

# Middle Niobrara Natural Resources District

## Rules and Regulations

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# Middle Niobrara Natural Resources District

## Rules and Regulations

### AUTHORITY

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

### PURPOSE

The purpose of these Rules and Regulations 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 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: provide for the management, protection and conservation of groundwater and the beneficial use thereof within the State of Nebraska, and particularly within the MNNRD; and to stabilize, reduce, and prevent the increase or spread of groundwater contamination throughout the MNNRD.

### GROUND WATER MANAGEMENT AREA BOUNDARIES

These Rules and Regulations apply to all lands within the MNNRD, which lands have been designated as the “Ground Water Management Area.” The entire geographic area of the MNNRD is subject to these Rules and Regulations.

### CHAPTER 1:

#### DEFINITIONS

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

Allocations – shall mean the permitted allotment of a specific total number of acre-inches of water per certified irrigated acre per year or an average number of acre-inches of water per certified irrigated acre over a period of years.

Allocation Period – shall mean the time frame to which the allocation is applicable.

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

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

Application for a Change of Use - shall mean an application using a written form provided by the MNNRD and submitted by an applicant who desires to change the historic ground water use of certified irrigated acres to a new use.

Application for a Transfer of Ground Water - shall mean an application using a written form provided by the Department and/or the MNNRD and submitted by an applicant who desires to physically transfer ground water from an existing location to a new location.

Application for Transfer of Certified Ground Water Irrigated Acres – shall mean an application using a written form provided by the MNNRD to move the authorization to irrigate specific acres of land to different acres.

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

Board or Board of Directors - shall mean the Board of Directors of the MNNRD.

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.

Certified Irrigated Acre - shall mean any acre that is authorized pursuant to the Rules and Regulations of the MNNRD to receive ground water for irrigation use.

Certification of Irrigated Acres – the process ~~that the MNNRD used to authorize historically ground water irrigated acres throughout the MNNRD for continued use of ground water in which the MNNRD authorizes a landowner to irrigate specified acres.~~ An acre must be certified to be allowed to have ground water irrigation applied to it.

Change of Use Accounting - shall mean the process the MNNRD uses to account the historical ground water irrigated acres at an existing location, when looking to move the use and move quantified use to a new location, or to a new use.

Comingled Acres – ~~Shall mean certified irrigated acres that are eligible to receive both groundwater and surface water.~~

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

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

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

Department or DNR-DWEE - shall mean the Nebraska Department ~~of Natural Resources of Water, Energy, and the Environment~~

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

Director - shall mean the Director of the Nebraska Department of ~~Natural Resources~~ Water, Energy & Environment .

MNNRD - shall mean the Middle Niobrara Natural Resources District.

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

Domestic Water Well - shall mean a water well with a capacity that is fifty (50) gallons per minute (“gpm”) or less and that is used by a person or by a household for normal household uses and for the irrigation of lands not exceeding two (2) acres in area for growing gardens, orchards, and lawns, and keeping domestic animals. Domestic water wells as defined here are exempt from the application of these Rules and Regulations.

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

Flow Meter - shall mean a device that when properly installed and calibrated, will be operated and maintained in accordance with MNNRD specifications, and will measure the total amount of ground water withdrawn from a water well.

~~Fully Appropriated Area – shall mean the area of the MNNRD determined to be fully appropriated by the Department’s Order dated September 30, 2004~~

Good Cause Shown - shall mean a reasonable justification for granting a variance to consumptively use water that would otherwise be prohibited by law, statute, or rule and regulation and which the MNNRD 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.

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

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

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

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

High Capacity Well – ~~Shall mean any groundwater water drilled and developed to pump fifty (50) GPM or more; any combination of wells that are physically tied together where the total of the wells’ pumping capacity is fifty (50) GPM or more.~~

Illegal Water Well - shall mean: ~~(1) any water well operated or constructed without or in violation of a permit required by the Nebraska Ground Water Management and Protection Act; (2) any water well not in compliance with Rules and Regulations adopted and promulgated pursuant to the Nebraska Ground Water Management and Protection Act; (3) any water well not properly registered in accordance with Neb. Rev. Stat. §§ 46-602 to 46-604; or (4) a~~ ny water well not in compliance with any other applicable law of the State of Nebraska or with Rules and Regulations adopted and promulgated pursuant to such laws.

