

D-5200
LND-9.00

APR 26, 1999

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

Subject: Implementation of the Administrative Fee Provisions in the Acreage Limitation Rules and Regulations

Enclosed for your information is a document that updates and supersedes the information contained in our June 12, 1995, letter to districts regarding the implementation of the administrative fee provisions in the Acreage Limitation Rules and Regulations (rules).

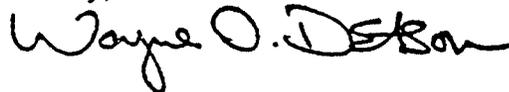
The information in the June 12, 1995, letter has been revised mainly to reflect the fact that a new application of the administrative fee was included in the revised rules that became effective on January 1, 1998. As of that date, Reclamation began assessing the administrative fee for excess land violations. Prior to January 1, 1998, the administrative fee provisions applied strictly to form nonsubmittal violations and form error violations.

On December 2, 1998, we sent districts a special letter advising them of Reclamation's policy concerning the use of unapproved substitute certification and reporting forms. Beginning with the 1999 water year, Reclamation considers the use of unapproved substitute forms to be a form submittal violation. Accordingly, beginning this water year, the administrative fee will be assessed for use of unauthorized substitute forms, and no grace period will be provided for making corrections. Since this is a relatively new application of the administrative fee, we have repeated our policy on this matter in the enclosed document.

The enclosed document also advises districts that as of the 2000 water year, Reclamation will no longer provide a grace period for 100-percent family-owned trusts and estates to correct form submittal violations. Beginning with that water year, the administrative fee will be assessed for such violations in the same way they are assessed for other landholders with form submittal violations.

If you have additional questions on this matter, feel free to contact your local Reclamation office.

Sincerely,



For

Margaret W. Sibley
Director, Office of Policy

Enclosure

ADMINISTRATIVE FEE PROVISIONS ACREAGE LIMITATION RULES AND REGULATIONS

Note: In this document, the word "form(s)" refers to RRA certification or reporting forms.

The following questions and answers provide updated information regarding implementation of the administrative fee provisions in the Acreage Limitation Rules and Regulations, 43 CFR 426 (rules). The administrative fee provisions (43 CFR 426.20) are included in Attachment 1.

Question: What is the amount of the administrative fee?

A: Currently the administrative fee is \$260. Reclamation will review the data on which this amount is based at least once every 5 years and adjust the amount as necessary. The first review will be conducted in 2000. If the data support an adjusted administrative fee amount, the new amount will be published in the Federal Register in December 2000.

Question: What types of Reclamation Reform Act of 1982 (RRA) violations will result in the assessment of the administrative fee?

A: The Bureau of Reclamation (Reclamation) will assess the administrative fee when the following violations occur:

- Excess land violations
- Form submittal violations
- Form error violations

Question: When does an excess land violation occur?

A: An excess land violation occurs when Reclamation irrigation water is delivered to ineligible excess land. The administrative fee provisions for excess land violations first became effective on January 1, 1998. Accordingly, Reclamation does not assess the administrative fee for excess land violations that occurred prior to that date.

Question: Are there any consequences for excess land violations other than the administrative fee assessment?

A: Yes. Reclamation will assess the compensation rate and underpayment interest, if applicable, for Reclamation irrigation water delivered to ineligible excess land, regardless if the violation occurred before, on, or after January 1, 1998. *For additional information, refer to 43 CFR 426.2 (definition of "compensation rate"), 43 CFR 426.12(h) (application of the compensation rate for irrigating ineligible excess land), and 43 CFR 426.21 (interest on underpayments).*

**ADMINISTRATIVE FEE PROVISIONS
ACREAGE LIMITATION RULES AND REGULATIONS**

Note: In this document, the word "form(s)" refers to RRA certification or reporting forms.

Question: When does a form submittal violation occur?

A: A form submittal violation occurs when Reclamation irrigation water is delivered to land that was ineligible because a landholder did not submit an acceptable form for the year in question prior to receiving such water. The administrative fee provisions for form submittal violations first became effective on March 27, 1995. Accordingly, Reclamation will not assess the administrative fee for form submittal violations that occurred prior to that date.

Question: What are "acceptable forms?"

