

DISTRICT-WIDE  
GROUND WATER MANAGEMENT AREA  
RULES AND REGULATIONS

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**UPPER NIOBRARA WHITE NATURAL RESOURCES DISTRICT  
DISTRICT-WIDE GROUND WATER MANAGEMENT AREA  
RULES AND REGULATIONS**

1. **AUTHORITY** – These rules and regulations are adopted pursuant to the authority granted in Neb. Rev. Stat. §§ 46-701 to 46-753, the Nebraska Ground Water Management and Protection Act, (“the Act”).
2. **PURPOSE** – The purpose of these rules and regulations is to implement the Upper Niobrara White Natural Resources District’s Ground Water Management Plan (“the Plan”). The Act provides authority for the adoption of the Plan and the rules and regulations. The District-wide Ground Water Management Area will facilitate the proper management of ground water with respect to issues concerning quantity, quality and integrated management.

The Act states that ground water is one of the most valuable natural resources in the State and that an adequate supply of ground water is essential to the general welfare of the citizens of Nebraska and to the present and future development of agriculture. Although statutes grant first priority for the use of ground water for domestic purposes, the District will endeavor to take steps to protect ground water use for all beneficial purposes.

3. **APPLICABILITY – Creation of Area:** These rules and regulations are promulgated under the authority of the Act, and apply to all lands of the District which have been designated by the Upper Niobrara White Natural Resources District Board of Directors as the District-wide Ground Water Management Area (“Management Area”). A description of the applicable lands is set forth in Appendix A and a map in Appendix B of these Rules and Regulations. The Management Area and rules and regulations originally became effective on July 1, 1998, on a District-wide basis. The Board of Directors has amended the rules and regulations in conjunction with the revision of the District’s Ground Water Management Plan and intends that the amended rules and regulations will initially be effective on or before March 1, 2007. The controls adopted pursuant to the authority in the Act are set forth beginning with Rule 14 of these rules and regulations.
4. **DEFINITIONS** – The following definitions shall be used in connection with the administration of the Management Area:

Abandoned Water Well means any water well, the use of which has been accomplished or permanently discontinued, which has been decommissioned as described in the rules and regulations of the Nebraska Department of Health and Human Services Regulation and Licensure and the owner of which has filed a notice of abandonment with the Nebraska Department of Natural Resources.

Acre-inch means the amount of water that will cover one (1) surface acre to the depth of one (1) inch.

For the purposes of these rules and regulations one (1) acre inch is equal to twenty-seven thousand one hundred fifty-four (27,154) gallons.

Act means the Nebraska Groundwater Management and Protection Act, Neb. Rev. Stat. § 46-701 to 46-753, referred to as “the Act”.

Adjacent Section means a section of land that adjoins the section of land in question.

Alleged Violator means a landowner and/or operator of the land who has failed to comply with the Ground Water Management and Protection Act and any of these rules and regulations.

Allocation, as it relates to ground water use for irrigation purposes, means the allotment of a specified total number of acre-inches of irrigation water per irrigated acre per year or an average number of acre-inches of irrigation water per irrigated acre over any reasonable period of time.

Allocation Period means the period of time for which an allocation is apportioned, which for purposes of these regulations shall be four years.

Application for a Permit means an application on a written form supplied by the District for the construction of a water well in accordance with Neb. Rev. Stat. § 46-735 and amendments thereto.

Application for a Late Permit means an application for a permit that was not timely filed. Such permit will be reviewed by the District in accordance with Neb. Rev. Stat. § 46-735 and amendments thereto.

Average Allocation means an average number of acre-inches of ground water per irrigated acre over a certain period of time determined by the Board, not to exceed four years.

Best Management Practices means the schedules of activities, maintenance procedures, and other management practices utilized to prevent or reduce present and future contamination or declines of ground water. Best management practices shall include but are not limited to such things as soil testing, water testing, manure testing, irrigation scheduling, measuring and/or monitoring of irrigation water applications, use of inhibitors, proper timing and rate of fertilizer and pesticide application and other fertilizer and pesticide management programs.

Board or Board of Directors means the Board of Directors of the Upper Niobrara White Natural Resources District.

Carry Forward means the unused portion of allocated ground water during a four (4) year allocation period, which may be saved and used if needed in a subsequent four (4) year allocation period.

Certification of Education means a current certificate of completion issued by the District to the operator for completion of the necessary educational programs required by the District.

Certified Irrigated Acres means the number of irrigated acres that are eligible for ground water allocation, which have been certified by the Board pursuant to these rules and regulations.

Commingled Well means multiple wells used for a single purpose, which individually pump less than 50 gallons per minute, but collectively pump more than 50 gallons per minute.

Commencement of Construction means the beginning of the boring, drilling jetting, digging, or excavation of the actual water well from which ground water is to be withdrawn.

Certification Inspector means an employee or agent of the District authorized by the District Manager to perform the duties assigned to him or her by these rules and regulations.

Controls means any requirement, obligation, duty, or restriction placed upon a landowner and/or operator of the land by these rules and regulations.

Decommission means the complete filling and sealing of a water well cavity in accordance with the rules and regulations and the Water Well Standards and Contractors' Licensing Act.

Department, NDNR or DNR means the Nebraska Department of Natural Resources.

District, UNWNRD or NRD means the Upper Niobrara White Natural Resources District.

Director means the Director of the Department of Natural Resources.

Educational Programs means information and educational training programs designed to educate a landowner and/or operator of the land about best management practices in the operation of irrigation and cropping systems.

Flow Meter or Meter means a device of a type or design approved by the Board, which measures the total amount of ground water withdrawn, and is installed, operated and maintained according to District specifications.

Good Cause Shown means a reasonable justification for granting a variance for a consumptive use of water that would otherwise be prohibited by rule or regulation and which the District reasonably and in good faith believes will provide an economic, environmental, social, or public health and safety benefit that is equal to or greater than the benefit resulting from the rule or regulation from which a variance is sought.

Government Survey Section or Section means a section of land approximately one (1) square mile in size as defined by the United States Government Survey System of townships, ranges, sections, and quarter sections.

