

**LOWER REPUBLICAN NATURAL RESOURCES DISTRICT  
GROUND WATER MANAGEMENT RULES AND REGULATIONS  
AND INTEGRATED MANAGEMENT PLAN**

**Effective February 29, 2008**

**AUTHORITY** – The Lower Republican Natural Resources District (LRNRD) adopts these Rules and Regulations pursuant to the authority granted in the Nebraska Ground Water Management and Protection Act, Chapter 46, Article 7.

**PURPOSE** – These Rules and Regulations are adopted for the following purposes: (1) to protect ground water quantity; (2) to prevent or resolve conflicts between ground water users and surface water appropriators in those areas where ground water and surface water are hydrologically connected; and (3) to implement the necessary controls to carry out the goals and objectives identified in the Integrated Management Plan (IMP) jointly adopted by the LRNRD and the Nebraska Department of Natural Resources (DNR).

**CHAPTER 1 – DESIGNATION OF BOUNDARIES  
AND MANAGEMENT AREA**

These Rules and Regulations apply within the geographic boundary of the LRNRD. The stratigraphic boundary is from the land surface to the base of the underlying sand and gravel layers that contain the water bearing material. The base of the sand and gravel layers rest on impervious layers of Niobrara Chalk, Pierre Shale or formations of the White River Group. See Map 1. The area within the foregoing geographic and stratigraphic boundaries shall be referred to as “the Management Area.”

**CHAPTER 2 – ENFORCEMENT AND PENALTIES**

**RULE 2-1 ENFORCEMENT**

Penalties for violating certain provisions of these Rules and Regulations are identified below, which penalties will be enforced without the need for the LRNRD to obtain a cease and desist order. To the extent that specific penalties are not identified below, these Rules and Regulations shall be enforced by the LRNRD through the use of cease and desist orders issued in accordance with the Neb. Rev. Stat. § 46-707(7).

**RULE 2-2 PENALTIES**

Any person who violates any cease and desist order issued by the LRNRD pursuant to Neb. Rev. Stat. § 46-707(7), or who violates any controls or Rules or Regulations adopted by the LRNRD relating to the Management Area, shall be subject to penalties imposed through the controls adopted by the LRNRD. Such controls include, but are not limited to, a reduction (in whole or in part) in that person’s allocation of

ground water or a reduction in the number of certified irrigated acres. Notice and hearing shall be provided to such person before the LRNRD takes any action. Specific penalties may be identified in rules and regulations for some violations. 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.

### **CHAPTER 3 – ACCESS**

#### **RULE 3-1 ENTRY UPON LAND**

The LRNRD or authorized designee shall have the power and authority to enter upon the land, after notification to the landowner, for any and all reasons relative to the administration of the provisions of these Rules and Regulations and the Ground Water Management and Protection Act. This entry shall not be considered trespass.

#### **RULE 3-2 NOTICE**

Notification for entry upon land may be accomplished by regular mail, certified mail or by oral communication.

#### **RULE 3-3 ACCESS RELATED TO MEASURING DEVICES**

The LRNRD hereby notifies all operators of its intent to enter onto property to verify the installation of flow meter devices (or other similar devices) used to measure the quantity of ground water pumped for irrigation, municipal, commercial and industrial purposes (referred to below as “measuring devices”) and to read, or to verify the readings of, all measuring devices that have been installed. The LRNRD hereby notifies all operators of its intent to enter onto property to install cable seals to prevent the removal of such measuring devices.

### **CHAPTER 4 – DEFINITIONS**

- 4-1.1.** Abandoned Well: Any water well, the use of which has been accomplished or permanently discontinued, (1) which has been decommissioned as described in the rules and regulations of the Department of Health and Human Services Regulation and Licensure, and (2) for which a notice of abandonment has been filed with the Department of Natural Resources.
- 4-1.2.** Act: The Nebraska Ground Water Management and Protection Act.
- 4-1.3.** Additional Water Administration Year: When water is needed for diversion at Guide Rock and the projected or actual irrigation supply is less than 130,000 acre-feet of storage available for use from Harlan County Lake as determined by the United States Bureau of Reclamation for the Republican River Compact Administration.
- 4-1.4.** Allocation: As it relates to water use for irrigation purposes, means the allotment of a specified total number of acre-inches of irrigation water per certified irrigated acre assigned to that regulated well over the allocation period. As it relates to other purposes, the allotment of a determined quantity of ground water.
- 4-1.5.** Allocation Period: The number of years over which an allocation can be used.

- 4-1.6. Base Allocation:** This amount, in acre-inches, is derived from dividing the allocation by the allocation period.
- 4-1.7. Baseline of Commercial or Industrial Uses:** The amount of ground water used by a commercial or industrial user as computed in Rule 7-5.2.2.
- 4-1.8. Baseline of Municipal Uses:** The amount of ground water used by a municipality as computed in Rule 7-5.1.2.
- 4-1.9. Board:** The elected Board of Directors of the Lower Republican Natural Resources District.
- 4-1.10. Certification:** The process whereby the LRNRD verifies and authorizes the use for a regulated ground water well.
- 4-1.11. Certified Use:** Any use of ground water in accordance with Rule 6-6.
- 4-1.12. Certified Irrigated Acre:** Any acre that is certified as such pursuant to the LRNRD Rules and Regulations, and that is actually capable of being supplied water through irrigation works, mechanisms or facilities existing at the time of allocation.
- 4-1.13. Commercial Livestock Well:** A water well used for the watering of livestock and other uses directly related to the operation of a feedlot or other confined livestock operation or dairy.
- 4-1.14. Commercial Water User:** A person who uses ground water for commercial purposes, including but not limited to, maintenance of the turf of a golf course.
- 4-1.15. Consumptive Use:** That amount of water that is consumed under appropriate and reasonably efficient practices to accomplish without waste the purposes for which the appropriation or other legally permitted use are lawfully made.
- 4-1.16. Decommission:** When used in relation to a water well, shall mean the act of filling, sealing, and plugging a water well in accordance with the Department of Health and Human Services Regulation and Licensure Rules and Regulations.
- 4-1.17. Dewatering Well:** A water well constructed for the purpose of temporarily lowering the ground water surface elevation.
- 4-1.18. District, NRD, or LRNRD:** The Lower Republican Natural Resources District.
- 4-1.19. DNR or Department:** The Nebraska Department of Natural Resources.
- 4-1.20. Flow Meter:** A device, approved by the LRNRD, to measure the quantity of ground water pumped, withdrawn, or taken from a water well.
- 4-1.21. Good Cause Shown:** A reasonable justification for granting a variance to consumptively use water that would otherwise be prohibited by rule or regulation, and which the LRNRD 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.
- 4-1.22. Governmental Uses:** Any ground water supplied to a governmental entity, including school districts, counties, and other political subdivisions, state agencies, or federal agencies.
- 4-1.23. Ground Water:** That water which occurs in or moves, seeps, filters, or percolates through the ground under the surface of the land.
- 4-1.24. Historic Consumptive Use:** That amount of water that has previously been consumed under appropriate and reasonably efficient practices to accomplish

without waste the purposes for which the appropriation or other legally permitted use was lawfully made.

- 4-1.25. History of Use:** As used in these Rules and Regulations shall mean the exercise of a certified use in four (4) of the previous six (6) years.
- 4-1.26. Illegal Water Well:** (a) any water well operated or constructed without or in violation of a permit required by the Act; (b) any water well not in compliance with Rules and Regulations adopted and promulgated pursuant to the Act; (c) any water well not properly registered in accordance with Neb. Rev. Stat. §§ 46-602 to 46-606; (d) any water well not in compliance with any other applicable laws of the State of Nebraska or with rules and regulations adopted and promulgated pursuant to such laws.
- 4-1.27. Inactive Status Well:** A water well that is not currently in use, but is in a good state of repair and for which the owner has provided evidence of intent for future use by maintaining the water well in a manner which meets the 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 water 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 water well; (3) the pump and pumping column have been removed; and (4) the water well is marked so as to be easily visible and located and is labeled or otherwise marked as to be easily identified as a water well and the area surrounding the water well is kept clear of brush, debris, and waste material. An inactive status water well shall be registered as such in the well registration records of the Nebraska DNR.
- 4-1.28. Incentive Program:** A program that may require agreements or covenants concerning the use of land or water as necessary to produce the benefits for which the program is established.
- 4-1.29. Industrial Water User:** A person who uses ground water for industrial purposes, including but not limited to, manufacturing and power generation.
- 4-1.30. Industrial Well:** A water well designed and constructed to be used for industrial purposes including manufacturing, commercial and power generation uses of water. Commercial use includes, but is not limited to, maintenance of the turf of a golf course.
- 4-1.31. Integrated Management Area or Management Area:** The entirety of the LRNRD as per Chapter 1 of these Rules and Regulations.
- 4-1.32. Late Permit:** A permit applied for after construction has commenced on a regulated water well pursuant to Neb. Rev. Stat. § 46-735.
- 4-1.33. Little Blue Basin:** The Little Blue Basin is that area, delineated by the DNR, within the geographic confines of the LRNRD and located outside of the Republican River Basin.
- 4-1.34. Offset.** Any water that is used to compensate for ground water that has been withdrawn since the effective date of Neb. Rev. Stat. § 46-740 when such withdrawal is considered to be an expanded or new use. “Offset” may also include