A: Beginning with the 1999 water year, acceptable forms are:

- Forms that were distributed by Reclamation or legible photocopies of such forms
- Forms that were prepared by scanning forms distributed by Reclamation, with no changes made to the electronic version
- Substitute forms that Reclamation has assigned a Substitute Form Approval Number (SFAN) *(Note: SFAN's are to be printed at the bottom left margin area on the first page of every substitute form and instructions that have been approved.)*

Question: Are there any consequences for form submittal violations other than the administrative fee assessment?

A: Yes, a landholder with a form submittal violation is ineligible to receive Reclamation irrigation water until all the proper forms have been submitted. "Proper forms" means past-due forms for the period of noncompliance and, depending on the circumstances of the case, may also include forms for an upcoming water year.

Question: Reclamation has considered a form submittal violation by 100-percent family-owned trusts and estates to be a correctable error. Is this policy still in effect?

A: Reclamation's policy on this has been: If such a trust or estate did not submit a form prior to receiving Reclamation irrigation water, this is considered a correctable problem, provided certain conditions are met. Trusts or estates that meet those conditions are given a 60-day grace period in which to submit their past-due forms. The administrative fee is not assessed if the forms are submitted within this timeframe. *(Answer continued on next page.)*

ADMINISTRATIVE FEE PROVISIONS ACREAGE LIMITATION RULES AND REGULATIONS

Note: In this document, the word "form(s)" refers to RRA certification or reporting forms.

This policy will remain in effect for such form submittal violations that occur prior to the 2000 water year. However, such violations that occur in or after the 2000 water year will no longer be considered correctable. Reclamation will not give 100-percent family-owned trusts and estates that have form submittal violations in or after the 2000 water year any grace period before assessing the administrative fee.

For example, if Reclamation finds that a 100-percent family-owned trust has a form submittal violation in the 1999 and 2000 water years, the trust will have 60 days in which to correct the 1999 form submittal violation without imposition of the administrative fee, provided certain criteria are met. Reclamation will apply the administrative fee to the violation in the 2000 water year without a 60-day grace period to correct the violation.

Question: When does a form error violation occur?

A: A form error violation occurs when:

- Reclamation identifies after March 27, 1995, a form error(s) for a landholder that received Reclamation irrigation water during a particular water year, **and**
- the district does not provide a copy of a corrected form within 60 calendar days of Reclamation's written request for corrections.

Question: Are there any exceptions to the requirement that districts must submit copies of corrected forms to Reclamation?

A: Reclamation regional offices may at their discretion permit districts to submit a verification that form errors have been corrected instead of requiring districts to submit copies of corrected forms. In such cases a violation occurs if the verification is not submitted to Reclamation within the 60-calendar-day grace period.

Question: Will Reclamation ever assess the administrative fee for failure to correct errors on forms that were submitted prior to March 27, 1995?

A: Yes. A form error violation occurs when a district does not correct in a timely manner form errors that Reclamation identifies after March 27, 1995. However, errors Reclamation finds after that day may be on forms that were submitted prior to that date. If a district fails to correct these errors within the 60-calendar-day grace period, a violation will have occurred and Reclamation will assess the administrative fee.

**ADMINISTRATIVE FEE PROVISIONS
ACREAGE LIMITATION RULES AND REGULATIONS**

Note: In this document, the word "form(s)" refers to RRA certification or reporting forms.

Question: What kind of form errors will Reclamation identify?

A: Reclamation will identify all errors on forms, except for missing social security numbers. The omission of social security numbers will not be considered an error because their disclosure is voluntary.

Question: How will Reclamation notify districts of form errors?

A: Reclamation most frequently identifies form errors during reviews conducted at district offices. Reclamation may be able to make the district aware of the errors during the review, and the district may be able to correct the errors before the compliance staff departs from the office.

Sometimes Reclamation identifies form errors during activities conducted at Reclamation offices, or form errors identified during a water district review cannot be corrected during the review. In such cases, Reclamation will notify districts in writing of the errors that were identified, the date by which the errors must be corrected, the consequences for failure to correct the errors within the specified timeframe, and other relevant information. Reclamation will notify districts either by sending them a letter or providing them with compliance review sheets.

(Note: Use of compliance review sheets is at the discretion of Reclamation regional offices. Compliance review sheets list various kinds of form errors and other problems Reclamation finds while reviewing a landholder's compliance with the RRA and the rules. Compliance review sheets commonly are referred to as "three-part forms.")

Question: Who is responsible for correcting form errors?

A: Districts, which includes individual contractors, are ultimately responsible for obtaining corrections needed on forms. Reclamation will accept corrections made by:

- one of the parties required to file the forms,
- a person authorized to sign for the landholder, or
- district staff.

