

For hearing use – January 13, 2009

CHAPTER 5 – MANAGEMENT OF USES

RULE 5-1 TRANSFERS- GENERAL and PERMIT REQUIREMENTS

- 5-1.1 Any person who intends to withdraw ground water and (a) transfer that ground water off the overlying land which he or she owns or controls or (b) otherwise change the location of use of ground water shall, before making such transfer, apply for a transfer permit on forms provided by the District and as required by statute. (11/13/07)
- 5-1.2 Requests for a transfer that require a permit which falls under the authority of the Nebraska Department of Natural Resources, including the Municipal and Rural Domestic Ground Water Transfers Permit Act and the Industrial Ground Water Regulatory Act, will not be considered for action by the district until such time as the permits are approved by NDNR. (11/13/07)
- 5-1.3 The MRNRD shall approve the withdrawal and transport of ground water when a public water supplier providing water for municipal purposes receives a permit from the Nebraska Department of Natural Resources pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act.
- 5-1.4 The applicant shall be required to provide access to his or her property at reasonable times for purposes of inspection by officials of the District.
- 5-1.5 All applications for a transfer permit under the authority of the district shall be made on forms provided by the district and shall be approved, denied or conditioned by the Board. (11/13/07)
- 5-1.6 The application for a transfer permit shall be denied or conditioned to the extent that it is necessary to (1) ensure the consistency of the transfer with the purpose or purposes for which the management area was designated, (2) prevent adverse effects on other ground water users or on surface water appropriators, (3) maintain compliance with the Republican River Compact, and (4) otherwise protect the public interest and prevent detriment to the public welfare.
- 5-1.7 The application for a transfer permit also shall be denied if (1) the location or operation of the proposed water well or other works would conflict with any regulations or controls adopted by the District or (2) the proposed use would not be a beneficial use.
- 5-1.8 The District may limit the allocation upon transfer of use if the use is between sub areas with different allocations.
- 5-1.9 The District may deny or condition a request for transfer based on the rate of decline in the area into which the transfer will be used. *The reference for rate of decline shall include, but not be limited to, Ground Water Level Change maps from the Conservation and Survey Division of the University of Nebraska and District Records.* (10/03/2006)
- 5-1.10 The District may limit the allocation to the consumptive use associated with the certified use if the transfer is to a different preference use.

- 5-1.11 The issuance, by the District, of a transfer permit shall not vest in any person the right to violate any District rule, regulation, or control in effect on the date of issuance of the permit or to violate any rule, regulation, or control properly adopted after such date.
- 5-1.12 The issuance, by the District, of a transfer permit shall not vest in any person the right to violate any statute, state agency or other jurisdictional agency's rule, regulation, or control in effect on the date of issuance of the permit or to violate any rule, regulation, or control properly adopted after such date. It is the responsibility of the applicant to ensure compliance with other rules and regulations.
- 5-1.13 *All requests for a transfer shall include a \$100.00 nonrefundable fee. The application for a Permanent Transfer, involving a transfer well, shall include an additional \$50.00 for an Application to Construct a Water Well.*
- 5-1.14 *A completed application shall be provided to the board of directors for initial review at the next regularly scheduled board meeting. An incomplete or defective application shall be returned within ten business days to the applicant for correction. No action will be taken on that application until final review at the next regularly scheduled board meeting.*
- 5-1.15 *An application requiring a variance hearing shall not be considered complete until such time as the applicant has received a favorable ruling on their variance.*
- 5-1.16 *Applications shall not be considered complete if fees have not been received or if the application is missing required information or signatures.*
- 5-1.17 *Should additional information be needed between initial review and final review, the district may table the application until such time as the information is received.*
- 5-1.18 *Final review will be given at the next regularly scheduled board meeting following the initial review of the application for a transfer. At final review the District shall approve the application and issue, with or without conditions, or deny the application.*
- 5-1.19 *All transfers of use or permanent transfers shall be reduced by a factor of ten per cent (10%). This reduction shall be made prior to any other reductions as may be applied by computing stream depletion factors or other approved methods. This ten per cent (10%) reduction shall be retained by the district.*
- 5-1.20 *Transfer of use or permanent transfers of any type may not be made into a designated critical unit.*
- 5-1.21 The allocation for any use is associated with the certification of that use. The right to use the allocation shall be surrendered with a transfer of use or a permanent transfer. The new user shall be limited to the quantity of allocation associated with the certified use and shall be subject to the same restrictions on volume of use as the original allocation *or as further limited by the provisions in Rule 5-2.*

