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APR 4 2000

MEMORANDUM

To: All Irrigation Districts Subject to the Acreage Limitation Provisions of Reclamation Law

From: Elizabeth Cordova-Harrison *Elizabeth Cordova-Harrison*
Deputy Director, Office of Policy

Subject: Application of the Acreage Limitation Provisions to Nonresident Aliens Married to United States Citizens or Resident Aliens and Related Issues

In response to various questions, the attached tables provide further clarification on how to apply the acreage limitation provisions to married couples that include a nonresident alien. The tables present several circumstances for such married couples that are not addressed in the January 1, 1998, Acreage Limitation Rules and Regulations. How acreage limitations apply if a nonresident alien or foreign entity involuntarily acquires land is also addressed.

Please contact your local Bureau of Reclamation office if you have any questions, special situations, or need further assistance.

Attachments

TABLE 1 - General Applications of the Acreage Limitation Provisions to Various Landholding Situations Involving Nonresident Aliens or Foreign Entities

Specific Circumstance	Treatment for Acreage Limitation Purposes	Important Notes
U.S. citizen or resident alien married to a nonresident alien	The couple is treated as a U.S. citizen (or resident alien as the case may be).	<ul style="list-style-type: none"> The couple may hold land directly in a discretionary provisions district and have that land be eligible to receive Reclamation irrigation water See Table 2 for more information on what happens to the nonresident alien spouse if his or her U.S. citizen or resident alien spouse dies.
Spouses are both nonresident aliens	<p>Like all nonresident aliens, these couples are not eligible to receive Reclamation irrigation water on land held directly in a discretionary provisions district.</p> <p>If the couple wishes to remain prior law recipients, the couple can be treated as such with no further action. If the couple wishes to be a qualified recipient under the discretionary provisions, see the notes in the column to the right.</p>	<ul style="list-style-type: none"> If each spouse's country of citizenship meets the requirements in section 426.8(d)(1) of the Acreage Limitation Rules and Regulations (Regulations), the couple is eligible to make an irrevocable election with proof of citizenship being required for both. <p><u>If each spouse is from a different country:</u></p> <ul style="list-style-type: none"> The couple will be limited to prior law entitlements if neither spouse's country of citizenship meets the criteria specified in section 426.8(d)(1) of the Regulations. If one spouse's country of citizenship meets the criteria of section 426.8(d)(1), and the other spouse's country of citizenship does not, the couple will be limited to prior law entitlements.
Nonresident alien or foreign entity that involuntarily acquires land.	See the notes in the column to the right for a nonresident alien or foreign entity in a discretionary provisions district that involuntarily acquires land and wants to (1) directly hold it in the discretionary provisions district, and (2) receive Reclamation irrigation water on it under the involuntary acquisition provisions of the RRA and section 426.14 of the Regulations.	<ul style="list-style-type: none"> The involuntarily acquired land cannot receive Reclamation irrigation water as long as it is directly held by the nonresident alien or foreign entity (reference section 426.8[b] of the Regulations). In a discretionary provisions district, the nonresident alien or foreign entity must hold the land indirectly through a legal entity established under State or Federal law in order to utilize the involuntary acquisition provisions. If the nonresident alien or foreign entity has conformed to the discretionary provisions, the involuntarily acquired land cannot be directly owned in any district that is subject to the acreage limitation provisions if the nonresident alien or foreign entity intends to utilize the involuntary acquisition provisions to receive Reclamation irrigation water.

TABLE 2 - U.S. Citizen or Resident Alien Dies While Married to a Nonresident Alien

