

EROSION AND SEDIMENT CONTROL PROGRAM

SOUTH PLATTE NATURAL RESOURCES DISTRICT

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EROSION AND SEDIMENT CONTROL PROGRAM

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**SOUTH PLATTE
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EROSION AND SEDIMENT CONTROL PROGRAM

DEFINITIONS

As used in this program the following definitions shall apply:

1. South Platte Natural Resources District shall mean NRD, SPNRD or District.
2. Soil Loss Limits shall mean the maximum amount of soil loss due to erosion by wind or water, expressed in terms of tons per acre per year, which is determined to be acceptable in accordance with the Erosion and Sediment Control Act.
3. EQIP shall mean Environmental Quality Incentive Program. The Environmental Quality Incentives Program (EQIP) was reauthorized in the Farm Security and Rural Investment Act of 2002 (Farm Bill) to provide a voluntary conservation program for farmers and ranchers that promotes agricultural production and environmental quality as compatible national goals. EQIP offers financial and technical help to assist eligible participants install or implement structural and management practices on eligible agricultural land.
4. NRI shall mean National Resources Inventory. The National Resources Inventory (NRI) is a statistically based sample of land use and natural resource conditions and trends on U.S. nonfederal lands. It is the most comprehensive database of its kind ever attempted anywhere in the world. The Natural Resources Conservation Service's program for NRI serves as the Federal Government's principal source of information on the status, condition, and trends of soil, water, and related resources in the United States.

GENERAL

This program has been prepared by the South Platte Natural Resources District and adopted by the Board of Directors. This program follows the State Erosion and Sediment Control Program as approved by the Nebraska Department of Natural Resources Commission in accordance with section 2-4604, R.R.S., 1997, as amended, a portion of the Erosion and Sediment Control Act of 1986 (LB-474). It sets forth the comprehensive District Erosion and Sediment Control Program designed to reduce soil erosion in the District to tolerable levels.

Adopted by the 1986 Nebraska Legislature the Erosion and Sediment Control Act (LB-474) represents a commitment by the State of Nebraska to reduce erosion on Nebraska lands and to reduce sedimentation and other problems that result from that erosion. A copy of the Act is found in Attachment - A of this plan.

The aim of the program, developed in 1987, was to accelerate the rate at which additional conservation land treatment was applied to the land, and to strengthen the District's efforts in erosion and sediment control. The purpose for revising the program is to address current problems, and develop a revised course of action aimed at our goals.

Erosion control in urban areas has not received as much attention as rural areas, even though they are sources of erosion related damage. Large tracts of land are sometimes developed, but it may be years before that land is fully developed and grass and trees are established. Legislation that was enacted in 1994, LB480, that dealt with the Erosion and Sediment Control Act, permitted complaints to be filed with natural resources districts about activities related to the construction of housing, industrial, and commercial developments on sites two acres or larger in size. Previously, such nonagricultural land disturbing activities were exempt from the Erosion and Sediment Control Act regardless of the land area involved.

The program and objectives are promoted primarily in two ways. First, the program as outlined in the Act established a system for the filing and processing of complaints concerning land where erosion is exceeding the soil loss limits established by the District. Complaints may be filed by any owner or operator being damaged by sediment, by any state agency or political subdivision whose roads or other public facilities are being damaged by sediment or any entity with responsibility for water quality maintenance, or by a natural resources district representative. If it is found that damage is occurring as the result of identifiable excessive erosion, the offending landowner(s) may be required to adopt management practices and/or install conservation practices to reduce erosion to tolerable levels.

The second component of the program is the District's comprehensive and coordinated erosion and sediment control programs. The District believes that the complaint portion of the Sediment and Erosion Control Act will serve as an integral part of the plan, however, its effect, if measured only in terms of conservation resulting directly from complaints filed and processed, may be relatively minor. The complaint process will serve as a significant part of these comprehensive, coordinated programs, but the positive efforts that are generated by the programs will also be necessary to meet the objectives of the Act and the goals established herein.

The plan includes the District's soil loss limits (Attachment - F), recommended erosion and sediment control practices, and soil and water conservation practices and programs, procedures, and methods the District will use to implement the program.

The cooperation of the Natural Resources Conservation Service (NRCS) has been essential to the success of the District's efforts in addressing erosion and sediment concerns. NRCS at the field level has provided technical leadership, and assistance in providing information and education to the public.

Impacting the District's Program has been the 1985 Farm Bill, P.L. 99-198 to the current 2002 Farm Bill. Those congressional acts imposed sanctions on agricultural users who cultivated highly erodible land. Sanctions consisted of withholding participation in many federal farm programs unless adequate conservation practices were applied to prevent excessive soil erosion. These Farm Bills had and continue to have an exceptional impact on the application of soil and water conservation in the District. The Conservation Reserve Program of the 1985 Farm Bill idled 146,398 acres of highly erodible land in the SPNRD. Kimball County accounts for 72 % of the CRP land, which amounts to 105,423 acres. Cheyenne County and Deuel County follow with 29,665 acres and 11,310 acres, respectively. In the CRP, the Commodity Credit Corporation (CCC) pays owners and operators of highly erodible and other environmentally sensitive cropland to convert the land to a conserving use cover for a period of 10 to 15 years. Of the expiring CRP contracts to date, 95% of the acres have been re-enrolled into new contracts.

The Conservation Reserve Program (CRP) will extend through 2007. The program encourages landowners to leave environmentally sensitive lands in grass, trees, or other conservation cover. The 2002 Farm Bill provides that up to 39.2 million acres may be enrolled in the program at any one time and allows new enrollments to replace expired or terminated contracts to maintain the total authorized level.

The Environmental Quality Incentive Program (EQIP) combines the functions of the Agricultural Conservation Program, Water Quality Incentives Program, and the Great Plains Conservation Program. EQIP will be funded at \$6.1 billion in the 2002 Farm Bill. Conservation practices related to livestock production will receive half of the program funding. EQIP provides technical assistance, cost-share payments, incentive payments, and education to producers who enter into 2 to 10 year contracts based on conservation plans.

