

RULE 12

Transfers:

- 12.1 Groundwater Transfers: Groundwater users intending to withdraw and physically transfer groundwater, transfer certified irrigated acres, transfer the type of use, or add a type of use of groundwater within the Management Area shall, before making any such transfer, apply for and be approved for the transfer by the Board. Application period for groundwater transfers will occur during November 1st to March 1st. Fees for transfers will follow fee structure in Rule 12.1.14.3.
 - 12.1.1 The withdrawal and transfer of groundwater for domestic purposes that is subject to Neb. Rev. Stat. § 46-691.01 will not be subject to Rule 12.
 - 12.1.2 The transfer of certified irrigated acres may be denied by the UENRD Board of Directors based on the transfer agreement.
 - 12.1.3 The legal descriptions receiving (transferring into) acres must have an equal to or higher area weighted average of each land classification than the legal description where the acres are being transferred from.
 - 12.1.3.1 For transfers of 15 acres or less, where an irrigation distribution system is being completed, the area weighted average of each land classification is not considered for transfer approval.
 - 12.1.4 Legal descriptions that certified irrigated acres have been transferred from are ineligible to receive transferred certified irrigated acres for a minimum of 5 years.
 - 12.1.5 Groundwater transfers shall not exceed the historic consumptive use and/or the certified irrigated acres. Transferred acres must be irrigated no later than October 1st of the following growing season and must remain on that legal descriptions receiving (transferring into) for a minimum of 5 years before being eligible for transfer.
 - 12.1.6 A flowmeter is required on irrigation distribution systems located on the legal descriptions receiving (transferring into) acres by October 1st.
 - 12.1.7 The withdrawal and transfer of groundwater within the District solely for the purpose of providing water to range livestock will not be subject to Rule 12.
 - 12.1.8 Permanent transfers may occur only if the following conditions are met:
 - 12.1.8.1 All transfers of groundwater or use must occur within the subdistrict USGS 10-Digit Hydrologic Unit Code (HUC) where the groundwater was originally withdrawn or within Rule 12.1.8.2.
 - 12.1.8.2 Transfers to an adjacent HUC will be allowed if the subdistrict of the adjacent HUC has not suffered a static groundwater level decline of more than three (3) feet based on the 20-year trend line calculated by the UENRD. Certified irrigated acres within the two mile border of a HUC are not to be transferred beyond two miles of the adjoining HUC.
 - 12.1.8.3 Certified irrigated acres will not be allowed to be transferred within the two mile border of an adjoining HUC if that HUC is showing a groundwater decline of more than three (3) feet based on the 20-year trend line.

- 12.1.8.4 The section to which the certified irrigated acres are to be transferred to does not have a higher stream depletion factor as evidenced by data provided to the District through the Elkhorn-Loup Modeling project or other updated model(s).
 - 12.1.8.4.1 For transfers of 15 acres or less, where an irrigation distribution system is being completed, the stream depletion factor is not considered for transfer approval.
- 12.1.8.5 The certified irrigated acres are within the same, single, HUC. For purposes of this subsection, the term “HUC” does not include those areas or lands that the Nebraska Department of Natural Resources has determined to be in more than one basin.”
- 12.1.8.6 Transfers from lands within the HUC of the 10/50 area that are within the area overlapped by the Lower Niobrara River Basin and the Lower Platte River Basin will remain within the same overlapped area. This may be lifted after December 31, 2015 or upon the Nebraska Department of Natural Resources basin determination if neither basin is labeled fully appropriated at that time.
- 12.1.8.7 Certified irrigated acres will not be allowed to be transferred from a lower to a higher water quality designated Phase Area.
- 12.1.8.8 The applicant(s)/landowners for land from where the acres are transferring from and transferring to must be in compliance with Upper Elkhorn NRD Rules and Regulations.
- 12.1.9 Agricultural Transfers: After the effective date of these rules, an agricultural user intending to withdraw and physically transfer groundwater off of the overlying land which he or she controls or transfer the certified irrigated acres shall, before making such transfer, apply for and be subject to Board approval for the transfer. Application period for agricultural transfers will occur during November 1st to March 1st. Fees for transfers will follow fee structure in Rule 12.1.14.3.
 - 12.1.9.1 Transfers to the adjacent section or within the same section are not subject to Rule 12.1.8. except the following;
 - 12.1.9.1.1 Transfers within the District may not occur in any subdistrict determined by the Board to be undergoing significant groundwater declines; and
 - 12.1.9.1.2 Groundwater use or acres will not be transferred to a section designated with a higher stream depletion factor as evidenced by data provided to the District through the Elkhorn-Loup Modeling project or other updated model(s).
 - 12.1.9.1.2.1 For transfers of 15 acres or less, where an irrigation distribution system is being completed, the stream depletion factor is not considered for transfer approval.
 - 12.1.9.2 The permanent transfer of certified irrigated acres may be accomplished by decommissioning the well, changing the status of the

