

**BY ORDER OF THE NORTH PLATTE NATURAL RESOURCES DISTRICT  
ORDER ADOPTING AMENDMENTS TO CHAPTER 1, RULE 1.2 AND CHAPTER 6 OF THE  
RULES AND REGULATIONS FOR THE ENFORCEMENT OF THE NEBRASKA GROUND  
WATER MANAGEMENT AND PROTECTION ACT**

**ORDER NUMBER NPNRD-19**

This matter came on for consideration before the North Platte Natural Resources District (NPNRD or District) Board of Directors (Board) pursuant to the Nebraska Ground Water Management and Protection Act (Act) and the provisions of the joint NPNRD-Nebraska Department of Natural Resources (DNR) Integrated Management Plan (IMP).

**The Board FINDS:**

1. On April 11, 1996, the Board adopted Order Number NPNRD-1 which established a Districtwide Ground Water Management Area with an effective date of July 10, 1996. On January 12, 2009, the Board adopted Chapter 6 (Allocation of Ground Water) of the NPNRD Rules and Regulations for the Enforcement of the Act (Rules). Chapter 6 established an allocation of eighteen (18) acre-inches per certified irrigated acre for the overappropriated portion of the District with the exception of the Pumpkin Creek Basin Ground Water Management Sub-Area as defined in Order NPNRD-4.
  
2. On August 13, 2009, the Board adopted the joint NPNRD-DNR IMP with an effective date of September 14, 2009. The IMP identifies an allocation as the primary ground water control which will be implemented by the District to meet the first increment goals and objectives for the overappropriated portion of the District. Chapter 6, Section II.B.3(a) of the IMP contains the guidelines for the implementation of such allocation. Those guidelines are: (1) implementation of an allocation of fifty-six (56) acre-inches per certified irrigated acre per four (4) year allocation period beginning in the 2010 irrigation season; (2) a limit on the amount of the allocation that can be carried over into the next allocation period of fourteen (14) acre-inches per certified irrigated acre; (3) the ability to combine certified irrigated tracts into designated allocation units (DAUs) provided they meet the following eligibility criteria: (a) all wells and a portion of each certified irrigated tract to be included in a DAU must be within a floating three by three mile floating square, (b) the stream depletion percentage of each well must be within ten (10) percent of each other, (c) a DAU must consist of either ground water only tracts or commingled tracts only but not a combination of ground water only and commingled only, and (d) DAUs comprised of commingled tracts must be within the boundaries of the same irrigation district or canal company; and (4) prior to the 2010 irrigation season, the concept of a higher allocation during the allocation period for acres irrigated by a gravity system would be evaluated.
  
3. The purpose of the proposed amendments is to implement an allocation in conformance with the IMP. The IMP was adopted after many years of development involving stakeholders from within the District along with several downstream water users. Within the first ten year increment, the goal of the IMP is to address the impacts of streamflow depletions to surface water appropriations and water wells constructed in aquifers dependent upon recharge from streamflow to the extent those depletions are due to water uses initiated after July 1, 1997. The purpose of the allocation of fifty-six (56) acre-inches per acre per four (4) year allocation period is to reduce consumptive use on those acres by one (1) acre-inch per acre per year. The average crop irrigation requirement for this area is fifteen (15) acre-inches per acre per year; therefore, the fourteen (14) acre-inches per acre base allocation results in deficit irrigation.

The amount of the allocation was determined through numerous discussions and technical work with the DNR, the NPNRD Board and staff and the public. Since the adoption of the IMP, there has been continued discussion with the public and the DNR regarding the specifics of the implementation of the

allocation. A number of irrigators within the District, who collectively have centuries of experience between them, have expressed serious concerns about the ability to grow a crop which would produce economically viable yields with this allocation. Those irrigators with ground water only gravity irrigation systems cited the inefficient nature of gravity irrigation systems and their historic water use as reasons why the allocation would not be enough for their operation. In addition, many of them said that due to the physical layout of their tract, it would not be possible to install a pivot. With these concerns in mind, along with the overall purpose of reducing consumptive use, the proposed rules allow for an exemption to the allocation for those irrigators using ground water only gravity irrigation systems. To reduce consumptive use, those irrigators receiving the exemption would have to cease irrigation on 1/15<sup>th</sup> of the total acres within the certified irrigated tract exempt from the allocation for each year of the allocation period. This reduction in irrigated acres is equivalent to the consumptive use savings derived from the one (1) acre-inch per acre per year reduction in the allocation.

4. Prior to the public hearing on February 18, 2010, the NPNRD held public information meetings in Oshkosh and Bridgeport to explain the proposed rules and solicit input and answer questions from the public. In addition, an information session was held immediately prior to the hearing which included an overview of the proposed rules and an opportunity for the public in attendance to have their questions answered by the Board and/or staff.

5. The NPNRD held a public hearing on the proposed amendments to Chapter 1, Rule 1.2 and Chapter 6 on February 18, 2010, pursuant to Neb. Rev. Stat. § 46-743. Notice of such public hearing was published in the Scottsbluff Star-Herald on January 28, February 4 and 11, 2010. Copies of the proposed amendments to Chapter 1, Rule 1.2 and Chapter 6 were made available at the NPNRD office in Scottsbluff, Nebraska and on the NPNRD's website.

