

## Depletions Offsetting for Habitat Restoration Projects

### Within the Middle Rio Grande Project

**Background:** The surface waters of the Rio Grande basin are fully appropriated. Any use of water in the basin requires a permit from the New Mexico Office of the State Engineer ("NMOSE"). The State Engineer requires that any new use of water must be offset by a reduction in an existing use to ensure that senior water rights are not impaired.

In addition to legal requirements mandated by state law, the 2003 State Water Plan requires that habitat restoration activities that result in increased depletions of water must be permitted, and that any increases in depletions must be offset by purchased or leased water rights.

**Policy:** The State Engineer requires that parties intending to construct habitat restoration projects in the middle Rio Grande basin within the boundaries of the Middle Rio Grande Project (from Velarde to Elephant Butte Dam) that involve diversion of water from the river or creation of new, open water surface ("Project"), submit their project plans to the District I Office of the State Engineer. The NMOSE will determine whether a permit is needed and, in consultation with the NMISC, whether the project is likely to result in increased depletions, and how those increased depletions will be offset. The NMISC Rio Grande Basin Bureau will annually track, account and report to the NMOSE the depletions and status of offsets associated with the projects.

Should the NMOSE determine a permit is or is not required, it will inform the proposal submitter by letter.

Should the NMOSE determine that depletion offsets are required, it will inform the proposal submitter in writing and advise that the following criteria will be used to quantify depletions associated with the project:

1. Increases in the area of open water over pre-project conditions will be evaluated and quantified at the State Engineer's recognized open water evaporation rate (Soil Conservation Service Map 4-R-33582, Gross Annual Lake Evaporation, New Mexico, April, 1972). Areas that experience episodic inundation will be prorated.
2. Similarly, any increase in the areas of marsh or wetlands over pre-project conditions will be considered open water and assessed at the evaporative rate for open water. Areas that experience episodic inundation will be pro-rated.
3. No credits will be given or debits assessed for changes in vegetation.

The NMOSE may consult with the NMISC or other agencies or sources to evaluate and quantify the depletions associated with a Project at its discretion.

Parties will be required to offset any increase in depletions, as calculated above, on an annual basis. Offset of depletions can be in one of the following forms:

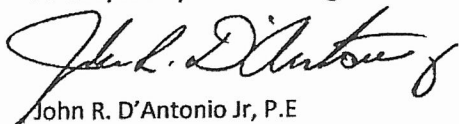
- A permanent transfer of water rights,
- A temporary transfer of leased rights,
- A lease and release (as directed by the State Engineer) of bulk water, or
- Any other sources approved by the State Engineer.

#### **Exemptions**

The NMOSE does not require the U.S. Bureau of Reclamation ("Reclamation"), the U.S. Army Corps of Engineers ("Corps"), or NMISC to obtain water rights permits for habitat restoration activities conducted within the Middle Rio Grande floodplain (defined as levee to levee) between Velarde and Elephant Butte Reservoir because of their respective flood control authorities and/or compact delivery statutory roles. The State Engineer recognizes that Reclamation, the Corps, and the NMISC each have roles and responsibilities that require them to perform work within the floodplain of the Rio Grande between Velarde and Elephant Butte Reservoir and that the end result of the work is a functional MRG floodway and floodplain which is important to the State and its citizens for a number of reasons. However, any increases in depletions caused by those Agencies' habitat restoration activities as accounted for by the NMISC must be offset as described above, subject to the following exception.

Work performed by any party within the river channel within the Rio Grande Floodway is exempt from both the permitting requirement and the offsetting requirement. The definition of the river channel in this case is a 600-ft wide corridor centered on the midline of the river. The Middle Rio Grande Project was constructed, in part, to safely move flood flows through the middle valley into Elephant Butte Reservoir. In most areas this requires a river channel of at least 600 feet wide. Therefore, water use within this 600-foot wide corridor is not deemed an "increase in water use" and does not require permitting or offsetting.

As adopted by the State Engineer



John R. D'Antonio Jr, P.E

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