1. PLANNING PROCESS TO DETERMINE SPNRD CONSERVATION NEEDS AND PROGRAMS

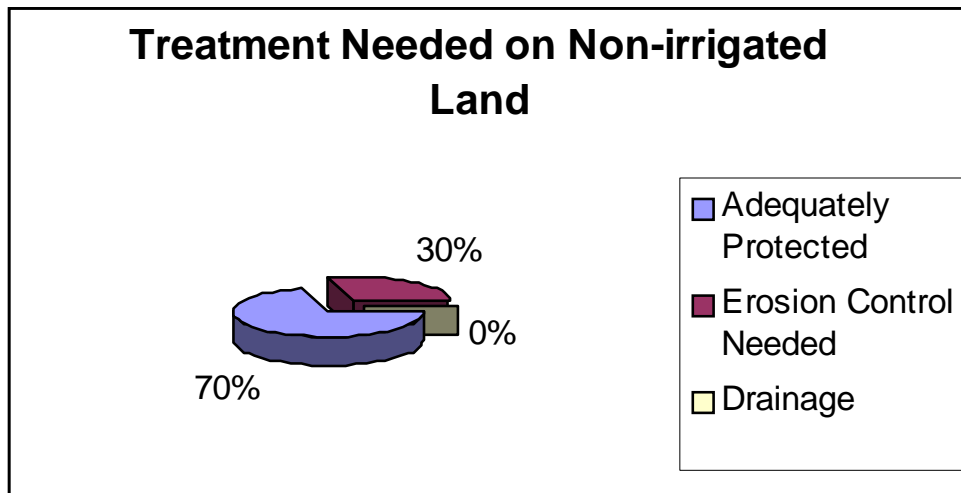
The district's planning process addressing sediment and erosion relies on information from the 1992 & 1997 Nebraska National Resources Inventory (NRI) as well as from the district's locally led conservation group and long range plan.

1. The purpose of the NRI is to provide information that can be used for effectively formulating policy and developing natural resource conservation programs. NRI data are statistically reliable for state and sub-state analysis, however, the accuracy of the information is questionable and suspect at the local level.
2. The district's locally led conservation group, comprised of representatives from governmental entities, agricultural production and business groups, environmental groups and others as determined necessary, meet at least annually to assess conservation needs, determine priorities and working together to solve local natural resources problems.
3. Current District activities directed towards erosion and sediment control are referenced in the District's 1-5 Year Long Range Implementation Plan. The SPNRD's 1-5 Year Long Range Implementation Plan (LRP) identifies current and long range goals, objectives and activities that are directed to erosion and sediment control. The LRP is a working document that actively addresses erosion and sediment problems. Financial, cost-share programs and personnel needs are also identified in the plan. In addition, the Key Program Planning areas in the LRP are annually reviewed, and the State's Soil and Water Conservation Program is considered when establishing erosion control goals and activities for the District. The cities and counties in the District currently do not have promulgated rules and regulations for an erosion and sediment control

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program(s).
 Charts 1, 2, 3a & 3b show the Conservation Treatment Needs. The Board will monitor these figures and change them as necessary to reflect the impact of the Farm Bill on conservation needs.

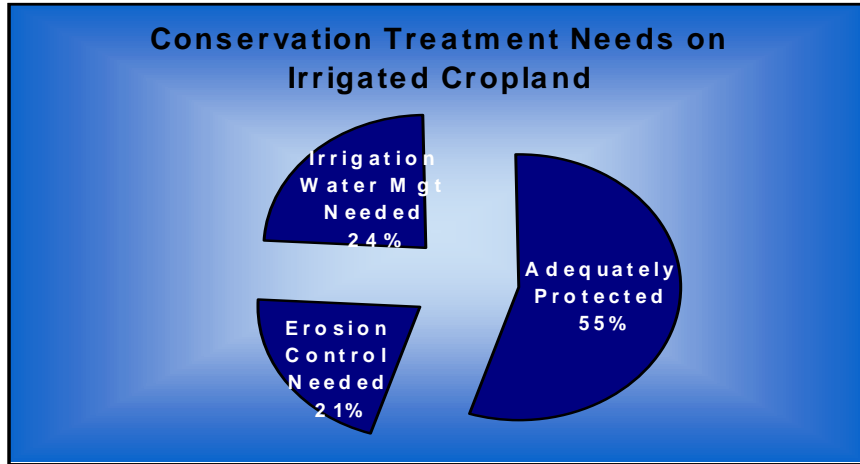
Chart 1: Conservation Treatment Needs on Non-irrigated Cropland.



Class	Adequately Protected	Treatment Needed			Total
		Erosion Control	Drainage	Total	
1,000 Acres					
2	405.1	41.5	1	42.5	447.6
3	174.7	174.2	0	174.2	348.9
4	91.4	49.5	0	49.5	140.9
6	19.8	21.4	0	21.4	41.2
7	1.1	4.5	0	4.5	5.6
Total	692.1	291.1	1.0	292.1	984.2

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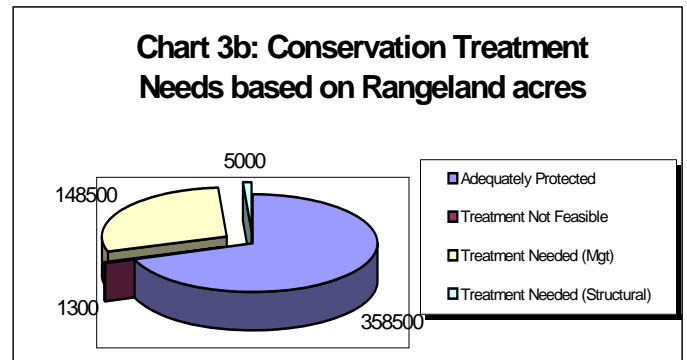
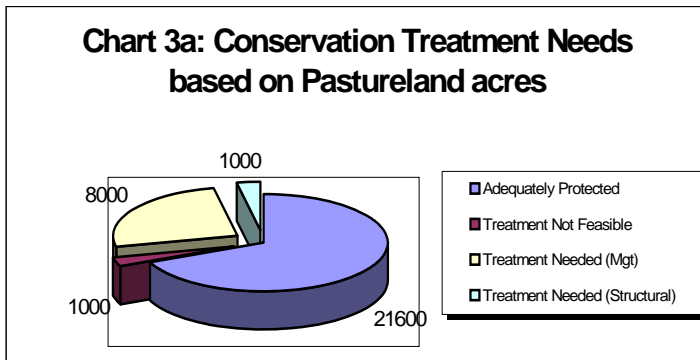
Chart 2: Conservation Treatment Needs on Irrigated Cropland.



