

Lower Elkhorn Natural Resources District

Groundwater Management Area Rules and Regulations for the Enforcement of the
Nebraska Groundwater Management and Protection Act

Effective August 24, 2019

AMENDMENTS TO THE RULES AND REGULATIONS

**FOR THE ENFORCEMENT OF THE NEBRASKA GROUND WATER MANAGEMENT AND
PROTECTION ACT IN THE LOWER ELKHORN NATURAL RESOURCES DISTRICT**

GENERAL PROVISIONS AND PROCEDURES FOR ENFORCEMENT

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Rule 1. GENERAL

1.1. The District shall enforce the provisions of the Nebraska Ground Water Management and Protection Act, and all Rules and Regulations adopted pursuant thereto. At its discretion, the District may address violations by the issuance of cease and desist orders in accordance with Neb. Rev. Stat. § 46-707, as amended, through appropriate actions in the District Court of the County in which any violations occur, or with penalties imposed through the controls adopted by the District. In addition, any person who violates a cease and desist order shall be subject to a civil penalty in accordance with Neb. Rev. Stat. §§ 46-745 and 46-746.

1.2. The District may issue a cease and desist order under Neb. Rev. Stat. § 46-707 to enforce any of the provisions of the Nebraska Ground Water Management and Protection Act or the Rules and Regulations adopted pursuant thereto. The General Manager may initiate the enforcement through issuance of the notice required under Neb. Rev. Stat. § 46-707.

1.2.1. In addition, cease and desist orders may be issued for the following:

1.2.1.1. Construction or operation of an Illegal Water Well as defined in Rule 2 of these Rules and Regulations.

1.2.1.2. Failure to properly install and maintain a Flow Meter, submit reports and certifications, and report Groundwater use as required by these Rules and Regulations.

1.2.1.3. New irrigated acre development without an approved variance as required by these Rules and Regulations.

1.2.1.4. Failure to comply with the conditions of an approved variance.

1.2.1.5. Using farming techniques, including the growing of crops, in a designated subarea in violation of the required best management practices, or these Rules and Regulations, all as adopted and ordered by the Board of Directors.

1.2.1.6. Using farming techniques, including the growing of crops, in a designated subarea without the appropriate certification of completion of the educational programs required by the Board of Directors.

1.2.1.7. Failure to submit such reports or forms as may be required by the Board of Directors as part of the District's Groundwater Management Program.

1.2.1.8. Any other action which is in violation of these Rules and Regulations.

1.3. Additional Penalties. In addition to or in lieu of the authority in Sections 1.1 and 1.2, and notwithstanding any other provision of these Rules and Regulations, the District may impose a penalty, in addition to the issuance of a cease and desist order as authorized under Neb. Rev. Stat. § 46-707, on any person who is cited for violation of these Rules and Regulations. Additional penalties may include, but are not limited to the following:

1.3.1. Temporary suspension of authorization to use wells for irrigation purposes for land associated with the violation;

1.3.2. Permanent revocation or reduction in the certification status of irrigated acres for the land associated with the violation;

1.3.3. Revocation of variances granted to expand irrigated acres;

1.3.4. Cancellation of an approved permit to construct a high-capacity well;

1.3.5. Cancellation of approved conservation cost-share contracts;

1.3.6. Reduction or cancellation of groundwater allocation;

1.3.7. Other penalties deemed suitable by the Board.

1.4. Notwithstanding all other limitations, the period of suspension for any of the penalties listed in Sections 1.3.1 through 1.3.7 shall be not less than one year for a first violation. The period of suspension shall be not less than two years for a second violation that occurs within the preceding four years.

1.4.1 Violation of cease and desist order. Pursuant to Neb. Rev. Stat. § 46-745, any person who violates a cease and desist order issued by a district pursuant to Neb. Rev. Stat. § 46-707 shall be subject to a civil penalty of not less than one thousand dollars and not more than five thousand dollars for each day an intentional violation occurs. In assessing the amount of the civil penalty, the court shall consider the degree and extent of the violation, the size of the operation, whether the violator has been previously convicted or subjected to a civil penalty under this section, and any economic benefit derived from noncompliance. Any civil penalty assessed and unpaid shall constitute a debt to the state which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The court shall, within thirty days after receipt, remit the civil penalty to the State Treasurer for credit to the permanent school fund.

1.5. Penalties for Violations in a Quantity Subarea. In addition to or in lieu of the authority in Sections 1.1 and 1.2, and notwithstanding any other provision of these Rules and Regulations, the District may impose a penalty on any person who violates any control required or any Variance granted under Rule 17. Such penalties include, but are not limited to, a reduction (in whole or in part) in any Allocation of Groundwater applicable to the person, or additional educational requirements for the person.

1.5.1. The General Manager shall initiate enforcement by sending a notice to the person by Certified Mail. The person shall have 10 days from receiving the notice to request a hearing in writing to the District. If requested, the Board shall hold a hearing. Following the hearing, or if no hearing is requested, the Board shall determine the appropriate penalty under the circumstances.

1.5.2. For persons subject to an allocation without any history of violations of the Rules and Regulations, the penalty for exceeding an allocation shall include an allocation reduction for two years. The annual reduction shall be calculated using the formula in Section 1.5.4. For purposes of this section, the base allocation reduction shall be two acre-inches.

1.5.3. For persons subject to an allocation with a history of any violation of the Rules and Regulations, the penalty for exceeding an allocation shall include an allocation reduction for three years. The annual reduction shall be calculated using the formula in Section 1.5.4. For purposes of this section, the base allocation reduction shall be four acre-inches.

1.5.4. The formula for calculating an allocation reduction is: (Base Allocation Reduction) + (Aggravating Factors) – (Discount for Cooperation). The Board shall determine the Aggravating Factors figure on a case-by-case basis, utilizing those factors identified in Section 1.5.5. The Aggravating Factors figure shall not exceed double the exceedance volume for penalties under Section 1.5.2 or triple the exceedance volume for penalties under Section 1.5.3. The Board may grant a discount from the allocation reduction of up to twenty-five percent for cooperation by the person subject to a penalty.

1.5.5. The District shall consider the following Aggravating Factors when considering the appropriate penalties: (1) repeat violations; (2) the number or length of violations; (3) impacts to other Groundwater Users; (4) whether the person engaged in willful or wanton misconduct; (5) if the violation is an exceedance of an allocation, the extent and nature of the exceedance; and (6) such other factors the District finds relevant under the circumstances.

1.6. In adopting, amending or repealing any control authorized by these Rules and Regulations, the District's considerations shall include, but not be limited to, whether it reasonably appears that such action will mitigate or eliminate the condition which led to designation of a management area or will improve the administration of the area.

1.7. Inspections. To assist in carrying out these Rules and Regulations, the District shall have the right to make any necessary inspections and other actions allowed under Neb. Rev. Stat. § 2-3232, R.R.S. 1943, as amended, together with any other authorized actions at law or equity.

1.8. Amendments. More detailed rules than those contained herein may be proposed, heard as required by law and adopted by the District Board of Directors before regulatory requirements not set forth herein are imposed.

1.9. Compliance with other laws. Nothing in these Rules and Regulations shall relieve any person of his or her duty to comply with local, state, or federal laws or regulations.

Rule 2. DEFINITIONS

2.1. Definitions. As used in these Rules and Regulations of the Lower Elkhorn Natural Resources District for administration of the Nebraska Ground Water Management and Protection Act:

2.1.1. Abandoned Water Well means any Water Well (1) the use of which has been accomplished or permanently discontinued, (2) which has been decommissioned as described in the Rules and Regulations of the Department of Health and Human Services Regulation and Licensure, and (3) for which the notice of abandonment required by subsection (2) of Neb. Rev. Stat. § 46-602 has been filed with the Department of Natural Resources by the licensed water Well contractor or pump installation contractor who decommissioned the Water Well or by the Water Well owner if the owner decommissioned his or her own sand point Water Well.

2.1.2. Acre Foot (AF) means the amount of water necessary to cover once acre of land, one foot deep;

2.1.3. Act shall mean the Nebraska Ground Water Management and Protection Act, Neb. Rev. Stat. §§ 46-701 to 46-753 (Reissue 2004).

2.1.4. Active Status Water Well means any legal Water Well that is properly registered with the Department of Natural Resources as an active status well.

2.1.5. Acre-inch means the amount of water necessary to cover an acre of land one inch deep (approximately 27,154 gallons). Neb. Rev. Stat. § 46-706(11).

2.1.6. Alleged Violator means any person against which a complaint has been filed in accordance with Rule 5.

2.1.7. Allocation, as it relates to water use for irrigation purposes, means the allotment of a specified total number of acre-inches of irrigation water per irrigated acre per year or an average number of acre-inches of irrigation water per irrigated acre over any reasonable period of time. [Neb. Rev. Stat. § 46-706(15)]

2.1.8. Allocation Subarea means any Subarea established by the District under Rule 17 of these Rules that is subject to an Allocation of groundwater withdrawal for agricultural use for irrigation purposes.

2.1.9. Basin-Wide Plan means the seven Natural Resource Districts in the Lower Platte Basin and the Nebraska Department of Natural Resources (the Coalition) who have signed an interlocal agreement to adopt, implement, and maintain a Basin-wide Water Management Plan (Plan). The Plan focuses on water use policies and practices that contribute to the protection of existing surface water and groundwater uses while allowing for future water development. The Agreement is also intended to provide the flexibility for NRD's in the basin to work cooperatively in ways they would not be able to individually. These water use policies and practices are implemented through incorporation into individual NRD Integrated Management Plans with the Nebraska Department of Natural Resources. The agreement was approved in January of 2018 and continues for five years, at which time the policies and practices will be reviewed and reauthorized in five-year increments.

2.1.10. Beneficial Use means that use by which water may be put to use to the benefit of humans or other species. [Neb. Rev. Stat. § 46-706(19)]

2.1.11. Best Management Practices means schedules of activities, maintenance procedures, and other management practices utilized for purposes of irrigation efficiency, to conserve or achieve a savings of Groundwater, or to prevent or reduce present and future contamination of Groundwater. Best management practices relating to contamination of Groundwater may include, but not be limited to, irrigation scheduling, proper rate and timing of fertilizer application, and other fertilizer and pesticide management programs. In determining the rate of fertilizer application, the district shall consult with the University of Nebraska or a certified crop advisor certified by the American Society of Agronomy. [Neb. Rev. Stat. § 46-706(13)]

2.1.12. Board means the Board of Directors of the Lower Elkhorn Natural Resources District and its employees and agents acting at the direction of the Board of Directors.

2.1.13. Certification means a current certificate of completion issued by the District to the operator for completion of the necessary educational programs outlined by the District.

2.1.14. Certificate of Completion means written evidence or documentation that shows attendance and completion of a continuing education program.

2.1.15. Certified Irrigated Acres means any acre that is certified as such pursuant to Rule 14.

2.1.16. Combined Wells are Wells that are commingled, combined, clustered, or joined with any other Water Well or Wells or other water source, other than a water source used to water range livestock. Such Wells shall be considered one Water Well and the combined capacity shall be used as the rated capacity. [Neb. Rev. Stat. § 46-735(1c)]

2.1.17. Commercial/Industrial Water Well means any legal Water Well properly registered as a commercial or industrial well with the Nebraska Department of Natural Resources.

2.1.18. Community Water System means a Public Water Supply System that (a) serves at least 15 service connections used by year-round residents of the area served by the system or (b) regularly serves at least 25 year-round residents. They include such entities as mobile home parks, rural water districts, sanitary improvement districts, and municipalities. [179 NAC Chapter 22 (NDHHS)]

2.1.19. Complainant means any person who files a complaint alleging a violation of these Rules and Regulations in accordance with Rule 5.

2.1.20. Compliance Officer means an employee, agent, or director of the District authorized to perform the functions assigned thereto by these Rules and Regulations.

2.1.21. Consumptive Use means the amount of water that is consumed under appropriate and reasonable efficient practices to accomplish, without waste, the purposes of which the appropriation or other legally permitted use is lawfully made;

2.1.22. Contamination or Contamination of Groundwater means nitrate-nitrogen or other material which enters the Groundwater due to action of any person and causes degradation of the quality of Groundwater sufficient to make such Groundwater unsuitable for present or reasonably foreseeable beneficial uses. [Neb. Rev. Stat. § 46-706(3)]

2.1.23. Continuing Education means that education required as a condition of certification under these Rules and Regulations for the maintenance of skills necessary for the protection of Groundwater and for keeping informed about these Rules and Regulations, (See Rule 12).

2.1.24. Continuing Education Program or Program means a formal offering of approved instruction or information to certificate holders for the purpose of staying informed about these Rules and Regulations, and maintaining skills necessary to the protection of Groundwater. Such programs may be offered under such names as “field day”, “demonstration”, “school”, “clinic”, “forum”, “lecture”, “course of study”, “seminar”, “workshop”, “conference”, “convention”, “short course”, or “home study course” (See Rule 12).

2.1.25. Department means the Nebraska Department of Natural Resources.

2.1.26. Dewatering Well means a Well constructed and used solely for the purpose of lowering the Groundwater table elevation. [Neb. Rev. Stat. § 46-706(21)]

2.1.27. District means the Lower Elkhorn Natural Resources District.

2.1.28. Educational Programs means information and educational training sessions designed to acquaint landowners and operators with best management practices in the operation of their irrigation and cropping systems.

2.1.29. Flow Meter means a device, approved by the District for use under these Rules and Regulations, which when properly installed and maintained, accurately measures the volume of Groundwater withdrawn from a Water Well or Wells.

2.1.30. Flow Meter Technician means a Person that is certified as described in Rule 11 to install and/or maintain Flow Meters within the District. A Person may be certified as a Flow Meter Installation Technician and/or a Flow Meter Maintenance Technician, and the term Flow Meter Technician is a generic term referring to either certification.

2.1.31. Groundwater means that water which occurs in or moves, seeps, filters, or percolates through ground under the surface of the land. Such “Groundwater” may also be referred to as “Ground Water” in these Rules and Regulations, and, wherever the same may appear, the definition shall be the same, notwithstanding the difference in the spelling of the same, whether it be one word or two. [Neb. Rev. Stat. § 46-706(2)]

2.1.32. Groundwater Reservoir Life Goal means the finite or infinite period of time which this district establishes as its goal for maintenance of the supply and quality of water in a groundwater reservoir at the time a groundwater management plan is adopted. The Lower Elkhorn NRD’s reservoir life goal is to provide an adequate supply of acceptable quality Groundwater to forever fulfill the reasonable Groundwater demands within the District for domestic, municipal, agricultural, industrial, wildlife and other uses deemed beneficial by the District's Board of Directors. [Neb. Rev. Stat. § 46-706(9)] [District Groundwater Management Plan, 2016]

2.1.33. Groundwater User means a Person who at any time extracts, withdraws, or confines Groundwater for any use by himself or herself or allows such extraction and use by other persons. Whenever the landowner and operator are different persons, the term “Groundwater User” shall mean both the landowner and the operator. For any Public Water System in the District, the term “Groundwater User” shall mean the both the owner and the operator of such Public Water System.

2.1.34. Historically Irrigated Acres means any acre of land watered for the purposes of agricultural irrigation purposes from a legal Well or a Nebraska Department of Natural Resources permitted surface water source that:

2.1.34.1. Was classified as irrigated land for any one year between January 1, 1999 and December 31, 2008 by the local County Assessor; or

2.1.34.2. Is currently enrolled in a federal, state, or local conservation program and was classified as irrigated land by the local County Assessor within one year prior to being enrolled in such program; and

2.1.34.3. For acres irrigated with surface water, the acres must also have a valid associated appropriation from the Department for beneficial use under Neb. Rev. Stat. § 46-229.

2.1.35. Hour of Continuing Education means one (1) hour or sixty (60) minutes of approved credit toward the requirements of the Rules and Regulations (See Rule 12).

2.1.36. Hydrologically Connected Area means the area delineated by the Department pursuant to Neb. Rev. Stat. § 46-713(1)(a)(ii). As used herein, Hydrologically Connected Area refers only to that area delineated by the Department within the District, unless specifically stated otherwise. The legal description of the Hydrologically Connected Area is on file at the District Office.

2.1.37. Illegal Water Well means:

2.1.37.1. Any Water Well operated or constructed without or in violation of a permit required by the Act, and/or.

2.1.37.2. Any Water Well not in compliance with Rules and Regulations adopted and promulgated pursuant to the Act.

2.1.38. Inactive Status Water Well means any legal Water Well that is properly registered with the Department of Natural Resources as an inactive status well.

2.1.39. Inspector means an employee, agent, or director of the District authorized to perform the functions assigned thereto by these Rules and Regulations.

2.1.40. Irrigated Acres means any acre that is certified as such pursuant to Rules and Regulations of the District and that is actually capable of being supplied with water through irrigation works, mechanisms, or facilities.

2.1.41. Irrigation Pit means any excavation made for any purpose if Groundwater flows into the excavation under natural pressure and a pump or other device is placed in the excavation for the purpose of withdrawing water from the excavation for irrigation. For such excavations, construction means placing a pump or other device into the excavation for the

purpose of withdrawing water for irrigation, and the legal location of the Well is the location of the pump itself. [Neb. Rev. Stat. § 46-601.01(1)]

2.1.42. Irrigation Well means any legal Water Well properly registered as an irrigation well with the Nebraska Department of Natural Resources.

2.1.43. Landowner means any person or entity with legal title to the land. An authorized representative may be substituted for the Landowner with a properly executed and notarized durable power of attorney.

2.1.44. Legume means a field crop, such as soybeans or alfalfa, which belong to the botanical family Fabaceae.

2.1.45. Livestock Well means any legal Water Well properly registered as a livestock well with the Nebraska Department of Natural Resources.

2.1.46. Management Area means all areas within the Lower Elkhorn Natural Resources District as designated by the District pursuant to Neb. Rev. Stat. §§ 46-712 or 46-718, any area designated by the Director of Environmental Quality pursuant to Neb. Rev. Stat. § 46-725, or any area designated by the Interrelated Water Review Board pursuant to Neb. Rev. Stat. § 46-719. Management area includes a control area or a special groundwater quality protection area designated prior to July 19, 1996. [Neb. Rev. Stat. § 46-706(7)]

2.1.47. Management Plan means a groundwater management plan developed by a District and submitted to the Director of the Department for review pursuant to Neb. Rev. Stat. § 46-711. [Neb. Rev. Stat. § 46-706(8)]

2.1.48. Nebraska Department of Health and Human Services means the Nebraska Department of Health and Human Services, which may be abbreviated NDHHS in these Rules.

2.1.49. Nebraska Ground Water Management and Protection Act means Neb. Rev. Stat. §§ 46-701 through 46-753.

2.1.50. New Groundwater Depletion means a new use of groundwater that causes a long-term decrease in the available supply of groundwater for beneficial uses;

2.1.51. New Groundwater Irrigated Acre means any Groundwater irrigated acre that does not qualify as a Historically Irrigated Acre. However, New Groundwater Irrigated Acre shall not include any acre that is mitigated with an Offset approved by the District or any acre approved by the Board under Neb. Rev. Stat. § 46-714(3)(j).