- any water that the LRNRD requires an applicant to provide to compensate for ground water that will be withdrawn pursuant a variance granted under Rule 5-1.
- 4-1.35. Offset Account:** A tracking system for the amount of credits and debits for a municipal or industrial/commercial user pursuant to Rule 7-5.
- 4-1.36. Operator:** The person who controls the day-to-day operation of the water well.
- 4-1.37. Overlying Land:** The land that has been certified as being irrigated by a regulated well as per Rule 6-6.
- 4-1.38. Permit to Construct a Well:** A document that must be obtained from the LRNRD in accordance with Rule 6-2 before construction of a regulated ground water well may be commenced in the Management Area pursuant to Neb. Rev. Stat. § 46-735.
- 4-1.39. Person:** A natural person, partnership, limited liability company, association, corporation, municipality, irrigation district, agency or political subdivision of the state, or a department, agency, or bureau of the United States.
- 4-1.40. Public Water Supplier:** A city, village, municipal corporation, metropolitan utilities district, rural water district, natural resources district, irrigation district, reclamation district, or sanitary and improvement district which supplies or intends to supply water to inhabitants of cities, villages, or rural areas for domestic or municipal purposes.
- 4-1.41. Public Water System:** System for providing the public with water for human consumption, as further defined in 179 N.A.C. 2.
- 4-1.42. Range Livestock Well:** A water well that is used for the watering of range livestock and other uses of water directly related to the operation of a pasture or range.
- 4-1.43. Regulated Well:** A water well designed and constructed to pump more than fifty (50) gallons per minute. A series of water wells, with a combined discharge of more than fifty (50) gallons per minute, of which the water is commingled, combined, clustered or joined as a single unit for a single purpose, shall be considered as one regulated well.
- 4-1.44. Replacement Well:** A water well which is constructed to provide water for the same purpose as the original water well and is operating in accordance with any applicable rules and regulations of the District and with any applicable permit from the Department and, if the purpose is for irrigation, the replacement water well delivers water to the same tract of land served by the original water well and (i) replaces a decommissioned water well within one hundred eighty days after the decommissioning of the original water well, (ii) replaces a water well that has not been decommissioned but will not be used after construction of the new water well and the original water well will be decommissioned within one hundred eighty days after such construction, except that in the case of a municipal water well, the original municipal water well may be used after construction of the new water well but shall be decommissioned within one year after completion of the replacement water well, or (iii) the original water well will continue to be used but will be modified and equipped within one hundred eighty days after such construction of the replacement water well to pump fifty gallons per minute or less and will be used only for range livestock, monitoring, observation, or any other nonconsumptive or de minimis use and approved by the District, and (iv) would

not be used to provide water to a use not certified with the well being replaced and (v) would not be used in such a way as to result in the consumption of more water than was historically consumed by the water well being replaced. A replacement well, as defined in Neb. Rev. Stat. § 46-602 or as further defined in LRNRD Rules and Regulations, is subject to the same provisions as the water well it replaces.

**4-1.45. Reserve:** That part of an allocation that is unused during the base allocation period.

**4-1.46. Supplemental Well:** A water well that provides ground water to acres that have a surface water permit. Annual use is not a requirement to be considered a supplemental well.

**4-1.47. Test Hole:** A hole designed solely for the purpose of obtaining information on hydrologic or geologic conditions.

**4-1.48. Unregulated Well:** A water well designed and constructed to pump fifty (50) gallons per minute or less and is not commingled, combined, clustered or joined with other water wells.

**4-1.49. Variance:** Approval to act in a manner contrary to existing rule or regulation obtained from a governing body whose rule or regulation is otherwise applicable.

**4-1.50. Water Short Year:** A year in which the projected or actual irrigation supply is less than 119,000 acre-feet of storage available for use from Harlan County Lake as determined by the United States Bureau of Reclamation for the Republican River Compact Administration.

**4-1.51. Water Well:** Any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting fluid as defined in section 81-1502 into the underground water reservoir. Water well includes any excavation made for any purpose if ground water flows into the excavation under natural pressure and a pump or other device is placed in the excavation for the purpose of withdrawing water from the excavation for irrigation. For such excavations, construction means placing a pump or other device into the excavation for the purpose of withdrawing water for irrigation. Water well does not include (i) any excavation made for obtaining or prospecting for oil or natural gas or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission or (ii) any structure requiring a permit by the Department used to exercise a surface water appropriation.

## **CHAPTER 5 – GENERAL PROVISIONS**

### **RULE 5-1 VARIANCES**

**5-1.1.** The Board may grant variances from the strict application of these Rules and Regulations upon good cause shown.

**5-1.2.** All requests for a variance shall be made on forms provided by the LRNRD and shall be acted upon at a formal adjudicatory hearing before the Board. This hearing shall be advertised in newspaper(s) of general circulation within the LRNRD. All known interested parties will be provided notice of the hearing. The

well owner or his or her representative shall be present at the hearing, except that, with prior notification to the LRNRD, written testimony may be provided if the well owner cannot be present in person.

## **RULE 5-2 SEVERABILITY**

If any Rule or Regulation or any part of any Rule or Regulation herein shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

## **CHAPTER 6 – GENERAL MANAGEMENT**

### **RULE 6-1 MORATORIUMS**

- 6-1.1.** The LRNRD hereby closes the entire Management Area to the issuance of new permits for regulated wells except as provided in Rules 6-1.2, 6-1.3, and 6-1.4.
- 6-1.2.** The LRNRD hereby closes the entire Management Area to the initiation or expansion of consumptive uses with the exception of (1) those uses that pertain to human health, safety, and welfare, range livestock, (2) those uses for which an offset has been or will be provided as described in Rule 7-5 below, or (3) those uses for which an offset will be provided to compensate for ground water that will be withdrawn pursuant a variance granted under Rule 5-1.
- 6-1.3.** Wells for new or expanded municipal, commercial and industrial uses are governed by Rule 7-5 below.
- 6-1.4.** Replacement wells and wells for the expansion of range livestock use are not subject to the moratoriums.

### **RULE 6-2 PERMIT TO CONSTRUCT A WATER WELL**

- 6-2.1.** Except as provided in Rule 6-2.2, any person who intends to construct a regulated water well on land in the Management Area that he or she owns or controls shall, before commencing construction, apply with the LRNRD for a permit on a form provided by the LRNRD. Within thirty (30) days after the application is properly prepared and filed, the LRNRD shall either issue the approved permit (with or without conditions) or deny the permit application. An incomplete or defective application shall be returned for correction. If correction is not made within sixty (60) days, the application shall be canceled.
- 6-2.2.** Exceptions. No permit shall be required for:
  - 6-2.2.1. Test holes
  - 6-2.2.2. Dewatering wells with an intended use of ninety (90) days or less.
  - 6-2.2.3. A single water well designed and constructed to pump fifty (50) gallons per minute or less.
- 6-2.3.** Applications for a permit to construct a water well that require consideration of a variance request shall not be deemed as properly filed and complete until such time as the Board has acted to approve the variance request.

