

Middle Niobrara Natural Resources District

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

Adopted November 13, 2007
Amended May 5, 2011

Section A

Rule 1) Authority - These rules and regulations are adopted by the Middle Niobrara Natural Resources District, Valentine, Nebraska, pursuant to grant of authority as set forth in Neb. Rev. Stat. § 46-701 through § 46-754.

Rule 2) Purpose - The purpose of these rules and regulations is to achieve the orderly implementation of the Nebraska Ground Water Management and Protection Act (the Act), as adopted by the Nebraska Legislature and as set forth in Neb. Rev. Stat. § 46-701 through § 46-754; to provide rules and regulations for the administration and enforcement of the Act; to meet the purposes of the Act, which includes, but are not necessarily limited to: meeting the goals as set forth in the Act; to provide for the management, protection and conservation of groundwater and the beneficial use thereof within the State of Nebraska, and particularly within the Middle Niobrara Natural Resources District; and to stabilize, reduce, and prevent the increase or spread of groundwater contamination throughout the Middle Niobrara Natural Resources District.

Rule 3) Definitions

Act - shall mean the Nebraska Ground Water Management and Protection Act.

Alleged Violator - shall mean any person against which a complaint has been filed in accordance with Section C of these rules and regulations.

Best Management Practices (BMPs) - shall mean schedules of activities, maintenance procedures, and other management practices utilized for purposes of irrigation efficiency, to conserve or affect a savings of ground water, or to prevent or reduce present and future contamination of ground water. Best management practices relating to contamination of ground water may include, but not be limited to, irrigation scheduling, proper rate and timing of fertilizer application, and other fertilizer and pesticide management programs. In determining the rate of fertilizer application, the district shall consult with the University of Nebraska or a certified crop advisor certified by the American Society of Agronomy. An approved list of best management practices will be adopted and made available for inspection. The Middle Niobrara Natural Resources District may amend the approved list of best management practices from time to time.

Board of Directors or Board - shall mean the Board of Directors of the Middle Niobrara Natural Resources District.

Certification - shall mean the act of certifying that a person has completed required educational programs and/or has irrigated or previously irrigated acres in compliance with these rules and regulations.

Complainant - shall mean any person who files a complaint or complaints alleging violation of these rules and regulations for the enforcement of the Act as adopted by the Middle Niobrara Natural Resources District as set forth in Section C of these rules and regulations.

Compliance Officer - shall mean an employee *with the job title/position of Water Programs Coordinator* or agent of the District authorized by the District Board of Directors to perform the functions assigned thereto by said groundwater authority by the District or by these rules and

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regulations.

Consumptive Use – shall mean the amount of water that is consumed under appropriate and reasonably efficient practices to accomplish without waste the purpose for which the appropriation or other legally permitted use is lawfully made (i.e. that portion of the groundwater which is withdrawn and is evaporated, transpired, incorporated into products or plants).

Cropland – shall mean land that has been certified by USDA Farm Services Agency as cropland or has been planted to row crops or small grains one year over any four year period.

Department – shall mean the Nebraska Department of Natural Resources.

District - shall mean the Middle Niobrara Natural Resources District.

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

Groundwater Management Area - shall mean any geographic area, which may include the entire Middle Niobrara Natural Resources District or part thereof that shall be designated by the Board of Directors in accordance with Neb. Rev. Stat. § 46-712 or as amended from time to time for the purposes of managing groundwater resources and regulating the use of said groundwater resources to protect groundwater quality, to maintain groundwater supplies and/or to protect surface water supplies.

Groundwater Management Zone or Management Zone - shall mean a geographic area no smaller than 36 square miles within the Middle Niobrara Natural Resources District established by the Board to manage and protect groundwater quality.

Groundwater User - shall mean any person who pumps, extracts, withdraws or confines groundwater at a rate in excess of 50 gallons per minute for any use by any person. Whenever the landowner and operator are different persons or entities, the term groundwater user shall include both the landowner and operator.

Growing Season - shall mean the period from May 1st to September 15th of each year.

Illegal Water Well - shall mean (a) any well operated or constructed without a permit required by the Act or constructed in violation of a permit issued by the District as required by the Act, (b) any water well not in compliance with the rules and regulations adopted by the Board pursuant to the Act, (c) any well not properly registered in accordance with sections § 46-602 to § 46-604 Neb. Rev. Stat. 1943, R.R.S. 1998, or (d) any well not in compliance with any other law, rule or regulation of the State of Nebraska as the same may be amended from time to time.

