

Overview and Summary of NRD Certified Irrigated Acre Transfer Policies

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(Planning document-for internal TBNRD use only)

Introduction: I reviewed certified acre transfer policies at nine NRDs across the state, for the benefit of the Tri-Basin NRD board, at the request of director Dave Nelson. For the summary below, I reviewed the rules of other NRDs on-line. I also talked to NRD staff to discuss details.

Many districts' rules have provisions very similar to, or exactly the same as Tri-Basin's, such as requiring landowners to contact their county assessor after a transfer is completed to verify the current location of irrigated acres (Lower Republican NRD is the only exception to this requirement). No district allows transfers between river basins. Many districts also restrict transfers between sub-basins or mapped-out sub-areas. Central Platte is the only district that allows transfers that "grow" more acres. Other NRDs have a maximum allowable rate of one acre at the point of origin to one acre at the destination, like Tri-Basin, to insure that groundwater consumption doesn't increase. I didn't include those similarities.

I looked for differences and unique features in other districts' rules. Nonetheless, these brief summaries do not adequately describe the irrigated acre certification rules of the other NRDs listed, some of which are very intricate. We will want to contact the relevant districts for additional details if we want to consider revising our rules to incorporate their rules provisions.

Several districts have circumstances that vary from ours. They fall into three basic categories: 1) Moratoria on new well drilling and development of additional irrigated acres district-wide and allocations that limit pumping (Lower, Middle and Upper Republican, North and South Platte NRDs); 2) Moratoria on new well drilling and development of additional irrigated acres district-wide but no pumping allocations (Twin Platte and Central Platte NRDs); or 3) Moratoria on new well drilling and development of additional irrigated acres either district-wide or in parts of the district, no allocations, but some limited development of additional irrigated acres is possible with district permission, as allowed in LB 483 from 2009 (Lower and Upper Elkhorn, Upper and Lower Loup NRDs). Tri-Basin NRD falls into the second category described above. One district (Upper Niobrara-White NRD) has a full range of management situations described above. There is a district-wide moratorium on drilling new irrigation wells. Flowmeters are required on all wells. Some "sub-areas" are under a moratorium on new acres, development of additional acres using existing wells is allowed in other sub-areas, while still other sub-areas have restrictions on new development and allocations.

The NRDs listed below have rules that were developed under a broad range of circumstances, so they demonstrate a wide variety of approaches to the same issue. Five other districts (Upper Big Blue, Lower and Middle Niobrara, and Lower and Upper

Elkhorn) certify acres and have some transfer rules, but my brief review of their rules didn't identify any unique features beyond what is already listed. I will start by listing the main features of Tri-Basin's certified acre transfer rules, then list the highlights of other districts' rules, focusing on how they differ from our own rules.

Tri-Basin NRD (Full TBNRD certified acre transfer rules are attached as Appendix A)

- Certified acres can be transferred from the overappropriated apportionment of the Platte Basin (West of Highway 183) to the fully appropriated area, but not vice versa. Acres can be transferred in any direction within these two management areas.
- Certified acres can be transferred anywhere within the Republican and Little Blue Basins within the district, but inter-basin transfers are prohibited.
- Certified acre transfers are pro-rated to maintain equivalent depletions to the Platte (acres reduced as they are transferred from lower to higher depletion areas). Transfers from higher to lower depletion areas are at a 1:1 rate (preventing an increase in consumptive irrigation water use).
- Transfers within the Republican and Little Blue Basins are always made at a 1:1 rate. If the NRD board approves the current draft of the joint Republican Basin IMP, however, transfers from low to higher depletion areas in the Republican Basin will be pro-rated, as they are in the Platte.
- Certified acres can be transferred out of phase 2 and phase 3 groundwater quantity management areas, but they can't be transferred into those areas.
- Certified acres originating in commingled or surface water only parcels can only be transferred to other commingled parcels.
- Three acre minimum transfer amount.
- \$100 certified acre transfer permit application fee.

Central Platte NRD

- If acres are transferred from a low to a higher depletion area, the number of acres that can be irrigated at the point of destination is reduced using a computer program that adjusts for the differences in depletion and soil types at the origin and destination. If acres are transferred from a higher to lower depletion area, the same computer program is used, so an increase in irrigable acres can result at the destination, as long as depletions to streamflows of the Platte or its tributaries aren't increased.
- Certified acres can be transferred North, South or East any distance within the NRD, but only one mile west (upstream) of the point of origin.
- Certified acres can be transferred between Class I, Class II and Class III land. Acres can only be transferred to Class IV lands if the destination property has a prior history of crop production, or if the originating property has poorer soils. Certified acres can only be transferred to Class VI soils if the destination parcel will remain in grass.
- \$325 certified acre transfer permit application fee on all requests to transfer more than four acres. This fee includes the cost of a title search, which is performed by an attorney under contract for the district.