- 6-2.4.** A person shall apply for a permit before he or she modifies a water well, for which a permit was not required when the well was constructed, into one for which a permit would otherwise be required.
- 6-2.5.** The permit application shall be accompanied by a \$50.00 filing fee payable to the LRNRD and shall contain:
- 6-2.5.1. The name and post office address of the well owner;
  - 6-2.5.2. The nature of the proposed use;
  - 6-2.5.3. The intended location of the proposed water well or other means of obtaining ground water;
  - 6-2.5.4. The intended size, type and description of the proposed water well and the estimated depth, if known;
  - 6-2.5.5. The estimated capacity in gallons per minute;
  - 6-2.5.6. The acreage and location by legal description of the land involved if the intended use is for irrigation;
  - 6-2.5.7. A description of the proposed use, if other than irrigation;
  - 6-2.5.8. The registration number of the well being replaced, if applicable;
  - 6-2.5.9. The certified use of the well being replaced, if applicable;
  - 6-2.5.10. The historic consumptive use of the well being replaced, if applicable; and
  - 6-2.5.11. Such other information as the District may require.
- 6-2.6.** Any person who has failed or in the future fails to obtain a permit before construction is commenced shall make application for a late permit on forms provided by the LRNRD. The application for a late permit shall be accompanied by a \$250.00 fee payable to the District and shall contain the same information required in Rule 6-2.5.
- 6-2.7.** The application for a permit shall be denied if (a) the location or operation of the proposed water well or other work would conflict with any regulations or controls adopted by the LRNRD; (b) the proposed use would not be a beneficial use; or (c) in the case of a late permit only, that the applicant did not act in good faith in failing to obtain a timely permit.
- 6-2.8.** No refund of any application fees shall be made regardless of whether the permit is issued, canceled, or denied.
- 6-2.9.** The issuance, by the LRNRD, of a permit or the registration of a water well with the DNR shall not vest in any person the right to violate any LRNRD rule, regulation, or control in effect on the date of issuance of the permit or the registration of the water well, or to violate any rule, regulation, or control properly adopted after such date.
- 6-2.10.** The applicant shall commence construction as soon as possible after the date of approval and shall complete construction and equip the water well prior to the date specified in the conditions of approval, which shall not be more than one (1) year from the date of approval, unless it is clearly demonstrated in the application that one (1) year is an insufficient period of time for such construction. Failure to complete the project under the terms of the permit may result in the withdrawal of the permit by the LRNRD.

### **RULE 6-3 WELL SPACING**

- 6-3.1.** No regulated irrigation well shall be constructed upon any land in this District within six hundred (600) feet of any registered regulated irrigation well of different ownership, except, any irrigation water well that replaces an irrigation water well that was drilled prior to September 20th, 1957, and which is less than six hundred (600) feet from a registered irrigation well may be located closer than six hundred (600) feet from another regulated well if it is drilled within fifty (50) feet of the water well being replaced.
- 6-3.2.** No regulated irrigation, industrial or public water system well shall be constructed upon any land in this District within one thousand (1000) feet of any registered regulated industrial or public water system well of different ownership.
- 6-3.3.** A replacement well must be constructed within one thousand three hundred and twenty (1320) feet from the well that it is replacing.
- 6-3.4.** The well spacing required by Rule 6-3.1 shall also apply to the distance between a proposed new regulated well and an unregistered regulated water well but only for a period of sixty (60) days to allow for registration of such unregistered water well.

### **Rule 6-4 FLOW METERS**

- 6-4.1.** Flow meters meeting accuracy specifications established in Rule 6-4.2 shall be installed on all regulated wells by April 1, 2005, except that, before any inactive wells are placed in service, a flow meter shall be installed, the LRNRD shall be notified of the well's status change, and the status of the well in the well registration records of the DNR shall be updated to reflect its active status.
  - 6-4.1.1. No such well shall be operated within the District without a properly installed and operational flow meter.
  - 6-4.1.2. The penalty for operating a well without a properly installed and operational flow meter shall be the loss of the base allocation for the following year and the well will not be allowed to be pumped until the required flow meter is installed and/or made properly operative and free from any tampering.
- 6-4.2.** All meters shall be tested for accuracy using recognized industry testing methods and certified by the manufacturer according to those standards. At any rate of flow within the normal flow limits, the meter shall register not less than ninety eight (98) percent nor more than one hundred and two (102) percent of the water actually passing through the meter. All meters shall have a register or totalizer and shall read in U. S. gallons, acre-feet or acre-inches.
- 6-4.3.** Installation – The operator shall, on forms provided by the LRNRD, report the location, by legal description, and certify the proper installation of flow meters. The LRNRD may, at a time of its own choosing, verify the location and proper installation of flow meters. The proper installation of a meter is such that it meets the manufacturer's specifications and/or more restrictive specifications developed by the LRNRD as reflected in this Rule.
  - 6-4.3.1. Whenever a manufacturer's or dealer's instructions and/or specifications are more restrictive, they shall govern.

- 6-4.3.2. In no case may a meter be installed with less than five (5) unobstructed pipe diameters upstream of the meter or less than one (1) unobstructed pipe diameter downstream of the meter.
- 6-4.3.3. If the meter is installed downstream of a mainline check valve, there must be at least ten (10) pipe diameters upstream of the meter. If there are not at least ten (10) pipe diameters upstream of the meter, straightening vanes must be installed.
- 6-4.3.4. Meters must be located so as to prevent damage to the meter from excessive vibration.
- 6-4.3.5. Meters must be installed so that the removal of the meter for service or maintenance can be performed with the use of normal tools and does not require excessive or unusual removal of hardware or other appurtenances.
- 6-4.3.6. Meters shall not be removed except for service or maintenance.
- 6-4.3.7. The LRNRD may establish a method by which the installed meter is tagged, sealed, marked or otherwise protected from tampering.
- 6-4.4.** Improperly Installed Meters – The installation of meters that do not meet the manufacturers’ or LRNRD standards must be corrected. If the LRNRD determines that a meter has been improperly installed, it will send a certified letter to the well owner and operator requesting correction within fourteen (14) days. Failure to provide for proper installation, or to correct a problem identified by the LRNRD in its certified letter, may result in the imposition of the penalties as described in section 6-4.1.2 above.
- 6-4.5.** Inoperative Meters – Well owners and/or operators shall notify the LRNRD of an inoperative meter within one (1) working day from the time the defect is noted. The LRNRD shall repair or temporarily replace the inoperative meter and charge the well owner for the service. Failure to report inoperative meters shall result in the imposition of penalties as described in section 6-4.1.2 above.
- 6-4.6.** Tampering with an Installed Flow Meter – Following a hearing before the Board, if it is found that tampering so as to affect the accuracy or true use of the meter has occurred, the LRNRD shall impose the penalties described in section 6-4.1.2 above and may prorate the allocation for the current year.
- 6-4.7.** Removing a Cable Seal or Removing a Flow Meter – Removing a cable seal and/or removing a flow meter without written approval by the District staff shall result in the loss of fifty percent (50%) of the base allocation for the following year.
- 6-4.8.** Service – It is the responsibility of the operator to provide for service and to maintain the flow meter according to either the manufacturer’s standards or more restrictive standards developed by the LRNRD. The operator may grant permission for this service to be provided by the LRNRD, at a cost to the operator. A form, provided by the LRNRD, shall authorize this service and the LRNRD may enter onto property to provide this service. This service shall be provided in the off-season and will not interfere with the normal operation of the meter or the well.
- 6-4.9.** The LRNRD may establish a program to randomly inspect the serviceability and to verify use of a meter. The LRNRD may correct discrepancies noted at the time of

the inspection. Discrepancies that require the repair of a meter may be performed by the LRNRD, at a cost to the well owner, with the prior permission of the well owner.

- 6-4.10.** When an installed non-mechanical flow meter is in need of replacement, it shall be replaced with a mechanical flow meter.
- 6-4.11.** Only mechanical flow meters are allowed to be installed after the effective date of these rules.

### **RULE 6-5 REPORTS**

- 6-5.1.** Owners and operators of regulated irrigation wells shall allow District staff to determine from the flow meters, by January 15 of each year, the total water withdrawn from that well since the last reading.
  - 6-5.1.1.** If the owner and/or operator of a regulated irrigation well disputes the amount of total water withdrawn from the well during the year as read by District staff, the owner and/or operator shall have until April 1 of the following year to file an objection with the District.
- 6-5.2.** Each operator of a regulated irrigation well shall report by November 15 of each year, on forms provided by the District, the acres irrigated by that well during the preceding irrigation season and the type of crop grown on such acres.
- 6-5.3.** Each operator of a regulated well, other than an irrigation well, shall report by January 15 of each year, on forms provided by the LRNRD, the total water withdrawn from that well during the preceding calendar year and the nature of the use of that water.
- 6-5.4.** Failure to allow the District staff or authorized designee to read the meter or to provide the reports identified in Rules 6-5.2 and 6-5.3 shall result in the loss of allocation for the next crop year or current year, in the case of a regulated well other than an irrigation well.
- 6-5.5.** In order to ensure compliance with the Republican River Compact Accounting procedures, additional reports may be required from operators.

### **RULE 6-6 CERTIFICATION OF USES**

- 6-6.1.** After December 31, 2004, no regulated well shall be operated until its use is certified and approved by the Board pursuant to these Rules and Regulations.
- 6-6.2.** Any operator aggrieved by a determination of the Board regarding approval of certification of irrigated acres or of non-irrigation uses may request a hearing before the Board for the purpose of reconsidering that determination. Such request shall be filed on a form provided by the LRNRD within thirty (30) days of the Board's action on the certification. Such hearing shall be a formal adjudicatory hearing and shall be conducted in accordance with the LRNRD'S Rules and Regulations for the Enforcement of the Ground Water Management and Protection Act. The burden of proof shall be on the person requesting the hearing to establish that the Board's decision should be modified.
- 6-6.3.** The Board may review each certification for all uses no less often than every five (5) years. Errors or inconsistencies discovered during that review shall be resolved to the satisfaction of the Board before any new allocation is made to the previously

certified uses. Following notice and a hearing, the Board may rescind any previously approved certification and any previously granted allocation to a well for which false or misleading information was used to obtain the certification required by Rule 6-6.5 or 6-6.12.

