

# **Twin Platte Natural Resources District**

## **DISTRICTWIDE GROUND WATER MANAGEMENT AREA AND INTEGRATED MANAGEMENT SUB-AREA**

### **RULES AND REGULATIONS**

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Twin Platte Natural Resources District  
Rules and Regulations  
for the  
Districtwide Ground Water Management Area  
and for the  
Integrated Management Sub-Area

**AUTHORITY**

The Twin Platte Natural Resources District (“TPNRD” or “District”) adopts these Rules and Regulations pursuant to the authority granted in Neb. Rev. Stat. §§ 46-701 to 46-754, also known as the Nebraska Ground Water Management and Protection Act (“Act” or “GWMPA”).

**PURPOSE**

The purpose of these Rules and Regulations is to describe and implement the TPNRD’s Districtwide Ground Water Management Area, as well as the ground water controls contained in the Integrated Management Plan (“IMP”) within the TPNRD’s Integrated Management Sub-Area.

**BACKGROUND**

- I. In 1993, the Department of Natural Resources (“DNR” or “Department”) (previously known as the Department of Water Resources) imposed a moratorium on the issuance of new surface water appropriations in the Platte River Basin upstream of Columbus, Nebraska.
- II. In December of 2003, the TPNRD requested the Department to conduct studies and to hold a hearing on the preparation of a joint action plan for the integrated management of hydrologically connected ground water and surface water within the District. On February 12, 2004, the TPNRD adopted Rules and Regulations for the “Temporary Suspension of Drilling New Wells.” That “Temporary Suspension,” which took effect on July 1, 2004, applied to those lands within the then-defined stream depletion factor line representing a cumulative depletion to stream baseflow of 28% of a hypothetical pumping volume in a 40-year period (the “28/40 area”).
- III. On July 16, 2004, when LB 962 took effect, and pursuant to Neb. Rev. Stat. § 46-720, the Department issued a notice of preliminary determination that the TPNRD was fully appropriated. That determination continued the stay on the drilling of new groundwater wells in that part of the TPNRD previously subject to the “Temporary Suspension,” and added a stay on new irrigated acres.
- IV. On September 15, 2004, the Director of the Department designated the Platte River Basin above the Kearney Canal diversion as “overappropriated,” and identified the area in which surface water and ground water were considered to be “hydrologically connected” for purposes of the overappropriated designation. That area coincided with the 28/40 area described above.

As a result of that designation, additional land area within the TPNRD became subject to the stay on the drilling of new wells and the stay on increases in irrigated acres.

V. On September 30, 2004, the Director of the Department designated the entire TPNRD as “fully appropriated.” As required by Neb. Rev. Stat. § 46-720 (3) (b), such a designation operated to impose a stay on drilling new wells and a stay on increasing irrigated acres in that area within the District that was specifically designated as overappropriated (again, the 28/40 area). An automatic stay on the issuance of new surface water appropriations, and on the use of existing surface appropriations to increase irrigated acres, took effect on that same date in accordance with Neb. Rev. Stat. § 46-714.

VI. On March 29, 2005, the TPNRD formed the TPNRD Stakeholders Group, which met monthly to assist in developing the IMP.

VII. In January 2006, the Board of the TPNRD approved a Ground Water Management Area for the District, which approval became effective on February 24, 2006. By operation of the Ground Water Management Area, a stay was imposed on the issuance of high capacity water well construction permits for the entire TPNRD (no longer limited to the 28/40 area). On May 17, 2007, the board of the TPNRD adopted a districtwide stay on the use of an existing water well to increase the number of acres historically irrigated, which stay became effective on June 18, 2007.

### **GROUND WATER MANAGEMENT AREA BOUNDARIES**

These Rules and Regulations apply to all lands within the District, which lands have been designated as the “Districtwide Ground Water Management Area” and the “Integrated Management Sub-Area.” The entire geographic area of the TPNRD is subject to these Rules and Regulations, including the area within the boundaries of the TPNRD determined to be fully appropriated and the area designated as overappropriated. The stratigraphic boundaries include all sediments from ground level downward through all aquifer units. A map of the lands subject to these Rules and Regulations is set forth in Appendix A, Appendix B includes a map showing the Ground Water Management Area.

### **CHAPTER 1: DEFINITIONS**

1.1 Alleged Violator - shall mean the ground water user, landowner, or operator of the land who has allegedly failed to comply with any of these Rules and Regulations.

1.2 Application for a Large User Permit - shall mean an application using a written form provided by the District and submitted by a public water supplier who desires to initiate a new, expanded, or different use of ground water.

1.3 Application for a Late Permit - shall mean an application using a written form provided by the District and submitted for a well construction permit that was not timely filed. Such permit shall be reviewed by the District in accordance with Neb. Rev. Stat. § 46-736.

1.4 Application for a Transfer Permit - shall mean an application using a written form provided by the Department and/or the District and submitted by an applicant who desires to physically transfer ground water use from an existing location to a new location, to change the type of use of a well, to add a new type of use of ground water to a well, or to transfer certified acres or parcels.

1.5 Application for a Water Well Construction Permit - shall mean an application using a written form provided by the District and submitted by an applicant for the construction of a water well in accordance with Neb. Rev. Stat. §§ 46-735 through 46-738.

1.6 Board or Board of Directors - shall mean the Board of Directors of the TPNRD.

1.7 Certified Irrigated Acre - shall mean any acre that is certified pursuant to the Rules and Regulations of the District.

1.8 Certified Irrigated Parcel - shall mean a parcel of land that is associated with and irrigated by one or more registered irrigation well(s) that have been certified by the District according to the process described in these Rules and Regulations.

1.9 Consumptive Use - shall mean the amount of water that is consumed under appropriate and reasonably efficient practices to accomplish the purposes for which the appropriation or other legally permitted use are lawfully made (e.g., that portion of the irrigation water applied to a crop that is consumed due to evapotranspiration).

1.10 Controls - shall mean any requirement, obligation, duty, or restriction placed upon a ground water user, surface water appropriator, landowner, or operator of the land.

1.11 Decommission - when used in relation to a ground water well, shall mean the act of filling, sealing, and plugging the well in accordance with the Department of Health and Human Services Regulations and Licensure Rules and Regulations.

1.12 Department or DNR - shall mean the Nebraska Department of Natural Resources.

1.13 Dewatering Well - shall mean a water well constructed and used solely for the purpose of lowering the ground water table elevation.

1.14 Director - shall mean the Director of the Nebraska Department of Natural Resources.

1.15 District, TPNRD, or NRD - shall mean the Twin Platte Natural Resources District.

1.16 Districtwide Ground Water Management Area – shall mean any area so designated by the District pursuant to Neb. Rev. Stat. § 46-712.

1.17 Domestic Water Well - shall mean a water well with a capacity that is fifty (50) gallons per minute (“gpm”) or less and that is used by a person or by a household for normal household uses and for the irrigation of lands not exceeding two (2) acres in area for growing gardens,

orchards, and lawns, and keeping domestic animals. Domestic water wells as defined here are exempt from the application of these Rules and Regulations.

1.18 Educational Programs - shall mean information and educational training programs designed to educate a landowner and/or operator of the land about the operation of irrigation and cropping systems and integrated management of ground water and surface water.

1.19 First Class City – shall mean all cities in the state having more than five thousand and not more than one hundred thousand inhabitants. Based on the 2000 census North Platte and Ogallala are considered first class cities.

1.20 Fully Appropriated Area - shall mean the area of the District determined to be fully appropriated by the Department’s Order dated September 30, 2004.

1.21 Guidelines for Designating Closed Areas – shall mean the factors for consideration for the Designation of a closed area may include ground water level changes, density of irrigation development, and hydrologic and section, township, and range boundaries.

1.22 Guidelines for Determining Penalties – shall mean consideration for additional penalties may include value of financial gain, intent, duration of violation, and number of occurrences.

1.23 Good Cause Shown - shall mean a reasonable justification for granting a variance to consumptively use water that would otherwise be prohibited by law, statute, or rule and regulation and which the District reasonably and in good faith believes will provide an economic, environmental, social, or public health and safety benefit that is equal to or greater than the benefit resulting from the prohibition from which a variance is sought.

1.24 Governmental Uses - shall mean any ground water supplied to a governmental entity, including school districts, other political subdivisions, state agencies, or federal agencies.

1.25 Ground Water - shall mean that water which occurs or moves, seeps, filters, or percolates through the ground under the surface of the land.

1.26 Ground Water User - shall mean any person who pumps, extracts, withdraws, or confines ground water for any use, except for domestic or range livestock, regardless of rate of withdrawal. Whenever the landowner and the operator are different persons or entities, the term “ground water user” shall include both the landowner and the operator.

1.27 Historic Consumptive Use - shall mean the amount of water that has previously been consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use was lawfully made.

1.28 Illegal Water Well - shall mean: (1) any water well operated or constructed without or in violation of a permit required by the Nebraska Ground Water Management and Protection Act; (2) any water well not in compliance with Rules and Regulations adopted and promulgated pursuant to the Nebraska Ground Water Management and Protection Act; (3) any water well not

properly registered in accordance with Neb. Rev. Stat. §§ 46-602 to 46-604; or (4) any water well not in compliance with any other applicable law of the State of Nebraska or with Rules and Regulations adopted and promulgated pursuant to such laws.

1.29 Inactive Status Water Well - shall mean a water well that is in good state of repair and for which the landowner/operator has provided evidence of intent for future use by maintaining the water well in a manner which meets the following requirements: (1) the water well does not allow impairment of the water quality in the water well or of the ground water encountered by the well; (2) the top of the water well or water well casing has a water-tight welded or threaded cover, or some other water-tight means to prevent its removal without the use of equipment or tools to prevent unauthorized access, to prevent a safety hazard to humans and animals, and to prevent illegal disposal of wastes or contaminants into the well water; (3) all entrances and discharge piping to the water well are effectively sealed to prevent the entrance of contaminants; and (4) the water well is marked so as to be clearly visible and identified as a water well and the area surrounding the water well is kept clear of brush, debris, and waste material.

1.30 Industrial or Commercial Water Well - shall mean a water well that pumps ground water for non-municipal manufacturing, commercial, and power generation uses. Commercial use shall include, but not be limited to, maintenance of the turf of golf courses, and the maintenance of playing fields and parks.

1.31 Integrated Management Area - shall mean any area so designated by the District pursuant to Neb. Rev. Stat. § 46-718.

1.32 Irrigation Water Well - shall mean any water well that pumps ground water to certified irrigated parcels located within the District for the production of forage or any agricultural crop.

1.33 Irrigation System - shall mean the necessary appurtenances to a well(s), including the pump, used to convey irrigation water to a certified parcel(s) of irrigated land. This includes any combination of set-move, solid-set, traveler, center pivot, or linear move sprinkler system(s) and gravity, furrow, border, or flood irrigation utilizing water from a lateral or a pipe.

1.34 Landowner - shall mean any person who owns real estate or has contracted to purchase or otherwise acquire title to real estate.

