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In The

Supreme Court of the United States

STATE OF KANSAS,

*Plaintiff,*

v.

STATE OF NEBRASKA

and

STATE OF COLORADO,

*Defendants.*

BEFORE THE HONORABLE VINCENT L. MCKUSICK  
SPECIAL MASTER

FINAL SETTLEMENT STIPULATION  
VOLUME 3 OF 5

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SUPREME COURT, U.S.

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Adopted 7-19-01

NEBRASKA DEPARTMENT OF NATURAL RESOURCES  
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NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: April 21, 1999  
TITLE 256 DNR – ADMINISTRATION OF THE  
RESOURCES DEVELOPMENT FUND  
Chapter 1 – GENERAL PROVISIONS

*001 Purpose and Effect of Rules.* These rules and regulations are adopted for the purpose of carrying out the provisions of the Nebraska Resources Development Fund Act. Under no circumstances shall these rules and regulations be construed as a limitation or restriction upon the exercise of any proper discretion that is vested in either the Director or the Natural Resources Commission, nor shall they in any event be construed to deprive the Director or the Commission of any exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount or character of data or information which may be required for the proper administration of the Act.

*002 Definitions.* As used in these rules and regulations, the terms listed below shall have the meanings noted:

*002.01 Act.* “Nebraska Resources Development Fund Act” or “Act” shall mean Sections 2-1586, R.R.S., 1997; 2-1587, 2-1589, 2-1590, 2-1592, 2-1593, and 2-1595, R.S. Supp., 2000; and 2-1588 and 2-1594, as amended by LB 129, 97th Nebraska Legislature, 1st Session (2001), and any and all amendments, additions, or deletions which may be made thereto;

*002.02 Applicant.* “Applicant” shall mean any state agency or political subdivision applying for financial assistance under the Act;

*002.03 Commission.* “Commission” shall mean the Nebraska Natural Resources Commission created pursuant to Section 2-1504, R.S. Supp., 2000;

*002.04 Department.* "Department" shall mean the Nebraska Department of Natural Resources created pursuant to Sections 61-205 and 81-101 R.S. Supp., 2000;

*002.05 Director.* "Director" shall mean the Director of the Department of Natural Resources as provided in Section 81-102, R.S. Supp., 2000;

*002.06 Fund.* "Fund" shall mean the Nebraska Resources Development Fund created by Section 2-1587, R.S. Supp., 2000;

*002.07 Governing Body.* "Governing Body" shall mean the individual or group of individuals which are empowered by law to govern the business of an applicant;

*002.08 Intangible Benefits.* "Intangible Benefits" shall mean benefits, either primary or secondary, that cannot be expressed in monetary terms;

*002.09 Political Subdivision.* "Political Subdivision" shall mean any political subdivision of the State of Nebraska to which has been granted the authority to develop water and related land resources, including, but not limited to a natural resources district, irrigation district, public power and irrigation district, reclamation district, county, and any municipal corporation, village, or city, whether operating under home rule charter or under the general laws of the State of Nebraska;

*002.10 Primary Benefits.* "Primary Benefits" shall mean net values attributable to a project of increases in products and services and of reductions in costs, damages, or losses of primary beneficiaries;

*002.11 Program and/or Project.* "Program and/or Project" shall mean any structural or non-structural undertaking for which assistance from the Fund is requested. Unless the context otherwise requires, no

distinction is intended between such terms and they may be used interchangeably for purposes of administration of these rules and regulations;

*002.12 Project Engineer or Project Director.* "Project Engineer or Project Director" shall mean any engineer, engineering firm, or other person, persons or firm retained by the sponsor to provide professional engineering or other professional or technical services during the planning, design, and construction of the project;

*002.13 Secondary Benefits.* "Secondary Benefits" shall mean net values to persons other than primary beneficiaries as a result of economic activity induced by or stemming from a project;

*002.14 Sponsor.* "Sponsor" shall mean the state agency or political subdivision primarily responsible for the development, administration, operation and maintenance of a program or project for which assistance from the Fund is requested;

*002.15 State Agency.* "State Agency" shall mean any agency, board, commission or other office of state government to which has been granted the authority to develop the state's water and related land resources.

*002.16 Tangible Benefits.* "Tangible Benefits" shall mean benefits, either primary or secondary, that can be expressed in monetary terms.

*003 Types of Assistance.* Eligible applicants for financial assistance from the Fund may receive such assistance in the form of grants, loans, or through the direct acquisition by the state of interests in eligible programs and projects. The form of assistance which may be allocated to a program or project shall be determined utilizing the following criteria:

*003.01 Grants.* Allocations from the Fund may be made as grants to applicants when it is determined that such an allocation will not be reimbursed from revenue or receipts and when the program or project, or separable portion thereof, appears to be of general public benefit thereby making reimbursement of such money from local tax funds inappropriate or impossible, or when the funds are intended for a state or local contribution to a program or project requiring such contribution to meet the requirements for a matching federal grant. If only a portion of the project meets the above criteria, only that portion will be eligible for a grant. In determining the appropriateness of a grant the considerations of the Director and the Commission shall include the extent of the area over which the anticipated benefits will accrue and whether equitable distribution of the costs of the program or project can be accomplished without a grant.

*003.02 Loans.* Allocations may be made from the Fund as loans to applicants for any program or project or any part thereof consistent with the purposes of the Act which will directly generate revenue or receipts or which can be anticipated to culminate in a program or project which will generate revenue or receipts, or which would not generate revenue or receipts but would be of general public benefit to the applicant making repayment from local tax funds appropriate.

*003.03 Acquisition of State Interests.* Interests in water and related land resources projects may be acquired by the Department, upon approval by the Commission, in the name of the state with moneys from the Fund when the public benefits obtained from the project or a part thereof are statewide in nature and when associated costs are determined to be more appropriately financed by other than a local organization. The Department, upon approval by the Commission, may also acquire interests in water resources

projects in the name of the state to meet future demands for usable water.

*003.04 Allocations to State Agencies.* No grant or loan shall actually be made to state agencies for programs or projects determined to be eligible for funding unless:

*003.04A* The allocation is for the purpose of reserving land for a future resource development project, or;

*003.04B* The allocation has been approved by the Legislature by earmarking appropriations to the Fund for that purpose.

*004 Eligible Projects.* Moneys from the Fund may be used to (a) participate in locally sponsored projects; (b) participate in projects sponsored or financially assisted by the federal government; and, (c) finance state-sponsored projects. The types of projects and programs eligible for funding and the respective forms of such funding are as follows:

*004.01 Structural Measures.* Structural measures which may be eligible for allocations from the Fund in the form of grants and/or loans include measures designed for flood control; pollution abatement; fish and wildlife enhancement and preservation; outdoor recreation; irrigation development; irrigation rehabilitation; groundwater recharge; water supply for any beneficial use including domestic, agricultural, and manufacturing uses; streamflow augmentation; stream bank stabilization; and erosion and sediment control.

*004.02 Non-structural Measures.* Non-structural measures which may be eligible for financial assistance from the Fund in the form of grants and/or loans include: Flood damage reduction; fish and

wildlife enhancement and preservation; outdoor recreation; reservation of lands for future resources development projects; and other water and related land resources programs. Projects whose primary purposes are research or data gathering shall not be eligible for assistance.

*005 Interest Rate.* The rate of interest payable on loans from the Fund shall be determined annually prior to October 1 of each fiscal year. Except as otherwise provided herein, such rate of interest shall be computed by averaging the yields, as determined by the "Moody's" rating and classification system, of AAA State-Local Bonds issued nationally for the three previous fiscal years and by rounding off such average to the nearest one-eighth percent. For loans for the rehabilitation or betterment of surface water irrigation projects, the Commission may reduce the rate of interest to not less than three percent if (1) the amount of the loan is \$500,000 or less; (2) the repayment period is ten years or less; (3) the project sponsor has not previously received a reduced interest loan from the Fund; and (4) the Director and the Commission determine that the proposed project will make water available for public use or will provide other public benefits. The rate of interest payable on a loan for a specific program or project shall be the rate in effect for the fiscal year in which the Director recommends approval of the program or project for a loan allocation. Such rate shall remain in effect throughout the repayment period determined to be appropriate for such program or project.

*006 Deferred Interest.* When, in the Commission's judgment, a construction or preconstruction period (not exceeding five years next following the initial allocation) is justified, no payment on the interest or principal on such

loans is required during that period, but interest shall begin accruing on all loan allocations immediately with disbursement. Repayment shall commence no later than one full year following completion of project construction. Any deferred interest may be apportioned over the repayment period. The repayment period will not exceed the project life or fifty years, whichever is less.

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NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: April 21, 1999

Title 256 – DEPARTMENT OF NATURAL RESOURCES

Chapter 2 – APPLICATION PROCEDURES AND  
REQUIREMENTS

*001 Filing Fees.* No filing fee is required to accompany any project proposal or any application for assistance under the Act.

*002 Filing Location.* All project proposals, applications or other documents or instruments supplied by an applicant in connection with a request for financial assistance from the Fund shall be filed with the Director.

*003 Application Procedure.* It is recommended that each formal application for financial assistance from the Fund be preceded by a Project Proposal. An applicant may include the cost to the applicant of the feasibility report, the contents of which are specified by section 2-012 as a portion of the project costs of any project for which funding in an amount of less than \$100,000 is requested. Such cost may also be included as a portion of the project costs of any project for which funding in excess of \$100,000 is



requested if, and only if, a project proposal has been previously submitted.

*004 Information Required in Project Proposal.* If the applicant decides to submit a Project Proposal, thirty-five copies shall be filed unless otherwise directed by the Director. The Project Proposal shall include the following information:

*004.01* Name and address of applicant;

*004.02* Applicant's authorized representative and his name and address;

*004.03* A description of the proposed project and the desired accomplishments;

*004.04* The primary purpose of the proposed project;

*004.05* Other purposes of the proposed project;

*004.06* A statement of urgency and need for the proposed project;

*004.07* The applicant's most recent financial statement or budget document;

*004.08* The estimated costs of the project;

*004.09* The expected benefits from the proposed project;

*004.10* The anticipated funding or other assistance from other sources;

*004.11* The type and approximate amount of state assistance to be requested;

*004.12* A discussion of probable environmental effects which shall include the applicant's plans to determine the potential impact of the proposed project on any threatened or endangered species or the critical

habitat of any such species. Copies of any applicable correspondence with the Game and Parks Commission shall be included, if available.

*004.13* The estimated schedule of construction of the project, and;

*004.14* A discussion of alternatives for accomplishing the purpose of the project.

*004.15* An indication whether liability insurance or contractor bonding will be required.

*005 Details of Project Proposals.* The information required in Project Proposals shall be in such detail as directed by the Commission and Director. Appropriate guidelines for assistance in Project and Program Proposal preparation shall be prepared and distributed to all state agencies or political subdivisions expressing a need for such assistance.

*006 Omissions in Project Proposal.* If the Commission or the Director desire additional information on a Project Proposal, it will so notify the applicant. If the Director determines that a Project Proposal is not complete, or if additional information is required, the Director will notify the applicant of such omissions. The applicant shall be expected to correct any such omission or provide any additional information requested within 60 days following notification.

*007 Review by Commission and Director.* Upon receipt of a properly completed Project Proposal, the Director shall review it forthwith, make a preliminary evaluation, and advise the Commission within 90 days: (1) that the Director recommends the Sponsor be authorized to proceed with preparation of a formal application and feasibility report;

or (2) that, based upon the submitted proposal, the Director does not recommend the Sponsor prepare an application and feasibility report. The reasons for any negative recommendation shall be stated. If the Director recommends proceeding, he or she shall also indicate the type of funding for which the project may be eligible and a cost-share range within which a funding recommendation is probable if the project is later determined to be eligible for funding. The Director may make any additional recommendations regarding the contents of the formal application and feasibility report he or she deems appropriate. Any such recommendations shall be forwarded to the Sponsor by the Department along with an invitation to the Sponsor to appear before and comment on the Director's recommendations to the Commission. Upon receipt and consideration of the Director's recommendations and the Sponsor's comments, if any, the Commission shall determine whether the Director is to advise the applicant: (1) that it is authorized to proceed with preparation of a formal application and feasibility report; or (2) that it is recommended that an application and feasibility report not be prepared; the reasons for a negative recommendation shall be stated.

*008 Public Hearing and Notification.* Except for projects requesting less than \$100,000 from the Fund, the applicant shall conduct at least one public hearing on all aspects of the proposed project or program prior to submission of the formal application and feasibility report. Notice of the hearing shall be provided to the general public by publication, at least ten days prior thereto, in a newspaper or newspapers of general circulation within the project or program area. A copy of such notice will be provided to the Director. Information gained from the

hearing, including a summary of testimony presented, is to be forwarded with the application.

*009 Time to Complete Formal Applications.* Upon notice by the Director of the Commission's findings on the Project Proposal, the Applicant shall be given a period of one year to complete a formal application and feasibility report. If an application is not completed within one year, or within such additional time as the Commission may grant for good cause shown, the Commission may request the filing of a new Project Proposal.

*010 Form of Formal Application and Feasibility Report.* Applicants for financial assistance from the Fund shall file twenty-five copies of an application and feasibility report. Such application shall contain a specific request for each type of assistance applied for in a specified amount. The contents of such application and feasibility report shall include all items required by sections 2-011 to 2-018 unless otherwise authorized by the Director. Feasibility reports shall be prepared at the initial expense of the applicant and with the assistance of licensed engineers, financial consultants, economists, recreation planners, wildlife specialists, or other consultants if deemed necessary by the applicant or by the Director following his or her evaluation of the Project Proposal. Costs of preparation of the feasibility report incurred by the applicant may be included if consistent with section 2-003.

*011 Contents of Formal Application.* Except to the extent that such information has previously been indicated through submission of a Project Proposal, the formal application shall include the following information:

*011.01* A cover letter from the applicant submitting the feasibility report, the contents of which are specified by section 2-012;

*011.02* The name and address of the applicant's authorized representative;

*011.03* An outline of the initial development and background of the project;

*011.04* An explanation of the need and urgency of the project;

*011.05* A description of project goals and purposes;

*011.06* A general discussion of alternative plans considered including a comparison of the technical, economic, and environmental aspects of each alternative with the plan chosen; and

*011.07* A statement whether money from other sources is available or has been sought.

*012 Contents of Feasibility Report.* Contents of the feasibility report are to be of sufficient detail to demonstrate the technical, economic and financial feasibility, as well as the legal soundness, of the proposed project. Additionally, the expected positive and adverse environmental and ecological consequences of the project shall be therein demonstrated. The extent of detail necessary in the feasibility report will depend upon the type, purpose, and complexity of the project. Upon completion of any project proposal review, the Director will, to the extent deemed necessary, advise the applicant as to:

*012.01* The criteria utilized to evaluate the technical, economic, financial, legal, and environmental aspects of the project;

*012.02* The informational detail to be contained in the feasibility report.

*013 Technical Feasibility.*

*013.01* A structural project shall be considered technically feasible when it can and will be designed, constructed, and operated to accomplish the purpose(s) for which it was planned utilizing accepted engineering and other technical principles and concepts. Technical data and information to be provided in the feasibility report should include, but is not limited to, the following:

*013.01A* A detailed discussion of the plan of development selected for the project;

*013.01B* A description of all field investigations made to substantiate the feasibility report;

*013.01C* Maps, drawings, charts, tables, etc., used as a basis for the feasibility report;

*013.01D* A description of the water and land rights associated with the project and pertinent water supply and water quality information, if appropriate;

*013.01E* A detailed discussion of each component of the final plan preparation including, when applicable:

*013.01E1* Required geologic investigation;

*013.01E2* Required hydrologic data;

*013.01E3* Design criteria for final design including, but not limited to, soil mechanics, hydraulic, hydrologic, structural, embankments and foundation criteria.

*013.02* A non-structural project shall be considered to be technically feasible when it can and will be designed and carried out to accomplish the purpose(s) for which it was planned. Data necessary to establish the technical feasibility should include, but is not limited to the following:

*013.02A* A detailed discussion of the plan of development designed for the project, including techniques to be utilized in all aspects of the project;

*013.02B* A description of field or research investigations utilized to substantiate the project conception;

*013.02C* A description of the water and/or land rights necessary for project continuation, if applicable;

*013.02D* A discussion of the anticipated effects, if any, of the proposed project upon the development and/or operation of existing or envisioned structural measures including a brief description of any such measure.

*014 Economic Feasibility.* Except as otherwise specified by subsection 014.04 or subsection 014.05 of this section, a project is economically feasible if primary, tangible benefits exceed project costs. In addition, for projects for which \$100,000 or more is requested from the Fund, each project's purpose in a multi-purpose project must provide benefits equal to or greater than its separable or specific cost as specified by the Director and there must be no known means of accomplishing the same purpose or purposes more economically. The Director and the Commission may also require that separable project features or increments have benefits which equal or exceed their

costs. All costs and benefit data reported by the applicant will be based upon current data and sources for all data must be documented. Certain commodity prices, recreation benefit prices, and wildlife prices will be prescribed by the Director. The Director may also prescribe other cost and benefit information necessary for completion of the feasibility report. The period of analysis for economic feasibility studies shall be fifty (50) years or the life of the project, whichever is less.

*014.01 Cost Information.* The report shall include all relevant cost information including, but not limited to, all actual or anticipated costs for the feasibility study, the engineering and inspection costs, capital construction costs, annual operation and maintenance costs, and annual replacement costs. Cost information shall also include the estimated construction period as well as the estimated project life.

*014.02 Benefit Information.* Only primary tangible benefits may be counted in providing the monetary benefit information. In a multi-purpose project, the benefits will be estimated for each purpose and displayed by year for the project life. Intangible and secondary benefits of the proposed project or program should be described for consideration and evaluation by the Director and the Commission. Benefit measurement techniques and criteria shall be provided to the applicant by the Director.

*014.03 Cash Flow Stream.* All benefit and cost data will also be presented in a table form to indicate the annual cash flow for the life of the project, not to exceed 50 years. A form for so indicating the annual cash flow shall be supplied by the Director.

*014.04 Rate-of-Return on Investment.* The cost and benefit data expressed in the cash flow stream will be



utilized by the Director to calculate the rate-of-return on the investment. The rate-of-return on the investment is the discount rate applied to future benefits and costs at which costs and benefits become equal and the net present worth of the project cash flow is zero. The Commission may prescribe a minimum rate-of-return for a project to be considered economically feasible.

*014.05 Other Methods.* In the case of proposed programs or projects for which there is no generally accepted method for calculation of primary, tangible benefits, the economic feasibility of such program or project shall be demonstrated by such method as the Director and the Commission deem appropriate.

*015 Financial Feasibility.* A project is financially feasible if sufficient funds can be made available to complete the project, and if sufficient annual revenues can be obtained to repay the reimbursable costs and to operate, maintain, and replace the project. When a loan is involved, financial feasibility requires assurance that the projects can be adequately operated, maintained, and replaced and that the loan can be repaid during the repayment life of the project. Financial data supplied by the applicant shall include the applicant's most recent financial statement, budget document or other documentation necessary to illustrate the following:

*015.01* The legal limit of the rate of taxation by the applicant and the rate currently being levied;

*015.02* The limit of property that can be locally taxed by the applicant;

*015.03* The level and trend of actual valuation;

*015.04* The rate of local delinquency;

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*015.05* The legal limit of revenue and general obligation bond indebtedness;

*015.06* Any debts, including bonded indebtedness and those resulting from contractual or other obligations.

If a loan is requested, applicant shall also supply a complete year-by-year repayment schedule in such detail as directed by the Director.

*016 Environmental Acceptance.* A project is considered to be environmentally acceptable when:

*016.01* The Director has found that the project will not jeopardize the continued existence of any threatened or endangered species or result in the destruction or modification of the critical habitat of any such species; and

*016.02* The plan of development minimizes, in a manner satisfactory to the Director, any adverse impacts on the natural environment and adequately addresses existing cultural resources.

In addition to any proposed mitigation measures, if applicable, all aspects of the proposed project which can be anticipated to result in environmental enhancement shall be considered in determining whether the plan of development does minimize adverse impacts. To assist the Director in determining environmental acceptance, the applicant will demonstrate the probable environmental and ecological consequences of the project by addressing all areas of study identified on the environmental acceptance form (NRC/NRDF Form 02Ev1).

*017 Federally Assisted Projects.* When assistance from the Fund is requested for participation in a project planned by an agency of the federal government, the federally

prepared plan of work can be submitted by the applicant for the purpose of complying with Sections 2-013, 2-014, and 2-016 and shall be submitted at the request of the Director. The Director does, however, reserve the right to reject all or a portion of any such plan of work on the grounds that the information provided therein is insufficient or inadequate for full evaluation of the proposed project's eligibility for assistance from the Fund.

*018 Required Legal Data.* The applicant shall assure the Director and the Commission that all legal requirements have or can be met prior to the allocation of any funds for the proposed program or project. Legal data submitted by the applicant in the feasibility report shall include the following:

*018.01* Citation(s) to the legal authorities relied upon by the applicant to undertake or participate in the proposed program or project.

*018.02* An explanation, with appropriate documentation of legal authorities, of the applicant's intention to finance that part of the project or program for which assistance from the Fund is not requested.

*018.03* A showing that the applicant has or can acquire all necessary land rights and water rights.

*018.04* Copies of any available proposed or executed contracts for construction or consultant services necessary for construction of the proposed program or project and included as part of the total cost of the project.

*018.05* A listing of any permits, licenses, or other approvals required for the proposed project, their current status, and estimated schedule for compliance.

*018.06* An explanation of the sponsor's plan to require consultants, contractors, and sub-contractors to obtain liability insurance or bonding to ensure the proper design and construction of the project.

*018.07* An analysis of the sponsor's potential liability for damages from the project, including dam failure, overflow, or seepage of water and an explanation of the sponsor's plan to protect itself from any such liability.

*018.08* A certified copy of a resolution of the applicant requesting financial assistance from the Department and containing a finding that the applicant cannot finance the project from other available state or federal sources.

*018.09* Such other information, plans, and specifications as are requested by the Director or the Commission and which are reasonably necessary for an adequate understanding of the project.

*018.10* A notarized statement executed by the applicant's official representative that the facts contained in the application are true and correct to his or her best knowledge and belief.

*019 Omissions in Application.* If an application submitted to the Director is not complete or if additional information is required, the Director will so notify the applicant. If the application is not completed within 90 days after the notice, unless the Director extends this time for good cause shown, the Director will return the application to the applicant without making any findings on the application and without prejudice to the submission of a new application at any future time.

*020 Use of Department Data.* Any pertinent data of the Department made available to applicants for use in

preparing applications and feasibility reports will be furnished at cost.

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NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: April 21, 1999

Title 256 – DEPARTMENT OF NATURAL RESOURCES

Chapter 3 – ACTION BY THE DIRECTOR

*001 Review and Report by the Director.* On receipt of a completed application and feasibility report required by Chapter 2 of these rules and regulations, the Director shall review the application and feasibility report and shall, within six months of receipt, prepare a report containing his or her findings and recommendations with respect to the application and file such report with the Commission. Copies of the Director's report will be furnished to the applicant. The Director's report shall include the following items:

*001.01* A recommendation of approval or rejection of the program or project for funding eligibility.

*001.02* If approval is recommended, a recommendation that the allocation be made in the form of a grant, loan, acquisition of state interest, or combination thereof.

*001.03* If a program or project is recommended for loan assistance, a recommendation of the appropriate repayment period.

*001.04* A recommended degree of assistance for each type of allocation recommended by the Director which shall be developed with assistance from a subcommittee of the Commission's Program Committee.

*001.05* Any conditions which the Director recommends be placed on project design, construction, operation, or maintenance to ensure the consistency of the project with the Act and with other state policies, plans and programs.

*002 Committee Findings and Public Hearings.* To assist the Director in making his or her review and report, the Director may refer the application and feasibility report, or any parts thereof, to such review committees as he or she may establish. In addition, the Director may, at his or her discretion, conduct one or more public hearings at such location(s) as he or she shall choose for the purpose of receiving public testimony on all aspects of the proposed program or project. The record of any such public hearing shall constitute a part of the Director's report to the Commission.

*003 Considerations in Passing on Applications.* In passing on applications, the Director shall consider:

*003.01* The needs of the area to be served by the program or project and the benefit to be received from the program or project by the area served.

*003.02* The availability of revenue to the applicant from all sources.

*003.03* Whether the program or project is of such general public benefit that state financial assistance is justified.

*003.04* The relationship of the program or project to the overall statewide water and related land needs.

*003.05* Other factors relating to the nature of the project and the appropriate level of financial assistance.

*004 Required Findings of Fact.* Prior to making any report to the Commission recommending approval of a program or project for funding eligibility, the Director shall make the following findings of fact:

*004.01* The plan does not conflict with any existing Nebraska State land plan.

*004.02* The proposed program or project is technically, economically, and financially feasible based upon standards contained within these rules and regulations or otherwise adopted and supplied to the applicant by the Commission or the Department.

*004.03* The plan for development of the proposed program or project is satisfactory.

*004.04* The plan of development minimizes any adverse impact on the natural environment.

*004.05* The applicant is qualified, responsible, and legally capable of carrying out the program or project.

*004.06* In the case of a loan, the borrower has demonstrated the ability to repay the loan, and there is assurance of adequate operation, maintenance, and replacement during the repayment life of the project.

*004.07* The plan considers other plans and programs of the state in accordance with the provisions of Sections 84-135, Reissue Revised Statutes of Nebraska, 1994, and resources development plans of the political subdivisions of the state.

*004.08* The project will not jeopardize the continued existence of any threatened or endangered species or result in the destruction or modification of the critical habitat of any such species.

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LAST ISSUE DATE: April 21, 1999

Title 256 – DEPARTMENT OF NATURAL RESOURCES

Chapter 4 – COMMISSION ACTION AND REQUIREMENTS

*001 Action on the Report of the Director.* Unless the Commission requests additional information from the applicant, it shall no later than its second regular meeting following submission of the report by the Director, act to approve or reject the findings of fact made by the Director pursuant to section 3-004 and the recommendations of the Director; provided, however, that no action shall be taken until a delegation composed of Commission members has visited the project site and reported the results of its tour to the Commission or the appropriate committee of the Commission. Action on recommendations made by the Director pursuant to subsections .01 and .02 of section 3-001 shall be in accordance with such recommendations unless action to the contrary is approved by each Commission member eligible to vote on the specific recommendation under consideration. A Commission member shall be ineligible to participate in the action of the Commission concerning an application for a grant or a loan only if such member is a member of the governing body or otherwise represents the applicant for financial assistance. All Commission members shall be eligible to vote on programs and projects involving state acquisition of interests in projects pursuant to Section 2-1590, R.S. Supp., 2000. If the Commission determines, following review of the application, feasibility report, and the Director's report, that the proposed program or project is eligible for financial assistance from the Fund, the Commission shall determine a tentative dollar figure for such assistance.