Ground Water means that water which occurs in or moves, seeps, filters, or percolates through ground under the surface of the land.

Ground Water User means a person who at any time extracts, withdraws, or confines ground water, at a rate in excess of 50 gallons per minute from a well or Commingled Well, for any use by himself or herself or allows such use by other persons. Whenever the landowner and/or operator are different, the term ground water user includes the landowner and/or operator.

(a) Agricultural user means a ground water user who uses ground water for livestock, irrigation or other purposes, which requires pumping ground water to the surface of the land.

(b) Municipal user means a ground water user that is an incorporated city or village, rural water district or sanitary improvement district that withdraws ground water from a water well to serve its customers.

(c) Other user means a ground water user that uses ground water for purposes other than those described in the definitions of agricultural and municipal user and includes, but is not limited to, recreational, wildlife, manufacturing and industrial uses.

High Capacity Livestock Well means a well with pumping capacity of over 50 gallons per minute that is used for the watering of livestock and other uses of water directly related to the operation of a pasture, range, feedlot or other confined livestock or dairy operation.

Historically Irrigated Land means land that has been assessed by a County Assessor and taxed three (3) out of the last five (5) years as irrigated land, except for land enrolled in a federal or state set aside program. The landowner or operator of land in a set aside program is required to maintain a written record of irrigation for the duration of any contract with a federal or state agency. After any such contract has terminated, this land shall be classified as Historically

Irrigated Land..

Illegal Water Well means:

- (a) Any water well operated or constructed without or in violation of a permit required by these rules and regulations,
- (b) Any water well not properly registered in accordance with Neb. Rev. Stat. § 46-602 to 46-604,
- (c). Any water well not in compliance with any other applicable laws of the State of Nebraska or other rules and regulations of the District,
- (d) Any water well in violation of spacing requirements specified in the District's Water Well Permit Restrictions or by Neb. Rev. Stat. § 46-609 and 46-651,
- (e) Any water well used for the application of chemical materials in violation of Neb. Rev. Stat. § 46-1101 to 46-1148 as such statutes may be amended and supplemented, and such rules and regulations as may be adopted from time to time by the Nebraska Department of Environmental Quality,
- (f) Any water well located within fifty (50) feet of the bank of any natural stream and used for irrigation purposes without a permit issued pursuant to Neb. Rev. Stat. § 46-637 and 46-735,
- (g) Any well or pit from which water is transported to an adjoining state in violation of Neb. Rev. Stat. § 46-613.01, and
- (h) Any well from which water flows under natural pressure in excess of the amounts specified in Neb. Rev. Stat. § 46-281.

Inactive Status Well means a water well that is in good state of repair and for which the landowner/operator has provided evidence of intent for future use by maintaining the water well in a manner, which meets the following requirements:

- (a) The water well does not impair the quality of the water in the well or of the ground water which may be pumped by the well.
- (b) The top of the water well or water well casing has a watertight welded or threaded cover or some other watertight means in order to prevent (i) unauthorized access, (ii) a safety hazard to humans and animals, and (iii) illegal disposal of wastes or contaminants into the water well.
- (c) The water well is marked so as to be clearly visible and identified as a water well and the area surrounding the water well is kept clear of brush, debris and waste material.
- (d) The status change to inactive is filed with the Nebraska Department of Natural Resources.

Information and Education means the collection, compilation and dissemination of ground water data as well as training, demonstration and educational instruction.

Industrial Well means a well used in manufacturing and commerce operations, and/or watering

and maintenance of golf courses.

Irrigated Acre means an acre that is certified as such pursuant to rules and regulations of the District and is capable of being supplied water through irrigation works, mechanisms or facilities existing at the time of ground water allocation.

Irrigation Monitoring means the monitoring of soil moisture as a management tool for the proper application of irrigation water.

Irrigation System means the necessary appurtenances to a well or other water source to convey irrigation water to a certified tract of irrigated land, which includes a set-move, solid-set, traveler, center pivot, or linear move sprinkler system and gravity, furrow or flood irrigation utilizing water from a ditch, canal or pipe.

Landowner means any person who owns real estate or has contracted to purchase or otherwise acquire title to real estate.

Livestock Well means a well with pumping capacity of fifty (50) gallons per minute or less which is used for the watering of livestock and other uses of water directly related to the operation of a pasture, range, feedlot or other confined livestock or dairy operation.

Management Area means the District-wide Ground Water Management Area as designated by the Upper Niobrara White NRD Board of Directors pursuant to the Act.

Management Plan or Plan means the ground water management plan developed and maintained by a Natural Resources District and approved by the Department of Natural Resources pursuant Neb. Rev. Stat. § 46-709 to 46-711, particularly Section 7 and Section 8 of the Upper Niobrara White Natural Resources District's Revised Ground Water Management Plan.

Monitoring Period means the period of time which ground water information is collected and analyzed for making management decisions.

Monitoring Well means a well from which the District or another public agency collects ground water quality and quantity information.

Nitrogen Fertilizer means a chemical compound in which the percentage of nitrogen is greater than the percentage of any other nutrient in the compound or, when applied, results in an average application rate of more than twenty (20) pounds of nitrogen per acre over the field to which it is being applied.

Non-regulated Well means a ground water well designed and constructed to pump fifty (50) gallons per minute or less, unless it is a Commingled Well.

Non-point Source Contamination means any source of pollution resulting from the dissolution and disbursement of widespread, relatively uniform contaminants of a nonspecific origin.

Observation Well means a well from which the District or another public agency measures the static water level of ground water.

Offset means the transfer or retirement of water use from one source, to allow an increase in use for another source.

Operator means the person who has control over the day-to-day operations of the land in

question, which shall include the landowners and/or any tenant.

Permit means an approval document which is required to be obtained from the District in accordance with Neb. Rev. Stat. § 46-735 through 46-738, and the rules and regulations of the District.

Person means a natural person, personal representative, trustee, guardian, conservator, partnership, association, corporation, limited liability corporation, municipality, irrigation district, and any agency or political subdivision of the State of Nebraska, or any department, agency, or bureau of the United States.

