

ELEPHANT BUTTE IRRIGATION DISTRICT
DEPLETION REDUCTION AND OFFSET PROGRAM
2015-OP13

POLICY SUBJECT: Pursuant to EBID Resolution No. 2015-09 passed on November 10, 2015, this policy provides the framework for EBID's Depletion Reduction and Offset Program ("DROP"). DROP utilizes temporary, voluntary fallowing of lands with combined EBID surface water rights and groundwater rights (Combined Rights) to offset depletions of Rio Grande Project (Project) surface water supply by Municipal and Industrial (M&I) water users within the Lower Rio Grande.

DATE APPROVED: November 10, 2015

PURPOSE: This policy provides guidelines for structuring and implementing DROP. DROP was developed to provide a mechanism for M&I water users to offset their depletions of Rio Grande Project surface water supply through fallowing agreements with EBID members.

GOAL: The goal of DROP is to reduce overall water depletions within the Lower Rio Grande (LRG) basin, while maintaining the viability of farming within EBID.

CONDITIONS: Implementation of this policy shall be contingent on the 2008 Operating Agreement remaining in effect.

POLICY STATEMENT:

1. Hydrologic Basis for DROP

- a. Surface water and groundwater in the LRG are hydrologically interconnected. Because of this interconnection, groundwater use in the LRG reduces surface water supplies that are available to the Project.
- b. Under the terms of the 2008 Operating Agreement, El Paso County Water Improvement District No. 1 and Mexico are protected from impairment, and EBID has been absorbing the full impact of groundwater use by EBID members as well as by M&I water users.
- c. This policy provides a mechanism whereby M&I water users may offset their impacts on the surface water supply of the Project.
- d. DROP will reduce overall groundwater depletions in the LRG by:
 - i. foregoing all water use for fallowed parcels, and
 - ii. allowing the surface water portion for fallowed parcels to be used on EBID member lands that remain in production, thus reducing the groundwater needs for those lands.
- e. Each acre of land fallowed under DROP shall produce an annual offset of 2.6 acre-feet, based on the transfer rate out of agriculture stated in section V(A) of the final judgment of SS-97-101, filed August 22, 2011 in the Lower Rio Grande Stream Adjudication.
- f. Each acre-foot of hydrologically connected groundwater extracted by a non-EBID member shall be compensated for with one acre-foot of DROP offset water.

2. DROP Overview

- a. M&I participants in DROP will be able offset their depletion of Project water through fallowing agreements with EBID members who elect to participate in DROP.
- b. EBID members who participate in DROP will be paid by M&I to fallow land that otherwise would have been irrigated with EBID surface water and groundwater.
- c. EBID surface water that is not applied to parcels being fallowed through enrollment in DROP will be included in the allotment of the participating EBID member for use on the land that the member keeps in production or for annual transfer to other EBID lands.
 - i. If the allotment of surface water to EBID members is increased during the year, it is allotted pro-rata to all lands in the district, including the lands that have been fallowed under DROP.
 - ii. Example: The initial allotment of surface water for EBID member lands was 8 inches, but was later increased to 10 inches. The additional 2 inches of allotment cannot be applied to land fallowed under DROP, but like the initial allotment, can be used on land that the participating EBID member keeps in production or be transferred to other EBID lands.
- d. Enrollment of land in DROP does not reduce the remainder of an EBID member's allotment.
- e. The groundwater portion for lands enrolled in DROP cannot be transferred or otherwise used.

3. Eligibility

- a. EBID members may only enroll into DROP land that
 - i. has combined surface and groundwater rights as described section II of the final judgment of SS-97-101, and
 - ii. has been irrigated for four of the last five years.
- b. Purchase of depletion offsets through participation in DROP shall only be open to M&I users in the LRG.

