

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 accept applications for any new irrigated acres. The Board of Directors shall vote at the April Board Meeting to determine how many new irrigated 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 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 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 PM CST 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.

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 that were closed by the District for the current year's application cycle.

4.10 Number of Applications:

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, and Environment (NDWEE). 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 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.