6. Testimony was received at the public hearing from DNR, pursuant to Neb. Rev. Stat. § 46-743(7), the NPNRD, Central Nebraska Public Power and Irrigation District (CNPPID), Karen Ott, Kendall Busch, Gerrod Toepfer, Jim Ridgeway, Jim Lapaseotes, Ryan Shultz, and Paul Robinson. The NPNRD, DNR and CNPPID provided submittals which were made a part of the record. All of the submittals received at the public hearing were distributed to each member of the Board, excluding George Hall who was absent, at the beginning of the hearing. The submittals and a summary of the oral testimony were provided to George Hall following the hearing but prior to the February 25, 2010, Board meeting. On February 24, 2010, the WRS discussed and considered the testimony and all of the submittals received at the public hearing. The Board discussed and considered the testimony and all of the submittals at the February 25, 2010, Board meeting. It was the recommendation of both the WRS and the NPNRD staff that the Board adopt the proposed amendments to Chapter 1, Rule 1.2 and Chapter 6.

7. A general description of the proposed amendments to Chapter 1, Rule 1.2 and Chapter 6 of the Rules are as follows:

The proposed amendments to Chapter 1, Rule 1.2 are to incorporate new definitions and to modify existing definitions related to the amendments in Chapter 6.

The proposed amendments to Chapter 6 are as follows:

The allocation for ground water on all certified irrigated acres (acres) is fifty-six (56) acre-inches per certified irrigated acre over a four (4) year allocation period beginning with Water Year 2010. The operator and/or landowner may apply for an exemption to the allocation (exemption) for those acres which are irrigated with ground water only through a gravity irrigation system. If approved, this exemption will require the cessation of ground water irrigation on 1/15<sup>th</sup> of the total acres within the certified irrigated tract approved for the exemption as well as a dedicated flow meter to measure the

amount of ground water applied to those acres. The deadline for the exemption application is April 1 of the water year in which the exemption is sought. The exemption will be in effect for the duration of the allocation period unless revoked by the District.

Any ground water carried forward and, if applicable, any overdrafts and/or penalties from Water Year 2009 will be applied during the allocation period beginning in Water Year 2010.

A pre-existing allocation unit (PAU) has been designated 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). The allocations for the tracts within a PAU have been combined.

If approved, the available water on tracts subject to an allocation or tracts subject to the exemption may be combined into a designated allocation unit (DAU). In order to establish a DAU, several criteria must be met: 1) all wells and a portion of each tract must be within a floating 3x3 mile square; 2) the stream depletion percentage for each well must be within 10% of the other wells; 3) tracts must be served by ground water only or commingled only and in the case of commingled only, the tracts must be within the same irrigation district or canal company; 4) all tracts and wells are owned by the same person; 5) tracts must be subject to an allocation only or subject to the exemption only; and 6) PAUs cannot be part of a DAU. The application deadline for a DAU is April 1 of the water year the DAU is to be established. The DAU will be in effect for the duration of the allocation period unless rescinded by the District.

General provisions related to the allocation for ground water irrigation are 1) no ground water may be applied unless the available water is greater than zero; 2) an available water overdraft and/or penalties will result in a reduction in the available water for the current and/or next allocation period; and 3) the lesser amount of the unused available water or fourteen (14) acre-inches per certified irrigated acre multiplied by the number of acres within the tract can be carried forward into the next allocation period.

Acres enrolled in a federal and/or state program requiring cessation of irrigation will not receive an allocation or exemption during the period of the program, but will be eligible for an allocation or exemption upon removal of acres from the program. When acres enter the program, any remaining allocation will be rescinded and any exemption will be revoked.

The allocation for uses other than irrigation, municipal, and industrial will require the user to submit an application to the District which must be approved by the Board prior to ground water use.

Failure to comply with any provisions of Chapter 6 will result in enforcement actions and penalties, which may include but not be limited to, loss of the exemption or loss of part or all of the available water.

8. The proposed amendments to Chapter 1, Rule 1.2 apply to the entire geographic area of the NPNRD. The proposed amendments to Chapter 6 of the Rules encompass the overappropriated portion of the NPNRD with the exception of the Pumpkin Creek Basin Ground Water Management Sub-Area as defined in Order NPNRD-4.

**It is therefore CONCLUDED** that the North Platte Natural Resources District should adopt the amendments to Chapter 1, Rule 1.2 and Chapter 6 of the North Platte Natural Resources District Rules and Regulations for the Enforcement of the Nebraska Ground Water Management and Protection Act.

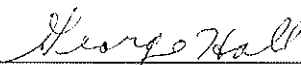
**It is therefore ORDERED** that:

1. The amendments to Chapter 1, Rule 1.2 and Chapter 6 of the North Platte Natural Resources District Rules and Regulations for the Enforcement of the Nebraska Ground Water Management and Protection Act are hereby adopted and shall be implemented.
2. The amendments to Chapter 1, Rule 1.2 and Chapter 6 of the North Platte Natural Resources District Rules and Regulations for the Enforcement of the Nebraska Ground Water Management and Protection Act are incorporated into this Order by reference as though fully set forth herein.

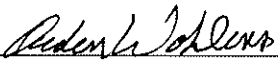
This Order shall become effective on March 29, 2010, pursuant to Neb. Rev. Stat. § 46-744.

NORTH PLATTE NATURAL RESOURCES DISTRICT

February 25, 2010

  
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George Hall, Chair

Adoption of Order Number NPNRD-19 was approved by the Board of Directors of the North Platte Natural Resources District at a regular meeting held in Scottsbluff, Nebraska, on the 25<sup>th</sup> day of February, 2010.

  
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Attest: Arden Wohlers, Secretary

A copy of the full text of the amendments to Chapter 1, Rule 1.2 and Chapter 6 is available for inspection during normal weekday working hours at the office of the NPNRD located at 100547 Airport Road in Scottsbluff, Nebraska. The full text is also available on the NPNRD website at [www.npnrd.org](http://www.npnrd.org).