

Eastern Irrigation District

BYLAW 906 (2016)

Being a Bylaw of the Eastern Irrigation District to regulate the delivery and distribution of water to users,
to establish the terms and conditions that apply to that delivery
and the circumstances under which the delivery of water to a user may be reduced or stopped.
[Irrigation Districts Act, Section 177]

WHEREAS Section 177(2)(a) of the Irrigation Districts Act permits the District to make a bylaw governing the delivery and distribution of water to users;

AND WHEREAS the District, pursuant to a bylaw under section 177(2)(a), may, in regulating the delivery and distribution of water to a User, reduce or stop the delivery of water to a User and may impose terms and conditions that apply before the delivery and distribution of water to a User may be restored;

AND WHEREAS, section 6 of the Act provides that the purpose of a district is:

- (a) to convey and deliver water through the irrigation works of the district in accordance with this Act,
 - (b) to divert and use quantities of water in accordance with the terms and conditions of its licence under the Water Act,
 - (c) to construct, operate and maintain the irrigation works of the district, and
 - (d) to maintain and promote the economic viability of the district;
- all for the purpose of making water available for Users;

AND WHEREAS section 6(2) of the Act, provides that to carry out its purposes a district has the capacity and, subject to the Act, the regulations and the bylaws, the rights, powers and privileges of a natural person;

AND WHEREAS the District has determined that it has been unable to regulate and prevent some Users from using additional water obtained by them from the District for unauthorized purposes, and the District has determined that the most effective means it has to control that unauthorized use of water is to stop the delivery of water entirely to the User on the affected parcel or to the Irrigable Unit which contains the affected parcel or parcels until the User has complied with the requirements imposed pursuant to this Bylaw;

AND WHEREAS section 13 of the Act provides that:

- 13 (1) A district may stop the delivery of water to a parcel if the district is of the opinion
 - (a) that any further delivery of water may exceed the amount prescribed by bylaw, or
 - (b) the owner or lessee of the parcel has used or is using the water delivered by the district in a manner that is causing or may cause loss or damage to property or loss or injury to any person.
- (2) A district may stop the delivery of water to a parcel subject to an annual agreement or terminable agreement if the district is of the opinion that it may not be able to deliver sufficient water to the irrigation acres of the district or to the irrigation acres in a portion of the district.
- (3) If a district stops the delivery of water to a parcel under subsection (2), it must do so in the following order:
 - (a) first, acres in a parcel subject to an annual agreement;
 - (b) second, acres in a parcel subject to a terminable agreement.
- (4) If a district intends to stop the delivery of water under this section, it must provide written notice to the owner or lessee of the parcel at least 24 hours before the delivery of water is stopped;

AND WHEREAS in addition to the ability of the District to stop the delivery of water under the circumstances described in section 13 of the Act, the District, in utilizing its capacity, rights and powers of a natural person under section 6(2) of the Act to monitor and regulate compliance with its various water supply agreements and to better allow it to accomplish its purposes described in section 6(1) of the Act, may stop the delivery of water to a User, to a Point of Delivery, to the whole of an affected parcel or the whole of an Irrigable Unit containing an affected parcel or parcels, to enforce compliance with the User's obligations as an Irrigator, or with the User's water supply agreement and to discontinue and prevent the unauthorized delivery and use of water;

AND WHEREAS the District acknowledges that, while an Irrigator has the right pursuant to section 14 of the Act to receive water for irrigation purposes for irrigation acres on the assessment roll, unless the Irrigator is party to an agreement with the District granting the Irrigator authority to use the water for another purpose or on other acres, the District has the right, power and obligation to prohibit and stop such unauthorized use of water in the manner provided for in this Bylaw;

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AND WHEREAS the District has determined that certain activities by Users related to the delivery and use of water by Users hinder and erode the economic viability of the District, impair its ability to carry out its purposes, and impair the ability of the District to construct, operate and maintain irrigation works of the District for use in fulfilling its purposes. In this Bylaw, the District designates certain activities individually and collectively as a Prohibited Activity for the better welfare of the District.

