

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 thoroughly explain 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 and Republican Rivers and their tributaries (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 Little Blue Basin are always made at a 1:1 rate.
- 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 from commingled or surface water only parcels can only be transferred to other commingled parcels.
- Three acres is the 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

(Section 10 of TBNRD's rules describes certification of irrigated land and other water uses, Procedures for transfers of certified irrigated acres are mostly explained in rules 10.5, 10.6 and sub-sections. Changes are proposed to rules regulating expansion of livestock water consumption and conversion of certified irrigated acres for that purpose (Rules 10.2.2.2, 10.2.2.3, 10.3 and sub-sections and 10.4 and sub-sections). These changes will be explained during a public hearing that will be scheduled later in 2021.)

SECTION 10

IRRIGATED LAND CERTIFICATION

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. Criteria for Certification of Irrigated Land. All Parcels or portions of Parcels that were 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 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 for classification of irrigated land that the District will use to certify irrigated acres District-wide. Tri-Basin NRD recognizes that county assessors periodically re-measure Parcels, and that such re-measurements may result in changes in assessed irrigated acres. Tri-Basin NRD will accept revisions to certified irrigated acres totaling four acres or less per parcel without further review. If an assessor's re-measurement results in an increase of more than four irrigated acres per parcel, NRD staff will also re-measure the parcel to confirm the assessor's re-measurement result. If that result is confirmed, the affected landowner will be required to either: A. reduce irrigated acres during the next calendar year to the number certified by the NRD, or B. provide independently verified documentary proof that the acres in question were irrigated during the period 1997-2004 and request that the NRD Board approve a revision of certified irrigated acres, as described in Rule 10.2.2 below.

10.2.1. Any Landowner who wishes to get NRD certification to use Groundwater to irrigate land within 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 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.

10.2.2.1. Any land not certified for irrigation by Tri-Basin NRD before December 31, 2011, but which has a history of irrigation, will only be certified by the Tri-Basin NRD Board of Directors if the Landowner requesting certification agrees to pay the county assessor in the county in which the land is located the equivalent of the difference between property taxes on irrigated cropland and property taxes on the land use which the land was actually classified for property tax purposes during the three years immediately preceding certification.

10.2.2.2. Landowners may request that the NRD Board of Directors certify as irrigated cropland land that was used for feeding livestock of any kind during the period 1997-2004. The rate of conversion from livestock feeding use to irrigated cropland will be calculated by NRD staff using data for water consumption by livestock that is agreed upon by Tri-Basin NRD and the NE Department of Natural Resources. The current agreed-upon average daily water consumption rates for common livestock are as follows: Cattle=seven gallons per animal per day, Hogs= four gallons per animal per day, Horses= 12 gallons per animal per day, Poultry= 12 gallons per 100 birds per day.

10.2.2.3. Anyone who wants to develop a new animal feeding operation or expand an existing animal feeding operation must 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

10.2.3. Land within an integrated Groundwater management area or a phase II or Phase III 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, procedures, calculations or computer programs approved by the NRD Board of Directors and the NE Department of Natural Resources. These maps, procedures, calculations 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.

10.2.4. Land that has been certified by the NRD for groundwater irrigation will be periodically reviewed by NRD staff to check the accuracy of NRD records.

10.2.4.1. Land that NRD staff determine is no longer irrigable due to a change in land use or loss of a water source will be recommended to the NRD Board of Directors for de-certification as irrigated land.

10.2.4.2. If land is de-certified for irrigation, the de-certification will take effect within six months or on January 1 of the following year, whichever is later, unless the acres subject to cancellation are transferred to a different Parcel before that date.

10.3. Procedure to certify existing Environmental, Commercial, non-Irrigation Agricultural and Industrial Groundwater Uses. Environmental, commercial and industrial groundwater uses that are supplied by non-municipal Water Wells and that are in place before April 1, 2013 will be certified by Tri-Basin NRD. Certification will specify the baseline amount of water pumped annually by these users. These amounts will be approved by the NRD Board of Directors.

