

## **SECTION B - RULE 8** 30-Year Acreage Reserve Program- Participation Eligibility and Rules

- B.8.1 Definitions Participation Eligibility and Rules- 30-Year Acreage Reserve Program
- B.8.1.1 30-Year Acreage Reserve Program Agreement: shall mean a contract, executed between one of the Three Canals, or any other surface water provider and the District according to the terms set forth under the 30-Year Acreage Reserve Program.
- B.8.1.2 Active Participation: shall mean holding, but not exercising during the designated period, an appropriation right to divert surface water.
- B.8.1.3 Diverter Enrollee: shall mean a person who has been deemed by the District and applicable Participating Canal or surface water provider to have satisfied the following condition under the 30-Year, namely having an appropriation right to divert surface water from the Participating Canals.
- B.8.1.4 Participating Canal: shall mean one of the Three Canals, or surface water provider throughout the applicable Agreement Term, after it has validly executed a 30-Year Acreage Reserve Program Agreement with the District.
- B.8.1.5 Sufficient Cause: shall mean “sufficient cause for nonuse,” as that phrase is used in Neb. Rev. Stat. § 46-229.04(2) (2019), of a surface water appropriation right that is held by a Diverter Enrollee in Active Participation with the 30-Year Acreage Reserve Program, an “acreage reserve program” under Neb. Rev. Stat. § 46-229.04(2)(b) (2019).
- B.8.1.6 Three Canals: shall mean the Cozad Canal, 30-Mile Canal, and Orchard-Alfalfa Canal; and surface water provider (“Provider”) shall mean Nebraska Public Power District.

### **THIRTY-YEAR ACREAGE RESERVE PROGRAM**

- B.8.2 Establishment The Board of Directors hereby creates a 30-Year Acreage Reserve Program.
- B.8.2.1 Purpose and Intent The 30-Year Acreage Reserve Program is established for the following purposes:
- B.8.2.2 To allow surface-water appropriators to preserve their surface-water rights while reducing their consumptive use of surface water;
- B.8.2.3 To maintain the hydrological benefits that functional surface-water-irrigation canals and districts provide, including recharge and reduction in the use of groundwater supplies;
- B.8.2.4 To strengthen the District’s working relationship with the Three Canals and Providers;
- B.8.2.5 To allow the District access and flexibility to leverage the water rights held by the Three Canals and Providers to meet conservation goals, including:
- B.8.2.5.1 Basin-Wide Plan for Joint Integrated Water Resources Management of Overappropriated Portions of the Platte River basin, NE; and
- B.8.2.5.2 The most recently completed Integrated Management Plan, jointly adopted by the District in consultation with the Nebraska Department of Natural Resource pursuant to those entities’ statutory authority in Neb. Rev. Stat. § 46-715(1) (2014);

- B.8.2.3 To aid the State of Nebraska in meeting its targets under the Nebraska New Depletion Plan for the Platte River Recovery Implementation Program; and
- B.8.2.4 To provide controllable, wet water that can be released during times of need to assist the District in meeting its goals and mitigation targets.

B.8.3 30-Year Acreage Reserve Program Agreements

B.8.3.1 Eligibility Any or all of the Three Canals and Providers shall be eligible to form a 30-Year Acreage Reserve Program Agreement with the District. Each 30-Year Acreage Reserve Program Agreement shall be executed between one of the Three Canals and the District.

B.8.3.2 Participating Canals/Providers By validly executing a 30-Year Acreage Reserve Program Agreement with the District, a canal/surface water provider shall become a Participating Canal/Provider.

B.8.3.2.1 Effective Date A 30-Year Acreage Reserve Program Agreement shall become effective upon its execution by the District and Participating Canal/Provider according to the effective date stated in the agreement.

B.8.3.2.2 Agreement Term Unless otherwise stated in the terms of a 30-Year Conservation Program Agreement, the Agreement Term shall be for a period of not more than 30 years from the Effective Date. Upon completion of the Agreement Term, the canal shall cease to be a Participating Canal/Provider. No 30-Year Acreage Reserve Program Agreement may be terminated and then re-established as to lengthen the original period of the Agreement Term.