Improper Irrigation Run-off - shall mean the occurrence of irrigation run-off water (1) which causes or contributes to the accumulation of water upon or beneath the surface of lands of any other person(s) to their detriment, damage or inconvenience; (2) which causes or contributes to the deterioration of water quality by depositing sediment and/or associated chemicals in surface water within the area; or (3) which contributes to waste.

Irrigation Run-off Water - shall mean groundwater used for irrigation purposes which escapes from land owned, leased, legally occupied, used or otherwise under the direct supervision and/or operation of a groundwater user.

Landowner - shall mean any person who is the owner of record, or is purchasing under terms of a contract, real estate, or is the beneficial owner of any interest in the real estate, or who is the tenant under a lease for a period of time longer than one year.

Offset – shall mean any water that is used to compensate for stream flow impacts that are created by

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groundwater that has been either withdrawn or consumptively used for any new or expanded use since the effective date of the rules and regulations.

Operator - shall mean that person who has principal responsibility and control over the day-to-day operations of the land concerned.

Parts-per-million (ppm) - shall mean a ratio used to describe the presence of any substance that may contaminate water, where one part of the contaminant is present among one million parts water.

Person - shall mean a natural person, partnership, association, corporation, municipality, irrigation district, limited partnership, limited liability company or other entity whether natural or legal.

Permit - shall mean the authorization given by the Middle Niobrara Natural Resources District for construction of wells capable of pumping greater than 50 gallons per minute defined in Neb. Rev. Stat. § 46-735.

Transfer of Groundwater – shall mean any arrangement approved by the Board through the granting of a permit in which the point of withdrawal, location of use, type of use, addition of a type of use, or location of certified irrigated acres is altered.

Transfer Permit – shall mean an application, on a form supplied by the District and/or Department, for the physical transfer of groundwater, the change in the type of use of groundwater, the addition of a type of use of groundwater, or the transfer of certified acres.

Waste - shall mean any irrigation runoff water that is not being immediately utilized for a beneficial purpose or stored for a future beneficial use.

Well - shall mean any artificial opening or excavation in the ground through which groundwater flows through pressure or is mechanically withdrawn. A series of wells developed and pumped as a single unit shall be considered and construed as one well.

Rule 4) General - The District shall enforce the provisions of the Act, and all rules and regulations adopted pursuant thereto in any one of the following manners to-wit: 1) require reports from groundwater users as may be necessary to effectuate the policy of the State of Nebraska to conserve groundwater resources; 2) require devices on wells to acquire water use information; 3) conduct investigations and cooperate or contract with agencies of the United States, agencies or political sub-divisions of this State, public or private corporations or any association or individual on any manner relevant to the administration of the Act; 4) report to and consult with appropriate agencies of the State on all matters concerning the entry of contamination or contaminating materials into the groundwater supply; 5) issuance of cease and desist orders, upon ten (10) days notice to the person effected, stating the contemplated action and in general the grounds for the action and following reasonable opportunity to be heard, to enforce any of the provisions of the Act, to initiate suits to enforce the provisions of orders issued pursuant to the Act, and to restrain the construction of illegal water wells or the withdrawal or use of water from illegal water wells; 6) enforcement of such actions including cease and desist orders, by the filing of appropriate action in the Court of proper jurisdiction of the county in which any violation shall occur; 7) cease and desist orders may be issued for the following reasons:

- a. Operation of an irrigation system in a manner which allows for improper groundwater irrigation runoff.
- b. Construction or operation of an illegal well as defined in these rules and regulations.
- c. Operation of a cropping system in the designated groundwater management area in violation of the best management practices adopted by the Board of Directors.
- d. Operation of a cropping system in the designated Groundwater Management Area without the certification of completion of the appropriate education programs as required by the Board of Directors.

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- e. Operation of a cropping system in the designated Groundwater Management Area without submitting such reports or forms as may be required by the Board of Directors as part of the District's Groundwater Management Program.
- f. Operation of a well that pumps more than 50 gallons per minute to an area larger than 5 acres without the certification of the acres in accordance with Section D of these rules and regulations.

