

DRAFT for Public Hearing on February 18, 2010
Proposed Amendments to Chapter 1, Rule 1.2 and Chapter 6
NPNRD Rules and Regulations for Ground Water Management

CHAPTER 6 - ALLOCATION OF GROUND WATER

6.1 Area Designation and Boundaries - The area subject to Chapter 6 of these Rules and Regulations is the entire geographic area designated as the overappropriated area of the District, with the exception of the Pumpkin Creek Basin Ground Water Management Sub-Area as defined in Order NPNRD-4.

6.2 Conditions for Allocation of Ground Water

6.2.1 Use of ground water from a regulated well must be in compliance with Chapters 3 and 4 of these Rules and Regulations.

6.3 Allocation of Ground Water for Certified Irrigated Acres

6.3.1 Allocation - The ground water allocation for each certified irrigated acre is fifty-six (56) acre-inches per certified irrigated acre per allocation period. The allocation period shall consist of four (4) consecutive water years beginning in Water Year 2010. The base allocation for each certified irrigated acre is fourteen (14) acre-inches per certified irrigated acre per water year.

6.3.2 Exemption from Allocation - If approved by the District, certified irrigated acres irrigated exclusively with ground water by a gravity irrigation system are exempt from Rule 6.3.1.

6.3.2.1 The operator and landowner or landowner must apply to the District, on forms provided by the District, for consideration of such exemption from Rule 6.3.1. A completed application must be received by the District prior to April 1 of the water year for which the exemption is requested. Prior to taking action on the application, the District will conduct an investigation to determine whether to approve, approve with conditions, or deny the request for an exemption from Rule 6.3.1.

6.3.2.1.1 Once approved, the exemption from Rule 6.3.1 will remain in effect until the end of the allocation period unless revoked by the District.

6.3.2.2 If certified irrigated acres within a portion of a certified irrigated tract receive an exemption from Rule 6.3.1, the certification will be rescinded for that irrigated tract and the irrigated acres which receive the exemption will be certified as a separate irrigated tract from those irrigated acres in the original certified irrigated tract subject to Rule 6.3.1 which will also be certified as a separate irrigated tract.

6.3.2.2.1 Notwithstanding the provisions of Chapter 3 of these Rules and Regulations, the District Manager is authorized to rescind certifications and certify irrigated acres subject to Rule 6.3.2.2 without Board approval.

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6.3.2.3 Certified irrigated acres receiving an exemption from Rule 6.3.1 must have a dedicated flow meter(s) to measure the amount of ground water which is applied to those acres.

6.3.2.4 Ground water irrigation will not be allowed on one-fifteenth (1/15th) of the total certified irrigated acres in a certified irrigated tract comprised of certified irrigated acres approved for an exemption from Rule 6.3.1 for each water year in the allocation period following approval of the exemption.

6.3.2.4.1 In the case of a DAU composed entirely of certified irrigated tracts comprised of certified irrigated acres subject to Rule 6.3.2, the cessation of ground water irrigation for each water year within the allocation period of one-fifteenth (1/15th) of the total certified irrigated acres in each certified irrigated tract within the DAU may be combined onto one of the certified irrigated tracts within the DAU.

6.3.2.4.1.1 If the cessation of ground water irrigation for the certified irrigated tracts within a DAU has been combined onto one of the certified irrigated tracts within the DAU and the DAU is rescinded by the District pursuant to Rule 6.3.5.3.1 during the allocation period, each certified irrigated tract that was within the DAU, with the exception of those certified irrigated tract(s) comprised of certified irrigated acres subject to Rule 6.3.2 in which the exception from Rule 6.3.1 has been revoked by the District, will be subject to Rule 6.3.2.4.

6.3.2.4.1.2 If the cessation of ground water irrigation for the certified irrigated tracts within a DAU has been combined onto one of the certified irrigated tracts within the DAU and the DAU is rescinded by the District during the allocation period due to a violation of Rule 6.3.2.4, the certified irrigated acres within each certified irrigated tract that was within the DAU will be subject to 6.3.2.4.3.

6.3.2.4.2 The certified irrigated acres within the certified irrigated tract or DAU which will not be irrigated with ground water pursuant to Rule 6.3.2.4 or Rule 6.3.2.4.1 must be identified by the operator and landowner or landowner on a digitized map provided by the District during the application process described in Rule 6.3.2.1.

6.3.2.4.2.1 If the operator and landowner or landowner desires to amend the location of the certified irrigated acres within the certified irrigated tract or DAU which are not being irrigated with ground water pursuant to Rule 6.3.2.4 or Rule 6.3.2.4.1 as identified during the application process, the operator and landowner or landowner must apply to the District prior to April 1 of the water year for which such change is requested. Such change in location of certified irrigated acres cannot take place until approved by the District.

