

FACT SHEET 17

EXCESS LAND

Reclamation Reform Act of 1982 (RRA)

This fact sheet details excess land, what a landholder's responsibilities are when excess land exists, and if excess land can be made eligible to receive Bureau of Reclamation irrigation water. If you are unsure of the information discussed in this fact sheet, contact your district or the appropriate Reclamation office, or see the **Sources for more information** section at the end of this fact sheet.

What is excess land?

Excess land is any land that exceeds a landholder's maximum ownership entitlement, and/or any land designated as excess by the **direct owner** of the land. Once land is designated as excess, it cannot receive Reclamation irrigation water at any price unless very specific criteria (discussed later in this fact sheet) are met. Land that can be designated as excess is any nonexempt land (irrigable or irrigation land¹ that is subject to the acreage limitation provisions). Generally land is designated as excess if the direct landowner's owned land westwide (in the 17 Western States where Reclamation has projects) that is subject to the acreage limitation provisions exceeds the applicable ownership entitlement (that is, prior law recipient, qualified recipient, or limited recipient). For more information on ownership entitlements, see the appropriate fact sheet listed in the **Sources for more information** section at the end of this fact sheet. Buyers and lessees of land must pay particular attention to whether the land being purchased or leased has already been designated as excess by the current owner. Leased land that is designated as excess will be ineligible to receive Reclamation irrigation water, regardless of whether the lessee has room within their personal ownership entitlement to hold the land as nonexcess land.

Who can own excess land?

Directly or indirectly owned excess land is a possibility for all landholders, regardless of their acreage limitation status. In some districts, landowners who are subject to the discretionary provisions are able to use Class 1 equivalency to bring land (that otherwise would have been designated as excess) within the applicable ownership entitlement. The following is a non-inclusive list of some possible landholding situations in which excess land can exist:

- A landowner's total westwide land ownership exceeds the applicable ownership entitlement, after Class 1 equivalency is applied where applicable.
- A landholder purchases (acquires through a sale or transfer) additional land that, when added to the land that is currently directly owned and/or indirectly owned, exceeds the landholder's applicable ownership entitlement.

¹ Generally, **irrigable land** is land that is, can be, or is planned to be provided with Reclamation irrigation water through facilities that are provided or planned to be provided. **Irrigation land** is any land receiving Reclamation irrigation water for irrigation purposes (unless exempted under certain circumstances).

- A landholder purchases land that has been designated as excess by a previous owner/seller without obtaining Reclamation’s approval of the sale price.
 - The purchased land will be considered excess land even if the purchasing landholder doesn’t exceed his/her/its ownership entitlement.
- A landholder involuntarily acquires nonexcess land that is eligible to receive Reclamation irrigation water (for example, through foreclosure, inheritance, or conveyance in satisfaction of a debt) and designates that land as excess. See Fact Sheet 13 (Involuntary Acquisitions) for additional information concerning involuntary acquisitions.
- A landholder involuntarily acquires land that is already designated as excess.
 - Generally, the involuntarily acquired land will be considered excess land even if the acquiring landholder doesn’t exceed his/her/its ownership entitlement. See Fact Sheet 13 (Involuntary Acquisitions) for additional information concerning involuntary acquisitions.
- An entity (direct owner) agrees to designate some of its land as excess when one of its part owners (indirect owner) exceeds the part owner’s ownership entitlement.
- A landholder leases land from a public entity, causing the landholder to exceed the applicable ownership entitlement (land leased from a public entity must be identified by the lessee as directly owned land).
- A landholder is attributed with land directly owned by a legal entity or a trust or estate that, when added to the landholder’s directly owned land, exceeds the landholder’s applicable ownership entitlement.

What is required when there is excess land?

A designation must be made by the direct landowner that specifies which directly owned land parcels are to be considered nonexcess (and eligible to receive Reclamation irrigation water) versus excess (and generally ineligible to receive Reclamation irrigation water). **A designation of excess land is binding upon the land**, not the landowner. Designations are made using the “Designation of Excess Land” (Form 7-21XS), and are required when:

- A landowner (individual or entity) exceeds the applicable ownership entitlement, regardless of whether the land is irrigated; and/or
- A landowner owns or acquires land designated as excess even if the landowner does not currently exceed the applicable ownership entitlement.

What happens if the landowner does not designate excess land on a Form 7-21XS?

The Acreage Limitation Rules and Regulations (43 CFR² part 426; Regulations) require the district or Reclamation to designate the appropriate amount of excess land.

² Code of Federal Regulations

How is a redesignation of excess land accomplished once an excess designation has already been made?

Once land is designated as excess, that designation remains in full force and effect until a written request for redesignation is submitted to Reclamation for approval. Merely submitting a new Form 7-21XS to the appropriate district(s) will not accomplish a redesignation of excess land. Both of the following criteria must be met prior to delivery of Reclamation irrigation water to the land involved in the redesignation request. A binding redesignation of excess land is accomplished by:

- Submitting the request to Reclamation **in writing** by the landowner³ along with a new Form 7-21XS and a new standard RRA form, **and**
- Approval by Reclamation **in writing**.

Reclamation **will not approve** redesignation requests that are made:

- Because the landowner sells some or all land that is currently designated as nonexcess;
- Because the landowner is attempting to achieve a total landholding that exceeds the allowable maximum (for example, more than 960 acres) by repeatedly redesignating excess land; or
- After the eligible land has already received Reclamation irrigation water during the current water year.

An excess land designation can be changed without Reclamation's approval only if:

- The excess land becomes eligible because the landowner becomes subject to the discretionary provisions and then has a larger ownership entitlement available;
- A recordable contract is amended to remove the excess land designation when a landowner becomes subject to the discretionary provisions (in the rare instance that a recordable contract is in place); or
- The excess land becomes eligible due to a Class 1 equivalency determination.

