

SECTION 9– FALLOWING CONTRACTS AND OTHER LAND RETIREMENT PROGRAMS

9.01. Introduction. Upon final approval, the Board of Managers will cooperate with the State of Colorado acting through the Department of Natural Resources and the U.S. Department of Agriculture acting through the F.S.A., to implement a Conservation Reserve Enhancement Program (“CREP”) within Subdistrict No. 1 pursuant to the requirements of the CREP Program as set forth by the F.S.A. and incorporated within the contracts and agreements which are made a part of these Rules in Section 8.

9.01.01. In order to supplement the CREP Program effort, which is not yet in effect at the time of adoption of this Rule, and to encourage fallowing of lands to reduce groundwater consumption at times or places where CREP is not appropriate, the Board of Managers may initially offer to pay land owners to fallow actively irrigated land for one year. The contract may be extended or an option for additional years may be added as agreed to between the parties. This fallowing program is intended to complement the CREP Program. These rules which govern this fallowing program are markedly different than the terms and conditions of the USDA CREP Program and should not be compared. A link to the USDA CREP Rules is posted on the RGWCD website.

9.01.02. The ultimate goal of these programs is to reduce groundwater pumping to sustainable levels within Subdistrict No. 1, to reduce the amount of land being irrigated with groundwater, to encourage the recharge of surface water diverted into Subdistrict No. 1, to restore groundwater levels in the aquifer within Subdistrict No. 1 and to prevent land erosion.

9.01.03. Lands eligible for consideration in this fallowing program are lands on which the owner or lessee will apply groundwater irrigation in an amount that is at least 50% less than the average pumped during the previous three consecutive

years, per Division of Water Resource records. Lands considered will include those under full-turn center pivot and partial-turn center pivot, but not less than half-turn center pivot and lands that are flood irrigated with groundwater. The contract period for lands accepted into the fallowing program shall coincide with the irrigation season for the same year of the contract. Lands which have recently completed a contract with another conservation program will be considered on a case by case basis.

9.01.04. The purpose of these Rules is to ensure that a fair and consistent standard is applied to all fallowing contracts so that Subdistrict No. 1's purposes, including the reduction in the use of groundwater and the restoration of groundwater levels in the aquifer within Subdistrict No. 1 are achieved.

9.01.05. It is recognized that lands which are offered for a fallowing contract may produce different benefits and the Board of Managers of Subdistrict No. 1 intend to use these Rules to ensure that a fair standard is applied.

9.02. Procedures for an Annual Fallowing Program.

9.02.01. The Board of Directors will announce no later than December 10th of any year that they intend to entertain offers to fallow land pursuant to these Rules during the following calendar year. At that time, they will propose the tier based prices that they are willing to offer for fallowing a parcel of ground either in terms of dollars per acre, or in terms of dollars per acre-foot of surface water recharged per year or a combination.

9.02.02. Land owners interested in proposing to fallow ground shall present their proposal to the Rio Grande Water Conservation District Manager no later than February 1st by submitting the form with all information provided as shown in Section 8.____. In calendar year 2012 only the proposals may be submitted no later than March 5.

9.02.03. The technical staff and management of Subdistrict No. 1 will review all proposed fallowing contract proposals for completeness and prepare a recommendation for each proposal in accordance with the requirements of these Rules.

9.02.04. The Board of Managers will meet during the 1st week of March to act upon the Subdistrict's staff's recommendations to accept, reject, or propose alternate terms for fallowing contracts. The Board's decisions will be promptly transmitted to the individual or entity making the fallowing proposal.

9.02.05. The entity making the fallowing proposal will have one week to accept or reject the Board of Managers' decision and an appropriate fallowing contract in the form contained in Section 8 will be presented for signature. The executed fallowing contracts must be completed no later than March 15th of the year in which they are to take effect.

9.03. Water and Land Valuation. Each year the Board of Managers will establish a value that will be used in determining appropriate fallowing contract terms. The established value will be announced on the Rio Grande Water Conservation District website at the time of or prior to the request for fallowing proposals.

9.03.01. Fallowing proposals will be accepted in accordance with the following three tiers:

- 1) If the contract holder elects to apply no water from any source on the proposed fallowed parcel, then the price per acre offered is \$300/acre for 2012. This price may be adjusted annually by the Board.. A zero irrigation fallowing contract may consist of a field with an existing stand of alfalfa or barley stubble or similar. Water usage will be verified with meter records and visual observation. Meters shall be operational at all times and subject to inspection by Subdistrict No. 1 staff.
- 2) If the contract holder elects to apply up to 6 inches of water from any source for a cover crop on the proposed fallowed parcel, then the price per acre offered is \$200/acre for 2012. This price may be adjusted annually by the Board. Water usage will be verified with meter records. Meters shall be operational at all times and subject to inspection by Subdistrict No. 1 staff.
- 3) If the contract holder elects to apply 6-10 inches of water from any source for a cover crop on the proposed fallowed parcel, then the price per acre offered is \$100/acre for 2012. This price may be adjusted annually by the Board Water usage will be verified with meter records. Meters shall be operational at all times and subject to inspection by Subdistrict No. 1 staff.