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

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

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

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

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

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

~~LB 962 - shall mean the Ground Water Management and Protection Act as adopted during the 2004 Legislative Session and as became effective in July, 2004 and as thereafter amended.~~

Livestock Operation - shall mean: (1) livestock kept in buildings, lots, or pens, which normally are not used for the growing of crops or vegetation; or (2) any livestock kept in any livestock operation that is required by the Livestock Waste Management Act or state livestock waste regulations to obtain a permit from the Department of Environment and Energy; or (3) livestock which are confined for more than ninety (90) days per year. Livestock operation shall not mean livestock that are kept in pastures, on rangeland, or on other grazing lands and allowed to feed on vegetation growing therein.

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

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

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

New Irrigated Acres: Land that is not currently certified to irrigate but will be approved, permitted, and certified to irrigate to grow cash crops, livestock feed supplies, or other agricultural products under normal farming practices. These acres are strictly agricultural and do not meet the terms for recreational, industrial, or commercial uses.

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

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

Overlying Land – the Rule pertaining to Industrial Transfers, shall mean a contiguous tract of land owned by the same person that lies about a ground water source. ~~For all other references, shall mean a single certified irrigated parcel of land.~~

Permit - shall mean an approval document that must be applied for and obtained from the MNNRD to authorize uses or changes in use to ground water.

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

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

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

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

Replacement Water Well - shall mean a water well which is constructed to provide water for the same purpose as the original water well and is operated in accordance with any applicable permit from the Department and the Rules and Regulations of the MNNRD. If the purpose of the replacement well is for irrigation, it must deliver water to the same parcel of land served by the original water well, and (1) replace a decommissioned water well within one hundred eighty (180) days after the decommissioning of the original water well; (2) replace a water well that has not been decommissioned but will not be used after construction of the new water well and the original water well will be decommissioned within one hundred eighty (180) days after such construction, or (3) the original water well will continue to be used but will be modified and equipped within one hundred eighty (180) days after such construction of the

replacement water well to pump fifty (50) gallons per minute or less and will be used only for range livestock, monitoring, observation, or any other nonconsumptive or de minimis use approved by the MNNRD. If the purpose of the replacement well is for municipal use, the original municipal water well may be used after construction of the new water well but shall be decommissioned within one (1) year after completion of the replacement water well.

Stream Depletion Factor – shall mean ~~a the hydrologic impact of factor that is used when considering the physical transfer of ground water certified irrigated acres, transfer of use, and the change of use. This factor allows the comparison of the amount of water pumped from the current location with the new location. The factor considers~~ the effects of the removed water from the ground and its effects on the surface water system (e.g. rivers, streams, and drains) due to the withdrawal of ground water from a regulated well during a set amount of time divided by the amount of pumping from such regulated well during the same time period. This calculation may include, but not be limited to, hydraulic conductivity, saturated thickness, storage coefficient, distance to the surface water feature, and distance to the aquifer boundary. Also, considerations may be given to the subsurface geological features.

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

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

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

Water Well - shall ~~be the definition provided for in Nebraska State Statute Chapter 46. mean any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting fluid as defined in Neb. Rev. Stat. § 81-1502 into the underground water reservoir. It also includes any excavation made for any purpose if ground water flows into the excavation under natural pressure and a pump or other device is placed in the excavation for the purpose of withdrawing water from the excavation for irrigation municipal, industrial, or commercial uses. For such excavations, construction means placing a pump or other device into the excavation for the purpose of withdrawing water for irrigation. Water well does not include any excavation made for obtaining or prospecting for oil or natural gas, or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission, or any structure requiring a permit by the Department used to exercise a surface water appropriation.~~

## **CHAPTER 2:**

### **GENERAL PROVISIONS AND PROCEDURES FOR ENFORCEMENT AND PENALTIES**

#### **2.1 Enforcement and Penalties**

Any person who violates any controls or Rules and Regulations adopted by the MNNRD shall be subject to the issuance of a cease and desist order and such other legal action as is necessary to bring about compliance.