Pooling Arrangement means any plan approved by the Board in which ground water allocations are combined in the manner set forth in Section 21.

Recreational Use means utilizing water from a Regulated Well for any form of play, amusement or relaxation.

Regulated Well means a registered ground water well or Commingled Well that is designed and constructed to pump more than fifty (50) gallons per minute.

Replacement Well means a ground water well which (a) replaces an abandoned water well within three years of the last operation of the abandoned water well, or replaces a water well that will not be used after construction of the new water well, and (b) is constructed to provide water to the same tract of land served by the water well being replaced; PROVIDED that (i) such replacement well is not designed or constructed to pump more water than the well it replaces; (ii) no more than one replacement well may be used to replace the original well; (iii) the replacement well must be used for the same purpose as the original water well; (iv) a well is an illegal well if, after having been replaced, it has not been decommissioned within one (1) year of completion of construction of the new water well.

Specific Allocation means the allotment of a specified number of acre-inches of irrigation water to an irrigated acre for a specific year.

Sprinkler means an irrigation system that uses pressure energy to form and distribute water droplets over the land surface. This includes permanent, semi-permanent or moveable sprinkler systems such as set-move, solid-set, traveler, center pivot and linear move sprinkler systems.

State means the State of Nebraska.

Sub-area means a geographic area within the district as designated by the Board of Directors.

Surface Irrigation means irrigation by gravity, furrow or flood utilizing water from a ditch, canal, pipe, or other conveyance directly to the surface of the ground. Such water is distributed across the field through a channel or furrow by the force of gravity.

Tract of Land or Tract means a legally identifiable parcel of land that is contiguous or lies within one government survey section.

Transfer of Ground Water means the transfer of ground water off of overlying land to another contiguous tract in accordance with Section 20 of these rules and regulations.

Variance means approval to act in a manner contrary to existing rules or regulations from a governing body whose rule or regulation is otherwise applicable.

Water Well means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for ground water, monitoring ground water, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting fluid as defined in section 81-1502 into the underground water reservoir. Water well shall not include any excavation made for obtaining or prospecting for oil or natural gas or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Commission or the Nuclear Regulatory Commission.

Wildlife Use means utilizing water from a Regulated Well for the enhancement of wild birds and animals.

5. **GENERAL PROVISIONS AND PROCEDURES FOR ENFORCEMENT** – The District shall enforce the provisions of the Ground Water Management and Protection Act and all rules and regulations adopted pursuant thereto by the issuance of cease and desist orders in accordance with the procedures hereinafter specified and by bringing appropriate actions in the District Court in which any violations occur for enforcement of such orders. Cease and desist orders may be issued for the following reasons:
- (a) Construction or operation of an illegal well as defined in these rules and regulations.
  - (b) Operation of an irrigation system in the Management Area that is in non-compliance with the allocable use of ground water as set forth in these rules and regulations.
  - (c) Operation of a cropping system in the Management Area in violation of the controls provided for in these rules and regulations.
  - (d) Operation of a cropping system in the designated Management Area without being certified in the education programs required by the District pursuant to Rules 18 of these rules and regulations.
6. **INSPECTIONS** – A certification inspector may conduct an inspection to confirm compliance with these rules and regulations. A certification inspector may conduct a field inspection upon offering proper identification and after informing the landowner and/or operator, either in person, by certified return receipt request mail, or by leaving notice posted at the landowner and/or operators' last known address of the suspected violation(s) and the purpose of the inspection. A certification inspector shall be authorized to enter upon the land if necessary for the purpose of making an investigation of the alleged violation pursuant to these rules and regulations. Upon completion of the investigation of records or field activities, the certification inspector shall file a written report of his or her findings in the District office and shall deliver a copy of the report to the landowner and/or operator.
7. **SUBMISSION OF INSPECTION REPORT ALLEGING VIOLATION AND ALLEGED VIOLATOR'S ALTERNATIVES** – If the certification inspector finds that there is reasonable cause to believe that the landowner and/or operator is in violation of these rules and regulations, then the certification inspector's report shall be accompanied by a formal notice to the landowner and/or operator of the alternative actions available to the alleged violator. Alternative actions include the following:
- (a) Agree with and accept as true and correct the certification inspector's findings that the alleged violation(s) has in fact occurred or is occurring and consent in writing to cease and desist from continuing or allowing the recurrence of such violation; and submit a schedule for corrective action pursuant to Rule 8; or

- (b) Reject the findings of the certification inspector's report and request in writing that a formal hearing be scheduled and conducted in accordance with the rules and regulations of the District.

The alleged violator shall be granted not more than seven (7) days (excluding Saturdays, Sundays, and legal holidays) following receipt of the report notice to respond.

- 8. **SCHEDULE OF COMPLIANCE** – If the alleged violator agrees with the certification inspector's findings and further agrees to submit a plan to conform with these rules and regulations, then the landowner and/or operator shall submit a plan within ten (10) days (excluding Saturdays, Sundays, and legal holidays) following the notification provided by the District. Failure to submit a plan within ten (10) days shall be deemed a rejection of the findings and shall be deemed a request for a formal hearing.
- 9. **VOLUNTARY COMPLIANCE** – Subsequent to the submission of a plan to take corrective action the District shall review the investigation report, the plan and any other related or pertinent document necessary to evaluate the plan.

The District within its sole discretion shall determine whether the actions agreed to by the landowner and/or operator will, when applied, bring the landowner and/or operator into compliance with these rules and regulations. If the District determines that the proposed actions of the landowner and/or operator are adequate and will prevent future violations within a reasonable time period, such action or plan will be approved and the District shall notify the landowner and/or operator of the District's approval and provide a schedule of compliance to complete the plan.

If the District within its sole discretion determines that implementation of the proposed plan or schedule of compliance would be inadequate to prevent further violation of the rules and regulations, then the District shall inform the landowner and/or operator and shall make proposed changes or additions to the plan to attain conformance with these rules and regulations. An alleged violator shall have five (5) days (excluding Saturdays, Sundays, and legal holidays) from the receipt of the proposed changes from the District to consent to such additions or changes and puts them into effect, agree to negotiate appropriate changes, or reject such changes and request a formal hearing.

