

## CHAPTER 5 – TRANSFER OF GROUND WATER

5-1 Area Designation and Boundaries. The area subject to Chapter 5 of these rules and regulations is the entire geographic area that coincides with the boundaries of the North Platte Natural Resources District, with the exception of lands lying within the Pumpkin Creek Basin Ground Water Management Sub-Area as defined in Order NPNRD-4.

5-2 Offsets. No new net depletions to the hydrologic system within the District will be allowed. Anyone seeking a permit to transfer ground water that will result in an increase of consumptive use as of the effective date of these rules and regulations will be required to permanently offset the increase of consumptive use associated with the permit.

Exceptions to this rule are uses for domestic or range livestock use.

Offset water must be returned to the hydrologic system in time, location and amount where the depletion occurs and upstream of the next downstream appropriator. Offsets for irrigation purposes will be achieved by the retirement of one (1) acre for every one (1) acre that is put into new irrigated production. For uses other than irrigation, offsets will be based on consumptive use. Such consumptive use will be calculated by the District based on best scientific data available.

If and when offsets are necessary, the applicant shall describe, on a form provided by the District, specifically how, when, and where the new depletion to ground water supplies proposed in the permit application will be offset.

The District reserves the right to place additional restrictions on transfers as necessary.

5-3 Conditions for All Transfers. Transfers may be allowed in the same, adjacent or diagonal government survey section with District staff approval. All other transfers beyond such boundaries will require Board review and approval on a case-by-case basis.

Transfers of certified ground water uses which are greater than two acres to newly irrigated lands will only be allowed for row crops with a majority of Class I, Class II, Class III, Class IVw and Class IVs soils as identified in the U.S. Department of Agriculture, Natural Resources Conservation Service Standard Soils Survey, and transfers for irrigation will only be allowed for Class IVe soils if the area remains in alfalfa or grass.

Withdrawal, transport, and use of such water shall be consistent with all applicable state statutes, and the rules and regulations of the District. All approved transfers of ground water are subject to any future ground water allocation plans or other restrictions approved by the Board.

5-4 Transfers of Ground Water – Permit Required. Any person who desires to withdraw ground water from wells located within the District and to transport that ground water from a regulated well associated with a certified ground water use for reasonable and beneficial use elsewhere, or to transfer the location of use, transfer the point of withdrawal, or transfer the type of use may do so only after applying for and obtaining a permit on forms provided by the District.

The permit holder will then have six (6) months from the date of permit approval to complete the transfer. If a transfer is not completed within that time, the District may

consider, on a case-by-case basis, the circumstances for the transfer not being completed within the allotted time and allow for an extension. If the transfer has not been completed within the six (6) month period and an extension has not been granted, the District shall withdraw the permit.

Once granted, such permits will remain in force until the owner of a well that is subject to such transfer notifies the District in writing within thirty (30) days of cessation of the transfer that the transfer permit should be cancelled, or until the Board determines that such transfer is no longer in the best interest of the public.

5-4.1 Transfer permits for situations when ground water is discharged into an open ditch and transported by such ditch to a location other than the same, adjacent, or diagonal government survey section will not be granted by the District.

5-4.2 Transfer permits for when ground water is discharged into a natural stream or channel and transported by such open stream or channel to a location other than the overlying land can not be granted by the District. A permit from the Nebraska Department of Natural Resources would be required for this type of transfer.

5-5 Exceptions to Permit Required. No transfer permit shall be required pursuant to Rule 5-4 if the withdrawal and transfer of ground water complies with any one or more of the following exceptions, provided however, that notice of such transfer shall be given to the District within thirty (30) days of the commencement of such transfer:

1. The withdrawal and transfer of ground water was begun prior to the effective date of these rules and regulations and was at that time in compliance with all applicable District rules and regulations and all applicable state statutes and regulations. Landowners are required to file with the District, on forms provided by the District, proof of withdrawal and transfer of ground water if such withdrawal and transfer was begun prior to the effective date of these rules and regulations;
2. The proposed withdrawal and transfer of ground water is for domestic purposes only and is subject to Neb. Rev. Stat. § 46-691.01.
3. The proposed withdrawal and transfer of use is solely for the purpose of providing water to range livestock.
4. The withdrawal and transfer has been approved by the Department prior to July 16, 2004.
5. The withdrawal and transfer has been approved by the Department pursuant to the Municipal and Rural Domestic Ground water Transfers Permit Act, Neb. Rev. Stat. §§ 46-638 to 46-650 (“the Act”). Any public water supplier that has filed an application for a permit pursuant to the Act, and has not been issued a permit on the effective date of this rule, shall not be subject to the jurisdiction of the District over the withdrawal and transfer, so long as such public water supplier is diligently pursuing such application. If the District determines that a public water supplier is not diligently pursuing a permit or is denied a permit by the Department of Natural Resources pursuant to the Act, the District requires the applicant to seek a permit from the District under Rule 5-4 above.