- 6-6.4.** Any change in farming operation or ownership that would result in a change in the number or location of certified irrigated acres shall be reported to the LRNRD no later than December 31 of the calendar year in which the change occurred. Any change in use of a regulated well used for purposes other than irrigation that would result in a change in that well's certification shall be reported to the LRNRD no later than December 31 of the calendar year in which the change occurred. The Board may reject such changes if it finds that such changes would cause an increase in Nebraska's consumptive use as calculated pursuant to the Republican River Compact or would have detrimental effects on other ground water users or on surface water appropriators.
- 6-6.5.** No later than January 1, 2005, each owner or operator of a regulated irrigation well shall certify (a) the well registration number for that well, (b) the number and location of all acres irrigated at least once by that well between January 1, 1999 and December 31, 2004, and (c) the maximum number of acres irrigated by that well in any one (1) year within that time period. Such certification shall be on forms provided by the LRNRD and shall be accompanied by applicable records from the U.S.D.A. Farm Service Agency and/or the County Assessor and such other information as requested by the LRNRD to verify the information certified.
- 6-6.6.** The Board may take action to approve, modify and approve, or reject the certifications provided by owners and/or operators pursuant to Rule 6-6.5. The number and location of certified irrigated acres, which shall be approved for each such irrigation well, shall be determined at a public meeting of the Board after consideration of the following:
  - 6-6.6.1. The information provided on and with the certification filed in accordance with Rule 6-6.5;
  - 6-6.6.2. Any water use reports for that well filed in accordance with Rule 6-5;
  - 6-6.6.3. U.S.D.A. Farm Service Agency records or County Assessor records;
  - 6-6.6.4. Aerial photographs; and
  - 6-6.6.5. Other information available to and deemed relevant by the Board.
- 6-6.7.** Only those acres that are actually capable of being supplied with ground water through irrigation works, mechanisms or facilities existing at the time of certification may be approved as certified acres by the Board.
- 6-6.8.** Any acres that are changed from irrigated to non-irrigated in the County Assessor's office, shall permanently forfeit the certification for those acres and they will not be considered certified acres for purposes of allocating water for irrigation.
- 6-6.9.** If certification is not filed pursuant to Rule 6-6.5 to 6-6.7 for an irrigation well constructed prior to July 26, 2004, the well shall be an illegal water well as that term is defined in Rule 4-1.26.
- 6-6.10.** The Board shall not certify any irrigated acres for an illegal water well, as that term is defined in Rule 4-1.26, and an illegal water well shall receive no future

allocation of water until such certification has been filed and until the Board has approved or modified and approved that certification. Certification of acres can be approved for any such well if and when the deficiency that caused that well to be an illegal water well is corrected.

- 6-6.11.** The Board may approve a change in the location of certified irrigated acres on contiguous property when the owner or operator of a regulated well changes to the use of an alternative delivery system or changes the location of the current delivery system. New acres not previously irrigated or certified may be certified if previously certified acres are removed from certification and the new acres are on the same contiguous property as the previously certified acres. The number of acres to be removed from certification must equal the number of newly certified acres to qualify for approval.
- 6-6.12.** No later than June 1, 2005, each owner or operator of a regulated well used for purposes other than irrigation shall certify (1) the well registration number for that well, (2) the nature and location of the use of the water withdrawn from that well, (3) the measured or estimated average annual quantity and the maximum quantity of water withdrawn from that well between January 1, 2004, and December 31, 2004, and a description of the method used to determine that quantity, (4) if the well was constructed before December 9, 2002, but has not yet been used for its intended purpose, the quantity of water proposed to be withdrawn from that well in the future, and (5) if the owner or operator of the well desires that the annual quantity of use to be certified for that well be in excess of the quantity historically withdrawn by that well, the quantity proposed and an explanation why that quantity is necessary to accomplish the purpose for which the well is used. Such certification shall be on forms provided by the LRNRD and shall be accompanied by such information as requested by the LRNRD to verify the information certified.
- 6-6.13.** Any new or expanded municipal, commercial or industrial use shall be considered to be a “certified” use so long as it is offset pursuant to the procedures described in Rule 7-5.
- 6-6.14.** No later than July 15, 2005, the Board shall take action to approve, modify and approve, or reject the certifications provided by the owners and/or operators of non-irrigation wells pursuant to Rule 6-6.12. Such action shall be taken after reviewing the information provided by the owner or operator of the well and any other information available to and deemed relevant by the Board. The Board’s approval of the certification for such a well shall not, by itself, limit the quantity of water that can be withdrawn by that well in 2005 or any subsequent year. Any such limitations on the quantity that can be withdrawn annually from that well will be imposed through the Board’s allocation of water to that well pursuant to the LRNRD’s Rules and Regulations. The Board may use the information provided through such certification if and when it determines the amount to be allocated to that well.
- 6-6.15.** Only those non-irrigation uses that are actually capable of being supplied with ground water through works, mechanisms or facilities existing at the time of certification may be approved as certified uses by the Board.

- 6-6.16.** If no certification is filed pursuant to Rule 6-6.12 for a regulated well constructed prior to June 1, 2005, and used for other than irrigation purposes, that well shall not be used until such certification has been filed with the LRNRD and approved by the Board.
- 6-6.17.** Certification shall not be approved by the Board for any regulated non-irrigation well, which is an illegal water well as that term is defined by Rule 4-1.26 of the LRNRD's Rules and Regulations. The Board may approve such certification if and when the deficiency that caused the well to be an illegal water well is corrected.

#### **RULE 6-7 WATER SHORT YEAR ADMINISTRATION**

- 6-7.1.** No later than October 15, 2005 and October 15 of each following year, the DNR shall notify the LRNRD of the potential for a Water Short Year. Notification of updates to such determinations shall be provided monthly, or more often as requested, through the following June 30<sup>th</sup> at which time the final determination shall be made.
- 6-7.2.** Upon receiving notice of the potential designation of a Water Short Year, the LRNRD shall provide notice to irrigators of this designation by publishing said notice in newspapers of general circulation in the LRNRD and shall place said notice on the LRNRD website.
- 6-7.3.** There will be no further reductions to allocations or certified irrigated acres needed to maintain compliance with the Republican River Compact without Board approval following a Public Hearing.

#### **RULE 6-8 INCENTIVE PROGRAM**

Unless permitted by the rules and regulations established by individual incentive programs, no certified acres may be enrolled in incentive programs sponsored by or funded by the District if such certified acres do not have a history of use in four (4) of the previous six (6) years.

These incentive programs may include any Federal, State, or Local programs that have the effect of reducing the LRNRD's overall consumptive use. Subject to State law, the LRNRD may also raise the money necessary to provide cost share for incentive programs it utilizes. If sufficient irrigated acres are retired, through the use of incentive programs, above what is needed to meet the requirements of the Republican River Compact, the LRNRD may re-evaluate and alter the allocation previously set per irrigated acre.

Participation in an incentive program shall not result in the permanent loss of an allocation unless the acres involved are changed from irrigated status to non-irrigated status with the County Assessor. Upon completion of the enrollment period required by the incentive program, the certified irrigated acres will be granted an allocation prorated to the years remaining in the allocation period.