2.1.52. Nitrogen Fertilizer means a chemical compound in which the percentage of nitrogen is greater than the percentage of any other nutrient in the compound and, when applied, results in an average application rate of more than twenty-five (25) pounds of nitrogen per acre over the field to which it is being applied.

2.1.53. Offset means any water that is used to compensate for the new depletion caused by the irrigation of acres other than Historically Irrigated Acres.

2.1.54. Operator means that person who has the most direct control over the day-to-day farming operations of the land concerned.

2.1.55. Order, except as otherwise specifically provided, means any order required by the Nebraska Ground Water Management and Protection Act, by rule or regulation,

or by a decision adopted by a district by vote of the board of directors of the district taken at any regularly scheduled or specially scheduled meeting of the board. [Neb. Rev. Stat. § 46-706(26)]

2.1.56. Original Water Well means the first Well in a series of one or more Replacement Wells that was registered with the State of Nebraska and was issued the registration number that each subsequent Replacement Well is also assigned. For further clarification, please refer to the definition of “Replacement Well” below.

2.1.57. Orphaned Acre means any acre of land that has been certified by the District as an irrigated acre, but has been severed from the source of groundwater that was originally used to establish irrigated certification status;

2.1.58. Person means a natural person, partnership, limited liability company, association, corporation, municipality, irrigation district, and any agency or political subdivision of the state, or a department, agency or bureau of the United States. [Neb. Rev. Stat. § 46-706(1)]

2.1.59. Pit means any excavation made for any purpose if Groundwater flows into the excavation under natural pressure. A pit becomes a Water Well when a pump is installed in the pit in order to withdraw water from the pit to irrigate a land surface greater than two (2) acres. See also the definition of Water Well. [Neb. Rev. Stat. § 46-601.01(1)]

2.1.60. Point Source means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, channel, tunnel conduit, Well, discrete fissure, container, rolling stock, vessel, other floating craft, or other conveyance, over which the Department of Environmental Quality has regulatory authority and from which a substance which can cause or contribute to contamination of Groundwater is or may be discharged. [Neb. Rev. Stat. § 46 706(14)]

2.1.61. Public Water Supply Well means any legal Water Well properly registered with the Nebraska Department of Natural Resources as a public water supplier well, whether with or without spacing protection.

2.1.62. Public Water System means a system for providing the public with water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days per year, or as otherwise defined by the Nebraska Department of Health and Human Services. Public water system does not include a special irrigation district. A public water system is either a community water system or a non-community water system. [179 NAC Chapter 2 (NDHHS)]

2.1.63. Replacement Water Well means a Water Well which is constructed to provide water for the same purpose as the original Water Well and is operating in accordance with any applicable permit from the Department and any applicable rules and regulations of the District and, if the purpose is for irrigation, the replacement Water Well delivers water to the same tract of land served by the original Water Well, will not result in any increase in the number of irrigated acres, and:

2.1.63.1. Replaces a decommissioned Water Well within one hundred eighty (180) days after the decommissioning of the original Water Well,

2.1.63.2. Replaces a Water Well that has not been decommissioned but will not be used after construction of the new Water Well and the original Water Well will be decommissioned within one hundred eighty days (180) after such construction, except that in the case of a municipal Water Well, the original municipal Water Well may be used after construction of the new Water Well but shall be decommissioned within one year after completion of the replacement Water Well, or

2.1.63.3. The Original Water Well will continue to be used but will be modified and equipped within one hundred eighty days (180) after such construction of the replacement Water Well to pump fifty gallons per minute or less and will be used only for livestock, monitoring, observation, or any other nonconsumptive or de minimis use and approved by the applicable natural resources district. [Neb. Rev. Stat. § 46-602(2b)]

2.1.64. Rotation means a recurring series of use and non-use of Irrigation Wells on an hourly, daily, weekly, monthly, or yearly basis. [Neb. Rev. Stat. § 46-706(16)]

2.1.65. Soil Testing means the collection and laboratory analysis of soils for nutrient content. One soil sample for nitrate-nitrogen will consist of a composite of a minimum of six soil cores that represent an area no larger than 80 acres. Soil samples must be collected to a minimum depth of 24 inches, split in any combination of depth increments (for example, core depth increments of 0 to 8 inches and 8 to 24 inches).

2.1.66. Subarea means a geographical area within the management area, which is so designated by the Board and for which controls specific to that subarea have been adopted pursuant to these Rules and Regulations.

2.1.67. Subirrigation or Subirrigated Land means the natural occurrence of a Groundwater table within the root zone of agricultural vegetation, not exceeding ten feet below the surface of the ground. [Neb. Rev. Stat. § 46-706(12)]

2.1.68. Supplemental Well means any Water Well used to supplement irrigation of lands already irrigated, regardless of source of water, and the number of irrigated acres will not increase unless granted a Written Good Cause Variance.

2.1.69. Test Hole means a hole designed solely for the purposes of obtaining information on hydrologic or geologic conditions. [Neb. Rev. Stat. § 46-706(28)]

2.1.70. To Commence Construction of a Water Well means the beginning of the boring, drilling, jetting, digging, or excavating of the actual Water Well from which Groundwater is to be withdrawn. [Neb. Rev. Stat. § 46-706(6)]

2.1.71. Unsaturated zone, sometimes referred to as the vadose zone in technical literature, means the region of unsaturated sediments that are between an aquifer and the surface of the ground.

2.1.72. Voluntary Integrated Management Plan (V-IMP) means a joint water quantity management plan developed and implemented by the Department and the NRD. The purpose is to manage the river basin or sub-basin to achieve and sustain long-term balance between water uses and water supplies.

2.1.73. Water Well Permit means the written authorization for construction of a new Well or a Replacement Well, granted by the Board, with conditions specified by the Board

pursuant to these Rules and Regulations and any applicable State and Federal agencies, laws, rules or regulations.

2.1.74. Water Well or Well means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for Groundwater, monitoring Groundwater, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting fluid as defined in Neb. Rev. Stat. § 81-1502 into the underground water reservoir. The terms “Water Well” and “Well” are used in these Rules, and the definition for both terms is identical.

2.1.74.1. Water Well includes any excavation made for any purpose if Groundwater flows into the excavation under natural pressure and a pump or other device is placed in the excavation for the purpose of withdrawing water from the excavation for irrigation. For such excavations, construction means placing a pump or other device into the excavation for the purpose of withdrawing water for irrigation. Irrigation Well, Replacement Well, Supplemental Well, and Pit, as defined in Rule 2, are each a type of Water Well under this definition.

2.1.74.2. Water Well does not include (i) any excavation made for obtaining or prospecting for oil or natural gas or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission or (ii) any structure requiring a permit by the Department of Natural Resources used to exercise surface water appropriation. [Neb. Rev. Stat. § 46-601.01(1)].

2.1.75. Water Well Permit Condition means a requirement placed upon a well permit issued by the District for approval of construction and use of a water well;

2.1.76. Wellhead Protection Area means the surface and subsurface area surrounding a water well or well field, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field;

2.1.77. Written Good Cause Variance means a variance granted by the District under either Rule 13 or Rule 15.

Rule 3. WATER WELL PERMITS

3.1. Water Well Permit Required. Any person intending to construct a Water Well on land which he or she owns or controls in any manner at any location within the Lower Elkhorn Natural Resources District groundwater management area shall, before commencing construction, obtain a permit from the District, provided, however, that:

3.1.1. No permit shall be required for dewatering Wells or test holes with an intended use of ninety (90) days or less;

3.1.2. No permit shall be required for a Water Well which is designed and constructed to pump fifty (50) gallons per minute or less and which is not connected to another Well or Wells in such a way that all such Wells thus connected are designed or constructed to collectively pump fifty (50) gallons per minute or less; and

3.1.3. A permit need only be obtained once for Water Wells defined by the District to be combined Water Wells. The district may require a permit for a Water Well designed and constructed to pump fifty gallons per minute or less if such Water Well 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.

3.1.4. Application for such a permit shall be made before any Water Well for which a permit was not required under subsections 3.1.1 and 3.1.2 of this Rule 3 is modified into a Water Well for which such a permit is otherwise required by this rule.

3.1.5. Failure to obtain a Water Well Permit as required under this Rule 3 shall be a violation of these Rules and Regulations.

3.2. Application and Fee.

3.2.1. Application for a Water Well Permit shall be made on a form provided by the District. The General Manager is instructed to create and adopt forms as required for this process. The General Manager, if deemed appropriate in his sole discretion, is authorized to combine the application forms for this Rule 3 with any application forms required under Rules 13 or 15. Any form must be consistent with this Rule 3 and Neb. Rev. Stat. § 46-735, and require, at a minimum, the following information:

3.2.1.1. The name and post office address of the applicant(s), and, if the landowner is not the applicant, then the name and post office address of the landowner;

3.2.1.2. The nature of the proposed use;

3.2.1.3. The intended location of the proposed Water Well or other means of obtaining Groundwater;

3.2.1.4. The intended size, type, and description of the proposed Water Well and the estimated depth, if known;

3.2.1.5. The estimated pumping rate in gallons per minute;

3.2.1.6. The acreage and location by legal description of the land involved if the water is to be used for irrigation;

3.2.1.7. A description of the proposed use if other than for irrigation purposes;

3.2.1.8. The registration number of the Water Well being replaced if applicable; and

3.2.1.9. Such other information as the General Manager deems appropriate and necessary for purposes of evaluating a permit application under these Rules and Regulations.

3.2.2. The application fee for a Well construction permit is \$50.00 and shall be included with the application. If the applicant is also filing an application for a variance under Rules 13 or 15, the combined application fee shall remain \$50.00, subject to the late permit fee in Rule 3.3.

3.3. Late Permit. Any person who commences construction of a Well, which includes installing a pump in a pit for the purpose of irrigation, prior to obtaining the permit required by this Rule 3 shall apply for a “late permit” on forms provided by the District, and shall pay a filing fee of \$250.00 at the time of application. No refund of any application fees shall be made regardless of whether the permit is issued, canceled, or denied. [Neb. Rev. Stat § 46-736]

3.4. A permit provided for by this Rule 3, whether late or otherwise, will be granted unless the District finds:

3.4.1. The location or operation of the Water Well in question or other work would conflict with any applicable law or any regulation or control adopted by the District;

3.4.2. The proposed use would not be a beneficial use of water;

3.4.3. In the case of a late permit only, that the applicant did not act in good faith in failing to obtain a permit prior to commencing construction of the Water Well,

3.4.4. Inability of the applicant to meet the conditions of the permit or related variance, or

3.4.5. Limitations to or restrictions of the District’s authority or ability to issue Water Well Permits pursuant to local, state, or federal laws or regulations.

3.5. If the District finds that an application is incomplete or defective, it shall return the application for any necessary corrections. If such corrections are not made within sixty (60) days, the application shall be canceled.

3.6. All permits shall be issued (with or without conditions attached) or denied not later than thirty (30) days after receipt by the District of a complete and properly prepared application.

3.7. A permit issued shall specify all conditions, regulations and controls adopted by the District relevant to the construction or utilization of the proposed Water Well.

3.8. No refund of any filing fees shall be made regardless of whether the permit is issued, canceled or denied.

3.9. The transfer of any Water Well Permit issued under this Rule 3 shall not be allowed from one person to another person.

3.10. The District shall transmit one copy of each permit issued to the Director of the Department.

3.11. The issuance by the District of a permit shall not vest in any person the right to violate any District rule, regulation or control, whether in effect on the date of issuance of the permit or adopted thereafter.

3.12. When any Water Well Permit is approved, the applicant shall commence construction of the Water Well as soon as possible after the date of permit approval and shall complete such construction and equip the Water Well prior to the date specified in the conditions of approval, which date shall be not more than one (1) year after the date of approval, unless the permit specifies a longer time period for completion. Such additional time will be granted by the District only if it is clearly demonstrated in the application that one year is an insufficient period of time for such construction. If the applicant fails to complete the project under the terms of the permit, the permit shall be cancelled.

3.13. Obtaining a permit pursuant to this Rule 3 shall not relieve any person of his or her duty to register a Well with the Nebraska Department of Natural Resources, pursuant to Nebraska law. [Neb. Rev. Stat. §§ 46-735 through 46-7

Rule 4. CONTROLS

4.1. Regulation. The District following a hearing held in accordance with Neb. Rev. Stat. § 46-712 may adopt Rules and Regulations governing the use of water in a management area or subarea by any of the following means, whether relating to management of the use of water, Groundwater quality or otherwise. The District may by order adopt one or more of the following controls for the management area:

4.1.1. It may allocate the amount of Groundwater that may be withdrawn by Groundwater Users;

4.1.2. It may adopt a system of rotation for use of Groundwater;

4.1.3. It may adopt Well-spacing requirements more restrictive than those found in Neb. Rev. Stat. § 46-609 and 46-651;

4.1.4. It may require the installation of devices for measuring Groundwater withdrawals from Water Wells;

4.1.5. It may adopt a system which requires reduction of irrigated acres pursuant to subsection (2) of Neb. Rev. Stat. § 46-740;

4.1.6. It may limit or prevent the expansion of irrigated acres or otherwise limit or prevent increases in the consumptive use of Groundwater withdrawals from Water Wells used for irrigation or other beneficial purposes;

4.1.7. It may require the use of best management practices;

4.1.8. It may require the analysis of water or deep soils for fertilizer and chemical content;

4.1.9. It may impose mandatory educational requirements designed to protect water quality or to stabilize or reduce the incidence of Groundwater depletion, conflicts between Groundwater Users and surface water appropriators, disputes over interstate compacts or decrees, or difficulties fulfilling the provisions of other formal state contracts or agreements;

4.1.10. It may require water quality monitoring and reporting of results to the district for all Water Wells within all or part of the management area;

4.1.11. It may require district approval of:

4.1.11.1. Transfers of Groundwater off the land where the water is withdrawn; or

4.1.11.2. Transfers of rights to use Groundwater that result from allocations imposed by the District or from other restrictions on use that are imposed by the District in accordance with this section.

4.1.11.3. Such approval may be required whether the transfer is within the management area, from inside to outside the management area, or from outside to inside the management area, except that transfers for which permits have been obtained from the Department prior to July 16, 2004, or pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act shall not be subject to district approval pursuant to this subdivision. If the district adopts Rules and Regulations pursuant to this subdivision, such regulations shall

require that the district deny or condition the approval of any such transfer when and to the extent such action is necessary to:

4.1.11.4. Ensure the consistency of the transfer with the purpose or purposes for which the management area was designated;

4.1.11.5. Prevent adverse effects on other Groundwater Users or on surface water appropriators;

4.1.11.6. Prevent adverse effects on the state's ability to comply with an interstate compact or decree or to fulfill the provisions of any other formal state contract or agreement; and

4.1.11.7. Otherwise protect the public interest and prevent detriment to the public welfare;

4.1.12. It may require, when conditions so permit, that new or

4.1.13. Replacement Water Wells to be used for domestic or other purposes shall be constructed to such a depth that they are less likely to be affected by seasonal water level declines caused by other Water Wells in the same area;

4.1.14. It may close all or a portion of the management area to the issuance of additional permits or may condition the issuance of additional permits on compliance with other Rules and Regulations adopted and promulgated by the district to achieve the purpose or purposes for which the management area was designated; and

4.1.15. It may adopt and promulgate such other reasonable Rules and Regulations as are necessary to carry out the purpose for which a management area was designated. [Neb. Rev. Stat. §§ 46-712 and 46-739]

4.2. Nothing in these Rules and Regulations shall relieve any person of his or her duty to comply with local, state, or federal laws or regulations.

Rule 5. COMPLAINTS

5.1. Any person who owns land, leases land, or resides within the District; or any non-resident person who can show that the actions of any landowner or operator within the District directly affects him or her; or the Board on its own motion; or any employee or other agent of the Board so authorized, may file a written complaint. Said complaint shall be filed against a landowner or operator and shall provide the information on which a violation of these Rules and Regulations or other violations of laws governed by these Rules and Regulations is alleged.

5.2. Complaints shall be filed at the office of the District, 1508 Square Turn Boulevard, Norfolk, Nebraska, on complaint forms prepared by the District. Forms shall be made available at such office or other offices designated by the Board of Directors, from time to time. Irrigation run-off complaints shall be governed by the District's Administrative Policy Number 10.

Rule 6. INSPECTIONS

6.1. When a written complaint alleging a violation of these Rules and Regulations is filed with the District, the Compliance Officer shall determine whether, because of the nature of the violation alleged, an inspection is necessary to determine whether or not the landowner or operator is, at the time of inspection, or was, at the time complained of, in violation of these Rules and Regulations.

6.2. If the Compliance Officer determines that an inspection is required, the land where the alleged violation occurred shall be inspected by the Inspector within five (5) days after the complaint is filed (excluding Saturdays, Sundays, and legal holidays). The Inspector, upon proper identification and after informing the person in control of the land either in person or by certified mail, of the complaint and the Inspector's purpose, is authorized to enter upon the land if necessary for the purpose of making an inspection of the alleged violation.

6.3. Upon completion of the inspection, the Inspector shall file a report of his or her findings with the District Compliance Officer. The Compliance Officer shall review the complaint, the inspection report, if any, and other information available to the District and shall decide whether, in his or her opinion, there is a reasonable cause to believe that a violation has occurred or is occurring. Regardless of what the Compliance Officer concludes, the District shall deliver a copy of the complaint, any Inspector's report and the Compliance Officer's conclusions to the alleged violator and to the complainant, if other than the Compliance Officer or the Board, in person, or shall transmit the same by certified mail.

Rule 7. ALLEGED VIOLATOR'S ALTERNATIVES

7.1. When the Compliance Officer's findings are delivered in accordance with Rule 6, it shall be accompanied by a formal notice of the alternative actions available to the alleged violator and the complainant. If the Compliance Officer's findings are that reasonable cause exists for believing that a violation has occurred or is occurring, the alleged violator shall have the following alternative actions, all of which shall be outlined in such formal notice:

7.1.1. The alleged violator may agree with and accept as true and correct the Compliance Officer's findings and consent in writing to cease and desist from continuing or allowing the reoccurrence of such violation; or

7.1.2. The alleged violator may reject the Compliance Officer's findings and request in writing that a formal hearing be scheduled and conducted in accordance with the Rules and Regulations of the District.

7.1.3. If the Compliance Officer's findings are that reasonable cause does not exist for believing that a violation has occurred or is occurring, the complainant shall have the following alternative actions, all of which shall be outlined in such formal notice:

7.1.4. The complainant may accept the Compliance Officer's conclusions; or

7.1.5. The complainant may reject the Compliance Officer's findings and may request in writing that a formal hearing be scheduled and conducted in accordance with the Rules and Regulations of the District.

7.1.6. The alleged violator or complainant shall be granted not less than three (3) days (excluding Saturdays, Sundays, and legal holidays) from the date that said report and notice is provided to respond and to choose the alternative actions stated above.

Rule 8. BOARD ACTION SUBSEQUENT TO ALLEGED VIOLATOR OR COMPLAINANT REQUEST FOR HEARING

8.1. The Board shall hold a formal hearing in accordance with its Rules when requested by an alleged violator or a complainant. Notice of the hearing shall be delivered to the alleged violator and the complainant, in person or shall be transmitted to same by certified mail.