- 5-1.22 A portion of the allocation for a municipal use may be transferred to another use. The amount transferred would be deducted from the municipal allocation.
- 5-1.23 The District may deny a request for transfer based on the rate of decline in the area into which the transfer will be used. District statistics and Ground Water Level Change maps from the Conservation and Survey Division of the University of Nebraska may be used for a reference of areas of decline. (10/03/2006)
- 5-1.24 If the transfer is to a different preference of use, the District may limit the allocation to the consumptive use associated with the certified use that is being transferred. (11/13/07)
- 5-1.25 *Only the owner of the land upon which a well is registered, with certified acres and otherwise compliant with district rules and regulations may apply for a transfer of any type.*
- 5-1.26 *Acres enrolled in CREP, CRP, EQIP, prevented planting or otherwise encumbered in a federal or state program that limited the use or availability of their water supplies, may not be considered for transfer.*
- 5-1.27 *Acres with a supplemental well shall not be eligible for transfers as the source unless it can be shown to the satisfaction of the district that no increase in consumptive use will occur as a result of using surface water supplies. The surrender of the surface water right for an irrigation district that may be used by another customer of that irrigation district is not satisfactory.*
- 5-1.28 An application for a permit to transfer shall be made on forms provided by the district and shall contain the following information *and any other information as requested by the district:* (11/13/07)
- 5-1.28.1 The name and mailing address of the well owners and/or landowners for the point of withdrawal and the point of transfer,
 - 5-1.28.2 The point of withdrawal,
 - 5-1.28.3 The point of transfer,
 - 5-1.28.4 The registration number of the water well(s) involved,
 - 5-1.28.5 If for irrigated use, the certified acres of the water well(s) involved,
 - 5-1.28.6 The capacity of the well from which the transfer is made,
 - 5-1.28.7 *The application must contain the original signature of the landowners involved in the transfer.*
 - 5-1.28.8 Any other factors consistent with the purposes of this section that the District deems relevant to protect the health, safety, and/or welfare of the District and its citizens.

RULE 5-2 TRANSFER- TYPES and PERMIT REQUIREMENTS

- 5-2.1 Transfers out of the District. Any person who desires to withdraw ground water from wells located within the District and transport that ground water out of the District for use elsewhere in the State may do so after obtaining a transfer permit. Use of the withdrawn water must be approved by the District within which the water will be used. Ground water shall not be

transferred or transported to lands outside of the boundaries of the Republican River Basin as defined in the Republican River Compact.

5-2.2 Transfers into the District. Ground water withdrawn outside the District shall not be transported for use inside the District unless the District from which the ground water is withdrawn approves the withdrawal and transport in advance. Use of the transported water must be in accordance with these rules.

5-2.3 Transfer out of State. Requests for transfer of ground water out of state pursuant to NRRS Section 46-613.01 shall not be acted upon by the District until such time as the approval or denial, by the Nebraska Department of Natural Resources, of the required transfer permit.

5-2.4 Transfer of Use. A portion, *as further limited by these rules*, of the base allocation may be transferred to another user for the same or another use. Only the accumulated unused portion of the *previous base allocations and the next single year base allocation may be transferred in any given year*. If an allocation had been completely used, no transfer of use would be available until the next allocation period. *Reserve associated with the allocation may not be transferred.* Bonus inches may not be transferred.