6.3.2.4.3 Failure to comply with Rule 6.3.2.4 will result in immediate revocation of the exemption from Rule 6.3.1 for those certified irrigated acres within the certified irrigated tract and ground water may not be applied to those certified irrigated acres

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for the remainder of the water year in which the violation occurred. For the subsequent three (3) water years, those certified irrigated acres will receive an allocation equal to the base allocation for each of those water years. In addition, the operator and landowner or landowner is prohibited from any consideration for such exemption on those certified irrigated acres within the certified irrigated tract for the same three (3) water years.

6.3.3 Transition from Water Year 2009 to the Allocation Period of Water Years 2010-2013

6.3.3.1 For those certified irrigated tracts comprised of certified irrigated acres subject to Rule 6.3.1, any unused available water carried forward from Water Year 2009 will be added to the total current allocation for the allocation period beginning in Water Year 2010. Any available water overdraft, available water overdraft penalty, and/or other penalties assessed for Water Year 2009 will be subtracted from the total current allocation for the allocation period beginning in Water Year 2010 for those certified irrigated tracts comprised of certified irrigated acres subject to Rule 6.3.1. These additions and/or subtractions, if any, along with the total current allocation, will equal the available water for the allocation period beginning in Water Year 2010 for those certified irrigated tracts comprised of certified irrigated acres subject to Rule 6.3.1.

6.3.3.1.1 The carryforward from Water Year 2009 that will be added to the total current allocation for those certified irrigated tracts comprised of certified irrigated acres subject to Rule 6.3.1 for the allocation period beginning in Water Year 2010 is the lesser amount of 1) the unused available water or 2) nine (9) acre-inches per certified irrigated acre, equivalent to fifty (50) percent of the base allocation of eighteen (18) acre-inches per certified irrigated acre for Water Year 2009 multiplied by the number of certified irrigated acres within the certified irrigated tract.

6.3.3.2 For a certified irrigated tract comprised of certified irrigated acres subject to Rule 6.3.2 for Water Year 2010, any carryforward from Water Year 2009 shall be relinquished and any available water overdraft and/or other penalties resulting from a violation(s) of the Rules and Regulations during Water Year 2009 will be assessed during Water Year 2010. Such violation(s) will be assessed by reducing the amount of certified irrigated acres within that certified irrigated tract that can be irrigated with ground water during Water Year 2010.

6.3.3.2.1 The amount of the available water overdraft for the certified irrigated tract during Water Year 2009 will be divided by the total amount of ground water applied to the certified irrigated tract during Water Year 2009 and then multiplied by one hundred (100) to determine the percentage of the ground water which was withdrawn in excess of the available water for Water Year 2009. This percentage will be the percentage of the certified irrigated tract that ground water cannot be applied to during Water Year 2010.

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6.3.4 Pre-existing Allocation Units (PAUs)

6.3.4.1 The total current allocation for each certified irrigated tract comprised of certified irrigated acres subject to Rule 6.3.1 within a PAU will be combined.

6.3.4.2 No additional PAUs will be designated after April 1, 2010, unless the ownership of a certified irrigated tract(s) or a portion of a certified irrigated tract(s) within the PAU changes or if there is a change in the configuration of the regulated well(s) and/or the location of the flow meter(s) measuring the withdrawal of ground water from such regulated well(s) serving one or more of the certified irrigated tract(s) within the PAU.

6.3.4.2.1 The landowner has sixty (60) days to notify the District of a change in ownership of a certified irrigated tract(s) or a portion of a certified irrigated tract(s) within the PAU and/or a change in the configuration of the regulated well(s) and/or the location of the flow meter(s) measuring the withdrawal of ground water from such regulated well(s) serving one or more of the certified irrigated tract(s) within the PAU. Failure to notify the District, on forms provided by the District, will result in enforcement actions and penalties in accordance with Chapter 2 of these Rules and Regulations.

6.3.4.3 Once a PAU is rescinded by the District, if necessary, the certification for each certified irrigated tract within the original PAU will be rescinded and each tract will be certified according to the modified status of each tract.

6.3.4.4 If a PAU is rescinded by the District during an allocation period, the remaining available water in the PAU will be prorated to the separate certified irrigated tract(s) comprised of certified irrigated acres subject to Rule 6.3.1 based on the amount of remaining available water and the number of certified irrigated acres in each certified irrigated tract unless an agreement has been reached by parties involved regarding the partitioning of the remaining available water between the certified irrigated tract(s).