6. The withdrawal and transfer has been approved by the Department pursuant to Industrial Ground Water Regulatory Act. Neb. Rev. Stat. §§ 46-675 to 46-690.

5-6 Hydrologic Evaluation Required. A hydrologic evaluation will be required of any person withdrawing and transferring more than two hundred fifty (250) acre feet of ground water annually. That person shall, in addition to the information required on the transfer permit application, provide the District with a hydrologic evaluation conducted at the permittee's expense. The evaluation must show the impact, if any, of the intended withdrawal and transfer for a minimum of fifty (50) years on ground water users, surface water appropriators, and the ground water table. A non-refundable fee of five hundred dollars (\$500) is required of the applicant to reimburse the District for its costs in reviewing and assessing the hydrologic evaluation.

5-7 Types of Transfers. Permits will only be considered for the following types of ground water transfers:

5-7.1 Transfers Out of District. Transfer of the location of use to outside the District boundaries will not be allowed unless transfer of the location of use is to the same, adjacent, or diagonal government survey section, in which case a transfer permit from the District will be required. Transfer of the point of withdrawal to outside the District boundaries will be considered pending approval from the bordering District.

5-7.2 Transfers Out of the State. Requests for transfer of ground water out of state pursuant to Neb. Rev. Stat. § 46-613.01 shall require District approval but will not be acted upon by the District until such time as the approval or denial, by the Department, of the required transfer permit.

5-7.2.1 Any person desiring to transfer ground water to an adjoining state shall advise the District of the proposed transfer no later than the filing of a permit application with the Department.

5-7.2.2 A water well construction permit shall not be issued until a permit to transfer ground water to an adjoining state has been obtained from the Department and a copy of the permit is on file with the District.

5-7.3 Transfers Into the District/Into the State. District approval is required before ground water is transferred from a well located outside the District for use within the District unless such transfer began before the effective date of these rules and regulations or the water is used solely for domestic purposes or used to water range livestock. Such approval shall be granted if the proposed transport of the ground water is not inconsistent with the District's rules and regulations and if the applicant agrees that such approval may be conditioned on the water use being in conformance with District rules and regulations relating to the use of water withdrawn inside the District. The applicant shall provide the District with such information as the District deems necessary to make a determination about whether to grant, condition, or deny the permit application. 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. Any transfer into the District, unless such transfer began before the effective date of these rules and regulations or the water

is used solely for domestic purposes, or range livestock purposes, regardless of its origin, will be considered a new use in the District and will be required to be offset as outlined in Rule 5-2.

5-7.4 Transfer of Point of Withdrawal. Transfers of the point of withdrawal from a fully appropriated area to an overappropriated area are prohibited. Point of withdrawal transfers will be allowed from an overappropriated area into a fully appropriated area only if that transfer will not cause impact on other immediate ground water users or surface water appropriators.

5-7.5 Transfer of Location of Use from FA to OA. Transfers of the location of use from FA to OA will only be allowed when ground water is transported from the original well (without changing the point of withdrawal). Transfers of location of use from FA to OA may be allowed only if the transfer will not cause impact on other immediate ground water uses or surface water appropriations, and there are no increases in historic consumptive use unless an offset is provided.

5-7.6 Transfers of Location of Use from OA to FA are prohibited.

5-7.7 Transfer of Location of Use or Point of Withdrawal. In the case of transfer of location of use of water or transfer of point of withdrawal, the use associated with the original well or wells will have the certification of ground water use rescinded. The new use must be certified in accordance with Rule 3-3, except that historical information will not be required.

5-7.8 Transfer of Type of Use. Transfer of type of use or addition of type of use will require a permit from the District. No change or addition of ground water use shall be approved unless such change or addition results in no increase in the historic consumptive use of the ground water to be transferred unless an offset is provided. The certification of the original ground water use will be rescinded and the new use certified in accordance with Rule 3-3.

5-7.9 Transfer of Commingled Water The transfer of ground water from certified acres that are irrigated with both surface and ground water (commingled water) will be permitted under the following conditions:

5-7.9.1 Transfers are permitted on an acre for acre basis from agricultural land to other agricultural land if there is no increase in net ground water irrigated acres and all District water transfer conditions are met.

