

ORDER

BEFORE THE TRI-BASIN NATURAL RESOURCES DISTRICT BOARD OF DIRECTORS

In the matter of revising rules and regulations for the Districtwide Integrated Water Management Area (IWMA), the Quantity Groundwater Management Area (QGMA) and Groundwater Quality Management Area (GQMA) of the Tri-Basin Natural Resources District (Tri-Basin NRD, or NRD).

THE BOARD FINDS THAT:

It is necessary to revise the Tri-Basin NRD groundwater management rules and regulations to more effectively manage the quality and quantity of groundwater resources within the district. Following are suggested revisions to the Tri-Basin NRD Rules and Regulations. The full text of the NRD Rules and Regulations is available on the NRD website.

SECTION 1- DEFINITIONS

NEW 1.2 Agricultural operation shall mean a parcel or parcels of land in contiguous counties, constituting a cohesive management for farm agricultural purpose. This shall be regarded as located in the county in which the principal dwelling is situated, or if there is no dwelling thereon, it shall be regarded to be in the county in which the majority of the irrigated cropland is located.

NEW 1.12 Common management shall mean an agreement between an operator and owner for the management of an agricultural operation that is going to be pooled. This agreement shall delineate who will provide the labor, equipment, accounting system, and management of commonly managed land. Examples of common management include, but are not limited to; landlord/tenant leases, family member/family member ownerships, and individual/entity (corporation, limited liability Corporation, partnership) ownership.

NEW 1.44 Owner shall mean an individual or entity who has legal ownership of farmland, including individual or entities.

NEW 1.54 Streamflow Depletion Offset Credit shall mean any credit established by the Tri-Basin NRD Board of Directors pursuant to Section Nine of these rules that enables Groundwater users to initiate new uses or expand existing uses.

SECTION 2- GENERAL PROVISIONS AND PROCEDURES FOR ENFORCEMENT

2.11 Board Authorization to Initiate Court Action - The Board of Directors may initiate appropriate legal actions in the District Court of the County in which the violation has occurred whenever necessary to enforce any action or orders of the Tri-Basin NRD in accordance with these rules and regulations. The Board of Directors may also seek assistance in enforcing NRD rules from the Nebraska Attorney General's office.

SECTION 3- GROUNDWATER QUALITY MANAGEMENT AREA REGULATIONS

3.3.2 Fall and winter applications of commercial nitrogen fertilizer for spring-planted irrigated crops shall be prohibited on fields where more than 50% of the areal extent consists of soils with nominal or intermediate Leaching Potential (loamy sands, loams, silts and clays) between September 1 and November 1, except that producers may apply less than 60 pounds per acre of actual N (nitrogen) as an ingredient in a fertilizer formulation primarily composed of other nutrients or as a carrier for pesticides.

SECTION 7- GROUND WATER TRANSFERS

7.6 Measuring and reporting water pumping. Any Person who holds a Permit that allows transfer of water off of Overlying Land, except for a temporary commingled groundwater

transfer permit (see rule 7.1.1), must install a Flowmeter on the Well or Wells that are the subject of the Permit. The Permit holder must also annually report the legal description of the Well location and the destination for the water and the total volume pumped from said Well or Wells or, at the discretion of the Board of directors, allow Tri-Basin NRD Personnel to read and record data from said Flowmeter or Flowmeters.

SECTION 8- QUANTITY GROUNDWATER MANAGEMENT AREA RULES AND REGULATIONS

8.1.2. The Tri-Basin NRD Board of Directors shall utilize average springtime static water level elevation measurements for the years 1981-1985 as the reference level to compare to an average of springtime groundwater levels during the three most recent years water level data when they consider whether to invoke Phase II or Phase III management rules in any section within the District. Average data for the 1981-85 period and current water level data are derived from TBNRD and other public domain water level data records.