1.35 Late Permit – shall mean an approval document that is issued by the District in those circumstances where the landowner and/or operator failed to obtain the required transfer permit, large user permit, or water well construction permit prior to making changes. The District shall assess a fee for processing late permit applications.

1.36 LB 962 – shall mean the Ground Water Management and Protection Act as adopted during the 2004 Legislative Session and as became effective in July, 2004.

1.37 Livestock Operation - shall mean: (1) livestock kept in buildings, lots, or pens, which normally are not used for the growing of crops or vegetation; or (2) any livestock kept in any livestock operation that is required by the Livestock Waste Management Act or state livestock

waste regulations to obtain a permit from the Department of Environmental Quality; or (3) livestock which are confined for more than ninety (90) days per year. Livestock operation shall not mean livestock that are kept in pastures, on rangeland, or on other grazing lands and allowed to feed on vegetation growing therein.

1.38 Livestock Operation Water Well - shall mean a water well which serves a livestock operation.

1.39 Management Area - shall mean the geographic area that is within the Districtwide Ground Water Management Area and the Integrated Management Sub-Area. The Management Area is subject to these Rules and Regulations.

1.40 Metropolitan City Class – shall mean all cities in this state which have attained a population of three hundred thousand inhabitants or more.

1.41 Monitoring/Observation Water Well - shall mean a water well, constructed to the appropriate standards, for the purpose of withdrawal of water or the observation of water levels during aquifer testing, collection of water quality samples, and providing hydrogeology information. A monitoring well shall not have a permanent pump installed and shall include a planned disposition of the monitoring well after its intended use is completed.

1.42 Offset - shall mean any water that is provided to compensate for ground water that has been either withdrawn or consumptively used for any new or expanded use since July 16, 2004.

1.43 Operator - shall mean any person who has control over the day-to-day operations of the land in question, which shall include any landowner and/or any tenant.

1.44 Overappropriated Area - shall mean the area of the District designated as overappropriated by the Department's Order dated September 15, 2004.

1.45 Overlying Land – for Rule 3.4.5 pertaining to Industrial Transfers, shall mean a contiguous tract of land owned by the same person. For all other references, shall mean a single certified irrigated parcel of land.

1.46 Annual Population Estimation of a Municipality - for purposes of Rules 3.5.1 and 3.5.2 below, shall mean the most current estimated annual census population data for persons living within the boundaries of a municipality, and those persons provided with water service by the municipality outside of its corporate limits.

1.47 Permit - shall mean an approval document that must be applied for and obtained from the District for a transfer permit, large user permit, or water well construction permit.

1.48 Person - shall mean a natural person; a partnership; a limited liability company; an association; a corporation; a municipality; an irrigation district; an agency or political subdivision of the state; or a department, agency, or a bureau of the United States.

1.49 Primary Class City – shall mean all cities in the state having more than one hundred thousand and less than three hundred thousand inhabitants.

1.50 Public Water Supplier - shall mean a public water supplier as defined in Neb. Rev. Stat. § 46-638(2).

1.51 Range Livestock - shall mean livestock that are kept in pastures, on rangeland, or on other grazing lands and allowed to feed on vegetation growing therein. Range livestock shall not mean: (1) livestock kept in buildings, lots, or pens, which normally are not used for the growing of crops or vegetation; or (2) any livestock kept in any livestock operation that is required by the Livestock Waste Management Act or state livestock waste regulations to obtain a permit from the Department of Environmental Quality. Livestock that are confined for fewer than ninety (90) days per year may be considered range livestock if they meet the other conditions in this definition.

1.52 Range Livestock Water Well - shall mean a water well which serves range livestock.

1.53 Replacement Water Well - shall mean a water well which is constructed to provide water for the same purpose as the original water well, and is operated in accordance with any applicable permit from the Department and the Rules and Regulations of the TPNRD. If the purpose of the replacement well is for irrigation, it must deliver water to the same parcel of land served by the original water well, and (1) replace a decommissioned water well within one hundred eighty (180) days after the decommissioning of the original water well; (2) replace a water well that has not been decommissioned but will not be used after construction of the new water well and the original water well will be decommissioned within one hundred eighty (180) days after such construction, or (3) the original water well will continue to be used but will be modified and equipped within one hundred eighty (180) days after such construction of the replacement water well to pump fifty (50) gallons per minute or less and will be used only for range livestock, monitoring, observation, or any other nonconsumptive or de minimis use approved by the TPNRD. If the purpose of the replacement well is for municipal use, the original municipal water well may be used after construction of the new water well, but shall be decommissioned within one (1) year after completion of the replacement water well.

1.54 Second Class City – shall mean all cities, towns, and villages in the state containing more than eight hundred and not more than five thousand inhabitants. Based on the 2000 census, Sutherland is considered a second class city.

1.55 Stream Depletion Factor – shall mean the amount of water removed from the surface water system (e.g. rivers, streams and drains) due to the withdrawal of ground water from a regulated well during a set amount of time divided by the amount of pumping from such regulated well during the same time period. This calculation may include, but not be limited to, hydraulic conductivity, saturated thickness, storage coefficient, distance to the surface water feature and distance to the aquifer boundary. Also, considerations may be given to the subsurface geological features.

1.56 Supplemental Ground Water Well - shall mean a water well from which ground water is pumped and added to the water pumped from an existing irrigation water well(s) to irrigate the same certified irrigated acres.

1.57 Test Hole - shall mean a hole designed solely for the purpose of obtaining information on hydrologic or geologic conditions.

1.58 Transfer - shall mean any arrangement approved by the Department and/or the District, as required by rule or law, through the granting of a permit for the physical transfer of ground water off the overlying land, the change in type of use of a well, the addition of a type of use to a ground water well, or the transfer of certified acres.

1.59 Variance - shall mean approval to act in a manner otherwise contrary to existing Rules or Regulations from a governing body whose Rules or Regulations are otherwise applicable.

1.60 Village – shall mean any village or town in the state containing not less than one hundred nor more than eight hundred inhabitants. Based on the 2000 census Brady, Brule, Hershey, Maxwell and Paxton are all considered villages.

1.61 Water Bank - shall mean a procedure for tracking additions and/or reductions in ground water consumptive use within the District in accordance with Rule 4.4.

1.62 Water Well - shall mean any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting fluid as defined in Neb. Rev. Stat. § 81-1502 into the underground water reservoir. It also includes any excavation made for any purpose if ground water flows into the excavation under natural pressure and a pump or other device is placed in the excavation for the purpose of withdrawing water from the excavation for irrigation municipal, industrial, or commercial uses. For such excavations, construction means placing a pump or other device into the excavation for the purpose of withdrawing water for irrigation. Water well does not include any excavation made for obtaining or prospecting for oil or natural gas, or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission, or any structure requiring a permit by the Department used to exercise a surface water appropriation.

## **CHAPTER 2: GENERAL PROVISIONS AND PROCEDURES FOR ENFORCEMENT AND PENALTIES**

2.1 Enforcement and Penalties - Penalties for violating certain provisions of these Rules and Regulations are identified below, which penalties will be enforced without the need for the TPNRD to obtain a cease and desist order. To the extent that specific penalties are not identified below, the TPNRD may enforce these Rules and Regulations and the GWMPA through the use of cease and desist orders issued in accordance with the Neb. Rev. Stat. § 46-707(7). The TPNRD may file actions in the appropriate District Court for the enforcement of any District

order, or for purposes of enforcing any other aspect of these Rules and Regulations, the Act or other Nebraska law.

Any person who violates any cease and desist order issued by the TPNRD pursuant to Neb. Rev. Stat. § 46-707(7), or who violates any controls or Rules or Regulations adopted by the TPNRD relating to the Management Area, shall be subject to a penalty, including but not limited to the following: (1) a reduction (in whole or in part) in that person's allocation of ground water; (2) a reduction in the number of certified irrigated acres; and/or (3) a permanent forfeiture (revocation) of certification. Such penalties may be permanent or for a specified period of time. The TPNRD Board shall consider the seriousness of the violation when determining the nature of the penalty to be imposed.

There are circumstances under which a person may be subject to additional penalties, which circumstances are described in more detail in Guidelines for Determining Penalties developed and maintained by the TPNRD Board of Directors (available at the TPNRD Office and on its website). Such additional penalties may be up to and including a permanent forfeiture of their certification of acres, a permanent forfeiture of all future allocations, and/or payment of a penalty to the District up to three-hundred dollars (\$ 300.00) per acre per year until such time as the person ceases or remedies the violation at issue. The circumstances for additional penalties include, but are not limited to, the following: (1) a second violation of any particular Rule or Regulation, (2) repeated violations of these Rules and Regulations, (3) being in violation of more than one Rule at any particular time; and/or (4) engaging in willful and wanton misconduct. The Board may also pursue such forfeiture of certification and/or allocation if a person has been warned in writing on more than one occasion that they are in violation of these Rules and Regulations. Notice and hearing shall be provided to any such person before the TPNRD imposes the additional penalties identified in this Paragraph.

Specific penalties for some violations may be identified in the particular rules and regulations contained herein. Any person who violates a cease and desist order issued by the District pursuant to Neb. Rev. Stat. § 46-707(7) shall be subject to a civil penalty assessed pursuant to Neb. Rev. Stat. § 46-745.

2.1.1 A formal notice of an alleged violation and/or a cease and desist order may be issued for reasons including, but not limited to, the following:

2.1.1.1 To enforce any of the provisions of the Act, to enforce orders or permits issued pursuant to the Act, or to enforce these Rules and Regulations;

2.1.1.2 To initiate suits to enforce the provisions of the Act, to enforce orders or permits issued pursuant to the Act, or to enforce these Rules and Regulations;

2.1.1.3 To restrain the construction and/or operation of an illegal well as defined in these Rules and Regulations, and/or the withdrawal or use of water from such illegal well; and

2.1.1.4 To restrain the operation of an irrigation system in the Management Area that is in violation of the controls provided for in these Rules and Regulations.

2.1.1.5 To restrain the use of ground water in the Management Area in violation of the controls provided for in these Rules and Regulations.

2.1.2 In addition to the authority set forth in Neb. Rev. Stat. §§ 46-745 and 46-746, the District may enforce these Rules and Regulations through voluntary compliance and/or through a formal enforcement action, both processes being more specifically described below. The notice and hearing process for addressing enforcement of and compliance with these Rules and Regulations is described below. 2.1.3 The circumstances under which the District will provide notice via certified mail, return receipt requested, are identified below. In the event, however, that the ground water user, landowner, or operator fails, for five (5) business days, to accept such certified mail, the District may provide the necessary notices and information through publication. If publication is used, the time-frame within which the ground water user, landowner, or operator must respond to such notice shall run from the date that the notice is first published in a newspaper of general circulation until fourteen days after the anniversary of the first publication.

2.1.4 It is presumed that any person subject to these Rules and Regulations has full knowledge of their contents, requirements, and prohibitions. No person shall be able to use ignorance of the provisions of these Rules and Regulations as a defense in any enforcement action or penalty proceeding.