- 10. **FORMAL HEARING** – If voluntary measures can not be agreed upon between the certification inspector and the landowner and/or operator, or the landowner and/or operator rejects the findings of the certification inspector's report set forth in Rule 7, Part (b), then the alleged landowner and/or operator shall be given an opportunity to contest the investigation report, or the schedule of compliance required by the District, at a Board hearing or formal public hearing to be held no sooner than fifteen (15) days and not more than forty-five (45) days after receipt of the initial notice provided pursuant to Rule 7. Notice of the hearing shall be provided to the landowner and/or operator and any other necessary persons. The District's rules for a formal adjudicate hearing shall govern the conduct of all such hearings. The landowner and/or operator shall be further notified that if he or she fails to respond to any notice and fails to appear at the scheduled hearing, the Board shall proceed to make a final determination as to the alleged violation of these rules and regulations and shall determine if a formal cease and desist order shall be issued and enforced against the landowner and/or operator.

The Board may take any and all actions it deems necessary to cause the landowner and/or operator to comply with these rules and regulations. The Board may authorize a variance from these rules and regulations if it is determined that unique or special circumstances require such treatment. A variance will only be granted in those rare circumstances where evidence, data or

other facts require a variance that is consistent with the goals and objectives of these rules and regulations.

A cease and desist order may be issued at the conclusion of the hearing if deemed necessary and appropriate by the Board.

11. **LANDOWNER'S/OPERATOR'S ACTIONS FOLLOWING ISSUANCE OF CEASE AND DESIST ORDER** – A landowner and/or operator who has been served with a cease and desist order for a violation of these rules and regulations shall be allowed seven (7) days (excluding Saturdays, Sundays, and legal holidays) following receipt of such order, to submit a schedule of compliance. The District will review the schedule of compliance and within its sole discretion shall determine if such plan satisfies these rules and regulations. If the plan fails to comply with these rules and regulations the District shall proceed with the enforcement of the cease and desist order.
12. **BOARD AUTHORIZATION TO INITIATE COURT ACTION** – The Board may initiate appropriate legal actions to enforce any action or orders of the District.
13. **CEASE AND DESIST ORDER; VIOLATION: PENALTY** – As provided by the Act, any violation of a cease and desist order issued by the District pursuant to the Act shall be subject to a civil penalty assessed pursuant to Neb. Rev. Stat. § 46-746.
14. **CONTROLS IN THE DISTRICT-WIDE GROUND WATER MANAGEMENT AREA** – The following controls apply to landowners and/or operators of irrigated land in the Upper Niobrara White NRD District-wide Ground Water Management Area.
15. **GROUND WATER QUALITY** – A ground water analysis for nitrate-nitrogen content in all wells pumping greater than 50 gallons per minute for irrigation of crops must be accomplished once every four (4) years. Landowner/Operator must allow the sample to be collected and analyzed by the Upper Niobrara White NRD using approved methods. Results of the analysis will be mailed to landowner and will give the operator knowledge of usable nitrogen present in the ground water.
16. **WATER WELL PERMIT** – Any person intending to construct a water well on land he/she owns, leases or controls in any manner at any location within the Upper Niobrara White NRD Ground Water Management Area shall, before commencing construction, apply for a permit and receive approval on forms provided by the District. Water well permits shall expire one (1) year from date of approval. Water well permits shall not be required for the following exemptions:
  - (a) No permit shall be required for test holes or dewatering wells with an intended use of ninety (90) days or less; and
  - (b) No permit shall be required for water wells designed and constructed to pump fifty (50) gallons per minute (gpm) or less, however, multiple wells individually pumping less than 50 gpm but collectively pumping more than 50 gpm will be considered a single well for purposes of this rule if they are connected together or otherwise serve a single purpose;
  - (c) The geographic area subject to this rule is the entire geographic area that coincides with the boundaries of the District. The stratigraphic area subject to this rule is from the land surface to the base of the underlying layers that contain the water bearing material except that the portion of the Chadron aquifer that is permitted by DNR under the Industrial Permits Act, for in situ uranium mining. Any new water well to be constructed in the aquifer(s) that overlie or underlie the permitted portion of the Chadron aquifer described above is subject to this rule.

Such a permit shall be applied for before any water well is modified, for which a permit was not required under 16.a, 16.2b or 16.c above, into a water well for which such a permit is otherwise required by this rule.

17. **STAY ON THE ISSUANCE OF WATER WELL CONSTRUCTION PERMITS –**

Commencing on the effective date hereof and except as provided hereinafter, no person shall commence the construction or construct a new water well as specified in Rule 16 above. Provided, however, that (i) test holes or dewatering wells with an intended use of ninety days or less, (ii) a single water well designed and constructed to pump fifty gallons per minute or less, and (iii) water wells defined by the District to be replacement wells, shall not be subject to the stay.

Water wells for which permits have been issued prior to the effective date of these rules and regulations may be constructed if the District has issued a valid permit and all conditions of the permit have been complied with.

**Well Construction Variances**

The District may grant a variance from the stay on the issuance of water well construction permits if it determines that construction of a new water well will provide an economic, environmental, social or public health and safety benefit that is equal to or greater than the benefit resulting from the rule or regulation from which the variance is sought. In addition a variance may be granted for contamination/remediation or monitoring/observation as defined below.

(a) Contamination/Remediation means a water well constructed to the standards of the State of Nebraska Department of Health and Human Services for a recovery well, and for the purpose of withdrawal or treatment of contaminated water, or for the introduction or removal of air, water or chemicals. The variance request and Application for a Permit to Construct a Water Well shall include written approval of the state agency with supervisory responsibility for the planned project.

(b) Monitoring/Observation means a water well constructed to the appropriate well standards and for the purpose of withdrawal of water or the observation of water levels, collection of water quality samples and providing hydrogeology information. The variance request and Application for a Permit to Construct a Water Well shall include the planned disposition of the monitoring/observation well after its intended use is completed.

