

## Middle Niobrara NRD Proposed Regulation Changes 2022

**\*\* Black Text is EXISTING wording or regulation \*\***

**\*\* Green Text is PROPOSED wording or regulation \*\***

### **1. Chemigation and Chemigation Permit added to Definitions - Chapter 1**

*Chemigation: shall mean any process whereby chemicals are applied to land or crops in or with water through an on-farm irrigation distribution system.*

*Chemigation Permit: Permit issued by the MNNRD allowing a certified operator to apply chemicals through an on farm irrigation system in accordance with the Nebraska Chemigation Act.*

### **2. Changes to Moratorium on New or Expanded Ground Water Irrigated Acres- Chapter 3 - 3.1**

*Moratorium on Water Well Construction Permits and on New or Expanded Ground Water Irrigated Acres:*

*Commencing on the effective date of these Rules and Regulations, and except as provided below, no permits to construct a new water well used for irrigation or other beneficial purposes within the boundaries of the Management Area will be issued, unless a variance is applied for and, after review, granted by the MNNRD. The expansion of irrigated acres is prohibited unless a variance is applied for and, after review, granted by the MNNRD.*

*Except as provided below, no permits to construct a new water well used for irrigation or other beneficial purposes within the boundaries of the Management Area will be issued, unless an application is applied for during an open application period and, after review, granted by the MNNRD.*

### **3. Strike “Certification Process Completed” in portions of Chapter 3- 3.3**

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

### **4. Modifying Portions of Chapter 3 -3.4 Transfers of Ground Water from outside the MNNRD to inside the MNNRD**

*Transfers of Ground Water from Outside the MNNRD to Inside the MNNRD*

*MNNRD approval from both affected Natural Resources Districts is required before ground water is transferred from a water well located outside the MNNRD for use within the MNNRD, unless such transfer began before February 24, 2006, or the water is used solely for domestic or range livestock purposes.*

Transfers of certified irrigated acres will not be allowed into, or out of, MNNRD boundaries.

**5. Changes to Controls in the Groundwater Quality Management Area Rule E and F Chapter 3 – 3.7 Rule E - F - G – H**

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.

All persons owning or leasing certified irrigated acres in management zone 3 and 4 must provide the District on or before April 15th a fertilizer and irrigation water application report for all parcels of land in Management Zone 3.

**6. Strike portions of Chapter 3 - 3.7**

*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.*

**7. Addition of Statement of Intent to Groundwater Controls – Groundwater Controls for Water Quantity – 3.8**

Water quantity is being closely monitored by the District. Should water quantity be threatened, the District is prepared to undertake additional regulatory action, as authorized by state law, to protect and preserve groundwater for the benefit of all our residents.

**8. Addition of Regulations regarding New Certified Irrigated Acre Development - Chapter 4**

*4.1. Purpose and Authority:*

*The purpose of these rules and regulations are in accordance with Nebraska Ground Water Management and Protection Act, Neb. Rev. Stat. 46-701 et seq:*

*Limit the number of new permits so that total new ground water irrigated acres does not exceed 3,000 acres per year. This does not require the Board of Directors to approve any acres.*

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

*The Middle Niobrara NRD and its Board of Directors goal and responsibility is to maintain and enhance our water resources while continuing to allow for agriculture and economic development opportunities for its constituents.*

#### *4.2. New Development/Certification of New Certified Irrigated Acres:*

*The Board, at its discretion, may certify no more than 3,000 acres per year for new irrigation. If the total number of new certified irrigated acres is less than 3,000, the difference between 3,000 acres and the amount of new certified irrigated acres may not be carried forward for development quotas in future years. Applications that are not approved will not be rolled over to following years. Landowners who have had applications denied but continue to desire new certified irrigated acres, must submit a new application and fee every year.*

#### *4.3 Well Permits:*

*If an application for the development of new certified irrigated acres requires the installation of a new groundwater well, the respective well permit application will not be deemed complete until authorization is granted by the Middle Niobrara NRD for the development of those new certified irrigated acres.*

#### *4.4 Ownership:*

*Applicants must be the owner or the owner's representative as evidence by a Power of Attorney or appropriate corporate authorization in the property for which they are making application for certification to irrigate.*

#### *4.5 Compliance:*

*Applicants must be in compliance with all other Middle Niobrara NRD regulations before they can apply. Any Applicant who is not in full compliance with District rules is not eligible to apply for a well permit or expanded water uses.*