## 2.2 Complaints

2.2.1 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 ground water user, landowner or operator within the District directly affects him/her, may file a complaint with the District against a ground water user, landowner or operator alleging that they are in violation of these Rules and Regulations; the Act; and/or other Nebraska law, the violation of which is within the jurisdiction of the District.

2.2.2. District staff, and/or the Board of Directors on its own motion, may file a complaint with the District against a ground water user, landowner, or operator alleging that they are in violation of these Rules and Regulations; the Act; or other Nebraska law, the violation of which is within the jurisdiction of the District.

2.2.2.1 Complaints shall be reported to the office of the District at 111 South Dewey Street, 2<sup>nd</sup> Floor, North Platte, Nebraska.

2.2.2.2 To the extent permitted by law, the District shall attempt to keep confidential the name of the person initiating the complaint.

2.3 Inspections - District staff may conduct investigations, document reviews and field inspections to confirm compliance with these Rules and Regulations, the Act, and/or other Nebraska law.

2.3.1 District staff shall notify the ground water user, landowner, or operator, either in person, by postal mail, by electronic communication, or by leaving notice posted at the ground water user's last known address, of any suspected violation(s), of the District's intent to conduct an inspection, and of the purpose of such inspection.

2.3.2. District staff shall be authorized to enter upon the land to investigate complaints and alleged violations, and to conduct field inspections, upon showing proper identification, and after providing the ground water user, landowner, or operator with notice as described above.

2.3.3 Upon completion of the investigations and/or inspections described above, the District staff member shall file with the TPNRD a written report setting forth his or her findings and shall deliver, by certified mail, return receipt requested, a copy of the report to the ground water user, landowner, or operator.

2.4 Submission of Inspection Report Alleging Violation and Alleged Violator's Alternatives - If the District finds that there is reasonable cause to believe that the ground water user, landowner, or operator is in violation of these Rules and Regulations, the Act and/or other Nebraska law, the staff report described above shall be sent to the ground water user, landowner, or operator, accompanied by a formal notice identifying the alternative responses that are available to the alleged violator. Alternative responses include the following:

2.4.1 Agree with and accept as true and correct the District's findings that the violation(s) has in fact occurred or is occurring; consent in writing to cease and desist from continuing or allowing the recurrence of such violation; and submit a plan for corrective action along with a schedule for its implementation pursuant to Rule 2.5 below; or

2.4.2 Reject the findings set forth in the staff report and submit a written request within seven (7) business days (excluding Saturdays, Sundays, and legal holidays) after receipt of said report that the TPNRD Board conduct a formal hearing in accordance with the Rules and Regulations of the District.

2.5 Schedule of Compliance - If the ground water user, landowner, or operator agrees with and accepts the District's findings that the violation(s) has occurred or is occurring, he or she shall, within ten (10) business days (excluding Saturdays, Sundays, and legal holidays) after receipt of the notice provided by the District pursuant to Rule 2.4, consent in writing to cease and desist from continuing or allowing the recurrence of such violation, and shall submit a plan for corrective action and the schedule for its implementation. Failure to submit a plan within ten (10) days shall be deemed a rejection of the findings and shall be deemed a request for a formal hearing.

2.6 Voluntary Compliance – Upon receipt of the plan described in Rule 2.5, the District shall compare it to the staff report and any other related or pertinent information necessary to determine whether the actions proposed will, when implemented, bring the ground water user, landowner, or operator into compliance with these Rules and Regulations, the Act, and/or other Nebraska law.

2.6.1 If the District determines, at its sole discretion, that the proposed actions of the ground water user, landowner, or operator are adequate and will resolve and prevent, within a reasonable period of time, ongoing and/or future violations, it shall approve such plan, and shall issue a written decision notifying the ground water user, landowner, or operator of such approval. The District’s approval shall include a schedule for implementation and completion of the plan. The District’s decision shall be sent certified mail, return receipt requested.

2.6.2 The District may impose penalties through the voluntary compliance process including, but not limited to, revoking the certification for the irrigated parcel(s) that is the subject of the violation.

2.6.3 If the District determines, at its sole discretion, that the proposed actions of the ground water user, landowner, or operator would be inadequate to prevent further violation of the Rules and Regulations, the Act and/or other Nebraska law, it shall reject such plan and shall issue a written decision notifying the ground water user, landowner, or operator of its disapproval. The District’s decision shall include proposed changes or additions to the plan needed to obtain conformance with these Rules and Regulations, the Act and/or other Nebraska law. Said decision shall be sent via certified mail, return receipt requested.

2.6.3.1 The ground water user, landowner, or operator in violation of these Rules and Regulations, the Act, and/or other Nebraska law shall have five (5) business days (excluding Saturdays, Sundays, and legal holidays) after receipt of the District’s decision and proposed changes as described above to notify the District of his or her consent to such additions or changes, to agree to continue to negotiate, or to reject such changes and request a formal hearing.

2.6.3.2 Failure to respond within five (5) business days as described in Rule 2.6.3.1 shall be deemed a rejection of the District’s decision and proposed changes, and a request for a formal hearing.

2.7 Formal Hearing - If voluntary compliance measures cannot be agreed upon between the District and the ground water user, landowner, or operator, or if the ground water user, landowner, or operator rejects the findings of the staff report or the District’s schedule of compliance, the ground water user, landowner, or operator may submit a written request that the TPNRD Board conduct a formal hearing in accordance with the Rules and Regulations of the District. Such hearing shall be held no sooner than ten (10) days and not more than forty-five (45) days after receipt of the formal notice provided pursuant to Rule 2.4.

2.7.1 Notice of the hearing shall be provided to the ground water user, landowner, or operator and any other necessary person. Such notice shall be provided via certified mail, return receipt requested. The notice shall inform the ground water user, landowner, or operator that, if he or she fails to respond to any notice and/or fails to appear at the scheduled hearing, the Board shall proceed to make a final determination as to the alleged violation of these Rules and Regulations, the Act and/or other Nebraska law, and as to whether to issue and enforce a formal cease and desist order against the ground water user, landowner, or operator.

2.7.2 Following the formal hearing, the Board may take any legally authorized action that it deems necessary, including but not limited to the issuance of a cease and desist order, to cause the ground water user, landowner, or operator to comply with these Rules and Regulations, the Act and/or other Nebraska law.

2.8 Action of a Ground Water User, Landowner, or Operator Following Issuance of a Cease and Desist Order - A ground water user, landowner, or operator who has been served with a cease and desist order for a violation of these Rules and Regulations, the Act, and/or other Nebraska law, shall be allowed seven (7) business days (excluding Saturdays, Sundays, and legal holidays) after receipt of such order, to submit a schedule of compliance for resolving the violation.

2.8.1 The District shall review the schedule of compliance and, at its sole discretion, determine whether it satisfies these Rules and Regulations, the Act, and/or other Nebraska law in terms of curing the violation at issue.

2.8.1.1 If the District determines that the schedule of compliance satisfies these Rules and Regulations, the Act, and/or other Nebraska law, and that the violation has been cured, the District will rescind the cease and desist order.

2.8.1.2 If the schedule of compliance fails to comply with these Rules and Regulations, the Act and/or other Nebraska law, the District shall proceed with the enforcement of the cease and desist order.

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

2.10 Cease and Desist Order; Violation; Penalty - As provided by the Act, any violation of a cease and desist order issued by the District pursuant to the Act shall be subject to a civil penalty of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) for each day an intentional violation occurs, per Neb. Rev. Stat. § 46-745(1).

### **CHAPTER 3: GROUND WATER CONTROLS**

3.1 Permit to Construct a Water Well - Any person intending to construct a water well within the Management Area for any purpose, except for test holes, dewatering wells with an intended use of ninety (90) days or less, range livestock wells, or domestic wells that pump fifty 50

gallons per minute (gpm) or less, shall apply for a permit from the District to construct a water well.

3.1.1 Applications for a permit must be completed by the applicant using forms provided by the District and be submitted to the TPNRD. Within thirty (30) days after a completed application is filed, the District shall review the application and approve, approve with conditions, or deny the permit.

3.1.2 The applicant shall pay an application fee of fifty dollars (\$50) to the District.

3.1.3 Any person who fails to obtain a permit required by Rule 3.1, but who proceeds to construct a water well, shall make application for a late permit on forms provided by the District, and shall pay a late application fee of two-hundred and fifty dollars (\$250) to the District. The District may consider the fact that the applicant failed to timely obtain a permit in its determination as to whether to approve, approve with conditions, or deny the permit.

3.1.4 The permit holder shall commence construction as soon as possible after the date the permit is approved, and shall complete construction and equip the water well within twelve (12) months of approval.

3.1.5 If the applicant fails to complete the project under the terms of the permit, the District shall cancel the permit.

3.1.6 Permit applications shall be denied only if the District finds: 1) that the location or operation of the proposed water well or other work would conflict with any regulations or controls adopted by the District; 2) that the proposed use would not be a beneficial use of water; or 3) in the case of a late permit only, that the applicant did not act in good faith by obtaining a timely permit.

3.2 Moratorium on Water Well Construction Permits and on New or Expanded Irrigated Acreage - Commencing on the effective date of these Rules and Regulations, and except as provided below, no permits to construct a new water well used for irrigation or other beneficial purposes within the boundaries of the Management Area will be issued, unless a variance is applied for and, after review, granted by the District. The expansion of irrigated acres is prohibited unless a variance is applied for and, after review, granted by the District.

### 3.3 Certified Irrigation Uses

3.3.1 Certification of Irrigated Acres - Any ground water user, landowner, or operator who irrigates with ground water is required to obtain certification from the District for all irrigated acres. No ground water user, landowner, or operator may irrigate with ground water within the Management Area unless he or she has first obtained the necessary certification from the District.

3.3.2 Certification Process Completed – The TPNRD completed its certification of ground water irrigated acres during the December 2005 to December 2009 timeframe. With the exception of the certification processes described in Rules 3.3.3 and 3.3.4 below, the District process for certifying the actively irrigated acres will be considered complete as of the effective date of these Rules and Regulations.

3.3.3 Certification of Acres Previously Included in the Conservation Reserve Program, EQIP Program, or Other Acreage Reserve Program – Any ground water user, landowner, or operator must comply with the following in relation to those lands that have been included in the Conservation Reserve Program (“CRP”), EQIP Program, or other acreage reserve program:

3.3.3.1 Any ground water user, landowner, or operator whose lands were not certified during the December 2005 to December 2009 timeframe for the reason that such lands were included within the CRP, EQIP or other acreage reserve program, and were not then being irrigated, may request certification from the District.

3.3.3.2 No later than twelve (12) months after the date on which lands come out of the CRP, EQIP, or other acreage reserve program, the ground water user, landowner or operator must notify the TPNRD of their intent to pursue the required certification in order to irrigate the subject lands. Any lands for which the notification required herein was not properly and timely made will be ineligible for certification.

3.3.3.3 No ground water user, landowner, or operator may irrigate with ground water within the Management Area unless and until he or she obtains certification from the District. In order for such acres to be eligible for certification, the ground water user, landowner, or operator must provide documentation showing an irrigated crop history for the year immediately preceding the year in which such lands were placed into CRP, EQIP, or other acreage reserve programs. Such documentation may include, but is not limited to, crop insurance, Farm Service Agency records, or water well registration records. The ground water user, landowner, or operator must also provide the District with documentation showing that such lands were included in a CRP, EQIP or other acreage reserve program, and the date on which the lands came out of the program.

