

ORDER

BEFORE THE TRI-BASIN NATURAL RESOURCES DISTRICT BOARD OF DIRECTORS

In the matter of revising rules and regulations for the Integrated Water Management Area (IWMA) and the Districtwide 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 is the text of the revised rules (new text in revised rules is italicized, deleted language is lined through):

Section 1 General Definitions

Delete 1.2- Allowable Depletion Limit

Revise 1.12 as shown:

Conditional Replacement Well- A water well may be considered by the NRD to be a conditional replacement well if it ~~replaces or~~ supplements existing groundwater wells or surface water rights on NRD-certified irrigated lands. The owner of a conditional replacement well permitted by the NRD may be subject to limitations, regulations and operational conditions regarding use of that well that are different from limitations, regulations and conditions of operation imposed by the district on owners of other wells within the district. In the absence of any other limitations, regulations or conditions of operation, the beneficial consumptive use of water resulting from operation of a conditional replacement well shall be no greater than the historic consumptive use of water from the well or surface water use which it is to replace or supplement.

Revise 1.18 as shown:

Eligible, shall mean:

1.18.1 any non-domestic water well that is capable of pumping 50 gallons per minute or more which is not registered as inactive with the Nebraska Department of Natural Resources, as referred to in section ~~five and~~ six of these rules.

1.18.2 any non-domestic water well that is a.) located within the watershed boundaries of the Republican River and its tributaries, as mapped by the Nebraska Department of Natural Resources, that is capable of pumping 50 gallons per minute or more *or b.) any new or conditional replacement well permitted after September 15, 2004, or c.) any well for which a landowner has an approved groundwater transfer permit.* ~~which is not registered as inactive by the Nebraska Department of Natural Resources.~~

Revise 1.19 as shown:

Flowmeter, shall mean a device, *meeting certain NRD specifications described in section six of these rules*, designed to record the rate of flow and cumulative volume of flow of water within a pipe.

Revise 1.25.2 as shown:

Any well in violation of spacing requirements specified by Neb. Rev. Stat. § 46-609 or §46-651 *or sections four and eight of these rules*;

Delete 1.28- Installation Years

Revise 1.36 as shown

Overlying land. A parcel of land upon which a water well is located. It shall also include ~~any parcel of land adjacent to a section of land upon which a well is located or~~ any other parcel of land that meets all of the following criteria:

- 1.36.1 The parcel is located within the same watershed as the parcel upon which the well is located.
- 1.36.2 The parcel of land is located within the administrative area of Tri-Basin NRD (Gosper, Phelps and Kearney Counties in Nebraska).
- ~~1.36.3 The parcel of land is within one statute mile (5280 feet) of the parcel upon which the well is located.~~
- 1.36.3 The parcel of land is *contiguous to the parcel on which the well is located and is owned by the same entity as the parcel upon which the well is located.*

Section 2 General Provisions and Procedures for Enforcement

Revise 2.3.1 as shown:

Complaints shall be filed at the office of the Tri-Basin NRD, ~~1308 2nd St.~~ *1723 N. Burlington St.*, Holdrege, Nebraska, 68949, on complaint forms prepared by said District. Forms shall be made available at such office or at such other office or offices as from time to time the Board of Directors shall designate.

Revise 2.6 as shown:

"Schedule of Compliance - If the alleged violator *named in* a complaint agrees with the findings of an Inspector's report filed under sub-section 2.5, he or she shall submit a schedule of compliance to Tri-Basin NRD for approval by the Board of Directors. The schedule shall provide for the discontinuance and/or non-reoccurrence of the violation. If appropriate, the schedule of compliance shall include the identification and description of all proposed procedures or measures that will be utilized to prevent, control, or abate the problem that is the subject of the complaint."

Section 3 Groundwater Management Area Regulations

Insert the word *"Quality"* into the title of this section.