## CHAPTER 7 – MANAGEMENT OF USES

### RULE 7-1 GROUND WATER TRANSFER FOR IRRIGATION, PUBLIC WATER SUPPLIES AND INDUSTRIAL PURPOSES

- 7-1.1. Transfers for Irrigation Purposes:** The LRNRD finds that the transfer of ground water off of the overlying land for irrigation purposes may contribute to conflicts between ground water users and surface water appropriators, and to disputes over the Republican River Compact. For those reasons, and except as described below, the LRNRD hereby closes all of the Management Area to the withdrawal and transfer of ground water off the overlying land or otherwise changing the location of use of ground water for irrigation purposes.
- 7-1.2.** Allocations of ground water shall not be transferred except as provided pursuant to Rule 6-6.11.
- 7-1.3. Transfers by Public Water Suppliers:** Pursuant to Neb. Rev. Stat. §§ 46-739(k) and 46-742, the District is required to allow the withdrawal and transport of ground water when a public water supplier providing water for municipal purposes receives a permit from the Department pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act. Except to the extent that a public water supplier has obtained a permit under the Municipal and Rural Domestic Ground Water Transfers Permit Act, the LRNRD hereby closes all of the Management Area to the withdrawal and transfer of ground water off of the overlying land or otherwise changing the location of use of ground water for municipal purposes. A public water supplier shall notify the District at the time that it files an application with the Department for a permit under the Municipal and Rural Domestic Ground Water Transfers Permit Act.
- 7-1.4. Transfers by Commercial and Industrial Water Users:** The District will allow industrial ground water users to transfer water pursuant to a permit granted by the Department, or pursuant to written notice filed with the DNR, as provided for in the Industrial Ground Water Regulatory Act. Except to the extent that a commercial or industrial water user has obtained a permit from the Department under the Industrial Ground Water Regulatory Act, the LRNRD hereby closes all of the Management Area to the withdrawal and transfer of ground water off of the overlying land or otherwise changing the location of use of ground water for commercial or industrial uses. A commercial or industrial water user shall notify the District at the time that it files an application with the Department for a permit under the Industrial Ground Water Regulatory Act.
- 7-1.5. Department Review of Permit Applications:** Upon receipt of an application by a public water supplier seeking a permit under the Municipal and Rural Domestic Ground Water Transfers Permit Act, an application by a commercial or industrial water user under the Industrial Ground Water Regulatory Act, or a person seeking a permit to transfer ground water to another state, the Department shall consult with the District. As part of that consultation, the District shall provide the

Department with whatever relevant information that it may have in its possession, including but not limited to, the following:

- 7-1.5.1. The applicant's unmet offset obligations, if any;
- 7-1.5.2. The amount of water in the applicant's "offset account" as defined in Rule 7-5 below;
- 7-1.5.3. Whether the applicant will need to provide an offset for the proposed water use in order to maintain compliance with the Republican River Compact; and
- 7-1.5.4. Whether the applicant will need to mitigate any effects to surrounding ground water users or surface water appropriators;

## **RULE 7-2 ALLOCATION**

**7-2.1.** The use of ground water from all regulated water wells shall be allocated by the LRNRD. Allocations will be set after considering: (1) the relationship between wells and surface waters and the impact of well usage on stream flow; (2) whether ground water levels are declining; and (3) such other factors as the Board determines may be relevant to the appropriate amount of water to be withdrawn.

### **7-2.2. GENERAL PROVISIONS:**

- 7-2.2.1. Allocation – 45 acre-inches for the allocation period.
- 7-2.2.2. Base Allocation – 9 acre-inches per year for all regulated wells for all certified acres.
- 7-2.2.3. Allocation Period – Five (5) years; January 1, 2008 through December 31, 2012.
- 7-2.2.4. Base Certification – 325,876 certified irrigated acres
- 7-2.2.5. Base Allocation Year – January 1<sup>st</sup> to December 31<sup>st</sup>
- 7-2.2.6. The LRNRD's net depletions shall not exceed twenty-six percent (26%) of the State's allowable ground water depletions as determined by the Republican River Compact Administration Ground Water Model. It may be necessary to adjust the base allocation, as defined in Rule 7-2.2.2., within the five-year allocation period in order to meet this requirement.
- 7-2.2.7. The District's base allocation may be increased or decreased proportionately with any increase or decrease in the water supply conditions. Such increase or decrease will become effective only after the Board holds a public hearing.
- 7-2.2.8. Pursuant to Neb. Rev. Stat. § 46-739, the LRNRD may establish different provisions for restriction of water wells that were constructed after January 1, 2001.

**7-2.3. SUPPLEMENTAL WELLS:** If land with a surface water appropriation is also served by a regulated well, any surface water used on that land or leased or purchased by the District or the DNR shall be deducted from the allocation of ground water to the regulated well serving that land (not to exceed the base allocation).

**7-2.4. PENALTY:** If at the end of an allocation period an operator has exceeded his or her allocation, the allocation for the next allocation period shall be reduced by the

number of acre-inches by which said allocation was exceeded in the prior allocation period for the first three inches of overuse and by twice the number of inches of overuse for the fourth and subsequent inches of overuse. Nothing in Rule 7-2.4 negates applicability of Rule 7-2.5.

- 7-2.5. An operator must have a positive balance in his or her allocation before using water in any year of an allocation period. The LRNRD shall notify landowners and/or operators anytime the balance of their allocation goes below zero.
- 7-2.6. For irrigation purposes, if at the end of the allocation period, an operator has consumed less than his or her allocation, he or she may carry the reserve or unused portion forward to the subsequent allocation period. Reserve ground water must be used for the same certified acres for which the water was originally allocated. It is expected that certain operators will be carrying forward into the current allocation period the unused portion of their 2005-2007 allocation, not to exceed the base allocation (11 or 12 inches depending upon geographic location within the District) for that period.
- 7-2.7. Certified irrigated acres participating in the Federal Conservation Reserve Program (CRP), EQIP, or similar programs shall not receive an allocation during the term of participation. Certified irrigated acres removed from these programs shall be granted an allocation that is prorated for the remaining years of the allocation period provided that those acres have remained in irrigated status with the County Assessor.
- 7-2.8. The LRNRD may review any allocation or reduction control imposed and shall adjust allocations or reductions to accommodate or otherwise reflect findings of such review consistent with the integrated management objectives. Such review shall consider more accurate data or information that was not available at the time of the allocation or reduction order, designation of a Water Short Year and such other factors as the LRNRD deems appropriate.
- 7-2.9. The LRNRD may institute formal adjudicatory proceedings or take any other legal action authorized or permitted by law to prohibit further withdrawal of ground water from any regulated well whenever an operator has exhausted his or her allocation during or before the end of any allocation period or has in any other way violated the amount, limitations, or conditions of his or her allocation or violated any other rules of the LRNRD. In the event of such action, no ground water may be withdrawn until the operator has adhered to LRNRD Rules and Regulations.

### **RULE 7-3 RESERVED**

### **RULE 7-4 LIMIT OR PREVENT THE EXPANSION OF NEW ACRES**

- 7-4.1. Beginning on January 1, 2005, no irrigation well may be used to irrigate any acre that was not irrigated with ground water at some time between January 1, 1999 and December 31, 2004.

## **RULE 7-5 MUNICIPAL, COMMERCIAL, AND INDUSTRIAL USES**

### **7-5.1. Municipal Use Accounting and Offsets**

- 7-5.1.1. Allocation Amount – The minimum annual allocation for a municipality located within the boundaries of the LRNRD may be the greater of either 1) the amount of ground water authorized by a permit issued pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act, or 2) the governmental, commercial, and industrial uses of the municipality plus a per capita allowance of 225 gallons per person per day. Persons served by a municipality outside of its corporate limits shall be considered part of the municipality's population if such service begins prior to January 1, 2026.
- 7-5.1.2. Establishment of a Baseline – In order to define what are new and expanded consumptive uses within the municipality, the District must establish a baseline of existing municipal uses as of July 14, 2006, which is the date on which Neb. Rev. Stat. § 46-740(3) became effective.
- 7-5.1.2.1. To define this baseline, the District shall 1) collect 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) collect monthly discharge data for the same period (if available) measured in gallons. The District will 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 timeframe. The largest 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. If the municipality does not discharge wastewater to a natural watercourse but uses lagoons, then the highest 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 unless through the variance process the municipality can establish that the baseline amount should be reduced.
- 7-5.1.3. Accounting System – Starting with the period beginning on August 1, 2007, and based upon the calculations made using the foregoing formula, the total amount of ground water used by each municipality within the Management Area will be measured for each year (August 1 through July 31) and be compared to the baseline calculated in Rule 7-5.1.2.

- 7-5.1.3.1. The total amount of ground water used annually by the municipality shall be determined by, 1) collecting monthly data for the amount of ground water pumped between August 1 and July 31, measured in gallons, and 2) collecting monthly discharge data (if available) between August 1 and July 31, measured in gallons. The annual amount discharged shall be subtracted from the annual amount pumped to determine the total amount of water consumptively used over each twelve (12) month period. If the municipality does not discharge wastewater to a natural watercourse but uses lagoons, then the amount of ground water pumped between August 1 and July 31 will be used to determine the annual amount of ground water used.
- 7-5.1.3.2. Between August 2007 and January 1, 2026, the District shall, for each municipality, document the difference between each subsequent annual calculation and the baseline. For each five (5) year increment between August 1, 2007 and January 1, 2026, the District shall maintain a cumulative total of the amount of consumptive use that exceeds the baseline and the consumptive use that is less than the baseline.
- 7-5.1.3.3. If it is determined at the end of any five (5) year increment between August 1, 2007 and January 1, 2026, that the cumulative total exceeds the baseline amount, measures will be taken by the LRNRD within six (6) months thereafter to offset the exceedence, if:
  - 7-5.1.3.3.1. The municipality's water use remains below or equal to the amount of ground water authorized by a permit that was issued pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act, if applicable; or
  - 7-5.1.3.3.2. The municipality's water use remains below or equal to the governmental, commercial and industrial uses of the municipality plus a per capita allowance of two hundred and twenty-five (225) gallons per person per day; or
  - 7-5.1.3.3.3. The baseline exceedence is due to any new or expanded single commercial or single industrial development served by any municipality which, after July 14, 2006, commences water use resulting in the consumptive use of water in amounts less

than twenty-five (25) million gallons annually.