Class	Adequately Protected	Treatment Needed			Total
		Erosion Control	Irrigation Management	Total	
1,000 Acres					
1	2.3	4.2	1.4	5.6	7.9
2	27.9	3.5	9.4	12.9	40.8
3	8.5	3.0	4.5	7.5	16
4	6.7	5.4	4.0	9.4	16.1
6	0	1.4	1.0	2.4	2.4
Total	45.4	17.5	20.3	37.8	83.2

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Charts 3a & 3b: Conservation Treatment Needs on Pastureland and Rangeland.



	Pastureland	Rangeland
	1,000 Acres	
Adequately Protected	21.6	358.5
Treatments Not Feasible	1.0	1.3
Treatment Needed (Management)	8.0	148.5
Treatment Needed (Structural)	1.0	5.0
Total	31.6	513.3

Tables 4 and 5 show the Estimated Average Annual Erosion on all cropland. These figures reflect the Board's best estimation based on the current situation in the District.

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Table 4: Estimated Average Annual Erosion on all Cropland. Potential Average with all Lands.

Wind Erosion	Sheet and Rill Erosion
8.5 Tons/Acre	5.1 Tons/Acre

Table 5: Estimated Average Annual Erosion based on acres in relation to T Value on Cropland.

< = T	T - 2T	> 2T	TOTAL
741.5 (69.8%)	212.4 (20%)	108.6 (10.2%)	1,061.9 (100%)

The factor(s) that limit realization of erosion and sediment control in the District are:

- 1) Funding conservation projects and programs relies heavily upon federal cost-share dollars. Although the 2002 farm bill boosted federal funding for conservation practices the overall sluggish farm economy may reduce interest in the installation of conservation practices. NRDs are attempting to increase budget line items to leverage other funding sources. Property tax concerns have, however, placed limitations on what projects and programs the Districts will institute to address erosion and sediment control.
- 2) Staffing limitations with the Natural Resources Conservation Service may play a role. The district relies heavily upon the NRCS for technical assistance in the development and installation of conservation practices, but without proper staffing, installation of the practices may be delayed or never implemented.

Several thousands of acres have been adequately treated over the years. According to the Soil and Water Conservation Needs Inventory, progress has occurred since 1967. The National Resources Inventories (NRI) for 1977, 1987 1992 and 1997 have also shown improved trends for land that is adequately protected. The 1997 NRI is the latest in a series of inventories conducted by the USDA's Natural Resources Conservation Service.

Table 6: Conservation Treatment Needs-Trends 1967-1977-1987-1992-1997

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	Cropland	Rangeland
<u>Treatment Needed</u>		
1967	81%	57%
1977	74%	46%
1987	47%	30%
1992	30%	29%
1997	30%	29%
<u>Treated</u>		
1967	19%	43%
1977	29%	54%
1987	53%	70%
1992	70%	71%
1997*	70%	71%

* The NRI was not correlated when these figures were documented to determine trends in 1997. The 1997 figures are estimates.

2. DISTRICT EROSION AND SEDIMENT CONTROL PROGRAM: GOALS, PROGRAMS, PRIORITIES, EVALUATION

- a. The South Platte NRD goal is to complete 100% of the remaining treatment needs by the year 2025. In addition, the short term goal is to have 75% treated by 2010 while maintaining the existing land treatment that has previously been established. Treatment goals for the major land uses were developed to correspond with the State’s Soil and Water Conservation Program. The District recognizes that these goals may be ambitious as several factors such as drought will slow progress in meeting the goals.

The District also recognizes that achieving adequate land treatment for all of the remaining land in the District will be difficult and that 100 percent treatment at any one time is not possible. However, the Erosion and Sediment Control Act requires that state goals be established for reducing soil losses on all land in the state. In addition, if a goal for achieving 100 percent treatment is not established, the District and thus the state, will likely fall even shorter of that figure than if a goal is established. The year 2025 is therefore established as the goal for reducing soil losses on all lands to the applicable soil loss limit. It shall be the goal of the District to thereafter maintain adequate treatment on all lands not undergoing temporary land use changes and at least adequate sediment control for all lands that are undergoing such changes.

Table 7: Treatment Goals Year 2025 and 2010.

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Land Use	Goal	Area Needing Treatment	Total Treatment Goal
		1,000 Acres	
Non irrigated Cropland	2025 - 100% 2010 – 75%	291.1	291.10 232.88
Irrigated Cropland	2025 - 100% 2010 – 75%	29.3	29.30 29.30
Pastureland	2025 - 100% 2010 – 75%	8.0	8.0 6.4
Rangeland	2025 - 100% 2010 – 75%	148.5	148.5 118.8

- b. The Board identified alternative programs, procedures, and methods for continuation or initiation by the NRD.

Alternative Actions

- District Long Range Implementation Plan (LRP). The District uses its Long Range Implementation Plan (LRP) as the mechanism to adopt and employ programs, procedures and methods to address erosion and sediment control concerns. The NRD Board believes that the individual goals, objectives and action items in the plan are reasonable, attainable, and in conformance with the State Erosion and Sediment Control Program. Individual components of the plan identify the District’s cost-share program(s), targets cost-share funds for watersheds with severe water and/or wind erosion problems, and provides goals and objectives for educational and information programs.
- Locally Led Conservation Group. Representatives from governmental entities, agricultural production and business groups, environmental groups and others as determined necessary comprise the group and meet at least annually to assess conservation needs, determine priorities and working together to solve local natural resources problems.

- c. Priorities for program implementation are identified in the District’s Long Range Plan. Following are guidelines used in setting the priorities.

