



United States Department of the Interior

BUREAU OF RECLAMATION
P.O. Box 25007
Denver, CO 80225-0007

MAR 23 2012

IN REPLY REFER TO:
84-53000
LND-9.00

Subject: Acreage Limitation Consequences Due to Death of a Spouse

Dear Ladies and Gentlemen:

The purpose of this letter is to provide additional guidance for applying the acreage limitation provisions of Federal reclamation law when a spouse dies.

Death of a Prior Law Spouse

What is the impact on the ownership and nonfull-cost entitlements for a married couple that remains subject to the prior law provisions of Federal reclamation law when one of the spouses dies? On September 27, 2006, the Bureau of Reclamation distributed a letter to all districts subject to the acreage limitation provisions which provided various directions concerning entitlements of surviving prior law spouses. However, a scenario has since been discovered that had not been previously addressed with regard to the impact on a surviving prior law spouse's entitlement.

Regulatory Provisions

Section 426.5(d)(1)(ii) of the Acreage Limitation Rules and Regulations (43 CFR¹ part 426; Regulations) provides the following:

“Married couples who hold equal interests are entitled to receive irrigation water on a maximum of 320 acres of jointly owned nonexempt land;”

In addition, 43 CFR 426.6(b)(3) provides:

“The nonfull-cost entitlement for prior law recipients is equal to the recipient's maximum ownership entitlement as set forth in § 426.5(d). However, for the purpose of computing the acreage subject to full cost, all owned and leased irrigation land westwide must be included in the computation.”

The Regulations also specify the ownership entitlements, and thus the nonfull-cost entitlements, of a surviving prior law spouse as follows:

“Surviving spouses until remarriage are entitled to receive irrigation water on that land jointly owned in marriage up to a maximum of 320 acres of owned nonexempt land. If any of that land should be sold, the applicable ownership entitlement would be reduced

¹ Code of Federal Regulations

accordingly, but not to less than 160 acres of owned nonexempt land;” [43CFR 426.5(d)(1)(iii)].

New Scenario

The question became, what is the impact if upon the death of the landholder, the landholder’s interest in the land jointly owned by the husband and wife is automatically transferred to a trust, with the surviving prior law spouse being the sole beneficiary? This could create excess land for the surviving spouse, depending on the amount of land that was jointly owned, since land transferred is treated in the same manner as land sold for acreage limitation purposes.

After a detailed review, Reclamation has determined there is a clear distinction between when interest in jointly owned land automatically transfers, for example to a trust, upon the death of a spouse, and when a surviving spouse takes action **after** the death of his or her spouse to transfer land to a trust or other entity, even if such land will then be jointly owned between the surviving spouse and entity. This latter scenario is addressed in the September 27, 2006, letter sent to the districts in section VI.B of the Attachment. Specifically, the provisions of 43 CFR 426.5(d)(1)(iii) apply and the surviving prior law spouse’s acreage limitation entitlement will be reduced accordingly. Therefore, we highly recommend that any surviving prior law spouse contemplating such action seriously consider conforming to the discretionary provisions of the Reclamation Reform Act of 1982 (RRA) (if eligible) before transferring land into another ownership arrangement.

As for the automatic transfer upon the death of a spouse scenario, the following applies. Under the prior law provisions, if action is taken upon the death of a spouse that (a) is directed by the decedent’s will or trust, (b) results in all or a portion of land jointly owned by the married couple being placed into an entity, including a trust, and (c) such land will be jointly owned by the surviving spouse and the entity, then the surviving prior law spouse can retain the up to the 320-acre acreage limitation entitlements provided in the Regulations, for the land that was jointly held with the deceased spouse.

The following examples illustrate how application of the acreage limitation provisions of Federal reclamation law differ based on when the land transfers.

Example 1: Joe and Janet, who are married, are prior law recipients and jointly own 320 acres. When Joe dies, his will creates a trust that receives his share of the 320 acres as an asset. The sole beneficiary of the trust is Janet. The entire landholding is now in a joint tenancy with Janet having 50 percent and the trust having 50 percent interest. But Janet is going to be attributed with 320 acres of directly and indirectly owned land. The issue becomes, is Janet now over the applicable ownership entitlement?

Answer: No, Janet will continue to have a 320-acre entitlement until any of the subject land is sold or transferred again, at which time the entitlement will gradually reduce upon the sale or transfer of land to not less than 160 acres.

Example 2. Martha and George are the beneficiaries of a trust that owns 270 acres. As a husband and wife who are subject to the prior law provisions, they may own up to 320 acres jointly and be eligible to receive Reclamation irrigation water on the land. When Martha dies, will George be over his entitlement?