3.3.4 Certifications of Acres After Board Approved Transfer or Variance – For all circumstances in which the certification has been transferred off the overlying land and moved to a new use or location through the TPNRD transfer or variance process the ground water user, landowner or operator shall be required to decertify the lands at the original location, and to certify the acres at the new location.

3.3.5 Re-evaluation of Certified Irrigated Acres - The Board, at its sole discretion, may re-evaluate any determination made by the District related to certification of irrigated acres.

3.3.6 Modification of Certified Irrigated Acres - Upon the effective date of these amendments the TPNRD will no longer allow modifications of certified irrigated acres, except to the extent that such “modification” involves a decertification.

3.3.7 Decertification of Certified Irrigated Acres – Any ground water certified irrigated acres that are transferred to another location or another use must be decertified at the original location. Acres that are voluntarily placed in temporary acreage reserve programs such as CRP or EQIP and are re-designated from irrigated to dryland will not be considered “permanently transferred.” The water savings from placing acres in temporary acreage reserve programs will be considered on a short-term basis.

### 3.4 Transfers

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

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

3.4.1.2 Transfers shall be conditioned upon and limited to those in which the land where the right is transferred from remains in dryland agricultural use, or such other non-consumptive uses as have been approved by the District. This restriction shall run with the land, and apply to the transferor’s heirs, successors, and assigns. The owner of the land will be required to sign an affidavit and acceptance of offset/mitigation obligations that a new consumptive use will not be created on the land where the right is transferred from. Such affidavit will be filed with the County land records.

3.4.1.3 The well from which the use is transferred cannot be used to irrigate land that is not certified for ground water irrigation. If the well is no longer used to irrigate land certified for ground water irrigation, then the well must be configured to prevent the possibility of contamination of the ground water.

3.4.1.4 The person who seeks to transfer water use from one location to another shall have the burden of establishing to the satisfaction of the Board each of the requirements set forth above.

3.4.1.5 Transfers Prohibited Within Two Miles of a City limit: The TPNRD hereby closes that area which is located within two (2) miles of any city of the metropolitan class, city of the primary class, and city of the first class: (1) to the withdrawal and transfer of ground water off the overlying land; (2) to otherwise changing the location of use of ground water for irrigation purposes, and; (3) to transferring certified irrigated acres. This two (2) mile buffer shall be measured

from the city limit as it is defined at the time any person seeks to make such transfer.

3.4.1.6 Transfers Prohibited Within One Mile of a City of Second Class or Village limit: The TPNRD hereby closes that area which is located within one (1) mile of any city of second class or village: (1) to the withdrawal and transfer of ground water off the overlying land; (2) to otherwise changing the location of use of ground water for irrigation purposes, and; (3) to transferring certified irrigated acres. This one (1) mile buffer shall be measured from the city limit as it is defined at the time any person seeks to make such transfer.

### 3.4.2 Types of Transfers

3.4.2.1 Physical Transfer of Ground Water Off of Overlying Land Located in the District; Permit Required - Except as provided in Rule 3.4.2.1.3 below, any person who withdraws ground water from a well located within the District and physically transfers or intends to physically transfer such water off the overlying land shall apply to the District for a transfer permit using forms provided by the District. No transfer shall be commenced unless and until the District grants the permit application.

3.4.2.1.1 Conveyance Methods – If the conveyance method of a physical transfer is through a natural stream or canal, then an additional permit will be required by the Department.

3.4.2.1.2 Changes in Certified Irrigated Parcels or Certified Irrigated Acres - Whenever the location of a certified irrigated parcel or the number of certified irrigated acres changes as a result of the physical transfer of ground water off of the overlying land, the ground water user, landowner, or operator shall comply with Rule 3.4.2.3 below.

3.4.2.1.3 Exceptions to Rule 3.4.2.1 - No transfer permit shall be required pursuant to Rule 3.4.2.1 if the withdrawal and physical transfer of ground water complies with any one or more of the following exceptions, provided, however, that any required notices shall be provided to the District within thirty (30) days after the commencement of such transfer:

3.4.2.1.3.1 The withdrawal and transfer of ground water was begun prior to February 24, 2006, and was at that time in compliance with all applicable District Rules and Regulations and all applicable state statutes and regulations.

3.4.2.1.3.2 The proposed withdrawal and transfer of ground water is for domestic purposes or for providing water to range livestock only.

3.4.2.1.3.3 The withdrawal and transfer was approved by the Department prior to July 16, 2004.

3.4.2.1.3.4 The proposed withdrawal and transfer is to carry out a ground water remediation plan as required under the Nebraska Environmental Protection Act, pursuant to Neb. Rev. Stat. § 46-691.

3.4.2.1.3.5 The proposed transfer of ground water is between certified irrigated parcels served by a single irrigation system.

3.4.2.2 Transfer of Type of Use or Addition of Use of Ground Water - Any person who withdraws ground water from a water well located within the District and wishes to transfer the type of use of that water (e.g., irrigation to industrial), or to add a type of ground water use to the water well (e.g., adds an industrial use to an existing irrigation water well), shall apply to the District for a transfer permit using forms provided by the District. No transfer shall be commenced unless and until the permit application is granted by the District.

3.4.2.2.1 No change in the type of use of ground water shall be approved unless the applicant can prove that such change results in no increase in the historical consumptive use or, if the change will result in an increase in consumptive use, an offset is provided by the applicant for any such increase.

3.4.2.2.2 If a type of use of ground water is added to the well, the transfer permit will not be approved unless the applicant can prove that there is no increase in historical consumptive use or, if the change will result in an increase in the historical consumptive use, an offset is provided by the applicant for any such increase.

3.4.2.2.3 No person shall use a water well for purposes other than its registered purpose until after the Board has approved the transfer permit application and the water well registration information has been changed to the intended new use or the additional use has been added to the registration.

3.4.2.2.4 The change to a new use or the addition of a use shall be made by filing a water well registration modification form with the Department. Such change must be in conformance with Neb. Rev. Stat. §§ 46-609(1) and 46-651 prior to the commencement of the new or additional use.

3.4.2.3 Transfer of Certified Acres

3.4.2.3.1 Any person who intends to transfer certified irrigated acres shall apply to the District for a transfer permit using forms provided by the

District. No transfer shall be commenced unless and until the District grants the permit application.

3.4.2.3.1.1 The certified irrigated acres that are being transferred must be decertified with the District and the acres to which the certified irrigated acres or parcels are being transferred to must be certified with the District according to Rule 3.3.

3.4.2.3.1.2 The District shall determine the stream depletion percentage for the location of the existing certified irrigated acres that are being transferred (the “old acres”) and for the location of the acres to where the certification is proposed to be transferred (the “new acres”).

3.4.2.3.1.3 If the stream depletion factor determined for the new acres is less than the stream depletion factor of the old acres, the number of acres allowed to be transferred shall remain the same (i.e., shall be the same as the number of old acres).

3.4.2.3.1.4 If the stream depletion factor determined for the new acres is greater than the stream depletion factor of the old acres, the number of acres allowed to be transferred shall be decreased by an amount proportional to the increase in the stream depletion factor. The point is to ensure that there is no impact on the River associated with such a transfer.

3.4.2.3.2 The District will not allow a transfer of certified irrigated acres or parcels between the North Platte River Basin and the South Platte River Basin, and from the North Platte, South Platte, or Platte Basin to the Loup or Republican Basin. See the River Basins Map modified for the TPNRD in Appendix C.

3.4.2.3.2.1 The Board will evaluate requests on a case-by-case basis in those circumstances where the tract of land is divided by two river basins. The applicant will be required to show that such transfer will not result in an increase in the consumptive use of water.

3.4.2.3.3 Upon proper application and proof as described above, the District may allow transfers of certified irrigated acres to a new parcel not previously certified for the purpose of irrigation. The District will not allow any transfer of new acres to slopes historically exceeding nine percent (9%) for any soils. Historical data, including LiDar data collected for the TPNRD, will be utilized to determine areas equal to or exceeding a nine percent (9%) slope. Grading, land leveling, or any form of slope alteration will not be allowed to change the historical data. An exception

will be allowed for up to ten percent (10%) of a new parcel, if all of the parcel will be certified for the purpose of irrigation.

3.4.2.3.4 All transfers must comply with the United States Department of Agriculture wetland provisions.

3.4.2.3.5 Transfers of certified irrigated acres that change the amount or timing of river flows may contribute to conflicts between ground water users and surface water appropriators. For those reasons, the TPNRD will not allow any transfers of certified irrigated acres that change the amount or timing of river flows. To avoid such changes, the TPNRD hereby prohibits transferring certified irrigated acres from below a surface water diversion to above a surface water diversion as such surface water diversion boundary lines are identified in Appendix C (no transfers east to west across flow lines).

3.4.2.3.5.1 The Board will evaluate requests on a case-by-case basis in those circumstances where a particular tract of land is divided by flow line boundaries. The applicant will be required to show that such transfer will not result in an increase in the consumptive use of water.

3.4.2.3.6 If the TPNRD grants an application to transfer certified acres, and it is later determined that such transfer has caused a change the amount or timing of river flows, the landowner must take the steps necessary to offset and/or mitigate such changes. If the landowner is unable to offset and/or mitigate such impacts at any time, the landowner must do one or both of the following:

3.4.2.3.6.1 Immediately cease irrigating the new acres; until the landowner provides the necessary offsets and/or mitigation for all past and future impacts caused by transferring the certified acres.

3.4.2.3.7 The Board of Directors will determine by July 1 of each year those areas that will be designated as “closed” for the upcoming calendar year. The criteria used by the Board shall be contained in the District’s Guidelines for Designating Closed Areas. The District will not allow a transfer of certified irrigated acres into a closed area.

3.4.2.3.8 All offset and/or mitigation obligations described in this transfer Section will run with the land, and apply to any and all future owners of the real property that is subject to a transfer as described herein.

### 3.4.3 Transfers of Ground Water from Outside the District to Inside the District

3.4.3.1 Physical Transfer of Ground Water - District approval from both affected Natural Resources Districts is required before ground water is transferred from a water well located outside the District for use within the District, unless such transfer began before February 24, 2006, or the water is used solely for domestic or range livestock purposes.

3.4.3.2 Transfer of Certified Irrigated Acres - District approval from both affected Natural Resources Districts is required before certified irrigated acres are transferred from outside of the District to inside the District, unless such transfer began before February 24, 2006.

3.4.3.3 Transfers subject to Rule 3.4.3 must meet the following conditions:

3.4.3.3.1 The proposed transfer of the ground water must be consistent with the District's Rules and Regulations.

3.4.3.3.2 The applicant must acknowledge in the application that approval of the transfer may be conditioned on the water use conforming with District Rules and Regulations relating to the use of water withdrawn inside the District.

3.4.3.3.3 The transfer must conform to any applicable transfer rules of the Natural Resources District from which the transfer originates.