- 1) The extent to which the actions anticipated provide public rather than private benefits.
- 2) Cost effectiveness, including analysis of:
 - a) The extent to which the total of adequately treated acres will be increased;
 - b) The extent to which total soil loss will be reduced;

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- c) The extent to which adequate treatments can be realized most effectively through recognition of Land Use Classifications limitation factors and through conversion of land to less intensive use rather than treatment to prevent erosion occurring with present land use.
- 3) The extent to which the actions will cause or encourage conservation activities and enhance environmental activities.
- 4) The extent to which the actions will promote inter-agency cooperation and federal, state, and local program compatibility and consistency.
- d. The NRD will monitor and evaluate the progress, documenting the dollars spent for cost-share on each practice and program. Accurate records will be kept on total acres and percentage of land treated annually. These records will include all conservation practices including the Conservation Reserve Program and the other Farm Bill Programs. The acres and percentage of land converted to pastureland or rangeland will be monitored. An annual report will be presented each year at the board's January meeting.

Locations of complaints will be recorded to determine if a specific area of the District has increased erosion problems.

A Summary of Activities will be developed on each of the programs and projects as outlined in the District's Long Range Implementation Plan to monitor the progress of each. The Performance and Results Measurement System (PRMS) will be used to document and summarize practices and effects.

3. RECOMMENDED PRACTICES FOR CONTROLLING EROSION AND SEDIMENTATION

The following lists of practices are grouped into three general categories: permanent agricultural, temporary agricultural, and nonagricultural. The lists are not mutually exclusive; some practices are on more than one list. All practices on the lists are deemed to be suitable, under the proper circumstances, for controlling erosion and sedimentation within the District. Many are potential components of resources management systems for lands in the District. Actual application depends on the particular specifications, or technical guides for most of these practices.

Permanent Structural Practices for Controlling Erosion and Sedimentation on Agricultural Land

Permanent soil and water conservation practices are activities which often are part of an on-going (longer than one year) resources management system. Many of these practices require some construction or installation, which usually involves a capital investment. For that reason, permanent practices may be recommended and adopted as part of a conservation plan but cannot be required under the Erosion and Sediment Control Act unless cost-sharing funds are made

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available. For these practices found on both this and the "Temporary Soil and Water Conservation Practices" lists, the District will determine on a case by case basis whether the practice is required as a permanent or temporary measure.

Buffer Strips	Conversion to Perennial Grasses
Benches and Berms	Critical Area Planting
Channel Vegetation-Streambank	Dams
Chutes/Flumes	Dikes
Diversions	Farmstead/Feedlot Windbreaks
Irrigation Management Systems	
Fencing	Range Seeding
Field Borders	Terraces
Field Windbreaks	Tree Planting
Filter Strips	
Grade Stabilization Structures	Water and Streambank Control Structures
Grassed Waterways or Outlets	Windbreak Renovation
Pasture and Hayland Planting	

Temporary Soil and Water Conservation Management Practices for Controlling Erosion and Sedimentation on Agricultural Land

Temporary soil and water conservation practices range from one-time only actions to activities which could continue for a number of years. Those on-going activities generally involve management decisions where a practice may be maintained, modified, or eliminated on an annual basis, rather than practices involving more permanent construction or installation activities. These practices generally require little or no capital investments and the availability of cost-sharing funds is not required.

Conservation Cropping Systems	Conservation Tillage Systems
Contour Farming	Rangeland Management (Proper Grazing Use)
Conversion to Annual Grasses	Stripcropping
Cover and Green Manure Crop	Fencing
Crop Residue Use	Filter Strips
Deferred Grazing	Irrigation Water Management
Emergency Tillage	Livestock Exclusion
Pasture/Hayland Management	Mulching
Planned Grazing Plans	Waste Management
Vegetative Wind Barriers	

Erosion and Sediment Control Practices for Controlling Erosion and Sedimentation on Land Not Used for Agriculture, Horticulture, or Silviculture Purposes

There are many land-disturbing activities which are not related to agriculture, horticulture or silviculture. Erosion and sedimentation as a result of these activities can be a significant problem. The following practices may be required to treat erosion and sedimentation on these lands under the Erosion and Sediment Control Act, but cost-sharing funds need not be made available.

Benches and Berms	Contour Developments (Urban & Const. Sites)
Dikes	Underground Outlets
Check Dams	Vegetative Wind Barriers
Diversions	Water and Sediment Control Structures
Chutes/Flumes	Rooftop Ponding
Erosion Checks	Recreation Area Improvement (Seeding, etc.)
Cover Crops	Roadside Seeding
Fencing	Porous Pavement
Critical Area Planting	Sandbag Sediment Barrier
Channel Vegetation	Sectional Downdrains
Dams	Sediment Retention Basins
Filter Strips	Storm Sewer
Flexible Downdrains	Straw Bales Sediment Barriers
Gabions	Stream Channel Stabilization
Grade Stabilization Structures	Parking Lot Ponding
Grassed Waterways or Outlets	Land
Heavy Use Area Protection	Streambank Protection
Lining of Waterways and Outlets	Street Cleaning
Mulching	Subsurface Drains
Netting	Terraces
Windbreak Plantings/Renovation	Tree Plantings
	Xeriscaping

4. RULES AND REGULATIONS IMPLEMENTING THE EROSION AND SEDIMENT CONTROL ACT

1. Authority. These rules and regulations are adopted pursuant to the authority granted in sections 2-4605 & 2-4607 R.R.S., 1997, as amended.
2. Purpose. The purpose of these rules and regulations is to implement the Erosion and Sediment Control Act, Sections 2-4601 to 2-4613 R.R.S., 1997, as amended, to provide conservation and preservation of the land, water and other resources of the District, and to thereby:

