withdrawal and Transfer of Ground Water off the overlying land as is necessary to ensure that the withdrawal and Transfer is and continues to be consistent with the matters listed in Rule 6.7.11.9.

## 6.8 Pooling

6.8.1 Any Pooling Arrangement for Allocations and/or Certified Irrigated Acres may only be approved if the following conditions are met:

6.8.1.1 Any Pooling Arrangement within an Allocation Subarea shall not cross county boundaries (Allocation Subareas and county lines are shown on the attached maps in Appendix C and C1);

6.8.1.2 No Pooling Arrangement shall be allowed between Allocation Subareas or across different Allocation Subareas;

6.8.1.3 Any Pooling Arrangement within an Allocation Subarea is limited to Pooling Arrangements within a Floating Township (Allocation Subareas and county lines are shown on the attached maps in Appendix C and C1); and

6.8.1.4 All Pooling Arrangements shall be approved by the Board and are subject to conditions imposed by the Board.

6.8.2 Unless a Variance is approved, Pooling Arrangements of Certified Irrigated Acres which have an Allocation are prohibited during the first three (3) complete irrigation seasons following installation of a Flow Meter on any well included in such arrangement.

6.8.3 Before the Board may approve any Pooling Arrangement, at least fifty percent (50%) or more of the Allocation shall have been used during the previous Allocation Period.

6.8.4 An application for a Pooling Arrangement shall be in writing and contain the signatures of every Person having an interest in such arrangement.

6.8.5 An application for a Pooling Arrangement shall be submitted on or before February 28, and once approved will be effective for the remainder of the then current Allocation Period.

6.8.6 An application for a Pooling Arrangement shall be on forms provided by the District and include, the following:

6.8.6.1 Record from tax assessor showing owners for each Certified Irrigated Tract included in the Pooling Arrangement; and

6.8.6.2 One or more aerial photographs showing tracts to include the Pooling Arrangement.

6.8.7 Any Pooling Arrangement previously approved may be renewed by filing an application with the District for subsequent Allocation Periods. The Board may approve, deny or condition the renewal based on the criteria established in Rule 6.8.10.

6.8.8 If a Pooling Arrangement is terminated, the unused portion shall remain with each tract, unless all of the members of the Pooling Arrangement agree in writing to prorate the remaining Allocation among the members.

6.8.9 In no event may any Pooling Arrangement result in more Ground Water being withdrawn than a Ground Water User's Total Allocation.

6.8.10 The Board may condition its approval or deny any Pooling Arrangement to the extent necessary to: 1) ensure the consistency of the arrangement with the purpose or purposes for which the Management Area or subarea was designated; 2) prevent adverse effects on other Ground Water Users or on surface water appropriators; 3) interfere with 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; and 4) otherwise protect the public interest and prevent detriment to the public welfare.

6.8.11 A Pooling Arrangement shall not be approved unless all Certified Irrigated Tracts have unused Allocations or Carryforward.

6.8.12 A newly purchased Certified Irrigated Tract may continue in an existing Pooling Arrangement provided all Persons in such Pooling Arrangement agree in writing.

6.8.13 Nothing contained in this Rule 6.8 is intended or shall be construed as 1) permitting the development of any new well, or 2) prohibiting a Person from pursuing a Variance, pursuant to Rule 8 of these rules and regulations.

## 6.9 Improper Irrigation Runoff

6.9.1 Pursuant to *Neb. Rev. Stat. § 46-708(1)*, each Person who uses ground water irrigation in the state shall take action to control or prevent the runoff of water used in irrigation.

6.9.2 Definition: Improper Irrigation Runoff - shall mean surface runoff of water derived from ground water irrigation, which

6.9.2.1 Causes or contributes to the accumulation of such water upon or beneath the surface of the land of any other Person, which adversely affects such other Person's land, or

6.9.2.2 Contributes to the deterioration of water quality by depositing sediment and/or associated chemicals in natural drain ways, streams, or other bodies of water.

## 6.9.3 Prevention or Control Options

6.9.3.1 All Persons who use ground water irrigation shall prevent Improper Irrigation Runoff by utilizing a structural or non-structural procedure, measure, or combination thereof, which provides for the effective prevention, control or abatement of Improper Irrigation Runoff, including but not limited to:

6.9.3.1.1 Limitation of water utilized by the proper operation and management of irrigation system, including reuse or other control measures installed so that structural measures are not necessary to prevent Improper Irrigation Runoff;

6.9.3.1.2 Construction of a runoff collection and/or retention system such as a sump or dugout, together with a reuse pump and/or ditch to return the water to the same or other field for beneficial use;

6.9.3.1.3 Blocking of rows or field borders to contain irrigation water within the property which is under the direct supervision or control of such Person;

6.9.3.1.4 The execution and performance of an agreement between two or more Persons and approved by the District for the use of any irrigation runoff water; or

6.9.3.1.5 Any other procedure or measure approved by the District.

#### 6.9.4 Irrigation Runoff - Use by other Persons

6.9.4.1 Persons whose irrigation runoff water is capable of being captured and utilized by another Person in a manner which will prevent waste of such water, deterioration of surface water quality, and accumulation of water upon the land of any other Person without his or her consent, may have such water excluded from the category of Improper Irrigation Runoff by submitting to the District an agreement providing for such capture and utilization signed by all affected parties, on forms provided by the District. When such agreement is approved by the District it will show the District's concurrence that the Person's irrigation runoff water is under adequate control. The agreement may be terminated at any time by either party or by the District whenever it is determined that such agreement no longer prevents or controls Improper Irrigation Runoff. If the District terminates the agreement, written notice shall be provided to all parties. If one of the parties to the agreement causes the termination, written notice shall be provided to all other parties and to the District.

#### 6.9.5 Complaints

6.9.5.1 Any Person who owns or leases land within the boundaries of the District or the Board on its own motion may file a written complaint against any Person using ground water irrigation, alleging Improper Irrigation Runoff.

6.9.5.2 Complaints shall be filed at the office of the District on forms provided by the District.

6.9.5.3 The General Provisions and Procedures for Enforcement set forth in Section 5 of these Rules and Regulations shall be followed for the processing and enforcement of Improper Irrigation Runoff Complaints and violation of Section 6.9.

### **7. GROUND WATER QUALITY CONTROLS**

7.1 Controls in Ground Water Quality Management Subareas - The following controls shall apply to all irrigated land within the specified Quality Management Subarea and to Operators of specific crops, as follows.

#### 7.1.1 Sidney Ground Water Quality Management Subarea

7.1.1.1 This Quality Management Subarea (Appendix D) shall remain designated in Phase II until the 2022 crop season when this subarea will transition into a Phase III designation and shall apply to all irrigated crop acres except alfalfa.

#### 7.1.2 Cheyenne County East Lodgepole Valley Ground Water Quality Management Subarea

7.1.2.1 This Quality Management Subarea (Appendix D) shall be designated in Phase I.

#### 7.1.3 Deuel County Lodgepole Valley Ground Water Quality Management Subarea

7.1.3.1 This Quality Management Subarea (Appendix D) shall be designated in Phase I.

#### 7.1.4 South Platte Valley Ground Water Quality Management Subarea

7.1.4.1 This Quality Management Subarea (Appendix D) shall be designated in Phase I and shall apply to all irrigated crop acres except alfalfa.

7.2 Phase I Controls: Established when the average nitrate-nitrogen levels of all sampled wells exceed 65% of the MCL for three (3) consecutive years.