Answer: No, but George cannot buy or lease additional land to reach the 320-acre entitlement (unless he marries again or conforms to the discretionary provisions). Rather, George will continue to have a 270-acre entitlement until any of the land previously jointly owned with Martha is sold or transferred again, at which time the entitlement will gradually reduce upon the sale or transfer of land to not less than 160 acres.

Example 3. Kyle and Tiffany are prior law recipients and both create wills. Upon death, their interest in the 320 acres they jointly own will transfer to their individual trusts. The beneficiary of each trust is their daughter, also a prior law recipient, who owns no other land. When Kyle dies, does Tiffany have a problem with excess land?

Answer: No, because although a joint tenancy may exist that holds 320 acres, Tiffany is only being attributed with 160 acres, with the other 160 acres of the jointly owned 320 acres being attributed to the daughter. It does not matter if the daughter is a dependent, because under prior law dependents also have 160-acre ownership entitlements.

However, when Tiffany dies, the daughter may have an ownership problem, unless she conforms to the discretionary provisions or Kyle's trust has already sold or transferred the 160 acres originally owned by Kyle. This problem will occur immediately if the daughter does not convince the trustee of Tiffany's trust to utilize the involuntary acquisition provisions (43 CFR 426.14). The problem will occur later if, after the trustee utilizes the involuntary acquisition provisions and designates the nonexcess land as excess, Tiffany's trust intends to continue receiving Reclamation irrigation water on the entire 320 acres after the 5-year grace period provided by those provisions expires.

Example 4. Pat and Richard are married prior law recipients and jointly own 300 acres. Six months after Richard passes away, Pat has a trust created and transfers ownership of the 300 acres to the trust of which she is the sole beneficiary. Can Pat continue to receive Reclamation irrigation water on the entire 300 acres?

Answer: No, since Pat initiated the transfer after the death of her spouse. Therefore, as a prior law recipient, Pat now has a 160-acre acreage limitation entitlement and 140 acres of land attributed to Pat's trust must be designed as excess by the direct landholder.

RRA Forms and Surviving Spouses

On August 25, 2004, Reclamation distributed a letter to all districts subject to the acreage limitation provisions that addressed what RRA forms requirements occur when a landholder dies. In summary, land that passes to a surviving spouse does not constitute a landholding change requiring the submittal of new RRA forms as provided for in 43 CFR 426.18(k). Rather, the surviving spouse will be required to submit new RRA forms before receiving Reclamation

irrigation water in the next water year, assuming no other landholding changes occur in the interim and an RRA form was already submitted for the current water year (see Enclosure 4 to the August 25, 2004, letter).

In the case where upon death, the interest in land transfers to a trust or another ownership arrangement, with the result being the land is jointly held by a trust (for example) and surviving spouse, a landholding change has occurred and the entity to which the land transferred could very well be a new landholder. However, no new RRA forms will be required for the water year during which the spouse died as long as **all of the following criteria are met**, for the interest transferred to the entity:

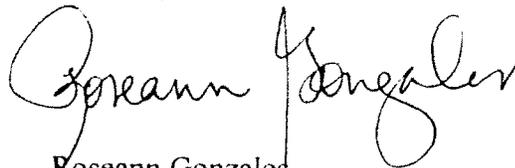
- An RRA form for the applicable land is already on file for the current water year;
- The applicable land was eligible to receive Reclamation irrigation water while in the deceased landholder's landholding; and
- The applicable land remains in the holding of the entity(s) or individual(s) that initially involuntarily acquire(s) the land upon the landholder's death.

Please note that new RRA forms will be required to be submitted by the surviving spouse and the entity to which the land transferred before Reclamation irrigation water is delivered in the next water year, if the westwide landholdings exceed the applicable RRA forms submittal threshold.

Assuming the criteria specified above have been met in examples 1 through 3, only for example 4 would the landholding change provisions specified in 43 CFR 426.18(k) be triggered and new RRA forms would be required to be filed within 60-calendar days of when the land is transferred to the trust (if this landholding change occurs during the irrigation season). However, if the land should leave the holdings of the individuals or trust who initially acquired the land in examples 1 through 3 during that water year, a landholding change will have occurred with the second or subsequent transfer or sale. The landholding change requirements would then be immediately applicable and RRA forms may be required.

If you have any questions regarding the information provided in this letter, please contact the appropriate Reclamation office.

Sincerely,



Roseann Gonzales
Director, Policy and Administration