3.4.3.3.4 The Natural Resources Districts involved in the transfer must agree that the use that is being retired in the transferor Natural Resources District to allow use in the transferee Natural Resources District, and that the use shall remain retired for the duration of the use within the transferee natural resources district.

3.4.3.3.5 Transfers into the District may only be made from an adjacent section in an adjoining Natural Resources District.

#### 3.4.4 Municipal Transfer Permits

3.4.4.1 The withdrawal and transport of ground water by a public water supplier providing water for municipal purposes who has obtained a permit from the Department pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act does not require a transfer permit from the District. Any public water supplier who files an application for a permit with the Department under the Municipal and Rural Domestic Ground Water Transfers Permit Act, shall notify the District.

3.4.4.1.1 Any public water supplier's variance application that is approved by the Board at any time before or during the permitting process shall be forwarded to the Department. The District shall clearly identify

any conditions, or monitoring and/or compliance provisions imposed as part of the variance approval.

3.4.4.1.2 It is understood that the Department shall initiate consultation with the District regarding a permit application filed pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act. The District shall at that time advise the Department of any of the applicant's unmet obligations under District Rules (e.g., variance not yet applied for or granted).

3.4.4.2 Any public water supplier seeking a transfer that crosses a municipal boundary, and for which no permit has been obtained pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act, is required to comply with these Rules and Regulations in applying for and obtaining a transfer permit from the District.

3.4.4.2.1 The District shall forward to the Department for review copies of all permit applications and variances granted for municipal uses to ensure compliance with any interstate compact or decree or with any other formal state contract or agreement.

3.4.4.2.2 The District shall not grant a water well construction permit unless and until the Board has granted a variance to the moratorium on the issuance of water well construction permits and has also approved the transfer permit application.

3.4.4.2.3 In considering the permit application for a municipal transfer, the District shall examine the factors identified and information provided pursuant to Rule 3.4.7.4 through 3.4.7.7, as well as the following:

3.4.4.2.3.1 Whether the proposed withdrawal, use, and transfer is reasonable; and

3.4.4.2.3.2 Whether the proposed withdrawal, use, and transfer is consistent with the conservation and beneficial use of ground water.

3.4.4.2.4 The District shall file copies of both the water well construction permit and the transfer permit with the Department.

### 3.4.5 Industrial and Commercial Transfer Permits

3.4.5.1 Transfers for which permits have been obtained from the Department pursuant to the Industrial Ground Water Regulatory Act do not require a transfer permit from the District. Any industrial or commercial user who files an

application for a permit with the Department under the Industrial Ground Water Regulatory Act, shall notify the District.

3.4.5.1.1 Any industrial or commercial user's variance application that is approved by the Board at any time before or during the permitting process shall be forwarded to the Department. The District shall clearly identify any conditions, or monitoring and/or compliance provisions imposed as part of the variance approval.

3.4.5.1.2 It is understood that the Department shall initiate consultation with the District regarding a permit application filed pursuant to the Industrial Ground Water Regulatory Act. The District shall at that time advise the Department of any of the applicant's unmet obligations under District Rules (e.g., variance not yet applied for or granted).

3.4.5.1.3 The District shall not issue a water well construction permit unless and until the industrial transfer permit has been obtained from the Department, a copy of the permit is on file with the District, and a variance to the moratorium on the issuance of water well construction permits has been granted by the Board.

3.4.5.2 Any industrial or commercial water user seeking a transfer and for which no permit has been obtained pursuant to the Industrial Ground Water Regulatory Act is required to comply with these Rules and Regulations in applying for and obtaining a transfer permit from the District.

3.4.5.2.1 The District shall forward to the Department for review copies of all permit applications and variances granted for industrial or commercial uses to confirm that no state industrial transfer permit is also required, and to ensure compliance with any interstate compact or decree or with any other formal state contract or agreement.

3.4.5.2.2 The District shall not grant a water well construction permit unless and until the Board has granted a variance to the moratorium on the issuance of water well construction permits and has also approved the transfer permit application.

3.4.5.2.3 In considering the transfer permit application, the District shall examine the factors identified and information provided pursuant to Rule 3.4.7.9, as well as the following:

3.4.5.2.3.1 The effect on surface or ground water supplies needed to meet reasonably anticipated domestic and agricultural demands in the area of the proposed withdrawal;

3.4.5.2.3.2 The economic benefit of the proposed use;

3.4.5.2.3.3 The social and economic benefits of existing uses of surface or ground water in the area;

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

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

3.4.5.2.4 The District shall file copies of both the water well construction permit and the District transfer permit with the Department.

### 3.4.6 Transfer Out of State

3.4.6.1 Any applicant who seeks to transfer ground water out of State must comply with State law and the Rules and Regulations of the District.

3.4.6.2 It is understood that the Department shall initiate consultation with the District regarding a permit application to transfer ground water out of state. The District shall at that time advise the Department of any of the applicant's unmet obligations under District Rules (e.g., variance not yet applied for or granted).

3.4.6.3 The Board shall take the appropriate formal action to impose any offset requirements determined by the District and/or the Department to be necessary to maintain compliance with any interstate compact or decree or any other formal state contract or agreement, or to mitigate any impacts to surrounding ground water users or surface water appropriators.

3.4.6.4 The District will consult with the applicant to establish the offsets and enforcement provisions that will be required. If no agreement can be reached regarding offsets the permit will be denied.

3.4.6.5 A water well construction permit shall not be issued until a permit to transfer ground water to an adjoining state has been obtained from the Department, a copy of the permit is on file with the District, and a variance to the moratorium on the issuance of water well construction permits has been granted by the Board.

### 3.4.7 Applications for Transfer Permits

3.4.7.1 Application Forms - The applicant must after contacting the NDNR complete and file transfer permit application forms with the District, along with any other information that they believe is relevant. The applications must be completed in their entirety.

3.4.7.2 Incomplete Applications -- An incomplete application shall be returned to the applicant for corrective action. If a properly completed application is not returned within sixty (60) calendar days thereafter, the application shall be denied.

3.4.7.3 Application Fees

3.4.7.3.1 Any transfer application filed pursuant to Rules 3.4 above shall be accompanied by a non-refundable fee of two hundred dollars (\$200) payable to the District.

3.4.7.3.2 An application for a transfer permit for the withdrawal and transport of ground water off the overlying land for use to augment water supplies in any Nebraska wetland or natural stream for the purpose of benefiting fish or wildlife, or for producing other environmental or recreational benefits pursuant to Neb. Rev. Stat. § 46-691.03, shall be accompanied by a non-refundable fee of fifty dollars (\$50) payable to the District.

3.4.7.4 Public Comment on Applications - Prior to taking action on an application filed pursuant to Neb. Rev. Stat. § 46-691.03, the District shall provide an opportunity for public comment at a regular or special Board meeting for which prior notice of the meeting and the agenda thereof have been published, consistent with Neb. Rev. Stat. § 84-1411.

3.4.7.5 Additional Information Requested - Prior to taking action on any transfer permit application governed by these Rules and Regulations, the District may request the applicant to provide additional information. Failure of the applicant to provide the requested information may be grounds for denying the permit.

3.4.7.6 Ownership and Encumbrances – An applicant must provide a completed report of title issued by an attorney or a registered abstracter reflecting; (a) the owner and legal description of the land from which the certified water uses or certified irrigated acres are to be transferred; and (b) the existence of all liens, evidence by the filing of a mortgage, trust deed, or other equivalent consensual security interest, against the land from which the certified water uses or certified irrigated acres are to be transferred.

3.4.7.7 Lienholder's Consent – For those lands that are the subject of a lien, an applicant must provide a completed lienholder's consent to transfer certified irrigated acres form that is signed by current lienholders.

3.4.7.8 Approval of Transfers

3.4.7.8.1 In accordance with Neb. Rev. Stat. § 46-739(k), the District shall deny or condition the approval of any transfer, when and to the extent such action is necessary to:

3.4.7.8.1.1 Ensure the consistency of the transfer with the purpose or purposes for which the District's Integrated Management Area was designated;

3.4.7.8.1.2 Prevent adverse effects on other ground water users or on surface water appropriators;

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

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

3.4.7.9 District Considerations Relative to Public Interest and Public Welfare - To determine whether approval of an application for a transfer permit would be in the public interest or detrimental to the public welfare, the District shall consider the following:

3.4.7.9.1 Whether the proposed use is a beneficial use of ground water;

3.4.7.9.2 The availability to the applicant of alternative sources of surface water or ground water for the proposed withdrawal, transport, and/or use;

3.4.7.9.3 Any negative effect of the proposed withdrawal, transfer, and/or use on ground water or surface water supplies needed to meet reasonable future demands for water within the state;

3.4.7.9.4 Any adverse environmental impacts;

3.4.7.9.5 The cumulative effects of the proposed withdrawal, transfer, and/or use relative to the matters listed in 3.4.7.9.1 to 3.4.7.9.4;

3.4.7.9.6 Whether the proposed withdrawal, transfer, and/or use is consistent with the TPNRD IMP;

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

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

3.4.7.10.1 The best available scientific information, including, but not limited to, COHYST modeling efforts;

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

3.4.7.10.3 Other transfers into the area in proximity to the impacted well;

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

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

3.4.7.11 Conditions on Transfer Permits Issued - All transfer permits issued by the District must meet the following minimum requirements:

3.4.7.11.1 Compliance with all applicable statutes and Rules and Regulations, including any statutes or Rules and Regulations adopted after the District's approval of the transfer permit;

3.4.7.11.2 Ensuring that the withdrawal and transfer is and continues to be consistent with the factors listed above;

3.4.7.11.3 A completed report of title issued by an attorney or a registered abstracter reflecting (a) the owner and legal description of the land from which the certified water uses or certified irrigated acres are to be transferred; and (b) the existence of all liens, evidence by the filing of a mortgage, trust deed, or other equivalent consensual security interest, against the land from which the certified water uses or certified irrigated acres are to be transferred;

3.4.7.11.4 For those lands that are the subject of a lien, a completed lienholder's consent to transfer certified irrigated acres form signed by current lienholders;

3.4.7.11.5 The signature of the applicant verifying that the land from which any certified ground water irrigated acres will be transferred were actually irrigated with ground water prior to certification.

3.4.7.11.6 That all necessary recordings and/or notices required at the county court house, county assessor's office, or the register of Deeds office will be paid for and completed by the applicant prior to final approval and transfer taking effect.

3.4.7.11.7 That such transfers are completed no later than twelve (12) months after District approval.

3.4.7.11.8 Any other conditions that the TPNRD deems necessary.

### 3.5 Municipal Use Accounting and Offsets

3.5.1 Certification of Municipal Use – All municipal water users are required to obtain certification from the District. Certification shall include but not be limited to:

3.5.1.1 The name and contact information for the user;

3.5.1.2 The well(s) associated with the municipal user;

3.5.1.3 The type(s) of use;

3.5.1.4 The location(s) of use;

3.5.1.5 If discharging wastewater, provide to the TPNRD how and where the water is discharged (to a stream, the aquifer or an evaporation lagoon);

3.5.1.6 The amount of ground water that is consumed annually.

3.5.2 Certification of a Baseline Use - In order to define new and expanded consumptive use(s) within a municipality, the District established a baseline of existing uses at the time that Neb. Rev. Stat. § 46-740(3) became operative on July 14, 2006.