All requests for a variance, except under (a) and (b) above, will be made on forms provided by the District and will be acted upon by the District. A variance under (a) and (b) above may be granted by the General Manager.

18. **CERTIFICATION TRAINING: EDUCATION IN IRRIGATION AND NITROGEN MANAGEMENT –**

All operators of irrigated land within sub-areas meeting or exceeding ground water decline triggers or ground water quality triggers are required to obtain necessary training and education certification in the Ground Water Management Area (GWMA) Certification Program. The required training and education may be accomplished through the participation in approved training and education programs. Certification requires the successful completion of the program. The educational program is explained in greater detail in the Ground Water Management Plan.

19. **FLOW METERS –** After the effective date of these controls, and except as otherwise provided herein, the users of all regulated water wells within sub-areas meeting or exceeding ground water

quantity or quality triggers are required to properly install flow meters.

(a) Installation of flow meters – All regulated water wells within the boundaries of the Upper Niobrara White NRD are required to have flow meters installed and operational in accordance with the following schedule:

(1) Ground water users within a sub-area meeting or exceeding ground water management triggers for phase III upon the effective date of these rules and regulations will install flow meters on all of their active uses by March 1, 2007.

(2) Ground water users within a sub-area meeting or exceeding ground water management triggers for phase II upon the effective date of these rules and regulations will install flow meters on all of their active uses by March 1, 2009.

(3) Ground water users within all sub-areas upon the effective date of these rules and regulations will install flow meters on all of their active uses by March 1, 2011.

(4) Ground water users within a sub-area meeting or exceeding ground water management triggers initiating a phase II or phase III designation prior to the 2009 or 2011 deadlines will install flow meters on all of their active uses by March 1<sup>st</sup> of the year following their meeting or exceeding ground water management triggers.

(5) All flow meters are required to measure the entire amount of water pumped by a regulated well in conformance with all specifications and requirements contained within these rules and regulations. In cases where water from two or more wells is commingled, one flow meter may be installed at a point after the water has been commingled. If water is used for irrigation, this point will be as near as possible to the device that is used to apply the water to the field. Commingled wells installed before the effective date of these rules and regulations must be modified in accordance with the flow meter installation schedule as established in 19.a.1.

(6) For inactive status wells a flow meter is required to be installed before reactivating the well.

(b) Flow meter specifications and requirements – All flow meters installed and maintained for purposes of compliance with these rules and regulations are required to meet or exceed the following specifications and requirements:

(1) All flow meters installed prior to the effective dates of these rules and regulations are required to comply with the specifications and requirements stated herein. In any event, all non-complying flow meters must be replaced in accordance with the flow meter installation schedule as established in 19.a.1.

(2) Each flow meter is required to be installed (physically attached) according to the manufacturer's specifications and calibrated to the pipe size. Calibration must maintain an accuracy of plus or minus two (2) percent of normal flow range.

(3) The meter registry will have a visual volume recording totalizer, which is protected from the elements, with sufficient capacity to record for the period of one year the quantity of water diverted from each well or commingling of wells. All flow meters also will have a clearly visible and readable analog or digital display that provides a real time reading of the rate of flow of water through the flow meter.

(4) District personnel will seal all flow meters. No seal will be removed without prior

approval of the District.

(c) Flow meter readings, inspections and maintenance

- (1) District personnel will have access to the well or commingled wells and flow meter(s) at any reasonable time to read and record flow meter readings.
- (2) Flow meters installed that do not meet manufacturers' or District standards must be corrected. Failure to provide for proper installation may result in the loss of the base allocation for the next crop year.
- (3) Flow meters may be periodically inspected for performance, accuracy and evidence of tampering.
- (4) Each flow meter is required to be kept in working order and clear of debris, vegetative growth or other material that would impede operation.
- (5) Landowners and operators are responsible to ensure that flow meters are fully functional, properly maintained and operational. The District, at the request of the landowner or operator, may perform maintenance and operational service to flow meters, at the landowners or operators cost. A form, provided by the District, will authorize this service and the District may enter onto property to provide this service. This service will be provided in the off-season and will not interfere with the normal operation of the meter or the well.
- (6) Any malfunctioning flow meter will be reported to the District office at Chadron, Nebraska, within twenty-four (24) hours after discovery. Malfunctioning flow meters discovered on any day other than workdays (weekends and holidays) will be reported before the office closes on the first working day following the discovery. During the malfunctioning period, the landowner or operator shall use a method approved by the District to determine water consumption. The District and landowner or operator are required to make a diligent effort to put the flow meter back in service as soon as possible. When flow meters are removed for servicing or replacement, the landowner or operator must keep records of the flow meter reading. Failure to report inoperative meters may result in the loss of the base allocation for the next crop year.
- (7) The District may require any ground water user to provide information that will enable the District personnel to determine the amount of energy used to operate any well on which a flow meter is required. The ground water user is required to provide such information, or the ground water user shall notify the entity providing such power of authorization for District personnel to procure such information. District personnel will seek such information in the event a flow meter is malfunctioning, or if the landowner, operator or the District personnel have reason to believe the flow meter reading is incorrect. If any power source on a well within the Management Area is equipped with an hour meter, the District may require the ground water user to provide appropriate readings from said hour meter.

(d) Damage to or tampering with flow meters

It shall be a violation of these rules and regulations for any person to willfully injure, alter, remove, reset, adjust, manipulate, obstruct or in any manner interfere with or tamper with any flow meter within the Management Area, without District consent, for the purpose or with the intent to produce an incorrect, inaccurate or misleading measurement or to cause,

procure or direct any other person to do so. Removing a seal placed on a flow meter by the District will be considered tampering with a flow meter. Following a hearing before the Board, if it is found that tampering has affected the accuracy or use of the meter, the District may withhold the base allocation for the next crop year and may prorate the allocation for the current year.

20. **GROUND WATER TRANSFERS** – Any user of a ground water well intending to withdraw and transfer water within the District is required before making such transfer, to apply and receive approval from the Board for the transfer. Transfers which are shown to have a reasonable probability of material negative impact on a third party will not be approved. The Board will review any requests for transfers on a monthly basis.