Tentative allocations shall also be established for each separable component of the project, as determined in accordance with section 4-007. In establishing its tentative allocations, the Commission may take into consideration the recommendations of the Director pursuant to subsection .04 of section 3-001, the nature of the project and the factors associated with it, the total amount of money available in the Fund, and the number of and total tentative dollar allocations for other programs and projects previously determined eligible. No tentative grant allocation shall exceed an amount equal to seventy-five percent (75%) of the portion of the estimated project costs which the local sponsor would be required to provide if financial assistance from the Fund was not available. The Commission may vary the maximum allowable cost-share rate for different categories of projects. No tentative loan allocation or combination loan and grant allocations shall exceed an amount equal to ninety percent (90%) of such portion of the estimated project costs.

*002 Project Totals Exceeding Balance in Fund.* Although the total of previously approved allocations exceeds the amount of funds then available in the Fund, the Commission may approve the eligibility of additional projects and establish tentative dollar allocations for such projects if such projects are otherwise eligible for financial assistance and if such approval and tentative allocations are otherwise consistent with state law. Notwithstanding any such approval, a sponsor shall not under any conditions be entitled to reimbursement for any project costs until funds have been apportioned and set aside in accordance with sections 4-008 or 4-009 for reimbursement of costs incurred by the sponsor on such project. Costs paid, accrued or authorized by a sponsor prior to funds being set aside

for such projects and costs paid, accrued or authorized by a sponsor for portions of project development in excess of those portions for which funds have been set aside, including application and engineering costs, shall be incurred at the risk of the sponsor and such sponsor shall not be entitled to reimbursement of such costs at any time without specific Commission approval for such reimbursement. Such costs may, however, be used by the sponsor to satisfy in whole or in part the sponsor's share of the total costs of the project if funds for remaining project costs are later apportioned and set aside for such project in accordance with sections 4-008 or 4-009.

*003 Annual Availability of Funds.* Regardless of the status of the Fund at the time of Commission approval of the eligibility of a project, the extent, if any, to which financial assistance will be provided to such project in any one fiscal year shall be in accordance with and contingent upon the availability of funds and Commission action apportioning and setting aside funds for such project in such fiscal year in accordance with sections 4-008 or 4-009.

*004 Continued Funding.* In order to assure continued funding of projects with no separable components and of separable project components which are not further separable, the Commission, when it first apportioned and sets aside in accordance with sections 4-008 or 4-009 funds for such project or project component, shall set aside an amount equal to the appropriate percentage of the total cost of the project or the component even if it is not anticipated that all of such funds could be expended during the next ensuing fiscal year. Funds thus apportioned and set aside shall, as soon as costs have been incurred by the sponsor subsequent to such apportionment, remain set aside and be committed for such project or project

component until the sponsor has received all reimbursement to which it is entitled unless:

*004.01* The project is abandoned or significantly delayed;

*004.02* The Commission has reasonable grounds for concern that the project or any portion of it may not be completed due to public opposition, litigation, or the loss of other state, local or federal funds needed to complete the project;

*004.03* The Department fails to receive a reappropriation of unexpended funds;

*004.04* The appropriation for the Resources Development Fund is reduced by subsequent legislative act; or

*004.05* The Commission determines the project no longer meets the criteria for funding eligibility contained in the Resources Development Fund Act or the Commission's rules and regulations.

If the Commission determines at any time that any of these conditions have occurred, any funds apportioned and set aside for the project which have not been disbursed may be deemed by the Commission and the Department to be no longer apportioned and set aside.

*005 Funding Preferences.* In order that the maximum practicable assurance of continued funding may be provided to sponsors of uncompleted projects which have previously been apportioned funds for one or more separable components, preference shall be given such projects and project components whenever funds are apportioned and set aside in accordance with section 4-008 or section 4-009.

*006 Determination of Fiscal Year Financial Needs.*

*006.01* No later than March 31 of each year each sponsor willing to utilize and capable of utilizing either an initial or an additional apportionment of funds for a project which has been determined eligible for funding shall submit a report to the Director indicating as follows:

*006.01A* If the project has no previously identified separable components and no request is made for identification of any such components, the report shall indicate the estimated time schedule for beginning and completing the project.

*006.01B* If the project has separable components, the report shall indicate the component or components for which the sponsor is requesting an apportionment and the estimated time schedule for commencing and completing such component or components.

*006.01C* If desired by the sponsor, the report may also include a request for the identification of separable components for a project with no previously identified separable components or for the separation of one or more previously identified separable components into additional separable components. Any such request shall be accompanied by an estimate of the costs for completing all separable components for which identification is requested. For those components for which apportionment of funds is desired, the information required by part B of this subsection shall also be provided.

*006.01D* The extent of any opposition to completion of the project, or any separable component, including whether any lawsuits to prevent its completion have been instituted or are anticipated, whether any problems are being experienced or are anticipated in

obtaining sufficient funds to meet the sponsor's financial obligations for the project, and whether any other factors exist-which may affect the sponsor's ability to complete the project.

*007 Separable Components.* If a project plan provides that development of the project will take place on two or more land areas not contiguous to each other, the project portion planned for each such land area shall constitute a separable component of the project. Projects for which total project development will take place all on one contiguous land area and separable components of projects of the type described above may also have separable components. A project component shall be deemed to be any distinguishable phase of project development including such phases as land rights acquisition, project construction, and related facilities development. The extent to which such components constitute separable components for any project shall be determined by the Commission after consultation with the Director and the sponsor. In the event that any project is determined to have separable components, the Commission shall take action to identify such separable components and to determine the estimated costs of completing each such component.

*008 Apportioning and Setting Aside Funds.* Prior to July 1 of each year the Commission shall apportion and set aside available funds for projects and project components eligible for funding assistance. In making such apportionments, the Commission shall consider the following:

*008.01* Whether it is reasonable to expect that each project or project component for which funding is requested is capable of being commenced within the next ensuing fiscal year;

*008.02* Whether any of the projects or project components proposed for funding by the sponsors could, in the opinion of the Commission, be delayed without significant adverse effects on the total project;

*008.03* Whether there are reasonable grounds for concern that the project, or portions of it, may not be completed. Reasonable grounds for concern shall include, but not be limited to, opposition to completion of the project including current or anticipated lawsuits or the unavailability or loss of local, federal, or other state funds needed to complete the project;

*008.04* The funding preferences established in section 4-005;

*008.05* Each project's rate-of-return on the investment;

*008.06* The water and related resources needs addressed by each project;

*008.07* The economic impact of each project on the local and/or regional economy;

*008.08* The environmental impact of each project;

*008.09* The support for or opposition to each project;

*008.10* The urgency of need for each project;

*008.11* The extent of benefit provided by each project; and

*008.12* How to make the most efficient utilization of the available funds.

Prior to the Commission's action apportioning and setting aside funds for a given fiscal year, the Department shall invite the sponsors of all projects for which funding has been requested for that fiscal year to appear before the

Commission to address the manner in which their projects relate to the factors to be considered by the Commission.

*009 Adjustments in Apportionments.* A sponsor may at any time during the fiscal year submit reports containing an update of the information contained in the report submitted in accordance with section 4-006. A sponsor of a project for which no report was submitted in accordance with section 4-006 may also at any time submit a report containing the information required by such section. At the first Commission meeting following August 1, November 1, and February 1 of each year, the Commission shall review all such reports, if any, which have been submitted since the last such review, and any other relevant information available to it and shall, if appropriate and consistent with the funding preference established in section 4-005, make adjustments in the amount apportioned and set aside for any project for that fiscal year. No amount previously apportioned and set aside in accordance with sections 4-008 shall be decreased unless:

*009.01* The sponsor has indicated a decrease in needs;

*009.02* The Commission, based on information contained in the sponsor's report submitted in accordance with section 4-006 or other information available to it, finds that there are reasonable grounds for concern that the project or any separable component may not be completed;

*009.03* The project is abandoned or significantly delayed;

*009.04* The Department fails to receive a reappropriation of unexpended funds;

*009.05* The appropriation for the Resources Development Fund is reduced by subsequent legislative act, or;

*009.06* The Commission determines the project no longer meets the criteria for funding eligibility contained in the Resources Development Fund Act or the Commission's rules and regulations.

In case of any such findings, the Commission may modify, suspend or revoke any previous action to apportion and set aside funds for the project or any separable component. Provided, however, any action to modify, suspend, or revoke any previous apportionment shall not affect the sponsor's right to reimbursement for costs which it has incurred or for which it has become legally obligated prior to such Commission action. In addition, such action shall not affect the sponsor's right to reimbursement for the cost of land or interests in land acquired through condemnation actions commenced prior to the Commission action to modify, suspend, or revoke an apportionment.

*010 Limitation on Reimbursements.* A sponsor shall not be reimbursed during any fiscal year in any amount in excess of the amount apportioned and set aside for the sponsor's project in accordance with sections 4-008 and 4-009.

*011 Review and Approval of Final Plans.* Prior to the actual disbursement of any funds for construction for the project or for any portion thereof, the Director shall review the final plans for the proposed program or project or the portion for which funds are requested. If it appears during such review or during any prior or subsequent review or inspection of the project plans or construction, or during any review of project cost information that:



*011.01* The plans and specifications for the project are not being followed;

*011.02* The plan for development or any work performed on the project are not based on sound technical principles or practices;

*011.03* The project or any portion thereof no longer meets the criteria for funding eligibility contained in the Resources Development Fund Act or the Commission's Rules and Regulations; or

*011.04* There is or has been non-compliance with any of the terms of the contract between the Sponsor and the Department;

the Director shall immediately bring such variances to the Sponsor's attention and may refuse to disburse any funds for the project until such time as the variances are corrected and the project is brought into conformance with all appropriate standards.

*012 Limitation on Allocation.* The amount actually disbursed for a program or project, or a separable component of a project, shall not exceed the dollar amount of the tentative allocation for the program, project or separable component approved by the Commission pursuant to section 4-001 or a dollar amount equal to the same percentage of the actual project costs as the tentative allocation represented to the estimated project costs, whichever is less, without specific Commission approval; except that funds apportioned and set aside for one separable component but not disbursed may be used to reimburse the Sponsor for the costs of another separable component even though such reimbursement may exceed the amount apportioned and set aside for that component if necessary in accordance with section 4-002 to achieve or maintain

the appropriate ratio between eligible project costs paid by the Sponsor and those paid by the Department.

*013 Contractual Arrangements.* State funds will not be advanced to any applicant pursuant to an approved loan or grant until a contract between the applicant and the Department setting forth terms and conditions of such loan or grant has been executed.

*014 Disbursements.* The Director shall disburse, no more often than once each month, such funds from those apportioned and set aside to a program or project as are necessary to reimburse, in the proper proportion, all eligible costs incurred by the applicant in carrying out the program or project since the next preceding disbursement, if any. All such costs shall be documented by the applicant in such manner as is directed by the Director prior to the disbursement of any funds. In the event that a program or project has been approved for combination grant and loan allocations, each disbursement shall, unless otherwise specified by the Commission constitute a disbursement of loan and grant funds in the same proportion as the totals of the allocation approved.

*015 Inspection During Construction.* The Commission and Director shall have the privilege of inspecting the construction of any project at any time in order to ensure that plans and specifications are being followed, and that the works are being constructed in accordance with sound engineering and technical principles and practices, but such inspection shall never subject the State of Nebraska to any action for damages. The Director shall bring to the attention of the sponsor and the project engineer any variances from the approved plans and specifications. The

Sponsor and the project engineer or project director shall initiate necessary corrective action.

*016 Changes in Scope of Approved Projects.* The Sponsor shall promptly report all increases in the cost of a project, or any separable component of the project, and any proposed additions, deletions, or modifications of any separable component, or any change in the purpose or purposes of the project by submitting to the Director an amendment to the formal application and feasibility report. Commission approval of any change in the scope, purpose, or plan for development of the project, and any increase in the tentative allocation for the project, or any separable component, shall be required. Any proposed change in the scope, purpose, or plan of development for the project, any request for an increase in the allocation for the project, or any cost increase, regardless of whether an increase in the tentative allocation for the project is requested, may at the discretion of the Commission, be referred to the Director for his or her review and recommendation regarding whether the project still meets the criteria for funding eligibility contained in the Act or the Commission's rules and regulations.

ANNOTATION

Title 256 NAC Section 2-1586, R.R.S., 1997; 2-1587, 2-1589, 2-1590, 2-1592, 2-1593, and 2-1595, R.S. Supp., 2000; and 2-1588 and 2-1594, as amended by LB 129, 97th Nebraska Legislature, 1st Session (2001)

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NEBRASKA DEPARTMENT OF NATURAL RESOURCES  
TITLE 257 – REGULATIONS GOVERNING THE  
ADMINISTRATION OF THE  
SMALL WATERSHEDS FLOOD CONTROL FUND

NEBRASKA ADMINISTRATIVE CODE  
NEBRASKA DEPARTMENT OF NATURAL RESOURCES  
TITLE 257  
RULES AND REGULATIONS CONCERNING  
SMALL WATERSHEDS FLOOD CONTROL FUND

Adopted 7-19-01

NEBRASKA DEPARTMENT OF NATURAL RESOURCES  
TITLE 257 – RULES AND REGULATIONS CONCERN-  
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#### NEBRASKA ADMINISTRATIVE CODE

##### LAST ISSUE DATE:

Title 257 DNR – ADMINISTRATION OF SMALL WATERSHEDS CONTROL FUND

##### Chapter 1 – GENERAL PROVISIONS

*001 Purpose of Rules.* These rules and regulations are adopted for the purpose of administering the Small Watersheds Flood Control Fund created by section 2-1503.01 R.S. Supp., 2000.

*002 General Availability of Funds.* Financial assistance from the Fund shall be available only to local organizations which have programs qualifying for such assistance under these rules and regulations. The Commission, in its sole discretion, may allocate to any qualifying organization, from the Small Watersheds Flood Control Fund, such sum or sums as in the judgment of the Commission may be necessary for such local organization to acquire real property or easements needed to permit the local organization to effectuate the purposes of the Small Watersheds Flood Control Fund.

*003 Definitions.* All terms defined in section 2-1501 R.S. Supp., 2000 shall have the same definition when used in these rules and regulations. In addition:

*003.01* "Fund" means the Small Watersheds Flood Control Fund created by section 2-1503.01 R.S. Supp., 2000.

*004 Responsibilities.*

*004.01* It is the responsibility of the Commission to make allocations from the Fund and to specify the date and all other terms for the sale of any lands or rights-of-way acquired with funds from the Fund and to require the execution of all documents necessary to complete such sales.

*004.02* It is the responsibility of the Director, through the Department, to administer the fund and to administer these rules and regulations.

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NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE:

Title 257 DNR – ADMINISTRATION OF SMALL WATERSHEDS FLOOD CONTROL FUND

Chapter 2 – FUND ADMINISTRATION

*001 Eligibility for Funds.* To be eligible for assistance from the Small Watersheds Flood Control Fund, the local organization must first enter into an agreement with the Department specifying a hydrologic unit and the total number of land rights to be acquired by the local organization in such unit. Such agreement, which shall be on a form supplied by the Department, shall also provide that the local organization will abide by the law and rules and



regulations governing administration of the Small Watersheds Flood Control Fund. In addition, the following conditions must have been met:

*001.01* The local organization has agreed on a program of work;

*001.02* Such program of work has been found by the Department to be feasible, practicable, and will promote the health, safety, and general welfare of the people of the state;

*001.03* The Department has either participated in the planning or reviewed the plans and has approved the program of work;

*001.04* The local organization has obtained a minimum of seventy-five percent of the needed number of lands, easements and rights-of-way in the project or a subwatershed prior to the use of state funds for this purpose;

*001.05* The local organization has made a formal request or application to the Department for state funds for the purpose of purchasing lands, easements, and rights-of-way;

*001.06* The local organization and the Department have entered into an agreement on the administration and expenditure of these state funds;

*001.07* The purchase price of the land, easement, or right-of-way has been established either by a court or by at least one registered, licensed, certified residential, or certified general real estate appraiser approved by the Department; and

*001.08* The local organization has given assurance to the Department that it has obtained any water rights or other permits required under state or federal law and complied with all other applicable state laws.

*002 Acceptance of Appraisals.* An appraisal prepared in accordance with Section 2-1502 R.S. Supp., 2000 must accompany each formal request or application for funds. Such appraisal shall be supplied at no cost to the state. In the event the Commission or the Department is of the opinion that any appraisal is subject to question, the Department may hire an appraiser at state expense, to aid the Commission in making its decision whether or not to approve such appraisal.

*003 Damage to Crops.* When applicable, the local organization shall also cause an appraisal to be made of all crops which are growing on the land to be purchased. Such crop appraisal shall also be subject to Commission approval and any rule, hereinabove set forth, applicable to appraisals in general. The local organization shall give the landowner the option of (1) retaining his or her interest in the crops, in which event he or she shall be given a reasonable period of time in which to harvest the same; or (2) selling such interest along with the land.

*004 Purchase Price and Total Cost of Acquisition.* For all purposes of the administration of the Small Watersheds Flood Control Fund, the terms "purchase price" and "total cost of acquisition" shall, in the absence of a condemnation proceeding, mean the amount actually paid by the local organization or the amount established by an appraisal conducted in accordance with Section 2-1502, which ever is the lesser amount. In the event of a condemnation proceeding, such terms shall mean the amount of damages awarded by a court of competent jurisdiction. Payments by a local organization in excess of any purchase price so established shall be the sole responsibility of the local organization and shall have no effect upon the distribution

of any proceeds subsequently realized from the sale of the land or right-of-way pursuant to Section 2-1502.

*005 Title Opinion or Title Insurance and Other Relevant Documents.* Before any funds are paid out to the local organization, such organization must furnish to the Department a copy of a title opinion or title insurance policy on the property or interest to be acquired, whether through purchase or condemnation. If a title opinion is provided, such opinion shall have been drafted following a title search by an attorney who is hired by the local organization and who is admitted to practice law before the courts of Nebraska. If a title insurance policy is provided, it must be from an insurance company authorized to provide such insurance in Nebraska. The local organization shall also furnish the Department with a copy of any purchase agreement or other written document demonstrating the terms and conditions of the proposed purchase.

*006 Eminent Domain Awards.* If a local organization is unable to acquire an interest in real property for which an appraisal has been approved except through the power of eminent domain, approval by the Commission of any court award exceeding in amount such appraised value shall be required prior to the disbursement of any funds in excess of such appraised value. The Commission reserves the right to require that the local sponsor appeal such award if such award is deemed excessive or to allocate a percentage of the court award as provided in Section 2-007.

*007 Amount Paid.*

*007.01* The Commission reserves the right to approve or reject payment for any purchases of any lands, easements, or rights-of-way within the hydrologic

unit described in the agreement and executed in accordance with section 2-001. In addition, if based on reports from the local organization or other information available to it, the Commission has reasonable grounds for concern that a project, or any portion of it, may not be completed, it may withhold or limit assistance to the organization for the acquisition of any lands, easements or rights-of-way needed for that project. Provided, however, any Commission action to refuse to assist an organization in paying the costs of acquisition of any interest in land shall not affect the organization's right to reimbursement for costs for which it has become legally obligated prior to such Commission action. In addition, such action shall not affect the organization's right to reimbursement for the cost of land, or interests in land, acquired through condemnation actions commenced prior to the Commission action. Reasonable grounds for concern shall include, but not be limited to, opposition to completion of the project including current or anticipated lawsuits or the unavailability or loss of local, other state, or federal funds.

*007.02* The amount which will be approved by the Commission for payment out of the Small Watersheds Flood Control Fund shall not exceed the purchase price as defined in Section 2-004. The Commission may, however, determine that an amount less than the purchase price should be paid from the Small Watersheds Flood Control Fund for any one of the following reasons:

*007.02A* The dollar amount of all unapproved requests for funding assistance exceeds the availability of uncommitted funds. Prior to approving any additional requests for assistance under such circumstances, the Commission will, following consultation with all affected local organizations,

determine whether the available funds could be most effectively utilized.

*007.02A1* By deferring assistance until funds do become available to one or more local organizations which would not encounter serious problems because of such deferral;

*007.02A2* By allocating them to all applicants on the basis of a percentage of purchase price; or

*007.02A3* By utilizing a combination of percentage allocation and deferral.

*007.02B* A court of competent jurisdiction has made an award in condemnation in excess of the value established by the appraisal approved by the Commission. Provided that, the dollar amount paid by the Commission in such cases shall not be less than the amount specified in the approved appraisal or the amount determined in accordance with section 007.02A, whatever amount is less.

*007.03* If for any of the reasons previously provided, the Commission determines that an amount less than the purchase price should be allocated from the Small Watersheds Flood Control Fund for the acquisition of any interest in real property, the local organization shall remit to the Department a pro rata share of the proceeds of any subsequent sale of such property. The pro rata share shall be equal to the percentage of the total cost of acquisition of such property made from any state allocation from the Small Watersheds Flood Control Fund.

*008 Documentation of Purchase.* Within thirty days after the local organization receives payment from the state, the local organization shall forward to the Department a copy of the deed, easement, court decree (in the case of a condemnation proceeding) or any other document or material

deemed by the Department to be necessary in the particular case. Such deed, easement, court decree, etc. shall be verified by the clerk of the court or the register of deeds, whichever the case may be.

*009 Conservation Plan.* Within one hundred twenty days after the title or titles, as applicable, have been acquired, the local organization shall prepare a detailed Conservation Plan, a copy of which shall be sent to the Department to be made a part of the files.

*010 Annual Inspection.* At least once each year, a Department staff member and a representative of the appropriate local organization shall inspect each parcel of land for which fee title has been acquired and shall compare it to the respective Conservation Plan. A report of the staff member's findings along with any suggestions or recommendations to the local organization shall be filed with the Department and the local organization.

*011 Annual Financial Statement.* Each local organization holding fee title to lands purchased with Small Watersheds Flood Control Funds shall submit a complete financial statement to the Department by August 1 of each year. Such required statement shall set forth the income received from such lands and also the expenses incurred in the maintenance, improvement, management, etc. of such lands. This financial statement is required in addition to any other statement or accounting required to be submitted by the local organization by law or otherwise.

*012 Annual Lease.* When appropriate, a Department staff member shall work with a local organization in preparing the annual lease for such property as was acquired, in whole or in part, with Small Watersheds Flood Control Funds. Unless otherwise approved by the Director, leases

shall commence on the first day of March and terminate on the last day of February of the year next ensuing. No lease shall be deemed effective unless and until it has been approved in writing by the Director.

*013 Use of Lease Revenues.* In addition to the uses for rental and lease revenues as set forth in Section 2-1502 R.S. Supp., 2000, such revenues may be used for reasonable and necessary personnel costs and expenses incurred by the local organization in the management of such lands. As the Department is responsible for overseeing the management of such lands, the local organization shall consult with and keep the Department informed of all matters relevant to such management.

*014 Disposition of Property.* It shall be the duty of the local organization, within ten years from the purchase date of lands and rights-of-way, to

*014.01* grant or retain, for public purposes, as provided for in Section 2-1502 R.S. Supp., 2000, and as provided by these regulations, or

*014.02* sell at public auction

all lands and rights-of-way purchased wholly or partially from the Fund.

*015 Sale Schedule.* The Department shall maintain a schedule of the proposed dates of sale for lands purchased in whole or in part with funds from the Small Watersheds Flood Control Fund. On or about July 1 of each calendar year, the Commission shall review this schedule, consult with local sponsors holding title to such lands, make any additions or revisions that are deemed necessary, and adopt a sale schedule for the next ensuing fiscal year.

*016 Notifying Public Bodies of Proposed Sales.* For the purpose of Section 2-1502, R.S. Supp., 2000, the Department shall on or about September 1 of each year notify the Governor of the State and the appropriate public districts, cities, counties, political subdivisions and agencies of the State or of the Federal government of the land(s) scheduled to be sold in at least the next ensuing fiscal year. Such notification shall indicate the proposed date(s) of sale and shall summarize the process by which public entities may acquire such lands for public purposes.

*017 Notice of Intent to Acquire or Retain.* Any public district, city, county, political subdivision, or agency of the State or of the Federal government which is interested in acquiring or retaining for public purposes land(s) purchased in whole or in part with Small Watersheds Flood Control Funds shall notify the Department of such interest by January 1 of the year prior to the fiscal year in which the property is scheduled to be sold.

*018 Appraisal and Notification to Public Bodies of Appraised Fair Market Value.* Whenever a public entity indicates in accordance with Section 2-017 that it is interested in acquiring or retaining lands purchased in whole or in part with Small Watersheds Flood Control Funds, the Department shall, by June 1 of the fiscal year prior to the year in which the property is scheduled to be sold, have an appraisal prepared for such lands in accordance with section 2-1502 R.S. Supp., 2000, as amended, and notify such public entity of the appraised fair market value. Such notification shall indicate the proposed date of sale, the appraised fair market value, and the requirements for purchase or retention by public bodies in accordance with Section 2-020.



*019 Acquisition by Public Bodies.* Any public district, city, county, political subdivision or agency of the State or of the Federal government which desires to acquire or retain for public purposes land(s) purchased in whole or in part with Small Watersheds Flood Control Funds shall notify the Department of such desire by September 10 of the fiscal year in which the property is scheduled to be sold. A report explaining the public purpose to be made of such property shall be simultaneously submitted to the Department. Such report shall include a description of the public uses to be made of such property, a description of and timetable for improvements, if any, and a discussion of management techniques to be utilized to serve the proposed public purpose. The report shall also document the public entity's legal and financial abilities to acquire or retain such property and to implement the proposed public purpose. If retention by the local organization of such land for public use is approved pursuant to the procedures hereinafter provided, the Department, within 90 days of approval, shall be reimbursed in the amount of the pro rata share of the appraised fair market value that is equal to the percentage of the total cost of acquisition paid by the Fund. If acquisition of such lands for public use by a public body other than the local organization holding title to the property is approved, the Department shall be reimbursed in the amount of the prorated share of the appraised fair market value that is equal to the percentage of the total cost of acquisition paid from the Fund and the local organization transferring the title to the acquiring public body shall be reimbursed in the amount of any remaining portion of the appraised fair market value, both reimbursements to occur within 90 days of such approval or approvals. All such proceeds to the Department shall be remitted to the State Treasurer for credit to the Fund.