3.5.2.1 To certify this baseline for municipalities that do not have a Municipal and Rural Domestic Ground Water Transfer Permit, the District will collect from the municipality: 1) monthly data for ground water pumped during each twelve (12) month period beginning August 1 and ending July 31 for the years 2001 to 2006, measured in gallons; and 2) monthly wastewater discharge data for the same period, measured in gallons, if available. The District will then subtract the amount discharged from the amount pumped for each twelve (12) month period. This amount will be divided by the annual population estimation for the municipality, obtained from the Nebraska Department of Economic Development, for the year in which the twelve (12) month period begins. The result of this calculation is the annual per capita consumptive use. The average of the annual per capita consumptive use calculated for each twelve (12) month annual period from 2001 to 2006 will be the baseline measured in gallons per person per day.

3.5.2.2 For purposes of comparison with the annual population estimation for the municipality starting in August 1, 2006, the baseline annual population estimation will be the average of each annual population estimation used in the calculation of the annual per capita consumptive use for the years 2001 to 2006.

3.5.2.3 Once each five (5) years, and more often if requested by the Department or as determined necessary by the TPNRD, the TPNRD will re-calculate the per capita consumptive use based upon similar, but updated, data described in section 3.5.1.1 above, and make any appropriate adjustments.

3.5.2.4 To establish this baseline for municipalities that have a Municipal and Rural Domestic Ground Water Transfer Permit, the District will collect from the municipality: 1) monthly data for ground water pumped during each twelve (12) month period beginning August 1 and ending July 31 for the years 2001 to 2006, measured in gallons; and 2) monthly wastewater discharge data for the same period, measured in gallons, if available. The District will then subtract the amount discharged from the amount pumped for each twelve (12) month period to determine the total amount of water consumptively used over each twelve (12) month period during the August 2001 to July 2006 period. The average amount of water consumptively used over a twelve (12) month period from August 1 to July 31 during these five (5) twelve (12) month periods will be the baseline use.

3.5.2.5 If the municipality does not discharge wastewater to a natural watercourse but uses lagoons, the amount pumped between August 1 and July 31 will be used to determine the amount of ground water annually consumed.

### 3.5.3 Certification of Annual Consumptive Use

#### 3.5.3.1 Municipalities without a Municipal and Rural Domestic Ground Water Transfer Permit

3.5.3.1.1 Starting August 1, 2006, the District will collect the annual population estimation for the municipality, obtained from the Nebraska Department of Economic Development, for the year in which the twelve (12) month period begins. The difference between this population estimation will be compared against the currently calculated population estimation to determine the change in population. This change will be multiplied by the baseline per capita consumptive use (gallons per person per day) to determine whether the annual consumptive use of the municipality has increased or decreased.

3.5.3.1.2 The municipality will be responsible for tracking and reporting to the District any new or expanded amount of water delivered to a single commercial or industrial development served by the municipality if the amount delivered is greater than twenty-five (25) million gallons.

3.5.3.1.3 The data collected by the municipality shall be submitted to the District by October 1 of each year.

### 3.5.3.2 Municipalities with a Municipal and Rural Domestic Ground Water Transfer Permit

3.5.3.2.1 Starting August 1, 2006, the District will collect from the municipality: 1) monthly data for ground water pumped during each twelve (12) month period beginning August 1 and ending July 31, measured in gallons; and 2) monthly wastewater discharge data for the same period, measured in gallons, if available. The District will then subtract the amount discharged from the amount pumped to determine the total amount of water consumptively used during the previous twelve (12) month period. This amount will be compared to the baseline use calculated in 3.5.2.4.

3.5.3.2.2 The data collected by the municipality shall be submitted to the District by October 1 of each year.

3.5.3.3 The difference between each subsequent annual calculation of consumptive use and the baseline use will be recorded between 2006 and 2026 to determine whether the annual consumptive use is greater than or less than the baseline amount. If the annual consumptive use is greater than the baseline, the annual amount over the baseline will have to be offset in accordance with Rule 3.5.4. If the annual consumptive use is less than the baseline, the difference will be carried forward as a credit within that users "offset account." This credit is cumulative through January 1, 2026 and will be placed in the District water bank for the municipalities growth in the District. The cumulative amount of any excess that has annually been carried forward will be accounted for in the District's water bank on January 1, 2026.

### 3.5.4 Offsets

3.5.4.1 Each year, the TPNRD will be responsible for offsetting: (1) any increase in the annual consumptive use of the municipality compared to the certified baseline ; (2) if the municipality has a Municipal and Rural Domestic Ground Water Transfer Permit, any increase in annual consumptive use of the municipality compared to the certified baseline, provided, however, that the increased consumptive use is less than the amount granted in the Transfer Permit; or (3) any new or expanded single commercial/industrial consumptive use served by the municipality of less than twenty-five (25) million gallons per year.

3.5.4.2 Each year, the municipality will be responsible for offsetting: (1) the entirety of any new or expanded single commercial/industrial consumptive uses of more than twenty-five (25) million gallons per year or; (2) if the municipality has a Municipal and Rural Domestic Ground Water Transfer Permit, any increase in annual consumptive use of the municipality compared to the certified baseline, provided that the increased consumptive use is greater than the amount granted in the Transfer Permit.

3.5.4.3 Any measures taken by the municipality to offset increases in consumptive use will require Board approval prior to implementation of the offset.

3.5.4.4 The municipality must report to the District any offsets applied pursuant to these Rules and Regulations. The report must contain a description of the offset, the timing by month, the location, and the amount of the offset.

3.5.4.5 Any Board approved offsets purchased by the municipality to be applied to increases in consumptive use will remain in the municipality's possession. Any Board approved offsets purchased by the TPNRD to be applied to increases in consumptive use will remain in the TPNRD's possession.

### 3.5.5 Permanent Reduction in Consumptive Use

3.5.5.1 Any permanent reduction in consumptive use of water associated with municipal growth (including governmental, industrial, and commercial growth), between July 14, 2006, and January 1, 2026, shall accrue to the benefit of the District to be used in whole or in part to offset increased consumptive use within the District. Acres taken out of production must be decertified and will be accounted for in the TPNRD's water bank.

3.5.5.1.1 The District shall calculate the amount by which consumptive use is reduced as a result of the growth of a municipality using the COHYST model or other tools and data that represent the best scientific information available as determined by the District.

3.5.5.1.2 The District shall notify the previous landowner and the municipality in writing that the consumptive use calculated has been accounted for in the District's water bank and shall accrue to the benefit of the District, in accordance with Neb. Rev. Stat. § 46-740(3)(c).

3.5.5.1.3 If a water well is associated with the permanent reduction in consumptive use, the current owner of such water well shall decommission the water well within one hundred eighty (180) days after the lands are taken out of irrigated production.

### 3.6. Non-Municipal Commercial and Industrial Use - Accounting and Offsets

3.6.1 Certification of Non-Municipal Commercial and Industrial Use – All non-municipal commercial and industrial ground water users are required to obtain certification from the District. Certification shall include but not be limited to:

3.6.1.1 The name and contact information for the user;

3.6.1.2 The well(s) associated with the non-commercial municipal or industrial user;

3.6.1.3 The type(s) of use;

3.6.1.4 The location(s) of use;

3.6.1.5 If discharging wastewater, provide to the TPNRD how and where the water is discharged (to a stream, the aquifer or an evaporation lagoon);

3.6.1.6 The amount of ground water that is consumed annually with a detailed explanation of how the annual consumptive use is calculated.

3.6.2 Certification of Baseline Use for Non-Municipal Commercial and Industrial Users - In order to define new and expanded consumptive use(s) of a new or expanded single industrial or commercial development served by a non-municipal water well, the District certified a calculated baseline consumptive use for each non-municipal commercial and industrial user in the District. That baseline was based on historic consumptive use for the interval August 1, 2001, through July 31, 2006, prior to Neb. Rev. Stat. § 46-740(5) becoming operative on July 14, 2006.

3.6.1.1 To establish this baseline for a new or expanded single industrial or commercial development served by a non-municipal water well, the District will collect: 1) monthly data for ground water pumped during each twelve (12) month period beginning August 1 and ending July 31 for the years 2001 to 2006, measured in gallons; and 2) monthly wastewater discharge data for the same period, measured in gallons, if available. The District will then subtract the amount discharged from the amount pumped for each twelve (12) month period to determine the total amount of water consumptively used over each twelve (12) month period during the August 2001 to July 2006 period. The average amount of water consumptively used over a twelve (12) month period from August 1 to

July 31 during these five (5) twelve (12) month periods will be the baseline use.

3.6.1.1.a If monthly or annual ground water pumping volumes, and waste water discharge volume data are not available for the interval of August 1, 2001, through July 31, 2006, the District will use other tools, including, but not limited to, an analysis of electrical records, computer modeling, and consideration of operational capacities. If this type of information is still not available, and the water use cannot be calculated, the non-municipal commercial and industrial user will be required to install a flow meter to meet the requirements. The District will rely upon the flow meter readings for the subsequent three (3) years, with the data being averaged across that period of time. That calculated average will be used to establish the certified baseline use. The Board shall be the sole and final approval authority in determining whether to approve or disapprove a particular methodology for calculating certified baseline use.

3.6.1.2 If a non-municipal industrial or commercial user does not discharge wastewater to a natural watercourse but uses lagoons, the average amount of ground water pumped during a twelve (12) month period starting August 1 and ending July 31 between 2001 and 2006 will be considered the baseline use.

### 3.6.2 Certification of Annual Consumptive Use

3.6.2.1 Starting August 1, 2006, the District will collect from the non-municipal industrial or commercial user: 1) monthly data for ground water pumped during each twelve (12) month period beginning August 1 and ending July 31, measured in gallons; and 2) monthly wastewater discharge data for the same period, measured in gallons, if available. The District will then subtract the amount discharged from the amount pumped to determine the total amount of water consumptively used during the previous twelve (12) month period. This amount will be compared to the baseline use.

3.6.2.2 If monthly or annual water use data is not currently available, and there is no other means for the non-municipal industrial or commercial user to document and report their water use, such non-municipal industrial or commercial user shall install an approved flow meter device within three (3) months after the date on which these Amended Rules and Regulations become effective. 3.6.2.2.1 If there is no water use data available between August 1, 2006 and the date on which these Amended Rules and Regulations become effective, the non-municipal industrial or commercial user shall cooperate and work with the TPNRD to develop a methodology similar to the baseline methodology, described in section 3.6.1.1.a above in order to establish an annual consumptive use for each

year in which such data are not available. Such approach shall be used until such time as a flow meter is installed, and water use data reported on a monthly basis.

3.6.2.3 The data collected by the non-municipal industrial, commercial, users shall be submitted to the District by January 15 of each year.