Revise 3.1.3 as shown:

Phase III Areas - If the average groundwater nitrate content of groundwater samples collected in the present northern Phase II Area (along and adjacent to the Platte River) by NRD personnel does not decline by at least one ppm during a period of four consecutive years prior to November 2005 (fifteen years from the effective date of the Groundwater Management Area rules on November 15, 1990), all townships in Phase II Areas that were designated on November 15, 1989 where average nitrate-nitrogen content of groundwater has not declined by at least one ppm over the last four consecutive years as compared to 1989 average nitrate levels will be declared Phase III Areas regardless of the nitrate level. ~~Townships in~~ Other Phase II Areas will be declared Phase III Areas fifteen years after they are designated Phase II Areas, unless NRD water sampling indicates that the average groundwater nitrate content in those townships have declined by at least one ppm during the preceding four consecutive years ~~in comparison to 1989 average nitrate levels~~. Phase III management areas will be designated only after providing public notice, holding public hearings and receiving public comment.

Section 4 Well Interference

Add new rule 4.2.5:

The board of directors may find it necessary to supersede the well spacing requirements in this section with stricter well spacing requirements to protect groundwater supplies within the district.

Renumber 4.2.5 as 4.2.6 and revise as shown:

The NRD Board of Directors may approve exceptions to the well spacing requirements described in these rules and regulations this section are allowed in cases where landowners are able to negotiate voluntary agreements with any and all neighboring landowners whose existing water wells are within the specified spacing distances of the site of a well to be drilled. Exceptions to such spacing restrictions ~~will~~ also

require approval by the Nebraska Department of Natural Resources.

Section 5 Republican Basin Alluvial Groundwater Use Data Acquisition

Remove this entire section.

Section 6 Republican Basin Groundwater Use Data Acquisition

Delete the words "Republican Basin" in the title of this section.

Revise the entire section as shown:

6 Authority - The Board of Directors of the Tri-Basin Natural Resources District hereby adopts these rules and regulations in accordance with Neb. Rev. Stat. ~~46-656.08 (3)~~ §46-739 (1) (d).

6.1 General - The Board of Directors recognizes the need for improved water use measurement on water wells within the ~~Republican Basin~~ Tri-Basin NRD. Therefore, the Board of Directors requires that owners of eligible water wells install flowmeters in accordance with these rules and regulations for purposes of gathering data on water use from those wells.

6.2 Procedure for identification of eligible water wells - ~~Tri-Basin NRD, in cooperation with the Nebraska Department of Natural Resources, will determine whether or not a well is located within the boundaries of the Republican Basin for purposes of this chapter.~~ Tri-Basin NRD staff will visit each well site to determine whether the well location corresponds to the location listed on the well registration. The well location coordinates will be measured using a surveying device, Global Positioning system locating device, or other device of comparable accuracy. If a well location varies from the location recorded in the well registration, this information will be provided to the Nebraska Department of Natural Resources.

6.2.1 ~~Only~~ Non-domestic wells that are capable of pumping 50 gallons per minute or more *and which are either:*

- a) *located within the Republican River Basin;*
- b) *new or conditional replacement wells permitted anywhere within the district after September 15, 2004; or*
- c) *used in association with an approved groundwater transfer permit* are required to have flowmeters. *In the case of Republican Basin wells, each well registration will be examined to determine, if possible, the pumping rates. If the pumping rate cannot be determined from the registration, Tri-Basin NRD personnel will visit the well site and measure the pumping rate with a portable flowmeter.*

6.2.2 Notice will be sent to the owner or owners of each eligible well, notifying them of said classification ~~of a Republican Basin well~~ *as an eligible well* subject to these rules and regulations.