6.3.4.4.1 In the case of an agreement between parties regarding the partitioning of the remaining available water between the certified irrigated tract(s), the agreement must be provided to the District prior to the next water year. Failure to do so will result in the available water being prorated pursuant to 6.3.4.4.

6.3.5 Designated Allocation Units (DAUs)

6.3.5.1 Certified irrigated tracts comprised of certified irrigated acres subject to Rule 6.3.1 and the corresponding available water for each tract or certified irrigated tracts comprised of certified irrigated acres subject to Rule 6.3.2 may be combined into DAUs provided the following criteria is met:

6.3.5.1.1 All regulated wells and at least a portion of each certified irrigated tract to be included in a DAU must be within a floating square measuring three (3) miles by three (3) miles.

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6.3.5.1.2 The stream depletion percentage for each regulated well to be included in the DAU must be within ten (10) percent of the stream depletion percentage of the other regulated well(s) to be included in the DAU.

6.3.5.1.3 A DAU must consist of either ground water only certified irrigated tracts or surface water and ground water (commingled) only certified irrigated tracts. A DAU cannot consist of a combination of ground water only and commingled certified irrigated tracts.

6.3.5.1.3.1 If a DAU is comprised of commingled certified irrigated tracts supplied by surface water from an irrigation district or canal company, all of the commingled certified irrigated tracts must be within the boundaries of the same irrigation district or the land served by the same canal company.

6.3.5.1.4 Pre-existing allocation units cannot be included within a DAU.

6.3.5.1.5 The certified irrigated tracts and the regulated wells to be included within the DAU are owned by the same person.

6.3.5.1.6 A DAU cannot consist of a combination of certified irrigated tracts comprised of certified irrigated acres subject to Rule 6.3.2 and certified irrigated tracts comprised of certified irrigated acres subject to Rule 6.3.1.

6.3.5.2 In order to establish a DAU, the landowner must apply to the District, on forms provided by the District, by April 1 of the water year in which the DAU is to be established.

6.3.5.3 Once approved by the District, the DAU will remain in place until the end of the current allocation period unless rescinded by the District.

6.3.5.3.1 The DAU will be rescinded if any of, but not limited to, the following situations exist: 1) the ownership of a certified irrigated tract(s) or a portion of a certified irrigated tract(s) within the DAU changes; 2)(a) a certified irrigated tract(s) or a portion of a certified irrigated tract(s) within a ground water only DAU is placed under a contract with an irrigation district or canal company to deliver surface water to the certified irrigated tract(s) or portion of the certified irrigated tract(s), or (b) a certified irrigated tract(s) or a portion of a certified irrigated tract(s) becomes included in an appropriation from the Department to irrigate with surface water on the certified irrigated tract(s) or portion of the certified irrigated tract(s), or (c) a certified irrigated tract(s) or a portion of a certified irrigated tract(s) otherwise receives surface water for irrigation purposes; 3) a certified irrigated tract(s) or a portion of a certified irrigated tract(s) within a commingled only DAU changes to a ground water only source of irrigation water; 4) a certified irrigated tract(s) or portion of a certified irrigated tract(s) is enrolled in a government program which requires cessation of ground water irrigation for the period of the program; or 5) the certified irrigated

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acres within a certified irrigated tract(s) or a portion of a certified irrigated tract(s) within a DAU which are subject to Rule 6.3.1 become subject to Rule 6.3.2 or are subject to Rule 6.3.2 and the exemption to Rule 6.3.1 is revoked by the District.

6.3.5.3.1.1 The landowner has sixty (60) days to notify the District of such a change in ownership of a certified irrigated tract(s) or a portion of a certified irrigated tract(s), of a change in the origin of the water source used to irrigate a certified irrigated tract(s) or a portion of a certified irrigated tract(s) within the DAU, or of enrollment in a government program requiring cessation of ground water irrigation for the period of the program. Failure to notify the District, on forms provided by the District, will result in enforcement actions and penalties in accordance with Chapter 2 of these Rules and Regulations.

6.3.5.3.2 If a DAU composed of certified irrigated tracts comprised of certified irrigated acres subject to Rule 6.3.1 is rescinded by the District during an allocation period, the remaining available water in the DAU will be prorated to the separate certified irrigated tracts based on the amount of remaining available water and the number of certified irrigated acres in each certified irrigated tract unless an agreement has been reached by parties involved regarding the partitioning of the remaining available water between the certified irrigated tracts.