7-5.1.3.4. If it is determined at the end of any five (5) year increment between August 1, 2007 and January 1, 2026, that the cumulative total exceeds the baseline amount, measures will be taken by that municipality within six (6) months thereafter, with prior approval from the Board, to offset the exceedence, if:

7-5.1.3.4.1. The municipality's water use exceeds the amount of ground water authorized by a permit that was issued pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act, if applicable; or

7-5.1.3.4.2. The municipality's water use exceeds the governmental, commercial and industrial uses of the municipality plus a per capita allowance of two hundred and twenty-five (225) gallons per person per day; or

7-5.1.3.4.3. The baseline exceedence is due to any new or expanded single commercial or single industrial development served by any municipality which, after July 14, 2006, commences water use resulting in the consumptive use of water in amounts greater than twenty-five (25) million gallons annually.

7-5.1.3.5. The municipality must provide an annual report to the District describing the nature of the offsets being implemented pursuant to Rule 7-5.1.3.4. That report shall describe the nature of the offset, along with the timing, location, and amount of the offset.

7-5.1.3.6. An "offset account" shall be created for each municipality. For each year that the amount of consumptive use is less than the baseline, a credit in that amount shall be made to that municipality's offset account. For each year that the amount of consumptive use is greater than the baseline, a debit in that amount shall be made to that municipality's offset account. If it is determined at the end of any five (5) year increment between August 1, 2007 and January 1, 2026, that the cumulative total of consumptive use is less than the baseline amount, that below-baseline amount shall be carried over into the next five (5) year period in that municipality's offset account.

7-5.1.3.6.1. If, by January 1, 2026, there is a credit in

- any municipality's offset account, that credit shall be deposited into the District's water bank.
- 7-5.1.3.6.2. The District shall be responsible for maintaining and managing the offset accounting system for each municipality within the Management Area.
- 7-5.1.3.7. The District shall enter into agreements with each municipality within the Management Area regarding the nature of governmental uses. This Agreement shall specify the type of use and the amount of water used.
- 7-5.1.3.8. Each municipality within the Management Area shall track all new or expanded (i.e., post-July 14, 2006) consumptive water uses by all single commercial and single industrial users served by that municipality, the amount of water used for governmental uses within that municipality, the permanent population of the municipality, and the persons served by the municipal system outside of its corporate limits if such service begins prior to January 1, 2026.
- 7-5.1.3.8.1. The data collected by the municipality pursuant to Rules 7-5.1.3.1. and 7-5.1.3.8. for the period from August 1<sup>st</sup> through July 31<sup>st</sup> of each year shall be submitted to the District no later than October 1<sup>st</sup> of that year.
- 7-5.1.3.8.2. The municipality shall also submit to the District by no later than October 1<sup>st</sup> of each year a report documenting its calculation of the persons served by the municipal system outside of its corporate limits. The District may either accept or reject the municipality's calculations. If the District rejects the municipality's calculations, the District may rely upon whatever information is available to determine the number of persons so served.
- 7-5.1.3.9. Any permanent reduction in consumptive use of water within the Management Area associated with municipal growth including governmental, industrial, and commercial growth (e.g., by taking irrigated acres out of production), between July 14, 2006 and January 1, 2026, shall accrue to the LRNRD's water bank to be used in whole or in part to offset increased consumptive use elsewhere within the Management Area.

- 7-5.1.3.9.1. The District shall determine the amount of reduced consumptive use that is due to the growth of a municipality based on the Management Area average net crop irrigation requirement.
  - 7-5.1.3.9.1.1. The average net crop irrigation requirement will be calculated by taking the weighted average net crop irrigation requirement of the five major crops grown in the last five years worth of crop type data from Ag Statistics. The net crop irrigation requirement for each crop will be determined from available data.
- 7-5.1.3.9.2. If the permanent reduction in consumptive use is associated with the retirement of irrigated acres, and those acres were previously irrigated with a ground water well, the current landowner of such well shall, within 180 days, either decommission the well, or modify and equip the well to pump fifty (50) gallons per minute or less and only use it for range livestock, monitoring, observation, or any other nonconsumptive or de minimis use approved by the District.
- 7-5.1.3.9.3. The District shall notify in writing the previous landowner and the municipality that the consumptive use calculated in Rule 7-5.1.3.9.1 has been transferred to the District's water bank.
- 7-5.1.3.9.4. If the permanent reduction in consumptive use results in the retirement of certified irrigated acres, those acres shall be decertified by the District.
- 7-5.1.4. Water Conservation Plan – Each municipality of the first class and second class that are located within the Management Area shall file a conservation plan with the District within three (3) months following the effective date of this Integrated Management Plan.
  - 7-5.1.4.1. Each municipality shall update and file a new conservation plan with the District no less than every three (3) years



available) measured in gallons. The District will 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 timeframe. The largest 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. If the non-municipal commercial or industrial user does not discharge wastewater to a natural watercourse but uses lagoons, then the highest 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 unless through the variance process the non-municipal commercial or industrial user can establish that the baseline amount should be reduced.

7-5.2.3. Accounting System – Starting with the period beginning on August 1, 2007, and based upon the calculations made using the foregoing formula, the total amount of ground water used by each non-municipal commercial or industrial user within the Management Area will be measured for each year (August 1 through July 31) and be compared to the baseline calculated in Rule 7-5.2.2.

7-5.2.3.1. The total amount of ground water used annually by the non-municipal commercial or industrial users shall be determined by, 1) collecting monthly data for the amount of ground water pumped between August 1 and July 31, measured in gallons, and 2) collecting monthly discharge data (if available) between August 1 and July 31, measured in gallons. The annual amount discharged shall be subtracted from the annual amount pumped to determine the total amount of water consumptively used over each twelve (12) month period. If the non-municipal commercial or industrial user does not discharge wastewater to a natural watercourse but uses lagoons, then the amount of ground water pumped between August 1 and July 31 will be used to determine the annual amount of ground water used.

7-5.2.3.2. Between August 2007 and January 1, 2026, the District shall, for each non-municipal commercial and industrial user, document the difference between each subsequent annual calculation and the baseline. For each five (5) year increment between August 1, 2007 and January 1, 2026, the District shall maintain a cumulative total of the amount of consumptive use that exceeds the baseline and the

- consumptive use that is less than the baseline.
- 7-5.2.3.3. If it is determined at the end of any five (5) year increment between August 1, 2007 and January 1, 2026, that the cumulative total exceeds the baseline amount, measures will be taken by the LRNRD within six (6) months thereafter to offset the exceedence, if:
- 7-5.2.3.3.1. The non-municipal commercial or industrial user's water use remains below or equal the amount of ground water authorized by a permit that was issued pursuant to the Industrial Ground Water Regulatory Act, if applicable; and
- 7-5.2.3.3.2. The baseline exceedence is due to any new or expanded single commercial or industrial development served by a non-municipal well which, after July 14, 2006, commences water use resulting in the consumptive use of water in amounts less than twenty-five (25) million gallons annually.
- 7-5.2.3.4. If it is determined at the end of any five (5) year increment between August 1, 2007 and January 1, 2026, that the cumulative total exceeds the baseline amount, measures will be taken by that non-municipal commercial or industrial user within six (6) months thereafter, with prior approval from the Board, to offset the exceedence, if:
- 7-5.2.3.4.1. The non-municipal commercial or industrial user's water use exceeds the amount of ground water authorized by a permit that was issued pursuant to the Industrial Ground Water Regulatory Act, if applicable; or
- 7-5.2.3.4.2. The baseline exceedence is due to any new or expanded single commercial or single industrial development served by any non-municipal well which, after July 14, 2006, commences water use resulting in the consumptive use of water in amounts greater than twenty-five (25) million gallons annually.
- 7-5.2.3.5. The non-municipal commercial and industrial users must provide an annual report to the District describing the nature of the offsets being implemented pursuant to Rule 7-5.2.3.4. That report shall describe the nature of the offset, along with the timing, location, and amount of the