Row No.	Acreage Limitation Status Considerations	Treatment for Acreage Limitation Purposes	Important Notes
1	The couple was subject to prior law provisions	The surviving, nonresident alien spouse is treated like any other prior law surviving spouse.*	<ul style="list-style-type: none"> • The surviving spouse may receive Reclamation irrigation water on land owned jointly in marriage (up to a maximum of 320 acres) until remarriage.** • This 320-acre ownership entitlement will be reduced accordingly if any land is sold, but not to less than 160 acres of owned, nonexempt land. • Such land can be directly or indirectly held in prior law districts in order to be eligible to receive Reclamation irrigation water. However, if the couple held land in discretionary provisions districts, that land must be held indirectly in order for the surviving, nonresident alien spouse to be eligible to receive Reclamation irrigation water on that land.
2	The couple held land directly in a district subject to the discretionary provisions	The surviving, nonresident alien spouse becomes a prior law recipient per section 426.8(c) of the Acreage Limitation Rules and Regulations (Regulations). He or she must make the arrangements specified in the second bullet in the notes to the right in order to continue to receive Reclamation irrigation water. The surviving, nonresident alien spouse must submit a new "Report of Individual's Landholdings" (Form 7-2190) and proof that the land in question is indirectly held.	<ul style="list-style-type: none"> • The death of the U.S. citizen or resident alien spouse leaves the surviving, nonresident alien spouse with directly held land in a discretionary provisions district. This is prohibited by section 426.8(b) of the Regulations if the surviving, nonresident alien spouse wants to receive Reclamation irrigation water on that land. • As long as arrangements are made (within the allowed 60 days) to hold such land indirectly through an entity established under State or Federal law, the surviving spouse (although now a prior law recipient) may continue to receive Reclamation irrigation water on land owned jointly in marriage (up to his or her deceased spouse's maximum discretionary provisions entitlement of 960 acres) until remarriage.** • This 960-acre ownership entitlement will be reduced accordingly if any land is sold, but not to less than 160 acres of owned, nonexempt land. Such land may be sold without Reclamation's sale price approval. • The surviving, nonresident alien spouse's form 7-2190 must explain why he or she may receive Reclamation irrigation water on more land than allowed by the applicable prior law entitlements. • The surviving, nonresident alien spouse may make an irrevocable election to conform to the discretionary provisions at any time if his or her country of citizenship meets the criteria specified in section 426.8(d)(1) of the Regulations. This will secure a 960-acre ownership entitlement, but will not make land directly held in a discretionary provisions district eligible to receive Reclamation irrigation water. • If the surviving, nonresident alien spouse still directly holds land in a discretionary provisions district after the allowed 60 days, such land will become ineligible to receive Reclamation irrigation water until he or she (1) takes action to hold the land indirectly, or (2) sells the land to an eligible buyer. Reclamation's sale price approval will not be required under these circumstances. Such land cannot be placed under a recordable contract.

Row No.	Acreage Limitation Status Considerations	Treatment for Acreage Limitation Purposes	Important Notes
3	The couple held land directly in a prior law district, held <u>no</u> land in a discretionary provisions district, and was subject to the discretionary provisions.	The deceased spouse's irrevocable election will also apply to the surviving, nonresident alien spouse. However, the surviving spouse will be treated as a prior law recipient until he or she submits the proof specified in the second bullet in the notes to the right. He or she must also submit Form 7-2190 or Form 7-2190EZ (if eligible).	<ul style="list-style-type: none"> • The death of the U.S. citizen or resident alien spouse leaves the surviving, nonresident alien spouse with directly held land in a prior law district. Section 426.8(d)(3)(iii) of the Regulations prohibits irrevocable elections by nonresident aliens who directly hold land in a prior law district. • The deceased U.S. citizen or resident alien spouse's irrevocable election will apply to the surviving, nonresident alien spouse as long as he or she provides proof of the following: (1) citizenship in a country that meets the criteria specified in section 426.8(d)(1) of the Regulations, and (2) that the land directly held in the prior law district when his or her spouse was alive is now indirectly held or no longer held. Proof of citizenship can only be used prospectively (i.e., it cannot be used to correct past problems). • While considered a prior law recipient until the above proof is provided, the surviving spouse can directly hold the land in the prior law district. He or she may also continue to receive Reclamation irrigation water on land held jointly in marriage (up to his or her deceased spouse's maximum discretionary provisions entitlement of 960 acres) until remarriage.** • While a prior law recipient, this 960-acre ownership entitlement will be reduced accordingly if any land is sold, but not to less than 160 acres of owned, nonexempt land. • The surviving, nonresident alien spouse's Form 7-2190 or Form 7-2190EZ must explain why he or she may receive Reclamation irrigation water on more land than allowed by the applicable prior law entitlements.
4	The couple held land only indirectly through an entity established under State or Federal law in any district and was subject to the discretionary provisions because of an irrevocable election.	The deceased spouse's irrevocable election will also apply to the surviving, nonresident alien spouse. However, the surviving spouse will be treated as a prior law recipient if (1) he or she is a citizen of a country that does not meet the criteria specified in section 426.8(d)(1) of the Regulations, or (2) he or she does not submit the proof specified in the second bullet in the notes to the right. In either case, he or she must also submit Form 7-2190.	<ul style="list-style-type: none"> • The death of the U.S. citizen or resident alien spouse leaves the surviving, nonresident alien spouse with indirectly held land, which is acceptable for a nonresident alien subject to the discretionary provisions (reference section 426.8[d][3] of the Regulations). • The deceased U.S. citizen or resident alien spouse's irrevocable election will apply to the surviving, nonresident alien spouse as long as he or she provides proof of citizenship in a country that meets the criteria specified in section 426.8(d)(1) of the Regulations. Proof of citizenship can only be used prospectively (i.e., it cannot be used to correct past problems). • If the surviving, nonresident alien spouse is found to be a prior law recipient, the surviving spouse may still receive Reclamation irrigation water on up to 960 acres of the jointly held land under the deceased spouse's discretionary provisions entitlement. However, he or she must submit Form 7-2190 and explain on the form why he or she is receiving Reclamation irrigation water on more land than allowed by the applicable prior law entitlements. • The surviving nonresident alien spouse may continue to receive Reclamation irrigation water on the land held jointly in marriage (up to his or her deceased spouse's maximum discretionary provisions entitlement of 960 acres) until remarriage.** • This 960-acre ownership entitlement will be reduced accordingly if any land is sold, but not to less than 160 acres of owned, nonexempt land.