AND WHEREAS the concepts of “delivery and distribution” include the terms and conditions under which the District makes water available in its irrigation works for Users, including but not limited to the manner of that delivery, the timing and availability of water, the quantity of water, the rate of flow, issues of water quality and composition, the manner of distribution, and the circumstances in which the delivery may be stopped;

AND WHEREAS the District desires to enact this Bylaw to regulate the delivery and distribution of water to Users and to set forth the terms and conditions that apply to that delivery and the circumstances, in addition to section 13 of the Act, under which the District may reduce or stop water delivery to a User;

AND WHEREAS the District desires to enact this Bylaw to better define its rights to stop the delivery of water to a User if a User is engaging in a Prohibited Activity;

NOW THEREFORE, the Board of Directors of the Eastern Irrigation District hereby enacts as follows:

DEFINITIONS

1. When used in this Bylaw,
 - (a) “Board of Directors” or “Board” mean the Board of Directors of the District.
 - (b) “Bylaw” means this bylaw being **Bylaw 906 (2016)** of the Eastern Irrigation District.
 - (c) “District” means the Eastern Irrigation District or the geographic area contained within the boundary of the Eastern Irrigation District, as the case may require.
 - (d) “Irrigation Districts Act” or “Act” mean the Irrigation Districts Act, chapter I – 11, RSA 2000.
 - (e) “Manager” means the person appointed pursuant to section 49 of the Act and includes any person acting under the direction of or on behalf of the Manager.
 - (f) “Other Purposes Agreement” means an agreement to deliver water for Municipal, Agricultural, Commercial, Industrial, Habitat Enhancement or Recreation purposes as authorized by the District’s Licence to Divert and Use Water.
 - (g) “Other User” means all users other than irrigators.
 - (h) “Point of Delivery” means the point on the District’s irrigation works from which the District delivers and the User receives water and shall also mean and include, as the case or context may require, a Primary Point of Delivery, an Associated Point or Points of Delivery, or a Primary Point of Delivery and one or more Associated Points of Delivery.
 - (i) “Prohibited Activity” means and includes, but is not limited to, the following activities:
 - (i) using water for household purposes without
 - a. entering into an agreement under section 19 of the Act, or
 - b. being otherwise authorized to do so under the Act;
 - (ii) using water for rural water use without entering into an agreement under section 19.1 of the Act;
 - (iii) using water for other purposes without entering into an Other Purposes Agreement;
 - (iv) using the irrigation works of the District without entering into an agreement under section 20 of the Act;
 - (v) without authority, taking, diverting or using water from any irrigation works;
 - (vi) applying water from irrigation works to acres that are neither shown on the assessment roll nor included in an alternate parcel irrigation agreement under section 25 of the Act;
 - (vii) applying water received from the District to an area of a parcel not designated as Irrigation Acres, or to more acres than specified on the Assessment Roll for that parcel;

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- (viii) applying water received from the District to an area of a parcel not permitted to receive water under a Terminable Agreement under section 17 of the Act, or Annual Agreement under section 16 of the Act, or any other form of water delivery agreement with the District;
 - (ix) causing or allowing water received from the District to be used on a parcel for other than the permitted purposes or at permitted locations or permitted amounts or in an amount or at a rate in excess of the permitted amount or rate;
 - (x) causing or allowing water received from the District to be used by anyone else on that or any other parcel, for other than the permitted purposes or permitted locations or permitted amounts, irrespective of whether some of the water delivered by the District for use on that parcel or any other parcel is being used for permitted purposes;
 - (xi) causing or allowing water received from the District to be used by anyone else on that or any other parcel for uses in addition to the purposes, locations or amounts for which it was delivered by the District irrespective of whether some of the water delivered by the District for use on that parcel or any other parcel is being used for permitted purposes;
 - (xii) using water delivered by the District for purposes or on areas of a parcel or in amounts or at rates for which the User has no authorization, agreement or permission from the District, or statutory right to do so, or if further delivery of water to the User at a Point of Delivery or on that parcel may exceed the amount prescribed in this Bylaw, any other bylaw of the District or any agreement, permit or other authorization from the District;
 - (xiii) contravening the District's Water Delivery and Operations Policy;
 - (xiv) contravening this Bylaw;
- and for all purposes of determining whether the User has engaged in a Prohibited Activity, the reference to a parcel of the User's land includes not only a parcel as defined by the Act but also any parcel or parcels included in an Irrigable Unit designated pursuant to section 23 of the Act.
- (j) "User" means any person who receives water, for any purpose, through the irrigation works and includes irrigators, Other Users and a person who is a party to a use of irrigation works agreement under section 20 of the Act or a water conveyance agreement under section 21 of the Act, and, for the purposes of this Bylaw, will be deemed to also include a person who is a party to an annual agreement under section 16 of the Act, a terminable agreement under section 17 of the Act, a household purposes agreement under section 19 of the Act, a rural water use agreement under section 19.1 of the Act, and a person who is party to an Other Purposes Agreement;
 - (k) Any other word or phrase that is defined in the Act and used in this Bylaw shall have the same meaning as given to the word or phrase by the Act.