Rule 5) Transfers of Groundwater – In the District are restricted as follows:

- a. Groundwater Transfers
 - 1. Any groundwater user who intends to withdraw and physically transfer groundwater, who intends to transfer certified acres, or who intends to transfer groundwater or certified acres to offset an increase in consumptive use, shall, before making such transfer, apply for and receive approval of a transfer permit from the Board.
 - 2. Any transfer shall not be allowed out of the district.
 - 3. Any transfer shall not be allowed to areas deemed by the District as having declining groundwater levels.
 - 4. Any transfer shall not exceed the consumptive use, stream depletion, and/ or the number of certified acres of the existing use.
 - 5. Any person who has transferred groundwater and/ or certified acres to another person, shall either decommission the well or modify the well to pump 50 gallons per minute or less within 180 days of Board approval of the transfer.
 - 5a. Wells shall be decommissioned according to the rules and regulations contained in Title 178- Water Well Standards.
 - 5b. If the person intends to either decommission or modify the well, such person shall file a notice of decommission or modification with the Department and the District.
 - 5c. Any person transferring groundwater, certified acres, type of use, location of use, and/or addition of type of use, must decertify the acres and/or type of use with the District and the person to whom the acres and/or type of use are transferred must certify the acres with the District.
 - 6. Any transfer may require an offset.
- b. Transfers that have permits from the Department relating to the Municipal and Rural Domestic Groundwater Transfers Permit Act is exempt from Rule 5a.
- c. Transfers that have permits from the Department relating to the Industrial Ground Water Permit Act are exempt from Rule 5a.

Section B

Rule 1) Improper Groundwater Runoff - All groundwater users are prohibited from allowing improper runoff of irrigation water. A groundwater user may implement any structural or non-structural procedure, measure, or combination thereof which provides for effective prevention, control or abatement of improper groundwater irrigation runoff, including but not limited to: 1) limitation of water utilized so that structural measures are not necessary to prevent irrigation runoff water and proper operation and management of the irrigation system including any measures installed; 2) construction of a run-off collection or a retention system such as a sump or dugout, together with a reuse pump and/or ditch to return water to the same or other field for beneficial use, or construction of grass filter strips or buffer zones; 3) blocking of rows or field borders to contain irrigation water within the property under the direct supervision or control of the groundwater user; 4) the execution and performance of an agreement between two or more persons and approved by the District for utilization of any irrigation run-off water in accordance with Section B, Rule 1 of these rules and regulations; or 5) any other procedure or method deemed acceptable by the District.

Rule 2) Agreement Between Landowners to Utilize Irrigation Runoff Water - Groundwater users whose water is capable of being captured and utilized by another groundwater user or other person, or

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the groundwater user in a manner which will prevent the waste of such water, deterioration of surface water quality, and accumulation of water upon the land of any other person without his/her consent may have such water excluded from the definition of improper irrigation run-off water by submitting to the District an agreement providing for such capture and utilization signed by all the affected parties, on forms provided by the District. When such an agreement is approved by the District, it will show the District's concurrence that the groundwater user's irrigation run-off water is under adequate control. The District will not pay any costs incurred by any of the parties in controlling improper irrigation run-off water unless otherwise provided. The agreement may be terminated at any time by either party or by the District whenever it determines that such an agreement no longer prevents or controls improper irrigation run-off water. If the District terminates the agreement, written notice shall be provided to all parties. If one of the parties to the agreement causes the termination, written notice shall be provided to all other parties and to the District at least thirty (30) days before the agreement is terminated.

Section C

Rule 1) Complaints - Any person, who owns land, leases land, or resides within the District; or any non-resident person who can show that the actions of any landowner or operator within the District affects him/her; or the district Compliance Officer; or the Board on its own motion, may file a written complaint, executed under oath, in a form prescribed by the District, alleging that these rules and regulations and/or the Act have been violated. The complaint must include the activity or activities that are believed to violate these rules and regulations or the Act. Complaints shall be filed at the office of the District, 526 East First Street, Valentine, Nebraska, on forms provided by the District.

Rule 2) Inspections - When a written complaint is filed alleging a violation of these rules and regulations where the Compliance Officer determines that an inspection is necessary to determine whether or not a landowner/operator is in violation of these rules and regulations, the alleged violation will be investigated by the Compliance Officer within five (5) days after the complaint is filed (excluding Saturdays, Sundays, and legal holidays). The Compliance Officer upon proper identification and after informing the landowner/operator in control of the land, either in person, or by certified U.S. Mail, of the suspected violation(s) is authorized to enter upon the land if necessary for the purpose of making an investigation of the alleged violation. Upon completion of the inspection, the Compliance Officer shall file a report of his/her findings in the District office and shall deliver a copy of the report to the alleged violator within ten (10) days (excluding Saturdays, Sundays and legal holidays) of the completion of the inspection, either in person, or by certified U.S. Mail.