#### *4.6 Applications For New Certified Irrigated Acres:*

*The process for requests to develop new groundwater irrigated acres shall be as follows: The application period shall be from 8:00 AM CST on the 1st regular business day of August to 5:00 PM CST the last regular business day in August. Applications will not be accepted before 8:00 AM on the first day of August and must be received at the District's Valentine Office no later than 5:00 PM CST on the last Friday in August.*

*Applications will be accepted in person and by mail at the Valentine District office.*

*Applications sent by mail must be received in the office by the 5:00 deadline on the last Friday in August. Applications sent by email will not be accepted.*

*The application shall be made on forms provided by the district.*

*The application shall include the most recent aerial photo delineating the new acres being applied for and the location of the new or existing well to be used.*

*The application shall be accompanied with a non-refundable fee of \$1,000*

*The application shall be signed by the current landowner, or person holding Power of Attorney, or documentation demonstrating appropriate corporate capacity.*

*The application is non-transferable and non-renewable.*

*The application does not include the permit fee to construct a water well in the MNNRD (\$50).*

*The application may be declined if it is incomplete.*

*Applicants will be notified of the status of their application within 10 business days after the October MNNRD Board meeting following the application period for each year.*

#### *4.7 Ranking Criteria:*

*The applications shall be ranked based on criteria set by the Middle Niobrara NRD.*

*Ranking criteria will be used as a guide and there may be other factors considered by the Board of Directors. Items to be considered include, but are not limited to:*

*Steam Depletion Factors*

*Conservation trees planted*

*Static water level history/restricted areas. No new irrigated acres will be allowed in areas deemed by the MNNRD as having declining static water levels*

*Removal of trees/shrubs*

*Irrigation Plan*

*Soil Classification*

*Conservation Practices*

*Parcel Slope Averages*

*Points will be awarded based on the above criteria as set forth in the attached ranking sheet identified as appendix A. Applicants must score at least 50% of the total points available, or 127.5 points on the ranking sheet, to be considered for approval. Any applications that have parcel slope averages of 10-15% must have an approved highly erodible plan on file with the NRCS or be able to obtain one prior to acre certification. There will be no applications approved in sections with higher than 89.99% stream depletion.*

*A tree planting contract must be signed at the time of the application if the landowner will be collecting points for tree planting or windbreak establishment.*

*Trees must be maintained for a period of 10 years with a 70% survival rate or greater, for each year during the 10-year period. Planted trees will be subject to survival assessments by MNNRD staff consistent with current NWSCP requirements on survivability.*

*No NWSCP cost share will be provided for planting conservation trees as part of the application process.*

#### *4.8 Tie Breaker Criteria:*

*If there are applications for the development of new irrigated acres and/or uses that have the same score under the ranking system, preference will be given to the application with the lowest stream depletion factor. If a tie still exists, then preference will be given to the application with the earliest application date.*

#### *4.9 Restricted Areas:*

*There will be no more than two applications approved in each section, per application period.*

*No new irrigated acres will be allowed in areas deemed by the MNNRD as having declining static water levels.*

#### *4.10 Number of Applications:*

*Landowners may submit 1 application per year. No single application may exceed a total acreage of one-hundred fifty (150).*

*4.11 Well Completion and Use of Water:*

*If a new well is permitted, proof that the new well has been completed must be submitted to the Middle Niobrara NRD by the last regular business day of October of the year after the notice of the new acres being approved. Proof shall mean a registration number issued by the Nebraska Department of Natural Resources. District staff shall also inspect the site to ensure that the groundwater has been put to beneficial use. The approved acres will be void if the well and irrigation system is not completed before the land is sold.*

*4.12 Reporting and Monitoring:*

*Installation of a flow meter approved by the Middle Niobrara NRD and yearly reporting of water usage to the District is required as a condition of approval of any application for the development of new groundwater irrigated acres and/or uses. Flow meters, approved by the District, shall be installed and inspected prior to the use of any newly permitted well. Flow meters will be used for the purpose of acquiring water use data to better manage the resource. Annual Spring and Fall static water level measurements taken by the MNNRD, as well as mid-year water quality sampling, will be required.*

*4.13 Granted Applications – Future Limitations:*

*All new certified irrigated acres may be subject to future restrictions on water use. Such restrictions can include, but are not limited to: allocations of water, suspension of water use, mandatory conservation measures, and increased metering and monitoring.*

*4.14 Cancellations of Approved Applications:*

*Following a hearing as required by law, the Middle Niobrara NRD may cancel or void certified irrigated acres at any time for violation of the District's rules and regulations.*