*020 Criteria for Acquisition by Public Bodies.*

*020.01* Whenever a public entity indicates in accordance with Section 2-019 that it desires to acquire or retain lands purchased in whole or in part with Small Watersheds Flood Control Funds, the Commission shall, no later than November 1 of the fiscal year in which the property is scheduled to be sold, determine whether the property should be so acquired or retained or whether it should be offered for sale at public auction in accordance with Sections 024 through 029. In making such determination, the Commission shall consider the following factors:

*020.01A* The nature of the public purpose for which acquisition or retention is requested and the demand for such purpose in the area to be served thereby.

*020.01B* The nature of probable alternative uses for such property and their relative importance in the community and the state.

*020.01C* The adequacy of the property to satisfy the proposed public purpose in comparison to its adequacy to satisfy probable alternative uses.

*020.01D* The relative economic impacts which could be anticipated in the community because of the proposed public purpose and probable alternative uses.

*020.01E* The legal and financial abilities of the public body to acquire or retain the property and to implement the proposed public purpose.

*020.01F* The compatibility of the proposed public purpose with operation and maintenance of the property for the purpose for which it was originally

acquired and its consistency with accepted conservation principles.

*020.02* Prior to determining whether the property should be acquired or retained by the public body or offered for sale at public auction, the Commission shall consult with the local organization holding title thereto and other interested organizations and individuals. If the amount invested in such property from the Small Watersheds Flood Control Fund constituted the full purchase price, the decision of the Commission regarding the purchase or retention of such property by the public body shall be binding on the local organization. If, however, a portion of the original purchase price was contributed by the local organization, such local organization shall have independent authority to disapprove the purchase of such property by another public body, and any such disapproval shall result in the property being offered for sale at public auction as scheduled.

*021 Desire to Acquire by Two or More Public Entities.* In the event that two or more public entities indicate a desire to purchase or retain the same land or right-of-way, the Commission shall evaluate each separately in accordance with Section 2-020. If following such evaluation, more than one of the proposed purchases by public bodies are deemed preferable to offering the property for sale at public auction, the Commission shall evaluate such proposals on their relative merits to determine which proposal would best serve the public interest.

*022 Acquisition or Retention of Less Than Full Parcel.*

*022.01* The acquisition or retention by public bodies of a parcel of land smaller in size than the parcel scheduled to be offered for sale will be approved only if such

purchase or retention would satisfy the criteria of Section 2-020 and if

*022.01A* It would have no anticipated adverse effect on the marketability of the remainder of the full parcel, and

*022.01B* No additional public purpose would be served by acquisition or retention by such public body of the remainder of the full parcel.

*022.02* The local organization shall be responsible for any surveys which are deemed necessary because of such acquisition or retention or for providing proper identification of such parcel prior to the sale at auction of the remaining portion of the full parcel. The public body acquiring such parcel shall reimburse the local organization for all actual and necessary costs incurred as a result of such survey and identification.

*023 Agreement to Retain in Public Use.* As a condition to acquiring or retaining for public purposes any lands acquired in whole or in part with funds from the Small Watersheds Flood Control Fund, the acquiring or retaining public body shall enter into an agreement with the Department. Such agreement, which shall remain in effect and be controlling as to the public body's utilization and disposition of the property for a period not to exceed 25 years, shall specify the following terms and conditions:

*023.01* The property shall, unless otherwise approved by the Commission, be retained by the public body for the public purposes specified in the report submitted pursuant to Section 2-019.

*023.02* No use shall be made of the property which is incompatible with the purposes for which it was originally acquired in whole or in part with funds from the Small Watersheds Flood Control Fund.

*023.03* Such public body shall not utilize the property or any part thereof for income production unless such income results from activities necessary to the maintenance of the property or to serving the public purposes for which the property was acquired or retained.

*023.04* Any other terms or conditions which the Commission deems appropriate. A copy of such agreement shall be filed by the Department in the register of deeds office of the county in which such land or right-of-way is located.

*024 Public Auction.* When any lands involving these funds are to be sold, whether those lands are to be sold with or without improvements, such sale, unless governed by Sections 2-019 through 2-023 shall be by public auction. Prior to such sale the Department shall:

*024.01* Cause an appraisal to be made of such land,

*024.02* Retain the services of a public auctioneer,

*024.03* Cause legal notice thereof to be published pursuant to Section 2-027.

*025 Public Auctioneers.* In retaining the services of a public auctioneer for the sale at auction of any lands purchased in whole or in part with these funds, the Department shall, not less than 60 days prior to the date established for the sale of any such lands, advertise for bids for the services of such public auctioneer. Selection of the auctioneer from those submitting bids shall be the responsibility of the Commission.

*026 Sale of Improvements.* When any improvements on lands involving these funds are to be sold separately from the land, such sale may be conducted by sealed bids or by public auction. Prior to such sale of improvements, the

Department shall cause legal notice thereof to be published pursuant to Section 2-027.

*027 Notice of Sales.* Notice of all sales governed by these rules shall be published in a legal newspaper of general circulation in the county in which such land(s) and/or improvement(s) is (are) located and also in a legal newspaper with statewide circulation. Such notices shall be published once each week for three consecutive weeks, the last publication of which shall not be published less than seven days prior to the date set for the auction or for the opening of sealed bids. Such notices shall list and describe the land(s) and/or improvement(s) to be sold and the easements and/or rights-of-way, if any, which will be retained by the local organization, and shall state the date, time and place for the opening of the sealed bids. If appropriate, such notice shall state the address where sealed bids are to be mailed or delivered, and the deadline for receipt of the same. The terms of payment and any other information that in the particular case would be required to impart adequate notice to all interested parties shall also be provided.

*028 Sealed Bids.* In order to be eligible for consideration, sealed bids for improvements shall state which improvement(s) the bid is for and shall be accompanied by a certified check or bank draft made out in the full amount of the bid. If any sealed bid is not accepted, the deposit shall be returned to the bidder within thirty days after the day on which the bids are opened. All sealed bids shall be mailed or delivered to the Department. Such bids must be received at least three days prior to the date set for their opening. All sealed bids shall remain sealed until the time set for their opening, at which time the two highest bids shall be read.

*029 Conduct of Auction.* The public auction for each tract of land to be sold shall remain open for receipt of bids for a minimum of one hour, but may be closed at the end of such time period if there are no reasonable grounds to believe that a higher bid would be received were the auction held open for a longer period of time.

*030 Earnest Money Deposit.* The highest bid for a tract of land received at public auction shall, in order to be eligible for consideration by the Commission, be accompanied by a check, bank draft, or cash in an amount of not less than twenty percent of the bid.

*031 Purchase Agreement.* The highest bidder for the purchase of any of the lands governed by these rules shall, after being designated the highest bidder, enter into a purchase agreement with the local organization stating that the balance due shall be paid within thirty days of notification by the local organization of the acceptance of the bid by the Commission. The purchase agreement shall describe all applicable terms for the sale, including all terms specified by the Commission pursuant to Section 2-1503.03 R.S. Supp., 2000. Failure to comply with this rule or with the conditions of the purchase agreement shall result in the forfeiture of said bidder's deposit.

*032 Approval or Rejection of Bids.* The Commission reserves the right to refuse any and/or all bids. At the next regularly scheduled Commission meeting following the closing of all bidding, the Commission shall review the highest bid, considering, if applicable, such factors as the original purchase price, any increases or decreases in land valuation, the present appraised fair market value, and any other criteria which may reflect the adequacy of the

bid. If a portion of the original purchase price was contributed by the local organization, such local organization shall be consulted regarding the adequacy of the bid prior to approving or rejecting the same. In the event the Commission approves a bid, it shall direct the local organization to proceed with the sale. Upon receiving full payment, the local organization shall convey title to the purchaser, reserving as applicable, such interests in the land as are necessary for the local organization to carry out its ongoing responsibilities relative to management of the land or to any improvements constructed thereon or necessary to effect any terms for the sale specified by the Commission pursuant to Section 2-1503.03 R.S. Supp., 2000. In the event that the Commission determines that a bid is inadequate, the bidder's deposit shall be returned within ten days after such determination, the land shall be leased for an additional year, and the land shall be re-scheduled for sale according to the rules hereinabove set forth.

*033 Sale Expenses.* Any expenses incurred by the Department or the local organization in conducting this sale shall be subtracted from the sale price prior to a pro rata distribution of such sale proceeds between the local sponsor and the Department in accordance with Section 2-007.03.

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NEBRASKA DEPARTMENT OF NATURAL RESOURCES  
TITLE 259 – REGULATIONS GOVERNING THE  
ADMINISTRATION OF THE  
WATER WELL DECOMMISSIONING FUND  
NEBRASKA ADMINISTRATIVE CODE  
NEBRASKA DEPARTMENT OF NATURAL RESOURCES  
TITLE 259  
RULES AND REGULATIONS GOVERNING THE  
ADMINISTRATION OF THE WATER WELL  
DECOMMISSIONING FUND

Adopted 7-19-2001

NEBRASKA ADMINISTRATIVE CODE  
TITLE 259 – NEBRASKA DEPARTMENT OF NATURAL  
RESOURCES RULES GOVERNING THE ADMINISTRA-  
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## NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: JULY 24, 1996

Title 259 DNR – ADMINISTRATION OF WATER WELL  
DECOMMISSIONING FUND

## Chapter 1 – GENERAL PROVISIONS

*001 Purpose of Rules.* These rules and regulations are adopted for the purpose of administering the Water Well Decommissioning Fund created by section 46-1403, as it will appear in R.S. Supp., 2000.

*002 General availability of funds.* Financial assistance from the Fund shall be available only to natural resources districts which have cost-sharing programs for decommissioning water wells consistent with sections 46-1401 through 46-1405, R.R.S., 1998 and R.S. Supp., 2000, and these rules and regulations and which have entered into a contractual arrangement with the Department setting forth the terms for providing such financial assistance.

*003 Definitions.* As used in these rules and regulations, unless the context otherwise requires:

*003.01* “Decommissioning” shall mean the act of filling, sealing, and plugging a water well in accordance with the rules and regulations of the Department of Health and Human Services, Regulations and Licensure;

*003.02* “Department” shall mean the Department of Natural Resources created by Section 81-101, R.S. Supp., 2000;

*003.03* “Director” shall mean the individual holding the position of Director of Natural Resources created by section 81-102, R.S. Supp., 2000;

*003.04* “District” or “Natural Resources District” shall mean a district created and operating in accordance with Chapter 2, Article 32, Reissue Revised Statutes of Nebraska;

*003.05* “Fund” shall mean the Water Well Decommissioning Fund created by section 46-1403, R.S. Supp., 2000;

*003.06* “Licensed pump installation contractor” shall mean an individual as defined in section 46-1209 and holding a current license issued in accordance with Chapter 46, Article 12, Nebraska Revised Statutes;

*003.07* “Licensed water well contractor” shall mean an individual as defined in section 46-1213, R.R.S. 1998 and holding a current license issued pursuant to Chapter 46, Article 12, Nebraska Revised Statutes; and

*003.08.* “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 water into the underground water reservoir. Water well shall not include any excavation made for obtaining or prospecting for oil or natural gas or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission.

*004 Access to Files and Compliance with Agreement and Rules and Regulations.* The files of each participating natural resources district shall be available for inspection by personnel of the Department and by representatives of the State Auditor's Office during normal business hours of the district. In the event that the Director becomes aware of a violation of the contract between the district and the Department or of these rules and regulations, the Director may terminate the contract and/or demand reimbursement of any state funds related to such violation.

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NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: JULY 24, 1996  
Title 259 DNR - ADMINISTRATION OF WATER WELL  
DECOMMISSIONING FUND

Chapter 2 - QUALIFIED COST-SHARING PROGRAMS.

*001 Program Eligibility.* For a district to be eligible for reimbursement from the Fund, it must establish a water well decommissioning cost-share program which is consistent with the following requirements:

*001.01.* The district program must apply only to water wells which are decommissioned in accordance with all applicable state laws, standards, rules, and

regulations and by a licensed water well contractor or licensed pump installation contractor.

*001.02.* The program must not exclude any category of water wells from cost-share eligibility.

*001.03.* The program must be available for at least thirty water wells per year. To establish and maintain eligibility, a district does not have to provide cost-share assistance to at least thirty water wells each year. For a given fiscal year a program that is otherwise consistent with these rules will be consistent with this requirement if the district has budgeted at least \$10,000 for that program that fiscal year. If a natural resources district produces sufficient evidence to document that it can cost-share the decommissioning of at least thirty water wells for less than \$10,000, the Director may determine that such district's program is eligible if the amount budgeted for decommissioning is equal to or greater than that lesser amount.

*001.04.* The district program must provide at least 60% of the cost of decommissioning water wells, except that a district may establish a maximum cost-share amount of no less than \$300 for all water wells other than hand-dug water wells and no less than \$700 for hand-dug water wells. For purposes of these rules, the cost of decommissioning a water well does not include the cost of removing any exposed or buried pipes, tanks or pumps or any tower, wellhouse or other apparatus or obstruction around or in the water well that might interfere with the process of decommissioning.

*002 Program Certification by District.* Each natural resources district desiring reimbursement from the Fund shall complete a program certification form provided by the Director. The form shall be completed and returned by

July 15 of each year the district wishes to receive reimbursement from the Fund.

*003 Approval of Programs.* The Director shall be responsible for determining whether a natural resources district cost-sharing program for decommissioning water wells complies with the requirements of this chapter. Before making any such determination, the Director may request additional information from any district.

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NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: AUGUST 17, 2000

Title 259 DNR – ADMINISTRATION OF WATER WELL  
DECOMMISSIONING FUND

Chapter 3 – ALLOCATION OF FUNDS

*001 Allocation of Funds.* The Director shall allocate funds only to districts which have entered into a contractual arrangement with the Department and have a water well decommissioning cost-sharing program consistent with the requirements of Chapter 2 of these rules and regulations. Each participating district's percentage of the funds available for a fiscal year will be determined by the Director on or before August 1 of that year and shall be based upon that participating district's proportion of the wells decommissioned the previous fiscal year statewide with natural resource district cost-share assistance. Only decommissionings cost-shared the previous fiscal year with district programs consistent with the requirements of Chapter 2 of these rules and regulations may be counted in determining (1) the total number of wells decommissioned statewide with cost-share assistance and (2) each district's proportion of that total. Funds shall be allocated

to participating districts from those available in the Water Well Decommissioning Fund on at least a quarterly basis. Except as provided in Rule 003 of this Chapter each district's share of each allocation shall be based upon the percentages determined in accordance with this rule.

*002 Certifying Wells Decommissioned.* On or before July 15 of each year, each district which desires to be reimbursed from the Fund shall certify the number of wells decommissioned with cost-sharing assistance the previous fiscal year in accordance with this chapter.

*003 Revising Allocations.* The percentages determined pursuant to rule 001 of this chapter may be adjusted by the Director after March 1 if the Director determines that one or more districts cannot reasonably be expected to use their full percentage of the funds available for that fiscal year. To assist the Director in making such determinations, each participating district shall provide the Director with a report by March 1. The report shall indicate the number of wells which that district has approved for cost-share assistance and which are expected to be decommissioned and cost-shared by the district before July 1 and any other information the district desires to indicate the demand for funds in that district. If such report provides adequate evidence that the district is likely to provide sufficient decommissioning cost-share assistance to utilize all of the district's percentage of the available funds by July 1, that district's percentage will be maintained. If any district does not provide the report, or if any district's report indicates that it cannot be expected to utilize all of its percentage by July 1, the Director may reduce that district's percentage and distribute any funds thus made available to districts which have documented the need for additional funds in that fiscal year. Such distribution shall

be based on the Director's determination of the proportionate number of well decommissionings that could still be cost-shared within those districts in the remainder of the fiscal year.

*004 Expiration of Allocation.* Except to the extent that the Department encumbers funds at the end of the fiscal year to reimburse districts for cost-share assistance paid by them in that fiscal year, allocations shall not be carried over from one fiscal year to the next. Any unexpended but reappropriated funds will be included in the amount allocated for the next fiscal year. Funds encumbered by the Department at the end of the fiscal year shall also be released if a request for reimbursement for such funds has not been received by the Director by July 15.

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NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: JULY 24, 1996

TITLE 259 DNR – ADMINISTRATION OF WATER WELL  
DECOMMISSIONING FUND

Chapter 4 – REIMBURSEMENT TO DISTRICTS

*001 Limit on Reimbursements.* Actual reimbursements to the district for each water well decommissioned with district cost-share assistance in accordance with these rules and regulations shall not exceed the lesser of: (1) 75% of the cost of such decommissioning; (2) \$300 for all water wells other than hand-dug wells; (3) \$700 for hand-dug water wells; or (4) the actual amount of the cost-share assistance paid by the district.



*002 Requesting Reimbursement.* A participating district may request reimbursement no more often than monthly, except as necessary to avoid a loss of encumbered funds in accordance with Rule 004 of Chapter 3 of these rules and regulations. To be eligible for such reimbursement, the district must certify the following information for each water well for which cost-share reimbursement is being sought: (1) the total cost of decommissioning the well; (2) the cost-share amount paid by the district; and (3) that district cost-sharing for the well was in compliance with sections 46-1401 through 46-1405, R.R.S., 1998 and R.S. Supp., 2000, as amended and with these rules and regulations.

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Title 259  
Chapter 3

NEBRASKA DEPARTMENT OF NATURAL RESOURCES

TITLE 262 – REGULATIONS GOVERNING THE  
ADMINISTRATION OF THE  
SOIL AND WATER CONSERVATION FUND

NEBRASKA ADMINISTRATIVE CODE

NEBRASKA DEPARTMENT OF NATURAL RESOURCES

TITLE 262

RULES AND REGULATIONS GOVERNING THE  
ADMINISTRATION OF THE SOIL AND  
WATER CONSERVATION FUND

Adopted 7/19/01

## NEBRASKA ADMINISTRATIVE CODE

TITLE 262 – NEBRASKA DEPARTMENT OF NATURAL  
RESOURCES RULES GOVERNING THE ADMINISTRA-  
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PROGRAM

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NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: September 8, 1998  
Title 262 DNR – ADMINISTRATION OF NEBRASKA  
SOIL AND WATER CONSERVATION PROGRAM

Chapter 1 – GENERAL PROVISIONS

*001 Purpose of Rules.* These rules and regulations are adopted for the purpose of carrying out the purposes and requirements of the Nebraska Soil and Water Conservation Act.

*002 General Availability of Funds.* Financial assistance from the Nebraska Soil and Water Conservation Fund shall be available only to landowners of land located in natural resources districts which have agreed to assist the Department in the administration of the Fund and have executed a Memorandum of Understanding with the Department setting forth the terms of such assistance.

*003 Definitions.* As used in these rules and regulations, unless the context otherwise requires:

*003.01 “Act”* shall mean the Nebraska Soil and Water Conservation Act as established and governed by sections 2-1575 to 2-1579 and 2-1583 to 2-1585, R.R.S. 1997, and R.S. Supp., 2000 and any and all amendments, additions, or deletions which have been or may be made thereto;

*003.02 “Apportion”* shall mean to set aside funds for use in accordance with the act and these rules and

regulations, but shall not mean any physical distribution or other transfer of such funds;

*003.03* "Average unit cost" shall mean the unit of measure cost determined to be the average cost charged in that county for the work performed and materials required in installing such unit;

*003.04* "Board" or "Board of Directors" shall mean the board of directors of the district in which is located the land upon which the projects or practices are proposed or installed;

*003.05* "Commission" shall mean the Nebraska Natural Resources Commission created pursuant to Section 2-1504, R.S. Supp., 2000, and amendments thereto;

*003.06* "Department" shall mean the Department of Natural Resources created pursuant to Section 81-101, R.S. Supp., 2000;

*003.07* "District" shall mean a natural resources district created and governed by sections 2-3201 to 2-32,101, R.R.S., 1997, and amendments and additions thereto;

*003.08* "Eligible project or practice" shall mean a project or practice designated as eligible for state cost-share funds by the Commission in accordance with Section 3-001;

*003.09* "Fiscal year" shall mean July 1 of any calendar year through June 30 of the next calendar year;

*003.10* "Fund" shall mean the Nebraska Soil and Water Conservation Fund created by Section 2-1577, R.R.S., 1997 and R.S. Supp., 2000 and amendments thereto;

003.11 "Landowner" or "owner" shall mean the record owner or owners of real property or upon adequate documentation of the sale of real property by land contract, the purchaser or purchasers of said real property;

003.12 "NRCS" shall mean the United States Department of Agriculture, Natural Resources Conservation Service;

003.13 "Participating district" shall mean a natural resources district which is a party to a then current agreement entered into in accordance with Section 1-002;

003.14 "Project or Practice" shall mean the soil or water conservation or water quality protection work of improvement or activity for which cost-sharing assistance is requested or approved;

003.15 "State cost-share funds" shall mean funds available from the Nebraska Soil and Water Conservation Fund.

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NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: November 5, 1999

Title 262 DNR – ADMINISTRATION OF NEBRASKA SOIL AND WATER CONSERVATION PROGRAM

Chapter 2 – APPORTIONMENT OF FUNDS

*001 Apportionment of Funds.*

001.01 Each fiscal year each participating district shall receive a new apportionment of funds for each of the following time periods:

*001.01A* July 1 to February 28; and

*001.01B* March 1 to June 30.

*001.02* The amount which shall be apportioned to each participating district for each such period shall be the combined total of:

*001.02A* A portion of the funds obligated but unexpended in such district as of the last day of the preceding apportionment period, such portion to be determined as follows:

*001.02A1* For each apportionment period beginning on March 1, each district shall be apportioned the full amount of funds obligated but unexpended in such district as of the last day of the preceding apportionment period;

*001.02A2* For each apportionment period beginning on July 1, each district shall be apportioned the full amount of funds obligated but unexpended by such district as of the last day of the preceding apportionment period if the total amount of all funds obligated but unexpended by all participating districts for that preceding apportionment period is \$1,000,000 or less. If such total is more than \$1,000,000, the amount to be apportioned to all districts shall be reduced to \$1,000,000 and each district shall be apportioned a percentage of its obligated but unexpended funds, such percentage to be determined by dividing \$1,000,000 by such total;

and

*001.02B* A portion of the sum of all unobligated funds as of the last day of the preceding apportionment period, any previously obligated but unexpended funds made available as a result of the reduction pursuant to Rule 001.02A2, and any

funds newly appropriated to the Soil and Water Conservation Fund. In determining the amount of this part of each district's apportionment, the Commission may divide no more than one million four hundred thousand dollars equally among all participating districts and shall, subject to Subsections 001.03 or 001.04, distribute the remainder, if any, among participating districts on the basis of one or more of the following criteria:

*001.02B1* The conservation or water quality protection needs in that district as expressed in monetary terms;

*001.02B2* The extent of the district's previous use of the Fund; and

*001.02B3* The district's own commitment to conservation or water quality protection as expressed by the expenditure of its general revenues for basic soil and water conservation or water quality protection practices in the preceding fiscal year.

*001.02B4* The need, as determined by the Commission, to provide assistance for one or more specific projects or practices or for one or more specific geographic areas.

The Commission may also in any apportionment period establish a minimum or maximum amount to be apportioned to any one district if it determines that such a minimum or maximum is necessary to maintain the viability of the Soil and Water Conservation Fund program in all participating districts.

001.03 The Department shall reserve at least two per cent of the funds credited to the Fund for grants to landowners ordered by a natural resources district pursuant to the Erosion and Sediment Control Act to



install permanent soil and water conservation practices. Such funds shall be made available at a rate sufficient to provide the landowner with total cost-sharing assistance of at least ninety percent of the actual cost of the required permanent practices and shall be granted on a first-come, first-served basis until exhausted. Such funds shall not be obligated by the district, but shall be obligated, if available, by the Director of Natural Resources to a landowner when a copy of the district's administrative order and a copy of an application for cost-share assistance are received by the Director. The application for cost-share assistance must be approved by the district before submission to the Director. Such funds shall remain obligated until used or until the district advises the Director of Natural Resources that all or part of the funds are no longer needed. If more than two per cent of the funds credited to the Fund are at any time reserved by the [sic] for such purposes, the [sic] may at any later time release all or part of such excess for inclusion in any future apportionment to the districts if it concludes that such funds are no longer needed for the purposes of this subsection.

001.04 The Commission may withhold from any apportionment pursuant to Rule 001.02B not more than 20% of the total unobligated funds available. Such funds may be later apportioned to districts which have obligated all previously apportioned funds and can demonstrate a need for additional funds or may be apportioned to districts for use in critical erosion or water quality areas. No one district shall receive more than 15% of any such withheld funds unless there are adequate funds available for all districts requesting and demonstrating a need for such additional funds on or before May 1.

001.05 No district shall obligate any funds after the last day of any appointment period until notified by

the Department of a new apportionment. The report submitted pursuant to Section 6-008 shall be the basis for determining the amount of funds obligated and unobligated by each participating district as of February 28 and June 30 of each fiscal year. Any district failing to submit a report due on or before the fifth working day of any July or March may be denied any apportionment of funds for the next apportionment period.

002 Supplemental Apportionments. The Commission may, by utilizing funds repaid to the Fund or otherwise made available for expenditure pursuant to the Act, establish supplemental apportionments of funds to participating districts. To the extent consistent with legislative direction, any such supplemental apportionment may be combined with any apportionment made pursuant to Section 2-001, Subsection 001.02 or 001.04.

003 Termination of the Memorandum of Understanding. In the event that the Memorandum of Understanding required by Section 1-002 is terminated by a district or by the Department, the district shall release all funds unobligated as of the effective date of such termination and shall further release as they become available obligated funds for which no claim for payment is made in a timely manner. Any funds so released shall be used by the Commission to supplement in accordance with Section 2-002 the funds apportioned to participating districts.