Any person who violates a cease and desist order or who has repeated or multiple violations of the Rules and Regulations of the MNNRD, shall be subject to a penalty, including but not limited to the following: (1) a reduction (in whole or in part) in that person's allocation of ground water; (2) a reduction in the number of certified irrigated acres; and/or (3) a permanent forfeiture (revocation) of certified irrigated acres. Such penalties may be permanent or for a specified period of time. The MNNRD Board shall consider the seriousness of the violation when determining the nature of the penalty to be imposed.

The circumstances for additional penalties include, but are not limited to, the following: (1) a second violation of any particular Rules and Regulations, (2) repeated violations of these Rules and Regulations; and (3) being in violation of more than one Rule at any particular time. The Board may also pursue such forfeiture of certification and/or allocation if a person has been warned in writing on more than one occasion that they are in violation of these Rules and Regulations. Notice and hearing shall be provided to any such person before the MNNRD imposes the additional penalties identified in this Paragraph.

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

## 2.2 Complaints

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

## 2.3 Inspections

Pursuant to Neb. Rev. Stat. § 46-707, MNNRD staff may conduct investigations, document reviews, and field inspections to confirm compliance with these Rules and Regulations, the Chemigation Act, and/or other Nebraska law.

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

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

## 2.4 Submission of Inspection Report Alleging Violation and Alleged Violator's Alternatives

If the MNNRD Manager finds that the ground water user, landowner, or operator is in violation of these Rules and Regulations, the Act and/or other Nebraska law, the staff report described above shall be sent to the ground water user, landowner, or operator, accompanied by a formal notice of intent to issue a cease-and-desist order. The staff report and notice of intent to issue a cease-and-desist order shall be provided to the ground water user, landowner, or operator by hand delivery, or via certified mail, return receipt requested, and by postage prepaid, First Class U.S. Mail. If the ground water user, landowner, or operator believes the report is in error and no violation has or is occurring, he/she may make a written request for a hearing before the MNNRD Board of Directors. Any written request for a hearing must be received at the MNNRD Office within seven (7) business days (excluding Saturdays, Sundays, and legal holidays), of receipt of the staff report and notice of intent to issue a cease-and-desist order. If the

MNNRD does not receive a written request for a hearing within seven (7) business days of receipt of the notice of intent, the General Manager is authorized and directed to issue a cease-and-desist order on behalf of the MNNRD Board of Directors.

## 2.5 Compliance

When a ground water user, landowner, or operator achieves compliance, the MNNRD shall lift the cease-and-desist order or modify it to ensure future compliance. Notwithstanding compliance, the MNNRD may impose penalties including, but not limited to, revoking the certification for the irrigated parcel(s) that is the subject of the violation.

## 2.6 Hearing

If the ground water user, landowner, or operator makes a timely, written request for a hearing, the MNNRD Board shall schedule such hearing at its Office. Such hearing shall be held no sooner than ten (10) days and not more than forty-five (45) days after receipt of the notice provided pursuant to Rule 2.4.

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

The MNNRD Board shall conduct the hearing to provide due process and receive all relevant information regarding the alleged violation, from the MNNRD and from the ground water user, landowner, or operator. The MNNRD Board shall keep a record of the hearing and shall base its decision on whether to issue a cease and desist order solely on the information received at the hearing. The MNNRD Board shall render its decision in writing and provide the same to the ground water user, landowner, or operator via certified mail, return receipt requested, and via postage prepaid First Class, U.S. Mail.