6.3.5.3.2.1 In the case of an agreement between parties regarding the partitioning of the remaining available water within the DAU between the certified irrigated tracts, the agreement must be provided to the District prior to the next water year. Failure to do so will result in the available water being prorated pursuant to 6.3.5.3.2.

6.3.6 Provisions - The following provisions apply to the use of ground water for irrigation purposes on those certified irrigated acres subject to Rule 6.3.1:

6.3.6.1 If the amount of available water for a certified irrigated tract, PAU or DAU is equal to or less than zero, ground water may not be applied to such certified irrigated tract, PAU or DAU until such time as the amount of available water is greater than zero.

6.3.6.2 In the event of an available water overdraft for a PAU or a certified irrigated tract, the District shall reduce the following allocation period's total current allocation for that certified irrigated tract or PAU by the amount of the available water overdraft plus the amount of the available water overdraft penalty.

6.3.6.3 If, at the end of an allocation period, there is an available water overdraft for a DAU, the amount of the available water overdraft plus the available water overdraft penalty and/or any other penalties will be prorated between the certified irrigated tracts based on the amount of the available water overdraft plus the available water overdraft penalty and/or any other penalties and the number of certified irrigated acres in each certified irrigated tract.

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6.3.6.4 If there is unused available water in a PAU or certified irrigated tract at the end of an allocation period, the lesser amount of the unused available water or fourteen acre-inches per certified irrigated acre multiplied by the number of certified irrigated acres within the certified irrigated tract or PAU may be carried forward and added to the total current allocation for the next allocation period.

6.3.6.5 If there is unused available water in a DAU at the end of an allocation period when the DAU is dissolved, the lesser amount of the unused available water or fourteen acre-inches per certified irrigated acre multiplied by the number of certified irrigated acres within the DAU may be carried forward into the next allocation period. The amount of such carryforward able to be used in the next allocation period will be prorated between the certified irrigated tracts based on the amount of the carryforward and the number of certified irrigated acres in each certified irrigated tract unless an agreement has been reached by parties involved regarding the partitioning of the carryforward between the certified irrigated tracts.

6.3.6.5.1 In the case of an agreement between parties regarding the partitioning of the carryforward between the certified irrigated tracts, the agreement must be provided to the District prior to the use of ground water the following water year. Failure to do so will result in the carryforward being prorated pursuant to 6.3.6.5.

6.3.7 Acres Enrolled in Government Program(s)

6.3.7.1 Certified irrigated acres which are not being irrigated while enrolled in a government program(s) that requires participants to set aside crop land for other uses or otherwise remove such land from crop production, such as the Conservation Reserve Program (CRP), Conservation Reserve Enhancement Program (CREP), Environmental Quality Incentive Program (EQIP), or others, shall not receive an allocation or be eligible for an exemption to the allocation while those certified irrigated acres are enrolled in such program.

6.3.7.1.1 The certified irrigated acres to be enrolled in such program(s) may use ground water to establish a vegetative cover following program guidelines for use of water.

6.3.7.1.2 If, prior to enrollment in such program(s), there is any remaining available water for the certified irrigated tract(s) or portion of certified irrigated tract(s), the remaining available water will be rescinded. If an exemption to the Rule 6.3.1 was approved for the certified irrigated acres to be enrolled, such exemption will be revoked.

6.3.7.1.2.1 If, prior to enrollment in such program(s), the certified irrigated tract(s) or portion of certified irrigated tract(s) to be enrolled are part of a PAU or DAU, the PAU or DAU will be rescinded. Any remaining available water in the PAU or DAU will be prorated to the separate certified irrigated tract(s) comprised of certified irrigated acres subject to Rule 6.3.1 which have been removed from

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the PAU or DAU and are not enrolled in the program(s). The remaining available water will be prorated based on the amount of remaining available water and the number of certified irrigated acres in each certified irrigated tract unless an agreement has been reached by parties involved regarding the partitioning of the remaining available water between the certified irrigated tract(s) removed from the PAU or DAU which are not enrolled in the program(s).

6.3.7.1.2.1.1 In the case of an agreement between parties regarding the partitioning of the remaining available water within the PAU or DAU between the certified irrigated tracts not enrolled in the program(s), the agreement must be provided to the District prior to the next water year. Failure to do so will result in the available water being prorated pursuant to 6.3.7.1.2.1.

6.3.7.2 The landowner is responsible for notifying the District when certified irrigated acres are enrolled in or removed from such program(s). The District will not grant an allocation or approve an exemption from the allocation for any certified irrigated acres removed from such a program(s) unless it receives written notification, on forms provided by the District, of the removal. Prior to the commencement of irrigation on such certified irrigated acres, the acres must be granted an allocation or approved for an exemption to the allocation.