8.2. If, following a hearing, the Board determines that the landowner, operator, or Groundwater User has violated these Rules and Regulations, it shall adopt an order directing such violator to immediately cease and desist from all activities determined by the Board to be violations, specifying any actions deemed necessary and appropriate. Said order shall be transmitted to the violator in person or by certified mail. [Neb. Rev. Stat. § 46-745]

Rule 9. BOARD ACTION IF ALLEGED VIOLATOR FAILS TO RESPOND OR APPEAR

9.1. When an alleged violator has been notified as required by these Rules and Regulations, and such alleged violator has failed to respond as required by Rule 7 above, or when an alleged violator has been notified of Board action in accordance with Rule 8 above, and has failed to appear at any properly scheduled formal hearing, the Board shall:

9.1.1. Review the complaint, the Compliance Officer's report, any inspection report, and any other pertinent information; and

9.1.2. Reach such findings, and issue such order or orders in accordance with these Rules and Regulations as it deems appropriate based upon the information available.

Rule 10. BOARD AUTHORIZATION TO INITIATE COURT ACTION

10.1. The Board may initiate appropriate legal actions in the District Court of the County in which the violation has occurred whenever necessary to enforce any action or orders of the District in accordance with these Rules and Regulations.

Rule 11. FLOW METERS

11.1. Background. The Lower Elkhorn Natural Resources District Board of Directors recognizes that an adequate supply of Groundwater is one of its most vital resources, and that accurate Groundwater use information benefits the public and is a valuable tool for Groundwater management. Monitoring Groundwater withdrawals provides essential information to evaluate Well interference complaints, to understand the resilience of Groundwater to pumping stresses, and to advance the District's understanding and management of this publicly owned resource. Knowing the rate and volume of Groundwater pumped provides Well owners with information necessary to improve irrigation and pumping plant efficiencies, discover well and pump problems, and conserve Groundwater and energy resources. Therefore, the District finds that it is in the public interest to require Groundwater users to measure Groundwater withdrawals for Public Water Supply Wells used to supply Community Water Systems, Irrigation Wells, Commercial/Industrial Wells, and Livestock Wells as well as for other District-permitted Water Wells.

11.2. Purpose. The purpose of this Rule 11 is to:

11.2.1. Prohibit withdrawal of Groundwater without a properly installed and functioning Flow Meter for Water Wells described in this Rule 11.

11.2.2. Require Irrigation Wells designed to pump more than 50 (fifty) gallons per minute to be equipped with a properly installed and functioning Flow Meter by January 1, 2018 as described in this Rule 11;

11.2.3. Require Public Water Supply Wells used to supply any Community Water System, Commercial/Industrial Wells, and Livestock Wells, if such wells are designed to pump more than 50 (fifty) gallons per minute, to be equipped with a properly installed and functioning Flow Meter by January 1, 2019 as described in this Rule 11;

11.2.4. With the exception of Wells registered as Inactive Status Water Wells and certain Replacement Wells, require any other Water Well within the District with a District-approved Water Well Permit issued on or after July 29, 2007 to be equipped with a properly installed and functioning Flow Meter as a condition of the approved Water Well Permit and as described in this Rule 11;

11.2.5. Instruct the General Manager to develop a policy for Flow Meter installation and maintenance inspection requirements;

11.2.6. Authorize District staff and/or their representatives to perform inspections of Flow Meters required by Rule 11.

11.2.7. Require any Person wishing to install and/or maintain Flow Meters required under this Rule 11 to become certified by the District as a Flow Meter Installation or Flow Meter Maintenance Technician, and require the General Manager to establish and maintain a Flow Meter Installation and Maintenance Certification Program for such purpose;

11.2.8. Authorize the District to establish and maintain a list of approved Flow Meters;

11.2.9. Specify the minimum criteria that must be met in order for any model of Flow Meter to be eligible to be included on the District's Approved Flow Meter List;

11.2.10. Specify the minimum Flow Meter installation and maintenance requirements, and actions required by a Groundwater User when a Flow Meter malfunctions;

11.2.11. Instruct the General Manager to establish a Rule 11 Variance Process to address issues and situations that would otherwise be prohibited by this Rule 11; and,

11.2.12. Require Groundwater Users to report data from Flow Meters required by Rule 11.

11.3. Flow Meters Required on Water Wells and as a Condition of District-Approved Variances and Permits. Withdrawal of Groundwater shall be strictly prohibited without a properly installed and functioning District-approved Flow Meter for measuring withdrawals from all Water Wells identified in this Section 11.3.

Sections 11.3.1, 11.3.2 and 11.3.3 describe the situations under which the District requires Flow Meters on Water Wells. Exceptions to these requirements are listed under Section 11.3.4. Local, state or federal requirements for Flow Meters may differ from District requirements, however the District's requirements shall control when more restrictive.

11.3.1. Flow Meters Required on Irrigation Wells. All Irrigation Wells designed to pump more than 50 (fifty) gallons per minute within the boundaries of the District shall, by January 1, 2018, and prior to Groundwater withdrawal after January 1, 2018, be equipped with a Flow Meter that complies with this Rule 11;

11.3.2. Flow Meters Required for Public Water Supply, Commercial/Industrial, and Livestock Wells. Any Water Well within the District designed to pump more than 50 (fifty) gallons per minute and registered with the Department as either a Public Water Supply Well used to supply a Nebraska Department of Health and Human Services designated Community Water System, or a Commercial/Industrial Well, or a Livestock Well, shall be equipped by January 1, 2019 with a Flow Meter that complies with this Rule 11; and

11.3.3. Flow Meter Required for Wells Constructed Under a District-Approved Variance or Permit. Installation of a District-approved Flow Meter is Required for any Water Well constructed under a Water Well Permit issued by the District on or after July 29, 2007 (that is, the approval date of the Water Well Permit was on or after July 29, 2007), and any written good cause variance granted under Rule 13 or Rule 15 prior to Groundwater withdrawal.

11.3.4. Flow Meter Not Required for Inactive Status Water Well. Any Well described in Sections 11.3.1, 11.3.2 or 11.3.3, if registered as an "inactive" status Water Well, is not required to have a Flow Meter installed. Once the registration of such Well changes from "inactive" to "active" status, installation of a Flow Meter is required prior to using the Water Well for Groundwater withdrawals.

11.4. General Provisions.

11.4.1. Maintain Flow Meter Integrity. It shall be a violation of these Rules and Regulations for any Person to willfully or negligently damage, alter, remove, reset, adjust, manipulate, obstruct, or in any manner interfere with or tamper with any Flow Meter required under this Rule 11.

11.4.2. Sealing of Flow Meters. Flow Meters installed to comply with this Rule 11 may be sealed to the piping system by the District to prevent and reveal tampering. Such a seal may not be removed without prior written approval of the District.

11.4.3. District Policy for Flow Meter Installation and Maintenance Inspections. The General Manager shall develop a Policy for Flow Meter installation and maintenance inspections. The purpose for this Policy is to establish requirements and develop a plan for performing Flow Meter installation and maintenance inspections to support the requirements of Rule 11.

11.4.4. Flow Meter Inspection. Flow Meters installed to comply with this Rule 11 may be periodically inspected by District staff or their representative for proper installation, readings and operation. The District shall provide Groundwater Users with notification of this inspection pursuant either to Neb. Rev. Stat. § 2-3232, or the conditions of a District-approved permit, or other District Rules and Regulations. The District shall report the results of the inspection, including any corrections required for proper installation or operation of the Flow Meter, to the Groundwater User and to the appropriate Flow Meter Installation or Maintenance Technician.

11.5. Installation and Maintenance of Flow Meters by Certified Flow Meter Technicians Only. After February 22, 2016, installation of any Flow Meter required by this Rule 11 shall be performed only by a Certified Flow Meter Installation Technician, and, similarly, after February 22, 2016, maintenance of any Flow Meter required under Rule 11 shall only be performed by a Certified Flow Meter Maintenance Technician.

11.5.1. Certified Flow Meter Technicians. Any person wishing install and/or maintain Flow Meters required by Rule 11 must first be accredited by the District by completing the District's Flow Meter Technician installation and/or maintenance certification process.

11.5.2. Flow Meter Technician Certification Process. The General Manager is instructed to create and administer a policy for accrediting Flow Meter Installation and Flow Meter Maintenance Technicians. The purpose of this policy is to specify the process and requirements for becoming a certified Flow Meter Technician and retaining this status, to maintain a list of certified Flow Meter Technicians, and to identify reasons for revocation of certification.

11.5.3. Flow Meter Technician Responsible for Reporting Activities. Flow Meter Technicians are responsible for notifying the District of all installation and maintenance activities performed after February 22, 2016 as follows:

11.5.3.1. Report of Installation Activities. All Flow Meter Installation Technicians must provide the District with a report of any Flow Meter installation within 30 (thirty) days of completing such installation using a reporting method approved by General Manager.

11.5.3.2. Report of Maintenance Activities. All Flow Meter Maintenance Technicians must provide the District with a report of any maintenance performed on a Flow Meter within 30 (thirty) days of completing such maintenance using a reporting method approved by the General Manager.

11.6. List of Approved Flow Meters. The District shall maintain a list of Flow Meter brands and/or models that are approved for use in the District for the purposes of this Rule 11 that meet or exceed the Flow Meter specification requirements of Section 11.7. This list may be

viewed in the District office in Norfolk, Nebraska and on the District's website. This list may be updated periodically by the District.

11.7. Flow Meter Specification Requirements. Except for public water supply Wells regulated under the Nebraska Department of Health and Human Services Title 179, Chapter 22, any Flow Meter installed to comply with this Rule 11 and any Flow Meter in order to be eligible to be included on the District's list of approved meters as described in Section 11.6, must meet or exceed the minimum specifications listed in this Section.

11.7.1. Written Installation, Operation and Maintenance Procedures. The meter manufacturer must have detailed written instructions for the installation and operation of the Flow Meter and for the frequency and methods for maintaining the Flow Meter.

11.7.2. Accuracy. Flow Meters must be accurate to within plus-or-minus two percent ($\pm 2\%$) of the normal range of the Flow Meter reading when installed according to the manufacturer's instructions. The manufacturer shall furnish the District with a written description of the methods used to calibrate and verify the accuracy of each meter and a description of the methods' use of standards traceable to the National Institute of Standards and Technology.

11.7.3. Flow Meter Display. Flow Meters shall have a clearly readable indicator to record and display the total volume of Groundwater withdrawal whether or not the system is running. The totalizer shall clearly and visibly display any multiplier needed to convert the meter reading to the correct total volume of Groundwater withdrawal. Totalizers for Flow Meters installed on Irrigation Wells shall measure Groundwater withdrawals in units of acre-inches, and totalizers for Flow Meters installed on all other categories of Wells shall measure Groundwater withdrawals in units appropriate for that use. The totalizer shall be non-resettable and have a nonvolatile memory.

11.7.4. Totalizer Recording Capacity. Each Flow Meter totalizer shall have sufficient range to record the total volume of water expected to be withdrawn over at least a one-year period.

11.7.5. Flow Meter Sizing. Flow Meters shall be installed and calibrated to pipe size so that the expected flow rate and pressure are within the manufacturer's design parameters for the Flow Meter. The meter size, serial number and the direction of flow shall be clearly marked and visible or otherwise made available to District staff upon request.

11.7.6. Flow Meter Protection. Flow Meters, especially the register and meterhead, shall be protected from the weather, livestock, rodents, and other potential sources of damage to the meter. Each Flow Meter shall be protected with a tamper proof or tamper evident mechanism, method or seal secured by the manufacturer or their authorized representative. This mechanism, method or seal shall make evident and attempt to deter any action by an individual to prevent the Flow Meter from recording the volume of Groundwater withdrawal or otherwise alter the totalizer reading.

11.7.7. Totalizer shall be Unaffected by Reverse Flow. Flow Meters installed on Irrigation Wells after February 22, 2016 shall be configured or equipped to ensure that reverse flow through the Flow Meter will not affect the totalizer reading.

11.7.8. Durability. In addition to the criteria listed above, the District may consider durability when determining eligibility of models of Flow Meters for the District's Approved Flow Meter List. When evaluating the durability of any Flow Meter model, the District will use published data if available, and will consult with reliable, unbiased entities that have a history of experience tracking the maintenance requirements and durability of Flow Meter models. These sources may include other Natural Resources Districts as Well as other research, professional association, conservation or regulatory entities.

11.8. Flow Meter Installation Requirements. Flow Meters and any appurtenances shall be installed according to the manufacturer's instructions and specifications to meet or exceed the Flow Meter accuracy required by Rule 11 and to ensure proper Flow Meter operation.

11.8.1. Flow Meter Location Relative to Water Well. Flow Meters must be located as close as practicable to the Water Well being measured.

11.8.2. Flow Meter Location – Upstream and Downstream Distance Requirements. Flow Meters and any appurtenances shall be positioned so that there is sufficient length of unobstructed pipe upstream of the Flow Meter from any valve, elbow, or any other source of turbulent flow, as required by the manufacturer to meet or exceed the Flow Meter accuracy required by this Rule 11. There shall also be unobstructed flow for the length of pipe downstream of the Flow Meter as required by the manufacturer.

11.8.3. Flow Meter Location for Technologies Affected by Chemical Injection. Some Flow Meter technologies may be affected by chemicals injected into the pipeline. If the injection of chemicals will interfere with the Flow Meter's ability to measure volume and/or flow rate, the Flow Meter must be located upstream of any potential chemical injection site.

11.8.4. Flow Meter Positioned for Full Pipe Flow. The Flow Meter shall be placed in such a manner that the pipe, including the Flow Meter and the necessary upstream and downstream lengths of pipe, will have a full flow of water to meet the requirements of the Flow Meter manufacturer's installation instructions, regardless of flow rate.

11.8.5. Flow Meter Orientation Relative to Flow Direction. The Flow Meter shall be positioned so that the flow of water is in the correct direction through the Flow Meter according to the manufacturer's instructions.

11.8.6. Reporting Flow Meter Installation. Flow Meter installation must be reported to the District as follows:

11.8.6.1. Flow Meters installed prior to July 29, 2007. Groundwater Users shall report the installation of any Flow Meter installed prior to July 29, 2007 on any Well subject to the requirements of Sections 11.3.1 and 11.3.2 of these Rules to the District by November 1, 2017 using a reporting method approved by the General Manager.

11.8.6.2. Flow Meter installed after July 29, 2007 and prior to February 22, 2016. Groundwater Users shall report the installation of any Flow Meter installed after July 29, 2007 and prior to February 22, 2016, as required by Rule 11, to the District within 30 (thirty) days of completing such installation using a reporting method approved by the General Manager.

11.8.6.3. Flow Meters installed on or after February 22, 2016. Flow Meter Installation Technicians shall report the installation of any Flow Meter installed on or

after February 22, 2016 to the District within 30 (thirty) days of completing such installation using a reporting method approved by the General Manager.

11.9. Flow Meter Maintenance and Repair Requirements. Groundwater Users shall ensure the proper working condition of Flow Meters, and shall be responsible for the maintenance of Flow Meters and for the correction, repair or replacement of a malfunctioning or improperly installed Flow Meter.

11.9.1. Operating Conditions. Each Flow Meter shall be kept in good working condition and clear of debris and other material or objects that could interfere with the inspection, operation, and performance of the Flow Meter.

11.9.2. Flow Meter Maintenance Requirements. Groundwater users shall ensure that Flow Meter maintenance is performed as recommended or instructed by the manufacturer.

11.9.2.1. Flow Meter Maintenance to be Performed by Flow Meter Maintenance Technician. Maintenance activities on any Flow Meter required by this Rule 11 must be performed by a Flow Meter Maintenance Technician; any Flow Meter maintenance activity performed by any person other than a District-certified Flow Meter Maintenance Technician is prohibited.

11.9.2.2. Report required. All maintenance activities for any Flow Meter required by Rule 11 must be reported to the District within 30 (thirty) days of performing such maintenance using a reporting method approved by the General Manager.

11.9.2.2.1. Prior to February 22, 2016, Groundwater users shall report any maintenance activity performed on any Flow Meter required by Rule 11 to the District within 30 (thirty) days of such activity using a reporting method approved by the General Manager.

11.9.2.2.2. After February 22, 2016, Flow Meter Maintenance Technicians shall provide the District with a report of any maintenance activity performed on any Flow Meter required by Rule 11 within 30 (thirty) days of performing such activity using a reporting method approved by the General Manager.

11.9.2.3. Frequency. Flow Meter maintenance activities shall be performed within the timeframe specified by the Flow meter manufacturer's recommended maintenance schedule, or at least once every five (5) years, whichever is more frequent.

11.9.2.4. Flow Meter Maintenance Actions. Any Flow Meter Maintenance actions shall be performed according to the manufacturer's recommended maintenance schedule.

11.9.3. Flow Meter Repair Requirements. For any Flow Meter required by this Rule 11, Groundwater Users are required to ensure the proper and timely repair of any malfunctioning Flow Meter, and, for Flow Meters installed to measure irrigation water use in an Allocation Subarea under Rule 17 of these Rules, to ensure that Groundwater withdrawals are measured until such time that the malfunctioning Flow Meter is repaired and reinstalled or replaced.

11.9.3.1. Malfunctioning Flow Meter – Report Required. The Groundwater User or its Flow Meter Maintenance Technician shall notify the District of a malfunctioning Flow Meter (also abbreviated by the term “malfunctioning meter” in this

Section 11.9.3.) within five (5) working days following the discovery of such malfunctioning meter using a reporting method approved by the General Manager.

11.9.3.1.1. Notification of Malfunctioning Flow Meter Report Contents. The Notification of Malfunctioning Flow Meter Report is available to Groundwater Users and Flow Meter Maintenance Technicians at the District office or on the District website. The report shall include:

11.9.3.1.1.1. Totalizer Reading. The totalizer reading of the malfunctioning meter prior to performing on-site repairs or removing the malfunctioning meter for repair;

11.9.3.1.1.2. Date Malfunctioning Flow Meter Discovered. The date of discovery of the malfunctioning meter;

11.9.3.1.1.3. Description of the Problem. A description of the nature of the problem with the malfunctioning meter;

11.9.3.1.1.4. Request for More Time to Complete Work. If a Groundwater User anticipates that more time is needed to repair and reinstall or, if necessary, replace a malfunctioning meter than is allowed under Section 11.9.3.1.2 below, it may propose and request the General Manager to consider an alternative schedule for performing such actions; and

11.9.3.1.1.5. Other Information. Other information required by the General Manager.

11.9.3.1.2. District Deadline for Groundwater user to Repair or Replace Malfunctioning Flow Meter. Unless otherwise authorized by the General manager, a Groundwater User shall complete the repair and reinstallation or, if necessary, the replacement of a malfunctioning Flow Meter within ten (10) days following discovery of such malfunctioning Flow Meter.

11.9.3.1.3. The District intends for nothing in this Section 11.9.3.1 to prevent the Groundwater User from initiating actions to repair and reinstall or, if necessary, to replace a malfunctioning Flow Meter immediately upon discovery of such malfunctioning Flow Meter (the District reminds the Groundwater user to record the totalizer reading prior to initiating actions).