8.3.1.2. The district will not knowingly issue Conditional Replacement or New Well Permits to landowners for parcels on which surface water rights were cancelled after September 16, 2004, except that a New or Conditional Replacement Well Permit may be issued if the NRD Board approves a transfer of a sufficient number of NRD-certified irrigated acres from a field that does not have a history of surface water use to the parcel in question for the new groundwater use.

8.3.5. Groundwater consumed for Environmental, Commercial and Industrial uses initiated or expanded after December 31, 2012 must be offset by discontinuing or replacing an equivalent amount of existing water uses in the basin and stream reach in which the facility is located. The amount of water consumed by existing irrigation water uses can be calculated by multiplying the per-acre baseline consumptive irrigation water use by the number of NRD-certified irrigated acres in a Parcel.

NEW 8.5.4. Water for crop irrigation will be allocated on a per-acre basis. Use of allocated water can be accounted for either on a parcel-by-parcel basis, or, when multiple parcels or wells are involved, the district and a landowner may agree to divide water use by means of a flowmeter that measures all water applied to a field containing multiple parcels.

NEW 8.5.5. Up to one-third of the total amount of water allocated to a parcel or use that is not used by the owner during an allocation period, not to exceed a total of nine inches per acre for irrigation uses, can be credited toward the landowner's allocation for that parcel or use in the following allocation period.

NEW 8.5.6. Landowners who use up the entire amount of water allocated to a parcel or use before the end of an allocation period will be allowed to use up to three additional inches of water per acre, or an equivalent amount for non-irrigation uses, provided that one and one half times the amount of water used will be deducted from any future allocation.

NEW 8.5.7. On an application form provided by the District, two or more persons may agree to pool for the current allocation from their individual wells on their combined certified acres.

8.5.7.1 The information provided shall contain:

- a. The names, addresses and notarized signatures of all persons involved;
- b. A map showing the locations of all parcels containing certified irrigated acres proposed for participation in the pooling agreement;
- c. Well registrations of all irrigation wells associated with those parcels;
- d. Evidence of common management for the acres to be pooled.

8.5.7.2 The term of the application shall be for the current allocation period. Pooling agreements shall not cover more than the current allocation period and must be renewed if continued into a new allocation period.

8.5.7.3 Pooling agreements shall remain in effect for the term of the allocation period unless terminated, in writing, by any party in the agreement. This must be done between

January 1 and April 1 of any year, in order to be terminated.

8.5.7.4 Wells and certified irrigated acres to be pooled shall be in the same or adjacent townships.

8.5.7.5 All certified irrigated acres proposed for inclusion in a pooling agreement must be within the district. Parcels outside of district boundaries can not be pooled.

8.5.7.6 Common management is required within a pool. The pooling agreement shall specify who will operate the pooled lands.

8.5.7.7 Incomplete applications will be returned to applicants for correction or completion of required information as identified by the district. If corrections are not made within sixty (60) days, such applications will be considered cancelled.

8.5.7.8 After receiving a complete application, the district will deny or approve the application within sixty (60) days.

8.5.7.9 The district may deny an application for pooling for any reason. Pooling agreements shall not be used in place of certified irrigated acre transfers.

8.5.7.10 The district may limit or condition applications for pooling if the use is between sub areas with different allocations.

8.5.7.11 Certified irrigated acres within one river basin may not be pooled with certified irrigated acres from another river basin.

8.5.7.12 Certified irrigated acres enrolled in a temporary or permanent irrigation retirement program including Federal, State of Nebraska, and locally administered programs are not eligible for pooling.

8.5.7.13 Any change of ownership of parcels containing certified irrigated acres in an approved pooling contract will result in those parcels being removed from a pool at the end of that year. New owners may apply between January 1st and April 1st of the following watering year to continue participation in the previous pooling agreement.

8.5.7.14 The district shall provide the parties of an approved pooling application with the revised allocations per certified irrigated acre for all certified irrigated acres participating in a pooling agreement.