Any transfer of ground water now occurring, which originates within the District and is transferred to another state, may continue with prior approval from the Department of Natural Resource. No new out of State or out of District transfers will be approved by the District.

Regulations on ground water transfers and exemptions are as follows:

(a) Agricultural transfers of ground water – Any agricultural user intending to withdraw and transfer ground water from the over lying land which he or she owns or controls, or otherwise change the location of use of ground water, shall, before making such transfer, apply for and receive approval from the District for the transfer.

- (1) Agriculture transfers exceeding historic ground water use will not be approved, unless an offset is provided by the landowner or operator.
- (2) Ground water withdrawal for agricultural use in the same section and sub-area controlled by the same landowner, is exempt from these transfer regulations if prior approval is granted by the District.
- (3) Transfer of ground water to an adjacent section of land, if prior approval is granted by the District:
  - (i) An agricultural ground water user may transfer ground water from a tract of land to an adjacent section that is in the same sub-area.
  - (ii) An agricultural user may not transfer more ground water to acres in an adjacent section in the same sub-area, than the total acreage allocation of the tract of land from which the ground water withdrawal originates.
  - (iii) If an agricultural user has transferred ground water to an adjacent section to serve a larger number of acres, before the effective date of these controls, he/she may continue to do so.
  - (iv) The number of acres served by the transfer of ground water from an adjacent section of land may not be increased.
- (4) After the effective date of these controls, no agricultural user may transfer ground water to a section that is not directly adjacent to the tract of land on which the ground water withdrawals originates, or to land in an adjacent sub-area or State.

(5) Any Transfer of ground water on or after the effective date of these controls, which does not comply with these rules and regulations, is prohibited.

(b) Industrial transfers of ground water – An industrial user shall not transfer ground water within the UNWNRD without first applying for and receiving approval for such transfer.

(1) Industrial transfers exceeding historical ground water use will not be approved, unless an offset is provided by the Industrial user.

(2) Industrial transfers will not be allowed from one sub-area to another sub-area, except as provided for in 20(b)(3).

(3) Industrial Ground Water Regulatory Act.

(i) Any transfer for which a permit or approval has been received pursuant to the Industrial Ground Water Regulatory Act, is exempt from the District permitting process if such transfer permit or approval is submitted to the UNWNRD office.

(c) Municipal transfers of ground water – A municipal user shall not transfer ground water outside of its jurisdictional limits without first applying for and receiving approval for such transfer by the District.

(i) Any municipal transfer exceeding historical ground water use will not be approved, unless an offset is provided by such municipal user.

(ii) No municipal transfer will be allowed from one sub-area to another sub-area unless such transfer occurs within such municipal user's corporate limits.

(iii) Municipal and Rural Domestic Ground Water Transfers Permit Act.

(1) The UNWNRD shall approve the withdrawal and transfer of ground water if a public water supplier providing water for municipal purposes receives a permit from the Department of Natural Resources pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act and submits such permit to the District.

(d) Transfer limitations for other ground water uses – On or after the effective date of these controls, no ground water transfer to a section that is not directly adjacent to the tract of land on which the ground water withdrawal originates will be allowed.

(e) Exempt transfers – The following types of transfers are exempt from these rules and regulations:

(i) Rural uses for domestic purposes with unregulated ground water wells.

(ii) Temporary transfers of water used for construction activities.

21. **POOLING OF IRRIGATED ACRES** – One (1) or more agricultural users who have certified irrigated acres in the same farming operation or who irrigate from the same regulated water well may combine their certified irrigated acres into one unit for the purpose of allocation, under the following conditions:

- (a) Any Pooling arrangement must be approved by the Board before it is effective.
- (b) Pooling will only be allowed within a sub-area.
- (c) The owner of the land shall be considered the agricultural user in control of ground water withdrawal unless the land is included in a Pooling Arrangement. The landowner must sign off on all pooling arrangements.
- (d) Certified irrigated acres under the control of a landowner in the same section and/or irrigated from the same regulated well shall be considered one (1) unit for the purpose of allocation.
- (e) A Pooling Arrangement will only be approved if it is shown by the Applicant or Applicants that there is no reasonable probability of material negative impact on any third party.
- (f) One agricultural user shall be designated by the Pooling Arrangement to be responsible for reporting the ground water withdrawals for use on certified irrigated acres to the District.
- (g) Any new Pooling Arrangement or amendments to an existing Pooling Arrangement must be submitted to the District on or before January 1st . Any party to a Pooling Arrangement must sign or provide an appropriate power of attorney.
- (h) Any Landowner who has exhausted his allocation shall not be eligible for a Pooling Arrangement.
- (i) If any Landowner removes a well from a Pooling Arrangement, the balance of any allocation remaining will be prorated evenly among all wells in the Pooling Arrangement including the well removed.
- (j) If any Landowner adds a well to a Pooling Arrangement, any balance remaining on the allocation, may be added to the Pooling Arrangement.
- (k) Any Pooling Arrangement shall expire at the end of the allocation period.

22. **CERTIFICATION OF GROUND WATER USE** – After the effective date of these controls, and except as otherwise provided herein, the acres serviced by regulated water wells within the District are required to be certified by the District. Any user is required to report acres and uses, on forms provided by the District, as provided herein. The Board may consider adjustments to certified acres based on evidence presented by the ground water user. The Board will consider new requests for certification of uses monthly.

(a) Agriculture reporting requirements – On or before January 1, following the effective date of these controls, any agricultural user who withdraws water from a regulated well is required to report the following:

- (1) Livestock users reporting:
  - (i) The number and type of livestock being watered.
  - (ii) The number of regulated wells used in livestock operation.

- (iii) Location of use.
- (iv) Well registration information.
- (v) Any other information deemed necessary by the District.

(2) Irrigation users reporting:

- (i) The number and location of irrigated acres.
- (ii) The number of regulated wells under their control.
- (iii) A copy of the most recent documentation from the county assessor showing irrigated acres.
- (iv) For tax-exempt irrigated acres, the user shall provide available documentation as deemed necessary by the District.
- (v) Well registration information.
- (vi) Any other information deemed necessary by the District.