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- a) Substantially reduce the sediment and erosion damage within the District,
 - b) Safeguard the health, safety and welfare of the District's citizens,
 - c) Preserve the value of land and its productive capability for present and future generations,
 - d) Prevent the pollution of streams and ponds, and
 - e) Reduce the danger of flooding
3. Applicability. These rules and regulations apply to all lands within the District except to the extent these lands lie within the respective jurisdiction of a county or municipality which has adopted and is implementing erosion and sediment control regulations in substantial conformance with the state erosion and sediment control program. Lands on which some nonagricultural land-disturbing activities are occurring are also excluded. These excluded activities involve the installation of aboveground public utility lines and connections, fence posts, sign posts, telephone poles, electric poles, and other kinds of posts or poles, emergency work to protect life or property, and activities related to the construction of housing, industrial and commercial developments on sites under two acres in size.
4. Definitions
- a) Alleged violator means the owner of record and the operator, if any, of land which is the subject of a complaint filed.
 - b) Board means the board of directors of the South Platte Natural Resources District.
 - c) Conservation agreement means an agreement between the owner or operator of a farm unit and the District in which the owner or operator agrees to implement a farm unit conservation plan or, with the approval of the district within which the farm unit is located, a portion of a farm unit conservation plan. The agreement shall include a schedule for implementation and may be conditioned on the furnishing by the District or other public entity furnishing technical, planning or financial assistance in the establishment of the soil and water conservation practices necessary to implement the plan.
 - d) District means the South Platte Natural Resources District.
 - e) Farm unit conservation plan means a plan jointly developed by the owner and, if appropriate, the operator of a farm unit and the District based upon the determined conservation needs for the farm unit and identifying the practices which may be expected to prevent soil loss by erosion from that farm unit in excess of the applicable soil loss limit. The plan may also, if practicable, identify alternative practices by which such objective may be attained.

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- f) Nonagricultural land-disturbing activity means a land change, including, but not limited to, tilling, clearing, grading, excavating, transporting, or filling land which may result in soil erosion from wind or water and the movement of sediment and sediment-related pollutants into the waters of the state or onto lands in the state, but shall not include:
 - 1) Activities related directly to the production of agricultural, horticultural or silvicultural crops, including, but not limited to, tilling, planting, or harvesting of such crops;
 - 2) Installation of above ground public utility lines and connections, fence posts, sign posts, telephone poles, electric poles, and other kinds of posts or poles;
 - 3) Emergency work to protect life or property; and
 - 4) Activities related to the construction of housing, industrial, and commercial developments on sites under two acres in size.
 - g) Sediment damage means the economic or physical damage to the land or other property of one person resulting from the deposition of sediment by water or wind of soil eroded from the lands of another person. Soil erosion is adversely affecting water quality if the beneficial uses of that water are impaired because of sediment or chemical deposition in the stream or lake involved. Physical effects to land or property which are relatively short term in nature and which cause no economic damage and no lasting physical damage shall not constitute sediment damage for the purposes of these rules and regulations.
 - h) T Value means the average annual tons per acre soil loss a given soil may experience and still maintain its productivity over an extended period of time.
5. Soil Loss Limits. Soil loss limits for the various types of soils in the District are adopted by the board as set forth in Attachment - F. The permitted soil loss for particular lands may not exceed the T-Value noted, except in cases where a variance is approved by the board. (Rule 12).
6. Administration.
- a) The board delegates the responsibility for administering these rules and regulations to the General Manager except to the extent board action is specifically required by these rules and regulations or by law. The following duties shall be performed by or under the direction of the General Manager.
 - 1) Keep an accurate record of all complaints received, investigations made, and other official actions.
 - 2) Investigate all complaints made in writing to the District office relating to the application of these rules and regulations and report in writing all alleged violations to the board.
 - 3) Monitor compliance with all farm unit conservation plans approved and

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orders issued by the board.

- b) In addition, the General Manager and such staff as he or she shall designate shall have the following powers and responsibilities:
 - 1) At any reasonable time, after notice to the owner and/or operator, to enter upon any public or private lands within the area affected by these rules and regulations to investigate complaints and to make inspections to determine compliance. The owner, operator, and any other necessary technical personnel and representatives of the District may accompany the inspector;
 - 2) Upon reasonable cause or question, to report to the board any violations of any administrative order issued by the board pursuant to section 2-4608 R.R.S., 1997, as amended, and these rules and regulations; and
 - 3) At the direction of the board, and in accordance with Rule 19 (Noncompliance), to commence any legal proceedings necessary to enforce these rules and regulations and any order issued pursuant to them.

7. Violation. A violation of these rules and regulations exists if:

- a) Sediment damage is occurring; and
- b) Average annual soil losses on the land which is the source of the damage are exceeding the soil loss limits adopted by the board (Attachment F); and
- c) The activity causing the soil loss is not an exempted nonagricultural land disturbing activity (Rule 4.(f) (2) to (4); and
- d) The land which is the source of the damage is not in strict compliance with a conservation agreement approved by the District.

8. Complaint. As outlined in section 2-4608 (1) R.R.S., 1997, a complaint alleging that excessive soil erosion is occurring may be filed in the District office by:

- a) An owner or operator of land damaged by sediment;
- b) Any authorized representative of a state agency or political subdivision whose roads or other public facilities are being damaged by sediment;
- c) Any authorized representative of a state agency or political subdivision with responsibility for water quality maintenance if it is alleged that the soil erosion complained of is adversely affecting water quality; or
- d) Any District staff member, or other person authorized by the board to file complaints. Complaints shall be made in writing on a form provided by the

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District (Attachment - C).

Attachment - B shows a flow chart outlining the process of the sediment and erosion control program. An explanation of the flow chart is on pages A-10 through A-12.

9. Investigation of Complaint. Upon receipt of a properly filed complaint, a representative of the District shall notify the alleged violator within ten days, excluding Saturdays, Sundays and Holidays, that a complaint has been filed and that an investigation to determine whether a violation of these rules and regulations has occurred will be initiated. The investigation shall take place as soon as possible after the complaint has been filed and notice given. The alleged violator shall be given an opportunity to accompany the person conducting the investigation. If a farm unit conservation plan previously approved by the District is being implemented and maintained in strict conformance with a conservation agreement, including the land subject to the complaint, the complaint shall be dismissed. The alleged violator, complainant and board shall be notified. Attachment - D shows the District's Sediment and Erosion Complaint Checklist that is used to aid the complaint process.