5-7.9.1.1 Ground water and surface water serving the same acres are both transferred to the same number of new acres not previously irrigated.

5-7.9.1.2 Ground water is transferred from acres irrigated by commingled water to acres irrigated with surface water only.

5-7.9.1.3 Surface water is transferred or assigned from acres irrigated by commingled water to acres certified for ground water use only. The original acres will retain full ground water irrigation use.

5-7.9.2 Ground water is transferred from an irrigated agricultural use to a non-agricultural use. The District will use the Net Crop Irrigation Requirement (NCIR) for corn developed by the University of Nebraska-Lincoln in inches per acre for that location to determine the amount of the ground water portion which may be transferred. The number of inches of

ground water permitted to be transferred will be the difference between the annual NCIR for corn and the average annual historic volume of water diverted by the surface water appropriator as determined by Department of Natural Resources' records. That amount will be divided by the total acres on record at the DNR for that appropriator allowing for a fifty percent average delivery loss.  $(\text{NCIR} - (\text{Diversion} \times .5)/\text{acres}) = \text{inches}$  ground water transferable per acre.

5-7.9.3 If the surface water appropriation on acres irrigated by commingled water is eliminated due to relinquishment or is otherwise lost when surface water was available, the District will rescind certification for ground water irrigation and prohibit the use of ground water for irrigation on said acres if the surface water appropriation is not transferred or assigned and the appropriation is lost resulting in a reduction in the appropriator's diversion entitlements. If the transfer or assignment of surface water from acres irrigated by commingled water to previously non-irrigated acres occurs, the formula used in Rule 5-7.9.2 will be applied to the use of the remaining ground water on the original acres.

5-8 Application for Transfer Permit(s). An application for a permit to transfer ground water shall include the following information:

1. The name and post office address of each owner of the land where the well or wells are or will be located, and if another person or persons operate such well, the name and address of such person or persons;
2. The name and post office address of the owner or owners of the land where the water is to be transferred for use;
3. The legal description of the parcel of land where the well or wells are located;
4. The legal description of the parcel of land where the water is to be transferred for use;
5. If an existing well is involved, the Nebraska Department of Natural Resources water well registration number for such well;
6. The nature of the proposed use;
7. The maximum rate of withdrawal from the well or wells to be used as the source of water for the transfer;
8. The range of the maximum and average amounts of water proposed to be withdrawn and transferred on an annual basis;
9. An aerial photo or photos showing the proposed point(s) of withdrawal, the proposed point(s) of delivery, and the transfer route(s);
10. Identification of any alternative sources of surface water or ground water available to the applicant for the proposed use and the reasons why use of such alternative source or sources is not being sought;
11. A statement of the effects of the proposed withdrawal, transfer and use on existing ground water users, on existing surface water appropriators, and on ground water and surface water supplies needed to meet present or reasonable future demands or to comply with any other interstate water compacts or decrees or any other formal state contract or agreement;

12. Any other information the District deems relevant to its criteria for approval of the proposed withdrawal, transfer and use.

An incomplete application shall be returned to the applicant for corrective action. If a properly completed application is not returned within sixty (60) days thereafter, the application shall be cancelled.

5-8.1 Application Fees. In accordance with Neb. Rev. Stat. § 46-691.03, an application for a permit for the withdrawal, transport and use of ground water to augment water supplies in any Nebraska wetland or natural stream for the purpose of benefiting fish or wildlife or for producing other environmental or recreational benefits shall be accompanied by a non-refundable fee of \$50 payable to the District.

5-8.2 Public Comment on Applications. Prior to taking action on any transfer permit application, with the exception of a Transfer of a Type of Use, the District shall provide an opportunity for public comment on such application at a regular or special board meeting for which advance published notice of the meeting and the agenda therefore have been given consistent with Neb. Rev. Stat. §§ 84-1414.

5-8.2.1 The District shall proceed by publishing, in a newspaper of general circulation of the county or counties in which the proposed transfer is to take place, any applications for the transfer of ground water. The District will allow the general public thirty (30) days from date of publication to file a formal objection with the District. If a member of the public chooses to file a formal objection against the proposed transfer, a fifty dollar (\$50) fee will be charged and a public hearing will be scheduled. If a member of the public chooses not to file a formal objection against the proposed transfer, but would still like to express his/her concerns, they may address the staff and/or Board directly with the understanding that the final and immediate decision on the proposed transfer will be left to the discretion of the staff and/or Board without further public comment.

5-8.3 Additional Information Requested. Prior to taking action on any application for a permit governed by these rules, the District may request the applicant to provide additional information to support his or her application. Failure of the applicant to provide the requested information may be grounds for denying the permit.