Rule 3) Submission of Inspection Report Alleging Violation and Alleged Violator's Alternatives - If the Compliance Officer finds in his/her report there is reasonable cause to believe that a landowner/operator is at the time of the inspection, in violation of these rules and regulations, then said Compliance Officer's report, prepared and delivered in accordance with Section C, Rule 2, shall be accompanied by a formal notice of alternative actions available to the alleged violator. Alternative actions shall be limited to the following actions:

- a. Agree with and accept as true and correct the Compliance Officer's findings that the alleged violation(s) has occurred or is occurring; consent in writing to cease and desist from continuing or allowing the reoccurrence of such violation; and submit a schedule of compliance in accordance to Section C, Rule 4.
- b. Reject the findings of the of the Compliance Officer's report and request in writing that a formal hearing by the Board of Director's be scheduled in accordance with the rules and regulations of the District.

The alleged violator shall be granted not more than ten (10) days (excluding Saturdays, Sundays, and legal holidays) from the date the report and notice is provided to him/her to respond and to indicate any actions intended. If the alleged violator fails to respond, it will be considered a rejection of the findings and a hearing will be scheduled in accordance to Section C, Rule 6.

Rule 4) Schedule of Compliance - If the alleged violator of a complaint agrees with the findings of the

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Compliance Officer's report under Section C, Rule 3, he/she shall submit a schedule of compliance to the District Compliance Officer not more than ten (10) days (excluding Saturdays, Sundays and legal holidays) from the date the report and notice is provided to him/her for approval. Said schedule shall provide for the discontinuance of and/or non-reoccurrence of the violation(s). If appropriate, such schedule of compliance shall include the identification, description, and implementation timetable for all proposed procedures or measures that will be utilized to prevent, abate or control the problem(s) that resulted in the violation(s).

Rule 5) Action Subsequent to Groundwater User Consent to Cease and Desist - When an alleged violator has been notified in accordance with Section C, Rule 2, and has consented to cease and desist in accordance with Section C, Rule 3, the District Compliance Officer, within ten (10) days excluding Saturdays, Sundays and legal holidays) of receipt of the proposed schedule of compliance from the alleged violator by the District, shall review and respond to the complaint, investigation report, the schedule of compliance and any other pertinent documents. The Compliance Officer shall determine whether the actions agreed to by the alleged violator will, when applied, bring the alleged violator into compliance with these rules and regulations.

a. If the District Compliance Officer determines that the proposed actions of the alleged violator are adequate and will prevent future noncompliance within a reasonable period of time, he/she shall approve such actions and approve the schedule of compliance, and shall supply written notification of such acceptance to the alleged violator.

b. If the District Compliance Officer determines that the implementation of the proposed schedule of compliance would be inadequate to prevent violation of these rules and regulations, he/she shall indicate in writing to the alleged violator by certified U.S. mail the additions or changes he/she deems necessary.

The alleged violator shall have ten (10) days (excluding Saturdays, Sundays and legal holidays) from the date of receipt of such notice to consent to such additions or changes, agree to negotiate appropriate changes within a time-frame established by the District or reject such changes and request a formal hearing. If the alleged violator fails to respond or negotiate in good faith, it will be considered a rejection of the changes or additions and a hearing will be scheduled in accordance to Section C, Rule 6.

Rule 6) Formal Hearing Given - If a schedule of compliance cannot be agreed upon between the District Compliance Officer and the alleged violator, the alleged violator fails to respond, the alleged violator fails to negotiate in good faith or the alleged violator rejects the findings of the Compliance Officer's investigation report under Section C, Rule 3, the alleged violator shall be given an opportunity to contest the investigation report, or the schedule of compliance required by the Compliance Officer, at a formal public hearing before the Board to be scheduled no sooner than fourteen (14) days and no later than 45 days after receipt of the hearing notice. Notice of the hearing shall be given to the alleged violator, the Board of Directors and any other appropriate party. The District's rules for a formal adjudicatory hearing shall govern the conduct of all hearings. The alleged violator shall be further notified that if he/she does not respond to the notice and fails to appear at the Board hearing for which notice was given, the Board shall proceed in his/her absence to make a final determination on the existence of the violation of these rules and regulations and enter such orders as shall be provided and appropriate under the terms of these rules and regulations.

The Board of Directors may take such action as deemed necessary, after consideration of the report of the Compliance Officer, the evidence of the landowner/operator, any other evidence received at the hearing, to cause the landowner/operator to comply with these rules and regulations.

The Board will issue cease and desist orders as provided in Rule 6 hereof, in the event that the alleged violator continues to reject requirements for corrective action and program compliance, and certified to and attested to by the District Compliance Officer.