B.8.3.2.3 Termination A 30-Year Acreage Reserve Program Agreement may be terminated upon the provision of 90 days' written notice by either the District or Participating Canal/Provider to all parties to the agreement. Termination shall cease to grant that Participating Canal/Provider, under the terminated 30-Year Acreage Reserve Program Agreement, a right to give Diverter Enrollees a Sufficient Cause for nonuse of their diversions during the Agreement Term.

B.8.4 Diverter Enrollees To qualify as a Diverter Enrollee, a person must (1) have an appropriation right to divert surface water from a Participating Canal/Provider and, (2) Any person having land appurtenant to the canal water rights is automatically enrolled in the 30-Year Acreage Reserve Program upon the canal board entering into this agreement. These persons are referred to as Diverter Enrollees, who maintain the operational flexibility to use or not use surface water on an annual basis.

B.8.4.1 Opt-In to Active Participation Every Diverter Enrollee shall, by March 1 of every year of the applicable Agreement Term, have the option to opt in to Active Participation for that year.

B.8.4.2 Cap on Opting-In In the event a Participating Canal/Provider deems it to be reasonably necessary, it may establish a maximum number of acres that can be opted in to Active Participation at any one time.

B.8.4.3 Sufficient Cause A Diverter Enrollee's Active Participation in the 30-Year Acreage Reserve Program shall be deemed to provide a Sufficient Cause for that Diverter Enrollee's non-diversion of all or a portion of the surface-water appropriation rights from the Participating Canal/Provider under Neb. Rev. Stat. § 46-229.04(2)(b) (2019).

B.8.4.4 Presumptive Opt-Out No Diverter Enrollee shall be required to achieve Active Participation in the 30-Year Acreage Reserve Program. Unless a Diverter Enrollee notifies the applicable Participating Canal/Provider that he or she intends to opt-in to Active Participation, he or she is presumed to not be in Active Participation during that year. If a Diverter Enrollee timely opts in to Active Participation for one or more parcels of land but then, due to unforeseen circumstances, does not achieve Active Participation during that year on those parcels, he or she will not be deemed to be in Active Participation with regard to those parcels. However, such determination shall not affect the Active Participation status for that Diverter Enrollee on his or her other parcels.

B.8.5 Reporting Each year, administrators for each Participating Canal shall collect information about which Diverter Enrollees have opted-in to Active Participation for that year. Then, by September 30 of each year, administrators for each Participating Canal/Provider shall report, through maps and/or land listings, to the District about which Diverter Enrollees and how many acres have achieved Active Participation during that year. The District shall work with the Participating Canals/Providers to ensure the accuracy of this data. Each year, the District shall provide summary reports to each Participating Canal/Provider about necessary in-season changes, if any, that the District expects or has experienced in the operation of the 30-Year Acreage Reserve Program.

B.8.6 No Harm to Other Surface-Water Users For the 30-Year Acreage Reserve Program to be considered successful, it is important that no other water users be harmed in the program's implementation and operation. To date, no potential harms have been identified. However, the implementation and operation of this program may, at the District's sole discretion, be modified, amended, or even discontinued in the event that the District finds that such action is necessary to avoid any harms to other parties.

B.8.7 Entity Roles. The District and any Participating Canals/Providers shall work diligently and in coordination to ensure that the goals of the 30-Year Acreage Reserve Program are accomplished and that all provisions in this section are followed. In addition, Participating Canals/Providers and the District shall have the following specific responsibilities:

B.8.7.1 Participating Canals/Providers The Three Canals and Providers shall (1) coordinate communication with and among surface-water diverters who are eligible to become Diverter Enrollees; (2) conduct field inspections, as needed, to determine whether Diverter Enrollees are achieving Active Participation; and, (3) at least once every five years, provide all Diverter Enrollees with the current terms of the 30-Year Acreage Reserve Program.

B.8.7.2 District The District shall (1) facilitate communication between Diverter Enrollees and the Nebraska Department of Natural Resources ("DNR"); (2) report any information to the DNR that is necessary for the DNR to determine that a Diverter Enrollee who has achieved Active Participation does, indeed, have a Sufficient Cause; (3) facilitate and coordinate communication with and among Participating Canals/Providers and Diverter Enrollees to ensure that the 30-Year Acreage Reserve Program's goals are met; and (4) not establish any alternative program that would be inconsistent with the terms or purpose of the 30-Year Acreage Reserve Program.