GENERAL PROVISIONS

2. Every User shall keep pipes, valves, taps, sprinklers, flow regulators and all other devices and fixtures on his land or premises in good repair, and protect them from damage or deterioration, and shall do everything necessary to prevent the waste of water, and shall not waste the water.
3. Water shall be used only on land, or premises, or for uses authorized by the District, and in respect of which rates, fees and assessments are paid by the User as required by the Act or by any bylaw or bylaws of the District.
4. No person, except a duly appointed officer or employee of the District, shall open, shut, operate or regulate any pipe, valve, measuring device, weir, gate or other thing maintained, owned or operated by the District, unless authorized to do so by the District.
5. No person shall do anything or allow anything to be done whereby the water being stored in or distributed through the District's irrigation works may in any way be polluted or contaminated or rendered unsuitable for use for crop production, including lawns and gardens, or by humans or animals.

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6. In addition to any other provision of this Bylaw, the District may at any time conduct tests, provide reports and undertake any other measures or make any estimates required to monitor compliance by any User with any agreement to which the User is a party, the Act, and this Bylaw.
7. Where a time frame is set out in this Bylaw for carrying out any action, the Manager may extend the time for compliance beyond the established time frame, provided such extension does not materially impair the effectiveness of this Bylaw.
8. No person shall tamper with, disable, modify or remove any water control device, measuring device, flow restriction device, lock or other equipment after it has been installed by the District and no User shall cause or permit such device, lock or equipment to be tampered with, disabled, modified or removed, unless authorized to do so by the District.
9. Nothing done pursuant to the provisions of this Bylaw shall result in the reduction, abatement or cancellation of any fee, rate or charge imposed by, owing or owed to the District.

WATER DELIVERY

10. (a) Where more than one Point of Delivery exists for a parcel, the Manager may designate one of those Points of Delivery as the Primary Point of Delivery and, in such case, each of the other Points of Delivery that serve the parcel shall automatically become designated as an Associated Point of Delivery. Where the Manager has designated a Primary Point of Delivery, all water delivered to the Primary Point of Delivery plus all of the water delivered to each of the Associated Points of Delivery shall be aggregated and recorded as though such water was delivered to the Primary Point of Delivery. The amount of water recorded as having been delivered to a Primary Point of Delivery shall be deemed to be the amount of water delivered to the parcel, notwithstanding that some of the water may actually have been delivered to one or more of the Associated Points of Delivery.
(b) The land or parcel served by a Point of Delivery shall be as shown in the District's assessment roll.
11. The manner of ordering, delivery, reduction and shut-off of water conveyed and delivered to Users shall be governed by the provisions of this Bylaw, any other bylaw of the District dealing with the subject matter or matters, any applicable agreement, permit or authorization, and the Water Delivery and Operations Policy, as approved, amended or replaced by the Board from time to time. The Water Delivery and Operations Policy, as approved, amended or replaced by the Board from time to time, is incorporated herein by reference and is enforceable pursuant to the terms of this Bylaw.
12. The District does not guarantee pressure, or any pressure, a continuous supply of water or any flow rate, and reserves the right at any and all times, without notice, to change operating water pressures, to shut off or reduce the supply of water, to change the flow rate or otherwise change or interrupt water service for the purposes of operating the irrigation works, filling reservoirs, making repairs, extensions, alterations, or improvements, or for any other reason. The District shall not incur any liability of any kind whatsoever by reason of the cessation in whole, or in part of, or increases or decreases of water pressure, water supply or flow rate.

INSPECTIONS

13. The District may at any reasonable time enter onto any parcel of any User and onto any parcel where water delivered by the District is being used to inspect for compliance with this Bylaw, and with any agreement or permitted water uses, and to document and detect any incidents of water use in contravention of the Act, this Bylaw, any other bylaw or any agreement or permitted water use, on such parcel.

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14. The District shall have, at any time, the right to enter upon any land for the purpose of monitoring the delivery and use of water, or to make any lawful enquiries or investigations required by the District, and such activities may include the periodical check of water being used for any purpose, the measurement (by meter, other device or by estimation) of water being used, and the investigation of sprinkler nozzles, flow regulators, meters and any other devices or appurtenances used in connection therewith.