3.6.2.4 If the non-municipal industrial or commercial user does not discharge wastewater to a natural watercourse but uses lagoons, the amount pumped between August 1 and July 31 will be used to determine the amount of ground water annually consumed.

3.6.2.5 The difference between each subsequent certified annual calculation of consumptive use and the certified baseline use will be recorded between 2006 and 2026 to determine whether the annual consumptive use is greater than or less than the baseline amount. If the annual consumptive use is greater than the baseline, the annual amount over the baseline will have to be offset. If the annual consumptive use is less than the baseline, the difference will be carried forward as a credit. This credit is cumulative through January 1, 2026 and will be placed in the District water bank for the non-municipal industrial or commercial user for future growth in the District. The cumulative amount that has annually been carried forward will be accounted for in the District's water bank on January 1, 2026.

### 3.6.3 Offsets

3.6.3.1 Each year, the TPNRD will be responsible for offsetting any increase in the certified annual consumptive use of the non-municipal industrial or commercial user compared to the certified baseline provided the: (1) increase is less than twenty-five (25) million gallons per year; and (2) the increase is less than the non-municipal industrial or commercial user's industrial transfer permit, if applicable.

3.6.3.2 Each year, the non-municipal industrial or commercial user will be responsible for any increase in the certified annual consumptive use compared to the certified baseline calculated provided that: (1) the increase is greater than twenty-five (25) million gallons per year; or (2) the increase exceeds the non-municipal industrial or commercial user's industrial transfer permit, if applicable.

3.6.3.3 Any measures taken by the non-municipal industrial or commercial user to offset increases in consumptive use will require Board approval prior to implementation.

3.6.3.4 The non-municipal industrial or commercial user must report to the District any offsets applied. The report must contain a description of the offset, the timing by month, the location, and the amount of the offset.

3.6.3.5 Any Board approved offsets purchased by the non-municipal industrial or commercial user to be applied to increases in consumptive use will remain in the non-municipal industrial or commercial user's possession, so long as the industrial or commercial activity continues in the same location. Any Board approved offsets purchased by the TPNRD to be applied to increases in consumptive use will remain in the TPNRD's possession.

#### 3.6.4 Permanent Reduction in Consumptive Use

3.6.4.1 Any permanent reduction in consumptive use of water associated with growth of the non-municipal industrial or commercial user including governmental, industrial, and commercial growth, between July 14, 2006, and January 1, 2026, shall accrue to the benefit of the District to be used in whole or in part to offset increased consumptive use within the District. Acres taken out of production must be decertified and will be accounted for in the TPNRD's water bank.

3.6.4.1.1 The District shall calculate the amount by which consumptive use is reduced as a result of the growth of a non-municipal industrial or commercial user based on the COHYST model or other tools and data that represent the best scientific information available as determined by the District.

3.6.4.1.2 The District shall notify the previous landowner and the non-municipal industrial or commercial user in writing that the consumptive use calculated has been accounted for in the District's water bank and shall accrue to the benefit of the District, in accordance with Neb. Rev. Stat. § 46-740(5)(e).

3.6.4.1.3 If a water well is associated with the permanent reduction in consumptive use, the current owner of such water well shall decommission the water well within one hundred eighty (180) days after the lands are taken out of irrigated production.

### **CHAPTER 4: OTHER TRACKING METHODS**

#### 4.1 Large User Permit

4.1.1 Any public water supplier with the exception of municipalities who desires to withdraw and/or consumptively use ground water shall, prior to: 1) changing the use of an existing ground water well or wells; 2) commencing construction of any new or

replacement ground water well; or 3) modifying the existing infrastructure for the purpose of expanding the consumptive use of ground water, must receive from the District a large user permit to authorize such withdrawal and/or use of ground water.

4.1.1.1 The application for a large user permit shall be on forms provided by the District and shall include, at a minimum, the following information:

4.1.1.1.1 The name and post office address of the applicant;

4.1.1.1.2 The legal description of the location of where the water well or wells are or will be located;

4.1.1.1.3 The legal description of the land on which the ground water will be used;

4.1.1.1.4 If an existing water well will be used, the Department's water well registration number for the well;

4.1.1.1.5 If a new or replacement water well will be constructed, the District's water well construction permit number;

4.1.1.1.6 A description of the nature of the proposed use;

4.1.1.1.7 The maximum rate of withdrawal from the water well or wells;

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

4.1.1.1.9 The amount of ground water to be consumptively used from the water pumped from the water well or wells, and a detailed explanation of how the amount of consumptive use was calculated;

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

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

4.1.1.1.12 A proposed offset for the amount of consumptive use specified in accordance with 4.1.1.1.9, and a detailed explanation of how the proposed offset was calculated; and

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

4.1.1.2 An incomplete application shall be returned to the applicant for corrective action. If a properly completed application is not returned within sixty (60) days thereafter, the application shall be denied.

4.1.2 Approval of Applications - The District may deny an application or condition the approval of any large user permit when necessary to:

4.1.2.1 Ensure consistency of the proposed use with the purpose or purposes for which the District's Integrated Management Area was designated;

4.1.2.2 Prevent adverse effects on other ground water users or on surface water appropriators;

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

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

4.1.3 District Considerations Relative to Public Interest and Public Welfare - To determine whether approval of an application for a large user permit would be in the public interest or detrimental to the public welfare, the District shall consider the following:

4.1.3.1 Whether the proposed use is a beneficial use of ground water;

4.1.3.2 The availability to the applicant of alternative sources of surface water or ground water for the proposed use;

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

4.1.3.4 The cumulative effects of the proposed withdrawal and/or use when considered in conjunction with all other ground water uses in the area of the proposed withdrawal and/or use;

4.1.3.5 Whether the proposed withdrawal and/or use is consistent with the IMP; and

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

4.1.4 Conditions on Permits Issued - All large user permits issued by the District shall be conditioned on the following:

4.1.4.1 Installation and maintenance of a District-approved flow meter on the well or wells that will be used for withdrawal and/or use;

4.1.4.2 Submission of an annual report to the District, by October 1 of each year, containing the total volume of water pumped and total volume of ground water consumptively used in the preceding year (August 1 to July 31); and

4.1.4.3 Compliance with all applicable statutes and Rules and Regulations, including any statutes or Rules and Regulations adopted after the District's approval of the permit.

4.2 Variations - Unless otherwise provided by law or these Rules and Regulations, the Board or the District Staff (as allowed by the following Rules), may grant a variance from these Rules and Regulations upon good cause shown. Offsets will be required for new uses, and the offset must be identified in the variance request.

4.2.1 Expedited Variations

4.2.1.1 Expedited variance request are permitted if a landowner desires to physically transfer ground water or modify certified irrigated acres and/or parcel(s), the transfer of that ground water or those certified irrigated acres and/or parcel(s) from land owned by him/her to other land owned by him/her.

4.2.1.2 Expedited variance request are permitted if a landowner desires to physically transfer ground water or modify certified irrigated acres and/or parcel(s), the transfer of that ground water or those certified irrigated acres and/or parcels are within the same and/or adjacent section(s) within the District.

4.2.1.3 The Board authorizes District staff to make the determination whether or not to approve, approve with conditions, or deny the expedited variance application. The expedited variance request cannot result in an increase in irrigated acres.

4.2.1.4 If, at any point in the expedited variance application review process, District staff determines that it is necessary for the Board to make the final decision on whether to approve, approve with conditions, or deny an expedited variance application, then staff will present recommendations on the application to the Board, and the Board will make the final decision.

4.3 Staff Authority

4.3.1 The Board authorizes District staff to modify the certification record for certified irrigated acres/parcel(s) to reflect any change(s) to the name or contact information of the landowner and/or operator on record for the acres/parcel(s).

4.3.2 The Board authorizes District staff to issue a new water well construction permit for a new supplemental ground water well as long as the number of certified irrigated acres that will be collectively irrigated by the supplemental ground water well and the existing water well(s) will not exceed the certified number of acres served by such existing water well(s), and so as long as the consumptive use on the certified irrigated acres irrigated by the supplemental ground water well and the existing water well(s) will not exceed the consumptive use of such existing water well(s).

4.4 Water Banking - The District shall develop the accounting and tracking procedures to establish a water bank. This water bank will keep track of reductions in consumptive use (e.g., taking acres out of irrigated production, retiring an industrial use) and increases in consumptive use (e.g., putting acres into irrigated production, adding an industrial use) within the District.

4.4.1 The District is the sole entity with the power to establish a water bank. Any ground water user, landowner, or operator who desires to participate in water banking, must do so through the District's water bank.

4.4.2 When certified acres are taken out of irrigated production, either through incentive programs, donations, or other means, the consumptive use of those acres will be accounted for in the water bank. The consumptive use will be calculated for those acres, based on the computation of the crop irrigation requirement (CIR) and using the best available scientific information, including, but not limited to, information obtained using the COHYST model. Only the consumptive use portion is subject to transfer.

4.4.3 Reductions in consumptive use due to retirement and/or transfer of non-irrigation uses will be calculated by the District and, upon agreement by the owner, accounted for in the water bank.

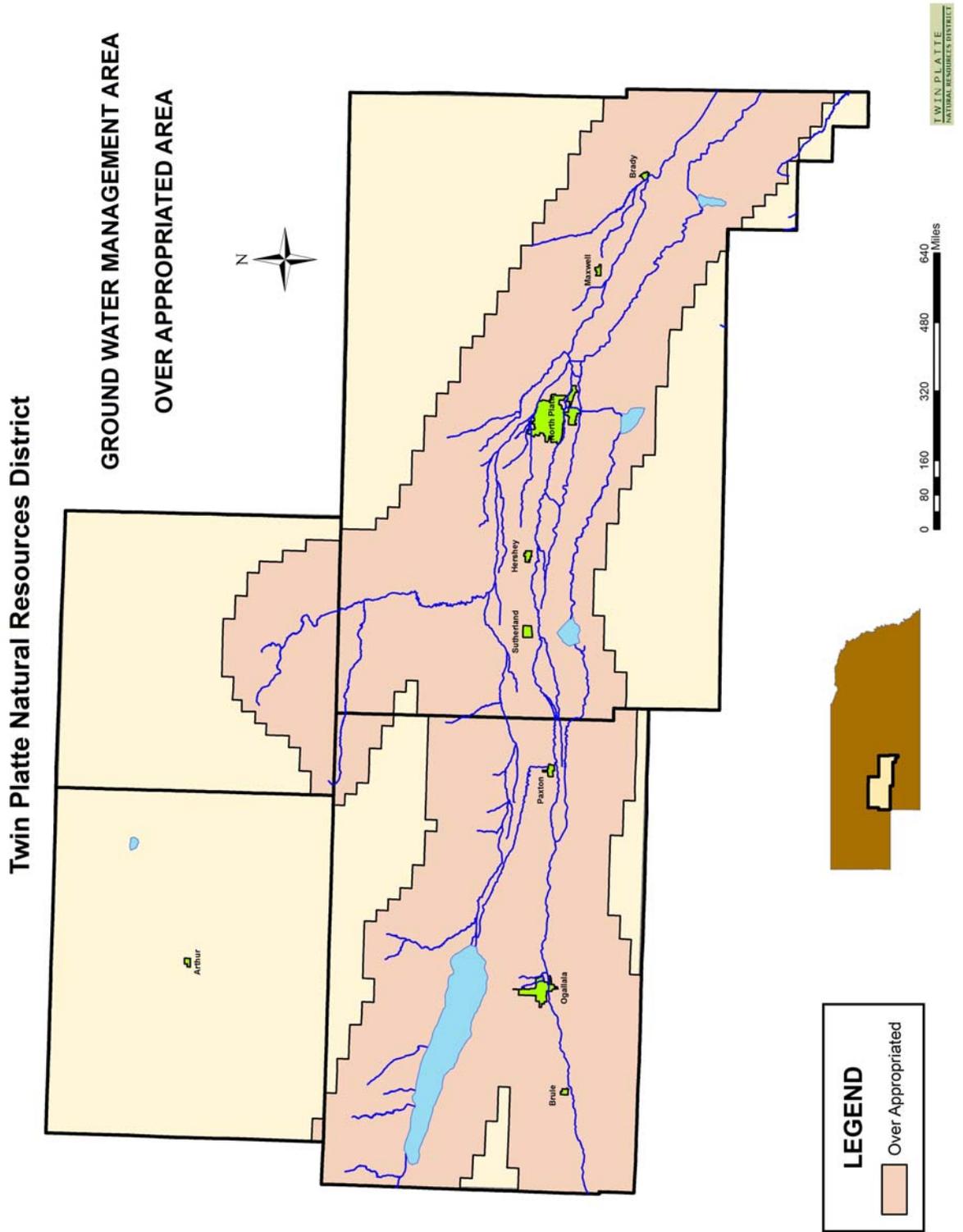
4.4.4 The District has the authority to develop a system for selling the consumptive use, owned or otherwise acquired by the TPNRD and accounted for in the water bank. The money collected by the District through the sale of consumptive use may be used to purchase, from a willing seller, additional consumptive use to be accounted for in the water bank.