6.3.7.3 If certified irrigated acres are removed from such program(s), or if the program contract(s) is terminated or expires during an allocation period, then, if eligible, the amount of the allocation that will be granted to such certified irrigated acres will be equal to the base allocation for each water year left in the allocation period. If the certified irrigated acres are approved for an exemption from Rule 6.3.1, the provisions of Rule 6.3.2 will apply to such certified irrigated acres.

6.4 Allocation for Other Uses

6.4.1 To receive an allocation for certified uses other than irrigation, municipal, and industrial uses, the ground water user must submit an application to the District on forms provided by the District. The application must receive approval from the Board before the ground water use may begin.

6.4.1.1 In considering whether to approve an application, the Board shall consider (1) the historical ground water use by the applicant; (2) relevant information about the ground water use provided by the applicant; (3) information from generally recognized experts and authorities in the relevant field; (4) information from governing or regulatory bodies and organizations in the relevant field; and (5) other information which the Board considers relevant, reliable and unbiased.

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Chapter 1, Rule 1.2 (Definitions)

1.2.4 Allocation means the allotment of a specified quantity of ground water during an allocation period for a specific use(s).

1.2.5 Allocation Period means the period of time for which an allocation is granted and may be used.

1.2.7 Available Water means the amount of ground water, expressed in acre-inches per certified irrigated tract, that may be used to irrigate a certified irrigated tract during an allocation period. It is calculated by adding the total current allocation to the amount of carryforward from the previous allocation period, if any, and then subtracting, if applicable, any available water overdraft, available water overdraft penalties, and/or any other penalties assessed during the current and/or previous allocation period.

1.2.8 Available Water Overdraft means the amount of ground water, in acre-inches per certified irrigated tract, used in excess of the available water during an allocation period.

1.2.9 Available Water Overdraft Penalty means a penalty assessed when an available water overdraft occurs. An available water overdraft penalty is equal to the amount of the available water overdraft and is expressed in acre-inches per certified irrigated tract.

1.2.11 Base Allocation means the amount of ground water, in acre-inches per certified irrigated acre per water year. It is calculated by dividing the allocation, as granted in Rule 6.3.1, by the number of water years in the allocation period.

1.2.14 Carryforward means the portion of unused available water at the end of the allocation period that may be added to the total current allocation for the subsequent allocation period.

1.2.27 Designated Allocation Unit (DAU) means an arrangement in which certified irrigated tracts may be combined pursuant to Rule 6.3.5.

1.2.35 Furrow Irrigation means a method of irrigation which is conducted by creating small parallel channels along the field length in the direction of predominant slope. Ground water, which is applied through means such as, but not limited to, gated pipe or siphon and head ditch, is applied to the top end of each furrow and flows down the field under the influence of gravity.

1.2.37 Gravity Irrigation System means furrow irrigation or partial flood irrigation.

1.2.53 Irrigation System means the necessary appurtenances to a well(s), including the pump, used to convey irrigation water to a certified irrigated tract(s). This includes, but is not limited to, any combination of set-move, solid-set, traveler, center pivot, or linear move sprinkler system(s) and gravity, furrow, border, or flood irrigation utilizing water from a lateral or a pipe.

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1.2.65 Partial Flood Irrigation means a method of irrigation where ground water is applied through means such as, but not limited to, gated pipe or siphon and head ditch to certified irrigated acres which have no guide preparation such as furrows or borders and the ground water flows over and across the land under the influence of gravity.

1.2.69 Pre-existing Allocation Unit (PAU) means a designation by the District in situations where the amount of ground water applied to more than one certified irrigated tract is not able to be determined due to the configuration of the regulated well(s) and/or the location of the flow meter(s) measuring the withdrawal of ground water from such regulated well(s).

1.2.77 Stream Depletion Percentage means the amount of water removed from the surface water system (e.g. rivers, streams and drains) due to the withdrawal of ground water from a regulated well during a set amount of time divided by the amount of pumping from such regulated well during the same time period. This calculation may include, but not be limited to, hydraulic conductivity, saturated thickness, storage coefficient, distance to the surface water feature and distance to the aquifer boundary. Also, considerations may be given to the subsurface geological features.

1.2.79 Total Current Allocation means the amount of ground water allocated to a certified irrigated tract during an allocation period, expressed in acre-inches per certified irrigated tract, and obtained by multiplying the number of certified irrigated acres in a certified irrigated tract by the allocation as granted in Rule 6.3.1.