NON-COMPLIANCE BY USERS

15. Where this Bylaw makes provision for the supply or delivery of water to be shut off or otherwise stopped at a Point of Delivery, such provision shall be interpreted as also authorizing the supply or delivery of water to be shut off or otherwise stopped at a Primary Point of Delivery, at any or all of the Associated Points of Delivery, and at any or all of the Primary Point of Delivery and Associated Point or Points of Delivery.
16. Notwithstanding that a User may be using some of the water delivered to a parcel for authorized purposes and in accordance with District policies and in compliance with any agreement or authorization of the District, where the District finds that a condition exists on a parcel in which the User is using some of the water in a manner or for a purpose that is not an authorized use on that parcel, or is in breach of any agreement, authorization, permission or approval of the District, or a condition exists on a parcel, or equipment is being used on a parcel, or elsewhere on or adjacent to the District's irrigation works that allows or may allow a breach or a continuation of existing circumstances which are in breach of this Bylaw, or which are or may be a Prohibited Activity, the Manager may:
- (a) Forthwith order the User to immediately eliminate the condition, remedy the breach or cease the Prohibited Activity (the "Cessation Order");
 - (b) Forthwith order the User to permanently remove or disable any equipment, pipes, valves, gates, or appliances used to supply water to or for the Prohibited Activity, condition or breach (the "Removal Order") and;
 - (c) No earlier than one (1) hour following the delivery to the User of the Cessation Order or Removal Order, shut off the delivery of water to the Point of Delivery, the parcel or the Irrigable Unit containing the parcel in its entirety until such time as the User has complied with the provisions of paragraph 19 of this Bylaw.
17. Where any User contravenes any provision of this Bylaw, in addition to any other measures permitted to be taken by the District to address such contravention, the Manager may, without notice, shut off or otherwise stop the supply of water at the Point of Delivery or to the affected parcel or Irrigable Unit or any portion thereof until the contravention is rectified, notwithstanding that the User may be an irrigator or have a subsisting agreement or permission to use water for an authorized purpose from a Point of Delivery or on that or any other parcel.
18. Failure on the part of any User to comply with the requirements of this Bylaw or any Order issued to a User under this Bylaw, will entitle the Manager, pursuant to the provisions of this Bylaw, to, without notice, shut off or otherwise stop the supply of water to the User at the Point of Delivery or to the affected parcels including the entire Irrigable Unit containing the affected parcels.
19. A User to whom delivery of water is shut off or otherwise stopped pursuant to this Bylaw shall not be entitled to receive any further water from the District for any purpose for use through the Point of Delivery or on the affected parcel and, if the parcel is part of an Irrigable Unit, to that Irrigable Unit, until that User has:
- (a) complied with the requirements of an Order issued under paragraph 16 of this Bylaw or otherwise satisfied the Manager that the contravention or non-compliance has been properly and fully rectified;
 - (b) has paid to the District a Turn-On Fee in the amount of One Thousand Dollars (\$1,000.00); and
 - (c) has paid to the District all costs incurred by the District in shutting off, stopping and re-instating delivery of water;
- with such Fee and costs to be paid in full prior to the District turning the water back on to the affected Point of Delivery, parcel or the Irrigable Unit containing the parcel.

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20. Notwithstanding that a User has complied with a Cessation Order or a Removal Order issued under this Bylaw and has complied with the requirements of paragraph 19 of this Bylaw, that User is not thereby authorized or permitted to conduct, continue or resume any Prohibited Activity. The further resumption or occurrence of any Prohibited Activity after the User has complied with paragraph 19 of this Bylaw and water service to the parcel is restored will be subject to the issuance of a further Cessation Order or Removal Order.

REVIEW OF DECISION OF MANAGER

21. (a) A User to whom delivery of water has been shut off or otherwise stopped pursuant to this Bylaw or to whom a Cessation Order or Removal Order has been issued under this Bylaw may apply to the Board for a review of the decision by the Manager.
- (c) A request for review must be made in writing, submitted to the Manager within five (5) days of the date on which the water was shut off or delivery stopped or the Order in question was delivered to the User, and must set out the User's reason or reasons for requesting the review.
- (d) Receipt of a request for review does not require or obligate the Manager to suspend or delay acting upon or enforcing this Bylaw or any Cessation or Removal Order.
- (e) The Manager will, at his earliest opportunity, advise the Board of the receipt of a request for review and the Board will meet to consider the request for review as soon as is practical.
- (f) The Board may vary or rescind a decision of the Manager only if the Board finds that the decision of the Manager is patently unreasonable.

OTHER

22. In the event that any paragraph or provision contained in this Bylaw is deemed to be ultra vires, invalid or otherwise inoperative, all remaining paragraphs and provisions shall remain fully in force to the extent practical.
23. This Bylaw shall come into force and take effect on the date it is finally passed.

Chairman

General Manager

Introduced and read the 1st time on the **26th** day of **January, 2016**.
Read the 2nd time on the **26th** day of **January, 2016**.
Read the 3rd time and finally passed on the **24th** day of **February, 2016**.