5-8.4 Approval of Transfers. In accordance with Neb. Rev. Stat. §46-739(k) the District shall deny or condition the approval of any such transfer when and to the extent such action is necessary to:

1. Ensure the consistency of the transfer with the purpose or purposes for which the District's Ground Water Management Area was designated;
2. Prevent adverse effects on other ground water users or on surface water appropriators;
3. Prevent adverse effects on the state's ability to comply with an interstate compact or decree or to fulfill the provisions of any other formal state contract or agreement; and

4. Otherwise, protect the public interest and prevent detriment to the public welfare.

5-8.5 District Considerations Relative to Public Interest and Public Welfare.

When determining whether it would be in the public interest or detrimental to the public welfare to approve an application for a withdrawal and transfer subject to Chapter 5, the District shall consider the following:

1. Whether the proposed use is a beneficial use of ground water;
2. The availability to the applicant of alternative sources of surface water or ground water for the proposed withdrawal, transport, and use;
3. Any negative effect of the proposed withdrawal, transfer, and use on ground water or surface water supplies needed to meet reasonable future demands for water within the state;
4. The cumulative effects of the proposed withdrawal, transfer, and use relative to the matters listed in subsections 1-3 of Rule 5-8.5;
5. If the ground water will be transferred to and used in any other natural resources district, whether that District has approved such transfer and use and whether such transfer and use would be consistent with the rules and regulations of such other District; and
6. Any other factors which the District deems relevant to protect the public interest and prevent detriment to the public welfare.

5-8.6 Permit to Construct New Ground Water Well. If a transfer of the point of withdrawal is approved under these rules and regulations the applicant must apply for a permit to construct a new ground water well as provided in Rule 1-3. If the permit is for a transfer of the point of withdrawal, approval of such permit will be conditioned on (1) the original well or wells will be decommissioned within thirty (30) days of the new well or wells being completed and, (2) the new well or wells will not consumptively use more water than the original well or wells unless an offset is provided. Permits to construct a well under this provision can be granted notwithstanding the provisions of Rule 1-8.

5-8.7 Conditions on Permits Issued. All permits issued by the District for transfers of ground water shall be conditioned on the following:

1. The applicant's installation and maintenance of a flow meter on the well or wells that will be used for withdrawal;
2. One percent of the total amount of transferred ground water from any type of transfer shall be placed into a ground water banking system administered by the District. The water in this account will be used for any offsets required of the NPNRD in accordance with the requirements of Section 46-740;
3. The applicant's submission of an annual report stating the total volume of water pumped from said well or wells in the preceding year, or, at the discretion of the Board, allow North Platte NRD personnel to read and record data from said flow meter or flow meters; and
4. Compliance with all applicable statutes and rules and regulations, including any statutes or rules and regulations adopted after the District's approval of the permit; and

5. The withdrawal and transfer is and continues to be consistent with the matters listed in Rule 5-8.4.
6. Transfers are approved according to current conditions, but are subject to future allocation rules. If an allocation falls below the NCIR due to a change in allocation, the previous transfer approval will be adjusted to conform to the new allocation.

5-9 Variances. Unless otherwise provided by law or these rules and regulations, the Board may grant a variance from the rules and regulations listed in Chapter 5 upon good cause shown, provided those variances may only be granted if third parties are not harmed or prejudiced. The request for a variance must provide all the information requested by the District on forms provided by the District, and any other additional information requested by the District.

- 5-9.1 If a request for a variance from rules and regulations listed in Chapter 5 is made, the District shall publish, in a newspaper of general circulation of the county where the transfer is to take place, any requests for variance of these transfer rules. The District will allow the general public thirty (30) days from date of publication to file a formal objection with the District against the variance. If a member of the public chooses to file a formal objection to the variance, a fifty dollar (\$50) fee will be charged. If a formal objection is filed, the variance request shall be acted upon by the Board following a public hearing. If a member of the public chooses not to file a formal objection of the variance, but would still like to express his/her concerns, they may address the Board directly with the understanding that the final and immediate decision on the variance will be left to the discretion of the Board without further public comment.

5-10 Enforcement of Rules and Regulations. These rules and regulations shall be in accordance with applicable state statutes and enforced by the District through the use of cease and desist orders or other measures as provided for in Chapter 2 of these rules and regulations.

*Chapter 5—Transfer of Ground Water was adopted by Order No. NPNRD-13 by the North Platte NRD Board of Directors on December 13, 2007 and effective January 11, 2008; amended by Order No. NPNRD-14 on July 10, 2008 and effective August 7, 2008.*