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NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: November 5, 1999  
Title 262 NNRC – ADMINISTRATION OF NEBRASKA  
SOIL AND WATER CONSERVATION PROGRAM

Chapter 3 – APPLICATION AND ELIGIBILITY FOR  
FUNDS

*001 Establishing Project Eligibility.* Landowners shall be eligible for cost-share funds only for the types of projects and practices designated as eligible for such purposes by the Commission. The Commission shall at least annually review the list of projects and practices for which such funds should be utilized and shall affirm or modify such list as it deems appropriate. Funds apportioned to districts for that fiscal year may be obligated only for projects and practices thus designated. Each participating district may further limit the types of projects and practices eligible for funding assistance in that district; the Department shall be promptly notified of any such action.

*002 Application for Assistance.* To be eligible for cost-share assistance from the fund, a landowner must make application therefor on forms provided by the Department. Copies of such forms shall be available at such locations as the district shall specify.

*003 Certification of Practices.* Before the district board of directors approves the application for assistance, a technician qualified to assess the practicability and need for the projects or practices for which assistance is requested shall certify that such projects or practices are feasible and that the estimated quantities are practical and reasonable. If such technician is other than an individual employed for such purposes by the district or by the NRCS, the qualifications of such technician shall be established to the

satisfaction of the board prior to approval of the application.

*004 Availability of Federal Funds.* Except for funds to be obligated by the Commission in accordance with Section 2-001, Subsection 001.03, applications for cost-sharing assistance from the Fund cannot be approved by the district board of directors unless it determines that federal funds were not available for the proposed project or practice at the time the application was submitted by the landowner. Federal funds shall be deemed to be unavailable in the county where the land is located if all such funds then available for obligation in such county through federal cost-sharing programs have been obligated or if the particular project or practice proposed is not eligible for federal cost-sharing funds in that county but is eligible for state cost-sharing assistance. Federal cost-sharing funds shall also be deemed to be unavailable to the extent that the maximum allowable dollar amount available from a federal cost-sharing program to individual landowners in a given year has limited or will limit the landowner's federal cost-share payment to an amount less than that to which such landowner would have been entitled in the absence of such a dollar limitation. In the event of the utilization of both state and federal cost-share funds on the same project or practice, the state cost-share funds provided to the landowner shall not exceed the amount which ineligible contributors are authorized to provide by federal regulations and operating procedures.

*005 Federal Multi-year Agreements.* Notwithstanding any provision of Section 3-004, federal cost-sharing funds shall be deemed to be unavailable for a project or practice which is included in a federal multi-year cost-sharing agreement or contract when and only when federal maximum dollar

amounts for that type of project or practice or that contract have been or are to be paid from federal cost-sharing funds.

*006 Compliance with Applicable Laws.* In the installation or application of any eligible project or practice the landowner shall be solely responsible for assuring compliance with any applicable federal, state, or local laws, ordinances, and rules and regulations. The landowner is also solely responsible for obtaining all permits, licenses, or other instruments of permission required prior to the installation of the proposed project or practice.

*007 Group Project or Practices.* In the event that the most appropriate solution to the needs addressed by the act requires the eligible projects or practices to be located on or across the property lines of different landowners, and when such landowners desire to jointly install, operate, and maintain such needed projects or practices, state cost-share funds may be used to share the cost when the following additional provisions have been satisfied.

*007.01* A group planning agreement prepared by or on behalf of landowners must be signed and submitted by the landowners involved and approved by the board;

*007.02* If the proposed projects or practices are approved by the board, the landowners shall arrange for carrying out the projects or practices by securing and recording any easements which are necessary and by agreeing to a division of the costs and cost-share payments;

*007.03* One member of the group shall be designated as the group representative to file the application for cost-share assistance, such application to be accompanied by a written statement describing the

arrangements agreed to under subsection 007.02 above;

*007.04* The group representative shall make arrangements to have the project or practice installed, make payments and obtain receipts from vendors;

*007.05* The group representative shall submit the claim for payment, supported as otherwise required by these rules and regulations;

*007.06* Payment will be made to the group representative;

*007.07* The division of cost-share assistance provided will be made by the group representative in the manner indicated in the agreement previously reached among the members of the group;

*007.08* A cost-share assistance agreement must be signed by each member of the group on whose land a portion of the project or practice has been installed;

*007.09* When two or more landowners intend to participate financially in the installation of a project or practice located wholly on the property of one landowner, the procedures outlined in this section may be used but are not required.

*008 Termination Date.* All applications shall specify a termination date which shall be no more than nine months from the date the landowner's application is approved by the board. Claims for payment received after such termination date shall not be honored unless an extension of not to exceed an additional three months time period is approved by the board by amendment to the original application.

*009 Application Amendments.*

*009.01* An amendment to an application for cost-sharing assistance shall be appropriate for any of the following reasons:

*009.01A* To increase or decrease consistent with the responsible technician's certification pursuant to Section 3-003 the quantities of eligible projects or practices needed and/or the amount of cost-share funds estimated on the original application.

*009.01B* To extend the termination date indicated on the original application consistent with Section 3-008;

*009.01C* To cancel the agreement by mutual consent.

*009.02* A copy of any amendment will be furnished to each party receiving a copy of the original agreement and the board shall approve each such amendment before it shall become effective.

*010 Need for Additional Reviews* The Commission may identify projects or practices for which reviews by an entity in addition to the district are required before the board of directors may approve applications for cost-share assistance, or any amendments thereto, pursuant to Section 6-002 or may approve claims for payment pursuant to Section 6-005. In the event the Commission takes such action, the Department, within five working days thereafter, shall notify the affected districts and as soon thereafter as possible, shall direct the affected districts concerning the process for future acceptance and approval

of applications, amendments, and claims for payment which include such projects or practices.

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NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: September 8, 1998

Title 262 DNR - ADMINISTRATION OF NEBRASKA  
SOIL AND WATER CONSERVATION PROGRAM

Chapter 4 - DESIGN, LAYOUT, AND CONSTRUCTION  
OF PROPOSED PROJECTS AND PRACTICES AND  
OPERATION AND MAINTENANCE

*001 Technical Specifications.* Unless the Commission provides otherwise for specific projects and practices, specifications for projects and practices set forth in the NRCS Field Office Technical Guide are to be used as the basis for determining need and practicability of the proposed project or practice, for preparing plans and specifications, for designing and laying out such projects and practices, and for certifying the proper installation or application of such projects and practices. Specifications for additional projects and practices not set forth in the NRCS Field Office Technical Guide and modifications to those included in such Technical Guide may be considered and authorized by the Commission at the request of the District. Project and practice description and specification information will be on file in the district office and at all such places as application forms are made available.

*002 Inspections and Certifications.* A responsible technician shall prior to installation or application of the proposed project or practice determine that the plans therefore are adequate and shall inspect any construction work in progress to determine that specifications are met.



Following such installation or application, it will be the responsibility of such technician to certify to the district that the project or practice was or was not properly installed or applied. If the district does not receive a technician's certification that the project or practice was properly installed or applied, it shall not approve any claim to the Department for payment regarding such project or practice. In the event that any technician responsible for complying with any portion of this section is different from the technician who originally certified the feasibility of the project or practice in accordance with Section 3-003, and if such technician is other than an individual employed for such purposes by the District or by NRCS, the qualifications of such technician shall be established to the satisfaction of the board prior to proceeding any further with processing of any claim for payment.

*003 Operation and Maintenance by Landowner.* Except as provided in Section 3-004, the landowner shall be responsible for the operation and maintenance of all projects and practices constructed with assistance from the Fund and the landowner will be expected to maintain the same in good operating condition to assure their continued effectiveness for the purpose or purposes for which they were installed.

*004 Operation and Maintenance by District.* If on any particular proposed project or practice, the district determines that landowner assumption of all operation and maintenance responsibilities would constitute an undue burden upon such landowner or would not assure operation or maintenance adequate to protect such project or practice from failure, the district may agree to be or require that it be responsible for all or a part of such operation and maintenance and may prior to and as a

condition for approval of an application for cost-share funds, require the landowner to provide the district with the right of access necessary to perform such operation or maintenance.

*005 Cost-Share Assistance Agreement.* As a condition for receiving any cost-share funds for eligible projects or practices, the landowner shall, prior to submission of a claim for reimbursement, enter into an agreement on forms supplied by the Department providing that if a conservation practice is terminated or a project or practice is removed, altered, or modified so as to lessen its effectiveness, without prior approval of the district, for a period of ten years after the date of receiving payment, the landowner shall refund to the Fund the full amount of the state cost-share payment previously received for the project or practices or portion thereof which has been thus terminated, removed, altered or modified.

*006 Requests for Termination, Removal, Alterations, Modifications.* A landowner may request the district's approval of the termination, removal, alteration, or modification of the project or practice at any time during the 10-year period following receipt of payment. In determining whether to approve or disapprove such action, the district shall consider:

*006.01* The value of the project or practice in conserving soil and water resources or protecting water quality;

*006.02* The extent to which such project or practice hinders the highest and best use of the land upon which such project or practice is located;

*006.03* Whether alternative forms of soil and water conservation or water quality protection measures

have been or are to be constructed or implemented;  
and

*006.04* The time remaining in the designed life of the project or practice.

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NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: September 8, 1998  
Title 262 DNR – ADMINISTRATION OF NEBRASKA  
SOIL AND WATER CONSERVATION PROGRAM

Chapter 5 – COST-SHARE RATES AND REIMBURSE-  
MENT PROCEDURES

*001 Cost-Share Rates.* The district may establish any cost-share rates for eligible projects and practices up to 75% of average unit cost. However, except as provided in Section 2-001, Subsection 001.03, no payment shall exceed 75% of the actual cost of the project or practice installed or applied. Participating districts shall notify the Department by February 1 of each year of the cost-share rates to be utilized for reimbursement purposes during the next ensuing year. In the event that average unit costs are not established in accordance with Section 5-002, or that average unit costs which are available are determined by the Commission to be unreliable because of the site-specific nature of the costs of a certain type of project or practice, the cost-share rate in effect will be applied to actual cost and average cost will not be utilized and need not be calculated on individual applications.

*002 Average Costs.* Unless a district establishes and informs the Department of lower average unit costs, the average unit costs for a county shall be identical to any established and utilized by NRCS for the same type of

projects and practices in that county. If average unit costs are not established by NRCS for an eligible practice in a county, the Commission itself may establish average unit costs for such project or practice in such county. Except for applications filed with the Commission in accordance with Section 2-001, Subsection 001.03, all applications for cost-sharing assistance shall be based upon the then current average unit costs. Once an application has been completed by a landowner, the same average unit costs in effect at the time the application was completed shall be utilized for determining the cost-share payment to which each landowner is entitled unless the district and the landowner agree to use updated average unit costs.

*003 Eligible Costs.* Except for costs incurred in employing the services of a technician as required by these rules and regulations or as otherwise may be limited by the Department, all necessary costs incurred by the landowner in installing or applying an approved project or practice shall be eligible for cost-sharing. Such costs include machine hire or the costs of the use of his own equipment, needed materials delivered to an [sic] used at the site, and labor required to construct the project.

*004 Documenting Costs.* All authorized items of costs for which the landowner desires cost-sharing assistance shall be itemized on a statement submitted to the district by the landowner in such form as is required by the Department. Costs incurred by the landowner in furnishing his own labor, material, or equipment for use on a project or practice should be listed in a certified statement itemizing such items and showing unit cost for each item and the total amount for which payment is claimed.

*005 Claim for Payment.* The landowner shall after the project or practice has been completed and certified by the responsible technician complete a claim for payment on forms provided by the Department and available at the location where the application form was obtained. A copy of the document(s) required by Section 5-004, shall be attached to such claim for payment prior to submission to the district. A claim for payment will not be accepted unless the landowner has signed the portion of the claim form required by Section 4-005.

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NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: September 30, 1994

Title 262 DNR - ADMINISTRATION OF NEBRASKA  
SOIL AND WATER CONSERVATION PROGRAM

Chapter 6 - DISTRICT ADMINISTRATION OF THE  
FUND

*001 Application.* Sections 6-001 through 6-009 shall apply only to districts which have entered into a Memorandum of Understanding with the Department agreeing to assist the Department in the Administration of the Fund.

*002 Board Action on Application.* The board of directors shall review each cost-share assistance application and any and all amendments thereto and shall approve or disapprove each such application or amendment. Such action shall be recorded in the official minutes of the meeting and the landowners shall be notified of such action within ten days thereafter. For any project or practice subject to additional review in accordance with Section 3-010, the board shall not approve an application

for cost-share assistance or an amendment thereto except in compliance with direction given by the Department.

*003 Approving Applications.* Except for applications pursuant to Section 2-001, Subsection 001.03, applications for cost-share assistance may be approved by the board only when there is a sufficient unobligated fund balance to provide the estimated cost-share amount based upon the average cost information indicated on the application. The board may if it desires give preference to the construction of projects or practices which will in its judgment provide the greatest public benefit in that district. Examples of projects and practices which would provide the most public benefit include those which would reduce runoff and sediment damage to lakes, streams, reservoirs, roads, highways, or other public improvements and those which would reduce demands on or contamination of the groundwater reservoir and/or provide enhanced recharge to an aquifer with a declining water table.

*004 Record Keeping.* The district shall maintain a record of funds obligated as applications for cost-share assistance are approved based upon estimated costs. A cost-share ledger will be kept current showing the balance of unobligated funds and such other information as the Department determines is necessary to provide for proper documentation of all expenditures from the Fund.

*005 District Review of Claim for Payment.* Upon completion of an approved project or practice, the district shall review the claim for payment prepared by the landowner in accordance with Section 5-005, and shall if it finds that the project or practice was properly installed, that all other conditions have been satisfied, and that the claim has been properly completed and is accompanied by all

## E2-90

required supporting documentation, approve the claim and certify the same to the Department with all supporting documentation attached. For any project or practice subject to additional review in accordance with Section 3-010, the board shall not approve a claim for payment except in compliance with direction given by the Department. If the district determines that the claim is improperly prepared or that other deficiencies exist, it shall so notify the landowner and shall provide the landowner with a reasonable opportunity to correct such deficiencies and to resubmit the claim for payment.

*006 District Assistance to Landowner.* The district shall provide such assistance as it deems appropriate to the landowner in the completion of necessary forms and in all matters relating to completion of eligible projects and practices.

*007 Filing System.* To provide for efficient processing of requests for cost-sharing assistance and for maintenance of necessary documentation of matters relating to the administration of the Fund, the district shall develop and maintain with the assistance of the Department a filing system which includes copies of all forms completed by the landowner and all other information deemed relevant to the installation and application of the eligible projects and practices and to the cost-sharing assistance provided. Such files shall be available for inspection by personnel of the Department and by representatives of the State Auditor's Office during normal business hours of the district.

*008 Reports.* The district shall no later than the 5th working day of March, July and November of each year submit a report to the Department indicating the status of cost-share funds as shown on each cost-share ledger

required by Section 6-004 at the close of the last day of the preceding month.

*009 Delegation of Responsibilities by Board.* The board of directors may delegate to the district manager or to a member or sub-committee of the board all or any of the authorities and responsibilities assigned to it by these rules and regulations except the establishment of preferred projects and practices in accordance with Section 6-003 and the limitation of the types of projects and practices eligible for assistance in accordance with Section 3-001. The Department shall be notified in writing of any such delegation.

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NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: September 30, 1994

Title 262 DNR – ADMINISTRATION OF NEBRASKA  
SOIL AND WATER CONSERVATION PROGRAM

Chapter 7 – DEPARTMENT ADMINISTRATION OF THE  
FUND

*001 Forms.* The Department shall prepare and make available to participating districts sufficient copies of all forms necessary for district administration and shall further prepare and keep updated a handbook for use by districts in assisting in the administration of the fund.

*002 Department Review of Claims for Payment.* Upon receipt from a district of a district approved claim for payment, a Department representative shall review the claim and the supporting documentation which is attached. If the claim is determined to be complete and properly documented, the Department shall prepare a



voucher for transmittal to the Department of Administrative Services for preparation of a warrant payable to the landowner or to a group representative designated in accordance with Section 3-007.

*003 Payment to Landowner.* Upon receipt of the warrant from the Department of Administrative Services, the Department shall transmit it by mail to the landowner or group representative.

*004 Incomplete or Inaccurate Claims for Payment.* If in reviewing the claim for payment, the Department determines that the information contained thereon is incomplete or inaccurate, that an error exists in the final computation or that proper documentation has not been supplied, it shall so notify the district of such deficiency. The district shall then request the landowner to complete a new claim for payment. No payment will be authorized until the Department has determined that the claim for payment and the necessary supporting documentation are complete and accurate in all respects.

*005 Violations of Cost-Sharing Assistance Agreement.* In the event that the Department is notified of an alleged violation of the cost-sharing assistance agreement, a representative of the Department and/or a representative of the district shall investigate the alleged violation and shall report the results of such investigation to the Department. If following the investigation it appears as though a violation has in fact occurred, the Department shall so notify the landowner and shall make demand for repayment of the appropriate amount to the Fund within 30 days thereafter. The landowner may within the time specified for such repayment contest the occurrence of a violation and may request that the Department conduct a formal hearing to reconsider such demand for payment.

Such hearing shall be conducted in accordance with Title 261 of the Department Rules and Regulations. If following the hearing, the Department determines that the violation did in fact occur, it shall so notify the landowner in accordance with the provisions of Title 261 and shall renew the demand for repayment. If repayment is not provided or all deficiencies corrected at the owner's expense within the time specified, appropriate legal action shall be taken by the Department to recover such amount.

*006 Report to Districts.* The Department shall prepare on a quarterly basis a report to each participating district indicating the payments which have been made from the fund during the preceding quarter and any other information determined by the Department to be of value to the districts regarding the administration of the fund.

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NEBRASKA DEPARTMENT OF  
NATURAL RESOURCES  
TITLE 263 – REGULATIONS GOVERNING  
THE ADMINISTRATION OF THE NATURAL  
RESOURCES WATER QUALITY FUND

NEBRASKA ADMINISTRATIVE CODE  
NEBRASKA DEPARTMENT OF  
NATURAL RESOURCES  
TITLE 263  
RULES AND REGULATIONS GOVERNING  
THE ADMINISTRATION OF THE NATURAL  
RESOURCES WATER QUALITY FUND

ADOPTED 7-19-2001

NEBRASKA ADMINISTRATIVE CODE  
 TITLE 263 – NEBRASKA DEPARTMENT OF NATURAL RESOURCES RULES GOVERNING THE ADMINISTRATION OF THE NATURAL RESOURCES WATER QUALITY FUND

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| General Provisions     | Sec. 2-15,122,<br>as amended by<br>Section 1, LB 329,<br>97th Nebraska<br>Legislature, 1st<br>Session (2001) | Chapter 1       |
| Qualified Expenditures | Sec. 2-15,123,<br>as amended by<br>Section 2, LB 329,<br>97th Nebraska<br>Legislature, 1st<br>Session (2001) | Chapter 3       |

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| Distribution of Funds   | Sec. 2-15,123, as<br>amended by<br>Section 2, LB 329,<br>97th Nebraska<br>Legislature, 1st<br>Session (2001) | Chapter 2               |
| Qualifying Expenditures | Sec. 2-15,123,<br>as amended by<br>Section 2, LB 329,<br>97th Nebraska<br>Legislature, 1st<br>Session (2001) | Chapter 3               |

## NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: MARCH 13, 1996  
 Title 263 DNR – ADMINISTRATION OF NATURAL  
 RESOURCES WATER QUALITY FUND

## Chapter 1 – GENERAL PROVISIONS

*001 Purpose of Rules.* These rules are adopted for the purpose of administering the Natural Resources Water Quality Fund governed by Sections 2-15,122 and 2-15,123, as amended by Sections 1 and 2, LB 329, 97th Nebraska Legislature, 1st Session (2001).

*002 General Availability of Funds.* Financial assistance from the Fund shall be available only to natural resources districts which have programs qualifying for such assistance under these rules and which have entered into a contractual arrangement with the Department setting forth the terms for providing such financial assistance.

*003 Definitions.* As used in these rules and regulations, unless the context otherwise requires:

*003.01* "Commission" shall mean the Natural Resources Commission created pursuant to Section 2-1504, R.S. Supp., 2000, and amendments thereto;

*003.02* "Department" shall mean the Nebraska Department of Natural Resources created by Section 81-101, R.S. Supp., 2000, and amendments thereto;

*003.03* "Director" shall mean the individual holding the position of Director of Natural Resources created by Section 81-102, R.S. Supp., 2000;

*003.04* "District" or "Natural Resources District" shall mean a district created and operating in accordance with Chapter 2, Article 32, Reissue Revised Statutes of Nebraska; and

*003.05* "Fund" shall mean the Natural Resources Water Quality Fund created by Section 2-15,122, as amended by Section 1, LB 329, 97th Nebraska Legislature, 1st Session (2001).

*004 Access to Files and Compliance with Agreement and Rules and Regulations.* Each participating natural resources district shall maintain records adequate to document that the district had expenditures qualified pursuant to Chapter 3 of these rules in amounts equal to or exceeding the amount provided from the Fund plus the required cost-share. Such files shall be available for inspection by

personnel of the Department and by representatives of the State Auditor's office during normal business hours of the district. In the event that the Director becomes aware of a violation of the contract between the district and the Department or of these rules and regulations, the Director may terminate the contract and/or demand reimbursement of any state funds related to such violation.

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NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: MARCH 13, 1996  
Title 263 DNR - ADMINISTRATION OF NATURAL  
RESOURCES WATER QUALITY FUND

Chapter 2 - DISTRIBUTION OF FUNDS

*001 Schedule for Distributing Funds.* Funds shall be distributed, pursuant to Section 002 of this chapter to participating districts on or before the 15th day of August, each year and at such other times during the year as the Director determines that sufficient additional funds are available to make a distribution and the participating districts indicate their ability to use additional funds.

*002 Determining Distributions.* The money available for each distribution from the Fund shall be divided among participating districts as follows:

*002.01* Except as provided by Section 004 of this Chapter, sixty percent of the funds available shall be distributed to districts on the basis of proportionate fertilizer sales within the districts during the preceding three calendar years for which sales records by county are available from Nebraska Agricultural Statistics or a comparable source. For a county which is contained within more than one district, each

district's proportion of sales shall be based upon its proportionate land area within the county. If sales records are not made available for any county, the Director shall establish that county's portion of the statewide sales total. That decision shall be based upon the best available information which may include, but not be limited to, county land area and sales in adjacent counties. In the event the Commission chooses to reserve up to ten percent of funds available for special distribution pursuant to 004 of this Chapter, the amount of funds available for distribution pursuant to this subsection shall be decreased by the amount reserved.

*002.02* Twenty percent of the funds available shall be divided equally among all participating districts.

*002.03* Twenty percent of the funds shall be distributed among districts which have (1) a designated ground water management area for water quality purposes or (2) a clean lakes watershed area designated pursuant to Section 314 of the Clean Water Act, or comparable federally funded program. Each district's distribution pursuant to this subsection shall be based upon the proportionate land area in that district which is in such a designated area compared to the total land area within the state in such designated areas. If specific lands are in more than one such designated area, they shall be counted only once for purposes of this subsection.

*003* At least thirty days prior to a distribution pursuant to Section 002 of this chapter, the Department shall notify each district of the estimated amount of funds to be distributed to that district. If any district does not believe it could fully utilize any such distribution in the amount estimated, it shall provide the Department with timely notification of the amount of funds which it could utilize

for qualified programs. The difference between that amount and the amount that would otherwise be distributed to that district pursuant to Section 002 of this Chapter will be divided among the other participating districts according to subsections 002.01 through 002.03.

004 The Commission may reserve up to ten percent of the funds that otherwise would be distributed pursuant to Section 002 of this Chapter as part of the first distribution in any fiscal year. Any such reserved funds will be distributed by the Director to participating districts for specific programs and/or projects by September 15 of the fiscal year in which they are to be expended. Application for such funds shall be made on a form provided by the Department. If the available funds are not sufficient to fund all those for which application has been made, priority will be given to programs and projects offering innovative ways to address water quality problems. No district shall receive more than twenty-five percent of the funds distributed pursuant to this section in any one fiscal year unless funds are available for all other qualified applications submitted.

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NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE: MARCH 13, 1996

Title 263 DNR – ADMINISTRATION OF NATURAL RESOURCES WATER QUALITY FUND

Chapter 3 – QUALIFYING EXPENDITURES

001 *Qualifying Programs and Projects.* Subject to the requirement of Section 002 of this Chapter, a participating district may expend funds distributed pursuant to Chapter 2 of these rules for costs incurred by that district for any of



the following programs and projects: (1) the purchase, installation, maintenance, and use of ground water sampling and testing equipment; (2) the purchase, installation, maintenance, and use of surface water sampling and testing equipment; (3) education and information programs related to water quality issues; (4) administration of ground water quality management areas; (5) purchase, installation, and maintenance of special monitoring wells and related equipment; (6) flow meters and other equipment required in ground water management areas; (7) source water protection programs and activities; (8) preparation and updating of ground water management plans; (9) implementation of water quality "best management" practices in both rural and urban areas, including programs which cost-share expenses of landowners and operators in installing or using such practices; (10) soil sampling and testing programs for soils in and below the crop root zone; (11) water quality research; (12) well decommissionings; (13) Chemigation permitting and inspection programs; (14) investigations, because of water quality concerns, of potential replacement sources of water for public water suppliers; (15) animal waste management activities including research, treatment lagoon cost-sharing, feedlot waste effluent management, and inactive feedlot management; and (16) other water quality related programs and projects approved in advance by the Director. The Director shall have sole discretion to determine whether a district's program qualifies for funding pursuant to this subsection.

*002 Cost-Share Requirement.* For each two dollars expended by the district from the funds distributed pursuant to Chapter 2 of these rules, the district shall spend at least three dollars in funds derived from other non-state sources for the programs and projects identified in Section 001 of this chapter.

*003 Certification of Expenditures and Reimbursement of Funds.* Funds distributed pursuant to Chapter 2 of these rules and regulations must be expended by the district in the fiscal year distributed. On or before August 31, the district shall account for expenditure of the funds made available from the Fund in the previous fiscal year. The Department shall provide a form for such purposes. In the event that all funds distributed in the previous fiscal year were not expended by June 30 of that fiscal year, or that any funds were expended for programs or projects that the Director determines were not qualified for funding, or that the district did not match the funds distributed in the proportion required by Section 002 of this chapter, the district shall reimburse the Department for the amount thus unexpended, improperly expended, or unmatched. All such reimbursed funds shall be redeposited in the Fund for redistribution in accordance with Chapter 2 of these rules and regulations. No new distributions shall be made to a district which has not made a reimbursement required by this section.