Rule 7) Landowner/Operator's Actions Following Issuance of Cease and Desist Order - Any landowner/operator against which a cease and desist order for a violation has been issued in accordance

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with these rules and regulations shall within ten (10) days (excluding Saturdays, Sundays, and legal holidays) following receipt of such order submit a schedule of compliance. The schedule of compliance shall be approved by the District's Compliance Officer if it is in accordance with said cease and desist order and will be carried out within a time period determined appropriate by the District.

Rule 8) Board Authorization to Initiate Court Action - The Board may initiate appropriate legal actions in the Court of proper jurisdiction of the county in which the violation has occurred whenever necessary to enforce any actions or orders of the District in accordance with these rules and regulations.

Section D

Rule 1 - Controls in the Groundwater Quality Management Area

The following rules and regulations apply to all landowners and operators applying fertilizer (commercial or organic) to planted dry land and irrigated crops.

a) Management Zone 1 Criteria - All areas of the District in which less than 50% of the wells monitored by the District have nitrate levels greater than 5 parts-per-million and less than 20% of the land is cropland.

b) Management Zone 1 Controls - Beginning on January 1, 2000 the following controls will be required:

Landowners/operators must apply for well construction permits for wells with a capacity of greater than fifty (50) gallons-per-minute in accordance with Section D, Rule 2.

Persons who apply any type of fertilizer, commercial or organic, on a total of more than five (5) acres of land in Management Zone 1 are required to complete a fertilizer applicator certification course once every four (4) years in accordance to Section D, Rule 8. Certification will expire April 1st of the 4th year following initial certification or recertification. Non-compliance may be subject to a cease and desist order pursuant to Neb. Rev. Stat. 46-707, 46-745, and 46-746.

c) Management Zone 2 Criteria - All areas of the District in which less than 50% of the wells monitored by the District have nitrate levels greater than five (5) parts-per-million and 20% or more of the land is cropland.

d) Management Zone 2 Controls - Beginning on January 1, 2000 the following controls will be required:

Landowners/operators must apply for well construction permits for new wells with a capacity of greater than fifty (50) gallons-per-minute accordance to Section D, Rule 2.

Persons who apply any type of fertilizer, commercial or organic, on a total of more than five (5) acres of land in Management Zone 2 are required to complete a fertilizer applicator certification course once every four (4) years in accordance to Section D, Rule 8. Certification will expire April 1st of the 4th year following initial certification or recertification. Non-compliance may be subject to a cease and desist order pursuant to Neb. Rev. Stat. 46-707, 46-745, and 46-746.

e) Management Zone 3 Criteria - 50% or more of the wells monitored by the District have nitrate levels greater than 5 parts-per-million.

f) Management Zone 3 Controls - Beginning on January 1, 2000 the following controls will be required in Management Zone 3:

Landowners/operators must apply for well construction permits for wells with a capacity of greater than fifty (50) gallons-per-minute in accordance to Section D, Rule 2.

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Persons who apply any type of fertilizer, commercial or organic, on a total of more than five (5) acres of land in Management Zone 3 are required to complete a fertilizer applicator certification course once every four (4) years in accordance to Section D, Rule 8. *Certification will expire April 1st of the 4th year following initial certification or recertification. Non compliance may be subject to a cease and desist order pursuant to Neb. Rev. Stat. 46-707, 46-745, and 46-746.*

The application of commercial nitrogen fertilizer will not be allowed during a period beginning on September 1st of each year to October 31st of the same year.

Persons applying fertilizer, commercial or organic, on a total of more than five (5) acres of land in Management Zone 3 are required to develop an annual fertilizer management plan for the next growing season to be submitted to the District no later than April 15th of each year in accordance with Section D, Rule 3.

Persons who apply fertilizer, commercial or organic, on a total of more than five (5) acres of land are required to collect a composite soil sample for each tract of land no larger than 40 acres. Composite samples for fields under center pivot irrigation can be collected on a half pivot basis. Each sample will consist of a minimum of eight probes at two depths: the first 0 to 10 inches and the second 10 to 30 inches. In areas of the district where soil layers are closely underlain by gravel or otherwise difficult to sample to these depths a best effort to acquire samples shall be made. Samples must be sent to a lab approved by the District and analyzed for nitrate-nitrogen. An annual list of approved laboratories will be made available and kept on file.