well with NeDNR to inactive, or modifying it into a well pumping fifty (50) gallons per minute or less.

12.1.9.2.1 If decommissioning the well, filing a notice of abandonment form with the Department, or if changing the status of a well or modifying a well, filing a modification form with the Department within 180 days of the transfer; and

12.1.9.2.2 The person to whom the acres are to be transferred must re-certify the acres with the District as well as submit county assessor and/or the USDA/FSA documentation that they are recorded as irrigated.

12.1.9.3 Transfers of certified irrigated acres off of land that is also served by surface water will not be permitted unless the surface water appropriation is relinquished for that parcel of land or an offset is provided to the District for the new acres to be irrigated.

12.1.10 Transfers of Type of Use: Any person who withdraws groundwater from a well located within the District and transfers the type of use of that water (e.g. irrigation to industrial) or adds a type of use of groundwater to the well (e.g. adds an industrial use to an existing irrigation well), shall apply for a transfer permit on forms provided by the District before beginning any such transfer.

12.1.10.1 No change in the type of groundwater use shall be approved unless such change results in no increase in the historical consumptive use of the groundwater to be transferred or an offset is provided for any increase in historical consumptive use.

12.1.10.2 No transfer will be approved if the water use moves to another section with a higher stream depletion factor as determined by the Elkhorn-Loup Modeling Project or other updated model(s).

12.1.10.3 No person shall use a water well for purposes other than its registered purpose until the water well registration has been changed to the intended new use or the additional use has been added to the registration.

12.1.10.4 In the case of a replacement well, a person may modify and equip the original water well to be used for range livestock, monitoring, observation, or any other non-consumptive or de minimis use approved by the District.

12.1.10.5 The change to a new use or the addition of a use shall be made by filing a water well registration modification with the Department and the change must be in conformance with Neb. Rev. Stat. §§ 46-609(1) and 46-651.

12.1.11 Municipal Transfer Permits: The District shall approve, without the filing of a District transfer permit application, the withdrawal and transport of groundwater when a public water supplier is providing water for municipal purposes, so long as that water supplier submits a notification of Department application to the District. If a public water supplier files an application for a permit from the Department under the Municipal and Rural Domestic

Groundwater Transfers Permit Act, then the permit applicant shall advise the District of its filing.

12.1.12 Industrial Transfer Permits: Transfers for which permits or approval for transfer have been obtained pursuant to the Industrial Ground Water Regulatory Act are not required to apply for a transfer permit from the District. Commercial and industrial users who are required to file for a permit from the Department under the Industrial Groundwater Regulatory Act shall advise the District of such application.

12.1.13 Transfer Out of District

12.1.13.1 Requests for transfer of groundwater out of the District pursuant to Neb. Rev. Stat. § 46-613.01 shall require District action to approve or deny the transfer request prior to submission of the required transfer permit application to the Department.

12.1.13.2 When the Department initiates the consultation with the District regarding a permit application, the District shall respond according to the following provisions:

12.1.13.2.1 The District shall advise the Department of any of the applicant's unmet obligations under District rules (e.g., variance not yet applied for or granted).

12.1.13.2.2 Any formal action taken by the Board adopting any offset determined by the Department or the District to be necessary to maintain compliance with any formal agreement or to mitigate any effects to surrounding groundwater users or surface water appropriators for uses other than municipal or industrial/commercial.

12.1.13.2.3 If the District determines an offset on behalf of the user, the nature of the offset and of the enforcement provisions that will be required.