- offset.
- 7-5.2.3.6. An “offset account” shall be created for each non-municipal commercial and industrial user. For each year that the amount of consumptive use is less than the baseline, a credit in that amount shall be made to that non-municipal commercial or industrial user’s offset account. For each year that the amount of consumptive use is greater than the baseline, a debit in that amount shall be made to that non-municipal commercial or industrial user’s offset account. If it is determined at the end of any five (5) year increment between August 1, 2007 and January 1, 2026, that the cumulative total of consumptive use is less than the baseline amount, that below-baseline amount shall be carried over into the next five (5) year period in that non-municipal commercial or industrial user’s offset account.
- 7-5.2.3.6.1. If, by January 1, 2026, there is a credit in any non-municipal commercial or industrial user’s offset account, that credit shall be deposited into the District’s water bank.
- 7-5.2.3.6.2. The District shall be responsible for maintaining and managing the offset accounting system for each non-municipal commercial and industrial user within the Management Area.
- 7-5.2.3.7. Each commercial or industrial water user within the Management Area shall track all of its new or expanded (i.e., post-July 14, 2006) consumptive water uses.
- 7-5.2.3.7.1. The data collected by each commercial or industrial water user pursuant to Rules 7-5.2.3.1. and 7-5.2.3.7. for the period from August 1 through July 31 of each year shall be submitted to the District no later than October 1 of that year.
- 7-5.2.3.8. Any permanent reduction in consumptive use of water within the Management Area associated with non-municipal commercial or industrial use (e.g., by taking irrigated acres out of production), between July 14, 2006 and January 1, 2026, shall accrue to the LRNRD’s water bank to be used in whole or in part to offset increased consumptive use elsewhere within the Management Area.
- 7-5.2.3.8.1. The District shall determine the amount of reduced consumptive use that is due to the growth of a non-municipal commercial or industrial use based on the Management

Area average net crop irrigation requirement.

- 7-5.2.3.8.1.1 The average net crop irrigation requirement will be calculated by taking the weighted average net crop irrigation requirement of the five major crops grown in the last five years worth of crop type data from Ag Statistics. The net crop irrigation requirement for each crop will be determined from available data.
- 7-5.2.3.8.2. If the permanent reduction in consumptive use is associated with the retirement of irrigated acres, and those acres were previously irrigated with a ground water well, the current landowner of such well shall, within 180 days, either decommission the well, or modify and equip the well to pump fifty (50) gallons per minute or less and only use it for range livestock, monitoring, observation, or any other nonconsumptive or de minimis use approved by the District.
- 7-5.2.3.8.3. The District shall notify in writing the previous landowner and the non-municipal commercial or industrial user that the consumptive use calculated in Rule 7-5.2.3.8.1. has been transferred to the District's water bank.
- 7-5.2.3.8.4. If the permanent reduction in consumptive use results in the retirement of certified irrigated acres, those acres shall be decertified by the District.

## **INTEGRATED MANAGEMENT PLAN**

### **INTEGRATED MANAGEMENT PLAN Jointly Developed by the DEPARTMENT OF NATURAL RESOURCES And the LOWER REPUBLICAN NATURAL RESOURCES DISTRICT**

#### **AUTHORITY**

This Integrated Management Plan (IMP) was prepared by the Board of Directors of the Lower Republican Natural Resources District (LRNRD) and the Nebraska Department of Natural Resources (DNR) in accordance with the Nebraska Ground Water Management and Protection Act, Chapter 46, Article 7.

#### **BACKGROUND**

In 1943 the States of Colorado, Kansas and Nebraska entered into the Republican River Compact (the “Compact”) with the approval of the United States Congress. The Compact provides for the equitable apportionment of the “virgin water supply” of the Republican River Basin. In 1998, following several years of dispute about Nebraska’s consumptive use of water within the Basin, Kansas filed an original action in the United States Supreme Court against the States of Nebraska and Colorado, seeking, among other things, to include ground water in the calculation of the virgin water supply and consumptive use. After several rulings by the Court and its Special Master (including a recommendation that the depletions to stream flow from the use of ground water be included in the virgin water supply and be included in the calculations of each State’s beneficial consumptive use), and several months of negotiation, the three States entered into a comprehensive Final Settlement Stipulation (FSS). That FSS was approved by the Supreme Court on May 19, 2003 and the Special Master’s final report approving the Republican River Compact Administration Ground Water Model developed by the three States for use in computing stream flow depletions resulting from ground water use was submitted to the Court on September 17, 2003.

The State of Nebraska is responsible for compliance with the Compact.

Ground water use within the Republican River Basin is regulated by four Natural Resource Districts: the LRNRD, the Upper Republican Natural Resources District (URNRD), the Middle Republican Natural Resources District (MRNRD), and the Tri-Basin Natural Resources District (Tri-Basin) (collectively referred to below as the “Districts”). Both prior and subsequent to the approval of the FSS, the DNR conducted and participated in several meetings with the LRNRD during which it explained that, in order for the State of Nebraska to achieve and maintain compliance with the terms of the FSS and the Compact, it would be necessary to undertake the following: (1) to continue the moratorium on new surface water appropriations and new ground water wells, (2) to

reduce all ground water pumpage from historic levels across the entire Basin, and (3) to further reduce ground water pumping to comply with the Compact in water short years. The foregoing steps were to be accomplished to the extent possible through the use of incentive programs to reduce consumptive use of water. Similar discussions were held between the DNR and each of the other Basin Natural Resources Districts regarding the need (1) to accurately measure actual ground water pumpage and surface water diversions throughout the Basin and within each District; (2) for the Tri-Basin to maintain, at sufficient levels to offset depletions to the Republican River caused by ground water pumping within the Republican River Compact area within Tri-Basin, the Compact Imported Water Supply that Nebraska receives because of discharges from the “ground water mound”; and, 3) for each of the Districts other than the Tri-Basin to reduce their ground water pumping from their “1998-2002 baseline pumping volumes,” which the DNR has defined as follows:

URNRD – 531,763 acre-feet

MRNRD – 309,479 acre-feet

LRNRD – 242,289 acre-feet

The DNR, through the use of the Republican River Compact Administration Ground Water Model, has also determined each Natural Resources District’s depletions to streamflow for the 1998-2002 period (referred to below as the “1998-2002 baseline depletion”) and the related depletion proportion (referred to below as the “1998-2002 baseline depletion proportion”):

URNRD – 74,161 acre-feet (44% of the depletions)

MRNRD – 52,168 acre-feet (30% of the depletions)

LRNRD – 43,954 acre-feet (26% of the depletions)

The percentage of allowable ground water depletions for each Republican River Natural Resources District was based on the proportion of the average ground water depletions caused by ground water pumping within each District that occurred during the baseline period from 1998-2002 as determined by model runs of the Republican River Compact Administration Ground Water Model, with ground water pumping within each District alternated between being turned off and then being turned on. The pumping volumes used to make these determinations will be evaluated within the next five years to determine their accuracy as compared with metered pumping volumes. If the baseline pumping volumes are found to be in error, the pumping volumes for the 1998-2002 period will be revised and the percentage of depletions for this period will be readjusted based on the new pumping volumes.

On June 24, 2005, the first Integrated Management Plan (2005 IMP) adopted by the LRNRD and the DNR became effective. That 2005 IMP described the ground water rules and regulations for the 2005-2007 period. Among other things, that 2005 IMP

provided for a base ground water allocation of 12 acre-inches per year (36 acre-inches for the allocation period) for all regulated wells located west of U.S. Highway 183, and a base ground water allocation of 11 acre-inches per year (33 acre-inches for the allocation period) for all regulated wells located east of U.S. Highway 183. The 2005 IMP also allowed the landowners to carry forward unused allocations.

Since adoption of the 2005 IMP, efforts have been taken to implement incentive programs, studies, and research to further our understanding and ability to comply with the Republican River Compact and FSS. The LRNRD and the DNR now seek to adopt and implement a revised IMP for the regulation of water resources within the District as required by the laws of the State of Nebraska, specifically the Ground Water Management and Protection Act.

The LRNRD will meet its responsibility under Neb. Rev. Stat. §46-715 of the Ground Water Management and Protection Act, including meeting the obligations under the FSS, by adopting revised Rules and Regulations to implement this 2007 IMP. The LRNRD understands that the URNRD and the MRNRD have also revised their 2005 IMPs, and have chosen to adopt a “compliance standard” whereby they have agreed that their use of ground water shall be within the allocation granted to them as determined by the 1998-2002 baseline pumping volumes, reduced by a certain percentage. They have also agreed that they will be assigned their proportionate share of stream flow depletions as calculated by the 1998-2002 baseline depletion percentages. The failure of any one Natural Resources District to adopt, implement or enforce IMPs adequate to meet their proportionate share of the responsibility to achieve and maintain Nebraska’s compliance with the Compact and the FSS shall not itself require any additional action by the other Districts.

## **GOALS AND OBJECTIVES**

The LRNRD and the DNR have adopted the following Goals and Objectives.