Persons applying fertilizer, commercial or organic, on a total of more than five (5) acres of land in Management Zone 3 must utilize a minimum of two (2) best management practices from a list approved by the District. Any management practice specifically required in these rules for Management Zone 3 cannot be counted towards this total.

Persons who apply fertilizer, commercial or organic, on a total of more than five (5) acres of land must provide the District on or before April 15th of the following year a fertilizer and irrigation water application report for all parcels of land in Management Zone 3 on which fertilizer was applied during the previous year in accordance with Section D, Rule 4.

g) Management Zone 4 Criteria - 50% or more of the wells monitored by the District have nitrate levels greater than 10 parts-per-million.

h) Management Zone 4 Controls - Beginning on January 1, 2000, the following controls will be required in Management Zone 4:

Landowners/operators must apply for well construction permits for wells with a capacity of greater than fifty (50) gallons-per-minute in accordance to Section D, Rule 2.

The application of commercial nitrogen fertilizer will not be allowed during a period beginning on September 1st of each year to October 31st of the same year.

Persons applying fertilizer, commercial or organic, on a total of more than five (5) acres of land in Management Zone 4 are required to develop an annual fertilizer management plan for the upcoming growing season to be submitted to the District no later than April 15th of each year in accordance to Section D, Rule 3.

Persons who apply any type of fertilizer, commercial or organic, on a total of more than five (5) acres of land in Management Zone 4 are required to complete a fertilizer applicator certification course once every four (4) years in accordance to Section D, Rule 8. *Certification will expire April 1st of the 4th year following initial certification or recertification. Non-compliance may be subject to a cease and desist order pursuant to Neb. Rev. Stat. 46-707, 46-745, and 46-746.*

Persons who apply fertilizer, commercial or organic, on a total of more than five (5) acres of land are required to collect a composite soil sample for each tract of land no larger than 40 acres.

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Composite samples for fields under center pivot irrigation can be collected on a half pivot basis. Each sample will consist of a minimum of eight probes at two depths: the first 0 to 10 inches and the second 10 to 30 inches. In areas of the district where soil layers are closely underlain by gravel or otherwise difficult to sample to these depths a best effort to acquire samples shall be made. Samples must be sent to a lab approved by the District and analyzed for nitrate-nitrogen. A list of approved laboratories will be made available and kept on file.

Persons applying fertilizer, commercial or organic on a total of more than five (5) acres of land are required to collect one (1) water sample from each source of groundwater to be used to irrigate the land on which the fertilizer is to be applied. Samples must be sent to a lab approved by the District and analyzed for nitrate nitrogen. A list of approved laboratories will be made available and kept on file.

Utilizing data generated from soil and water analysis, fertilizer application rates will be calculated in accordance to the most current University of Nebraska recommendations. Fertilizer must be applied at rates no greater than those recommendations.

Persons applying any fertilizer, commercial or organic, on a total of more than five (5) acres of land in Management Zone 4 must utilize a minimum of three (3) best management practices from a list approved by the District. Any management practice specifically required in these rules for Management Zone 4 cannot be counted towards this total.

Persons who apply fertilizer, commercial or organic, on a total of more than five (5) acres of land must provide the District on or before April 15th, a fertilizer and irrigation water application report for all parcels of land in Management Zone 4 on which fertilizer was applied during the previous year in accordance with Section D, Rule 4.

i) Changes in Management Zone Boundaries - If nitrate levels or cropland acres in all or a portion of Management Zones 1, 2, or 3 increases above allowable levels for that zone for a period of two (2) consecutive years, that area, following ninety (90) days public notice and a public hearing, will be placed in the next highest management zone.

If Nitrate levels or cropland acres in all or a portion of Management Zones 2, 3, or 4 decrease below allowable levels for that zone for two (2) consecutive years, that area, following a ninety (90) days public notice and public hearing, will be placed in the next lowest management zone.

Rule 2 - Permits for wells

Any person who intends to construct a water well within the District on land which he/she owns or controls, except for test holes, dewatering wells with an intended use of ninety (90) days or less, and water wells which are designed and constructed to pump fifty (50) gallons-per-minute or less, shall before commencing construction, file with the District an application for a permit on forms provided by the District, pursuant to Neb. Rev. Stat. § 46-735 or as hereinafter amended. The District shall review the application and issue or deny the permit within thirty (30) days after the application is filed. The applicant shall pay any fees in accordance with Neb. Rev. Stat. § 46-735. Any person(s) who fails to obtain a permit required by this rule shall make application for a late permit on forms provided by the District, and pay the late fee established by Neb. Rev. Stat. § 46-735. Such permits shall be required for all replacement wells which are designed and constructed to pump greater than fifty (50) gallons per minute. Applications for such permits must be accompanied by a copy of any permit required under state law or the rules and regulations of any state agency.