6.2.3 All wells identified as eligible wells ~~in the Republican Basin~~ within Tri-Basin Natural Resources District are subject to the provisions of this section *unless a landowner makes a request in writing for the NRD Board of Directors grant an exception to the requirements of this section.* The NRD Board of Directors may grant conditional or unconditional exceptions to some or all of the requirements of this section under one or more of the following circumstances:

~~6.2.3.1 A well is classified as inactive or decommissioned by the Nebraska Department of Natural Resources,~~

6.2.3.1 NRD staff determine that a well is used primarily for domestic purposes or is not capable of pumping 50 gallons per minute or more or

6.2.3.2 NRD staff determine that a well irrigates less than 15 total acres of cropland.

6.2.4 Any exceptions to the provisions of this section granted by the NRD Board of Directors in accordance with rule 6.3.3 will be revoked when the circumstances

that justified granting the exception no longer exist. When an exception to this section is revoked, the landowner must immediately install flowmeters on all wells that were the object of such exception in compliance with the provisions of this section.

- 6.3 Installation of flowmeters - all active eligible water wells ~~within the Republican River Basin~~ within the boundaries of Tri-Basin NRD shall have flowmeters installed and operational ~~within the Republican Basin~~ *whenever eligible wells are in use.*
- ~~6.3.1 Landowners will install flowmeters on half of their wells in Installation Years 1 and 2.~~
- ~~6.3.2 Landowners will install flowmeters on the remaining half of their wells in Installation Years 2 and 3.~~
- 6.4 Enforcement- Owners of active eligible ~~Republican Basin~~ water wells who do not install flowmeters ~~the dates set forth in sub-section 6.4~~ *and maintain them in operational condition* will be considered to be in violation of the Tri-Basin NRD's Rules and Regulations.
- 6.4.1 The Tri-Basin NRD reserves the right to seek cease and desist orders against owners of wells which do not have flowmeters installed ~~in accordance with the above schedule,~~ to prevent them from using ~~said any wells under their ownership~~ until flowmeters are in place and operational *on all wells under their ownership.*
- 6.4.2 One flowmeter may be utilized to measure water flow from multiple eligible wells, if said flowmeter can be installed in compliance with and conformance to all the specifications and requirements listed in these rules and regulations.
- 6.5 Flowmeter specifications and requirements- All flowmeters installed for purposes of compliance with these rules and regulations must meet or exceed the following specifications and requirements.
- 6.5.1 All flowmeters will be accurate within two percentage points, plus or minus, for every acre-inch (27,154.25 gallons) recorded by the flowmeter as determined by the NRD.
- 6.5.2 All flowmeters used on eligible ~~Republican Basin~~ water wells must have a clearly visible and readable, non-resettable, totalizing counter that records water used in units of gallons or acre-inches. All flowmeters must also have a clearly visible and readable analog or digital display that provides a real time reading of the rate of flow of water through the flowmeter.
- 6.5.3 All flowmeters used on eligible water wells must be installed in accordance with all applicable manufacturers' specifications.
- 6.5.4 All flowmeters used on eligible water wells must be installed in such a way that there will be a full pipe flow of water at all times during normal operation of the well.
- 6.5.5 All flowmeters used on eligible water wells must conform to the American Water Works Association's standard number C700-90 and/or applicable successors.
- 6.5.6 All flowmeters will measure the entire amount of water pumped by a well or series of wells.
- 6.6 Flowmeter readings, inspections and maintenance - Owners of eligible ~~Republican Basin~~ wells shall report water use data to the district in a format specified by the district no later than December 31 of each year. Owners of eligible ~~Republican Basin~~ wells shall allow Tri-Basin NRD personnel access to the well and flowmeter at any reasonable time.
- 6.6.1 Tri-Basin NRD may, from time to time, require owners of eligible wells to provide information about water use and ~~for~~ energy consumption of eligible wells.
- 6.6.2 Landowners shall be responsible to insure that flowmeters are fully functional, properly maintained and operational when wells are in use.
- 6.7 Damage to or tampering with flowmeters. - It shall be a violation of these rules and regulations for anyone to intentionally damage, alter, obstruct, tamper, re-set or otherwise modify a flowmeter on an eligible well *in such a way that its capability to measure water flow is reduced or impaired.*
- 6.7.1 Anyone who unintentionally damages a flowmeter, or who discovers that a

flowmeter is malfunctioning or inoperable, shall report said condition to the office of Tri-Basin NRD at Holdrege, Nebraska within 72 hours of said damage or discovery.