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**APPENDIX E3**  
**Upper Republican Natural Resource District**  
**RULES AND REGULATIONS**  
**FOR**  
**GROUND WATER CONTROL**  
**OF THE**  
**UPPER REPUBLICAN**  
**NATURAL RESOURCES DISTRICT**  
**MANAGEMENT AREA**  
**ORDER NO. 25**

**EFFECTIVE SEPTEMBER 1, 2002**  
**IN CONCERT WITH**  
**REVISED PARTS IV AND VI OF THE**  
**URNRD TECHNICAL MANUAL, TM - 25**

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**STATE OF NEBRASKA  
UPPER REPUBLICAN NATURAL RESOURCES  
DISTRICT AMENDMENTS TO RULES AND  
REGULATIONS GROUNDWATER  
CONTROL - ORDER NO. 25**

Pursuant to Section 46-656.25, R.R.S. 1998, Rules and Regulations for Groundwater Control, Order No.25, and Technical Manual TM 25 adopted July 2, 2002, are amended as follows:

**RULE I: DEFINITIONS**

All words, terms and phrases used herein shall be given their common, every day meaning and usage. In addition:

- A. **Allocated Acres** shall mean the specific number of acres that have been Certified by the Board as eligible to be granted an allocation of groundwater.

- B. **Allocation** shall mean the amount of groundwater granted by the Board to a groundwater user, pursuant to these rules and regulations.
- C. **Board of Directors** or **Board** shall mean the elected Board of Directors of the Upper Republican Natural Resources District.
- D. **Certified Irrigated Acre** shall mean any acre of ground upon which groundwater is being applied for irrigation purposes, regardless of the source of the groundwater, that is properly equipped to apply groundwater for irrigation purposes, and that has an allocation and is certified as such by the Board. (**Also see Irrigated Acre**)
- E. **Certified Irrigated Tract** shall mean an irrigated tract, not exceeding 640 contiguous acres, consisting of Certified Irrigated Acres. (**Also see Irrigated Tract**)
- F. **Critical Township** shall mean any township within the Management Area designated as Critical under the criterion of Rule 4 herein, and in TM-25.
- G. **District** shall mean the Upper Republican Natural Resources District, which encompasses Chase, Dundy, and Perkins Counties, in the State of Nebraska.
- H. **Flowmeter** shall mean a device of a type or design approved by the Board, which, when installed, operated and maintained according to District specifications, measures and totalizes the amount of groundwater withdrawn.
- I. **Groundwater Irrigation Runoff** shall mean groundwater used for irrigation purposes which escapes from land owned, leased, or otherwise under the control of a groundwater user. Groundwater that becomes commingled with surface water runoff shall be treated as irrigation runoff; except that groundwater

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.

- J. **Improper Groundwater Irrigation Runoff** shall mean the occurrence of groundwater irrigation runoff which causes or contributes to the: accumulation of water upon or beneath the surface of the lands of any person to their detriment, damage, or inconvenience; deterioration of water quality by depositing sediment and/or associated chemicals in surface water within the Management Area; and/or flow of groundwater to waste. Improper groundwater irrigation runoff is subject to the General Enforcement Provisions of Order No.25 and TM-25.
- K. **Irrigated Acre** shall mean any acre with a demonstrated or proven history of having been or currently being irrigated.
- L. **Irrigated Tract** shall mean any acres with a demonstrated or proven history of having been or currently being irrigated.
- M. **Management Area** shall mean all of Perkins, Chase and Dundy Counties and shall include the rock unit known as the Ogallala Formation and all other deposits of more recent geological age. That part of Dundy County lying south of the centerline of the Republican River and its North Fork Tributary, including the rock unit known as the Ogallala Formation and all other deposits of more recent geological age, is subject only to Rules 1, 2, 3, 4, 5, 6, 7, 8, 9 (B, C, D, E, & F), 12, 13, 14 (A, C), 15, 16, 17, 18, 19 and 20; and supplemental counterparts in Part VI of the Technical Manual.
- N. **Offset** shall mean any deduction from an allocation.

- O. **Permit** shall mean a permit, granted by the Board, with conditions specified by the Board, for construction of a new well or a replacement well pursuant to these rules and regulations. All new and replacement wells, except Domestic and Range Livestock, shall require a permit after September 1, 2002 prior to construction of the well.
- P. **Person** shall mean a natural person, a partnership, a limited liability company, an association, a corporation, a municipality, an agency or political subdivision of the State or of the United States. The male pronoun shall include the female.
- Q. **Pooling** shall mean any contract approved by the Board in which groundwater allocations are combined.
- R. **Technical Manual** shall mean a publication of the District that contains technical, administrative, procedural, regulatory and other materials, the contents of which are incorporated into these rules by reference herein. The Technical Manual is available to the public.
- S. **Transfer** shall mean any arrangement approved by the Board in which the point of withdrawal, the point of use, or the type of use of an allocation is altered.
- T. **State** shall refer to the State of Nebraska.
- U. **Well** shall mean any water well as defined in Nebraska statutes, Sections 46-601.01, 46-635.01, 46-1204.01, 46-1204.02, and 46-1212, R.R.S. For the purposes of these rules and regulations, wells are further defined and classified as follows:
  - 1. **Domestic Wells** are wells used by a person or by a family unit or household for normal household uses and for the irrigation of lands not exceeding two acres in area for the growing

of gardens, orchards, and lawns. Such wells are exempt from application of these rules.

2. **Range Livestock Wells** are wells, which are used for the watering of range livestock, and other uses of water directly related to the operation of a pasture or range. Such wells are exempt from application of these rules except for Rule 1-U-8.
3. **Irrigation Wells** are active wells that are fully equipped, and used for the pumping of groundwater to irrigated acres for the production of crops. Such wells must have a permit, Certified Acres, and an allocation; and be used in conjunction with a flowmeter located in the District
4. **Commercial Livestock Wells** are wells which are used for the watering of livestock and other uses directly related to the operation of a feedlot or other confined livestock operation or dairy. Such wells must have a District permit and water allocation; and be used in conjunction with a flowmeter located in the District.
5. **Back-up Wells** are wells designed for confined livestock and dairy operations and which operate only in emergencies when the main well fails. Back-up wells shall not be operated simultaneously with the commercial livestock wells, which they back up. Such wells must have a permit and any water pumped from such shall be accounted against the allocation for the well it backs up. Such well must be used in conjunction with a flowmeter located in the District.



6. **Industrial Wells** are wells used in manufacturing and commerce operations, and/or watering and maintenance of golf courses. Such wells must have a permit and an allocation; and be used in conjunction with a flowmeter located in the District.
7. **Municipal Wells** are wells owned and used by municipalities for public water supply. Such wells must have a permit and an allocation; and be used in conjunction with a flowmeter located in the District.
8. **Commingled Wells** are 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, after August 31, 1998. Such wells shall be considered one water well and the combined capacity shall be used as the rated capacity. Such wells must, prior to operation, have a permit and an allocation, and be used in conjunction with a flowmeter located in the District.
9. **Supplemental Well** is any well, the water from which is commingled with the water from any other well for irrigation purposes.
10. **Replacement Well** shall mean a well as defined by Section 46-602(3), R.R.S
11. **Abandoned Well** shall mean a well as defined by Section 46-1204.01, R.R.S.
12. **Inactive Status Well** shall mean a well as defined by Section 46-1207.02, R.R.S. The owner of any permitted well must notify the District when an active well is placed in inactive status.

13. **Monitoring Well** shall mean a well as defined by 178 NAC 12 at 002, Nebraska Department of Health and Human Services.
14. **Observation Well** shall mean a well as defined by 178 NAC 12 at 002, Nebraska Department of Health and Human Services.
15. **Illegal Well** shall mean a well as defined by Sections 46-656.07(5) and 46-1207.01, R.R.S.

*See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule.*

## **RULE 2: FLOWMETERS**

After the effective date of Order 25, all wells requiring permits shall be equipped with flowmeters or other device or method approved by the Board. Owners or operators of such wells shall allow the District staff to determine from the flowmeters, by January 15 of each year, the amount of groundwater withdrawn from each well during the preceding calendar year.

*See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule. See especially, "Flowmeters", pages 12 & 13, Part VI, TM-25.*

## **RULE 3: IRRIGATED ACRES AND TRACTS**

- A. The total number of acres irrigated in the District, belonging to or under the control of every groundwater user, must be reported annually to the District
- B. Wells drilled in Critical Townships after August 31, 1998, shall not be deemed to be irrigating more than

130 acres for groundwater allocation purposes, except for replacement wells, which shall be deemed to irrigate the same number of Certified Acres as the well being replaced. Wells without allocations that are returned to service after being idled, are subject to the 130-acre maximum limitation, or the previously irrigated acres if less than 130 acres.

- C. The Board will specify the number of Certified Irrigated Acres on each Certified Irrigated Tract for each groundwater user. Failure of the groundwater user to confirm the number of acres irrigated under his ownership or control shall preclude the Board from granting an allocation to such user.

*See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule. See especially "Irrigated Acres and Tracts", page 13 & 14, Part VI; TM-25.*

#### **RULE 4: CRITICAL TOWNSHIPS**

Critical Townships are those townships that have a three-year average annual decline of the groundwater table exceeding one-fourth of one percent of the saturated thickness of the aquifer in that township as determined [sic] by yearly groundwater measurements of observation and continuous recorder wells throughout the Management Area. Townships designated as Critical are listed in the District Technical Manual; and shall remain designated as Critical for a minimum of five years.

*See District Technical Manual for a list of designated Critical Townships; and technical, administrative, procedural, regulatory, and other materials related to this Rule. See especially "Critical Townships", pages 14,15 & 16, Part VI; TM-25.*

**RULE 5: WELL SPACING**

Spacing of all wells, for which District permits are required, and regardless of ownership and classification, must be approved by the Board prior to drilling the well. The following regulation applies to the spacing of all wells subject to these rules and regulations and receiving permits from the District:

A. In Non-Critical Townships:

1. New Wells – Any irrigation, commercial livestock, industrial, or municipal well drilled in a Non-Critical Township after August 31, 2000, must be at least 1,320 feet from any domestic, livestock, irrigation, commercial livestock, industrial or municipal well not belonging to the owner or controller of the land upon which the new well is established.
2. Replacement Wells – With the exception of A.2.(a), any irrigation, commercial livestock, industrial, or municipal well drilled in a Non-Critical Township as a replacement well after August 31, 2000, must be at least 1,320 feet from any domestic, livestock, irrigation, commercial livestock, industrial or municipal well not belonging to the owner or controller of the land upon which the replacement well is to be established.
  - (a) If the well to be replaced is within 1,320 feet of a domestic, livestock, irrigation, commercial livestock, industrial or municipal well not belonging to the owner or controller of the land upon which the replacement well is to be established, the replacement well must be drilled within 150 feet of the well it replaces.

B. In Critical Townships:

1. New Wells – Any irrigation, commercial livestock, industrial, or municipal well drilled in a Critical Township after August 31, 2000, must be at least 1,320 feet from any domestic or livestock well, and 5,280 feet from any other well not belonging to the owner or controller of the land upon which the new well is established.
2. Replacement Wells – With the exception of B.2.(a), any irrigation, commercial livestock, industrial, or municipal well drilled in a Critical Township as a replacement well after August 31, 2000, must be at least 1,320 feet from any domestic or livestock well and 5,280 feet from any irrigation, commercial livestock, industrial or municipal well not belonging to the owner or controller of the land upon which the replacement well is established.
  - (a) If the well to be replaced is within 1,320 feet of a domestic or livestock well, or within 5,280 feet of any irrigation, commercial livestock, industrial or municipal well not belonging to the owner or controller of the land upon which the replacement well is to be established, the replacement well must be drilled within 150 feet of the abandoned well it replaces.

- C. In the event any Statute of the State of Nebraska prescribes any well spacing requirement that is more stringent or restrictive than the well spacing requirement of Rule 9, the State Statute shall prevail.

*See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related*

*to this Rule. See especially "Well Spacing", pages 16 & 17, Part VI, TM-25.*

**RULE 6: INACTIVE STATUS WELLS**

The Board may approve the placing of Active Wells into Inactive Status at the request of the well owner or their legally appointed representative.

- A. All wells being placed into an Inactive Status shall conform to all relevant State statutes including those specifications defined in Section 46-1207.02 as follows:
  - 1. The water well does not allow impairment of the water quality in the well or of the Groundwater encountered by the well;
  - 2. The top of the water well or water well casing has a water-tight, welded or threaded cover or some other water-tight means to prevent its removal without the use of equipment or tools to prevent unauthorized access, to prevent a safety hazard to humans and animals, and to prevent illegal disposal of waste or contaminants into the water well; and
  - 3. The water well is marked so as to be easily visible and located and is labeled or otherwise marked so as to be easily identified as a water well and the area surrounding the water well is kept clear of brush, debris, and waste material.
- B. The well shall be marked in a permanent form with the Registration Number as a clearly legible engraving, raised metal embossing of the characters, or on a metal plate permanently welded, riveted or bolted to the casing.

- C. Both the State and the District must be notified within 60 calendar days of when the change to Inactive Status is achieved and any subsequent changes of the status of the well.
- D. While in a Board approved Inactive Status the Well will
  - 1) maintain the approved Certified Irrigated Acres and Certified Irrigated Tract associated with it;
  - 2) maintain the Allocation amount current at the time the Board approved the Well being made Inactive;
  - 3) NOT accumulate additional Allocation amounts for the years it is in Inactive Status; and
  - 4) Re-enter Active Status with the Allocation amount it went into Inactive Status with plus any remaining Allocation left for the Allocation period in which it is made Active again.
- E. Failure to comply with and maintain the provisions of A, B, and C above will make the Well an Illegal Well.

*See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule.*

#### **RULE 7: SUPPLEMENTAL WELLS**

No permit shall be granted for any supplemental well as defined in Rule 1-U-9.

*See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule.*

**RULE 8: PUMPING OF WATER ACROSS  
NRD BOUNDARIES**

Groundwater pumped from another NRD to this District, or from this District to one or more other Districts, shall be subject to the Rules and Regulations of all involved Districts.

*See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule.*

**RULE 9: ALLOCATIONS OF GROUNDWATER**

- A. Each Certified Irrigated Acre within a Certified Irrigated Tract is hereby granted a basic allocation of 72.5 acre inches for the period commencing January 1, 2003 and terminating December 31, 2007.
1. Groundwater users pumping less than the total basic allocation together with unused carryforward from prior allocation periods may carry the total forward to subsequent allocation periods.
  2. If, at the termination of the allocation period, any groundwater user has exceeded his allocation and banked carryforward, his basic allocation for the next allocation period shall be reduced by the number of acre-inches by which he exceeded said allocation and carryforward.
  3. Certified Acres in the Federal Conservation Reserve Program (CRP) shall not receive an allocation during the term enrolled. Certified Irrigated Acres being removed from the CRP shall be granted an allocation prorated to the years remaining in the allocation period. In addition, upon removal from the CRP, each Certified Acre shall receive the total of the carryforward brought



into the 5-year allocation period in effect at the time of enrollment plus the sum of the annualized allocation of 14.5 inches minus the inches used for each year of the allocation period prior to the year of enrollment.

4. On or before March 1, 2006 the Board of Directors shall commence deliberations concerning groundwater allocations for the succeeding allocation period to start January 1, 2008. Such deliberations shall be completed before August 31, 2006, and an allocation for the succeeding allocation period shall be established.
- B. All Industrial Wells shall have an allocation prior to operation. The owner of each industrial well shall, on or before January 15 of each year, apply for an allocation for that calendar year on forms provided by the District.
- C. Commercial Livestock Wells may be allocated an annual maximum of 22-acre feet per 1000 animal units, designated for an approved capacity.
- D. Each municipality is hereby granted without further application, an annual allocation computed as designated in the District Technical Manual.
- E. Allocations for any and all wells may be amended, reduced, increased, or made subject to limitations or conditions upon notice and hearing.
- F. The District may institute formal adjudicatory proceedings, or take any other legal action authorized or permitted by law, to prohibit further withdrawal of groundwater whenever any groundwater user has exhausted his allocation during or before termination of any allocation period; or has in any other way violated the amount, limitations, or conditions of his allocation. In the event of such action, no groundwater may

be withdrawn until the groundwater user has adhered to District Rules and Regulations.

*See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule. See especially "Allocations of Groundwater", pages 18 & 19, Part VI, TM-25.*

#### **RULE 10: POOLING**

The Board may approve pooling of groundwater allocations. The Board will consider the utility of replacing Pooling, as it now exists, with a Transfer system. The Transfer system, if approved, would be in place by January 1, 2004.

- A. No new pooling contract shall be approved which contains any Certified Irrigated Tract, which has no unused allocation or carryforward of groundwater.
- B. Pooling contracts involving lands within a Critical Township and a non-Critical Township can only be accomplished if such lands are contiguous.
- C. Pooling contracts will be permitted only between individuals, partnerships and corporations and other owners of Certified Irrigated Tracts when accompanied by proof of ownership or an appropriate power of attorney.
- D. A pooling contract shall not result in more groundwater being withdrawn from the aquifer within a Critical Township than the groundwater user has been allocated for Certified Irrigated Acres in Certified Irrigated Tracts within that Critical Township.
- E. Upon the termination of any pooling contract, proof of ownership must be provided.

- F. Pooling contracts, or changes to pooling contracts, must be submitted in writing with all required signatures to the District on or before March 31 of the year and approved by the Board before they are implemented.
- G. Certified Irrigated acres in the Federal Conservation Reserve Program, or any successor thereto, may not be involved in any pooling contract.
- H. A Certified Irrigated Tract removed from the Federal Conservation Reserve Program may not be part of a pooling contract within five (5) years of the date said Tract is removed.
- I. If a change of ownership of any Certified Irrigated Tract in a pooling contract occurs, the unused groundwater allocation for said Tract shall remain with said Irrigated Tract. The Board may, upon the written request of the owner or owners of the Tract(s), equalize the unused groundwater allocation among the irrigated acres involved.
- J. Purchased Certified Irrigated Tracts or purchased dry land tracts to be developed for irrigation, will not be eligible to be pooled with any other Certified Irrigated Tracts or Tracts for a period of three (3) irrigation seasons from the date the purchase is made. Tracts that are purchased may be pooled if originally in the same pooling contract.

*See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule*

### **RULE 11: TRANSFERS**

Board approval must be received for transfer of all or a portion of any groundwater allocation to another tract or use.

Transfers will only be allowed to wells in those areas where the Board, after reviewing all the available and relevant information, determines that the water level in the area proposed to receive the transfer will not decline at a rate in excess of .0025 percent of the Saturated Thickness of the aquifer in the next 3 years.

In making its decision the Board may use the following information obtained by application of the Annual Allowable Withdrawal Model as described on pages 8 and 9 of Technical Manual 25. The Board may use information including but not limited to the trend of change in the level of the aquifer over time from District records, other transfers into the area in proximity to the receiving well, the total usage in proximity to the receiving well, and other factors that would increase the rate of consumptive use in the area of the receiving well in making its decision.

*See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule. See especially "Transfers", page 20, Part VI; TM-25.*

### **RULE 12: OFFSETS**

The Board may establish Offsets as fees for the transfer of allocations or as part of establishing and operating a District Water Banking program.

*See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related in this Rule.*

### **RULE 13: GROUNDWATER QUALITY**

The Board shall implement procedures to monitor and protect the quality of the aquifers underlying the District. All areas in the District shall be considered as Phase I areas until at least September 1, 2003.

*See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule. See especially "Groundwater Quality", pages 19, 20, & 21, Part VI; TM-25.*

### **RULE 14: MORATORIUM**

- A. The Board having found that depletion of the groundwater supply in the Management Area is so excessive that the public interest cannot be protected solely through the implementation of the controls adopted pursuant to Subsection (7) of Section 46-656.25 R.R.S., no additional well permits, except as provided for in Paragraph C below, shall be issued within the Management Area for the period September 1, 2002 through August 31, 2003.
- B. Additional groundwater allocations may not be granted, except as provided for in Paragraph C below, within the Management Area for the period September 1, 2002 through August 31, 2003.
- C. The Board may, upon further deliberation, and notice and hearing, open designated areas of the District to additional well permits and allocations, subject to the application of a quantitative method for specifying

allowable withdrawal for the area, total allocations granted for the area, and any additional withdrawals that may be allowed in the area, as specified by the quantitative method adopted by the Board. The adopted method shall consider estimates of the following factors for the area under consideration: allowable depletion; specific yield; the shape and dimensions of the spatial area under consideration for management purposes; average saturated thickness of the aquifer within the area; proportion of the saturated thickness the Board will allow to be depleted in 100 years; precipitation recharge; recharge from irrigation application; and the amount of recharge that is available for appropriation in the area.

*See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule.*

#### **RULE 15: VARIANCES**

The Board may grant variances from the strict application of these rules and regulations upon good cause shown.

*See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule.*

#### **RULE 16: PENALTIES**

Any groundwater user found to be in violation of these rules and regulations may be required to cease and desist withdrawing groundwater until such time as he is in compliance.

*See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule.*

#### **RULE 17: GENERAL ENFORCEMENT PROVISIONS**

The District shall enforce these rules and regulations in conformance with the General Enforcement Provisions set out in Part VI of the District Technical Manual (TM-25).

*See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule. See especially "General Enforcement Provisions", page 22, Part VI TM-25.*

#### **RULE 18: FORMAL ADJUDICATORY HEARINGS**

Formal Adjudicatory Hearings shall be conducted in conformance with the procedures set out in the District Technical Manual (TM-25).

*See District Technical Manual for technical, administrative, procedural, regulatory, and other materials related to this Rule. See especially "Formal Adjudicatory Hearing", page 23, Part VI TM-25.*

#### **RULE 19: DISTRICT TECHNICAL MANUAL**

Supplemental Rules and Regulations specified in Part VI of the District Technical Manual (TM-25) are incorporated into, and considered as an integral part of these rules and regulations and are applicable in concert with the rules and regulations specified herein as the Rules and

Regulations for Groundwater Control of the Upper Republican Natural Resources District Management Area.

**RULE 20: SEVERABILITY OF RULES**

If any rule or any part of any rule herein and/or in the District Technical Manual shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

**Adopted this 2nd day of July 2002.**

**This amendment to Rules and Regulations for Groundwater Control of the Upper Republican Natural Resources District Management Area shall be effective commencing September 1, 2002.**

**UPPER REPUBLICAN NATURAL  
RESOURCES DISTRICT**

By \_\_\_\_\_  
Robert Ambrosek, Chairman

ATTEST:

\_\_\_\_\_

\_\_\_\_\_



E3-23

**UPPER REPUBLICAN  
NATURAL RESOURCES DISTRICT**

**TECHNICAL MANUAL**

**TM-25**

**EFFECTIVE SEPTEMBER 1, 2002  
IN CONCERT WITH  
THE  
RULES AND REGULATIONS FOR  
GROUNDWATER CONTROL  
ORDER NO.25**

**OF THE  
UPPER REPUBLICAN NATURAL  
RESOURCES DISTRICT  
MANAGEMENT AREA**

Parts IV and VI Adopted by the Upper Republican  
Natural Resources District Board of Directors,  
**July 2, 2002**

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**UPPER REPUBLICAN NATURAL RESOURCES  
DISTRICT TECHNICAL MANUAL OF  
POLICIES AND PROCEDURES  
TM-25**

**PART I**

**LEGISLATION ESTABLISHING  
NATURAL RESOURCES DISTRICTS**

Section 2-3201: Natural Resources, Declaration of Intent.

*The Legislature hereby recognises and declares that it is essential to the health and welfare of the people of the State of Nebraska to conserve, protect, develop and manage the natural resources of this state. The legislature further recognises the significant achievements that have been made in the conservation, protection, development and management of our natural resources and declares that the most efficient and economical method of accelerating these achievements is by creating natural resources districts encompassing all of the area of the state, as provided by this Act.*

*The Legislature further declares that the functions heretofore performed by Soil and Water Conservation Districts, Watershed Conservancy Districts, Watershed Districts, Advisory Watershed Improvement Boards and Watershed Planning Boards shall be consolidated and made functions for the Natural Resources Districts," and the governing boards of such districts and boards shall complete, before July 1, 1972, the necessary transfers and arrangements so that such boards may on that date, begin the operation of Natural Resources Districts, as provided by this Act.*

This legislation created twenty-four Natural Resources Districts in the State of Nebraska. The initial twenty-four (now 23) NRD District boundaries were based on the

approximate hydrologic boundaries of the recognised river basins of the State.

The Upper Republican Natural Resources District, which encompasses Dundy, Perkins, and Chase Counties, began operations on July 1, 1972. On that date, the District accepted the assets, liabilities, and obligations of the Dundy, Chase, and Perkins County Soil and Water Conservation Districts.

**PART II**  
**PURPOSE, GOALS AND OBJECTIVES**  
**OF THE**  
**UPPER REPUBLICAN NATURAL**  
**RESOURCES DISTRICT**

**Purpose**

The Board of Directors of the URNRD recognise that the underground aquifer partially underlying the District is a laterally confined aquifer and that there have developed, and will continue to develop, conflicts among users. Such conflicts have been based on a steadily declining water table within the aquifer in the URNRD. Therefore, the actions of the Board become of utmost importance in protecting all uses of groundwater, which include domestic, agricultural, municipal, industrial, wildlife, and recreational uses, from unmanageable declines and from degradation in quality.

**Goals**

It is the goal of the Upper Republican Natural Resources District Board of Directors to extend groundwater reservoir life to the greatest extent practicable consistent

with beneficial use of the groundwater and best management practices, and to protect the quality of the groundwater aquifers within the District boundaries.

The primary short-term goal of the Upper Republican Natural Resources District is to measure, monitor and allocate the groundwater resource within the District.

### **Objectives**

One objective of the Board is to ascertain the amount of groundwater being withdrawn from the aquifer within the Management Area. A second objective is to reduce the amount of groundwater being withdrawn from the aquifer within the Management Area, relative to the amount that might be withdrawn if no restraints were imposed upon groundwater users. A third objective is continued monitoring of groundwater quality to ensure that the groundwater quality remains the same or is improved.