12.1.13.3 A water well construction permit shall not be issued until a permit to transfer groundwater to an adjoining District has been obtained from the Department and a copy of the permit is on file with the original District.

12.1.14 Application for and Approval of Transfers

12.1.14.1 In accordance with Neb. Rev. Stat. § 46-739(k) the District may deny or condition its approval of any transfers to the extent such conditions are necessary to:

12.1.14.1.1 Ensure the consistency of the transfer with the purpose or purposes for which the management area or HUC was designated;

12.1.14.1.2 Prevent adverse effects on other groundwater users or on surface water appropriators;

12.1.14.1.3 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

- 12.1.14.1.4 Otherwise protect the public interest and public welfare.
- 12.1.14.2 In making its decision regarding a transfer application, the Board may consider relevant information, including but not limited to:
 - 12.1.14.2.1 Information obtained from studies within the District
 - 12.1.14.2.2 Whether the proposed use is a beneficial use of groundwater;
 - 12.1.14.2.3 Alternative sources of surface water or groundwater available to the applicant for the proposed withdrawal, transport, and use;
 - 12.1.14.2.4 Any negative effect of the proposed withdrawal, transfer and use on groundwater or surface water supplies needed to meet reasonable future demands for water within the state;
 - 12.1.14.2.5 Groundwater quality of the area being transferred to;
 - 12.1.14.2.6 Whether the proposed withdrawal, transfer, and use is consistent with the goals and objectives of the Groundwater Management Plan or the voluntary integrated management plan (V-IMP);
 - 12.1.14.2.7 The trend in the change of groundwater levels in the subdistrict;
 - 12.1.14.2.8 Other transfers into the area in proximity to the well proposed to be used;
 - 12.1.14.2.9 The total usage in proximity to the well proposed to be used; and
 - 12.1.14.2.10 Other factors that would increase the rate of consumptive use in the area of the well proposed to be used.
- 12.1.14.3 Each application for the transfer of irrigated acres will be charged a non-refundable \$50 application fee. Additional fees include:
 - 12.1.14.3.1 For qualifying applications the acre fee for 25 acres or less is \$125.00.
 - 12.1.14.3.2 For qualifying applications the acre fee for over 25 acres is \$5.00 per acre.
- 12.1.14.4 An application for a transfer shall include, but not be limited to the following:
 - 12.1.14.4.1 Names, addresses, phone number for each landowner involved in the proposed transfer, and the name, address, and phone number of the operator if different than the landowner;
 - 12.1.14.4.2 Legal description of the land involved in the proposed transfer along with well registration numbers of all wells proposed to be used;
 - 12.1.14.4.3 The nature of the proposed use;

- 12.1.14.4.4 Identification of any other alternative sources of surface water or groundwater available to the applicant for the proposed use and the reasons why use of such alternative source or sources are not being sought;
 - 12.1.14.4.5 Proof of ownership from the United States Farm Service Agency or county tax assessor for each certified irrigated acre to be involved in the transfer request;
 - 12.1.14.4.6 If exceeding limits set out in Rule 9.1, an assessment of the effects of the proposed withdrawal, transfer, and use on existing groundwater users, on existing surface water appropriators, and on groundwater and surface water supplies needed to meet present or reasonable future demands within the State;
 - 12.1.14.4.7 If exceeding limits set out in Rule 9.1, an assessment of the effects of the proposed withdrawal, transfer, and use on the environment in the vicinity of the proposed withdrawal and proposed use;
 - 12.1.14.4.8 Any other information the applicant deems relevant to the District's criteria for approval of the proposed withdrawal, transfer, and use;
 - 12.1.14.4.9 Signatures from all of the landowners involved;
 - 12.1.14.4.10 Aerial photograph(s) showing all certified irrigated acres involved in the transfer.
- 12.1.14.5 Application is transferable from one landowner to another for the life of the contract.
- 12.1.14.5.1 New landowner must fulfill original agreement.
 - 12.1.14.5.2 New landowner must comply to application criteria with 6 months of closing date on the property.
 - 12.1.14.5.3 Application is only transferable to new landowner with a completed purchase agreement.
- 12.1.14.6 Public notice of the transfer of certified irrigated acres will only be submitted to the county assessor after the recertification of those irrigated acres.