Upon completion of the investigation, the investigator shall file a report of his or her findings with the District's Natural Resources / Projects & Programs committee so that the committee, as provided in Rule 11, can make a determination as to whether a probable violation of these rules and regulations has or has not occurred. Copies of the investigation report shall also be provided to the alleged violator and the complainant. The report shall include:

- a) The location and estimated acreage involved in the alleged violation; and
 - b) The investigator's conclusions concerning the existence of any sediment damage and a description of the location and nature of any sediment damage identified; and
 - c) The location of land(s) which the investigator concludes are the source of the sediment, the nature of the land use on such lands, and the estimated average annual soil losses from such land(s). The investigator may utilize the services of professional staff, consultants, or technicians of other state or federal agencies, if necessary.
10. Determination of Soil Loss. Soil losses shall be determined by using the applicable portions of the then current version of the United States Department of Agriculture, Natural Resources Conservation Service Field Office Technical Guide to calculate the average annual sheet and rill erosion or to calculate the average annual wind erosion.

The soil losses normally will be calculated on a soil survey mapping unit basis. If it is

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determined that soil loss in excess of the applicable soil loss limits is occurring in the portion of one or more mapping units under the ownership and/or control of the alleged violator, they may not be averaged with other non-violating units for the purpose of determining overall soil loss. If it is determined that the sediment damage complained of is resulting from erosion on a land parcel smaller than the soil mapping unit, the soil loss equation in the Field Office Technical Guide may be applied to such smaller portion only if such portion is two acres or greater.

The cover and crop management factor, "C", used in calculating sheet and rill erosion may incorporate a cropping history of up to five years. Crop rotation patterns longer than five years but not more than ten years may be used for the purpose of planning future compliance. Multi-year crop rotation patterns may not have two consecutive years when calculated soil losses would exceed "T".

Soil losses from irrigation, ephemeral-gully, and gully erosion may also be determined by using acceptable scientific procedures and will be added to the sheet and rill or wind erosion soil losses determined in accordance with the Field Office Technical Guide.

Soil losses from stream bank erosion shall not be calculated and these rules and regulations are not applicable to this type of erosion.

11. Committee and Board Action. The District's Natural Resources/Projects & Programs Committee will assist the District staff in administering these rules and regulations and make a determination as to whether a probable violation of these rules and regulations has or has not occurred. Such determination shall be based upon the investigator's report completed pursuant to Rule 9 and an on-site inspection by the committee, if warranted. The committee shall report its findings to the board, and alleged violator and the complainant with a recommendation of further action as follows:
 - a) If the committee determines that no violation of these rules and regulations has occurred, it shall recommend and the board may approve dismissal of the complaint. The complainant shall be given an opportunity to appear before the entire board before the board acts on the recommendation; and
 - b) If the committee determines that a probable violation of these rules and regulations has occurred it shall proceed with the notice of violation (Rule 13).
12. Variance. The committee may recommend and the board may approve a variance from the soil loss limit established in the soil loss limits section of these rules and regulations (Rule 5), if it determines that a limit of T cannot reasonably be applied to land which is the subject of a complaint. The soil loss permitted, however, may in no case exceed 2T. In making any such determination, the committee or the board shall consider the judgment of local professional soil conservationists and the economic consequences and

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feasibility of requiring conservation measures necessary to reduce soil losses to the T-value.

13. Notice of Violation. If the committee determines that a probable violation of these rules and regulations has occurred, the alleged violator shall be informed of its findings by letter delivered in person or sent by registered or certified mail. The letter shall specify the options available to the alleged violator, including:

- a) The alleged violator shall be given an opportunity to contact the District within ten days after receipt of notice concerning the development of a plan and schedule for eliminating excessive erosion and sedimentation from the land that generated the complaint. If appropriate at this time, possible practices for inclusion in a plan may be suggested. Information on cost-share programs and a statement indicating whether cost-share money is available may also be supplied.
- b) The alleged violator shall be given an opportunity to contest the Committee's findings at a board meeting or, if desired, board hearing to be held no sooner than fifteen days after receipt of notice. Notice of the date shall be scheduled and provided to all concerned parties. The alleged violator may request a formal public hearing within ten days after receipt of notice. The District's rules for formal adjudicatory hearings shall govern the conduct of all such hearings.

The alleged violator shall be further notified that if he or she does not respond to this notice and does not appear at the board meeting for which notice was given, the board shall proceed in accordance with Rule 16 (Administrative Order), in his or her absence to make a final determination on the complaint and issue an administrative order if the board concludes that a violation has occurred.

14. Development and Approval of Plan for Compliance.

- a) If the alleged violator contacts the District and indicates a desire to attempt to jointly develop either a farm unit conservation plan or a plan for eliminating excessive erosion on and sedimentation from the land that generated the complaint, board action on the complaint shall be delayed until further action is taken by the committee pursuant to (b) or (d) of this Rule. The General Manager and the alleged violator shall promptly secure the assistance of the Natural Resources Conservation Service (NRCS) or such other professional resource planners as are deemed necessary to aid in preparation of such a plan and shall attempt to prepare a mutually acceptable plan in accordance with the NRCS Field Office Technical Guide. Any plan developed in accordance with this section shall identify, as applicable, the soil and water conservation practice(s) or erosion and sediment control practice(s) to be applied or used and shall be accompanied by a proposed conservation agreement setting forth a schedule for compliance.

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- b) Any plan developed by the alleged violator and the General Manager shall be presented to the committee for approval. If the committee agrees to the proposed plan and to the accompanying conservation agreement, the board may thereafter approve such plan and agreement. The complainant shall be notified of such action. In considering the schedule for compliance contained within the conservation agreement, the board may approve a longer time for compliance than would be permissible if an administrative order were issued, but shall not do so without consideration of the nature and extent of any additional sediment damages the complainant is likely to suffer until the plan has been fully implemented.
 - c) Strict conformance with a plan and agreement approved pursuant to this Rule shall be deemed compliance with these rules and regulations for the lands which are subject to the agreement.
 - d) If no mutually acceptable plan and conservation agreement have been prepared by the alleged violator and the General Manager within 90 days for alleged violations involving agricultural, horticultural, or silvicultural activities or within 15 days for alleged violations involving nonagricultural land disturbing activities or if the committee concludes at any time that progress is not being made and is no longer likely on the preparation of such a plan, the complaint shall be again referred to the board and the alleged violator shall be so notified in person or by registered or certified mail and shall be given the information and option described in Rule 13(b)-(Notice of Violation).
15. Practices. Practices designed to reduce or control soil erosion or sediment damage may be approved in developing a plan under Rule 14(Development and Approval of Plan for Compliance) and may be required by the District in an administrative order.
- a) Soil and water conservation practices, applicable only to land used for agricultural, horticultural, or silvicultural purposes, may include:
 - 1) Permanent practices, such as the planting of perennial grasses, legumes, shrubs, or trees, the establishment of grassed waterways, the construction of terraces, grade control structures, tile outlets, and other practices approved by the District.
 - 2) Temporary soil and water conservation practices, such as the planting of annual or biennial crops, use of strip-cropping, contour planting, conservation tillage or residue management system, and other cultural practices approved by the District.