In the event of multiple or repeated violations or a violation of the cease and desist order by the same ground water user, landowner, or operator, the MNNRD may hold a separate hearing to determine whether to impose additional penalties as noted in Section 2.7. The MNNRD Board shall provide written notice of the separate hearing to impose additional penalties on the ground water user, landowner, or operator via certified mail, return receipt requested and by prepaid First Class U.S. Mail. Such notice shall specify the date, time, and location of any such hearing and advise the ground water user, landowner, or operator that they may be represented by counsel of their choosing. The hearing shall be conducted to provide the appropriate due process and ensure all relevant information from the ground water user, landowner, or operator is considered before rendering a written decision. Only information received at the hearing shall be considered by the MNNRD Board to determine whether to impose any penalty. The MNNRD shall keep a record of that hearing and provide its written decision to the ground water user, landowner, or operator via certified mail, return receipt requested and via postage prepaid, First Class U.S. Mail.

## 2.7 Board Authorization to Initiate Court Action

The Board may initiate appropriate legal actions to enforce any action or order of the MNNRD.

## 2.8 Cease and Desist Order; Violation; Penalty

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

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

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

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. [Open application periods for New Irrigated Acres are listed under Chapter 4 and application periods for all other high-capacity use requests are listed in Chapter 6.](#)

## 3.2 Permit to Construct a Water Well

Any person intending to construct a water well within the Management Area for any purpose, except for test holes, dewatering wells with an intended use of ninety (90) days or less, range livestock wells, or domestic wells that pump fifty 50 gallons per minute (~~gpm~~**GPM**) or less, shall apply for a permit from the MNNRD to construct a water well.

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

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

Any person who fails to obtain a permit required by Rule 3.2, but who proceeds to construct a water well, is prohibited from using that well until a permit from the MNNRD has been issued. The well owner may make application for a late permit on forms provided by the MNNRD and shall pay a late application fee of two-hundred and fifty dollars (\$250) to the MNNRD. The MNNRD may consider the fact that the applicant failed to timely obtain a permit in its determination as to whether to approve, approve with conditions, or deny the permit.

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

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

Permit applications shall be denied if the MNNRD 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 MNNRD; 2) that the proposed use would not be a beneficial use of water; [3\) harm would be caused to existing groundwater](#)

well owners and users; 4) underlying water resources would be negatively impacted through either quality or quantity degradation.

Supplement or Helper Wells can be permitted by District staff only to which there will not be an increase in the number of irrigated acres certified at that location or a change of those locations.

### 3.3 Certified Ground Water Irrigation Acres and Process

Certification of Ground Water Irrigated Acres - No ground water user, landowner, or operator may irrigate with ground water within the Management Area unless he or she has first obtained the necessary certification of ground water irrigated acres from the MNNRD.

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

Modification of Ground Water Certified Irrigated Acres - Upon the effective date of these amendments the MNNRD will no longer allow landowners to certify new irrigated acres under the premise that they had been historically irrigated. Any acres that one desires to be certified as irrigated must be approved through a current and open application process. ~~allow modifications to ground water certified irrigated acres, except to the extent that such "modification" involves a decertification or such modifications are made if documented proof is provided to the MNNRD that the acres were irrigated one time from 2000-2004 calendar years and should have been certified during the original certification of ground water irrigated acres during the December 2005 to December 2009 timeframe.~~

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

### 3.4 Transfer of Ground Water; Transfer of Certified Ground Water Irrigated Acres; Changes in Use

Transferring Ground Water off the over lying land

**A.**—Any person who seeks to transfer ground water from one location to another shall apply to the Board for a transfer permit using forms provided by the MNNRD. No transfer shall be commenced unless and until the MNNRD grants the permit application. The applicant must acknowledge in the application that approval of the transfer may be conditioned on the water use conforming with MNNRD Rules and Regulations relating to the use of water withdrawn inside the MNNRD.

**B.**—The well from which the water is transferred cannot be used to irrigate land that is not certified for ground water irrigation. If the well is no longer used to irrigate land certified for ground water irrigation, then the well must be configured to prevent the possibility of contamination of the ground water, it may be converted into a 50 GPM-gpm or less livestock well.