Section 7 Groundwater Transfers

Revise 7.1.2 as shown:

In those instances where groundwater will be transported off overlying land using surface water delivery systems or natural streams or where surface water and groundwater will become commingled as a result of a groundwater transfer, said transfer permit will be valid ~~for a period of one year after the date of issuance~~ *until December 31 of the year in which it is issued.*

Revise 7.2.1 as shown:

Anyone seeking a permit to transfer groundwater out of the district will be required to offset water withdrawals associated with the permit by reducing existing groundwater or surface water uses in the same river basin in which the proposed withdrawal will occur in an amount equivalent to the annual volume of the proposed withdrawal. The applicant must provide information to the district specifying how, when and where the new depletion to groundwater supplies proposed in the permit application will be offset. The board reserves the right to place additional restrictions on the location, timing, rate and volume of groundwater withdrawals and associated offsets for those withdrawals. The board also reserves the right to restrict the timing and rate of discharges of *groundwater pumped* to streams or other water bodies within the NRD.

Revise 7.9 as shown:

Re-use of groundwater shall not constitute a groundwater transfer unless such re-use is specifically determined to be so ~~in a particular situation~~ by the Tri-Basin NRD Board of Directors.

Section 8 Quantity Groundwater Management Area Rules and Regulations

Revise 8.3.1.1 as shown:

"Any water user who, after September 15, 2004, wishes to construct a new well or wells, replace an existing well or use an existing well or series of interconnected existing wells with the intention of removing water from the district or consuming more than ~~300~~ 76 acre-feet of groundwater within a single parcel of land containing 320 acres or less for purposes other than irrigation of crops must apply to the NRD for a high volume groundwater consumption permit. A high volume groundwater consumption permit must be reviewed by the NRD board of directors, who may place conditions and limitations upon the operation of such wells they determine to be necessary to protect groundwater supplies, prevent groundwater runoff problems or prevent depletions to streamflows. Such conditions and limitations may include, but are not limited to: a) requirements to offset depletions to streamflows, b) limitations on the rate or volume of groundwater pumping, c) reporting pumping to the NRD on a periodic basis, d) allowing NRD personnel periodic access to the well site for inspection of the well and flowmeter, e) limitations on the location, rate and manner of discharge of groundwater after use in an industrial facility and f) constructing and maintaining groundwater observation wells in the vicinity of the production well, at locations to be determined by the NRD."

Section 9 Integrated Groundwater Management Area Rules and Regulations

Revise 9.2 as shown:

~~"Limitations on Irrigated Acres-~~ Landowners shall not use integrated groundwater resources to develop any additional irrigated acres in an Integrated GMA or transfer groundwater out of an Integrated GMA, ~~after the effective date of these rules unless~~ *except that the NRD board of Directors may approve requests by landowners to reassign certified irrigated acres from location to another, if landowners agree*

~~to convert an equal number of existing NRD-certified irrigated acres within the Integrated GMA to a non-irrigated land use, as provided for in Section 10, Irrigated Land Certification. Landowners shall also notify the county assessor of such conversion.~~

Revise 9.3 as shown and add sub-sections 9.3.1, 9.3.2 and 9.3.3:

“Well Construction Permits – *The Board of Directors of Tri-Basin NRD declare a moratorium on drilling new wells for the purpose of developing additional irrigated land or initiating new industrial or commercial water uses within the district. The district will only issue replacement or conditional replacement well construction permits to landowners in the Integrated GMA for the purpose of irrigating NRD-certified irrigated acres.”*

9.3.1 The NRD Board of Directors may grant variances to the moratorium on drilling new wells for the purpose of developing additional irrigated land or initiating new industrial or commercial water uses within the district if applicants can demonstrate that they will completely offset any depletions to surface water appropriations and water wells constructed in aquifers dependent upon recharge from streamflow.