(11/13/07)

5-2.4.1 *If the transfer of use is for the entire remaining base allocation, the well from which the use was transferred may only be used if a reserve is available during the period of time covered by the transfer. Otherwise, the well must be configured to prevent the possibility of contamination of the ground water.*

5-2.4.2 *A transfer of use shall be conditioned based on the Stream Depletion Factor using the best information available to the district. A transfer into an area with a higher stream depletion factor than the source of the water shall be reduced by the amount of the difference.*

5-2.4.3 *No more than two approved Transfers of Use, by the transferor, will be allowed during a base allocation period.*

5-2.4.4 *Maximum amount of Transfer of Use during a base allocation period will be the sum of two years base allocation.*

5-2.4.5 *The District may condition the allocation to be transferred, with a transfer of use, if the use is between sub areas with different allocations.*

5-2.4.6 *After January 1, 2008, completed applications in accordance with Rule 5-1, for transfers of use received after October 15th in the final year of an allocation period shall not be accepted.*

(11/13/07)

5-2.5 Permanent Transfer of a Well. A permanent transfer may be accomplished by decommissioning a well or discontinuing its certified use and transferring the right to that use to another owner or new location on property owned by the same landowner. *The new well shall be limited to the remaining base allocation associated with the certified use from the well being replaced and as further limited by 5-2.5 and 5-2.6. The*

provision of 5-1.19 shall not apply to pooled acres transferred by an owner to a new location on their own property. (10/03/2006)

- 5-2.5.1 If the well from which the use is being permanently transferred is part of a series, or a well that is commingled, combined, clustered or joined with other water wells, then only that pro rata portion of the allocation is transferred.
- 5-2.5.2 *The well being transferred must be registered, otherwise compliant with all district rules and regulations and physically capable of supplying water to the acres certified to that well.*
- 5-2.5.3 *Acres must be certified to the well.*
- 5-2.5.4 *The previous water use and the capability of the well shall be determined by the district and may require pumping of the well.*
- 5-2.5.5 *At least one acre certified to the well must be transferred with the well.*
- 5-2.5.6 *All acres transferred with the well shall be taxed as irrigated acres.*
- 5-2.5.7 *Using the best information available to the district, transfers between areas of equal stream depletion factor or to an area of lesser stream depletion factor shall not be conditioned other than by rule 5-1.19.*
- 5-2.5.8 *Transfers to an area of higher stream depletion shall have a reduction factor equal to the difference between the sites.*
- 5-2.5.9 *Each landowner involved in a permanent transfer must certify or recertify their acres accordingly and as limited by any conditions imposed on the transfer.*
- 5-2.6 Permanent Transfer of Acres. A landowner may permanently transfer a portion of his certified acres to another party. This transfer shall not result in an increase in total certified acres. (10/03/2006) *To be eligible for a Permanent Transfer of Acres;*
 - 5-2.6.1 *The acres must be certified,*
 - 5-2.6.2 *The acres must be taxed as irrigated,*
 - 5-2.6.3 *Only the base allocation for the remaining base allocation period may be transferred. Reserve associated with these acres shall be reduced to zero.*
 - 5-2.6.4 *Using the best information available to the district, transfers between areas of equal stream depletion factor or to an area of lesser stream depletion factor shall not be conditioned other than by rule 5-1.19*
 - 5-2.6.5 *Transfers to an area of higher stream depletion shall have a reduction factor equal to the difference between the sites.*
 - 5-2.6.6 *Each landowner involved in a permanent transfer of acres must certify or recertify their acres accordingly and as limited by any conditions imposed on the transfer.*

RECERTIFICATION

- 4-6.21 Whenever a parcel of land is sold, inherited or ownership of the property is otherwise changed, the certified acres for that parcel shall be recertified by the new owner on forms provided by the district.*
- 4-6.22 To be eligible to be recertified, (1) the acres must be capable of being supplied with ground water through irrigation works, mechanisms or facilities existing at the time of recertification and (2) under the control of the person making the recertification.*