**C.**—~~No transfer permit shall be required if the withdrawal and transfer of ground water complies with any one or more of the following exceptions, provided, however, that any required notices shall be provided to the MNNRD within thirty (30) days after the commencement of such transfer.~~

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

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

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

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

### 3.5 Change of Use or Addition of Use of Ground Water

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

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

Groundwater wells shall only irrigate the parcels that they are certified with to receive groundwater. Lands with a surface water appropriation shall not receive groundwater unless the acres to be irrigated are certified to do so. Surface water lands can apply to add groundwater certification and receive a comingled status but will follow the same processes as new irrigated acre applications.

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

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

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

### 3.6 Transfer Location of Ground Water Certified Irrigated Acres

Any person who intends to transfer the location of ground water certified irrigated acres shall apply to the MNNRD for a transfer permit using forms provided by the MNNRD. No transfer of Ground Water Certified Irrigated Acres shall be commenced unless and until the MNNRD grants the permit application.

Applicants will provide a title report with their application identifying all parties with a lien interest in the property. Any party holding a mortgage or lien must submit, in writing, express approval of the transfer request to the MNNRD prior to the Board of Directors granting the transfer request. Applicant(s) will be

responsible for the selection of the company providing the title report as well as any fees associated with it.

The ground water certified irrigated acres that are being transferred must be decertified by the MNNRD and the acres to which the certified irrigated acres are being transferred to must be certified by the MNNRD.

The MNNRD shall determine the stream depletion factor for the location of the existing ground water certified irrigated acres that are being transferred (the “old acres”) and for the location of the acres to where the certified acres are proposed to be transferred (the “new acres”). If the stream depletion factor determined for the new acres is less than the stream depletion factor of the old acres, the number of acres allowed to be transferred shall be proportional to the decrease in stream depletion factor. The difference in acres shall reduce the total amount of new irrigated acres allocated for the year referenced in Chapter 4.1. If there are no irrigated acres available for the year or for that area of the District, the number of acres allowed will be the same as the old acres and the District shall bank the difference. The Board will consider this on whether to approve or deny the transfer application. remain the same (i.e., shall be the same as the number of old acres). If the stream depletion factor determined for the new acres is greater than the stream depletion factor of the old acres, the number of certified irrigated acres allowed to be transferred shall be decreased by an amount proportional to the increase in the stream depletion factor. The point is to ensure that there is no impact to the stream associated with such a transfer-.

The MNNRD will not allow any transfer of ground water certified irrigated acres to a new location with slopes historically exceeding nine percent (9%) for any soils. Historical data, including LiDAR (Light Detection and Ranging) data collected for the MNNRD, will be utilized to determine areas equal to or exceeding a nine percent (9%) slope. Grading, land leveling, or any form of slope alteration will not be allowed to change the historical data. An exception will be allowed for up to ten percent (10%) of the total area of a new parcel, if all of the parcel will be certified for the purpose of irrigation.

Transfers of ground water certified irrigated acres that change the amount or timing of river flows may contribute to conflicts between ground water users and surface water appropriators. For those reasons, the MNNRD will not allow any transfers of ground water certified irrigated acres that change the amount or timing of river flows. To avoid such changes, the MNNRD hereby prohibits transferring ground water certified irrigated acres from below a surface water diversion to above a surface water diversion. The Board will evaluate requests on a case-by-case basis in those circumstances where a particular tract of land is divided by flow line boundaries. The applicant will be required to show that such transfer will not result in an increase in the consumptive use of water.

~~If the MNNRD grants an application to transfer ground water certified acres, and it is later determined that such transfer has caused a change the amount or timing of river flows, the landowner must take the steps necessary to offset and/or mitigate such changes. If the landowner is unable to offset and/or mitigate such impacts at any time, the landowner must: Immediately cease irrigating the new acres; provides the necessary offsets and/or mitigation for all past and future impacts caused by transferring the certified acres.~~

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

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

3.7 Controls in the Groundwater ~~Quality~~ Management Area - ~~Quality~~

The following rules and regulations apply to all landowners and operators owning or leasing certified irrigated acres in the MNDRD. applying fertilizer (commercial or organic) to planted dry land and irrigated crops. The District shall keep on a file a boundary map delineating the current management zones.

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~~ cease-and-desist order pursuant to Neb. Rev. Stat. §§ 46-707, 46-745, and 46-746.