9.3.2 The NRD Board of Directors may determine that it is necessary to allocate groundwater pumping, as described in sub-sections 8.5.2 through 8.5.4 of section eight of these rules, or that it is necessary to require landowners to reduce irrigated acres, as allowed by NERRS 46-739 (1) (e), to prevent depletions to surface water appropriations and water wells constructed in aquifers dependent upon recharge from streamflow.

9.3.3 The NRD Board of Directors hereby create a streamflow depletion offset account. The NRD board may allow landowners to make payments into this account in lieu of providing offsets for depletions to streamflows. The NRD Board of Directors may also choose to grant exemptions to landowners from compliance with rule 9.3.2 in exchange for said landowners agreeing to make contributions to the streamflow depletion offset account which the NRD Board of Directors determine are adequate to enable the NRD to purchase water of sufficient quantity and available in sufficient amounts to offset depletions to surface water appropriations and water wells constructed in aquifers dependent upon recharge from streamflow resulting from groundwater use on property owned by said landowners.

Section 10 Irrigated Land Certification

Revise the entire section as shown:

10. **General** - Tri-Basin NRD staff will gather data to locate and enumerate cropland, hayland and pasture land within district boundaries that is irrigated from groundwater or surface water resources.

10.1. ~~All irrigated acres parcels or portions of parcels that are were listed classified as irrigated cropland or irrigated grassland on the 2004-05 county property tax rolls, or that can be shown to have been farmed, grazed or hayed as irrigated land during or after 1997 and before the effective date of designation of an area as an Integrated Management Area or a Phase II Quantity Groundwater Management Area will be certified. The NRD Board of Directors may also certify irrigated acres developed within the district after the effective date of designation of an area as an Integrated Management Area or a Phase II Quantity Groundwater Management Area, as described below.~~

10.1.1 The number of certified irrigated acres in a parcel cannot exceed the number of actual acres in said parcel.

10.2. Procedure to Certify Irrigated Acres. County property tax rolls will be used as the primary data source of information for classification of irrigated land that the district will use to certify irrigated acres district-wide.

10.2.1 Any landowner who wishes to get NRD certification to use groundwater to irrigate land within ~~integrated groundwater management area, a Phase II Groundwater Quantity Management Area~~ the district that was irrigated for the first time during or after 2004 must be able to demonstrate that a crop was irrigated on that parcel of land before the effective date of the Integrated GMA. Classification of land as irrigated 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 shall suffice to demonstrate that a parcel of land is certifiable for groundwater irrigation for purposes of

these rules.

10.2.2 If a parcel of land or portion thereof is not classified as irrigated 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 as information to justify revision of NRD irrigated acre certifications.

10.2.3 Land within an integrated groundwater management area or a phase II quantity groundwater management area that is not certified by the NRD, may not be irrigated using groundwater except to the extent that *the board approves applications by landowners to reassign certified irrigated acres by ceasing irrigation on land previously certified by the NRD for groundwater irrigation. The amount of land that needs to be returned to a dryland land use will be determined by Tri-Basin NRD staff using maps or computer programs approved by the NRD Board of Directors and the NE Department of Natural Resources. These maps or computer programs will account for depletions to surface water appropriations and water wells constructed in aquifers dependent upon recharge from streamflow resulting from groundwater use on property owned by said landowners. In all instances, applicants will be required to permanently cease irrigation on at least one acre of certified irrigated land, in return for approval to develop for irrigation one acre of previously non-certified land.*

10.3. ~~Procedure to change location of~~ *reassign* NRD-certified irrigated acres. Landowners may request that the NRD Board of Directors authorize changes in the location or number of certified irrigated acres. *Requests to reassign certified irrigated acres from one parcel to another must be accompanied by a title search completed by an attorney or registered abstractor that identifies all lienholders who have an interest in the parcel from which certified irrigated land will be reassigned. The NRD will charge a non-refundable fee of \$100 to cover the costs incurred processing each application for reassignment of certified irrigated land. If the NRD Board of Directors approve a request to reassign certified irrigated acres, NRD staff will file an "Instrument of Water Transfer" that will be recorded by the county clerk, in connection with the parcel containing the irrigated acres that are to be transferred.* The NRD Board of Directors will reject a request to reassign certified irrigated acres if one or more of the following circumstances exist:

10.3.1 A landowner request would result in ~~reassigning location of~~ certified irrigated acres from a Phase I Quantity GMA area to a Phase II or Phase III Quantity GMA area or from an area not subject to integrated management rules to an area within the Integrated GMA.