While Reclamation will accept corrections made by district staff, districts are responsible for obtaining consent or authorization to make such changes from the landholders in question.

ADMINISTRATIVE FEE PROVISIONS ACREAGE LIMITATION RULES AND REGULATIONS

Note: In this document, the word "form(s)" refers to RRA certification or reporting forms.

Question: Does a new form need to be completed to correct form errors?

A: Corrections of minor errors can be made simply by revising the form originally submitted. The changes must be initialed and dated by the party who makes them.

A new form will need to be completed only when major revisions are required. In such cases, a form printed for the ongoing water year is to be completed and a note is to be added at the top of the form explaining that it replaces form No. _____ dated _____. In addition, the form that is being replaced is to be stapled behind the new form and retained until the retention period has expired for the corrected form. When a new form needs to be completed, districts must obtain signatures from all the parties required to sign the corrected form or their authorized agents. The current date is to be used in the signature block on the new form.

Question: Are there any consequences for form error violations other than the administrative fee assessment?

A: The answer depends on the type of error identified. Form errors are one of two types: "administrative errors" or "eligibility errors." Administrative errors are those that involve information needed to facilitate the administration of the RRA. Eligibility errors are those that involve information necessary for Reclamation to determine whether a landholder is eligible to receive Reclamation irrigation water, a landholder is within the applicable acreage limitation entitlements, or the proper water rate is being paid.

Failure to correct an administrative error will have no effect other than Reclamation's assessment of the administrative fee. However, failure to correct an eligibility error will result in the administrative fee assessment and also affect a landholder's eligibility to receive Reclamation irrigation water. Except as provided in the following paragraph, a landholder will be ineligible to receive such water in any future water year until the corrected form (or a verification of corrections, if applicable) has been submitted to Reclamation and all other forms required for the future water year have been submitted to the district. In no case will Reclamation terminate water deliveries in a current water year due to failure to correct form errors identified in that year.

For certain eligibility errors, Reclamation will make an exception to its rule that eligibility errors must be corrected before a landholder can be eligible to receive Reclamation irrigation water in future water years. Generally, Reclamation will make exceptions when it concludes that it is able to determine that a landholder is within the applicable acreage limitation entitlements despite the fact that the error has not been corrected. For certain other errors, Reclamation will never make such an exception. Failure to correct these errors will always affect a landholder's eligibility to receive Reclamation irrigation water.

ADMINISTRATIVE FEE PROVISIONS
ACREAGE LIMITATION RULES AND REGULATIONS

Note: In this document, the word "form(s)" refers to RRA certification or reporting forms.

Question: Which uncorrected form errors will always affect a landholder's eligibility to receive Reclamation irrigation water?

A: Attachment 2 to this document is a table that summarizes the consequences for form violations. Examples of uncorrected errors that will always affect eligibility are listed in the second column of that table.

Question: If an eligibility error is not corrected on a form submitted by a part owner of a legal entity, will this affect the entity's eligibility to receive Reclamation irrigation water?

A: Yes. A legal entity will be ineligible to receive Reclamation irrigation water in future water years if it or any of its part owners fail to correct eligibility errors on forms. However, if the document forming an entity provides for the part owners' interests to be separable and alienable, then only that portion of the land attributable to the part owners that failed to correct the eligibility errors will be ineligible for Reclamation irrigation water in future water years.

Question: If Reclamation finds a landholder submitted an unapproved substitute form, will this be considered a form error?

A: No. The use of an unapproved substitute form will be considered a form submittal violation. Reclamation will not assess the administrative fee for the use of unapproved substitute forms submitted prior to 1999. However, except as provided in the next paragraph, beginning with the 1999 water year, Reclamation will assess the administrative fee for the use of unapproved substitute forms, and no grace period will be provided before the assessment is made.

Use of unapproved substitute continuation sheets (7-21CONT-I, 7-21CONT-L, and 7-21CONT-O) and Form 7-21XSINAQ (which will first be available for use in the 2000 water year) will not result in the assessment of administrative fees because the substitute form requirements do not apply to these forms.

Question: How does Reclamation assess the administrative fee?

A: Reclamation will apply the administrative fee assessment on a yearly basis in each district for each landholder that has a form submittal violation, form error violation, or excess land violation. Each violation is viewed independently of the others. For form submittal and form error violations, Reclamation views compliance by a legal entity independently from compliance by its part owners. For excess land violations, Reclamation assesses the administrative fee for only the direct landowner.