All persons owning or leasing certified irrigated acres in Management Zone 1 are required to submit a yearly fertilizer and irrigation water application report to the District no later than the last business day in January. Forms with the required information will be made available by the District. 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; type of crop(s) grown and yield of each crop type; amounts per acre of any type Nitrogen, Phosphorus, Potassium, and Magnesium either commercial or organic, applied on each parcel of land; and total amount of irrigation water in acre inches, gallons, or acre feet applied to each parcel of land.

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:

All Controls in place for Management Zone 1 shall be in effect for Management Zone 2 plus any additional or expanded controls listed below.

~~Landowners/operators must apply for well construction permits for new wells with a capacity of greater than fifty (50) gallons per minute.~~

~~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— All areas of the District in which~~ 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:

All Controls in place for Management Zone 1 and 2 are in effect for Management Zone 3, plus any additional or expanded controls listed below.

~~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.~~

~~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 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 certified 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.~~

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

~~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:

All Controls in place for Management Zone 1, 2, and 3 are in effect for Management Zone 4, plus any additional or expanded controls listed below.

~~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 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. 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.~~

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 certified 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 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.~~

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

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.

### ~~Required Fertilizer and Irrigation Water Annual Report~~

~~All persons owning or leasing certified irrigated acres in management zone 3 or 4 are required to submit a fertilizer and irrigation water application report to the District no later than April 15th. 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.~~

### 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.

### ~~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.~~

### ~~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.~~

### 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.

### 3.8: Groundwater Controls for Water Quantity in the Management Area

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.

The District shall continue and expand upon its duties and activities to evaluate the current and future availability of water quantity resources in the District through activities including but not limited to: static water level measurements, utilization of observation/monitoring wells, groundwater modeling and scientific studies, dedicated data loggers and telemetry units, flow meters and water measuring devices, monitoring surface water flow, and producer reporting and education.

Should any areas of the District experience degradation or a projection of degradation to the aquifer(s) including but not limited to groundwater well interference, declining static water levels, streamflow reduction, surface water administration impairing senior right holders, or general negative impacts to the resources the District shall take regulatory action.

If negative impacts are identified, the District shall involve all impacted parties to further delineate the impacted area, identify causes and possible solutions, and decide on appropriate controls to reduce or eliminate the impact. Appropriate controls may include but are not limited to, Sub Districts, allocations of water, suspension of water use, mandatory conservation measures, and increased metering and monitoring. The District shall follow the proper procedures for public hearings and stakeholder involvement.

## **CHAPTER 4**

### **New Certified Irrigated Acre Development**

#### 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~~accept applications for any new irrigated acres. The Board of Directors shall vote at the April Board Meeting to determine how many acres will be available for allocation each year. At this time the Board shall also set any areas closed for new irrigated acre development.

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

This chapter was adopted in furtherance of the District's Voluntary Integrated Management Plan (VIMP)

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 Groundwater 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. Wells permitted for any new irrigated acre application must be drilled and located on land owned by the applicant.

#### 4.4 Ownership:

Applicants must be the owner or the owner's representative as evidenced 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 regular business day 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 regular business day 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:

Stream 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

Groundwater Model results or other scientific studies

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 NSWCP cost share will be provided for planting the minimum amount of 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. If a single section has more than two applications, the highest ranking two applications will be approved and the rest denied.

No new irrigated acres will be allowed in areas deemed by the MNNRD as having declining static water levels that were closed by the District for the current year's application cycle.

#### 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). Landowners may submit up to three (3) new irrigated acre applications per year. No single application may exceed a total acreage of 160 acres. If submitting more than one application, the landowner must identify the priority of each application as either their Priority A, B, or C application. All priority A applications will be ranked against each other, if there are available acres remaining then all priority B applications will be ranked against each other, if there are still acres available then the Priority C applications will be ranked out. Approval will stop when the current year's allocation of new acres has been met.

#### 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 Water, Energy, & Environment (NDWEE) 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 2 acres or less.