Information from monitoring of groundwater quality and use is to be used to set groundwater allocations so that the groundwater aquifer will be available for present and future generations. It is believed that reduced consumption of groundwater and protection of groundwater quality within the Management Area will result in a longer economic life for the aquifer and thereby, continued and enhanced prosperity will ensue.

## **PART III**

### **GOVERNANCE OF THE URNRD**

An eleven member Board of Directors governs the Upper Republican Natural Resources District. All eligible electors of the District may vote for Board Members at general

elections. The District is divided into ten sub-districts. One Board Member is elected from each sub-district and one at-large member is elected.

Candidates for sub-district Board positions must reside in the sub-district for which they are elected. The at-large Board member must reside within the boundaries of the Upper Republican Natural Resources District. The Board of Directors will appoint an eligible person to fill any unexpired term.

#### **Board Of Directors**

The Board is responsible for establishing District policies, programs, rules and regulations, and adopting the necessary budget, in order to fulfil the responsibilities of the District as authorized and required by law. The Board is also responsible for overseeing management to insure that the policies, programs, regulations, and budget are carried out as intended, and for approving District expenditures. The day-to-day management is the General Manager's responsibility. In general, the Board sets policy and the staff carries it out.

The Board holds regularly scheduled monthly meetings on the first Tuesday of each month, at which time the Board shall take action and make determinations as necessary and required by law. These meeting [sic] shall comply with the Open Meetings Law, and each Director shall receive a copy of meeting notices and agendas.

A majority of the voting members of the Board shall constitute a quorum, and the concurrence of a majority of the Directors present at any regular or special meeting at which such quorum is present shall constitute official

action of the entire Board. If less than a quorum is present at a meeting, no official action shall be taken, and the presiding officer shall adjourn the meeting. If a quorum cannot convene for any reason, the General Manager shall have the authority to approve recurring bills and salaries, and forward them to the District Treasurer for his or her signature, as funds are available in the District treasury.

Each Director present at regular or special meetings shall be entitled to one vote upon each matter submitted to a vote, including the chairman if he chooses to vote. The Board shall follow Robert's Rules of Order in conducting District business. Action taken on any question or motion, duly moved and seconded, shall be by roll call vote of the Board in open session, and the record shall state how each member voted, or if the member was absent or abstaining.

### **OFFICERS OF THE BOARD**

Officers of the Board shall include Chairperson, Vice Chairperson, Secretary, and Treasurer. The officers of the Board are elected by majority vote of Board members present.

The officers shall hold office for a one (1) year term and until his/her successor has been duly elected and qualified, or until he/she vacates the office due to death, disability resignation, relocation, removal, or other disqualification. A vacancy in any office on the Board due to death, disability, resignation, removal, or other disqualification shall be filled by election of the Board for the unexpired term of the office.

**Duties**

- A. Chairperson shall be the principal officer of the Board and subject to the control of the Board. The Chair shall be empowered to make non-policy decisions between meetings in carrying out the works, policies, and intents of the District. He/she will preside at all meetings of the Board of Directors. He/she may sign, with any proper officer, any agreements, contracts, or other instruments, which the board has authorized to be executed. Exceptions would be in cases when the signing and execution shall be expressly delegated by the District Board, or by the bylaws, to some other officer of the Board, or shall be required by law to be otherwise signed and executed. The Chairman shall perform all duties incident to the office of chairman, and the Board may prescribe such other duties as. [sic]
- B. Vice Chairperson, in the absence of the Chairperson or in the event of his inability to act, shall perform the duties of the Chairperson. When so acting, he will have all the powers of, and be subject to all the restrictions upon, the Chairperson. The vice-chairperson shall perform other duties from time to time that may be assigned to him/her by the Chairperson or by the Board.
- C. Secretary-Treasurer shall keep the minutes of the Board, see that all notices are given in accordance with Board policies or as required by law. In general, the incumbent will perform all the duties incident to the office of Secretary-Treasurer and such other duties from time to time that may be assigned to him by the Chairperson or by the Board. He/she shall keep an accurate account of all funds received and expended by the District, be bonded in the amount required by statutes, and see that all approved bills payable are paid and receipts received, and be



empowered to sign checks on the District's account to retire approved bills and debts of the District.

In case of temporary absence of any officer for any reason that the Board may deem sufficient, the Board may delegate the powers and duties of such officer to any other officer, or to any other Director of the Board, for the time of the temporary absence, provided a majority of the Board concurs.

### **Committee Responsibilities**

Committee Responsibilities are divided into different sections represented by five standing Board Committees. The Executive Committee shall appoint membership to the other four standing committees. The committees shall have and exercise duties in the best interests of the District. The committees have individual responsibilities of overseeing District functions and activities and making recommendations to the Board of Directors as necessary to carry out the responsibilities of the District. The Chairperson or the Board, may, from time to time, assign additional duties to specific committees.

- A. Executive Committee: The Executive Committee, consisting of the Chairperson, The Vice-Chairperson, and the Secretary-Treasurer, is responsible for Board organization, functions, ethics, and discipline. The Committee oversees personnel (including salary, wages, and benefits), buildings, and equipment needs, as well as general management of the District, and makes recommendations to the Board regarding these responsibilities.
- B. Budget Committee: The Budget Committee oversees the financial management and long range planning of the District. The annual budget

of all the District's activities are reviewed and approved by this Committee which then makes recommendations to the Board, prior to Board consideration of approval of the budget.

- C. Variance Committee: The Variance Committee meets with all individuals who request a variance from the rules and regulations of the Board. The Committee reports to the Board at a Regular Board meeting. The variance requests are reviewed by the Board and placed on the agenda for the next Regular Board meeting for decision.
1. All information for a variance request should be brought to the NRD Office at Imperial and discussed with the Manager.
  2. The Manager will distribute all information concerning the variance to the Variance Committee, all other Board members, and person(s) requesting the variance.
  3. The Variance Committee will meet with person(s) requesting a variance at the time set by the Manager to hear the variance request.
  4. The Variance Committee will report to the Board at a regular or special Board meeting the information received for the variance requested.
  5. The variance request will be voted on at the next regular Board meeting. At that time the Variance Committee will make a recommendation to the Board concerning the variance request.
- D. Groundwater Control Committee: The Groundwater Control Committee reviews all information received from the staff, and state and federal agencies. The Committee Make [sic] recommendations to the full

Board on needed studies and research projects; amendments to the Groundwater Control Rules and Regulations; date, time, and place to hold information meetings and public hearings; and material that should be made available to the public at information meetings and public hearings.

- E. Education and Information Committee: The Committee oversees both the education and information dissemination activities of the Board, which include the following: habitat, tree planting, public relations, education, and informing the public of District activities.

**Standing Committee Membership**

**Executive Committee**

Robert Ambrosek, Chairman  
Greg Pelster, Vice Chairman  
Kenneth E. Owens,  
Secretary/Treasurer

**Information and  
Education Committee**

Jerry Kuenning, Chairman  
Mike Mosel  
Gwen Springer  
Floyd Parman

**Budget Committee**

Donn Gengenbach, Chairman  
Kenny Frasier  
Kenneth E. Owens  
Greg Pelster

**Variance Committee**

Kenny Owens, Chairman  
Kurt Bernhardt  
Donn Gengenbach  
Jerry Kuenning

E3-34

**Groundwater Control Committee**

Greg Pelster, Chairman

Kurt Bernhardt

Dean Large

Floyd Parman

**Upper Republican NRD Staff**

**Imperial Office**

308-882-5173

Bob Hipple, Manager

Debra Hayes, Administrative Assistant

Mike Nesbitt, Conservation Programs Coordinator

Mike Smith, Water Programs Coordinator

Heather Francis, Conservation & Information Specialist

John Lemon, Conservation Technician

Christy Colson, Water Quality Conservation Technician

**URNRD Field Office Secretaries**

Located in NRCS Offices

Rebecca Spady, Imperial 308-882-4263

Patricia Clough, Grant 308-352-4776

Wilma Zimbelman, Benkelman 308-424-2696

**PART IV**

**CONVERSION TABLES**

**And**

**ANNUAL ALLOWABLE WITHDRAWAL FORMULA**

**WATER EQUIVALENTS**

1-acre-foot                      325,850 gallons

1 acre-inch                      27,154 gallons

1 acre-foot covers 1 acre of land 1 foot deep

1 acre-inch covers 1 acre of land 1 inch deep

10.833 acre-feet                1 in./ac. on 130 acres

### E3-35

|                      |                           |
|----------------------|---------------------------|
| 157.08 acre-feet     | 14.5 in./ac. on 130 acres |
| 98.05 hr. @ 600 gpm  | 1 in./ac. on 130 acres    |
| 73.54 hr. @ 800 gpm  | 1 in./ac. on 130 acres    |
| 58.83 hr. @ 1000 gpm | 1 in./ac. on 130 acres    |

### ANIMAL UNIT EQUIVALENTS

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

### ANNUAL ALLOWABLE WITHDRAWAL FORMULA

In the evaluation of the Annual Allowable Withdrawal for any purpose, the following three-mile radius circle formula shall be used:

$$A = \frac{640(D)(S.Y.) 3.1416 R^2 H}{(1.0 - Ir)t} + \frac{640(f)(Pr) 3.1416 R^2}{12(1.0 - Ir)}$$

where,

**A** = Annual allowable withdrawal within the circle being evaluated in acre-feet per year

**D** = Allowable depletion (expressed as a decimal)

**S.Y.** = Specific yield (dimensionless)

**R** = Radius of circle (miles)

**H** = Average saturated thickness within the circle (feet)

**t** = Time period during which depletion, **D**, occurs  
(years)

**Pr** = Precipitation recharge (inches/yr.)

**f** = Fraction of **Pr** that is available for appropriation  
in the circle (dimensionless)

**Ir** = Fraction of **A** that returns to the aquifer as  
deep percolation, i.e., irrigation return (dimen-  
sionless)

The constants in the above equation are:

**D** = 0.25, **R** = 3 miles, **t** = 100 years, **f** = 0.2 and **Ir** = 0.15

**Saturated thickness, H**, shall be determined by evalua-  
tion of the 3 year average contour maps developed  
from spring well measurements conducted by the  
NRD as well as other pertinent available water level  
data.

**Specific yield, S.Y.**, and **Precipitation Recharge, Pr**,  
will be determined from Figure 19, page 34 and

Figure 20, Page 40, respectively, "**Simulated Re-  
sponse of the High Plains Aquifer to Ground-  
Water Withdrawals, Upper Republican Natural  
Resources District, Nebraska,**" Water-Resources  
Investigations Report 95-4014, USGS, 1995, as well  
as other pertinent available water level data.

This formula was developed by the State of Colorado and  
is available in the publication:

**RULES AND REGULATIONS FOR THE  
MANAGEMENT AND CONTROL  
OF DESIGNATED GROUND WATER**

**2 CCR 410-1**

Effective Date: May 1, 1992 – Amended: March 30, 1995

– Re-amended: April 1, 1997

Re-amended: February 1, 2001

**STATE OF COLORADO  
GROUND WATER COMMISSION**

Hal D. Simpson  
Executive Director  
1313 Sherman Street  
Denver, Colorado 80203

**Definitions** – Unless expressly stated otherwise the following terms when used in these Rules shall have the meaning indicated in this Rule.

**“Allowed Average Annual Amount of Withdrawal”** means the average amount of water in acre-feet that a permittee may withdraw from a well in a calendar year.

**“Saturated Aquifer Material(s)”** means those aquifer materials containing sufficient water that can be drained by gravity and placed to beneficial use.

**“Specific Yield”** means the volume of water which can be drained by gravity from a saturated volume of aquifer material divided by the volume of material. This ratio can be expressed as a percentage.

**“Three-Mile Circle” or “Circle”** means a circle with a radius of three miles centered at the location of the well or proposed well used to appropriate water from the High-plains Aquifer.

**An Example Calculation using the AAW Formula to solve for –**

**A = Annual allowable withdrawal within the circle being evaluated in acre-feet per year**

**where,**

|      |   |      |  |
|------|---|------|--|
| D    | = | .25  | Allowable depletion (expressed as a decimal)   |
| S.Y. | = | 0.2  | Specific yield (dimensionless)   |
| R    | = | 3    | Radius of circle (miles)   |
| H    | = | 200  | Average saturated thickness within the circle (feet)   |
| t    | = | 100  | Time period during which depletion, D, occurs (years)  |
| Pr   | = | 2    | Precipitation recharge (inches/yr.)  |
| f    | = | 0.2  | Fraction of Pr that is available for appropriation in the circle (dimensionless)                       |
| Ir   | = | 0.15 | Fraction of A that returns to the aquifer as deep percolation, i.e., irrigation return (dimensionless) |

$$A = \frac{640(D)(S.Y.) 3.1416 R^2 H}{(1.0 - Ir)t} + \frac{640(f)(Pr) 3.1416 R^2}{12(1.0 - Ir)}$$

$$\frac{(640)(.25)(0.2)(3.1416)(3^2)(200)}{(1.0 - 0.15)100}$$

$$A = \frac{(640)(0.2)(2)(3.1416)(3^2)}{12(1.0 - 0.15)}$$

$$A = \frac{(904.78)(200)}{85} + \frac{804.25(9)}{10.2}$$

**A = 2838.53 Acre Feet of annual allowable withdrawal**

This number is compared to the total acre feet of allocated water for all the Certified Irrigated Acres contained within the circle as part of the evaluation of the impact of any proposed transfers or other water management techniques.



**PART V**  
**PROPOSED RULES**

**Proposed Rule 1      BANKING**

The Board hereby authorizes the establishment of a groundwater bank to facilitate the transfer of groundwater for beneficial uses within the District. No deposits or withdrawals will be allowed until September 1, 200X.

A. Definition:

1. **Account** shall mean the right-to-use all or a portion of an allocation held in the Bank in the name of a particular entity.
2. **Bank** is the institutional entity operated by the Upper Republican Natural Resources District with authority to hold and distribute rights-to-use allocations that have been deposited.
3. **Deposit** shall mean the right-to-use all or a portion of an allocation that has been removed from a groundwater user's allocation for a use to be facilitated by the Bank.
4. **Offset** shall mean the amount of groundwater deducted from a Deposit prior to withdrawal and held in the account of the District for conservation or other purposes
5. **Withdrawal** shall mean removal of a deposit for use by the groundwater user that deposited the same, or by another groundwater user with the consent of the depositor and the Bank.

B. Operation of the Bank

1. Groundwater users having unused groundwater allocation, whether granted for irrigation, commercial livestock, industrial or municipal

purposes, may deposit the right-to-use same in the Bank by designating in acre-feet the amount to be deposited.

2. Withdrawals of groundwater from the Bank must be designated in acre-feet and be withdrawn only by an authorized user.
3. The District shall operate the Bank.
4. Deposits must be accepted and withdrawals must be approved by the Board prior to implementation.
5. Variances may be granted by the Board to facilitate approved withdrawals.
6. All offsets shall be held in the account of the District for retirement, conservation or other uses.
7. Records of deposits and withdrawals shall be maintained by the District and shall be available to the public.

C. Offsets

Upon further deliberation, and notice and hearing, the Board may require offsets of groundwater, expressed in acre-feet, to be deducted from deposits prior to withdrawals and held in the account of the District pursuant [sic] the following principles:

1. Withdrawals for use on the same Certified Irrigated Tract, as defined herein, shall not be subject to offset.
2. Withdrawals for use by the person that made the deposit, or with the consent of that person, on lands not contiguous but within a one-mile radius shall be subject to an offset of up to 5%.

3. Withdrawals for use by the person that made the deposit, or with the consent of that person, on lands not contiguous but within a three-mile radius shall be subject to an offset of up to 10%.
4. Withdrawals for use by the person that made the deposit, or with the consent of that person, on lands not contiguous and outside the three mile radius shall be subject to an offset of up to 10% plus up to 1% for each mile beyond said three mile radius.
5. In addition to the offset imposed by the distance of the withdrawal, additional offsets may be imposed as follows:
  - a. When the saturated thickness of the aquifer at the point of withdrawal is less than the saturated thickness of the aquifer at the point of deposit, an offset of up to 5% for each 20 feet of difference in saturated thickness, or part thereof, shall be imposed.
  - b. Withdrawals for use in Critical Townships of deposits from Non-Critical Townships shall be subject to an additional offset of up to 25%.
  - c. Withdrawals for industrial or manufacturing use of deposits of irrigation, commercial livestock, or municipal allocations shall be subject to an additional offset of up to 20%.
6. All offsets shall be determined by the Board.

**PART VI**  
**SUPPLEMENTAL RULES**  
**AND REGULATIONS**  
**FLOWMETERS**

**Supplemental Rule 2**

*{See also Rules and Regulations (R&R), especially Rule 2  
"Flowmeters", page 4, R&R}*

- A. All wells requiring District permits shall be equipped with flowmeters before being placed in operation, in accordance with the following specifications.
1. Definitions of terms:
    - (a) Meter – Shall mean a mechanical or sensor device that measures and totalizes the amount of water flowing from a well.
    - (b) Manufacturer – Shall means [sic] the company that produces meters for the supplier or dealer.
    - (c) Supplier or Dealer – Shall mean the company that sells or provides meters to installer, groundwater user, or District.
    - (d) Installer – Shall mean the company or groundwater user that installs meters on the groundwater user's irrigation equipment.
    - (e) Pipe – Shall mean any material capable of transporting water.
- B. Meters installed under these specifications shall comply with the applicable provisions of American National Standards Institute, American Water Works Association's standard number C704-70.

- C. Each meter shall be installed and calibrated to pipe size.
- D. Flowmeters shall be of the velocity propeller or sensor type, and made of noncorrosive materials
- E. The meter registry shall have a visual volume recording totalizer, which shall record in acre-feet, acre-inches, or gallons.
- F. The registry shall be protected from the elements. Totalizers shall have sufficient capacity to record for the period of one year the quantity of water diverted from each well. Totalizers shall be direct reading and the multiplier shall be clearly indicated in which the rate of flow can be determined by timing.
- G. The meter shall have a rated accuracy of plus or minus two (2) percent of actual flow within the range of flow for which the meter is designed. The meter shall be capable of accurately registering the expected operating range of discharge.
- H. The meter shall have a pressure rating to fit the application used within its designed pressure range.
- I. The meter size, serial number and the direction of flow shall be clearly stamped on the body of the meter. The inside pipe diameter for which the meter has been calibrated shall be clearly shown on the meter to the nearest 0.001 of an inch.
- J. The meter shall be installed in accordance with the manufacturer's specifications and in such manner that there will be a full pipe flow of water at all times while water is being measured.
- K. The meter shall be placed in the pipe not less than five pipe diameters downstream from any valve, elbow or other obstructions, which might create turbulent flow or as, recommended by the manufacturer.

There shall also be at least one pipe diameter of unobstructed flow on the downstream side of the meter.

- L. The meter propeller shaft shall be positioned parallel to and aligned with the centerline of the pipe.
- M. Diversions from wells connected to serve multiple points of use shall not be made prior to the water passing through the meter for the individual wells. Wells with diversions before the meter in place and connected to serve multiple points of use, shall be modified no later than April 1, 2003 to comply with this rule.
- N. Meters should be kept clear of debris [sic] other material, which might impede operation.
- O. When meters are removed for servicing or replacement, records of meter readings should be kept.
- P. It shall be unlawful for any person to willfully injure, alter, remove, reset, adjust, manipulate, obstruct, or in any manner interfere with or tamper with any flowmeter within the Management Area for the purpose or with the intent to produce an incorrect, inaccurate or misleading measurement, without District consent, or to cause, procure or direct any other person to do so.
- Q. The District staff shall periodically check flowmeters on a random basis for reading and proper operation. The District staff may seal all flowmeters within the Management Area. The District will notify the groundwater user in advance that it intends to enter upon his land for such purposes. No seal shall be removed without prior approval of the District.
- R. Any malfunctioning flowmeter must be reported to the District Office at Imperial, Nebraska, within Twenty-four (24) hours after discovery. During the malfunctioning period, a substitute meter from the

District, if available, shall be used to determine water consumption. If no such meter is available, any reasonable method of determining water consumption may be utilized.

- S. The District may require any groundwater user to provide information that will enable the District Staff to determine the amount of energy used to operate any well on which a meter is required. The groundwater user shall provide such information, or the groundwater user shall authorize the District Staff to procure such information from the entity, which provided such power. The District Staff shall seek such information in the event a flowmeter is malfunctioning, or if either the owner or operator or the District Staff has reason to believe the flowmeter reading is incorrect. If any power source on any well within the groundwater management area is equipped with an hour meter, the District may require the groundwater user to provide appropriate readings from said hour meter.

### **IRRIGATED ACRES AND TRACTS**

#### **Supplemental Rule 3**

*(See also Rules and Regulations (R&R), especially Rule 3 "Irrigated Acres and Tracts", page 4, R&R..)*

The following regulation applies to the determination, identification and certification of Certified Irrigated Acres and Certified Irrigated Tracts.

- A. The number of Certified Irrigated Acres belonging to or under the control of groundwater users who were irrigating their lands prior to May 1, 1978, shall be the number of acres irrigated by such groundwater user during 1977, or the average number of acres irrigated during the years 1972 through 1976, whichever is greater.

- B. The number of Certified Irrigated Acres for lands placed under irrigation after May 1, 1978, shall be determined by the Board at a public meeting after consideration of the following criteria.
  - 1. Local F.S.A. records, if available.
  - 2. County Assessors records, if available.
  - 3. Suitable aerial photographs.
  - 4. Evidence adduced by the groundwater user or the District at any public meeting of the Board.
- C. Certified Irrigated Tracts shall be identified by government survey descriptions. In all cases the description of each groundwater user's irrigated tract, or tracts, as contained in any recorded deed, or lease, shall be definitive.
- D. No Certified Irrigated Tract may exceed 640 contiguous acres.

**Supplemental Rule 4**

**CRITICAL TOWNSHIPS**

*(See also Rules and Regulations (R&R), especially Rule 4 "Critical Townships", page 4, R&R.)*

- A. The saturated thickness of the aquifer shall be the average saturated thickness of the aquifer for the three-year period ending with spring observation and March continuous recorder well groundwater level measurements throughout the Management Area. The groundwater table shall be determined by averaging the annual groundwater measurement for the three-year period ending with spring observation and March continuous recorder well measurements. Computations made shall be made by the "water level



contouring procedure". Continuous recorder well shall mean a well installed for continuous recording of groundwater levels; and an observation well shall mean an irrigation, domestic, industrial, or other well measured for groundwater table changes by the District each spring and fall.

- B. On September 1, 2002, the following Townships are designated, or remain designated as critical:

**Dundy County**

| <u>Township</u> |                   | <u>Date Designated</u>  | <u>Minimum</u>     |
|-----------------|-------------------|-------------------------|--------------------|
| <u>North</u>    | <u>Range West</u> | <u>or Re-Designated</u> | <u>Period Ends</u> |
| 1               | 37                | 2002                    | 2007               |
| 1               | 38                | 1998                    | 2003               |
| 1               | 39                | 2001                    | 2006               |
| 2               | 36                | 2000                    | 2005               |
| 2               | 37                | 2002                    | 2007               |
| 2               | 38                | 2002                    | 2007               |
| 2               | 39                | 1998                    | 2003               |
| 2               | 40                | 1999                    | 2004               |
| 2               | 41                | 1999                    | 2004               |
| 2               | 42                | 1999                    | 2004               |
| 3               | 37                | 2002                    | 2007               |
| 3               | 38                | 2001                    | 2006               |
| 3               | 39                | 2001                    | 2006               |
| 3               | 40                | 2002                    | 2007               |
| 3               | 41                | 1999                    | 2004               |
| 3               | 42                | 1999                    | 2004               |
| 4               | 36                | 1998                    | 2003               |
| 4               | 37                | 2001                    | 2006               |
| 4               | 38                | 2002                    | 2007               |

**Dundy County**

| <u>Township</u><br><u>North</u> | <u>Range West</u> | <u>Date Designated<br/>or Re-Designated</u> | <u>Minimum<br/>Period Ends</u> |
|---------------------------------|-------------------|---|--------------------------------|
| <u>4</u>                        | <u>39</u>         | 2000  | 2007                           |
| <u>4</u>                        | <u>40</u>         | 2002  | 2007                           |
| <u>4</u>                        | <u>41</u>         | 2002  | 2007                           |
| <u>4</u>                        | <u>42</u>         | 1998  | 2003                           |

**Chase County**

| <u>Township</u><br><u>North</u> | <u>Range West</u> | <u>Date Designated<br/>or Re-Designated</u> | <u>Minimum<br/>Period Ends</u> |
|---------------------------------|-------------------|---|--------------------------------|
| 5                               | 37                | 1999  | 2004                           |
| 5                               | 38                | 2000  | 2005                           |
| 5                               | 39                | 1999  | 2004                           |
| 5                               | 40                | 1999  | 2004                           |
| 5                               | 41                | 2002  | 2007                           |
| 5                               | 42                | 1998  | 2003                           |
| 6                               | 37                | 2001  | 2006                           |
| 6                               | 38                | 2001  | 2006                           |
| 6                               | 39                | 2000  | 2005                           |
| 6                               | 40                | 1999  | 2004                           |
| 6                               | 41                | 2002  | 2007                           |
| 6                               | 42                | 2002  | 2007                           |
| 7                               | 36                | 2002  | 2007                           |
| 7                               | 37                | 2001  | 2006                           |
| 7                               | 38                | 2000  | 2005                           |
| 7                               | 39                | 1999  | 2004                           |
| 7                               | 40                | 1998  | 2003                           |
| 7                               | 41                | 2002  | 2007                           |
| 7                               | 42                | 2002  | 2007                           |
| 8                               | 36                | 2001  | 2006                           |
| 8                               | 37                | 2001  | 2006                           |
| 8                               | 38                | 2001  | 2006                           |
| 8                               | 39                | 2000  | 2005                           |
| 8                               | 40                | 2001  | 2006                           |
| 8                               | 41                | 2002  | 2007                           |
| 8                               | 42                | 2002  | 2007                           |

**Perkins County**

| <u>Township</u> |                   | <u>Date Designated</u>  | <u>Minimum</u>     |
|-----------------|-------------------|-------------------------|--------------------|
| <u>North</u>    | <u>Range West</u> | <u>or Re-Designated</u> | <u>Period Ends</u> |
| 9               | 35                | 2001                    | 2006               |
| 9               | 36                | 2002                    | 2007               |
| 9               | 37                | 2002                    | 2007               |
| 9               | 38                | 1998                    | 2003               |
| 9               | 39                | 1998                    | 2003               |
| 9               | 40                | 2002                    | 2007               |

**Perkins County**

| <u>Township</u> |                   | <u>Date Designated</u>  | <u>Minimum</u>     |
|-----------------|-------------------|-------------------------|--------------------|
| <u>North</u>    | <u>Range West</u> | <u>or Re-Designated</u> | <u>Period Ends</u> |
| 10              | 37                | 2001                    | 2006               |
| 10              | 38                | 2001                    | 2006               |
| 10              | 39                | 2001                    | 2006               |
| 10              | 40                | 2001                    | 2006               |
| 10              | 41                | 2001                    | 2006               |
| 11              | 37                | 2001                    | 2006               |
| 11              | 38                | 2001                    | 2006               |
| 11              | 39                | 2001                    | 2006               |
| 11              | 40                | 2001                    | 2006               |
| 11              | 41                | 2001                    | 2006               |
| 12              | 35                | 2002                    | 2007               |
| 12              | 36                | 2001                    | 2006               |
| 12              | 37                | 2001                    | 2006               |
| 12              | 38                | 2001                    | 2006               |
|                 | 39                | 2001                    | 2006               |
|                 | 40                | 2002                    | 2007               |
| 12              | 41                | 2000                    | 2005               |

**Supplemental Rule 5 WELL SPACING**

*(See also Rules and Regulations (R&R), especially Rule 5 "Well Spacing", page 5, R&R.)*

E3-50

The following regulation applies to the spacing of all wells subject to these rules and regulations and receiving permits from the Upper Republican Natural Resources District.