When any permit is approved, the applicant shall commence construction as soon as possible after the date of approval and shall complete construction and equip the water well within twelve (12) months of approval. If the applicant fails to complete the project under the terms of the permit, the District shall withdraw the permit as provided by § 46-738 Neb Rev. Stat. or as hereafter amended. Such 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 producer did not act

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in good faith in failing to obtain a timely permit.

Rule 3 - Annual Fertilizer Management Plan

Any person who plans to apply any type of fertilizer, commercial or organic, on a total of more than five (5) acres of land in Management Zones 3 and 4 during the year, will be required to submit a fertilizer management plan for the same parcel of land to the District no later than April 15th of that year. That plan must include the following information: name of the landowner and person(s) who will be farming the land to be fertilized; legal description of each parcel of land on which the fertilizer will be applied; type of crop(s) to be grown on the land parcels described; acres of land in each parcel of land to be fertilized; approved lab(s) for soil sampling analysis to be utilized; type of fertilizer and amounts per acre to be applied on each parcel of land; planned method of fertilizer application; and best management practices from the District's approved list to be utilized. The plan must meet all requirements set forth in these rules and regulations. An operator may deviate from the plan as long as the requirements set forth in these rules and regulations are met subject to review by the District.

Rule 4 - Required Fertilizer and Irrigation Water Annual Report

Any person who applied any type of fertilizer, commercial or organic, on a total of more than five (5) acres of land in Management Zones 3 and 4 is required to submit a report to the District no later than April 15th of the following year after application. The report will include the following information: name of the landowner and person(s) who farmed the land during the year; legal description of land on which fertilizer was applied; total number of acres in each parcel of land on which fertilizer was applied; crop(s) grown on each parcel of land on which fertilizer was applied; results of soil sampling and analysis for each parcel of land on which fertilizer was applied; approved lab(s) used for analysis; amounts per acre of any type of fertilizer, commercial or organic, applied on each parcel of land; nutrient analysis of any fertilizer, commercial or organic, applied; approved best management practices utilized on each parcel of land on which fertilizer was applied; and total amount of irrigation water in acre inches applied to each parcel of land on which fertilizer was applied.

Rule 5 - Method of Irrigation Water Application Measurement

Annual irrigation water application may be determined by one of the following methods: use of an in-line flow meter; use of a device that measures the hours the well or pump was in service during the year; or if surface water is used, the volume of water purchased from the surface water provider or measured by methods as set forth in this rule. Any metering devices used must be installed and operated in accordance to the manufacturer's specifications and be in place during all times that irrigation water is being applied.

Rule 6 - Approved List of Best Management Practices

On or before February 1st of each year, the District will approve and keep on file a list of best management practices for use by persons applying fertilizer on a total of more than five (5) acres of land in Management Zones 3 and 4 during the upcoming growing season as required in Section D, Rules 1f and 1h, of the rules and regulations. If the District is proposing any changes to the list of best management practices approved for the previous year, a public hearing will be held prior to taking final action. Notice of the hearing shall be published in a newspaper of general circulation in the affected area no less than seven (7) days prior to the hearing date. All persons applying fertilizer on a total of more than five (5) acres of land in Management Zones 3 and 4 during the year will be required to report the Best Management Practices utilized for the growing season no later than December 15th of that year.

Rule 7 - Approved List of Laboratories

The District will develop and keep on file a list of soil and water analysis laboratories approved for use by persons planning to apply fertilizer, commercial or organic on parcels of land in Management Zone 3 and 4 in accordance to Section D, Rule 1-f and 1-h. Criteria for inclusion on the list will be established by the District. Any laboratory meeting the criteria will be considered as approved, subject to review by the District. The list may be reviewed and revised as deemed necessary,

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Rule 8 – Fertilizer Applicator Certification Programs

The District will make available fertilizer applicator certification programs for persons planning to apply fertilizer, commercial or organic, on a total of more than five (5) acres of land in any Management Zone. Persons will become certified by attending a district developed or approved educational program designed to acquaint them with best management practices, operation of cropping and irrigation systems and fertilizer management. The certification will be valid for a period of four (4) years and expire April 1st of the 4th year. Participation in similar certification courses sponsored by other Natural Resources Districts in the State will be accepted by the District for the period that certification was valid.