#### 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.

#### 4.17 Extension Request:

New irrigated acre applications that do not have their new groundwater well completed based on requirements listed in Section 4.11 may request an extension from the Board of Directors. Extension requests must be submitted before the deadline listed in Section 4.1. The Board will take into consideration all information presented by the staff or the applicant when considering whether to approve, approve with conditions, or deny the extension request.

## **Chapter 5:**

### **Chemigation**

#### 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 June 1st 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.

## **CHAPTER 6**

### **OTHER PERMITS, PROGRAMS, AND MISC.**

#### 6.1+ Applications for New High-Capacity Uses

High-capacity uses shall be defined as groundwater users wishing to utilize a groundwater well pumping 50 GPM or more for commercial, industrial, recreational, or municipal uses. The Board of Directors will decide on a yearly basis if they will accept applications for New High Capacity uses outside of the New irrigated acres application. Applications will be accepted only for the areas not closed for new irrigated acre development by the Board of Directors. For large water user applications, a draft application will be made available to the Water Committee at least 30 days prior to the final application being submitted to the Board of Directors for approval. Final applications will be reviewed at each monthly board meeting to determine eligibility for approval. All applications will include a \$1,000 non-refundable application fee payable to the District.

Applications will be split into two categories for consideration by the Board of Directors. Controls and requirements for each category are listed under their respective category below. Application forms for both categories will be available at the District office. To determine whether approval of an application would be in the public interest or detrimental to the public welfare, the MNNRD shall consider the following: Whether the proposed use is a beneficial use of ground water; Any negative effect of the proposed withdrawal and/or use on ground water or surface water supplies needed to meet reasonable future demands for water within the state; The cumulative effects of the proposed withdrawal and/or use when considered in conjunction with all other ground water uses in the area of the proposed withdrawal and/or use; Whether the proposed withdrawal and/or use is consistent with the VIMP; and any other factors that the MNNRD deems relevant to protect the public interest and prevent detriment to the public welfare and the resources of the District. The District reserves the right to impose any additional conditions or controls on any application when making the decision to approve or deny the request. Failure to operate the user permit as it was represented in the original application may be cause for cancellation or modification after a hearing required by law unless a sufficient reason for non-use exists.

Modification: If an entity intends to expand or modify existing infrastructure and the new or expanded use will withdraw more than 300 Acre Feet on a yearly basis such entity must receive a large user permit from the MNNRD prior to commencement of the expansion or modification.

Small User Application and Permit: To be defined as an applicant that wishes to withdraw less than 300 Acre Feet on a yearly basis. Wells for Cities and Municipalities will be addressed under this category.

The following information will be required on the submitted application. The name and post office address of the applicant; Current phone number of the applicant; The legal description of the location of where the water well or wells are or will be located; The legal description of the land on which the ground water will be used; If an existing water well will be used, the Department's water well registration number for the well; If a new or replacement water well will be constructed, the MNNRD's water well construction permit number ; A detailed description of the nature of the proposed use; The maximum rate of withdrawal from the water well or wells; The range of maximum and average amounts of water proposed to be withdrawn on an annual basis; The amount of ground water to be consumptively used from the water pumped from the water well or wells, and a detailed explanation of how the amount of consumptive use was calculated ; Any other information the applicant deems relevant to the MNNRD's criteria for approval of the proposed withdrawal and/or use.

Exemptions from the requirements of a small user permit shall be geothermal wells that are utilizing an injection well to achieve a nonconsumptive pumping status. Geothermal wells pumping more than 50 GPM meeting these requirements may be permitted at anytime by District Staff. High-Capacity Geothermal wells that are not utilizing an injection well will be classified as a consumptive use and subject to all requirements listed under a Small or Large user application.