Row No.	Acreage Limitation Status Considerations	Treatment for Acreage Limitation Purposes	Important Notes
5	The couple conformed to the discretionary provisions by submitting a certification (blue) form when they held land only indirectly through an entity established under State or Federal law in a district subject to the discretionary provisions.	In such situations, if the U.S. citizen or resident alien spouse dies, where and how the land is held upon the death of the U.S. citizen or resident alien spouse must be considered.	<ul style="list-style-type: none"> • See Row No. 2 of this table if any land is directly held in a discretionary provisions district at the time of the U.S. citizen or resident alien spouse's death. Section 426.8(b) of the Regulations prohibits the surviving, nonresident alien spouse from receiving Reclamation irrigation water on any directly held land in a discretionary provisions district. • See Row No. 3 of this table if any land is directly held in a prior law district at the time of the U.S. citizen or resident alien spouse's death. If the surviving nonresident alien spouse wishes to be a qualified recipient, he or she will have to submit an irrevocable election in addition to proof of citizenship and meeting other requirements specified in Row No. 3. • If land was held only indirectly in a discretionary provisions district at the time of the U.S. citizen or resident alien spouse's death, the surviving nonresident alien spouse will have to make an irrevocable election if he or she wishes to be a qualified recipient rather than a prior law recipient. If the surviving, nonresident alien spouse cannot provide proof of citizenship in a country that meets the criteria specified in section 426.8(d)(1) of the Regulations or does not make an irrevocable election, the surviving nonresident alien spouse may still continue to receive Reclamation irrigation water on the land held jointly in marriage (up to his or her deceased spouse's maximum discretionary provisions entitlement of 960 acres) until remarriage.** He or she must also submit Form 7-2190 and explain on the form why he or she is receiving Reclamation irrigation water on more land than allowed by the applicable prior law entitlements. This 960-acre ownership entitlement will be reduced accordingly if any land is sold, but not to less than 160 acres of owned, nonexempt land. • Nonresident aliens (with citizenship in a country that meets the section 426.8[d][1] criteria and who are subject to the discretionary provisions only because their U.S. citizen or resident alien spouse submitted a certification form) are encouraged to make an irrevocable election by completing the special irrevocable election form for nonresident aliens and foreign entities and submitting the required accompanying documentation.

- The deceased landholder's RRA forms for the year in which the landholder died will remain in effect through the end of that water year. The surviving spouse must submit a new RRA form(s) prior to receiving Reclamation irrigation water in the subsequent year(s).

** If the surviving spouse should remarry, the acreage limitation entitlements and eligibility of the land will have to be re-examined based on the acreage limitation status and westwide landholdings of the surviving spouse and his/her new spouse.