### **Goals:**

1. Ensure that ground water and surface water users within the LRNRD assume their share of the responsibility to keep Nebraska in compliance with the Republican River Compact. Neither the LRNRD or DNR will require the Integrated Management Plan to be amended solely for the purpose of changing the responsibility of water users within the LRNRD based on the failure of the other Basin NRDs to implement or enforce an Integrated Management Plan to meet their share of the responsibility to keep Nebraska in compliance with the Republican River Compact.
2. Provide that LRNRD’s share of that responsibility be distributed in an equitable manner and, to minimize to the extent possible, adverse economic, social and environmental consequences.

3. To sustain a balance between water uses and water supplies within the District so that the economic viability, social and environmental health, safety, and welfare of the District can be achieved and maintained for both the near and long term.

**Objectives:**

1. With limited exceptions, prevent the initiation of new or expanded uses of water that increase Nebraska's computed beneficial consumptive use of water within the LRNRD.
2. Cause the required reductions in water use to be achieved through a combination of regulatory and incentive programs designed to reduce beneficial consumptive use.
3. The DNR shall ensure that administration of surface water appropriations in the Basin is in accordance with the Compact and in full compliance with Nebraska law.
4. After taking into account any reduction in beneficial consumptive use achieved through basin-wide incentive programs, make such additional reductions in ground water use in Water Short Years as are necessary to achieve a reduction in beneficial consumptive use in the LRNRD in an amount proportionate to the total reduction in consumptive use that is needed in Nebraska above Guide Rock in such years. Basin-wide incentive programs will be used to achieve reductions in beneficial consumptive use. There will be no further reductions without Board approval following a Public Hearing.
5. The LRNRD and the DNR will investigate or explore methods to manage the impact of vegetative growth on stream flow.
6. The LRNRD and the DNR will investigate or explore augmentation projects that would add to or retime the water supply within the Basin. Such augmentation and retiming projects include, but are not necessarily limited to, the following:
  - a. Leasing or purchasing surface water and/or ground water;
  - b. Augmentation wells, both within and outside of the Republican River Basin;
  - c. Exploring trans-basin diversion projects;
  - d. Conjunctive management of surface water irrigation projects.
7. The LRNRD and DNR will investigate, explore, and evaluate the effectiveness of vegetation management projects that would add to the water supply within the Basin. The District's ground water allocation may be adjusted upwards if it is found that such projects result in a water savings.

8. The LRNRD's net depletions shall not exceed twenty-six percent (26%) of the State's allowable ground water depletions as determined by the Republican River Compact Administration Ground Water Model. It may be necessary to adjust the base allocation, as defined in Rule 7-2.2.2., within the five-year allocation period in order to meet this requirement. The District's base allocation may be increased or decreased proportionately with any increase or decrease in the water supply conditions.

## **MAP**

The area subject to this IMP is the geographic area within the boundaries of the Lower Republican Natural Resources District.

## **GROUND WATER CONTROLS**

The authority for the ground water component of this IMP is the Nebraska Ground Water Management and Protection Act, Chapter 46, Article 7. The ground water controls for this integrated management plan that will be adopted and implemented by the LRNRD are those found in the **LOWER REPUBLICAN NATURAL RESOURCES DISTRICT GROUND WATER MANAGEMENT RULES AND REGULATIONS**.

## **SURFACE WATER CONTROLS – DEPARTMENT OF NATURAL RESOURCES**

The authority for the surface water component of this IMP is the Nebraska Ground Water Management and Protection Act, Chapter 46, Article 7. The surface water controls that will be continued and/or begun by the DNR are as follows:

1. DNR shall continue to administer surface water under the prior appropriation system.
2. The DNR shall implement the following additional surface water administration as required by the Final Settlement Stipulation:
  - A. To provide for regulation of natural flow between Harlan County Lake and Superior-Courtland Diversion Dam, Nebraska will recognize a priority date of February 26, 1948 for Kansas Bostwick Irrigation District, the same priority date as the priority date held by the Nebraska Bostwick Irrigation District's Courtland Canal water right.
  - B. When water is needed for diversion at Guide Rock and the projected or actual irrigation supply is less than 130,000 acre-feet of storage available for use from Harlan County Lake as determined by the Bureau of Reclamation using the methodology described in Harlan County Lake Operation Consensus Plan attached as Appendix K to the Final Settlement Stipulation, Nebraska will close junior, and require compliance with senior, natural flow diversions of surface water between Harlan County Lake and Guide Rock.

- C. Nebraska will protect storage water released from Harlan County Lake for delivery at Guide Rock from surface water diversions.
  - D. Nebraska, in concert with Kansas and in collaboration with the United States, and in the manner described in Appendix L to the Final Settlement Stipulation, will take actions to minimize the bypass flows at Superior-Courtland Diversion Dam.
3. Metering of all surface water diversions at the point of diversion from the stream will continue to be required. For surface water canals that are not part of a Bureau of Reclamation project, farm turnouts will be required to install and maintain a DNR approved measuring device by the start of the 2005 irrigation season. All measuring devices shall meet DNR standards for installation, accuracy and maintenance. All appropriators will be monitored to ensure that neither the rate of diversion nor the annual amount diverted exceeds that allowed by the applicable permit or by statute.
  4. The DNR's moratorium on the issuance of new surface water permits was made formal by Order of the Director dated July 14, 2004. Exceptions may be granted by the DNR to the extent permitted by statute or to allow issuance of permits for existing reservoirs that currently do not now have such permits. Such reservoirs are limited to those identified through the Final Settlement Stipulation required inventory of reservoirs with over 15 acre-feet capacity.
  5. All proposed transfers of surface water rights shall be subject to the criteria for such transfers as found in Neb. Rev. Stat. §§ 46-290 to 46-294.04 and related DNR rules or the criteria found in Neb. Rev. Stat. §§ 46-2,120 to 46-2,130 and related DNR rules.
  6. The DNR completed the adjudication process within the LRNRD upstream of Guide Rock for the individual appropriators in the Republican River Basin in 2004. The results of that adjudication provided up-to-date records of the number and location of acres irrigated with surface water by such appropriators. Those records will be used by the DNR to monitor use of surface water and to make sure that unauthorized irrigation is not occurring. The DNR shall also be proactive in initiating subsequent adjudications whenever information available to the DNR indicates the need for adjudication as outlined by state statutes.
  7. At this time, due to the already limited availability of surface water supplies, the DNR shall not require that surface water appropriators apply or utilize additional conservation measures or that they be subject to other new restrictions on surface water use, except as may be necessary to meet the goals and objectives of this plan and to maintain compliance with the Compact.
  8. The DNR reserves the right to request, in the future, that this IMP be modified to require any such additional measures. In the event such a request is made, the DNR shall "allow the affected surface water appropriators and surface water project sponsors a reasonable amount of time, not to exceed one hundred eighty (180) days, unless extended by the DNR, to identify the

conservation measures to be applied or utilized, to develop a schedule for such application and utilization, and to comment on any other proposed restrictions.” Neb. Rev. Stat. § 46-716(2).

9. Where necessary, the Department may further restrict surface water appropriators to comply with the Compact.

### **INCENTIVE PROGRAMS**

The LRNRD and DNR intend to establish and implement financial or other incentive programs to reduce beneficial consumptive use of water within the LRNRD. As a condition for participation in an incentive program, water users or landowners, and the LRNRD may be required to enter into and perform such agreements or covenants concerning the use of land or water as are necessary to produce the benefits for which the incentive program is established.

Such incentive programs may include any program authorized by state law and/or Federal programs such as, but not limited to, the Conservation Reserve Enhancement Program (CREP) and Environmental Quality Incentives Program (EQIP) operated by the U.S. Department of Agriculture.

### **MONITORING PROGRAM**

The DNR and the LRNRD shall develop a plan to gather and evaluate data, information, and methodologies that could be used to implement Neb.Rev.Stat. §§ 46-715 to 46-717, increase understanding of the surface water and hydrologically connected ground water system, and test the validity of the conclusions and information upon which the integrated management plan is based.

### **MODIFICATIONS TO THE INTEGRATED MANAGEMENT PLAN**

Modifications to this Integrated Management Plan including the rules and regulations contained within will require an agreement by both the District and the Department as to the proposed changes. After the proposed changes have been agreed to, a joint hearing on those changes will be required. Following the joint hearing, the District and the Department shall issue an order reflecting the decision made.

### **INFORMATION CONSIDERED**

Information used in the preparation and to be used in the implementation of this integrated management plan can be found in the simulation runs of the Republican River Compact Administration Ground Water Model, the data tables of the Final Settlement Stipulation for the Republican River Compact, Chapters 3, 6 and 7 of the 1994 Lower Republican NRD Ground Water Management Plan and additional data on file with the LRNRD and the DNR.