Large User Application and Permit: To be defined as an applicant that wishes to withdraw more than 300 Acre Feet on a yearly basis. —

The application will include all the required information listed on the small user application in addition to the following information. Application will also include a Hydrological evaluation completed by a licensed third party at the cost of the applicant. Applicant(s) will provide the name and contact of the third party and the estimated cost to aid in the production of the final report. The hydrological evaluation will include a detailed inventory of all groundwater wells and surface water appropriations within 3 miles of the proposed location; a detailed delineation of the underlying aquifer and its qualities the wells will be pumping from; yearly and 20-year impact studies of the groundwater withdrawal; a detailed contingency plan in the event of negative impact on the areas water resources; any test hole logs or any information on water availability exploration; any other pertinent information that the water committee may request after review of the initial submitted draft. Installation and maintenance of a MNNRD-approved flow meter on the well or wells that will be used for withdrawal and/or use; Submission of an annual report to the MNNRD, by March 1 of each year, containing the total volume of water pumped and total volume of ground water consumptively used in the preceding year; Compliance with all applicable statutes and Rules and Regulations, including any statutes or Rules and Regulations adopted after the MNNRD's approval of the permit. In approving the application, the District may require the applicant to construct monitoring/observation wells for use by the District staff to evaluate water quality or quantity. The District will establish a baseline volume of usage, if after the first five years the usage is higher than it was represented on the application, an offset will be required.

## 6.2 Large User Permit

~~Any public water supplier with the exception of municipalities who desires to withdraw and/or consumptively use ground water shall, prior to: 1) changing the use of an existing ground water well or wells; 2) commencing construction of any new or replacement ground water well; or 3) modifying the existing infrastructure for the purpose of expanding the consumptive use of ground water, must receive from the MNNRD a large user permit to authorize such withdrawal and/or use of ground water.~~

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

~~The name and post office address of the applicant;~~

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

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

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

~~If a new or replacement water well will be constructed, the MNNRD's water well construction permit number.~~

~~A description of the nature of the proposed use;~~

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

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

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

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

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

~~A proposed offset for the amount of consumptive use and a detailed explanation of how the proposed offset was calculated; and~~

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

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

## 6.2 — Approval of Applications

The MNNRD may deny an application or condition the approval of any large user permit when necessary to:

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

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

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

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

## 6.3 — MNNRD Considerations Relative to Public Interest and Public Welfare

~~To determine whether approval of an application for a large user permit would be in the public interest or detrimental to the public welfare, the MNNRD shall consider the following:~~

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

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

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

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

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

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

## 6.4 — Conditions on Permits Issued

~~All large user permits issued by the MNNRD shall be conditioned on the following:~~

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

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

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

## 6.2 Water Bank:

The District can at anytime maintain a water bank of irrigated acres. For purposes of these rules, a water bank shall mean ; An accounting system to assess the hydrologic impact of irrigated acres that have been retired so that they may be offered as an offset for changes to or new groundwater use locations. The

District has been accruing these irrigated acres through the transfers of groundwater wells from a location of higher stream depletion into a location of a lower stream depletion using a formula provided by the Department. The landowner receives the same number of acres provided and requested in the transfer; the District banks the difference as offset water in the balance. The change in stream depletion and the associated acres is added to the itemized water bank. The District will keep a public record of the Water Bank on file at the office.

Usage of the Water Bank: The District can make offset water volumes available to people or entities of the District after an application is made to the Board of Directors, approved, and permitted as such.

If the District is currently closed for New irrigated acre development, or such area has been closed, then the water bank can be made available for entities providing such water for agreeably beneficial economic development or as required by human health as it relates to health, fire suppression, or sanitation. Applications can be made to the District following the same processes as a “Small Water User” see Chapter 6.1. Applicants will have the opportunity to speak at the regularly scheduled board meeting where the application and request will be discussed. The Board will have the ability to add any conditions or further requirements as such as defined in the Small Water User application.

## **Chapter 7:**

### **Variances and Staff Authority**

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~~may be required for new uses, and the offset must be identified in ~~the variance request~~approval. Variance requests should be made on forms ~~prescribed~~provided by the District, included with a ~~nonrefundable~~ non-refundable 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.

#### 7.2 Staff Authority

The Board authorizes and directs MNNRD staff to modify the certification record for certified irrigated acres to reflect any change(s) to the name or contact information of the landowner and/or operator on record for the acres/parcel(s) The Board further authorizes and directs the MNNRD General Manager to conduct inspections and take enforcement action as directed in these rules and regulations.

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