11.9.3.2. Groundwater Withdrawal Measurement Required While Flow Meter is Being Repaired Within an Allocation Subarea. Upon discovery of a malfunctioning Flow Meter which measures Groundwater withdrawals for agricultural irrigation purposes within any Allocation Subarea formed under Rule 17 of these Rules, a Groundwater User must halt pumping Groundwater until such time as 1) the General Manager approves in writing and the Groundwater User implements an alternative method for measuring Groundwater withdrawal or 2) the Flow Meter is either repaired and reinstalled or, if necessary, replaced.

11.9.3.3. On-site Repair, or Breaking of District Seal and Removal of Malfunctioning Flow Meter by Flow Meter Maintenance Technician Only. On-site repairs or breaking of the District seal for removal for off-site repair of any Flow Meter required by this Rule 11 may only be performed by a Flow Meter Maintenance Technician; any such activities

performed by any person other than a District-certified Flow Meter Maintenance Technician are prohibited.

11.9.3.4. Certification of Flow Meter Repair. Any Person that repairs and/or calibrates any Flow Meter installed under Rule 11 shall certify in writing that the repaired or calibrated Flow Meter meets the manufacturer's original specifications, and the Groundwater User shall provide the District with a copy of that certification. The District shall provide the Groundwater User with confirmation that the certification was received.

11.9.3.5. District Policy for Alternative Method to Measure Groundwater Withdrawal. The General Manager is instructed to develop and maintain a policy and procedure for allowing the temporary use of alternative methods of measuring Groundwater withdrawals when a Flow Meter is malfunctioning and/or must be removed to be repaired or replaced. The purpose of this policy and procedure is to ensure that the District and Groundwater User can react quickly to implement a District-approved alternative method to measure Groundwater withdrawal, thus allowing the resumption of pumping when a Flow Meter is removed from the system for repairs.

11.10. Rule 11 Variances. The District finds that situations such as existing flow meters installed independent of District rules and sites where flow meter installation is exceedingly difficult warrant consideration as good cause for granting a variance from certain requirements of Rule 11.

11.10.1. Rule 11 Variance Process. The General Manager is instructed to establish a Rule 11 Variance Process. The purpose of this Process is to provide reasonable solutions to specific issues and situations that would otherwise be prohibited by Rule 11; to develop a procedure for application and processing of variance requests; to develop conditions for approved variances; and to establish necessary policies to guide the General Manager when evaluating applications.

11.11. Groundwater Use Reports. Groundwater users shall collect annual Groundwater withdrawal data from any Flow Meter under their ownership or control that is required under this Rule 11 and submit a report of such data to the District using a reporting method approved by the General Manager. The report must be postmarked or otherwise submitted to the District by December 1st each year. If December 1st is a non-business day, the report must be postmarked or submitted to the District by the following business day.

Rule 12. GROUNDWATER MANAGEMENT CONTROLS

12.1. Groundwater Quantity Management Controls. The Lower Elkhorn NRD has established triggering mechanisms for Groundwater quantity protection. These triggers are actuated when certain conditions are detected by the NRD Groundwater quantity monitoring program. The triggers are intended to be protective measures that will initiate actions before serious problems occur. Once a trigger is actuated, the NRD will begin a series of actions including the delineation of subareas, called Action Levels, and establish controls, including the required use of best management practices, to protect Groundwater supplies or remediate existing problems.

Triggers for Groundwater quantity protection consist of several phases, called action levels, which respond to worsening conditions with increasingly rigorous corrective measures. Each action level has its own triggering mechanism, so that changing conditions will trigger new action levels.

Flexibility has been built into the triggers and action levels because of the complex hydrogeology of the District. The current triggers and actions are used for the entire District, which may be too protective in some areas and may under-protect other areas. As our knowledge of the District's hydrogeology increases, the triggering mechanisms and actions will be fine-tuned to improve the effectiveness of our Groundwater quantity protection efforts. The Lower Elkhorn NRD will develop unique triggers and actions for different regions of the District as more local hydrogeologic information becomes available.

Action Level 1 subareas will require the District to increase educational efforts in the area, form a local citizen's advisory committee, and conduct a study to determine the extent of the problem. Action Levels 2 and 3 will require Groundwater Users to perform certain actions.

Prior to the formation of an Action Level 2 or 3 subareas, the District will amend these Rules and Regulations as needed, and will hold at least one (1) public hearing to consider adopting the amendments and to consider the formation of the subarea as required by law.

The following criteria and controls will be used to trigger, delineate, and treat Action Level subareas:

12.1.1. Action Level 1.

12.1.1.1. The District will initiate the following actions when, in 2 years out of any 3 year period, the spring Groundwater level of any Well in the routine groundwater quantity monitoring program drops 15 or more feet below predevelopment estimates for Groundwater levels in that area. When this trigger is actuated, the NRD will take the following actions:

12.1.1.1.1. Intensify educational efforts in the area including, but not limited to, information concerning Groundwater conservation practices, potential regulatory actions of the 2nd and 3rd Action Levels (see below), and the status of the Groundwater supply in the area.

12.1.1.1.2. Form a local citizen's advisory committee.

12.1.1.1.3. Increase the number of Wells monitored in the area to determine the extent of the problem, to serve as a basis for triggering Action Level 2, and to obtain the hydrogeologic information necessary to delineate an Action Level 2 subarea. The intensified monitoring program described below applies to the entire District. The actual monitoring program for each problem area may vary according to the local hydrogeologic characteristics of the area.

12.1.1.1.4. The District will determine a rudimentary area to be monitored. The shape and size of the area may change as more information is gathered. A minimum area of 9 square miles will be monitored.

12.1.1.1.5. The minimum number of monitoring sites will be 50% of the number of registered Irrigation Wells in the area that are suitable for use as Groundwater level observation Wells (taking into account criteria such as quality of Well construction and screened intervals). The District will also consider using registered industrial, livestock, monitoring, observation, public water supply, and domestic Wells that would be suitable as monitoring sites.

12.1.1.1.6. The intensified monitoring will begin no later than the spring after the trigger was actuated for Action Level 1.

12.1.1.1.7. Determine the necessary control measures, rules, and regulations for Action Levels 2 and 3.

12.1.2. Action Level 2.

12.1.2.1. An area will be placed into Action Level 2 when the spring Groundwater levels in 80% of the Wells monitored in the intensified monitoring program conducted in Action Level 1 drop 15 or more feet below predevelopment estimates for Groundwater levels in those Wells for 3 years out of any 4 year period of time. The area affected by this drop must be a minimum of 9 square miles in size.

12.1.2.2. The District will actively seek public opinion while amending the Rules and Regulations for the subarea. Information from Action Level 1 will be utilized in amending the Rules and Regulations. Prior to the formation of an Action Level 2 subarea, the District will hold at least one (1) public hearing to consider the adoption of the amendments and the formation of the subarea as required by law.

12.1.2.3. The District shall require volume metering of Wells used for any one or more of the following categories of Groundwater use: municipal, agricultural, manufacturing, commercial, or industrial. The District will also require owners of these Wells to submit to the District an annual report of the amount of water pumped.

12.1.2.4. Additionally, the District will choose at least one of the following authorized controls:

12.1.2.4.1. Allocate Groundwater withdrawal on an acre-inch basis, specifying the total number of acre-inches of irrigation water per irrigated acre per year or an average number of acre-inches of irrigation water per irrigated acre over any reasonable period of time not to exceed five years.

12.1.2.4.2. Adopt a system of rotation of use of Groundwater by utilizing a recurring series of use and nonuse of Irrigation Wells on an hourly, daily, weekly, monthly basis or yearly basis.

12.1.2.4.3. Adopt Well spacing requirements more restrictive than statutory Well spacing requirements.

12.1.2.4.4. Require the reduction of irrigated acres, where the nonuse of irrigated acres will be a uniform percentage reduction of each landowner's irrigated acres.

12.1.2.4.5. Require irrigation scheduling.

12.1.2.4.6. Adopt other reasonable regulations to protect the quantity of Groundwater in the subarea.

12.1.2.5. The District will also continue the educational efforts and the Groundwater level monitoring of Action Level 1.

12.1.3. Action Level 3.

12.1.3.1. An area will be placed in Action Level 3 when the spring Groundwater levels in 80% of the Wells monitored in Action Level 2 drop 20 or more feet below predevelopment estimates for Groundwater levels in those Wells for 3 years out of any 4 year period of time. The area affected must be a minimum of 9 square miles in size. The District may also declare an Action Level 3 when the Director of the Department makes a final determination that all or part of the District is fully appropriated under Neb. Rev. Stat. § 46-713.

12.1.3.2. Prior to the formation of an Action Level 3 subarea, the District will hold at least one (1) public hearing to consider the adoption of any amendments to the Rules and Regulations and the formation of the subarea as required by law.

12.1.3.3. In addition to the controls of Action Level 2, the District may require any of the following controls for an Action Level 3 area:

12.1.3.3.1. Require the use of tensiometers, soil moisture blocks, or other irrigation scheduling devices.

12.1.3.3.2. Require annual reports with water level measurements and quantifying the total withdrawal from Wells.

12.1.3.3.3. Close the area to the issuance of any additional new Water Well Permits for a period of one (1) year.

12.1.3.4. The District will also continue the educational efforts and the Groundwater level monitoring of the first two Action Levels. [District Groundwater Management Plan, 2015]

12.2. Groundwater Quality Management Controls. The Lower Elkhorn Natural Resources District Groundwater quality portion of the management area will be divided into subareas to more effectively manage areas where different conditions exist (such as areas with high or low Groundwater contamination concentrations, different soil types, or different land uses). Borders for these subareas will be determined primarily, but not exclusively, by Groundwater

contamination concentration based on the trigger criteria listed in the Phase area descriptions that follow. These subareas are called "Phases."

The "Additional Criteria" paragraph of this section lists the other criteria that the Board of Directors may consider when delineating phases. The District may change an area from one phase to another (either "up" or "down") based on Groundwater concentration and/or any of the listed additional criteria that are deemed appropriate by the Board only after holding a public hearing as required by law and revising the Rules and Regulations. Borders for the subareas may follow either natural or political boundaries.

The controls listed for Phases 1, 2, 3 and 4 in these Rules and Regulations are designed to address nonpoint source groundwater nitrate-nitrogen contamination from row crop production. The basic controls are listed for each phase. Additional controls may be used in any of the phases if deemed appropriate by the Board after holding the appropriate public hearings as required by law.

The United States Environmental Protection Agency has established Maximum Contaminant Levels allowed in drinking water for many contaminants. Contaminants occurring above these levels are considered to be a health risk for people that are exposed to a specified dose of the contaminant for an extended period of time. Potential contaminants may or may not have Maximum Contaminant Levels established for them.

For those contaminants that have no established Maximum Contaminant Level established, the District will cooperate with the Nebraska Department of Health to determine the health risks of the contaminant and develop trigger levels and controls for the different subareas. The District will initiate this process when the risk assessment indicates a risk of one (1) death per million of population (per U.S. Environmental Protection Agency guidelines).

For those contaminants with an established Maximum Contaminant Level, including but not limited to nitrate-nitrogen, the following criteria and controls will be used to trigger, delineate and treat subareas (such "subareas" to be called "Phases"):

12.2.1. Phase 1. "Phase 1" shall be those geographic areas that are not designated as either Phase 2, Phase 3, or Phase 4.

12.2.1.1. The District will encourage operators within a Phase 1 area to attend education programs sponsored by the District concerning potential contaminants (such as fertilizer and irrigation water management), to perform deep soil testing for any contaminants, to test irrigation water for contaminants, and to submit an annual report (similar to the report required in Phases 2 and 3) to the District.

12.2.2. Phase 2. "Phase 2" shall be those geographic areas that have from 50% to 90% of the Maximum Contaminant Level for a contaminant (for example, 5 to 9 milligrams per liter of nitrate-nitrogen). An area shall be placed into a Phase 2 area when at least 20% of the registered Wells in an area are at or above the trigger level and the contamination is the result of nonpoint source Groundwater contamination. Phase 2 areas must be a minimum of 9 square miles in size. The District will delay the requirement for deep soil testing, irrigation water testing, and submission of annual reports ((b), (c), and (d), respectively, below), for one year from the date that a subarea is designated as a Phase 2 area, so that operators may become certified by the District (Section 12.2.2.1 below) before being required to perform the other requirements. The following educational requirements, best management practices, reports, and

restrictions shall apply in a Phase 2 area to fields or tracts that are 40 acres or larger in area, unless otherwise exempted by the District Board of Directors:

12.2.2.1. Fall and winter application of commercial fertilizer containing nitrogen is prohibited between the dates of October 15 and March 15.

12.2.2.2. All operators in a Phase 2 area who apply fertilizers that contain nitrate-nitrogen must attain certification by the District, either by attending a District-approved certification workshop, or by attaining at least an 80% score on a test approved and proctored by the District. These certification methods will be designed to inform operators about the District Rules and Regulations and about management practices that minimize pollution. Each individual certified must on or before December 31 of the fourth full year following the issuance of his or her certificate and every four years thereafter complete at least three (3) hours of approved continuing education.

12.2.2.3. All operators in a Phase 2 area shall perform deep soil testing for residual nitrate-nitrogen. These tests are required for fields in each year in which a non-legume, annual row crop will be planted for at least the second consecutive year. For example, these tests will be required for fields under continuous corn, but will not be required for fields under an annual corn/soybean rotation. Soil samples will be collected in accordance with the definition of “soil testing” in Rule 2. The analysis will be conducted by a laboratory registered with the Nebraska Department of Agriculture.

12.2.2.4. Groundwater from all Irrigation Wells in Phase 2 areas shall be sampled and tested once every four years for the nitrate-nitrogen content of the water. The analysis must be conducted by a laboratory using methods approved by the United States Environmental Protection Agency for the analysis of nitrate-nitrogen in water and must be reported as nitrate-nitrogen in units of milligrams per liter (mg/L) or parts per million (ppm).

12.2.2.5. All operators in Phase 2 areas applying fertilizer (or other possible sources of contaminants that the management area is addressing) must annually submit reports to the District, postmarked or otherwise submitted to the District by March 15th or if March 15th lies on a non-business day, the next business day of each year, that will include soil test results, irrigation water test results, and other information required by the Board of Directors.

12.2.2.6. Application of commercial nitrogen fertilizer, as defined in Rule 2.1.52, is prohibited between October 15th and March 15th. Any single application of commercial nitrogen fertilizer in excess of 80 pounds per acre is prohibited.

12.2.2.7. Application of commercial nitrogen fertilizer of greater than 50 pounds of nitrogen per acre after March 15th is prohibited unless such fertilizer is accompanied with a District approved nitrogen stabilizer or inhibitor. Operator using nitrogen stabilizers and inhibitors must include documentation to provide proof of purchase and use along with their annual field reports to the District. This documentation must include information to verify the nitrogen application rate (per acre), along with verification that the nitrification inhibitor was used in accordance with manufacturer recommendation.

12.2.2.8. Contaminants in a Phase 2 area other than nitrate-nitrogen may require controls that are different than those listed above for Phase 2 areas. If these controls will not be effective in prevention or remediation of Groundwater contaminant(s) other than

nitrate-nitrogen, the Board of Directors may choose to not use some or all of the controls listed above.

12.2.2.9. Failure to comply with the Phase 2 area educational requirements, best management practices, reports, and restrictions as required under Section 12.7.1 and RULE 12 shall be a violation of these Rules and Regulations.

12.2.3. Phase 3. “Phase 3” shall be those geographic areas that have greater than 90% of the Maximum Contaminant Level for a contaminant (for example, greater than 9 milligrams per liter of nitrate-nitrogen). An area will be placed into a Phase 3 area after being in a Phase 2 area for a minimum of five years, and when 50% of the registered Wells in the area are at or above the trigger level. Phase 3 areas must be a minimum of 9 square miles in size. The following educational requirements, best management practices, reports, and restrictions shall apply in a Phase 3 area to fields or tracts that are 40 acres or larger in area, unless exempted by the District Board of Directors:

12.2.3.1. Continue Phase 2 controls.

12.2.3.2. All operators in a Phase 3 area shall perform deep soil testing for residual nitrate-nitrogen. These tests are required for fields in each year in which a non-legume, annual row crop will be planted. Soil samples will be collected in accordance with the definition of “soil testing” in Rule 2. The analysis will be conducted by a laboratory registered with the Nebraska Department of Agriculture.

12.2.3.3. All operators in a Phase 3 area shall be required to develop and adhere to a Nutrient Management Plan. The requirements for these plans shall be determined in cooperation with the operator, and will account for all environmental sources of nutrients, use historical evidence to support yield goals, and indicate frequency and amounts of nutrient applications to achieve yield goals.

12.2.3.4. Groundwater from all Irrigation Wells in Phase 3 areas shall be sampled and tested annually for the nitrate-nitrogen content of the water and such analyses must be conducted as directed in Section 12.2.2.3.

12.2.3.5. All irrigators in Phase 3 areas shall employ some form of irrigation scheduling acceptable to the District.

12.2.3.6. Contaminants other than nitrate-nitrogen may require controls that are different than those listed above for Phase 3 areas. If these controls will not be effective in preventing or remediating Groundwater contaminant(s) other than nitrate-nitrogen, the Board of Directors may choose to not use some or all of the controls listed above.

12.2.4. Phase 4. “Phase 4” shall be those geographic areas where Groundwater nitrate-nitrogen concentrations have not declined at an acceptable rate as determined by the Board of Directors. An area will be placed into a Phase 4 area after being in a Phase 3 area for a minimum of five years. The goal of a Phase 4 area is to reduce the Groundwater nitrate-nitrogen concentration of an area to less than 10 milligrams per liter. Phase 4 areas must be a minimum of 9 square miles in size. The following educational requirements, best management practices, reports, and restrictions shall apply in a Phase 4 area to fields or tracts that are 40 acres or larger in area, unless exempted by the District Board of Directors:

12.2.4.1. Continue Phase 3 area controls, except that:

12.2.4.1.1. Groundwater from all Irrigation Wells in Phase 4 areas shall be sampled and tested annually for the nitrate-nitrogen content of the water and such analyses must be conducted as directed in Section 12.2.2.4; and

12.2.4.1.2. All operators in a Phase 4 area shall perform deep soil testing for residual nitrate-nitrogen for fields in which a non-legume, annual row crop will be planted.

12.2.4.2. Annual nitrogen fertilizer application shall not exceed the rate calculated using methodology approved by the District.

12.2.4.3. All crop fields in a Phase 4 area must comply with a District-approved crop rotation plan.

12.2.4.4. Operators of any crop fields planted to an annual row crop must grow a District-approved cover crop mixture and utilize appropriate cover crop husbandry to ensure that the cover crop grows sufficiently to reduce nutrient leaching after harvest of such annual row crop.

12.2.4.5. Operators in a Phase 4 area must report annually, in addition to other District annual report requirements:

12.2.4.5.1. Purchase receipts for nitrogen fertilizer that include the location of fertilizer application, acres treated and the total amount of fertilizer applied; and

12.2.4.5.2. Documentation to support a five-year Average Production History (otherwise known as APH) to determine yield goals for use in calculating nitrogen fertilizer application rates to support Section 12.2.4.2.