Rule 9 - Penalties for Failing to Comply

Any person failing to comply with the rules and regulations as adopted herewith including: failing to submit reports or plans in accordance to these rules; submitting reports or plans without the information required; filing reports or plans with fictitious information; utilizing unapproved consultants, methods or devices for collecting or evaluating data; or failing to comply with any other requirement in these rules, will be considered in violation of these rules and regulations and may be subject to action in accordance with Section C of these rules.

Rule 10 - Irrigated Acres Certification

Certification of ground water irrigated acres is required, and certification of surface water irrigated acres is requested, by January 1, 2009, by each landowner or his or her representative that owns irrigated land within the Middle Niobrara NRD. The certification records provided by the landowner will include a completed District certification form, signed and stamped by the County Assessor and a FSA aerial photo delineating irrigated acres. In cases that the acres being certified are not accepted by the General Manager or his or her designated representative, the landowner or his or her representative may request to present his or her information to the Variance Committee for their recommendation to the Board.

The Board may take action to approve, modify and approve, or reject the certification provided by the landowner and his or her representative.

No acres shall be certified for an illegal water well, as that term is defined in Section A, Rule 3 of the Middle Niobrara NRD Rules and Regulations.

The information on the forms needs to be corrected and kept current by the landowner or his or her representative.

As of June 1, 2011, land that was previously irrigated but currently enrolled in CRP, or that had a CRP contract expire after January 1, 2001, will be required to certify acres within the Middle Niobrara NRD.

As of June 1, 2011, land that was previously irrigated for 1 or more years after January 1, 2001 will be required to certify those acres within the Middle Niobrara NRD.

Rule 11 - Other Ground Water Uses

Certification of livestock, municipal, and industrial ground water uses are required by January 1, 2009.

1. Livestock users reporting requirements (in accordance with Neb. Rev Stat. § 46-735):
 - a. The number and type of livestock.
 - b. The number of wells used in livestock operation.
 - c. Location and map of use.
 - d. Well registration information.
 - e. Estimated annual use.
 - f. Any other information deemed necessary by the District.

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2. Municipality reporting requirements:
 - a. The water wells operated by the municipal user.
 - b. Total acres within municipal jurisdictional limits, including location and map.
 - c. The total irrigated agriculture acres within municipal jurisdictional limits.
 - d. The total dry land agricultural acres within municipal jurisdictional limits.
 - e. Any acres outside the municipal jurisdictional limits served by the municipal water supply system.
 - f. The municipality's population according to the most recent federal population census.
 - g. Industrial uses within the municipal system may be identified separately and not counted as part of the municipal allocation.
 - h. The number of people served by the municipal water supply system.
 - i. Estimated annual use.
 - j. Any other information deemed appropriate by the District.
3. Industrial reporting requirements:
 - a. The water wells operated by the industrial user.
 - b. Total water use by industrial user.
 - c. The purpose for which the ground water is used.
 - d. The location and map of use.
 - e. Estimated annual use.
 - f. Any other information deemed appropriate by the District.

Rule 12 - Variances

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

1. An application for a variance shall be made on forms provided by the District and the application will be acted upon by the Variance Committee. The applicant or his or her representative shall be present at the Variance Committee meeting. With prior notification to the district, written testimony may be provided if the applicant cannot be present.
2. Variance Committee: The 3-member Variance Committee meets with all individuals who request a variance from the rules and regulations of the Board. The Committee reports to the Board at the regular Board meeting. The variance requests are reviewed by the Board and placed on the agenda for the next regular Board meeting for decision.
 - a. The Manager will distribute all information concerning the variance to the Variance Committee, all other Board members, and person(s) requesting the variance.
 - b. The Variance Committee will meet with person(s) requesting a variance at the time set by the Manager to hear the variance request.
 - c. The Variance Committee will report to the Board at a regular or special Board meeting the information received for the variance requested.
 - d. The variance request will be voted on at the next regular Board meeting. At that time, the Variance Committee will make a recommendation to the Board concerning the variance request.
3. Public education and/or demonstration projects deemed appropriate by the variance committee may be eligible for a variance.
4. All or any of the following sources of information will be used in the variance process to resolve a dispute:
 - a. U.S.D.A. Farm Service Agency records
 - b. Aerial photographs

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- c. Crop insurance records
- d. Personal documentation
- e. Estimated water use
- f. Other requested information

Rule 13 –Increases in Consumptive Use

Expanded uses of groundwater that result in the increase in consumptive use, may require a transfer and/or offset.

1. This transfer and/or offset must be in accordance with Section D, Rule 5 of these rules and regulations.