(b) Municipality reporting requirements – On or before January 1, after the effective date of these controls, a municipal user must report the following information to the District:

- (1) The regulated water wells operated by the municipal user.
- (2) Total acres within municipal jurisdictional limits.
- (3) The total irrigated agriculture acres within municipal jurisdictional limits.
- (4) The total dry land agricultural acres within municipal jurisdictional limits.
- (5) Any acres outside the municipal jurisdictional limits served by the municipal water supply system.
- (6) The municipality's population according to the most recent federal population census.
- (7) Industrial uses within the municipal system may be identified separately and not counted as part of the municipal allocation.
- (8) The number of people served by the municipal water supply system.
- (9) Any other information deemed appropriate by the District.

(c) Industrial reporting requirements – On or before January 1, after the effective date of these controls, an industrial user must report the following information to the District:

- (1) The regulated water wells operated by the industrial user.
- (2) Total water use by industrial user.
- (3) The purpose for which the ground water is used.
- (4) The location of use.
- (5) Any other information deemed appropriate by the District.

23. **ALLOCATION** – Subsequent to the effective date of these controls, the District shall allocate the use of ground water from all regulated water wells, if ground water management triggers are met or exceeded, in the following manner:

(a) Agricultural Uses – Includes livestock operations and irrigated agriculture operations, which use regulated wells.

(1) Livestock operation wells – will be allocated an amount equal to the maximum reasonable quantity of water for livestock as shown in table below, at the beginning of the four (4) year allocation period.

	Drinking water gallons/head/day	Servicing/Flushing gallons/head/day	Quantity/1000 head confined building capacity (cbc)=1000
Cattle, Beef	15 15	0 Open Lot 100 cbc	17 acre feet 129 acre feet
Cattle, Dairy	35	100 cbc	151 acre feet
Swine			
Nursery	1	4 cbc	6 acre feet
Finishing	5	15 cbc	22 acre feet
Sow & Litter	8	35 cbc	48 acre feet
Gestating	6	25 cbc	35 acre feet
Sow			
Sheep	2 2	0 Open Lot 15 cbc	2.2 acre feet 19 acre feet
Horses	12 12	0 Open Lot 100 cbc	13 acre feet 125 acre feet
Poultry/100			
Chickens	9	200 cbc	2.3 acre feet
Turkeys	30	400 cbc	4.8 acre feet

(2) Irrigation uses – will be allocated water based on triggers set forth in the Ground Water Management Plan, at the beginning of the four (4) year allocation period, in the following manner:

- (i) Base allocation will be sixty-four (64) acre-inches for the first four (4) year allocation period, which is an annualized allocation of 16 acre-inches.
- (ii) Allocation will be based on the number of certified acres.

(iii) Allocation year will be January 1<sup>st</sup> to December 31<sup>st</sup>.

(iv) Any amount of the total allocation may be used during the four (4) allocation period, but only 80% may be carried forward to the next allocation period as further provided for (d) below.

(b) Municipal Uses – Municipalities will be allocated a per capita allocation in the following manner:

(i) 250 gallons per person per day.

(ii) The same allocation as agriculture for one-third (1/3) of the non-agricultural irrigated acres within the municipal jurisdictional limits.

(iii) The same allocation as agriculture for the agricultural irrigated acres within the municipal jurisdictional limits.

(c) Industrial Uses – Industries will be allocated water based on projected needs for a five (5) year period. Future allocations will be based on the high use over the first five (5) year period.

(i) Additional allocations, up to twenty (20) percent above established use, may be granted for expansion. The industry is required to provide notice to the District of its need for additional allocation. Additional allocations as needed to comply with state and/or federal regulations will be added to the certified use without penalty to the industry.

(ii) Allocations for industrial wells permitted under the authority of the Industrial Ground Water Regulatory Act, will be determined by the amount allowed by the permit.

(d) Carry forward – Any ground water user who does not use all of his or her allocation of ground water during a four (4) allocation period, may carry forward a maximum of 80% of the total allocation to the next four (4) year allocation period, under the following conditions:

(i) Any user who has not used his or her total allocation during the current four (4) year allocation period, may use any or all of such unused amount during the current four (4) year allocation period.

(ii) Any user who uses all of his or her allocation during a four (4) year allocation period, may borrow two (2) inches from the next four (4) year allocation period, for use during the current four (4) allocation period. The two (2) inches which are borrowed, will be deducted from the next four year allocation amount.

(iii) If the Board determines to reduce the allocation amount for a subsequent four (4) year allocation period and a user has a carry forward from a previous four (4) year allocation period, such carry forward will be reduced to a maximum of 80% of the subsequent four (4) year allocation amount.

(e) Penalty for Excess Withdrawal – Any ground water user who withdraws ground water in excess of any borrowed amount, will be penalized at the beginning of the next allocation period as follows:

For every one (1) inch of ground water withdrawn in excess of any amount borrowed, such ground water user shall forfeit two (2) additional inches. For example, assuming (a) that the next four year allocation is sixty-four (64) inches, (b) the ground water user's present four (4) year allocation is sixty-four (64) inches, (c) the ground water user has borrowed two (2) additional inches, and (d) the ground water user withdraws an additional one (1) inch in excess of the borrowed two (2) inches. As a result, at the commencement of the ground water user's next four (4) year allocation, his or her account will be reduced from sixty-four (64) inches to fifty-nine (59) inches. The following is the calculation resulting such the fifty-nine (59) inches.

(64" allocation – 2" borrowed = 62" – 1" additional withdrawn = 61" – 2" penalty = 59" remaining for next allocation period).

24. **VARIANCE** – The Board may grant a variance from these rules and regulations upon Good Cause Shown, which is defined in the definition section.