12.2.5. Additional Criteria. The Board of Directors, in its discretion, may designate additional areas as, or include an area in, either Phase 2 or Phase 3, even though the “triggers” or requirements of a Phase 2 or Phase 3 area have not been met, if any of the following conditions exist:

12.2.5.1. Areas with similar soil and land use conditions as an existing Phase 2 or Phase 3 area.

12.2.5.2. Areas that may be vulnerable to Groundwater contamination, such vulnerability to be determined by the Board of Directors of the District, based on reasonable scientific evidence.

12.2.5.3. Areas that have unsaturated zone contamination that indicates a potential for Groundwater contamination.

12.2.5.4. Areas that are within Public Water Supply Wellhead Protection Areas.

12.2.5.5. Other areas deemed necessary by the Board of Directors that are consistent with the Groundwater Reservoir Life Goal and the Nebraska Ground Water Management and Protection Act.

12.2.6. Additional Controls. Any of the following controls may be required by the Board of Directors in a Phase 1, Phase 2, or Phase 3 subarea, after revising the Rules and

Regulations and holding a public hearing, if deemed necessary to fulfill the Groundwater Reservoir Life Goal:

12.2.6.1. All operators applying fertilizer or (other possible sources of contaminants that the management area is addressing) must attend educational programs sponsored by the District.

12.2.6.2. Soil tests for residual quantities of any contaminants.

12.2.6.3. Irrigation water tests for any contaminants.

12.2.6.4. Using realistic yield goals.

12.2.6.5. Irrigation water scheduling.

12.2.6.6. Meter irrigation water application volume.

12.2.6.7. Ban fall and/or winter fertilizer application.

12.2.6.8. Require the use of nitrification inhibitors.

12.2.6.9. Allowing nutrient credit for legume crops.

12.2.6.10. Performing chemical and/or physical analysis of contaminant sources being land applied (such as manure, compost, sewage sludge, and other waste products).

12.2.6.11. Allowing nutrient credit for manure, compost, sewage sludge, and other waste products.

12.2.6.12. Performing nutrient analysis of manure, compost, sewage sludge, and other waste products, preparing and implementing a plan for the disposal of animal wastes that determines the amount of manure that will be land applied, the area of land required for that amount of manure (complying with UNL recommendations), and the location(s) of that area of land. [District Groundwater Management Plan, 2015]

12.2.7. Management Area Boundaries. The Lower Elkhorn Natural Resources District groundwater management area includes the entire District. The management area includes the following aquifers: Ogallala Group and overlying deposits, Niobrara Formation and overlying deposits, Dakota Group and overlying deposits, and all other aquifers supplying Groundwater for beneficial uses.

12.3. Pierce County Phase 2 Area. The following subarea is established in Pierce County for Groundwater quality regulation to address nitrate-nitrogen contamination and is subject to the Rules and Regulations for a Phase 2 area. For a list of the requirements for a Phase 2 area, see Section 12.2.2.

12.3.1. The legal description of the Phase 2 subarea is:

Such Phase 2 subarea is also described as follows:

All of the following sections in the following precincts, all located in Pierce County, Nebraska, to-wit:

All of the following sections in Cleveland Precinct in Pierce County, Nebraska: All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26,

27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, all in Township Twenty-five (25), North, Range Two (2), West of the 6th Prime Meridian, in Pierce County, Nebraska;

All of the following sections in Blaine Precinct in Pierce County, Nebraska: All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, all in Township Twenty-five (25), North, Range Three (3), West of the 6th Prime Meridian, in Pierce County, Nebraska;

All of the following sections in Pierce Precinct in Pierce County, Nebraska: All of Sections 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, all in Township Twenty-six (26), North, Range Two (2), West of the 6th Prime Meridian, in Pierce County, Nebraska;

All of the following sections in Clover Valley Precinct in Pierce County, Nebraska: All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, all in Township Twenty-six (26), North, Range Three (3), West of the 6th Prime Meridian, in Pierce County, Nebraska;

All of the following sections in Plum Grove Precinct in Pierce County, Nebraska: All of Sections 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, all in Township Twenty-eight (28), North, Range Two (2), West of the 6th Prime Meridian, in Pierce County, Nebraska;

All of the following sections in Eastern Precinct in Pierce County, Nebraska: All of Sections 31, 32, 33, 34, 35, and 36, all in Township Twenty-eight (28), North, Range One (1), West of the 6th Prime Meridian, in Pierce County, Nebraska;

12.4. Madison County Phase 2 Area. The following subarea is established in Madison County for Groundwater quality regulation to address nitrate-nitrogen contamination and is subject to the Rules and Regulations for a Phase 2 area. For a list of the requirements for a Phase 2 area, see Section 12.2.2.

12.4.1 The legal description of the Madison County Phase 2 area is described as follows: All of the following sections in the following precincts, all located in Madison County, Nebraska to wit:

All of the following sections in Jefferson Precinct in Madison County, Nebraska: All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, all in Township Twenty-four (24), North, Range Four (4), West of the 6th Prime Meridian, in Madison County, Nebraska;

All of the following sections in Deer Creek Precinct in Madison County, Nebraska: All of Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, and 18, all in Township Twenty-four (24), North, Range Three (3), West of the 6th Prime Meridian, in Madison County, Nebraska;

All of the following sections in Norfolk Precinct in Madison County, Nebraska: All of Sections 1, 2, 3, 10, 11, 12, 13, 14, and 15, all in Township Twenty-four (24), North, Range One (1), West of the 6th Prime Meridian, in Madison County, Nebraska.

12.5. Pierce County Phase 3 Area. The following subarea is established in Pierce County for Groundwater quality regulation to address nitrate-nitrogen contamination and is subject to the Rules and Regulations for a Phase 3 area. For a list of the requirements for a Phase 3 area, see Section 12.2.3.

12.5.1. The legal description of the Pierce County Phase 3 area is as follows: All of the following sections in the following precincts, all located in Pierce County, Nebraska to wit:

All of the following sections in Thompson Precinct in Pierce County, Nebraska: All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, all in Township Twenty-eight (28), North, Range Three (3), West of the 6th Prime Meridian, in Pierce County, Nebraska; and

All of the following sections in North Dry Creek Precinct in Pierce County, Nebraska: All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, all in Township Twenty-eight (28), North, Range Four (4), West of the 6th Prime Meridian, in Pierce County, Nebraska;

All of the following sections in South Dry Creek Precinct in Pierce County, Nebraska: All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, all in Township Twenty-seven (27), North, Range Four (4), West of the 6th Prime Meridian, in Pierce County, Nebraska;

All of the following sections in Willow Creek Precinct in Pierce County, Nebraska: All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, all in Township Twenty-six (26), North, Range Four (4), West of the 6th Prime Meridian, in Pierce County, Nebraska;

All of the following sections in Mills Precinct in Pierce County, Nebraska: All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, all in Township Twenty-five (25), North, Range Four (4), West of the 6th Prime Meridian, in Pierce County, Nebraska;

All of the following sections in South Branch Precinct in Pierce County, Nebraska: All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, all in Township Twenty-five (25), North, Range One (1), West of the 6th Prime Meridian, in Pierce County, Nebraska;

All of the following sections in Slough Precinct in Pierce County, Nebraska: All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, all in Township Twenty-six (26), North, Range One (1), West of the 6th Prime Meridian, in Pierce County, Nebraska;

All of the following sections in Allen Precinct in Pierce County, Nebraska: All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, all in Township Twenty-seven (27), North, Range One (1), West of the 6th Prime Meridian, in Pierce County, Nebraska;

All of the following sections in Logan Precinct in Pierce County, Nebraska: All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, all in Township Twenty-seven (27), North, Range Two (2), West of the 6th Prime Meridian, in Pierce County, Nebraska;

All of the following sections in Foster Precinct in Pierce County, Nebraska: All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, all in Township Twenty-seven (27), North, Range Three (3), West of the 6th Prime Meridian, in Pierce County, Nebraska;

All of the following sections in Plum Grove Precinct in Pierce County, Nebraska: All of Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, all in Township Twenty-eight (28), North, Range Two (2), West of the 6th Prime Meridian, in Pierce County, Nebraska;

All of the following sections in Pierce Precinct in Pierce County, Nebraska: All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, all in Township Twenty-six (26), North, Range Two (2), West of the 6th Prime Meridian, in Pierce County, Nebraska.

**Rule 13. IRRIGATION WELL AND NEW GROUNDWATER DEPLETION
LIMITATIONS PURSUANT TO NEB. REV. STAT. § 46-715(4)**

13.1. Background. On December 16, 2008, the Director of the Nebraska Department of Natural Resources made a preliminary determination that the Lower Platte basin was Fully Appropriated. Then, on April 8, 2009, the Director reversed the preliminary determination that the Lower Platte Basin (Basin) was Fully Appropriated, causing a status change in the Basin. Because of this status change, the District adopts this Rule 13 for the following purposes:

13.1.1. The District adopted a joint V-IMP with the Department in November of 2018. The V-IMP allows for limited development in AF of new water consumption per year as determined by the Board, and not exceeding the limits imposed by the District may grant a set number of allowable new depletions, during the peak season, for all new groundwater uses in the groundwater control areas defined in the V-IMP. Such depletions shall be in terms of acre feet (AF) and will not exceed, in total, the number agreed upon as part of V-IMP implementation. New depletions shall be totaled and reassessed in five-year increments, with the first increment beginning July 1, 2016 and ending on December 31, 2021 as agreed upon in the Lower Platte River Basin Management Plan (Basin-Wide Plan). Future increments and allocations will be determined by the participants of the Basin-Wide Plan;

13.1.2. Maintain the status of not fully appropriated based on the most recent basin determination under Neb. Rev. Stat. § 46-713;

13.1.3. Limit the number of new permits to meet the limitation on the number of allowable new depletions, as determined annually by the Board;

13.1.4. Achieve this limitation on New Groundwater Depletions with the variance process described in this Rule 13. Any person wishing to create a New Groundwater Depletion, either through the construction of a new Well or the expansion of irrigated acres with an existing Well, must obtain a variance from the District first.

13.2. Board to Determine New Groundwater Depletion Limitations Annually. The Board may, at its discretion, annually determine the limitations on new Groundwater Depletions as provided by the controls associated with the V-IMP and the Basin-Wide Plan. The Board shall determine annually the maximum number of New Groundwater Depletions to be allowed and establish the applicable application period.

13.3. New Groundwater Depletion Limitation. Effective immediately, there shall be no New Groundwater Depletions within the Hydrologically Connected Area without a variance. Such activity is strictly prohibited, either from an existing Well or a new Well, unless approved by the District pursuant to this Rule 13.

13.3.1. The Board recognizes the hydrologic connection between groundwater and surface water in portions of the District. Notwithstanding this connection, the District will annually determine the amount of new groundwater depletions, calculated in AF, that it will allow in the hydrologically connected portion of the District. Such depletions shall not exceed the number agreed upon in the V-IMP and Basin-Wide Plan, and should be limited to no more than 450 AF of New Groundwater Depletions to be developed in the Hydrologically Connected Area per year.

13.4. Variance Required.

13.4.1. Any person wishing to undertake any of the following activities within the Hydrologically Connected Area must receive a Written Good Cause Variance:

13.4.1.1. Construction of an Irrigation Well, whether it is a new Well, a Replacement Well, or a Supplemental Well.

13.4.1.2. Irrigation of acres other than those defined as Historically Irrigated Acres, whether the source of water is from a new or existing Well. This includes New Groundwater Irrigated Acres and acres for which the applicant provides Offset Acres.

13.4.2. No Well construction permit application will be considered complete within the Hydrologically Connected Area until the appropriate Variance is approved.

13.4.2.1. Any person wishing to create a New Groundwater Depletion using a new Well may request a Variance for both construction of the Well and development of the new acres that cause the New Depletion using one variance application form.

13.5. Variance Application Periods.

13.5.1. The Board will establish application periods for submitting requests to create New Groundwater Depletions in the Hydrologically Connected Area annually. Variance requests must be fully completed and received by the District by the end of the application period. Incomplete and late applications will not be processed, but returned to the applicant.

13.6. Variance Application Process.

13.6.1. Contents of Application for Good Cause Variance. An application for a Variance must be made on an approved District form. The General Manager is instructed to create and adopt forms as required for this process. The General Manager, in his sole discretion, is authorized to combine the application forms for this Rule 13 with any application forms required under Rule 3. The General Manager may request, in his sole discretion, any of the information in this Rule 13.6.1 on the Expedited Variance form. The General Manager must request, at a minimum, the following information on the Standard Variance form:

13.6.1.1. Applicant information. Name, address, and contact information for applicant and landowners, if different than the applicant.

13.6.1.2. Purpose of variance request and of new Well and/or expanded water use. New Groundwater Irrigated Acres or other expanded water use, and/or construction of new Well, or Replacement Well or Supplemental Well construction, for irrigation or irrigation pit.

13.6.1.3. Test hole data for new Wells. Total depth of Well, test hole logs, and estimated or actual pumping capacity.

13.6.1.4. Water Source Information. Legal description of Well or surface water diversion location, including the county, township, range, section, and location within the section. If the source is surface water, the surface water appropriation number. If the Well is used to supplement water from a lagoon required under a Clean Water Act permit, include the Clean Water Act permit and permit number. If the Well is in a system with other Wells, the number of Wells, Well registration numbers, and legal description of each Well. If the Well is a Replacement Well, the registration number of the Well being replaced, the

proximity of the Replacement Well to the old Well, and decommissioning/change of use intentions of the applicant for the old Well.

13.6.1.5. Water Use Information. Description of the new water use area, including legal description of the new water use location and timeframe or schedule when water will be used, and the number of new acres that will be irrigated and proposed land use (for example, row crops, pasture, soccer fields, or golf course fairways and greens). The location(s) of existing water use if existing Well or surface water appropriation will be used to water new acres. If reuse water is one of the water sources, the annual amount of intake water, description of water use within the operation and the annual amount of water discharged from this operation.

13.6.1.6. Offset Water Sources and Methods. If applicable, description of method(s) to provide and location of source of Offset Acres. Documentation of applicant's ability to secure offset water. Volume and timing of consumptive use credit for offset water source or method.

13.6.1.7. Land Information. Current tax assessor records where water is to be used. Description of current land use (dryland, pasture, irrigated). Parcel number for land using Water Well. Tax assessor records submitted with the variance request must include map, parcel number and an accurate account of current land use, such as irrigated acres. An aerial photograph with markings to show current land use, the proposed Well location (if applicable), the location of the water source(s) and the location of where the water is to be used, shall be submitted with the variance request form.

13.6.1.8. Description of Project. A detailed narrative by the applicant of the project.

13.6.1.9. Signatures. Signature of the applicant, and landowner signature, if this is a different person or entity than the applicant.

13.6.2. Application Fee. Each variance application received on or after August 23, 2009, shall include an application fee of \$50.00 to be considered complete.

13.7. Standard Variance Process.

13.7.1. Variations Assigned to Variance Ad Hoc Committee. Unless otherwise specifically excluded, all applications for a Variance submitted to the District will be considered by the Variance Ad Hoc Committee (Committee).

13.7.2. Discretionary Factors. The District will review variance applications based on discretionary factors, including but not limited to, whether the application would promote the health and welfare of the District by contributing to the conservation, protection, development, and sound management of natural resources.

13.7.3. Ranking System. The Committee will use a scoring/ranking system as a guide when recommending approval or denial of variance applications within the limits established by this Rule 13. Categories and subcategories used for this system will be objective and quantifiable. Each subcategory will be assigned a numerical weight, or score, by the Committee prior to ranking any variance application, and will be structured so that higher scores will result in a better ranking.

13.7.4. Categories. Categories to be considered for the ranking include, but are not limited to:

- 13.7.4.1. Impacts to streamflow of New Groundwater Irrigated Acre;
- 13.7.4.2. Transmissivity;
- 13.7.4.3. High capacity Well density;
- 13.7.4.4. Well yield;
- 13.7.4.5. Soil conservation impacts;
- 13.7.4.6. Whether the applicant was subject to a cease and desist order within the past five years under the District's Rules and Regulations;
- 13.7.4.7. Whether the Variance is needed to support a Clean Water Act permit issued to a confined animal feeding operation;
- 13.7.4.8. Proximity and impacts to a Wellhead protection area;
- 13.7.4.9. Proximity of source or land to be irrigated to an area subject to a stay under Neb. Rev. Stat. § 46-707(2) or other similar state law;
- 13.7.4.10. Whether the applicant previously applied for a Variance on the same tract; and
- 13.7.4.11. Other factors that assist in determining whether the application will promote the health and welfare of natural resources within the District.

13.7.5. Transfer. The transfer of any application for a standard or expedited variance, or any variance issued under this Rule 13, shall not be allowed from one person to another person.

13.8. Processing and Ranking of Applications.

13.8.1. Variance applications will be ranked individually and considered jointly with all applications received during the same application period. Applicants with variance applications that were not approved must reapply during the next Variance application period to be considered again.

13.8.2. District Staff to Perform Initial Ranking. Using the ranking system developed by the Committee, District staff will perform an initial ranking of each variance application.

13.8.3. Applicant Review of Initial Ranking. The District will give each applicant 14 days to review the ranking of their variance application and an opportunity to provide more information to the District to ensure that the final ranking will be as accurate as possible. Each applicant will be mailed a copy of their application and the initial ranking, and will have 14 days from the date their application and initial ranking were mailed to provide the District with any further information. If the applicant does not provide any additional information on its ranking, the applicant waives any objection to the ranking assigned to its application.

13.8.4. Minimum Total Score. In order to achieve the District's priorities, and for the conservation, protection, development, and sound management of natural resources

within the management area, the Board may, at its discretion, annually establish a minimum total score that must be met in order for a variance request to be considered for approval. The Board must establish the minimum score prior to the beginning of any relevant application period.

13.8.5. Minimum Soil Score. In order to achieve the District's priorities, the Board may, at its discretion, annually establish a minimum score for the soil conservation category. The Board must establish such a minimum score prior to the start of the relevant application period. If established, the minimum score shall range from 80 to 120 utilizing the Natural Resources Conservation Service's National Soil Information System (NASIS) as the foundation for establishing scores in this category. Any variance application that does not achieve the minimum score or higher shall not be approved, notwithstanding the final ranking of the variance application.

13.8.6. Final Ranking of Applications. Although applicants are given the opportunity to provide additional information, the ultimate decision on the ranking of an individual application is left to the discretion of the District. District staff will consider any additional information provided by the applicants to perform the final ranking of each variance application. District staff will then sort the applications according to final rank, and beginning with the highest ranked application, staff will compute the running total number of acres with each successive application through the lowest ranked application.

13.8.7. Committee Recommendation. The Committee will make a recommendation to the Board on the number of New Groundwater Depletions to be allowed that year, subject to the limitations in this Rule 13. Based on this number and the final ranking of applications, the Committee will also recommend which applications to approve.

13.8.8. Board Action. The Board will consider the Committee recommendations at its next regularly scheduled meeting. The Board will establish the number of New Groundwater Depletions to be allowed, subject to the limitations in this Rule 13. Any variance application that does not achieve the minimum score or higher established under Section 13.8.4 or 13.8.5 will be denied. The Board will then approve the highest ranking applications up to the number of New Groundwater Depletions allowed that year, subject to the conditions set forth in Section 13.12 below (and any other conditions the Board deems appropriate and necessary to protect the health and general welfare of the District). Those applications not approved will be denied. Such a denial, however, does not prevent the applicant from reapplying the following year.