Can excess land receive Reclamation irrigation water?

Excess land is generally **ineligible** to receive Reclamation irrigation water. Only in very specific situations can Reclamation irrigation water be delivered to excess land:

- Excess land is purchased or transferred to an eligible buyer from a seller at a price approved by Reclamation (that is, sales price approval, which is discussed later in this fact sheet). Such land is no longer "excess;" rather, it is referred to as "formerly excess land."
- Excess land is purchased from a seller without sales price approval, **and** a reformation agreement is executed until Reclamation approves the price.
- Land becomes excess due to statutory or regulatory changes **and** is placed in a recordable contract.

³ Landholders that lease land from a public entity in excess of the landholder's applicable ownership entitlement should contact the district or the appropriate Reclamation office for further guidance on redesignating excess land.

- Nonexcess land is involuntarily acquired (for example, foreclosure, conveyance in satisfaction of a debt, inheritance, or devise) **and** designated as excess. See Fact Sheet 13 (Involuntary Acquisitions) for additional information concerning involuntary acquisitions.

What happens if ineligible excess land receives Reclamation irrigation water?

- Delivery of Reclamation irrigation water to the ineligible excess land is terminated immediately, even if during an irrigation season;
- The district is billed the compensation (full-cost) rate for the Reclamation irrigation water delivered, as compensation for illegal conversion of the Federal government's property interest;
- The district is billed underpayment interest that accrues from the original payment due date until the district pays the total amount due;
- The district is billed an administrative fee for delivery of Reclamation irrigation water to ineligible excess land (one fee per water year, per landholder, per district); **and**
- Legal action may be taken.

What happens when excess land is sold, and what is sales price approval?

During a land sale or transfer, it is the **obligation of the seller** (direct owner) to inform the buyer that the land has been designated as excess, and the obligation of the buyer to determine if any land involved in the sale is, or has ever been, designated as excess. Landowners are also strongly encouraged to inform Reclamation about potential sales of excess land to avoid difficulties for both the buyer and the seller.

Sales price approval is the process where excess land can be sold or transferred **at a price approved by Reclamation** and become **nonexcess** in the new landowner's landholding, if that landowner has ownership entitlement available (that is, owns a total number of acres that is less than the applicable ownership entitlement). Excess land that is acquired **without** sales price approval **continues to be ineligible** to receive Reclamation irrigation water until action is taken to obtain the required sales price approval.

Additionally, all excess land that is sold or transferred at an approved price must have a covenant placed in the deed transferring the excess land to an eligible buyer (a deed covenant), in order for the formerly excess land to be eligible to receive Reclamation irrigation water. The covenant (the text of which is specified in the Regulations) also specifies that:

- The future sales price of the land is restricted to a price approved by Reclamation.
- If the buyer sells or transfers the land (for example, into a trust) prior to the expiration of the deed covenant, then a new sales price approval will be required for the new landowner in order for the land to continue to be eligible to receive Reclamation irrigation water.
- The deed covenant will be in place for 10 years from the date the land was sold or transferred from excess to nonexcess status.
- Upon expiration of the deed covenant a landowner may resell the land in question at fair market value.

- An eligible landowner can acquire an amount of excess land, at a price approved by Reclamation, that equals the applicable ownership entitlement. Once that limit is reached, any additional excess land (or land subject to a deed covenant) acquired by the eligible landowner is ineligible to receive Reclamation irrigation water unless sold to another eligible buyer with sales price approval.

Once a sales price is approved by Reclamation and the deed covenant is in place, the buyer will be eligible to own the land as nonexcess and receive Reclamation irrigation water. However, the price for such water may be impacted if the buyer formerly owned the land as excess and sold it at a price approved by Reclamation. Contact your district or the appropriate Reclamation office for more information on the sales price approval process.

Additional information for farm operators

Formerly excess land that is held (directly or indirectly owned or leased) by a trust (not an estate) or legal entity (including 100-percent owned entities) is ineligible to receive Reclamation irrigation water unless the full-cost rate is paid (among other criteria) if you or your entity is a farm operator that:

- Operates land that is held in trust by a legal entity;
- Owned such land when it was excess;
- Sold or transferred such land at a price approved by Reclamation; **and**
- You are (or your entity is) now the direct or indirect farm operator of that land.

Contact your district or the appropriate Reclamation office for more information if this situation applies to you or your entity.

Sources for more information

More information for your landholding situation and the corresponding acreage limitation entitlements can be found in the following documents. Contact your district or the appropriate Reclamation office for further guidance.

| | | |
|--|---|--|
| Form 7-21INFO | General Information About the RRA Forms | The RRA Fact Sheets and the current water year's RRA forms and instructions are available online and at your district or the appropriate Reclamation office. |
| Separate instructions to each RRA form applicable to your landholding situation | | |
| Form 7-21XS – Designation of Excess land (particularly the separate instructions for this form) | | |
| RRA Fact Sheet 2 | Acreage Limitation Status | |
| RRA Fact Sheet 3 | How to Become Subject to the Discretionary Provisions | |
| RRA Fact Sheet 4 | Qualified Recipient Entitlements | |
| RRA Fact Sheet 6 | Limited Recipient Entitlements | |
| RRA Fact Sheet 8 | Prior Law Recipient Entitlements | |
| RRA Fact Sheet 13 | Involuntary Acquisitions | www.usbr.gov/rra |
| RRA website (including the RRA forms, District Reference Sources, and the text of the RRA and its associated Regulations) | | |