Twin Platte NRD

- No increases in depletions to the Platte or consumptive water use can result from a transfer. If acres are transferred to a higher depletion area, the number of acres that can be irrigated at the point of destination is determined using a computer program that adjusts for the differences in depletion and soil types at the origin and destination, as at Central Platte NRD. If acres are transferred from a higher to lower depletion area, the transfers are limited to equivalent consumptive use, so one-for-one is the highest possible transfer rate.
- Acres can be transferred East-to-West within management sub areas, but transfers aren't allowed upstream across "flow lines", which are lines of groundwater movement downstream from major surface water canal diversions.
- Irrigated acre transfers are prohibited out of city limits or extraterritorial municipal zoning areas (a field is within two miles of city limits, or within one mile of second class cities and villages). The purpose of this restriction is to protect NRD offsets resulting from future municipal development, as provided for in LB 1226 (2007).
- New irrigated land can only be developed on Class V or higher land if these land classes comprise less than 10% of the entire field. If class V or higher land comprises more than 10% of a field, then irrigated acres can be transferred to enable a center pivot to pass over the highly erodible land, but the erodible land must remain in grass.
- \$200 certified acre transfer permit application fee.

South Platte NRD

- Transfers only allowed if the tract has a positive allocation.
- Transfers can only take place after the tract has gone through one full allocation period.
- Certified acres can't be transferred into or out of a municipal zoning jurisdiction (similar to Twin Platte NRD rules, see above).
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- No transfers are allowed across county lines or sub-area boundaries.
- Within sub-areas and counties, transfers can be made up to six miles in any direction. This is a version of the "floating township" rule originated by Upper Republican NRD.
- Commingled acres can only be transferred to other commingled parcels, unless the landowner cancels their surface water right.
- \$200 certified acre transfer permit application fee.
- In order for 100% of a tract to be transferred, at least 50% of the total allocation for the previous allocation period must have been used, if less than 50% was used then the transfer is prorated accordingly.

North Platte NRD

- Transfers from overappropriated to fully appropriated areas are allowed. Transfers from the fully appropriated to overappropriated areas are allowed only if the acres in the new location are irrigated from the original well.
- No fee is charged for a certified acre transfer permit application. If a landowner wants to transfer more than 250 acre-feet of allocation, a hydrologic study is required. A \$500 fee is charged for the study.
- Anyone who wants to formally object to a transfer must pay a \$50 fee.

Lower Republican NRD

- Transfers are only allowed to contiguous (touching) fields under the same ownership.
- Landowners aren't required to contact county assessor to notify them of a change in location of certified acres.
- No fee is charged for certified acre transfer permit applications.

Middle Republican NRD

- Certified acre transfer rules are similar to Tri-Basin's, except they have rules related to allocations.
- Carry-over allocations are lost when certified acres are transferred.
- Transferring acres are reduced proportional to increases in stream depletions.
- All transfers are levied a 10% "conservation fee" for the purpose of reducing overall irrigated acres in the district.
- \$100 certified acre transfer permit application fee.

Upper Republican NRD

- Transfers are allowed up to six miles in any direction from the originating parcel ("Floating Township" rule).
- Most transfers (referred to in their rules as "expedited transfers") are approved only if recommended for approval by the manager and at least two directors.
- Transfers don't occur very often anymore because most landowners utilize "pooling agreements" that allow them to combine pumping from multiple fields. With a pooling agreement, a landowner is free to irrigate any parcel of land as he wishes, as long as total pumping doesn't exceed the amount allocated for all pooled certified irrigated acres.
- Carryover allocation limited to three year's unused past allocation for any certified acres transferred.
- \$10 certified acre transfer permit application fee, plus county clerk filing fees (\$5.50 per page).

Lower Loup NRD

- Transfers are only allowed in a downstream direction.
- Transfers can't be made across sub-basin boundaries (e.g., no transfers from the North Loup to the Middle Loup basins).
- Transfers are pro-rated based on SDF with no increase allowed.

- The NRD board allocates a limited number of new acres (1500-3000) annually district-wide for new development, as allowed by LB 483 (2009).
- Distributions of new acres are determined by ranking applications. Ranking factors include:
 1. Stream depletion factor at proposed new development parcel;
 2. Concentration of existing irrigated lands in the surrounding area;
 3. Land class (erodibility) at site of new development;
 4. Number of acres requested (bonus points are awarded for requests asking for fewer than 25 acres and fewer than 10 acres).
- \$150 certified acre transfer permit application fee.

Upper Niobrara-White NRD

- Transfers can be made in any direction within designated sub-areas. Transfers from one sub-area to another are prohibited. Transfers within a sub-area must occur within the same section or three government survey sections that are contiguous (essentially limiting transfers to two-miles).
- All transfers are made at a 1:1 rate (no increase in consumptive irrigation water use).
- Certified acres from commingled parcels can only be transferred to other commingled parcels.
- Certified acres can't exceed actual acres in a parcel (this prevents "stacking" allocations to circumvent pumping limits).
- \$100 certified acre transfer permit application fee.

Appendix A
Tri-Basin NRD Rules regulating certified irrigated acre transfers
(approved Sept. 8, 2009)

- 10.3. Procedure to 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 requests to reassign certified irrigated acres if one or more of the following circumstances exist:
- 10.3.1. A landowner request would result in reassigning 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 this district to another natural resources district, except that the 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 to a non-irrigated land use.
 - 10.3.5. A landowner fails to report changes in land use on all parcels 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 which is irrigated with 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 complete on the day that they are approved by the NRD board of directors.