The District shall maintain a complete list of approved permanent and temporary soil and water conservation practices as part of its local

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erosion and sediment control program.

- b) Erosion and sediment control practices, which are applicable to activities other than agricultural, horticultural, or silvicultural activities, may include:
 - 1) The construction or installation and maintenance of permanent structures or devices necessary to carry to a suitable outlet away from any building site, and commercial or industrial development or any publicly or privately owned recreational or service facility not served by a central storm sewer system, any water which would otherwise cause erosion in excess of the applicable soil loss limit and which does not carry or constitute sewage or industrial or other waste to a suitable outlet away from any development or facility not served by a control storm sewer system;
 - 2) The use of temporary devices or structures, temporary seeding, fiber mats, plastic, straw, diversions, silt fences, sediment traps or other measures adequate either to prevent erosion in excess of the applicable soil loss limit or to prevent excessive downstream sedimentation from land which is the site of or is directly affected by any nonagricultural land-disturbing activity;
 - 3) The establishment and maintenance of vegetation upon the right-of-way of any completed portion of any public street, road, highway or the construction or installation thereon of permanent structures or devices or other measures adequate to prevent erosion on the right-of-way in excess of the applicable soil loss limit.
The District shall maintain a complete list of approved erosion and sediment control practices as part of its local erosion and sediment control program.

16. Order. If after board consideration of the complaint at a meeting or hearing for which the alleged violator has been given notice in accordance with Rule 13 (Notice of Violation) the board finds that sediment damage has occurred, that average annual erosion on the land which is the source of the damage is occurring in excess of the applicable soil loss limit(s), and that a conservation plan has not been developed or is not being implemented according to a conservation agreement it shall issue an administrative order to the violator stating:

- a) The date of the order;
- b) The identity of the source of the violation and its location;
- c) The authority of the board to issue such order;
- d) The specific findings, including 1) the estimated average annual soil loss and the

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extent to which erosion exceeds the applicable soil loss limit, and 2) the nature of the sediment damage or water quality impairment resulting from such excessive erosion;

- e) If desired by the board, the alternative soil and water conservation practices or erosion and sediment control practices required to bring the land into conformance with these rules and regulations. When the complained of erosion, is the result of agricultural, horticultural or silvicultural activities, the soil and water conservation practices required shall be those necessary to bring the land into conformance with the applicable soil loss limit. If the board knows that cost-share funds are or may not be available for necessary permanent soil and water conservation practices and desires to use temporary soil and water conservation practices until cost-sharing is made available, then it shall also specify such temporary practices in the order.

Where the alleged erosion is the result of a nonagricultural land-disturbing activity, the board will require the violator to either bring the land into conformance with applicable soil loss limits or to prevent sediment resulting from excessive erosion from leaving the land;

- f) Any requirements concerning the operation, utilization, or maintenance of the alternative practices identified;
- g) The deadlines for commencing and completing work necessary to comply with this order.
 - 1) The time for initiating work needed to establish the necessary soil and water conservation practices or permanent erosion and sediment control practices shall not exceed six months after service or mailing of the order and shall be completed not later than one year after service or mailing of the order unless an extension has been granted upon a showing of good cause. If cost-share assistance for permanent soil and water conservation practices is not available and water conservation practices is not available when the order is issued, the time for initiating these practices shall be delayed until the District notifies the violator that cost-share assistance is available.
 - 2) A reasonable time shall be allowed after service or mailing of the order for commencing and completing work for temporary erosion and sediment control practices for nonagricultural land-disturbing activities but the time allowed for completing the work shall be no longer than forty-five days after service or mailing unless an extension has been granted upon a showing of good causes.

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- h) The action to be taken by the board if the violator does not comply.

A copy of the dismissal or administrative order shall be delivered to the owner and operator of the land in question by certified mail with return receipt requested.

17. Cost-Share Assistance.

- a) As outlined in section 2-4610 (2) R.R.S., 1997, if there is not available to any owner or operator at least ninety percent cost-sharing assistance for the installation of permanent soil and water conservation practices which are required in an approved farm unit conservation plan or are required by order of the board to conform agricultural, horticultural, and silvicultural practices to the applicable soil-loss limit, any such owner or operator shall not be required to install such practices pursuant to the Erosion and Sediment Control Act until such cost-sharing assistance is made available, except that such owner or operator may agree to a cost-share rate of less than ninety percent. To be enforceable, any agreement providing for cost-sharing assistance of at a rate of less than ninety percent shall include notice that the owner or operator may choose not to sign such an agreement and that such choice will preserve the right to not less than ninety percent cost-sharing assistance before any permanent soil and water conservation practices can be required by the district. The owner or operator may be required to utilize temporary soil and water conservation practices in the interim to minimize soil erosion and sediment damage. (section 2-4610 (2), R.R.S., 1997). Cost-share assistance is not a condition on requiring erosion and sediment control practices for nonagricultural land-disturbing activities.
- b) Priority for cost-share assistance shall be based on the date the administrative order executed pursuant to these regulations was signed. As cost-share assistance becomes available, the earlier date shall receive assistance first.

18. Supplemental Orders. The board may issue supplemental orders, as necessary, to extend the time of compliance with an administrative order if, in its judgment, the failure to commence or complete the work as required by the administrative order is due to factors beyond the control of the person to whom the order is directed and the person can be relied upon to commence and complete the necessary work at the earliest possible time.