13.8.9. Site Visit. District staff may perform a site visit to verify or seek additional information. Staff should contact the applicant for access approval.

13.9. Expedited Variance Process.

13.9.1. A variance granted under these conditions shall be referred to as an expedited variance. Expedited variances are not presented to the Committee and approved by the Board, but rather may be granted by the Manager or his designated representative. The Board finds this process acceptable for the following categories because good cause exists to grant these variances by the nature of the facts surrounding each category. If a variance does not fall under one of these expedited variance categories, and thus does not qualify for the expedited variance process, it shall be processed through the standard variance process.

Any New Irrigated Acre approved through the expedited variance process without an approved Offset will be subject to the limitations of Rule 13.3.1.

13.9.2. Standard Forms. An application for an expedited variance must be made on an approved District form. The General Manager is instructed to create and adopt forms as required for this process.

13.9.3. Expedited Variance Categories. Subject to the General Manager's discretionary authority in Rule 13.9.4 and subject to the acre limitation in Rule 13.3.1, the following categories are eligible for an expedited variance:

13.9.3.1. Supplemental Wells. Applications for a Variance for a Supplemental Well to irrigate land already irrigated with Groundwater, provided that the number of New Groundwater Irrigated Acres is not more than ten (10.00). An applicant may offer an Offset to reduce the number of New Groundwater Irrigated Acres, provided the applicant grants an acceptable conservation easement to restrict Groundwater use on any Historically Irrigated Acres used for the Offset. The General Manager shall have the sole discretion to determine whether a conservation easement is acceptable.

13.9.3.2. Replacement Wells. Applications for a Variance for a Replacement Well to irrigate land already irrigated with Groundwater, provided that the Well will meet the definition of Replacement Well in Rule 2.

13.9.3.3. Applications for a Variance to irrigate not more than ten (10.00) New Groundwater Irrigated Acres. An applicant may offer an Offset to reduce the number of New Groundwater Irrigated Acres, provided the applicant grants an acceptable conservation easement to restrict Groundwater use on any Historically Irrigated Acres used for the Offset. The General Manager shall have the sole discretion to determine whether a conservation easement is acceptable.

13.9.3.4. Applications for a Variance for Good Cause Shown to irrigate not more than thirty-five (35.00) New Groundwater Irrigated Acres. An applicant may request a Variance for good cause shown for New Groundwater Irrigated Acres which do not otherwise qualify either as Historically Irrigated Acres or to which may be approved under the other Expedited Variance Categories as listed above. In determining whether an applicant has provided good cause shown, the General Manager shall consider discretionary factors such as, but not limited to: (i) impacts to streamflow; (ii) transmissivity; (iii) high capacity Well density; (iv) Well yield; (v) soil conservation impacts; (iv) whether the applicant was subject to a cease and desist order within the past five years under the District's Rules and Regulations; (v) Well spacing; (vi) the potential for Well interference issues; (vii) whether the Variance is needed to support a Clean Water Act permit; (viii) whether the Variance is for a public benefit to a federal, state, or local agency; (ix) whether the Variance is for educational benefits to a state or local school, college, or university; and (x) other factors that assist in determining whether the application will promote the health and welfare of natural resources within the District.

13.9.4. Discretion of General Manager. The General Manager is authorized, at his discretion, to require any individual variance application that qualifies for the Expedited Variance Process to proceed for approval through the Standard Variance Process.

13.9.5. Offsets. Subject to the limitations and requirements in Sections 13.9.5.1, the General Manager is authorized, at his discretion, to approve Offsets as part of the Expedited Variance Process, except for applications for a Replacement Well.

13.9.5.1. The General Manager shall utilize the best scientific data available to determine the value of the Offset to reduce the number of New Groundwater Irrigated Acres. Generally, the General Manager should focus on the new depletion versus the depletion of the Offset proposed. Notwithstanding any other provision, credit for Offset Acres is limited to one Offset Acre per one acre of proposed irrigated land.

13.9.5.2. Offsets shall not be allowed between parcels inside and outside the Hydrologically Connected Area, where the transfer is into an NRD Stay Area, or where the transfer is from within the District boundary to outside the District boundary.

13.9.5.3. Offsets from another District are permitted provided the District approves the transfer subject to conditions sufficient to prevent further irrigation of the Offset Acres in the future.

13.9.5.4. Applications including a proposed Offset must include a certified title search on the Offset Acres performed within 60 days of filing the application. The application must be signed by all owners for both parcels. The application must also include a proposed conservation easement for the Offset Acres executed by the owner of the Offset Acres.

13.9.5.5. Any existing Well on the Offset acres must be decommissioned or converted to a capacity of 50 gallons per minute or less.

13.10. Exceptions.

13.10.1. No District variance or approval is required for certain categories or Wells qualifying for an exception. Any Water Well Permit required for Wells qualifying for an exception can be processed by management or staff without a District variance.

13.10.2. The following activities are exempt from variance requirements:

13.10.2.1. Test holes;

13.10.2.2. Dewatering Wells to be used for one year or less;

13.10.2.3. Monitoring Wells;

13.10.2.4. Wells constructed pursuant to a Groundwater remediation plan under the Environmental Protection Act;

13.10.2.5. Water Wells designed and constructed to pump fifty gallons per minute or less, except that no two or more Water Wells that each pump fifty gallons per minute or less may be connected or otherwise combined to serve a single project such that the collective pumping would exceed fifty gallons per minute;

13.10.2.6. Water Wells for range livestock; and

13.10.2.7. Water Wells for which permits have been approved by the DNR pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act.

13.11. Public Interest.

13.11.1. Notwithstanding any other provision of Rule 13, the Board may deny any individual variance application upon finding that granting the application will not promote the health and welfare of the District by negatively impacting the conservation, protection, development, or sound management of natural resources within the District. Before the Board denies a variance application under this provision, it shall provide the landowner with notice and an opportunity for a hearing.

13.12. Conditions of Variance. Except for a variance for a Well meeting the definition of Replacement Well under Rule 2, the following conditions apply to any variance granted under this Rule 13. If a variance is granted for a Replacement Well but the applicant ultimately does not comply with the conditions of that definition, the variance shall be subject to the following conditions upon notice by the District.

13.12.1. A Variance approved by District only applies to the locations and/or volume of water, and if the use is dewatering, to the period of time specified in the variance approval. Any proposed additional expansion of water use in the size of the area or in volume of water applied will require an additional Variance.

13.12.2. Landowner has 30 days from the date the District mails the Variance to sign the Variance and return it to the District. By signing the Variance, the landowner accepts the terms and conditions of the Variance. If the landowner does not comply with this condition within 30 days, the Variance shall lapse and the landowner must request a new Variance, absent Board approval for good cause shown.

13.12.3. Landowner has 180 days from the date the District mails the Variance to submit an application to the District for a Well construction permit (if applicable), update County assessor records and DNR Well registration records on New Groundwater Irrigated Acres, and comply with any additional conditions required by the District.

13.12.4. The issuance of a Variance does not exempt the applicant(s) from complying with any future integrated management plan or changes to the District's groundwater management plan or any rules and regulations adopted in accordance with that plan, including future amendments.

13.12.5. The irrigation activities authorized under a Standard Variance must be initially put to use within 18 months from the date the variance is approved by the District. The irrigation activities authorized under an Expedited Variance must be initially put to use within 12 months from the date the variance is approved by the District. The applicant shall submit a Notice of Project Completion on the form provided by the District and submit to the District within 19 months of approval for a Standard Variance and 13 months of approval for an Expedited Variance. If the requirements of this condition are not met within the timeframes required, the Variance shall lapse and the landowner must request a new Variance absent Board approval for good cause shown.

13.12.6. Any person who knowingly furnishes false information regarding an application for a Variance shall be subject to the imposition of penalties imposed through the controls adopted by the District pursuant to Neb. Rev. Stat. § 46-746, and may, upon notice and opportunity for a hearing, have the Variance cancelled by the Board.

13.12.7. Upon the issuance of any variance, the landowner shall execute a Notice of Encumbrance on the form provided by the District. This Notice of Encumbrance will indicate

that the use of the Well, which is a fixture that runs with the land, is subject to certain terms and conditions, and that any future potential buyer should obtain these terms and conditions from the District. The Notice of Encumbrance shall be returned to the District within 30 days of the date the District mails the Variance. If the landowner does not comply with this condition within 30 days, the Variance shall lapse and the landowner must request a new Variance, absent Board approval for good cause shown. Upon receipt of the executed Notice of Encumbrance, the District will work with the landowner and/or applicant to file the Notice of Encumbrance in the Register of Deeds office for the relevant County.

13.12.8. Any Person who violates any provision of Rule 13, or the terms and conditions of any Variance or exception granted under Rule 13, may be subject to a cease and desist order and the Variance may be subject to cancellation by the Board. This provision shall not limit any other enforcement authority or mechanism available to the District.

13.12.9. Applicant must equip the Well (or Wells) subject to the Variance with a District approved Flow Meter prior to Groundwater withdrawal in compliance with Rule 11 of the District's Rules and Regulations.

13.12.10. The conditions in this subsection are the standard conditions for any variance. Because every application is fact specific, and certain circumstances may arise that require additional conditions for the conservation, protection, development, or sound management of the natural resources in the District, the Board may add additional conditions to individual Variances as it deems necessary for the protection and general welfare of the people within the District. Such additional conditions also may be necessary for the Board to find good cause exists to grant the Variance.

13.12.11. Variances granted under the District's rules and regulations are deemed unique and special with regard to the specific application and/or application period, and do not create a precedent for future application, or matters pertaining to other lands, whether or not they are similarly situated.

Rule 14. CERTIFICATION OF IRRIGATED ACRES

14.1. Purpose. The Board declares that in order to best conserve, protect, develop, and manage the natural resources within the District, it is necessary and in the public interest to determine and certify the number and location of irrigated acres in the District, regardless of source of water or purpose of use. The Board further declares a goal of completing the certification of irrigated acres in the District by January 2013.

14.2. One of the primary goals for the certification of acres is, upon completion of the certification process, to allow irrigation of agricultural lands with Groundwater only on acres classified as Certified Irrigated Acres within the District. The Board will propose revisions to these rules and regulations, receive public comment and hold a hearing, prior to adopting such additional controls.

14.3. The Board declares that any tract of land greater than two acres that (1) has been actually irrigated any one out of ten years from 1999 to 2008, (2) is currently enrolled in a federal, state, or local conservation program and was classified as irrigated land by the local County Assessor within one year prior to being enrolled in such program, (3) has otherwise been allowed to develop under an approval granted by the Board since 2007, (4) has otherwise been allowed to develop under an approval granted by the Department since 2007, or (5) is irrigated from a lagoon constructed in compliance with a Clean Water Act permit, can be certified as irrigated acres. Tracts of land that are watered by one or more Groundwater Wells with a combined pumping capacity of 50 gallons per minute or less shall not be required to be certified by the District.

14.4. Process for Certification of Irrigated Acres.

14.4.1. The District will collect and organize data to identify those acres actually irrigated for agricultural purposes within the District, including Historically Irrigated Acres and any other irrigated tract of two acres or more, regardless of the source of water. The District may, but is not required to, identify acres actually irrigated for other beneficial uses.

14.4.2. The District staff will utilize this data to make a preliminary finding of those acres qualifying as Certified Irrigated Acres.

14.4.3. The District staff will contact in writing each landowner with acres determined in the preliminary finding to qualify as Certified Irrigated Acres to notify the landowner of the preliminary finding. Landowners will have 30 days from the date of the letter to provide additional information or otherwise object to the preliminary finding. If the landowner does not object, it shall sign the preliminary finding and return it to the District within the 30 day period. A landowner's failure to respond to the preliminary finding within 30 days shall be deemed consent to the preliminary finding.

14.4.4. Upon completion of the preliminary finding process, but before making a final determination regarding the acres to initially be deemed as Certified Irrigated Acres, the Board shall hold one public hearing to receive testimony and evidence on its proposed final determination. Following the hearing, the Board shall certify those acres deemed to qualify as Certified Irrigated Acres within the District.

14.4.5. As one of the initial goals of certifying irrigated acres is to accurately account for those acres actually irrigated (e.g., Historically Irrigated Acres) in the District, the Board may amend the Certified Irrigated Acres determination upon good cause shown.

Rule 15. CONTROLS FOR NON-10/50 AREA

15.1. Background. The Non-10/50 Area is the area of the District that is outside the boundaries of the Hydrologically Connected Area. The District finds it is in the public interest to impose controls in the Non-10/50 Area of the District-wide management area for the promotion of the health and welfare of the District and ensure the sound conservation, protection, development and management of Groundwater resources within the District. These controls apply irrespective of the action level triggers established in Rule 12.

15.2. Purpose. This Rule 15 limits the expansion of irrigated acres and increases in the consumptive use of Groundwater withdrawals from Water Wells used for irrigation purposes within the Non-10/50 Area, and limits the issuance of additional permits for new Irrigation Wells within the Non-10/50 Area. These activities are conditioned upon receipt of a variance and compliance with this Rule 15. Neb. Rev. Stat. §§ 46-739(1)(f), (m).

15.3. New Groundwater Irrigated Acre Limitation. Effective immediately, there shall be no New Groundwater Irrigated Acres within the Non-10/50 Area without a variance. Such activity is strictly prohibited, either from an existing Well or a new Well, unless approved by the District pursuant to this Rule 15.

15.3.1. Notwithstanding this limitation, the District shall annually determine the number of New Groundwater Irrigated Acres and/or New Groundwater Depletions in AF per calendar year in the Non-10/50 Area. This amount shall be based upon a variety of factors, including: available groundwater supplies, historical averages of allowable new development, and potential changes to management area boundaries.

15.4. Variance Required.

15.4.1. Any person wishing to undertake any of the following activities within the Non-10/50 Area must receive a Written Good Cause Variance:

15.4.1.1. Construction of an Irrigation Well, whether it is a new Well, a Replacement Well, or a Supplemental Well.

15.4.1.2. Irrigation of acres other than those defined as Historically Irrigated Acres, whether the source of water is from a new or existing Well. This includes New Groundwater Irrigated Acres and acres for which the applicant provides Offset Acres.

15.4.2. No Well construction permit application will be considered complete within the Non-10/50 Area until the appropriate Variance is approved.

15.5. Variance Application Periods.

15.5.1. The Board will establish application periods for development of New Groundwater Irrigated Acres in the Non-10/50 Area annually. Variance requests must be fully completed and received by the District by the end of the application period. Incomplete and late applications will not be processed, but returned to the applicant.

15.6. Variance Application Process.

15.6.1. Contents of Application for Good Cause Variance. An application for a Variance must be made on an approved District form. The General Manager is instructed to create and adopt forms as required for this process. The General Manager, in his sole discretion,

is authorized to combine the application forms for this Rule 15 with any application forms required under Rule 3. The General Manager may request, in his sole discretion, any of the information in this Rule 15.6.1 on the Expedited Variance form. The General Manager must request, at a minimum, the following information on the Standard Variance form:

15.6.1.1. Applicant information. Name, address, and contact information for applicant and landowners, if different than the applicant.

15.6.1.2. Purpose of variance request and of new Well and/or expanded water use. New Groundwater Irrigated Acres or other expanded water use, and/or construction of new Well, or Replacement Well or Supplemental Well construction, for irrigation or irrigation pit.

15.6.1.3. Test hole data for new Wells. Total depth of Well, test hole logs, and estimated or actual pumping capacity.

15.6.1.4. Water Source Information. Legal description of Well or surface water diversion location, including the county, township, range, section, and location within the section. If the source is surface water, the surface water appropriation number. If the Well is used to supplement water from a lagoon required under a Clean Water Act permit, include the Clean Water Act permit and permit number. If the Well is in a system with other Wells, the number of Wells, Well registration numbers, and legal description of each Well. If the Well is a Replacement Well, the registration number of the Well being replaced, the proximity of the Replacement Well to the old Well, and decommissioning/change of use intentions of the applicant for the old Well.

15.6.1.5. Water Use Information. Description of the new water use area, including legal description of the new water use location and timeframe or schedule when water will be used, and, if use is for irrigation, the number of new acres that will be irrigated and proposed land use (for example, row crops, pasture, soccer fields, or golf course fairways and greens). The location(s) of existing water use if existing Well or surface water appropriation will be used to water new acres. If reuse water is one of the water sources, the annual amount of intake water, description of water use within the operation and the annual amount of water discharged from this operation.

15.6.1.6. Offset Water Sources and Methods. If applicable, description of method(s) to provide and location of source of Offset Acres. Documentation of applicant's ability to secure offset water. Volume and timing of consumptive use credit for offset water source or method.

15.6.1.7. Land Information. Current tax assessor records where water is to be used. Description of current land use (dryland, pasture, irrigated). Parcel number for land using Water Well. Tax assessor records submitted with the variance request must include map, parcel number and an accurate account of current land use, such as irrigated acres. An aerial photograph with markings to show current land use, the proposed Well location (if applicable), the location of the water source(s) and the location of where the water is to be used, shall be submitted with the variance request form.

15.6.1.8. Description of Project. A detailed narrative by the applicant of the project.

15.6.1.9. Signatures. Signature of the applicant, and landowner signature, if this is a different person or entity than the applicant.

15.6.2. Application Fee. Each variance application received on or after the effective date of this Rule 15 shall include an application fee of \$50.00 to be considered complete.

15.7. Standard Variance Process.

15.7.1. Variations Assigned to Variance Ad Hoc Committee. Unless otherwise specifically excluded, all applications for a Variance submitted to the District will be considered by the Variance Ad Hoc Committee (Committee).

15.7.2. Discretionary Factors. The District will review variance applications based on discretionary factors, including but not limited to, whether the application would promote the health and welfare of the District by contributing to the conservation, protection, development, and sound management of natural resources.

15.7.3. Ranking System. The Committee will use a scoring/ranking system as a guide when recommending approval or denial of variance applications within the limits established by this Rule 15. Categories and subcategories used for this system will be objective and quantifiable. Each subcategory will be assigned a numerical weight, or score, by the Committee prior to ranking any variance application, and will be structured so that higher scores will result in a better ranking.

15.7.4. Categories to be considered for the ranking include, but are not limited to:

- 15.7.4.1. Impacts to streamflow of New Groundwater Irrigated Acre;
- 15.7.4.2. Transmissivity;
- 15.7.4.3. High capacity Well density;
- 15.7.4.4. Well yield;
- 15.7.4.5. Soil conservation impacts;
- 15.7.4.6. Whether the applicant was subject to a cease and desist order within the past five years under the District's Rules and Regulations;
- 15.7.4.7. Whether the Variance is needed to support a Clean Water Act permit issued to a confined animal feeding operation;
- 15.7.4.8. Proximity and impacts to a Wellhead protection area;
- 15.7.4.9. Proximity of source or land to be irrigated to an area subject to a stay under Neb. Rev. Stat. § 46-707(2) or other similar state law;
- 15.7.4.10. Whether the applicant previously applied for a Variance on the same tract; and
- 15.7.4.11. Other factors that assist in determining whether the application will promote the health and welfare of natural resources within the District.

15.7.5. Transfer. The transfer of any application for a standard or expedited variance, or any variance issued under this Rule 15, shall not be allowed from one person to another person.