8.5.7.15 If a pooling agreement expires or is terminated, the district shall provide the parties with the remaining allocation based on the water use while the certified acres were pooled.

SECTION 10 IRRIGATED LAND CERTIFICATION

10.2.2. If a Parcel of land or portion thereof is not classified as irrigated cropland, hayland or grassland by a county assessor prior to designation by the NRD Board of Directors of an area as an Integrated Management Area or a Phase II Quantity Groundwater Management Area, the NRD Board of Directors may accept aerial photos, USDA Farm Service Agency records, or other independently verified documents that indicate a Parcel of land or portion thereof was irrigated during or after the 1997 crop year, but before 2005, as well as during three of the five most recent preceding years as information to justify revision of NRD irrigated acre certifications.

10.2.2.3. Anyone who wants to develop a new animal feeding operation or expand an existing animal feeding operation must agree to set aside sufficient certified Irrigated Acres or an equivalent amount of Streamflow Depletion Offset Credits (see Section 9.7) to offset the consumptive Groundwater use resulting from the new or expanded livestock operation as a condition for issuance of an NRD well permit.

10.3.1. The NRD Board of Directors will use Flowmeter data and information provided by environmental, commercial, non-irrigation agricultural and industrial Groundwater users to determine the baseline amount of Groundwater that they pump annually. This baseline amount will be used by the NRD as the basis for setting allocations for environmental, commercial, non-irrigation agricultural and industrial Groundwater uses, should allocations become necessary. The annual baseline amount of water pumped that will be approved will

be at least ten percent greater than the maximum measured annual use or the amount of water required to fully satisfy the constructed capacity of the use as of December 31, 2012.

10.3.1.1. Baseline annual pumping for livestock operations that do not have metered water use will be set at amounts equivalent to 110% of the amounts listed for different animal species in Rule 10.2.2.2.

10.4.1. All Environmental, Commercial, non-irrigation Agricultural and Industrial Groundwater uses that are supplied by non-municipal Water Wells that are established after April 1, 2013 must, as a condition of certification, agree to offset any impacts to streamflows that the NRD Board of Directors determine are likely to result from initiation of said new uses. Offsets can be secured by reducing an equivalent amount of existing depleting water uses in the same river basin within Tri-Basin NRD, or, in the Platte Basin, the same overappropriated or fully appropriated designated portion of the Platte River Basin within the NRD. Alternatively, if the NRD Board agrees to offer this option to a water user, they may lease Water Use Offset Credits from other water users, as described in NRD rule 9.7 and sub-sections.

10.8.4. A landowner fails to secure a water source for a parcel within 18 months after certified irrigated acres are transferred to a parcel, or after the NRD notifies a landowner that district records do not specify a water source for said parcel.

Portions of the rules were also-renumbered, language was stricken and spelling was corrected.

IT IS CONCLUDED THAT:

The Board of Directors, in order to effectively enforce the Nebraska Groundwater Management and Protection Act have determined that is necessary to revise the Tri-Basin Natural Resources District Rules and Regulations for Management and Protection of Land and Water Resources.

Copies of the revised rules and regulations are available during normal business hours at the Tri-Basin NRD Office, 1723 N. Burlington St., Holdrege, Nebraska. District residents can also read the complete text of the district rules on the Tri-Basin NRD web site, www.tribasinprd.org, or receive a copy by mail by calling the NRD toll-free number, (877) 995-6688.

IT IS HEREBY ORDERED:

1. The revised Tri-Basin Natural Resources District Rules and Regulations for Management and Protection of Land and Water Resources shall become effective on May 15, 2015.

Pursuant to the majority vote of the Tri-Basin NRD Board of Directors on April 14, 2015, the revised Tri-Basin Natural Resources District Rules and Regulations for Management and Protection of Land and Water Resources shall become effective May 15, 2015.

For the Tri-Basin Natural Resources District

David Nickel, Chairman
Tuesday, June 11, 2013