4. Limits on Fallowing and Offsets

- a. The maximum amount of land that may be fallowed by any EBID member or EBID Member Group under DROP is 20% of the EBID member or Member Group's assessed acreage.
 - i. The EBID Board of Directors has discretion to waive the 20% limit for parcels that are smaller than ten acres and/or are difficult to irrigate.
- b. Individual EBID members may form Member Groups for the purpose of entering into a single fallowing agreement.
 - i. Example: EBID member A has 60 acres of land with combined surface water and groundwater rights, so is eligible to enroll 12 acres (20% of 60 acres) in DROP. EBID Member B has 40 acres of land with combined surface and groundwater rights, so is eligible to enroll 8 acres (20% of 40 acres) in DROP. EBID members A and B can form a Member Group and enter into a single fallowing agreement to collectively fallow up to 20 acres (20% of their combined 100 acres). The 20 fallowed acres can be located entirely on EBID member A's land, entirely on EBID member B's land, or be split between their land in any proportion, so long as the total amount fallowed does not exceed 20 acres and fallowing complies with other provisions of DROP.

- c. The maximum amount of land that may be fallowed within EBID is 20% (18,128 acres) of the assessed acreage within the district, subject to change at the discretion of the EBID board.
- 5. Length of Fallowing
 - a. The maximum amount of time that any particular parcel can be consecutively fallowed is three years, subject to the following provision:
 - i. The EBID Board of Directors has discretion to waive the three-year limit for parcels that are smaller than ten acres and/or are difficult to irrigate.
- 6. Land Management for Fallowed Parcels
 - a. Landowners who fallow land under DROP must submit to EBID a land management plan for each parcel fallowed. The land management plan must address weed control and soil erosion.
 - b. EBID will develop guidelines and recommendations for managing fallowed parcels. EBID may modify the guidelines and recommendations as needed.
 - c. No water other than natural precipitation may be applied to parcels that are being fallowed under DROP.
 - d. EBID will monitor parcels that are fallowed under DROP to ensure compliance with the fallowing agreement.
- 7. Short-term and Long-term Components of DROP
 - a. DROP will include a short-term component (or components) and the option to develop a long-term component.
 - b. The short-term component (or components) will allow the EBID Board of Directors to evaluate, refine, and adjust DROP as needed for program success.
 - i. Short-term DROP components will run for consecutive three-year periods.
 - ii. The EBID Board of Directors will have discretion over whether to establish additional short-term DROP components.
 - iii. EBID members may enroll in the short-term DROP by March 31 of any short-term program year.
 - c. If the short-term DROP components indicate that lengthier agreements are warranted and desired, a long-term DROP component will be developed.
 - d. If developed, the long-term DROP will:
 - i. run for no longer than the term of the 2008 Operating Agreement;
 - ii. require an initial opt-in period for EBID members who wish to participate; and
 - iii. require M&I users to make an up-front payment to EBID members who enroll in the program, in addition to annual payments for acres fallowed.
 - e. Regardless of whether a long-term component to DROP is implemented, the EBID Board of Directors has discretion to continue to implement a short-term DROP component of the program.
- 8. Administration and Oversight
 - a. EBID will administer and oversee DROP, to include:
 - i. Maintaining records of fallowing agreements and land management plans;
 - ii. Ensuring that EBID surface water is not applied to lands fallowed through DROP;
 - iii. Receiving fallowing agreement and administrative fee payments, with the lease portion passed on to the participating member, subject to compliance with the fallowing agreement and land management plan.

- b. EBID shall charge an administrative fee on an annual basis for the cost of overseeing the Program.
9. Compliance with Federal Reclamation Law
- a. Compliance with Federal Reclamation Law is required because the land following agreements would change the purpose of use of Project water rights from irrigation to offsets for M&I depletions of Project water.
 - b. The price for offsets will be determined through consultation with the Bureau of Reclamation (BOR) to comply with the Sale of Water for Miscellaneous Purposes Act, 43 USC §521, and the implementing regulations and policies.
 - c. The price for offsets shall also include any additional fees charged by the BOR for Operation and Maintenance under existing contracts between the BOR and EBID.
10. Process for Implementation
- a. EBID will initiate discussions and seek a Memorandum of Agreement with the BOR to establish a framework for DROP, including approach, process, schedule, funding, and implementing contracts. This framework will also outline the role of the M&I users.
 - b. All costs associated with implementing DROP shall be borne by the M&I users.