**(PLEASE SEE TABLE ON NEXT  
PAGE FOR DETAILS)**

## MINIMUM SPACING REQUIREMENTS FOR WELLS DRILLED AFTER AUGUST 31, 1999

| TYPE OF NEW WELL  | NEW WELLS                              |  | REPLACEMENT WELLS  |   |  |  |
|---|--|--|--|---|--|--|
|   | Non-Critical Townships                 | Critical Townships   | Non-Critical Townships   |   | Critical Townships   |  |
|   |  |  | Well to be replaced is not within 1320 feet of another land owner's well(s)  | Well to be replaced is within 1320 feet of another land owner's well(s) | Well to be replaced is not within 1320 feet of a domestic or livestock well, or 5280 feet of any other well(s) belonging to another land owner   | Well to be replaced is within 1320 feet of a domestic or livestock well, or 5280 feet of any other well(s) belonging to another land owner |
| ----- Minimum distance to any well(s) belonging to another land owner ----- |  |  |  |   |  |  |
| Domestic  | Not regulated                          | Not regulated  | Not regulated  | Not regulated   | Not regulated  | Not regulated  |
| Livestock   | Not regulated                          | Not regulated  | Not regulated  | Not regulated   | Not regulated  | Not regulated  |
| Commercial Livestock  | 1320 feet from well(s) owned by others | 1320 feet from domestic and livestock wells & 5280 feet from all other well(s) owned by others | 1320 feet from domestic, livestock, irrigation, industrial, commercial livestock, or municipal well(s) owned by others | Replacement well must be drilled within 150 ft of well to be replaced   | 1320 feet from domestic or livestock well, and 5280 feet from irrigation, industrial, commercial livestock, or municipal well(s) owned by others | Replacement well must be drilled within 150 ft of well to be replaced  |
| Irrigation  | 1320 feet from well(s) owned by others | 1320 feet from domestic and livestock wells & 5280 feet from all other well(s) owned by others | 1320 feet from domestic, livestock, irrigation, industrial, commercial livestock, or municipal well(s) owned by others | Replacement well must be drilled within 150 ft of well to be replaced   | 1320 feet from domestic or livestock well, and 5280 feet from irrigation, industrial, commercial livestock, or municipal well(s) owned by others | Replacement well must be drilled within 150 ft of well to be replaced  |
| Industrial  | 1320 feet from well(s) owned by others | 1320 feet from domestic and livestock wells & 5280 feet from all other well(s) owned by others | 1320 feet from domestic, livestock, irrigation, industrial, commercial livestock, or municipal well(s) owned by others | Replacement well must be drilled within 150 ft of well to be replaced   | 1320 feet from domestic or livestock well, and 5280 feet from irrigation, industrial, commercial livestock, or municipal well(s) owned by others | Replacement well must be drilled within 150 ft of well to be replaced  |
| Municipal   | 1320 feet from well(s) owned by others | 1320 feet from domestic and livestock wells & 5280 feet from all other well(s) owned by others | 1320 feet from domestic, livestock, irrigation, industrial, commercial livestock, or municipal well(s) owned by others | Replacement well must be drilled within 150 ft of well to be replaced   | 1320 feet from domestic or livestock well, and 5280 feet from irrigation, industrial, commercial livestock, or municipal well(s) owned by others | Replacement well must be drilled within 150 ft of well to be replaced  |

**Supplemental Rule 9**

**ALLOCATIONS OF GROUNDWATER**

*(See also Rules and Regulations (R&R), especially Rule 9 "Allocations of Groundwater" pages 7 & 8, R&R..)*

A. A basic allocation of 72.5 acre inches per Certified Irrigated Acre shall be granted for the 5-year allocation period.

1. The amount of carryforward for each Certified Irrigated Tract shall be determined on December 31, of the last year of the allocation period.

2. The carryforward so determined may be used by the groundwater user owning or controlling the irrigated tract in any manner not otherwise prohibited by these rules and regulations.

3. Certified Acres irrigated by wells in service for the entire allocation period shall receive the basic allocation.

4. Certified Acres irrigated by wells drilled and equipped after commencement of the allocation period shall receive a reduced allocation. The reduction shall be computed as follows:

a. The basic allocation shall be divided by the number of calendar years in the allocation period.

b. Acres irrigated by wells drilled and equipped prior to July 1 of any calendar year during the allocation period shall not receive an allocation for any prior year, but shall receive a full allocation for that year.

c. Acres irrigated by wells drilled and equipped between July 1 and August 31 of any calendar year in the allocation period shall not receive an allocation for any

prior year and shall receive one-half of that year's allocation.

d. Acres irrigated by wells drilled and equipped after August 31 of any calendar year during the allocation period shall not receive an allocation for any prior year, nor for that year.

B. Acres being removed from the Federal Conservation Reserve program shall be granted the carryforward allocated to the acres at the time of enrollment, provided:

1. Such acres were equipped to be irrigated at the time they were enrolled in the Conservation Reserve Program.

2. Upon removal from the Conservation Reserve Program such acres shall then be considered as acres becoming first irrigated on the day said acres are re-equipped to be irrigated, and an allocation for the remaining portion of the relevant allocation period shall be determined.

C. The carryforward so determined may be used by the groundwater user owning or controlling the irrigated tract in any manner not otherwise prohibited by these rules and regulations.

D. Each municipality using groundwater withdrawn from the Management Area is hereby granted without further application, an allocation of groundwater for each calendar year beginning with 1988, computed as follows:

1. An allocation of gallons equal to the number produced by multiplying the population of the municipality as determined by the most recent Federal Census by 91,250; and

2. An additional allocation of acre inches stated in gallons equal to the number produced by multiplying one third (1/3) of the non-agricultural acres of land within the municipality by the annualized allocation for irrigated acres as stated in Paragraph A. Each municipality shall report the total number of non-agricultural acres within its limits to the Board at the time of any annexation or elimination of territory to or from its limits.
- E. For every flowmeter under the ownership or control of each groundwater user, the District Staff shall take the final meter reading no sooner than September 15, and not later than December 31, of the same year on forms provided by the District. In addition, the District shall make random year-end meter readings as well as spot checks during the irrigation season. The District will, after year-end readings, notify each groundwater user of the amount of water withdrawn during the foregoing year and the amount of carry-forward and allocation remaining.

### **Supplemental Rule 11**

#### **TRANSFERS**

*(See also Rules and Regulations (R&R). especially Rule 11 "Transfers", page 9, R&R)*

Transfers of allocations from a Tract or for a use for which the same has been granted to another tract or use may be accomplished only under the following conditions:

- A. The tracts must be under the ownership or control of the same groundwater user except as provided for in Rule 12, Order No.25. No transfer may occur without the knowledge and consent of the owners of all lands involved, including any lands over which the groundwater is transported.



- B. Groundwater allocations in non-critical townships may not be transferred to tracts within Critical Townships.

**Supplemental Rule 13**

**GROUND WATER QUALITY**

*(See also Rules and Regulations (R&R), especially Rule 13 "Groundwater Quality", page 9, R&R.)*

Definitions:

- A. Contamination or Contamination of Groundwater shall mean nitrates or other material that enter the ground water due to action of any person and cause degradation of the quality of ground water sufficient to make such ground water unsuitable for present or reasonably foreseeable beneficial uses.
- B. Subirrigation or Subirrigated Land shall mean the natural occurrence of a ground water table within the root zone of agricultural vegetation, not exceeding ten feet below the surface of the ground.
- C. Best Management Practices shall mean schedules of activities, maintenance, procedures, and other management practices utilized to prevent or reduce present and future contamination of ground water which may include irrigation scheduling, proper timing of fertilizer and pesticide application and other fertilizer and pesticide management programs.
- D. Point Source shall mean any discernible, confined and discreet 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.

- E. Rotation shall mean a recurring series of use and non-use of an irrigation well on an hourly, daily, weekly, monthly, or yearly basis.
- E [sic].Phase I shall mean all areas within the District in which levels of nitrate nitrogen contamination, or any contaminant harmful to health or the environment is 0% to 40% of, the allowable level as determined by the Nebraska Department of Environmental Quality. On the effective date of this Order the entire territory of the Upper Republican Natural Resources District is Phase I.
- G. Phase II shall mean all areas within the District boundaries so designated by the Board in which levels of nitrate nitrogen contamination, or any contaminant harmful to health or the environment, are over 40%, but less than 60%, of the allowable level as determined by the Nebraska Department of Environmental Quality. Phase II areas shall be designated only after dissemination to the public the boundaries of such proposed areas and the rules and regulations pertaining thereto and the conduct of one or more public information meetings followed by a public hearing after which the Board may designate Phase II areas of not less than 6 square miles with rules and regulations pertaining to ground water quality in such areas.
- H. Phase III shall mean all areas within the District boundaries so designated by the Board in which levels of nitrate nitrogen contamination, or any contaminant harmful to health or the environment are 60%, or over, of the allowable level as determined by the Nebraska Department of Environmental Quality. Phase III areas shall be designated only after

dissemination to the public of the boundaries of such proposed areas and the rules and regulations pertaining thereto and the conduct of one or more public information meetings followed by a public hearing after which the Board may designate Phase III areas of not less than 6 square miles with rules and regulations pertaining to ground water quality in such areas.

- I. Certified Laboratory shall mean any laboratory within or outside the State of Nebraska certified and approved by the Nebraska Department of Environmental Quality.
- J. Ground Water Quality Controls shall mean the rules and regulations which may be proposed or adopted for ground water quality and based on the three (3) phase program defined above.
- K. Chemical means any fertilizer, fungicide, herbicide, or pesticide mixed with the water supply.
- L. Fertilizer means any formulation or product used as a plant nutrient, which is distributed on lands in the District, and/or intended to promote plant growth, and contains one or more plant nutrients recognized by the Association of American Plant Food Control Officials in its official publications.

Implementation Processes and Procedures:

Deep soil testing, ground water well testing and standard soil sampling will be used to determine contaminant levels throughout the district and to determine the geographic and stratigraphic boundaries of any territory for which controls for ground water quality may be proposed.

- A. Controls, rules, and regulations that may be proposed for ground water quality will be based on a three-phase program. Phase I shall include all territory in which levels of nitrate nitrogen contamination, or any

contaminant harmful to health or the environment, are 0% to 40% of the allowable level as determined by the Nebraska Department of Environmental Quality. Phase II shall include all territory in which levels of nitrate nitrogen contamination, or any contaminant harmful to health or the environment is over 40%, but less than 60%, of the allowable level as determined by the Nebraska Department of Environmental Quality. Phase III shall include all territory in which levels of nitrate nitrogen contamination, or any contaminants harmful to health or the environment, is 60%, or over, of the allowable level as determined by the Nebraska Department of Environmental Quality.

- B. In Phase I territories yearly monitoring ground water samples will be conducted by the District.
- C. When it is determined by the District, or there is reasonable cause to believe that the identified contamination is point source contamination; the District will request the Nebraska Department of Environmental Quality to make a determination if the contamination is point source.
- D. The District will take ground water and deep soil samples to determine whether ground water is contaminated. Ground water samples will be taken in not less than fifty (50) locations throughout the District. If a particular sample indicates contamination in excess of the levels established for Phase II or Phase III, the District will take a minimum of twelve (12) additional ground water samples in a radius of three (3) miles or the identified contamination. The District will make a map of the subject area divided into four (4) equal areas from the location of the ground water sample source, which shows contamination. The total area of said map would be approximately 6 miles square. Should 25% of the not less

than twelve (12) samples taken indicate contamination of more than 40% of the allowable level is determined by the Nebraska Department of Environmental Quality, the subject shall become designated a Phase II area. Should 25% of the not less than [sic] twelve (12) samples taken indicate contamination of 60%, or more of the allowable level as determined by the Nebraska Department of Environmental Quality, the subject shall become designated a Phase III area. If villages, cities or towns lie in the said three- (3) mile radius, the water samples shall be taken [sic] the municipal wells as one of the required twelve (12) samples.

- E. The District will initiate education programs for ground water users regarding non-point and point source pollution.
- F. The District will initiate a ground water quality study which will include deep soil testing, ground water sampling to identify types of contamination, identification of the best management practices to control contamination, and other research as funds become available.
- G. In Phase II areas the District may:
  - 1. Require ground water users to take nitrate nitrogen and irrigation management training and education.
  - 2. Implement irrigation scheduling.
  - 3. Require ground water users to limit commercial fertilizer applications to University of Nebraska published recommendations.
  - 4. Require that soil samples be taken to determine nitrates remaining in the soil at 1, 2 and 3 foot levels.

5. Require nitrogen application use be reported to the District on forms to be provided.
  6. Require all types of commercial fertilizer use to be reported to the District on forms to be provided
- H. In Phase III areas the District may:
1. Implement any rule, regulation or control authorized for Phase II areas.
  2. Restrict the use of fall and winter application of commercial nitrogen fertilizers in designated fields for spring planted crops unless inhibitors approved by the District are used in conjunction with such applications.
  3. Implement other restrictions on chemical use as determined necessary or advisable by investigations, studies, or research.
- I. All Areas in the District are considered as Phase I areas at least until September 1, 2003.

### **Supplemental Rule 17**

#### **GENERAL ENFORCEMENT PROVISION**

*(See also Rules and Regulations (R&R), especially Rule 17 "General Enforcement Provisions", page 10, R&R.)*

The District shall enforce the provisions of the Groundwater Management and Protection Act, and all rules and regulations adopted pursuant thereto by the issuance of cease and desist orders and by bringing, or defending, appropriate actions in the district court of the county in which any violations occur for enforcement of such orders. Cease and desist orders may be issued for any violation of any rule or regulation of the District.

- A. Any person within the District, or the Board on its own motion, may file a written complaint. Complaints shall be filed at the District office, 135 West 5th Street, Imperial, Nebraska. 69033.
- B. The District shall investigate the alleged violation. Upon completion of the investigation, the District Staff shall file a report with the Board and deliver copies of the report to the alleged violator and to the complainant, if other than the Board, in person, or shall transmit the same by certified mail.
- C. If the District staff finds there is reasonable cause to believe that a groundwater user is at the time of investigation, or was at the time complained of, in violation of District rules and regulations, then said report shall be accompanied by a formal notice of the alternative actions available to the alleged violator. Alternative actions available to the person complained against shall be:
  - 1. Agree with and accept as true and correct the District staffs findings that the alleged violation has in fact occurred or is occurring, consent to cease and desist from continuing or allowing the reoccurrence of such violation, and submit a plan and schedule of compliance. The District shall determine whether the plan and schedule will bring that user into compliance with District rules and regulations. If the Board determines that the proposed plan and schedule are adequate, it shall approve such plan and schedule of compliance.
  - 2. Reject the findings of the report, and within 30 days request a formal adjudicatory hearing.
- D. The Board shall notify the person filing the complaint of any action. If no objections to the action of the Board are received, the action of the Board on the written complaint shall be considered as final.

- E. If the person filing the complaint objects to the Board action, he may within 30 days of the Board action, request a formal adjudicatory hearing.
- F. An official record shall be made of the formal adjudicatory hearing requested by the alleged violator, by the complainant, or by the Board on its own motion. The Board shall deliberate the record and take action on the issue. The recourse to Board action by either the complainant or the alleged violator is by appeal with the district court
- G. When an alleged violator has been notified of Board action and such alleged violator has failed to respond thereunder, or has failed to appear at any properly scheduled formal adjudicatory hearing, the Board shall:
  - 1. Review the complaint and the report, as well as any other pertinent information; and
  - 2. Issue such order or orders in accordance with these rules and regulations, as it deems appropriate.

### **Supplemental Rule 18**

#### **FORMAL ADJUDICATORY HEARINGS**

*(See also Rules and Regulations (R&R), especially Rule 18 "Formal Adjudicatory Hearings," page 10, R&R.)*

- A. Formal Adjudicatory Hearings will be conducted by the District for the following purposes:
  - 1. Any purpose set out in the Rules and Regulations of the District or in the Technical Manual, which is in effect in concert therewith.



2. From an adverse decision on a request for variance when judicial review will be sought by the applicant for said variance.
  3. To resolve disputes between groundwater users or others, pertaining to illegal irrigation groundwater run off or any other dispute on a majority vote by the Board of Directors.
  4. Prior to the issuance of a cease and desist order on a majority vote of the Board of Directors.
- B. Any groundwater user aggrieved by any action of the District may request a formal adjudicatory hearing within 30 days of the action complained of.
- C. A hearing examiner shall conduct formal hearings. The presence of Board members shall not be required at any hearing. The hearing examiner shall be a person deemed to be knowledgeable in the procedures set out in these rules and regulations and shall conduct the hearing in a manner that provides fairness to all parties.
- D. The District shall prepare a notice setting the time and place of the formal hearing.
- E. The Board may grant continuances and the Board may at any time order a continuance on its own Motion.
- F. The Board may require stipulations on procedure to define the issues, or for any purpose designed to expedite the matter or to insure substantial due process or fairness.
- G. Ordinarily, opening statements and/or oral arguments following the close of the presentation of evidence will be permitted only insofar as such statements and/or arguments relate to the presentation and explanation of evidence.

- H. Submission of briefs may be requested or permitted by the Board
- I. An official record of any official hearing conducted pursuant to statute or the rules and regulations of the Board shall be preserved in the official [sic] taken at the hearing. Such records shall include all testimony and exhibits presented at the hearing. Such record shall whenever possible be kept by a court reporter to be procured by the District. Such record or a copy thereof shall be kept on file in the office of the District. The costs of the record and the hearing examiner, and other related costs may be assessed against the unsuccessful party or parties either after a final decision is rendered by the Board, or after the conclusion of any litigation that may ensue.
- J. The Board may deliberate the record as a quasi-judicial body under the provisions of 84-1409(i)(ii), R.R.S. without complying with the Nebraska public meetings laws.
- K. All orders and decisions of the Board shall be transmitted to the parties directly involved in the hearing by certified mail.
- L. The Board may at any time order the District staff to make an investigation into any matter within the jurisdiction of the Board or order any hearing which the Board is authorized either by law or inherent power to conduct. In the event of an investigation, the Board may request the attendance of any party.

**Supplemental Rule 19**

**DISTRICT TECHNICAL MANUAL**

All contents of Part IV, Supplemental Rules and Regulations herein of the District Technical Manual are

incorporated into, and considered an integral part of the District groundwater rules and regulations, and are applicable in concert with the Rules and Regulations for Groundwater Control of the Upper Republican Natural Resources District Management Area – Order No.25 (R&R).

**Supplemental Rule 20**

**SEVERABILITY OF RULES**

If any part of this District Technical Manual or any rule or part of any rule in the Rules and Regulations for Groundwater Control of the District shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

**Adopted this 2nd day of July 2002.**

**This Technical Manual for the Upper Republican Natural Resources District shall be effective in concert with the Rules and Regulations for Groundwater Control of the Upper Republican Natural Resources District Management Area (Order No.25), commencing September 1, 2002.**

**UPPER REPUBLICAN  
NATURAL RESOURCES  
DISTRICT**

By \_\_\_\_\_  
**Robert Ambrosek, Chairman**

**ATTEST:**

\_\_\_\_\_  
**Kenneth E. Owens, Secretary**

\_\_\_\_\_

**APPENDIX E**

**MIDDLE REPUBLICAN NATURAL  
RESOURCE DISTRICT**

***Current Middle Republican NRD***

**Ground Water Management Area Plan Rules and  
Regulations**

Adopted July 1, 1998

Revised July 1, 2000

***Rules and Regulations***

**Authority** – These rules and regulations are adopted pursuant to the authority granted in the Nebraska Ground Water Management and Protection Act, Sections 46-656.01 to 46-656.67.

**Purpose** – The purposes of the management area herein designated are:

1. To maintain, in accordance with the districts' ground water management plan, a ground water reservoir life of at least seventy five (75) years,
2. Protect ground water quality,
3. Allow for the integrated management of hydrologically connected ground water and surface water.

**Rule 1. Management Area Designation and Boundaries** – A ground water management area is hereby designated in the Middle Republican Natural Resources District. The geographic boundary of such management area will coincide with the boundaries of the Middle Republican Natural Resources District. The stratigraphic boundary of the area is from the land surface to the base of

the underlying sand and gravel layers that contain the water bearing material. The base of the sand and gravel layers rest on impervious layers of Niobrara Chalk, Pierce Shale or formations from the White River Group.

**Rule 2. Definition –**

**2.1 Act:** The Nebraska Ground Water Management and Protection Act.

**2.2 Board:** The elected board of directors of the Middle Republican Natural Resources District.

**2.3 Dewatering Well:** Shall mean a water well constructed for the purpose of lowering the ground water surface elevation.

**2.4 District:** The Middle Republican Natural Resources District.

**2.5 Flow Meter:** A device, approved by the district, to measure the quantity of ground water pumped, withdrawn, or taken from a water well.

**2.6 Ground Water:** Ground water shall mean that water which occurs in or moves, seeps, filters, or percolates through the ground under the surface of the land.

**2.7 Illegal Water Well:**

a. Any water well operated or constructed without or in violation of a permit required by the Act, or

b. Any water well not in compliance with the rules and regulations adopted and promulgated pursuant to the act, or

c. Any water well not properly registered in accordance with sections 46-602 to 46-6-4, or

d. Any water well not in compliance with any other applicable laws of the State of Nebraska or with rules and regulations adopted and promulgated pursuant to such laws, or

e. Any water well constructed or operated in violation of these or other rules and regulations of the district.

**2.8 Inactive Status Well:** Shall mean a water well that is in a good state of repair and for which the owner has provided evidence of intent for future use by maintaining the water well in a manner which meets the follow [sic] requirements:

a. The water well does not allow impairment of the water quality in the water well or of the ground water encountered by the water well,

b. The top of the water well or water well casing has a water-tight welded or threaded cover or some other water-tight means to prevent its removal without the use of equipment or tools to prevent unauthorized access, to prevent a safety hazard to humans and animals, and to prevent illegal disposal of wastes or contaminants into the water well,

c. The water well is marked so as to be easily visible and identified as a water well and the area surrounding the water well is kept clear of brush, debris, and waste material and status change is filed with the Nebraska Department of Natural Resources.

**2.9 Late Permit:** Shall mean a permit applied for after construction has commenced on a water well.

**2.10 Livestock Operation Well:** A regulated water well providing for the watering of animals in a livestock

operation or confined livestock operation as defined in Chapter 1 of Title 130, NDEQ, and requiring a permit from NDEQ to operate.

**2.11 Livestock Well:** A water well providing for the watering of:

- a. Livestock, poultry, farm and domestic animals used in operating a farm, or
- b. Domestic livestock as related to normal farm and ranch operations, or
- c. Range livestock or stock use on a farm or ranch

**2.12 Operator:** The person who controls the day to day operation of the water well.

**2.13 Permit:** Shall mean a document that must be obtained from the district in accordance with Rule 6 before construction of a water well may be commenced in the management area.

**2.14 Person:** A natural person, a partnership, a limited liability company, an association, a corporation, a municipality, an irrigation district, an agency or a political subdivision of the state, or a department, an agency, or a bureau of the United States of America.

**2.15 Regulated Well:** A water well designed and constructed to pump more than fifty (50) gallons per minute. A series of water wells, with a combined discharge of more than fifty (50) gallons per minute, of which the water is commingled, combined, clustered or joined as a single unit for a single purpose shall be considered as one regulated well.

**2.16 Replacement Well:** A water well which:

a. Replaces a previously abandoned (decommissioned) water well within three (3) years of the last operation of the abandoned (decommissioned) water well or replaces a water well that will not be used after construction of the new water well and the original water well will be decommissioned within one (1) year of construction of the new water well and,

b. Is constructed to provide water to the same tract of land served by the water well being replaced.

**2.17 Test Hole:** Shall mean a hole designed solely for the purpose of obtaining information on hydrogeologic conditions.

**2.18 Unregulated Well:** A water well designed and constructed to pump fifty (50) gpm or less and is not commingled, combined, clustered or joined with other water wells.

**2.19 Unused/Seldom Used Well:** A water well that has not been placed in inactive status but is used less than one year in three.

**2.20 Waiver:** An agreement between a water well owner or operator and the district that will provide for relief from the enforcement of a rule or rules of the district.

**2.21 Water Well:** Any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information or extracting water from or injecting water into the underground water reservoir. Water wells shall not include any



excavation made for obtaining or prospecting for oil or natural gas or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission.

***Rule 3. Well Spacing –***

**3.1** No regulated well shall be constructed upon any land in this district within one thousand three hundred and twenty (1,320) feet of any registered regulated well, regardless of ownership except:

1. Any irrigation water well that replaces an irrigation water well drilled prior to September 20, 1957, and which is less than six hundred (600) feet from a registered irrigation well shall be drilled with [sic] fifty (50) feet of the old water well,

2. After July 1, 1998, a replacement well may be constructed at less than one thousand three hundred and twenty (1,320) feet from another registered water well, if it is constructed within one hundred (100) feet of the water well it replaces and was, when constructed, in compliance with all applicable laws, rules and regulations.