*4.15 Domestic Gardening:*

*Domestic gardening is allowed without applying for new certified irrigated acres. Domestic gardening is defined as land being irrigated for producing food for personal use that is less than 2 acres.*

*4.16 Continued Beneficial Use:*

*All newly approved certified irrigated acres must receive groundwater for beneficial use two out of every three consecutive years. The failure to make beneficial use of the groundwater in at least two out of every three consecutive years can result in the cancelation/revocation of the certified irrigated acres and decommissioning of the associated well following a hearing.*

**9. Addition of Regulations relating to Chemigation – Chapter 5:**

*5.1 Permitting:*

*Chemigation permits must be received in the Middle Niobrara office by 5:00 CST June 1st, or the last regular business day prior to June 1st.*

*An application for a chemigation permit shall be considered received by the District on the date that it is delivered to the office of the District either in person or by mail provided:*

- A. That the application has been properly completed and signed by the permit holder;*
- B. The appropriate fee accompanies the application, as follows:*

*Renewal permit application fee is fifty dollars (\$50), with two dollars (\$2) of this amount paid by the District to the Department of Environment and Energy.*

*New permit application fee is seventy-five dollars (\$75), with five dollars (\$5) of this amount paid by the District to the Department of Environment and Energy.*

*Emergency permit application fee is three-hundred dollars (\$300), with ten dollars (\$10) of this amount paid by the District to the Department of Environment and Energy.*

*If an application is delivered to the District office which does not meet the criteria of this section, the District will promptly return the application to the permit holder for correction. Any application fee received with an incomplete application will also be returned.*

*Any application received by the District after June 1st will be reviewed by the staff to determine whether the permit will be classified as a new or emergency permit. Any applications received after June 1st will not be considered for renewal status.*

*New and renewal permits are annual and expire May 31st of the year following the year in which the permit was issued. An emergency permit expires 45 days after it is issued. The application for a permit shall serve as indication that the permit holder is ready for an inspection unless he or she indicates to the contrary.*

*Owners or operators of wells shall allow the District staff to enter upon any land for the following purpose:*

*A. To inspect any chemigation system to ensure proper installation, operation and maintenance to meet the requirements to Title 195.*

#### *5.2 Inspections:*

*The permit holder or applicator must be present during the inspection.*

*Failure to allow the inspection of a system will result in the revocation of the chemigation permit.*

*It will be required that the irrigation system be brought up to normal operating pressure and shut down during an inspection.*

*The District will not be responsible for damage done to any portion of the irrigation system during removal and/or reattachment of safety equipment.*

*The compliance inspector will conduct a second inspection of any safety equipment which did not meet the requirements to Title 195 during the first inspection.*

*The District will inspect injection locations, for which renewal permits have been granted, on a scheduled rotating basis. The District will conduct District-wide random inspections of irrigation distribution systems to determine compliance with the Nebraska Chemigation Act.*

*Any person who chemigates without either an applicator's certificate or proper chemigation equipment pursuant to the Chemigation Act shall be subject to one or any combination of the sanctions set forth in Rule 5.3.*

*Anyone aggrieved by actions taken by the District or its representatives, based on these rules and regulations, may request a hearing before the Board of Directors of the District, in accordance with Rule 2.6 of these rules and regulations.*

*A request for a hearing shall not deny or delay the District's right to carrying out the powers granted to it in the Nebraska Chemigation Act or Title*

*A compliance inspector shall be authorized to conduct a prompt chemigation inspection without consent or appropriate warrant in emergency situations when there is neither sufficient time nor opportunity to obtain an inspection warrant.*

### *5.3 Violation/Penalty*

*The Middle Niobrara NRD will enforce chemigation violations pursuant to Neb. Rev. Stat 46-1138-46-1144.*

## **10. Regulations for Variances and Staff Authority moved from Chapter 6 to Chapter 7: Modification of Variances in Chapter 7:**

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

### *7.1 Expedited Variances*

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

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

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

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

*Unless otherwise provided by law or these Rules and Regulations, the Board or the MNNRD Staff (as allowed by the following Rules and Regulations), may grant a variance from these Rules and Regulations upon good cause shown. Offsets will be required for new uses, and the offset must be identified in the variance request. Variance requests should be made on forms prescribed by the District, included with a nonrefundable fee of one-thousand dollars (\$1,000). Additional information may be requested by the District and individuals will be allowed to present additional information supporting the request at any regularly scheduled monthly Board meeting. The Board will make determination whether to approve, approve with conditions, or deny the variance application. The decision of the Board on the variance request is final and binding.*