10.3.2 A landowner request would result in reassigning irrigated acres from ~~a portion of the district that is not subject to Integrated Water Management Area rules to~~ *this district to another natural resources district, except that the NRD Board of Directors may approve requests to reassign irrigated acres outside of the boundaries of Tri-Basin NRD, with the concurrence of the neighboring affected NRD.*

10.3.3. A landowner request would result in *reassigning* certified irrigated acres from one river basin to another river basin.

10.3.4. A landowner request would add irrigated acres in an Integrated Management Area or a Phase II or Phase III Groundwater Quantity Management Area without *ceasing irrigation on a sufficient number of acres in the parcel* within which the certified acres were originally located.

10.3.5. A landowner fails to report changes in land use on all tracts that are involved in *reassignment* of irrigated acres to the County Assessor.

10.3.6. A citizen or NRD staff provide information to the NRD Board of Directors indicating that adding irrigated acres in a particular area is likely to deplete groundwater or surface water in excess of the maximum allowable depletion or is otherwise contrary to NRD rules or state or federal laws.

10.3.7. *A request would result in reassignment of certified irrigated acres from a parcel of land which is irrigated either with surface water alone, or with a combination*

of surface water and groundwater, to a parcel of land irrigated using groundwater as the sole source of water supply.

10.3.8. A landowner does not secure consent for a request to reassign certified irrigated acres from all affected lienholders.

10.3.9. A request to reassign certified irrigated acres would result in reassigning irrigated acres from another NRD into this NRD, unless the NRD Board of Directors determine that such a request would not lead to any of the circumstances described in rules 10.3.1 through 10.3.8.

10.4 *Reassignments of certified irrigated acres are considered completed the day that they are approved by the NRD board.*

10.5 Procedure to Withdraw NRD Certification of Irrigated Acres. The NRD Board of Directors may withdraw certification of irrigated acres under the following circumstances:

10.5.1 The County Assessor of the county in which the certified irrigated acres are located changes the land use classification of the certified acres from an irrigated to a non-irrigated land use class.

10.5.2 A landowner petitions or asks the County Assessor of the county in which the certified irrigated acres are located, requesting changes in land use classification of the certified acres from an irrigated to a non-irrigated land use class.

10.5.3 A landowner is not in compliance with Tri-Basin NRD Rules and Regulations.

10.6 Procedure to Certify Irrigated Land Enrolled in Conservation Programs. Landowners who, before September 15, 2004, voluntarily enter into contracts, agreements or easements as part of federal, state, local or private conservation programs that involve temporary cessation of irrigation on land with a previous history of irrigated crop production, may apply to the NRD for certification of those acres when those contracts, agreements or easements *expire or* are terminated.

10.6.1 Such application for certification will be necessary only in those instances where land was re-classified by the county tax assessor from an irrigated to a non-irrigated property tax valuation class.

10.6.2 In order to get NRD certification for land that was not classified as irrigated land on the 2004-05 property tax rolls due to enrollment in a conservation program, landowners must agree to ask the county assessor to classify as irrigated land any acres for which they seek certification.

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.tribasinnr.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 October 23rd, 2009.

Pursuant to the majority vote of the Tri-Basin NRD Board of Directors on September 8, 2009, the revised Tri-Basin Natural Resources District Rules and Regulations for Management and Protection of Land and Water Resources shall become effective October 23rd, 2009.

For the Tri-Basin Natural Resources District

Todd Garrelts, Chairman

Tuesday, September 8, 2009