4.4.5 Overappropriated Area of the District

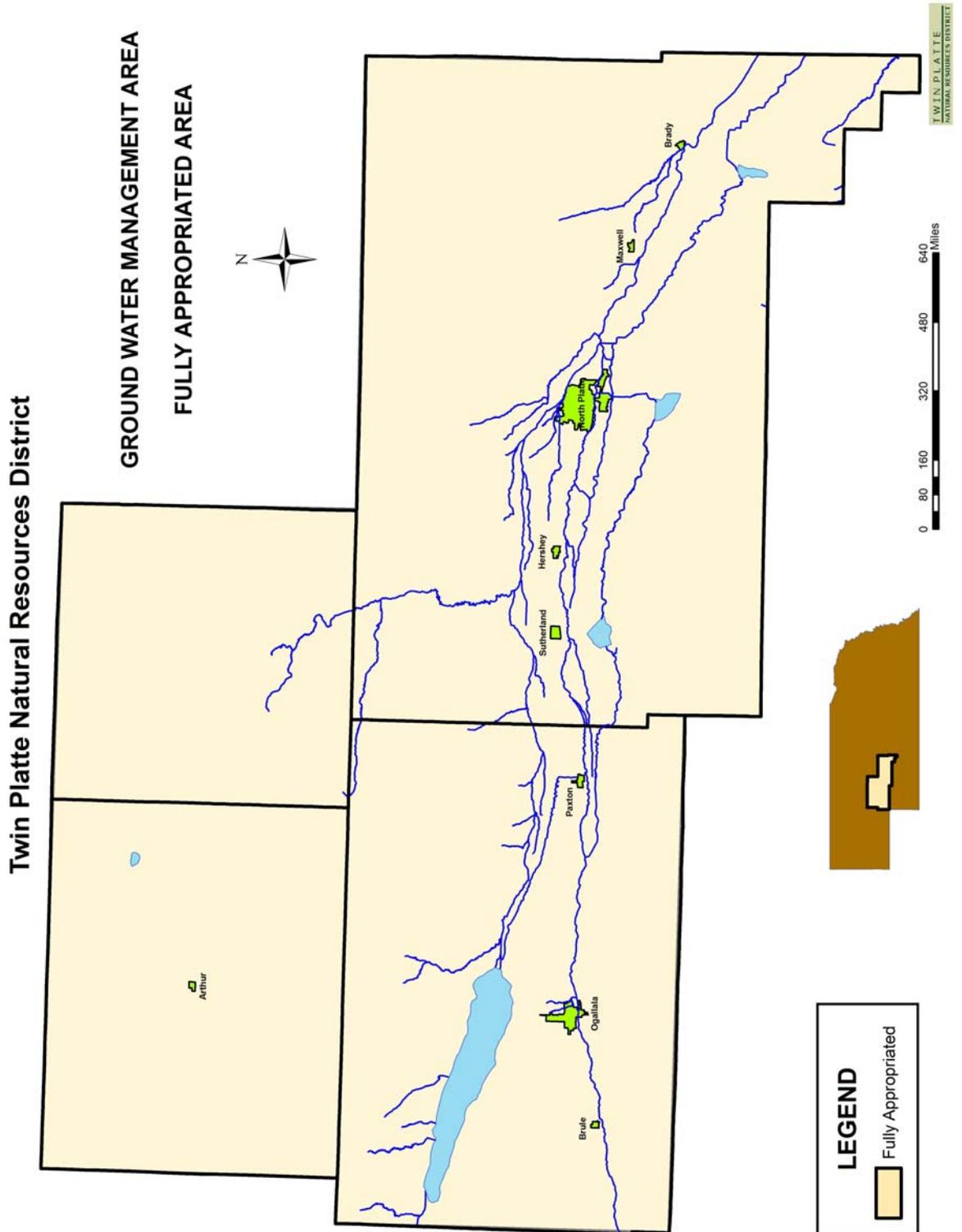
4.4.5.1 Consumptive use reductions for offsetting depletions to streamflow resulting from new water related activities initiated after July 1, 1997, are ineligible to be transferred or used elsewhere as an offset for a new or expanded use.

4.4.5.2 When fully appropriated status is achieved in the overappropriated area, consumptive use reductions will become eligible to be transferred or used elsewhere as an offset for a new or expanded use.

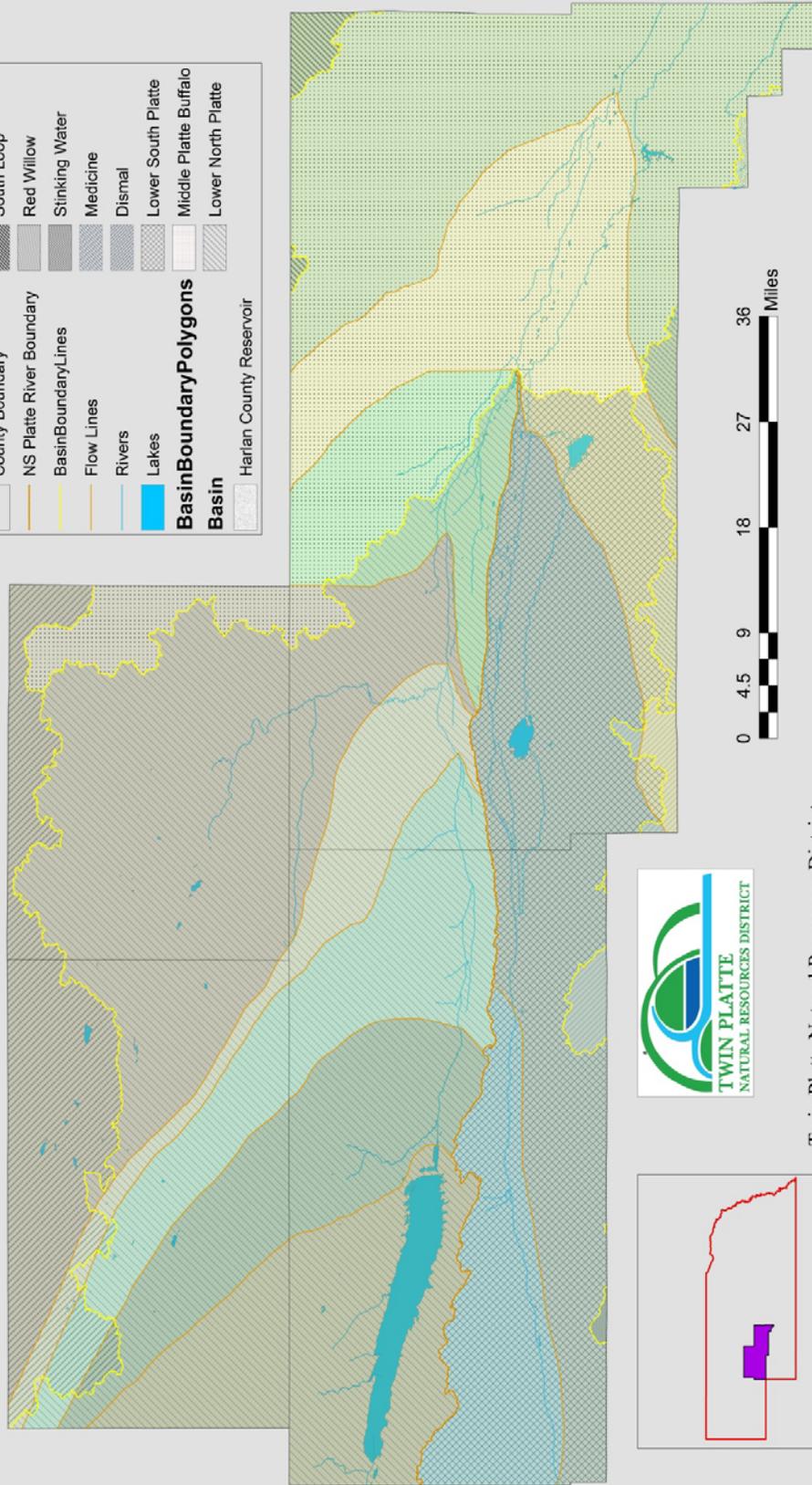
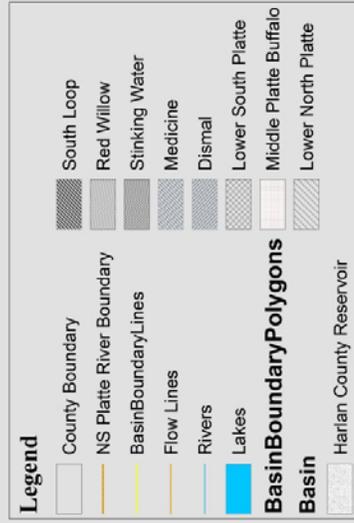
4.46 The District will only consider parcels greater than or equal to one (1) acre for inclusion in the water bank. Consumptive use figures will be rounded to the nearest hundredth (e.g. 1.30 AF).



Appendix B



# TRANSFER LIMITATIONS (Appendix B)



Twin Platte Natural Resources District  
Map by Landon Shaw, Hydrologist  
May 3, 2013