## APPENDIX A

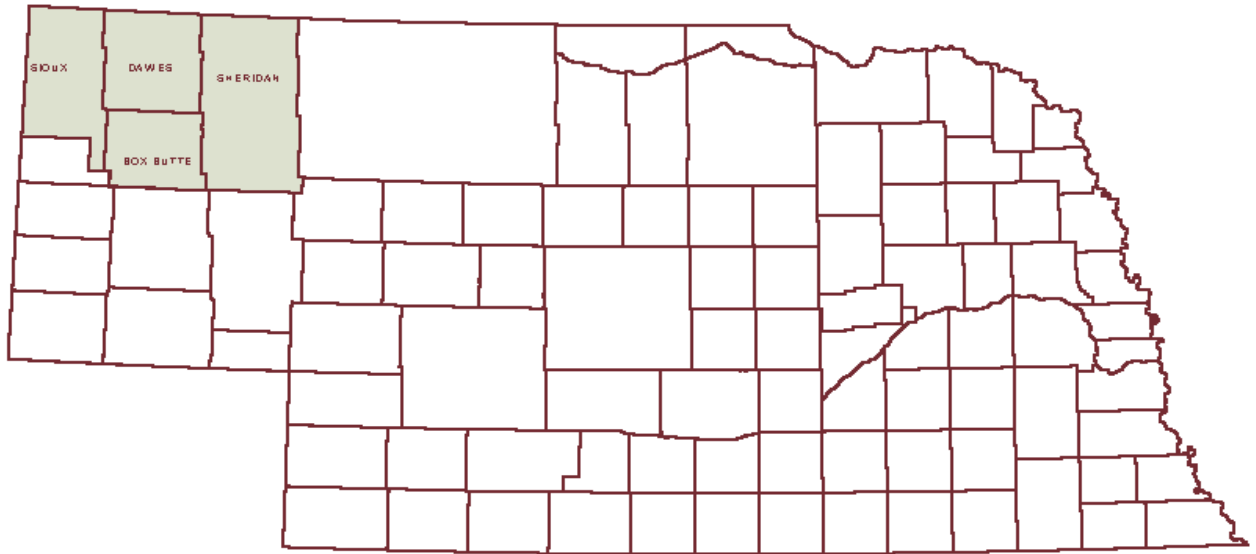
### GWMA Designations and Delineation

The Upper Niobrara White Natural Resources District District-wide Ground Water Management Area is delineated to include all lands within the political boundaries of the Upper Niobrara White NRD. A map of the area is included in Appendix B. This area includes lands within the counties of Dawes, Sheridan, Box Butte and Sioux.

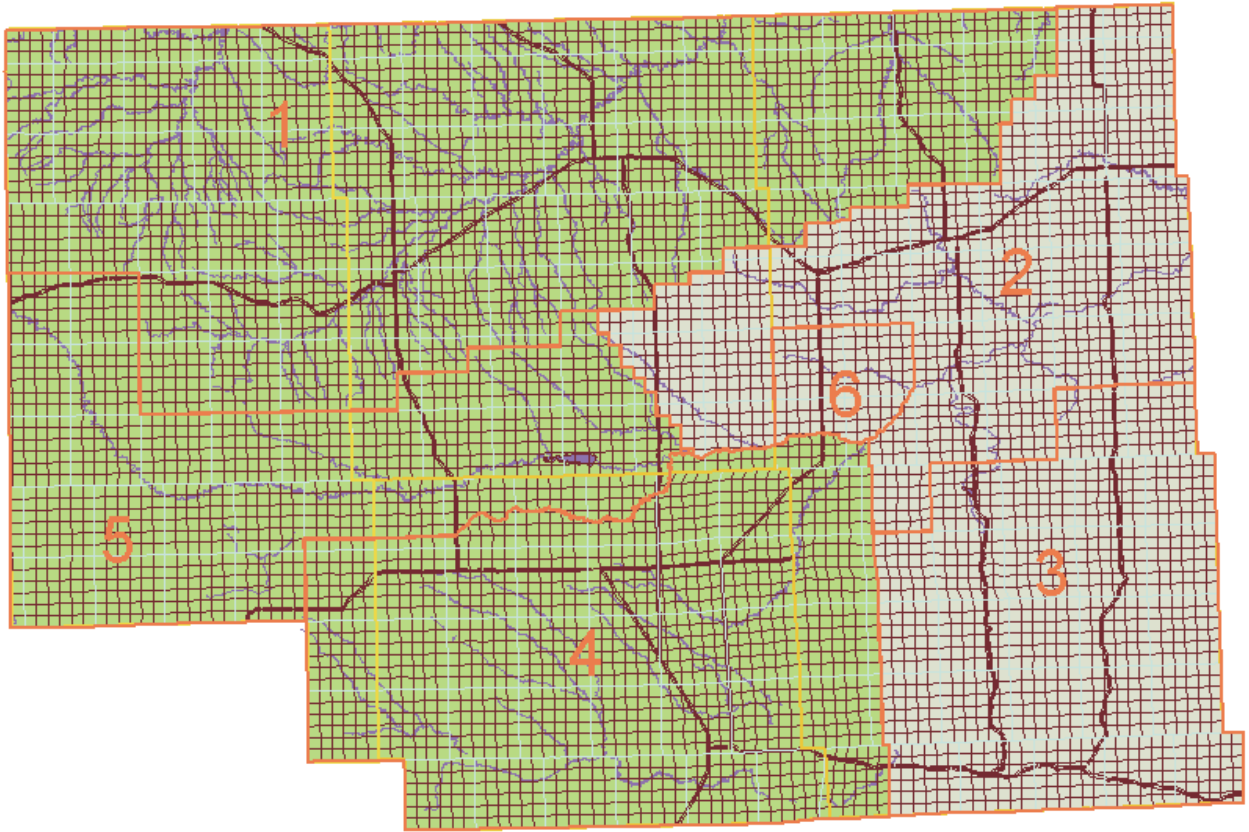
### Stratigraphic Extent:

The Area will include all geologic strata within the boundaries, beginning with the sediments from ground surface downward through all aquifer units supplying potable water. This includes Quaternary and Tertiary deposits as defined by the Conservation and Survey Division-University of Nebraska Lincoln.

APPENDIX B



Upper Niobrara White Natural Resources District



**Upper Niobrara White Natural Resources District**

Green area depicts Fully Appropriated Area

Red lines outline Sub-area Boundaries