15.8. Processing and Ranking of Applications.

15.8.1. Variance applications will be ranked individually and considered jointly with all applications received during the same application period. Applicants with variance applications that were not approved must reapply during the next Variance application period to be considered again.

15.8.2. District Staff to Perform Initial Ranking. Using the ranking system developed by the Committee, District staff will perform an initial ranking of each variance application.

15.8.3. Applicant Review of Initial Ranking. The District will give each applicant 14 days to review the ranking of their variance application and an opportunity to provide more information to the District to ensure that the final ranking will be as accurate as possible. Each applicant will be mailed a copy of their application and the initial ranking, and will have 14 days from the date their application and initial ranking were mailed to provide the District with any further information. If the applicant does not provide any additional information on its ranking, the applicant waives any objection to the ranking assigned to its application.

15.8.4. Minimum Total Score. In order to achieve the District's priorities, and for the conservation, protection, development, and sound management of natural resources within the management area, the Board may, at its discretion, annually establish a minimum total score that must be met in order for a variance request to be considered for approval. The Board must establish the minimum total score prior to the beginning of any relevant application period.

15.8.5. Minimum Soil Score. In order to achieve the District's priorities, the Board may, at its discretion, annually establish a minimum score for the soil conservation category. The Board must establish such a minimum score prior to the start of the relevant application period. If established, the minimum score shall range from 80 to 120 utilizing the Natural Resources Conservation Service's National Soil Information System (NASIS) as the foundation for establishing scores in this category. Any variance application that does not achieve the minimum score or higher shall not be approved, notwithstanding the final ranking of the variance application.

15.8.6. Final Ranking of Applications. Although applicants are given the opportunity to provide additional information, the ultimate decision on the ranking of an individual application is left to the discretion of the District. District staff will consider any additional information provided by the applicants to perform the final ranking of each variance application. District staff will then sort the applications according to final rank, and beginning with the highest ranked application, staff will compute the running total number of acres with each successive application through the lowest ranked application.

15.8.7. Committee Recommendation. The Committee will make a recommendation to the Board on the number of New Groundwater Irrigated Acres to be allowed

that year within the Non-10/50 Area, subject to the limitations in this Rule 15. Based on this number and the final ranking of applications, the Committee will also recommend which applications to approve.

15.8.8. Board Action. The Board will consider the Committee recommendations at its next regularly scheduled meeting. The Board will establish the number of New Groundwater Irrigated Acres to be allowed within the Non-10/50 Area, subject to the limitations in this Rule 15. Any variance application that does not achieve the minimum score or higher established under Section 15.8.4 will be denied. The Board will then approve the highest ranking applications up to the number of acres allowed that year, subject to the conditions set forth in Section 15.12 below (and any other conditions the Board deems appropriate and necessary to protect the health and general welfare of the District). Those applications not approved will be denied. Such a denial, however, does not prevent the applicant from reapplying the following year.

15.8.9. Site Visit. District staff may perform a site visit to verify or seek additional information. Staff should contact the applicant for access approval.

15.9. Expedited Variance Process.

15.9.1. A variance granted under these conditions shall be referred to as an expedited variance. Expedited variances are not presented to the Committee and approved by the Board, but rather may be granted by the General Manager or his designated representative. The Board finds this process acceptable for the following categories because good cause exists to grant these variances by the nature of the facts surrounding each category. If a variance does not fall under one of these expedited variance categories, and thus does not qualify for the expedited variance process, it shall be processed through the standard variance process.

Any New Irrigated Acre approved through the expedited variance process without an approved Offset will be subject to the limitations of Rule 15.3.1.

15.9.2. Standard Expedited Variance Forms. An application for an expedited variance must be made on an approved District form. The General Manager is instructed to create and adopt forms as required for this process.

15.9.3. Expedited Variance Categories. Subject to the General Manager's discretionary authority in Rule 15.9.4 and subject to the acre limitation in Rule 15.3.1, the following categories are eligible for an expedited variance:

15.9.3.1. Supplemental Wells. Applications for a Variance for a Supplemental Well to irrigate land already irrigated with Groundwater, provided that the number of New Groundwater Irrigated Acres is not more than ten (10.00). An applicant may offer an Offset to reduce the number of New Groundwater Irrigated Acres, provided the applicant grants an acceptable conservation easement to restrict Groundwater use on any Historically Irrigated Acres used for the Offset. The General Manager shall have the sole discretion to determine whether a conservation easement is acceptable.

15.9.3.2. Replacement Wells. Applications for a Variance for a Replacement Well to irrigate land already irrigated with Groundwater, provided that the Well will meet the definition of Replacement Well in Rule 2.

15.9.3.3. Applications for a Variance to irrigate not more than ten (10.00) New Groundwater Irrigated Acres. An applicant may offer an Offset to reduce the number of New Groundwater Irrigated Acres, provided the applicant grants an acceptable conservation easement to restrict Groundwater use on any Historically Irrigated Acres used for the Offset. The General Manager shall have the sole discretion to determine whether a conservation easement is acceptable.

15.9.3.4. Applications following Board Action Under Section 15.8.7. In the Non-10/50 Area, applications may qualify for an expedited variance following Board Action each year under Section 15.8.7 until the end of the calendar year, provided that: (1) the Board did not grant the full acres allowed that year as established under Section 15.3.1; (2) the application, when scored by District staff following the procedures in Sections 15.7 and 15.8, meets any minimum score established that year under Section 15.8.4 and scores equal to or higher than the median score for applications approved under Section 15.8.7 that calendar year through the Standard Variance Process; (3) the application is for not more than 100 New Irrigated Acres; (4) granting the application will not result in authorizing more acres than the annual limit established under Section 15.3.1; and (5) the General Manager affirmatively determines that good cause exists to process the application in accordance with the purposes of Section 15.9.1.

15.9.3.5. Applications for a Variance for Good Cause Shown to irrigate not more than thirty-five (35.00) New Groundwater Irrigated Acres. An applicant may request a Variance for good cause shown for New Groundwater Irrigated Acres which do not otherwise qualify either as Historically Irrigated Acres or to which may be approved under the other Expedited Variance Categories as listed above. In determining whether an applicant has provided good cause shown, the General Manager shall consider discretionary factors such as, but not limited to: (i) impacts to streamflow; (ii) transmissivity; (iii) high capacity Well density; (iv) Well yield; (v) soil conservation impacts; (iv) whether the applicant was subject to a cease and desist order within the past five years under the District's Rules and Regulations; (v) Well spacing; (vi) the potential for Well interference issues; (vii) whether the Variance is needed to support a Clean Water Act permit; (viii) whether the Variance is for a public benefit to a federal, state, or local agency; (ix) whether the Variance is for educational benefits to a state or local school, college, or university; and (x) other factors that assist in determining whether the application will promote the health and welfare of natural resources within the District.

15.9.4. Discretion of General Manager. The General Manager is authorized, at his discretion, to require any individual variance application that qualifies for the Expedited Variance Process to proceed for approval through the Standard Variance Process.

15.9.5. Offsets. Subject to the limitations and requirements in Sections 13.9.5.1, the General Manager is authorized, at his discretion, to approve Offsets as part of the Expedited Variance Process, except for applications for a Replacement Well.

15.9.5.1. The General Manager shall utilize the best scientific data available to determine the value of the Offset to reduce the number of New Groundwater Irrigated Acres. Generally, the General Manager should focus on the new depletion versus the depletion of the Offset proposed. Notwithstanding any other provision, credit for Offset Acres is limited to one Offset Acre per one acre of proposed irrigated land.

15.9.5.2. Offsets shall not be allowed between parcels inside and outside the Hydrologically Connected Area,, where the transfer is into an NRD Stay Area, or where the transfer is from within the District boundary to outside the District boundary.

15.9.5.3. Offsets from another District are permitted provided the District approves the transfer subject to conditions sufficient to prevent further irrigation of the Offset Acres in the future.

15.9.5.4. Applications including a proposed Offset must include a certified title search on the Offset Acres performed within 60 days of filing the application. The application must be signed by all owners for both parcels. The application must also include a proposed conservation easement for the Offset Acres executed by the owner of the Offset Acres.

15.9.5.5. Any existing Well on the Offset acres must be decommissioned or converted to a capacity of 50 gallons per minute or less.

15.10. Exceptions.

15.10.1. No District variance or approval is required for certain categories of Wells qualifying for an exception. Any Water Well Permit required for Wells qualifying for an exception can be processed without a District variance.

15.10.2. The following activities are exempt from variance requirements:

15.10.2.1. Test holes;

15.10.2.2. Dewatering Wells to be used for one year or less;

15.10.2.3. Monitoring Wells;

15.10.2.4. Wells constructed pursuant to a Groundwater remediation plan under the Environmental Protection Act;

15.10.2.5. Water Wells designed and constructed to pump fifty gallons per minute or less, except that no two or more Water Wells that each pump fifty gallons per minute or less may be connected or otherwise combined to serve a single project such that the collective pumping would exceed fifty gallons per minute;

15.10.2.6. Water Wells for range livestock; and

15.10.2.7. Water Wells for which permits have been approved by the DNR pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act.

15.11. Public Interest.

15.11.1. Notwithstanding any other provision of this Rule 15, the Board may deny any individual variance application upon finding that granting the application will not promote the health and welfare of the District by negatively impacting the conservation, protection, development, or sound management of natural resources within the District. Before the Board denies a variance application under this provision, it shall provide the landowner with notice and an opportunity for a hearing.

15.12. Conditions of Variance. Except for a variance for a Well meeting the definition of Replacement Well under Rule 2, the following conditions apply to any variance granted under this Rule 15. If a variance is granted for a Replacement Well but the applicant ultimately does

not comply with the conditions of that definition, the variance shall be subject to the following conditions upon notice by the District.

15.12.1. A Variance approved by District only applies to the locations and/or volume of water, and if the use is dewatering, to the period of time specified in the variance approval. Any proposed additional expansion of water use in the size of the area or in volume of water applied will require an additional Variance.

15.12.2. Landowner has 30 days from the date the District mails the Variance to sign the Variance and return it to the District. By signing the Variance, the landowner accepts the terms and conditions of the Variance. If the landowner does not comply with this condition within 30 days, the Variance shall lapse and the landowner must request a new Variance, absent Board approval for good cause shown.

15.12.3. Landowner has 180 days from the date the District mails the Variance to submit an application to the District for a Well construction permit (if applicable), update County assessor records and DNR Well registration records on New Groundwater Irrigated Acres, and comply with any additional conditions required by the District.

15.12.4. The issuance of a Variance does not exempt the applicant(s) from complying with any future integrated management plan or changes to the District's groundwater management plan or any rules and regulations adopted in accordance with that plan, including future amendments.

15.12.5. The irrigation activities authorized under a Standard Variance must be initially put to use within 18 months from the date the variance is approved by the District. The irrigation activities authorized under an Expedited Variance must be initially put to use within 12 months from the date the variance is approved by the District. The applicant shall submit a Notice of Project Completion on the form provided by the District and submit to the District within 19 months of approval for a Standard Variance and 13 months of approval for an Expedited Variance. If the requirements of this condition are not met within the timeframes required, the Variance shall lapse and the landowner must request a new Variance absent Board approval for good cause shown.

15.12.6. Any person who knowingly furnishes false information regarding an application for a Variance shall be subject to the imposition of penalties imposed through the controls adopted by the District pursuant to Neb. Rev. Stat. § 46-746, and may, upon notice and opportunity for a hearing, have the Variance cancelled by the Board.

15.12.7. Upon the issuance of any variance, the landowner shall execute a Notice of Encumbrance on the form provided by the District. This Notice of Encumbrance will indicate that the use of the Well, which is a fixture that runs with the land, is subject to certain terms and conditions, and that any future potential buyer should obtain these terms and conditions from the District. The Notice of Encumbrance shall be returned to the District within 30 days of the date the District mails the Variance. If the landowner does not comply with this condition within 30 days, the Variance shall lapse and the landowner must request a new Variance, absent Board approval for good cause shown. Upon receipt of the executed Notice of Encumbrance, the District will work with the landowner and/or applicant to file the Notice of Encumbrance in the Register of Deeds office for the relevant County.

15.12.8. Any Person who violates any provision of Rule 15, or the terms and conditions of any Variance or exception granted under Rule 15, may be subject to a cease and desist order and the Variance may be subject to cancellation by the Board. This provision shall not limit any other enforcement authority or mechanism available to the District.

15.12.9. Applicant must equip the Well (or Wells) subject to the Variance with a District approved Flow Meter prior to Groundwater withdrawal in compliance with Rule 11 of the District's Rules and Regulations.

15.12.10. The conditions in this subsection are the standard conditions for any variance. Because every application is fact specific, and certain circumstances may arise that require additional conditions for the conservation, protection, development, or sound management of the natural resources in the District, the Board may add additional conditions to individual Variances as it deems necessary for the protection and general welfare of the people within the District. Such additional conditions also may be necessary for the Board to find good cause exists to grant the Variance.

15.12.11. Variances granted under the District's rules and regulations are deemed unique and special with regard to the specific application and/or application period, and do not create a precedent for future applications, or matters pertaining to other lands, whether or not they are similarly situated.

Rule 16. CONTROLS FOR STAY AREAS.

16.1. Background on NRD Stays. The District has the authority to impose an immediate temporary stay for a period of one hundred eighty days on the construction of any new Well and on any increase in the number of Historically Irrigated Acres, without prior notice or hearing, upon adoption of a resolution by the Board finding that such temporary immediate stay is necessary. Neb. Rev. Stat. § 46-707(2). Upon the adoption of such a resolution imposing a temporary stay, the District is required to follow certain procedures to receive public input prior to making a determination as to imposing a permanent stay within the area.

16.2. Purpose. The purpose of this Rule 16 is to impose additional conditions on the construction of new Wells and the development of New Groundwater Irrigated Acres within areas where the District has imposed a temporary or permanent stay under Section 46-707(2), otherwise known as an NRD Stay Area. The District finds these conditions necessary for the promotion of the health and welfare of the District and for the sound conservation, protection, development, and management of Groundwater resources within the District and any NRD Stay Area. These controls apply in NRD Stay Areas irrespective of the action level triggers established in Rule 12.

16.3. Standard for Variance Applications in NRD Stay Area. Applications for a variance within an NRD Stay Area shall be made and processed in accord with Rule 13 for applications within the Hydrologically Connected Area and Rule 15 for applications within the Non-10/50 Area. Notwithstanding the provisions of Rules 13 and 15, an application for a variance within an NRD Stay Area shall not be granted until the District determines that the activity proposed under the variance will not cause unreasonably increasing damage to surrounding land or other water users. The declaration of an NRD Stay Area by the District creates a rebuttable presumption that any new Irrigation Well or any increase in New Groundwater Irrigated Acres within the NRD Stay Area may cause unreasonably increasing damage to surrounding land or other water users.

16.4. Additional Information for Applications for Variance in NRD Stay Area. Notwithstanding the provisions of Section 16.3, applications for a variance within an NRD Stay Area shall also include an aerial photograph of the proposed Well location. The applicant shall also identify all Wells located within a two-mile radius of the proposed Well location, including domestic and stock Wells, on the aerial photograph. If the Well is a registered Irrigation Well, the applicant shall provide the Well registration number, either on the aerial photograph or as an attachment. Finally, the applicant shall provide a list of names and addresses of all land owners within a two mile radius of the proposed Well location, after having verified the list with information from the appropriate County Assessor's office. The NRD may use the list of names and addresses as a basis to verify the current water users within the area, and may provide them with an opportunity to comment on the application.

16.5. District to Make Initial Determination. Upon receipt of a complete application, the District shall make an initial determination of whether the activities proposed by the variance application may cause unreasonably increasing damage to surrounding land or other water users.

16.5.1. Initial Determination of Not Likely to Cause Unreasonably Increasing Damage. If the District's initial determination is that the variance is not likely to cause

unreasonably increasing damage to surrounding land or other water users, then the District shall provide notice to the applicant of this determination and process the application in accord with Rule 13 or 15, as applicable.

16.5.2. Initial Determination of May Cause Unreasonably Increasing Damage. If the District's initial determination is that the variance may cause unreasonably increasing damage to surrounding land or other water users, the District shall notify the applicant of this initial determination in writing. The District shall also provide the applicant with information on other water users that the District determines may be impacted, including the location of the Wells and the names and addresses of the owners of the Wells. The applicant shall then have 30 days following issuance of the notice, or a longer time period as determined by the District if the applicant consents to deferment of the application under Section 16.6, to:

16.5.2.1. Provide any additional information relating to the District's evaluation, such as a study that accurately describes the availability of Groundwater and potential impacts on existing users; and/or

16.5.2.2. Submit one of the following for each water user that may be impacted as identified in the notice:

16.5.2.2.1. A signed and notarized consent form from the water user consenting to the withdrawals of the proposed variance. The applicant shall use the consent form furnished by the District; or

16.5.2.2.2. Evidence satisfactory to the District that the address of the water user is inaccurate and that the applicant made a reasonable attempt to locate the water user but was unable to do so.

16.6. Changes in Application. At any time before the District makes a final determination as to the impact of the proposed variance on surrounding land or other water users, the applicant may:

16.6.1. Amend the application to change the location of the proposed Well or Wells or the amount of Groundwater to be withdrawn from the Well or Wells to lessen the degree of impact on surrounding land or other water users. Under this option, the variance application must be effectively withdrawn and resubmitted for consideration during the next application period, unless the change is made before the close of the application period or the application is deferred under Section 16.6; or

16.6.2. Agree to construct or operate the Well or Wells in a manner that lessens the degree of impact on surrounding land or other water users. The District shall indicate in the variance, if approved, that compliance with the agreement is a condition of the Water Well Permit.

16.7. Time Period for Considering Applications in NRD Stay Areas. Notwithstanding the provisions of Rule 13 or 15 regarding the timing for granting of variance applications, the District finds that the circumstances surrounding variance applications within NRD Stay Areas may be too complicated to process such applications within the prescribed timeframes. Accordingly, if necessary to adequately consider an application for variance within an NRD Stay Area, the District may defer an application to the next year's application period to allow adequate time for considering the application. The District shall not defer an application for a

variance within an NRD Stay Area for more than one application period without the applicant's consent.

Rule 17. ADDITIONAL CONTROLS IN SUBAREAS

17.1. Background and Purpose. The District may designate a Management Area for the protection of Groundwater quantity in a portion or portions of the District where additional controls are necessary for the protection of Groundwater quantity in that area. Such management area shall be known as a Quantity Subarea. Additional controls are necessary where the existing action level triggers established in Rule 12 are insufficient to meet the groundwater management objective or the goals of the groundwater management objective in the Quantity Subarea. Such additional controls are in the public interest and for the promotion of the health and welfare of the District because they will minimize pumping conflicts and protect Groundwater supplies in the Quantity Subarea without imposing unnecessary controls in other portions of the District. Regulation of a Quantity Subarea is also grounded on the dynamic hydrologic, geologic, climatic, and soil conditions throughout the District. Because of these varying conditions, the uniform application throughout the management area of one or more controls would fail to carry out the intent of the Nebraska Ground Water Management and Protection Act in a reasonably effective and equitable manner. As a result, the District imposes the controls for each Quantity Subarea described in Section 17.8 as set forth in Sections 17.3, 17.4, 17.5, 17.6, and 17.7 respectively.