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.

10.3.1.2. Baseline annual pumping amounts for environmental uses will be certified using one of the following methods:

10.3.1.2.1. For wells used to augment water supplies in wetlands the baseline annual pumping amounts will be determined by tabulating all land that can receive water from registered wells under ownership of the environmental user. The number of acres will then be multiplied by nine acre-inches.

10.3.1.2.2. For wells used to supply fish hatcheries, aquaculture operations or augment streamflows, the baseline annual pumping amount will be determined by multiplying the daily rated pumping capacity of registered wells under ownership of the environmental user by 240 days.

10.3.2. Water Wells or interconnected series of wells that have a pumping capacity greater than 50 gallons per minute which supply environmental, commercial non-irrigation agricultural and industrial Groundwater uses will be considered Eligible Wells as defined in Section One of these rules and must comply with requirements of Section Six of these rules within one year of certification.

10.4. Procedure to Certify New Environmental, Commercial, non-Irrigation Agricultural and Industrial Groundwater Uses. 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 be certified by the NRD Board of Directors before they can initiate such new uses.

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.

10.5. 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 (transfer) certified irrigated acres from one Parcel to another must be accompanied by a title search report or title insurance policy 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. Such title search report or title insurance policy must have been completed less than 90 days prior to submission of an application to reassign certified irrigated acres. The NRD will charge a non-refundable fee of \$100 to cover the costs incurred processing each application for reassignment of certified irrigated land. The NRD Board of Directors will reject requests to reassign certified irrigated acres if one or more of the following circumstances exist:

10.5.1. 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.

10.5.2. 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.

10.5.3. A Landowner request would result in reassigning certified irrigated acres from one river basin to another river basin. 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 or other water uses that consume water at a rate that is greater than the amount of water consumed by non-irrigated grass or crops on a sufficient number of acres in the Parcel within which the certified acres were originally located to a non-irrigated land use.

10.5.4. 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, will conflict with the District's requirements for implementation of joint integrated management plans or is otherwise contrary to NRD rules or state or federal laws.

10.5.5. 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, unless the Parcel contains more certified irrigated acres than it does acres authorized for irrigation with surface water. In such a situation, the certified irrigated acres that exceed the surface water

right acres may be reassigned to a Parcel that has Groundwater as a sole source of water supply.

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

10.5.7. A request would result in reassignment of fewer than three certified irrigated acres without prior approval of the NRD Board of Directors.

10.5.8. A request would result in reassignment of certified irrigated acres onto a Parcel or portion of a Parcel the land area of which is composed of more than ten percent highly erodible soils, as determined by the USDA Natural Resources Conservation Service, and such transfer has not been reviewed and a recommendation on whether to approve such transfer made by the NRD Board of Directors Planning Committee.

10.5.9. 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 10.5.1 through 10.5.10.

10.6. Procedure for completing approved reassignments of Certified Irrigated Acres. 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 the county in which the originating Parcel is located.

10.6.1. Reassignments of certified irrigated acres are considered complete on the day that they are approved by the NRD Board of directors, except that a Landowner cannot irrigate two Parcels with the same certified acres during the same Irrigation Season.

10.6.2. The NRD Board of Directors may rescind approval of a completed reassignment of certified irrigated acres if a Landowner fails to report changes in land use on all Parcels that are involved in reassignment of irrigated acres to the County Assessor within 90 days of approval of said reassignment.

10.7. When irrigated acres are reassigned in an area where water use is allocated, the Allocation of the destination parcel will be extrapolated and applied to the reassigned acres. The Allocation of the originating parcel will be reduced in proportion to the reduction of certified irrigated acres.

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

10.8.1. 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.

10.8.2. 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.

10.8.3. A Landowner is not in compliance with Tri-Basin NRD Rules and Regulations, NRD Board policies or any agreed-to conditions listed on approved NRD Permits.

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.

10.9. 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 are terminated.

10.9.1. 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.

10.9.2. In order to obtain 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.