**3.2** The well spacing required by ***Rule 3.1*** shall apply to an unregistered water well for a period of only thirty (30) days following completion of such water well.

***Rule 4. Flow Meters –***

**4.1** Flow meters meeting the accuracy specifications established in ***Rule 4.3*** shall be installed on all regulated wells in accordance with the schedule established in ***Rule 4.2***.

**4.2** Placement schedule:

For regulated wells in the alluvial valley of the Republican River Basin, as identified by the Nebraska's Department of Natural Resources, flow meters shall be installed by December 31st of the year specified.

**4.2.1** 1998 – Alluvial wells in sections 1 through 12

1999 – Alluvial wells in sections 13 through 23

2000 Alluvial wells in sections 24 through 36

For regulated wells, other than those in **Rule 4.2-1**, flow meters shall be installed by December 31st of the year specified.

**4.2.2** 2001 – All regulated wells in the NE quarter of the section

2002 – All regulated wells in the SE quarter of the section

2003 – All regulated wells in the SW quarter of the section

2004 – All regulated wells in the NW quarter of the section

For all new or replacement regulated wells constructed after July 1, 1999, flow meters shall be installed prior to use of the well.

For unused/seldom used wells or wells with a pumping capacity of less than two hundred and fifty (250) gallons per minute a measuring device or method approved by the district with an accuracy of plus or minus 5% of the actual water flow may be used.

For inactive status wells a flow meter shall be installed prior to placing the well into active status.

**4.3** All meters shall be tested for accuracy using recognized industry testing methods and certified by the manufacturer according to those standards. At any rate of flow with the normal flow limits, the meter, except as noted in **Rule 4.2**, shall register not less than 98 percent nor more than 102 percent of the water actually passing through the meter. All meters shall have a register or totalizer and shall read in U.S. gallons, acre feet or acre inches.

**4.4 Installation** – The operator shall, on forms provided by the district, report the location, by legal description and certify the proper installation of flow meters. The district may, at a time of its own choosing, verify the location and proper installation of flow meters. The proper installation of a meter is such that it meets manufacturers specifications and/or more restrictive specifications developed by the district.

**4.5 Service** – It is the responsibility of the operator to service and maintain the flow meter according to either the manufacturers standards or standards developed by the district.

**Rule 5. Reports –**

**5.1** Beginning with the year after meter installation as required by **Rule 4** all operators of regulated irrigation wells shall report on forms provided by the district by November 15 each year, measurements that show or allow the district to determine the total water withdrawn from that well since the last report and the acres irrigated by that well during the preceding irrigation season.

**5.2** Each operator of a regulated well, other than an irrigation well, shall report, on forms provided by the district, by January 15 each year, the total water withdrawn from that well during the preceding calendar year.

**Rule 6. Well Permit –**

**6.1** Except as provided to **Rule 6.2** any person who intends to construct a water well on land in the management area which he or she owns or controls shall, before commencing construction, apply with the district for a permit on a form provided by the district.

**6.2 Exceptions –** No permit shall be required for:

1. Test wells,
2. Dewatering wells with an intended use of ninety (90) days or less,
3. A single water well designed and constructed to pump fifty (50) gallons per minute or less.

**6.3** 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 water well and the combined capacity shall be used as the rated capacity.

**6.4** A person shall apply for a permit before he or she modifies a water well, for which a permit was not required when the well was constructed, into one for which a permit is now required.

**6.5** The application shall be accompanied by a \$17.50 filing fee payable to the district and shall contain:

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1. The name and post office address of the well owner,
2. The nature of the proposed use,
3. The intended location of the proposed water well or other means of obtaining ground water,
4. The intended size, type, and description of the proposed water well and estimated depth,
5. The estimated capacity in gallons,
6. The acreage and location by legal description of the intended use of the well water,
7. A description of the proposed use of the well water,
8. The registration number of the well being replaced, if applicable,
9. Such other information as the district may require.

**6.6** Any person who has failed or in the future fails to obtain a permit before construction is started shall make an application for a late permit on forms provided by the district.

**6.7** The application for a late permit shall be accompanied by a two hundred and fifty (\$250) fee payable to the district and shall contain the same information required in **Rule 6.5**.

**6.8** 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,
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.

**6.9** The issuance, by the district, of a permit or the registration of a water well shall not vest in any person the right to violate any district rule, regulation, control properly adopted after such date.

**6.10** The applicant shall commence construction as soon as possible after the date of approval and shall complete construction and equip the water well prior to the date specified in the conditions of approval, which shall not be more than one year from the date of approval.

***Rules and Regulations For the***

***Temporary Suspension of the Drilling of New Wells***

Adopted by the Board of Directors of the Middle Republican Natural Resources District on June 11, 2002 following a Public Hearing on June 11, 2002.

**AUTHORITY**

The authority for these rules is contained in Chapter 46, Reissue Revised Statutes of Nebraska, Article 6, specifically sections 46-656.01 to 46-656.67 known as the Nebraska Ground Water Management and Protection Act.

## **GENERAL PROVISIONS**

In July of 1996, the Middle Republican NRD requested that the Department of Water Resources conduct studies and hold a hearing on the preparation of a joint action plan for the integrated management of hydrologically connected ground water and surface water in the NRD.

In July of 1998, the Middle Republican NRD adopted rules and regulations for a Ground Water Management Area. The current version of the groundwater management area rules and regulations were adopted in July 2000.

In June of 1999, the Middle Republican NRD requested that the process initiated in July of 1996, be suspended.

In May of 2002, the Middle Republican NRD requested that the Department of Natural Resources (formerly the Department of Water Resources) resume the process begun in 1996.

***Rule 1. Area Designation and Boundaries:*** The area subject to these rules is the entire geographic area that coincides with the boundaries of the Middle Republican Natural Resources District. The stratigraphic boundary of the area is from the land surface to the base of the underlying sand and gravel layers that contain the water bearing material. The base of the sand and gravel layers rest on impervious layers of Niobrara Chalk, Pierre Shale or formations from the White River Group.

### **Rule 2. Definitions:**

**2.1** Ground Water Management Area: Shall mean the area so designated by the Middle Republican

Natural Resources District pursuant to section 46-656.20, Revised Statutes of Nebraska, on July 1, 1998.

- 2.2** Permit: Shall mean a document that must be obtained from the district in accordance with Sections 46-656.29 through 46-656.31, Revised Statutes of Nebraska, and Rule 6 of the Rules and Regulations for the Ground Water Management Area.
- 2.3** Well or Water Well: Shall mean a water well as defined in Section 46-601.01, Revised Statutes of Nebraska and that is designed and constructed to pump more than fifty (50) gallons per minute. A series of water wells, with a combined discharge of more than fifty (50) gallons per minute, of which the water is commingled, combined, clustered or joined as a single unit for a single purpose shall be considered as one well.
- 2.4** Test Hole: Shall mean a hole designed solely for the purpose of obtaining information on hydrogeologic conditions.
- 2.5** Dewatering Well: shall mean a water well constructed for the purpose of temporarily lowering the ground water surface elevation.
- 2.6** Replacement Well: a water well which (a) replaces a previously abandoned water well within three years of the last operation of the abandoned water well or replaces a water well that will not be used after construction of the new water well and the original water well will be decommissioned within one year of construction of the new water well; (b) if for irrigation, is constructed to provide water to the same tract of land served by the water well being replaced. A replacement well as defined in section 46-602, or



as further defined in district rules and regulations, is subject to the same provisions as the water well it replaces.

**Rule 3. Temporary Suspension of the Drilling of New Wells:**

**3.1** Effective June 12, 2002 and except as provided in **Rule 3.2**, there is a temporary suspension in the drilling of new wells and a temporary suspension in the issuance of permits to construct new wells.

**3.2** Wells not subject to **Rule 3.1** are:

**3.2.1.** Test holes,

**3.2.2** Dewatering wells with an intended use of less than ninety days,

**3.2.3** Water wells designed and constructed to pump fifty gallons per minute or less,

**3.2.4** Water wells to be used as replacement wells.

**3.3** Wells with existing permits may be constructed if, on or before June 11, 2002, the construction of the well has begun. All other permits will be subject to this suspension.

**3.4** This temporary suspension of drilling shall remain in effect until June 1, 2005 unless rescinded by the Middle Republican NRD.

**3.5** This temporary suspension can be extended by amendment of these rules and regulations beyond June 1, 2005 on an annual basis until June 1, 2007.

**Rule 4. Variances:**

**4.1** The board may grant variances from the strict application of these rules and regulations if it determines that construction of a new well is necessary to alleviate an emergency situation involving the provision of water for human consumption or upon other good cause shown.

**4.2** An expedited variance may be granted by the manager or his designated representative for the purpose of approving a well permit for:

**4.2.1** Contamination/Remediation: Shall mean a water well, constructed to recovery well standards, for the purpose of withdrawal or treatment of contaminated water, or for the introduction or removal of air, water or chemicals. The variance request and application for a Permit to Construct a Water Well shall include written approval of the state agency with supervisory responsibility for the planned project.

**4.2.2** Monitoring/Observation: Shall mean a water well, constructed to the appropriate well standards, for the purpose of withdrawal of water or the observation of water levels during aquifer testing, collection of water quality samples and providing hydrogeology information. A monitoring/observation well shall not have a permanent pump installation.

The variance request and an application for a Permit to Construct a Water Well shall include the planned disposition of the monitoring/observation well after its intended use is completed.

**4.3** All requests for a variance, other than those in **Rule 4.2**, shall be made on forms provided by the district and will be acted upon after a hearing before the district.

***Rule 5. Violations:***

These rules and regulations shall be enforced by the district through the use of cease and desist orders issued in accordance with the "Rules and Regulations for the Enforcement of the Nebraska Ground Water Management and Protection Act, adopted March 27, 2000, and Section II, Subsection E, **Rule 4** of the "General Policy Statement". Any violation of a cease and desist order issued by the district shall be a Class IV misdemeanor.

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**APPENDIX E**

**LOWER REPUBLICAN NATURAL  
RESOURCE DISTRICT**

**Lower Republican  
Natural Resources District**

***Rules and Regulations***

**Temporary Suspension of the Drilling  
of New Water Wells**

**and**

**Water Use Measuring Devices for Water Wells**

***adopted***

***December 2, 2002***

Section 1. Authority

These rules and regulations are adopted pursuant to the authority granted by the Nebraska Unicameral in the Nebraska Ground Water Management and Protection Act, Neb. Rev. Stat. § 46-656.01-46-656.67.

Section 2. Definitions

|                      |   |
|----------------------|---|
| <u>Alluvial Well</u> | Shall mean a water well which is located in the district and in the alluvial aquifer of the Republican River Basin as determined and delineated on a map prepared by the Department of Natural Resources. |
| <u>Board</u>         | Shall mean the duly constituted and elected Board of Directors of the Lower Republican Natural Resources District acting in its official capacity.  |

|                          |  |
|--------------------------|--|
| <u>Category 1 Well</u>   | Shall mean a well with a pumping capacity of more than 250 gpm and used for withdrawal of water, on average, in at least one year out of three.  |
| <u>Category 2 Well</u>   | Shall mean a well with a pumping capacity of 250 gpm or less or a capacity active eligible well used for withdrawal of water, on average, in at least one year out of three.   |
| <u>District</u>          | Shall mean the Lower Republican Natural Resources District.  |
| <u>Flow Meter</u>        | Shall mean a device of a type or design approved by the Board, which when properly installed, operated, and maintained according to the district's specifications, measures and totalizes the quantity of groundwater pumped, withdrawn, or taken from a well. |
| <u>Groundwater</u>       | Shall mean water that occurs or moves, seeps, filters, or percolates through the ground under the surface of the land.   |
| <u>Groundwater User</u>  | Shall mean any person (owner, agent, tenant, etc.) who, at any time after the effective date of these regulations, utilizes a water well to extract or withdraw groundwater for his or her own use or for other persons.                                       |
| <u>Non-alluvial Well</u> | Shall mean a water well which is located in the district but not located within the alluvial aquifer of the  |

Republican River Basin as determined and delineated on a map prepared by the Nebraska Department of Natural Resources.

- Water Well or Well Shall mean a water well as defined in Neb. Rev. Stat. § 46-601.01 that is used for other than domestic purposes and that is designed and constructed to pump more than fifty (50) gallons per minute. A series of water wells, with a combined discharge of more than fifty (50) gallons per minute, of which the water is commingled, combined, clustered or joined, as a single unit for a single purpose shall be considered one well. For purposes of these rules, the term "water well" or "well" does not include any water well classified as an "inactive status water well" in accordance with Neb. Rev. Stat., § 46-1207.02.
- Test hole Shall mean a hole designed solely for the purpose of obtaining information on hydrogeologic conditions.
- Dewatering Well Shall mean a water well constructed for the purpose of temporarily lowering the groundwater surface elevation.
- Replacement Well Shall mean a water well which (a) replaces a previously abandoned water well or replaces a water well that will not be used after construction of the new water well and the original water well will be decommissioned

within one year of construction of the new water well; and (b) if for irrigation, is constructed to provide water to the same tract of land served by the water well being replaced. A replacement well as defined in § 46-602, or as further defined in district rules and regulations, is subject to the same provisions as the water well it replaces.

### Section 3.0. Meter Program Responsibilities

Each groundwater user subject to these rules will be responsible for: a) the purchase and installation of a flow meter or other measuring device as permitted by these rules; b) maintenance of the flow meter or other permitted measuring device; c) the repair or replacement of a disabled, inoperable or inaccurate flow meter or other permitted measuring device; and d) reading the flow meter or other permitted measuring device and reporting water use to the district as required by these rules.

The District will be responsible for: a) inspecting flow meter and other permitted measuring device installation; and b) spot checking flow meter readings and flow meters and other permitted measuring devices for accuracy.

### Section 3.1. Meter Program Completion Schedule

For each Category 1 alluvial well and for each Category 2 alluvial well, except as otherwise required, a flow meter shall be installed and be operational by the date specified in the following schedule:

|                 |   |
|-----------------|---|
| April 1, 1999   | Wells located in government survey sections 1 through 12  |
| April 1, 2000   | Wells located in government survey sections 13 through 24 |
| January 1, 2001 | Wells located in government survey sections 25 through 36 |

For each non-alluvial well constructed on or before the effective date of these rules, a flow meter shall be installed and be operational by the date specified in the following schedule:

- May 1, 2003 – Wells located in government survey sections 1 through 12
- April 1, 2004 – Wells located in government survey sections 13 through 24
- April 1, 2005 – Wells located in government survey sections 25 through 36

For each water well constructed after the effective date of these rules, a flow meter shall be installed and be operational by the applicable date specified in the schedule above or by the date of first use of the well, whichever date is later.

All alluvial water wells subject to an “Agreement to Use Alternative Metering Device for Active Irrigation Well Not Currently In Use,” shall remain subject to the terms and conditions of such agreements.

Section 3.2. Meter Specifications, Sealing,  
Installation and Removal

All flow meters shall be tested for accuracy using recognized industry testing methods and certified by the manufacturer according to those standards. At any rate of flow within the normal flow limits, a newly installed flow



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meter shall register within plus or minus 2% of the actual water flow. All flow meters shall have a register reading in gallons per minute and a totalizer with sufficient capability to record at least the quantity of water pumped during one whole year. The totalizing dial face shall clearly indicate the units measured.

Within 30 days of installation of the flow meter, the operator shall report the water well and flow meter location by legal description and by well registration number, if known. The District may, at any time, verify the location and proper installation of flow meters.

All existing and new flow water meters must be readable and have the capacity to be sealed. The district staff may seal any and all flow meters on wells subject to those rules. No seal shall be removed without district approval.

The flow meter shall be installed in accordance with the manufacturer's instructions and in such a manner to assure full pipe flow at all times while groundwater is being pumped. Full pipe flow may be obtained by using butterfly valves or by raising the pipe after the meter to a point above the level of the flow meter.

The flow meter shall be placed in the line with at least 5 pipe diameters of straight pipe without valves, elbows, or other obstructions upstream and at least 1 pipe diameter of straight pipe without valves, elbows or other obstructions downstream. Where manufacturer's instructions are more stringent they shall govern. If these conditions cannot be obtained, straightening vanes shall be installed in the pipe ahead of the flow meter according to the manufacturer's instructions.

Flow meters must be kept clear of debris, vegetative growth or other material which would impede operation. Where flow meters are removed for servicing or replacement, records of meter reading shall be kept. Flow meters should be stored in such a manner to prevent damages by freezing and rodents.

It shall be unlawful under these rules for any person to willfully injure, alter, remove, reset, adjust, manipulate, obstruct, or in any manner interfere with or tamper with any flow meter on a well subject to these rules for the purpose of or with the intent to produce an incorrect, inaccurate or misleading measurement, without district consent, or to cause, procure, or direct any other person to do so.

### Section 3.3. Operational Accuracy

To be considered acceptable for purposes of these rules, and in addition to meter and installation specifications elsewhere in these rules, each flow meter or other permitted measuring device must continue to measure water flow within a range of plus or minus 5% of the actual water flow from the well. If the groundwater user or the district determines that such accuracy is no longer within the acceptable range, the water flow meter or other permitted measuring device shall be repaired or replaced or other necessary adjustments shall be made in the system to assure that accurate water use information can be obtained. Unless an extension is granted by the Board for good cause shown, such replacement, repair, or adjustment shall be made within 30 days of such determination by the groundwater user or the district. In the

interim, any groundwater use shall be measured by a method approved by the board.

Section 3.4. District Flow Meter Inspection/  
Flow Rate Evaluations

The district may at any time conduct an inspection of the flow meter and installation or perform a flow rate evaluation using the district's calibrated flow meter, ultrasonic flow meter, or other flow measuring device approved for use by the board. Such inspections and evaluations shall be randomly conducted by the district. The district's goal shall be to annually check 25% of the flow meters and other permitted measuring devices subject to these rules. The groundwater user shall be notified in advance of the district's intention to conduct such inspection or evaluation and such user may be present if he or she so desires at such inspection or evaluation. The results of any such inspection or evaluation shall be provided to the groundwater user within 10 days if he or she is not present when the inspection or evaluation is conducted.

If the district determines after a flow meter and installation inspection that the flow meter or its installation do not meet the specifications in these rules, the groundwater user shall take the necessary corrective steps within 30 days. In the interim, any groundwater use shall be measured by a method approved by the board.

If a flow rate evaluation by the district indicates that the flow meter or other permitted measuring device is no longer accurate within a range of plus or minus 5% of the actual water flow, the groundwater user may arrange for an independent evaluation to be conducted with a

calibrated flow meter, ultrasonic flow meter, or other measuring device acceptable to the board. Such independent evaluation must be made within the time permitted by Section 6 of these rules for repair or replacement of inaccurate meters or other permitted measuring devices. If such independent evaluation is conducted in accordance with standards established by the board, and if it indicates that the flow meter or other permitted measuring device is measuring water flow within the acceptable range, the board will accept such independent evaluation and authorize the continued use of the water flow meter or other permitted measuring device without repair, adjustment, or replacement.

Section 3.5. Notice of Replacement

The groundwater user of a water well which is required to be metered will notify the District within 10 days of the installation [sic] a replacement meter.

Section 3.6. Accessibility

All meters must be accessible for inspection and may be inspected at any reasonable time by a District representative.

Section 3.7. Annual Meter Reporting

Each groundwater user shall report the water withdrawn each year from each well subject to these rules. For wells with flow meters, such reports shall provide the meter reading at the beginning of the calendar year or the date when the flow meter was installed, whichever date is

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later, and the flow meter reading at the end of the calendar year. If a flow meter was changed, reset or otherwise altered during the year, the report shall include sufficient information for the district to determine the water used for that year. All such reports shall be on forms provided by the district. Unless (1) earlier reporting is required because of the use of cost share assistance or (2) the well is constructed after the applicable date in the schedule in Section 3.1 of these rules, all such reports shall be filed by the date specified below and by January 15 of each year thereafter.

For Alluvial Wells Except Category 2 Alluvial Wells For Which An Alternative Water Use-Measuring Device Was Approved by the Board Under Previous NRD Rules:

- January 15, 2000 Wells located in government survey sections 1 through 12
- January 15, 2001 Wells located in government survey sections 13 through 24
- January 15, 2002 Wells located in government survey sections 25 through 36

For Non-Alluvial Wells and for Category 2 Alluvial Wells For Which An Alternative Water Use-Measuring Device Was Approved by the Board Under Previous NRD Rules:

- January 15, 2004 Wells located in government survey sections 1 through 12
- January 15, 2005 Wells located in government survey sections 13 through 24
- January 15, 2006 Wells located in government survey sections 25 through 36

For a well constructed after the applicable date in the schedule in Section 3.1 of these rules, the water use report

is due by January 15 of the first year following the first use of the well and by January 15 of each year thereafter.

A groundwater user who fails to report water use as required by this section or who falsely reports such information shall be subject to enforcement actions authorized by statute and by these rules and regulations.

#### Section 4. Variances For Well Meters

The Board may grant variances from the strict application of these rules upon (1) a showing of good and sufficient cause; (2) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and (3) a determination that the granting of the variance will not result in a conflict with other applicable laws, rules, or regulations.

#### Section 5. Temporary Suspension of Drilling New Wells

In July of 1996, the Board requested the Nebraska Department of Water Resources to conduct studies and hold a hearing on the preparation of a joint action plan for the integrated management of hydrologically connected groundwater and surface water. In June of 1999, the Board requested the Nebraska Department of Water Resources to suspend the studies and process begun in 1996. In October of 2002, the Board requested the Nebraska Department of Natural Resources (the successor agency to the Nebraska Department of Water Resources) to resume the studies and process begun in 1996.

Effective December 9, 2002, there is a temporary suspension of the drilling of new wells within the entire Lower Republican NRD, except for those areas lying east

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of a line proceeding north from the Nebraska-Kansas state line and following the western edge of Webster County, Township 1, Range 9, Sections 34, 27, 22, 15, 10, 3, through Webster County, Township 2, Range 9, Sections 34, 27, 22; then proceeding west along the southern edge of Webster County, Township 2, Range 9, Sections 16, 17, 18; then proceeding north following the western edge of Webster County, Township 2, Range 9, Sections 18, 7, 6, through Webster County, Township 3, Range 9, Sections 31, 30, 19, 18, 7, 6 to its intersection with the northern boundary of Webster County.

Wells not subject to the temporary suspension of drilling shall include (1) test holes; (2) Dewatering wells with an intended use of less than ninety days; (3) Water wells designed and constructed to pump fifty gpm or less; and (4) Water wells to be used as replacement wells. The temporary suspension of drilling shall remain in effect until November 30, 2005 unless rescinded.

#### Section 6. Variances for Drilling New Wells

The Board may grant variances from the strict application of these rules and regulations if it determines that construction of a new well is necessary to alleviate an emergency situation involving the provision of water for human consumption or upon other good cause shown. All requests for variances shall be made on forms provided by the district and will be acted upon after a public hearing before the Board.

#### Section 7. Enforcement of Rules

These rules and regulations may be enforced through issuance of cease and desist orders by the Board.

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Violations of a cease and desist orders [sic] issued by a district are also classified as Class IV misdemeanors by § 46-656.10.

Section 8. Effective Date

These rules and regulations shall be effective commencing on December 9, 2002 and shall remain in full force and effective until repealed, amended, or superseded.

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**APPENDIX F****Nebraska Calculation of Historic Consumptive Use**

The natural resources districts have adequate authority in current law to adopt and enforce historic consumptive use limitations for replacement wells and for wells receiving transfers of rights to use. A specific Natural Resource District's authority for imposing those limitations depends upon where that natural resources district is in its regulatory process. As long as the temporary suspension authorized by Section 46-656.28(16), R.R.S. 1998, as amended by Sec. 4 of LB 458, 97th Nebraska Legislature, Second Session (2002) remains in effect in the Lower Republican Natural Resources District or the Middle Republican Natural Resources District, the authority for such limitations is through the District's ability to define "replacement wells". The authority of the district to define such wells for purposes of the temporary moratorium can be utilized to impose the historic consumptive use limitation on both replacement wells and transfers of rights to use. A definition similar to the following will be proposed for adoption by the two districts operating under the temporary suspension:

Replacement well shall mean a water well which (a) replaces a previously abandoned water well within one year of the last operation of the abandoned water well or replaces a water well that will not be used after construction of the new water well and the original water well will be decommissioned within one year of construction of the new water well; and (b) would not be used in such a way as to result in the consumption of more water than was historically consumed by the water well being replaced.

For purposes of comparing the consumptive use of a proposed new water well for irrigation with the historic consumptive use of an irrigation water well to be replaced, the new water well shall be considered a replacement water well only if the number of acres to be irrigated by that new water well does not exceed the number of acres historically irrigated by the water well being replaced. If either the water well being replaced is or was used for any purpose other than irrigation or the proposed replacement water well is to be used for any purpose other than irrigation, the person proposing to construct the proposed replacement well shall provide the district with such information as the district determines necessary to compare the historic consumptive use of the water well being replaced with the anticipated consumptive use of the proposed replacement water well. If construction of the proposed replacement water well is approved by the district, it may impose such conditions on the construction and/or operation of that well as it deems necessary to prevent any increase in consumptive use because of the construction and/or operation of the replacement water well.

The districts which have a permanent moratorium may limit replacement and transfer wells pursuant to subsection (k) of Section 46-656.25, R.S.Supp., 2001. That subsection authorizes not only a moratorium but also allows a district to "condition the issuance of additional permits on compliance with other rules and regulations . . . to achieve the purpose or purposes for which the management area was designated." Subsequent permits may be conditioned upon the retirement of an existing well and on the further condition that the replacement or transfer well's consumptive use not exceed the consumptive use of the well being replaced. That could be accomplished by creating an

exception to the moratorium and by combining that exception with a definition like the one proposed above.

Finally, to implement the requirement that transfers not be allowed from water uses that deplete streamflows below Swanson Reservoir to water uses that would deplete streamflows above Swanson Reservoir, the Middle Republican Natural Resources District will need to include additional provisions in its rule or rules to prevent such “downstream” to “upstream” replacements and/or transfers.

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