17.2. Standard Controls. The following controls are the Standard Controls for a Quantity Subarea:

17.2.1. No New Irrigated Acres. There shall be no New Groundwater Irrigated Acres from any Water Well or for the benefit of any irrigated acre in the Quantity Subarea without a Written Good Cause Variance. There shall be no increase in the consumptive use of Groundwater withdrawals for agricultural purposes from Water Wells used for irrigation in the area or for the benefit of any irrigated acre in the area. Such activity is strictly prohibited, either from an existing Well or a new Well, without a Written Good Cause Variance.

17.2.1.1. An applicant for a Written Good Cause Variance under Rule 13 or Rule 15 that is also subject to this Section shall, in addition to the requirements in Rule 13 or Rule 15, meet the requirements set forth in Sections 16.3 and 16.4. The District will follow the procedural requirements in Sections 16.5, 16.6, and 16.7 when processing a Written Good Cause Variance under this Section. Any application for a Written Good Cause Variance for land or Water Wells subject to this Section shall not be eligible for an Expedited Variance Process unless it qualifies for a Variance for Good Cause Shown under Section 13.9.3.4 or 15.9.3.5.

17.2.2. Best Management Practices. Any Landowner withdrawing Groundwater for agricultural purposes from any Water Well or for the benefit of any irrigated acres in the Quantity Subarea shall implement the following best management practices:

17.2.2.1. The Landowner shall not irrigate from any Water Well or for the benefit of any irrigated acres in the Quantity Subarea unless the irrigation is for beneficial use for agricultural purposes. A Landowner must annually notify the District by telephone or in writing before irrigating for agricultural purposes from September 15 to April 15. This section shall not prohibit irrigation when necessary for compliance with a National Pollutant Discharge Elimination System permit issued to a confined animal feeding operation.

17.2.3. Mandatory Educational Requirements. There shall be mandatory educational requirements for Landowners withdrawing Groundwater for agricultural purposes

from any Water Well or for the benefit of any irrigated acres in the Quantity Subarea. The requirements shall be designed to stabilize or reduce the incidence of Groundwater depletion and reduce conflicts between Groundwater users.

17.2.3.1. The educational requirements for the first year shall be determined by the Board when establishing the Quantity Subarea.

17.2.3.2. Following the first year after Quantity Subarea is established, the educational requirement shall be to complete four (4) hours of District-approved educational programs once every four (4) years.

17.2.3.3. The General Manager is instructed and authorized to approve educational programs for the purpose of this section.

17.2.4. Measuring Devices. In addition to the requirements in Rule 11.1.2, all Landowners withdrawing Groundwater for agricultural purposes from any Water Well or for the benefit of any irrigated acres in the Quantity Subarea must install a device for measuring Groundwater withdrawals. The General Provisions of Rule 11.2 shall apply to Landowners and devices subject to this section, except the report of Groundwater withdrawal required under Section 11.2.6(q) must be postmarked or otherwise submitted to the District by December 1st of the same year. If December 1st is a non-business day, the report must be postmarked by the next following business day. For operators in a Phase 2 area, the report required under this Section is separate and independent of a report required under Rule 12.7.1(d).

17.2.5. Domestic Wells. New or replacement Water Wells to be used for domestic purposes in the Quantity Subarea shall be constructed to such a depth that they are less likely to be affected by seasonal water level declines caused by other Water Wells in the same area. Any person who installs a new or replacement Water Well for domestic purposes in the Quantity Subarea shall submit a certification from the water Well contractor that the Well was constructed in compliance with this section. The certification shall be submitted to the District within 90 days of completing construction.

17.3. Battle Creek Township. The Standard Controls described in Section 17.2 shall apply in the Battle Creek Township Madison County Quantity Subarea described in Section 17.8. Measuring devices required under Section 17.2.4 shall be installed by May 1, 2014. No Landowner shall operate an Irrigation Well after May 1, 2014 unless it is in compliance with this requirement.

17.4. Pierce County. The Standard Controls described in Section 17.2 shall apply in the Pierce County Quantity Subarea described in Section 17.8. Measuring devices required under Section 17.2.4 shall be installed by May 1, 2014. No Landowner shall operate an Irrigation Well after May 1, 2014 unless it is in compliance with this requirement.

17.5. Northern Chapin Township. The Standard Controls described in Section 17.2 shall apply in Sections One through Eighteen of Chapin Township Wayne County Quantity Subarea described in Section 17.8. Measuring devices required under Section 17.2.4 shall be installed by May 1, 2014. No Landowner shall operate an Irrigation Well after May 1, 2014 unless it is in compliance with this requirement.

17.6. Eastern Madison County. The following controls shall apply in the Eastern Madison County Quantity Subarea described in Section 17.8:

17.6.1. Standard Controls. The Standard Controls described in Section 17.2 shall apply in this Quantity Subarea. Measuring devices required under Section 17.2.4 shall be installed by May 1, 2013. No Landowner shall operate an Irrigation Well in 2013 until it is compliance with this requirement.

17.6.2. Allocation. The use of Groundwater for agricultural purposes from any Water Well for irrigation or for the benefit of any Irrigated Acre in the Quantity Subarea shall be subject to an Allocation. The Board shall establish the initial allocation when establishing the Quantity Subarea. The Board shall thereafter establish the Allocation annually by December 31st for the following calendar year. The Allocation shall specify the total number of acre-inches of irrigation water per irrigated acre for the following calendar year. The Board may establish a different Allocation for different irrigation distribution systems. Any Allocation adopted in this Quantity Subarea shall be at least 8 acre-inches per irrigated acre per year. If the Board fails to adopt an Allocation by December 31st, the Allocation for the following calendar year shall be 15 acre-inches per irrigated acre in this Quantity Subarea.

17.6.2.1. The Board may authorize an additional allocation of up to two acre-inches per irrigated acre for beneficial use for agricultural purposes after September 15 of any year. The Board must adopt this late season allocation at or before the August board meeting of the given year.

17.7. Wayne County. The following controls shall apply in the Wayne County Quantity Subarea described in Section 17.8:

17.7.1. Standard Controls. The Standard Controls described in Section 17.2 shall apply in this Quantity Subarea. Measuring devices required under Section 17.2.4 shall be installed by May 1, 2013. No Landowner shall operate an Irrigation Well in 2013 until it is compliance with this requirement.

17.7.2. Allocation. The use of Groundwater for agricultural purposes from any Water Well for irrigation or for the benefit of any Irrigated Acre in the Quantity Subarea shall be subject to an Allocation. The Board shall establish the initial allocation when establishing a Quantity Subarea. The Board shall thereafter establish the Allocation annually by December 31st for the following calendar year. The Allocation shall specify the total number of acre-inches of irrigation water per irrigated acre for the following calendar year. The Board may establish a different Allocation for different irrigation distribution systems. Any Allocation adopted shall be at least 8 acre-inches per irrigated acre per year. If the Board fails to adopt an Allocation by December 31st, the Allocation for the following calendar year shall be 15 acre-inches per irrigated acre in this Quantity Subarea.

17.7.2.1. The Board may authorize an additional allocation of up to two acre-inches per irrigated acre for beneficial use for agricultural purposes after September 15 of any year. The Board must adopt this late season allocation at or before the August board meeting of the given year.

17.8. The following areas are designated as Quantity Subareas in the District:

17.8.1. Battle Creek. The Battle Creek Quantity Subarea shall consist of Battle Creek Township in Madison County, formally described as: Township 23 North, Range 2 West (Battle Creek). (See Figure 17-1 for reference)

17.8.2. Northern Chapin. The Northern Chapin Quantity Subarea shall consist of Section One through Eighteen of the Chapin Township in Wayne County, formally described as: Sections One through Eighteen of Township 26 North, Range 2 East (Chapin). (See Figure 17-1 for reference)

17.8.3. Eastern Madison County. The Eastern Madison County Quantity Subarea shall consist of the Union and Warnerville Townships, formally described as: Township 22 North, Range 1 West (Union); and Township 23 North, Range 1 West (Warnerville). (See Figure 17-1 for reference)

17.8.4. Pierce County. The Pierce County Quantity Subarea shall consist of the Cleveland and Clover Valley Townships, formally described as: Township 25 North, Range 2 West (Cleveland); and Township 26 North, Range 3 West (Clover Valley). (See Figure 17-1 for reference)

17.8.5. Wayne County. The Wayne County Quantity Subarea shall consist of the Hancock, Brenna, Plum Creek, Chapin, and Strahan Townships, and portions of the Hunter and Wilbur Townships, formally described as: Township 25 North, Range 2 East (Hancock); Township 25 North, Range 3 East (Brenna); Township 25 North, Range 4 East (Plum Creek); Sections Nineteen through Thirty-Six of Township 26 North, Range 2 East (Chapin); Township 26 North, Range 3 East (Strahan); Sections 25 through 36 of Township 26 North, Range 4 East (Hunter); and Sections 25 through 36 of Township 27 North, Range 3 East (Wilbur). (See Figure 17-1 for reference)

17.9. The Board of Directors of the Lower Elkhorn Natural Resources District shall be required to conduct a public hearing on or before January 1, 2019, addressing, at a minimum, the amendments to Rules One and Seventeen of the District's Groundwater Management Area Rules and Regulations as approved by the District on January 24, 2013 and made effective February 25, 2013. Nothing within Rule 17.9 shall be interpreted to mean that amendments to Rules One and Seventeen shall sunset as of January 1, 2019, that amendments to Rules One and Seventeen shall be automatically revoked as of January 1, 2019, nor that the Board of Directors shall be required to take action following the aforementioned public hearing. Rather, the Board of Directors will simply receive public comment in both oral and written form prior to January 1, 2019.

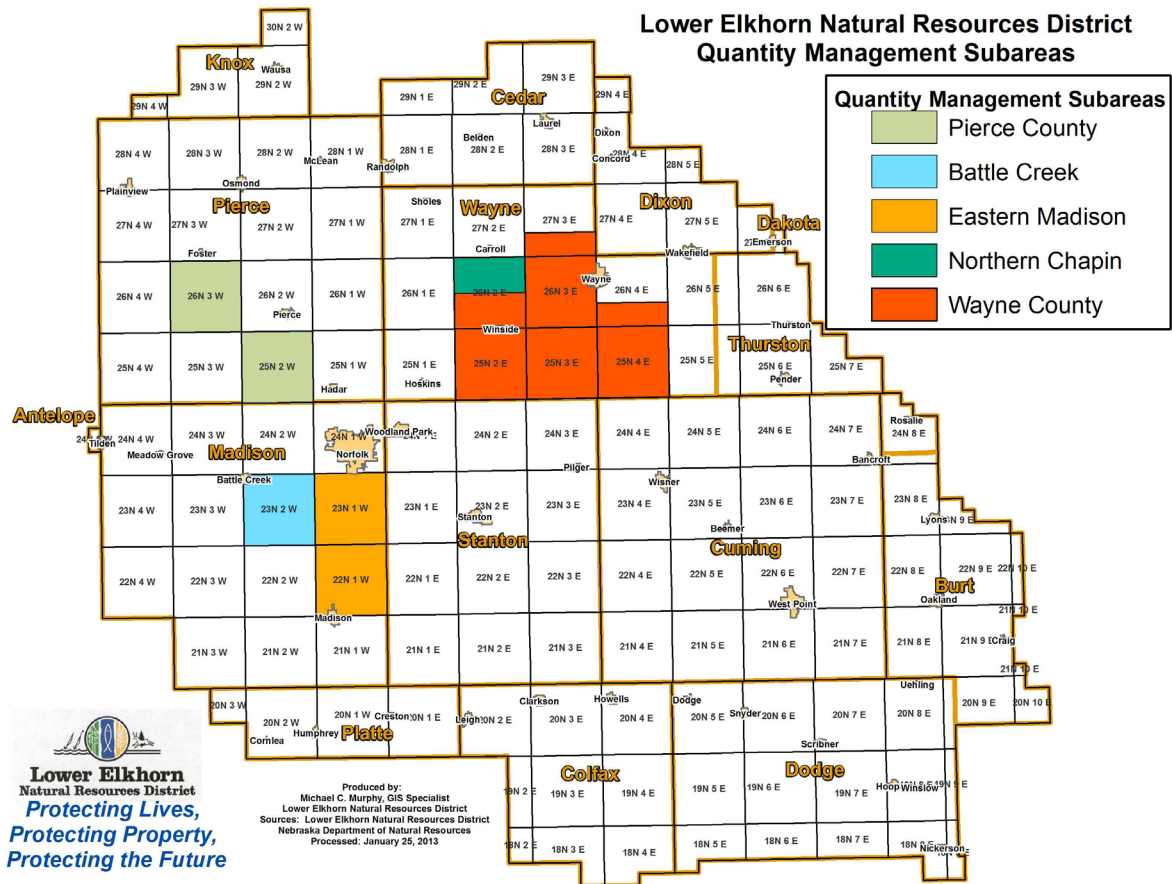


Figure 17-1 Map of Rule 17 Quantity Subareas.

Rule 18 – Transfers of Water Uses

18.1. Background and Purpose. To allow for the effective management of groundwater, the District may consider a request to transfer the beneficial use of the resource between geographic locations, transfers of groundwater to surface water, transfers of surface water to groundwater, conversion from one type of beneficial use of groundwater to another, the addition of a beneficial use to a groundwater well of different beneficial use and other such issues related to transfers. The purpose being to enhance the District’s ability to manage groundwater by moving the use of groundwater to more desirable locations, to reduce or minimize the consumptive use of groundwater for purposes of enhancing or protecting existing groundwater users and/or reduce the impact to rivers and streams (in areas where the two are connected) and to provide landowners with an alternative means of establishing and/or expanding a beneficial use of groundwater on their property.

18.2 Application Process. On or after March 1, 2018 requests for consideration of Rule 18 - Transfer of Water Use requests must be submitted to the District on forms provided by the District. The District will not consider transfers unless they pertain to certified irrigated acres as approved by the regulating District. A transfer shall not result in an increase of irrigated acres, unless accompanied by an approved variance to expand irrigated acres in the Lower Elkhorn NRD.

18.2.1 Application Fee. Each request for the transfer of water use shall be accompanied by a \$50 application fee, made payable to the Lower Elkhorn Natural Resource District. Additional fees will be required to cover the expense of a title report and are the responsibility of the applicant for transfer.

18.2.2 Application Period. Applications to transfer received prior to March 15, if approved, shall be effective on the date approved by the District. Applications to transfer received after March 15, if approved, shall not be effective until the following calendar year. The purpose for this is to provide for the timely consideration of a transfer request for the upcoming growing/irrigation season.

18.2.3 Approval of Transfers. In accordance with Neb. Rev. Stat. §76-739 (k) the District may deny or condition its approval of any transfers to the extent such conditions are deemed appropriate in the sole discretion of the District:

1. Ensure the consistency of the transfer with the purpose or purposes for which the management area was designated.
2. Avoid adverse effects on other ground water users or on surface water appropriators.
3. Avoid adverse effects on the state’s ability to comply with an interstate compact or decree or to fulfill the provisions of any other formal state contract or agreement.
4. Adhere to the requirements of the District and/or Basin Integrated Management Plans.
5. Otherwise protect the public interest and public welfare.

6. Avoid adverse effects from soil erosion within the alternate geographic location.

18.2.4 Evaluation Criteria. In making a decision regarding a transfer application, the District staff may consider relevant information, including but not limited to:

1. Information obtained from hydro-geologic studies within the District.
2. Whether the proposed use is a beneficial use of ground water.
3. Whether alternative sources of surface or ground water are available to the applicant for the proposed use.
4. Any negative effect of the proposed withdrawal, transfer and use on ground water or surface water supplies.
5. Groundwater quality of the area of the proposed transfer.
6. Whether the proposed use is consistent with the goals and objectives of the District's Groundwater Management Plan and/or Integrated Management Plan.
7. Trends in change in ground water levels in the proposed area of transfer, including both spring measurements and in-season declines (from monitoring well transducer data).

District staff, at its own discretion, may defer a request to transfer water uses to the Standard Variance process.

18.3 Proof of Historical Use. Applicants will be required to provide proof of certification of irrigated acres, or any other beneficial use, from the geographic location which is being offered in consideration for transfer to the alternate geographic location. In addition, applicants will be required to provide information such as: aerial photography, soil classifications and slopes, and other information deemed pertinent for consideration of the request.

18.4 Geographic Limitations. Applications for transfers of water withdrawn outside the District shall not be transferred for use inside the District without advance approval from the Natural Resource District from which the water originates. The same conditions apply for a request to transfer a use of water that is inside the District to a location outside the District. Transfers into Nebraska Department of Environmental Quality Delineated Wellhead Protection Areas or Lower Elkhorn NRD delineated Quantity Management or Stay Areas are prohibited. Transfers out of the state will also be prohibited. Transfers will be considered for their Stream Depletion Factor and shall not cause an increase in Stream Depletion. Transfers will also be evaluated for their potential impact to current groundwater users and will be denied if the new use of groundwater is likely to place existing supplies at risk for negative impacts.

18.5 Classification. Transfer may be considered on a permanent or temporary basis, for a definite term. Any requirements or special conditions enacted by this rule will apply in either case. If considered permanent, the District will file a conservation easement on the property associated with the point of origination that is being provided as a source for the transfer. A temporary transfer would require the same filings, but would be rescinded at the pre-determined date of expiration of the temporary transfer.

18.5.1 Permanent Transfer. Certified irrigated acres, or any other source of water provided as water credits, are indefinitely relinquished from their original point of origin and transferred to another geographic location. The property owner, as well as any lienholders thereto, will agree to the granting of a conservation easement to the Lower Elkhorn Natural Resource District, for the volume of water and/or total number of acres necessary to facilitate the transfer.

18.5.1.1 Temporary Transfer. Certified irrigated acres, or any other source of water provided as water credits, are temporarily relinquished from their original point of origin and transferred to an alternate location, for a definite term. The property owner will agree to the granting of a conservation easement to the Lower Elkhorn Natural Resource District for a definite term not less than five years in length, for the volume of water and/or total number of acres necessary to facilitate the temporary transfer.

18.5.1.2 Additional Controls. The permanent transfer of certified irrigated acres or any other type of beneficial use of groundwater may be accomplished by either: decommissioning of the well, modification of the well to pump 50 gallons or less per minute or removal of the pumping equipment to allow for the change of status to inactive with the Nebraska Department of Natural Resources. Transfers of certified irrigated acres from land that is also served by a surface water appropriation will not be permitted unless the surface water appropriation is formally retired with the Nebraska Department of Natural Resources for that parcel of land.

18.5.1.3 Notice of Decommissioning. If the landowner is decommissioning the well, the well owner must file a notice of well abandonment form with the Nebraska Department of Natural Resources within 180 days of the approval of the transfer.

18.5.1.4 Recipient of Transfer. The property owner; to whom the beneficial use of water has been transferred, must provide proof of re-certification of the property in question, along with supporting documentation from the county assessor and/or USDA/FSA office of the re-certification, within 90 days of the approval of the transfer.

LOWER ELKHORN NATURAL RESOURCES DISTRICT