9.03.02. The current year's "Water Value" shall be paid for each acre foot of surface water recharged on a parcel and not pumped or used for irrigation. The pro rata share of surface water available for recharge will be based on the 5-year running average of diversions as described in the Plan of Water Management and allocated to the field. Any surface water dedicated to the following contract under this Rule shall be deducted from the total surface water allocated to the lands on the Farm Unit.

9.03.03. In every year the Rules are in effect hereafter, these values will be subject to reconsideration and modification by the Board of Managers.

9.03.04. Temporarily fallowed parcels under the following contract will be assessed Administration, CREP and Variable fees according to the Plan of Water Management. Surface Water Credit will be calculated in accordance to Appendix C of the Plan including reductions for surface water that is not recharged, such as flood irrigation, use of surface water through the sprinkler and includes surface water that is dedicated to the following contract.

9.04. Limitations and Restrictions. The contract holder shall install, maintain and monitor such measuring devices deemed necessary by Subdistrict No. 1 to administer the terms of the contract. Any malfunction in the method or devices measuring the pumped ground or surface water must be rectified within 48 hours. If the malfunction cannot be corrected other measurement methods acceptable to Subdistrict No. 1 must be employed to accurately measure the amount of water being used. The contract holder shall report monthly readings on all the measurement devices used on fallowed lands to Subdistrict No. 1 between the 1st and the 10th of every month during

the contract period. If the groundwater irrigation applied to a particular parcel of land under the contract during the contract period is more than 50% (half) of the previous three year pumping average then the portion of the fallowing contract applicable to that parcel will become null and void.

9.04.01. If the contract holder elects to use surface water through his sprinkler, it shall be appropriately measured with an approved metering device to allow the determination of the surface water pumped through the sprinkler. Failure to do so will result in the contract being voided. If measurements on groundwater pumped and surface water are not accurately metered and/or if the meters do not accurately reflect the amount of water pumped, the contract will be voided as to those parcels where the metering was insufficient or inaccurate.

9.04.02. The fallowing contract holder shall provide all federal farm program information, preventative planting insurance and any other agreements as to the use of water or permitted cropping associated with the parcel considered for fallowing at the request of Subdistrict No. 1 staff. This information shall include historical planting and production data.

9.04.03. The fallowing contract holder shall be considered, as a condition of the contract, to have given permission to Subdistrict No. 1 personnel to enter upon the property that is the subject of the fallowing contract to check well meter readings and verify other fallowing criteria with prior notification.

9.04.04. During the term of a fallowing contract, grazing, tillage, fall planting and mechanical harvesting may occur on the property during the irrigation season of the

contract year. Any groundwater irrigation amounts applied during the contract period are restricted to the tier limits stated in section 9.03.01 of this rule. The contract holder shall inform Subdistrict No. 1 personnel if any of the above activities are planned prior to initiating these activities.

9.04.05. The contract holder shall ensure that appropriate erosion control techniques are applied to any parcel that is the subject of a fallowing contract. This may include the planting and irrigation of a cover crop or other appropriate soil stabilization measures or soil treatment.

If a cover crop is planted, the fallowing contract holder shall agree to apply no more water than permitted in each of the previously described tiers. If a land owner elects to apply more water than is provided for in a tier, then the fallowing contract will be voided as to the parcel and no payment by Subdistrict No. 1 will be made. During the irrigation season, a fallowing contractor may change tiers without violating the fallowing contract. If such a change is made, Subdistrict No. 1 must be notified and get approval prior to the end of the contract period to avoid violation of the contract.

9.04.06. The final value of a fallowing contract will be determined and adjusted after the end of the irrigation season to take into account water use decisions that are made on the parcel during the term of the fallowing contract. All fallowing contracts will acknowledge Subdistrict No. 1's ability to make that adjustment based upon the irrigation practices employed by the contract holder during the year. Among the reasons for a reduction in a fallowing contract payment or contract

cancellation would be excess irrigation beyond that described in the contract or the conduct of grazing, tillage or planting practices contrary to the terms of the contract.

9.05. Payment Schedule. The price established for a particular fallowing contract will be paid in one lump sum during December of the year in which fallowing occurred.

9.05.01. The fallowing contract shall provide that if the contract holder violates the terms, such as exceeding the irrigation limits included in the tiers of the contract, the Board of Managers may consider the contract null and void, no payment will be made and a variable fee would be calculated according to the Plan of Management.

9.05.02. A copy of the current fallowing contract is contained in Section 8. The contract may be changed from time-to-time in order to account for the subsequent decisions of the Board of Managers and the need to address newly identified issues. However, at all times, the fallowing contract used in any particular year will be consistent as to all contract holders.

9.05.03. At all times, every fallowing contract holder in a particular year will be treated consistently in accordance with these Rules. The contract price will be determined based upon the acreage value and water values determined for that year by the Board of Managers. The fallowing payment is only available to properties that fully comply with these rules.