19. Noncompliance.

- a) Subject to any limitations imposed by the board, the General Manager may commence legal proceedings by filing a petition in the District Court in which a majority of the land is located requesting a court order requiring immediate compliance with the administrative order or any supplemental order issued previously, if he or she has reasonable cause to believe after inspection that an

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administrative order issued previously by the board is not being complied with because:

- 1) The work necessary to comply with the order is not commenced on or before the date specified in the order or in any supplemental orders,
- 2) The work is not being performed with due diligence, is not satisfactorily completed by the date specified in the order, or is not being operated, utilized, or maintained in accordance with requirements set forth in the order.
- 3) The work is not of a type or quality specified by the District, and when completed, it will not or does not reduce soil loss to within the applicable soil loss limit for the identified land or, in the case of nonagricultural land-disturbing activity, will not or does not prevent sediment resulting from excessive erosion from leaving the land involved, or
- 4) The person to whom the order is directed informs the District that he or she does not intend to comply.

Forms for addressing erosion and sediment control violations and dismissals follow Attachment -E.

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Complaint Process on Agricultural and Nonagricultural Land
Explanation of Flow Chart

1. Source(s) of erosion must be identifiable and damage must be recognizable for valid complaint.
2. Complaints may be filed with the SPNRD by:
 - a) any owner or operator of land damaged by sediment;
 - b) any state agency or political subdivision whose roads or facilities are being damaged by sediment;
 - c) any state agency or political subdivision with responsibility for water quality if soil sediment is adversely affecting water quality; or
 - d) SPNRD authorized staff member or other agent for the District.
3. Within ten days after the complaint has been filed, excluding Saturdays, Sundays and Holidays, the SPNRD shall provide the alleged violator with a copy of the complaint and notice of the time scheduled for a field inspection.
4. SPNRD field inspection will be made as soon as possible after the complaint has been filed and notice given. The alleged violator may accompany the inspection team which may include SPNRD officials and staff, NRCS personnel, NDEQ personnel (where water quality is concerned), or other professional consultants, as necessary.
5. If a farm unit conservation plan previously approved by the District is being implemented and maintained in strict conformance with a conservation agreement including the land subject to the complaint, the complaint shall be dismissed and the alleged violator, complainant and board notified of the dismissal.
6. The report shall include 1) the investigator's conclusions regarding the existence of and a description of the location and nature of any sediment damage identified, 2) the location of lands the investigator concludes to be the source of the sediment, and 3) the calculated average annual soil losses from this land.

Average annual soil loss rates are to be determined by using the applicable portions of the then current version of the United States Department of Agriculture, Natural Resources Conservation Service Field Office Technical Guide. Ephemeral and gully erosion estimates will be included. The technician making the determination is expected to have sufficient professional qualifications for determinations to be supported, if necessary, in court.

7. Sediment damage is defined in the SPNRD rules and regulations as any economic or physical damage to the land or other property of one person resulting from the deposition of sediment by water or wind of soil eroded from the lands of another person. Soil erosion is adversely affecting water quality if the beneficial uses of that water are impaired because of sediment or chemical deposition in the stream or lake involved. Physical effects to land or property which are relatively short term in nature and which cause no economic damage and no lasting physical damage shall not constitute sediment damage.

If the committee finds that either no sediment damage has occurred or soil loss does not exceed established limits for the land in question, it shall dismiss of the complaint. If the committee finds that sediment damage has occurred and soil loss exceeds established limits, it shall issue a notice of probable violation to the alleged violator.

8. The alleged violator and complainant shall be informed by letter of the committee's recommendation to dismiss the complaint. The complainant shall be given an opportunity to appear before the entire board before it acts on the committee's recommendation.
9. Notice of a probable violation shall be sent to the alleged violator by registered or certified mail, stating the options available to the alleged violator. These include 1) an opportunity to develop with the District a plan and schedule for eliminating excessive erosion and sedimentation from the land that generated the complaint, or 2) an opportunity to contest the committee's findings at a hearing before the board.
 - 9a. Voluntary compliance is encouraged as long as possible in the process. The alleged violator contacts the district within 10 days of receipt of notice and voluntarily develops a conservation plan & schedule to addressing the erosion.
 - 9b. The alleged violator contacts the district within 10 days of receipt of notice and requests a board hearing contesting the committees findings.
10. If a plan and a conservation agreement cannot be concluded within 90 days for alleged violations involving agricultural, horticultural, or silvicultural activities or within 15 days for alleged violations involving nonagricultural lands or if the committee concludes that no progress is being made and is no longer likely, the alleged violator shall be so notified and given the option of a hearing before the board.
11. The alleged violator shall have an opportunity to contest the committee's findings at a hearing before the board scheduled not sooner than 15 days after notice to the alleged violator of this option.
- 12a. If the board finds after the hearing that either no sediment damage has occurred or that soil losses do not exceed established limits, it shall dismiss the complaint.
- 12b. If the board finds that sediment damage has occurred and that soil loss limits have been exceeded, it shall issue an administrative order to the violator to bring the land that was subject to the complaint into conformance with the established soil loss limits.
13. Administrative order issued by the board stating among other items, the deadlines for complying with the order. With regards to permanent erosion and sediment control practices, work must be initiated within six months of the order and shall be completed within one year unless an extension is granted by the board. Work on temporary erosion and sediment control practices must commence within a reasonable time and must be completed within forty-five days from the date of the order.
14. Compliance by the alleged violator, after the District Board issues an administrative order, is to begin within six months and be completed within one year. If 90% cost-share funds for the installation of permanent soil and water conservation practices, required in the administrative order, are not available, temporary practices or management methods may be required until funds are available.
15. The alleged violator may appeal to the District Court in the county where a majority of the land is located within 30 days of service of an administrative order.

16. If the recipient of the order indicates no intent to comply or if the order is not otherwise complied with as to timeliness or quality of work, the SPNRD shall petition the District Court for an order requiring immediate compliance.
17. The District has the burden of proof in court action to show that soil erosion is occurring in excess of the soil loss limits and that conservation practices have not been established or maintained as required in the District's order.
18. If the District Court rules in favor of the SPNRD, the court is to issue an order directing compliance with the administrative order as previously issued by the SPNRD or as modified by the court.
19. If the District Court rules against the SPNRD, it may 1) dismiss the complaint or 2) remand the case to the SPNRD for further action in accordance with the court's decision.