See the next page for an example illustrating how the administrative fee is assessed.

**ADMINISTRATIVE FEE PROVISIONS
ACREAGE LIMITATION RULES AND REGULATIONS**

Note: In this document, the word "form(s)" refers to RRA certification or reporting forms.

EXAMPLE

Facts

- Entity ABC received Reclamation irrigation water on 50 acres of excess ineligible land in District 1 during the 1998 water year.
- The part owners of Entity ABC, Landholders A, B, and C, also own and lease land directly in District 1 and District 2 in addition to the land they hold indirectly through Entity ABC. All the part owners exceed their form submittal threshold.
- Landholder A submitted a form in District 1 prior to receipt of Reclamation irrigation water in 1998 and 1999 but did not submit a form in District 2 during either of these years.
- Landholder B did not submit a form in either District 1 or 2 prior to receipt of Reclamation irrigation water in 1998 and 1999.
- Landholder C submitted a form in both districts prior to receiving Reclamation irrigation water in 1998 and 1999. Reclamation identified several errors on Landholder C's 1998 forms in both District 1 and District 2. The errors were not corrected within the 60-calendar-day grace period Reclamation provided.

Assessments

DISTRICT 1			
Year	Landholder	Type of Violation	Assessment
1998	Entity ABC	Excess land violation	\$ 260 + compensation charges *
	Landholder B	Form submittal violation	\$ 260
	Landholder C	Form error violation	\$ 260
1999	Landholder B	Form submittal violation	\$ 260
District 1 Total			\$1040 + compensation charges
DISTRICT 2			
1998	Landholder A	Form submittal violation	\$ 260
	Landholder B	Form submittal violation	\$ 260
	Landholder C	Form error violation	\$ 260
1999	Landholder A	Form submittal violation	\$ 260
	Landholder B	Form submittal violation	\$ 260
District 2 Total			\$1300
* Compensation charges = the compensation rate plus underpayment interest, if applicable.			

SECTION 426.20 OF THE ACREAGE LIMITATION RULES AND REGULATIONS

Assessment of Administrative Costs

(a) Assessment of administrative costs for delivery of water to ineligible land.

Reclamation will assess a district administrative costs as described in paragraph (e) of this section if the district delivers irrigation water to land that was ineligible because the landholders did not submit certification or reporting forms prior to the receipt of irrigation water in accordance with § 426.18; or to ineligible excess land as provided in § 426.12.

(1) Reclamation will apply the assessment on a yearly basis in each district for each landholder that received irrigation water in violation of § 426.18, or for each landholder that received irrigation water on ineligible land as specified above.

(2) In applying the assessment to legal entities, compliance by an entity will be treated independently from compliance by its part owners or beneficiaries.

(3) The assessment in paragraph (a) of this section will be applied independently of the assessment specified in paragraph (b) of this section.

(b) Assessment of administrative costs when form corrections are not made.

Reclamation will assess a district for the administrative costs described in paragraph (e) of this section, unless the district provides Reclamation with requested reporting or certification form corrections within 60-calendar days of the date of Reclamation's written request. If Reclamation receives the required corrections within this 60-calendar day time period, Reclamation will consider the requirements of § 426.18 satisfied.

(1) Reclamation will apply the assessment on a yearly basis in each district for each landholder that received irrigation water and for whom the district does not provide corrected forms within the applicable 60-calendar day time period.

(2) In applying the assessment to legal entities, compliance by an entity will be treated independently from compliance by its part owners or beneficiaries.

(3) The assessment in paragraph (b) of this section will be applied independently of the assessment specified in paragraph (a) of this section.

(c) Party responsible for paying assessments. Districts are responsible for payment of Reclamation assessments described under paragraphs (a) and (b) of this section.

(d) Disposition of assessments. Reclamation will deposit to the general fund of the United States Treasury, as miscellaneous receipts, administrative costs assessed and collected under paragraphs (a) and (b) of this section.

(e) Amount of the assessment. The administrative costs assessment required under paragraphs (a) and (b) of this section is set at \$260. Reclamation will review the associated costs at least once every 5 years, and will adjust the assessment amount, if needed, to reflect new cost data. Notice of the revised assessment for administrative costs will be published in the Federal Register in December of the year the data are reviewed.

SUMMARY OF CONSEQUENCES FOR FORM VIOLATIONS

TYPE OF FORM VIOLATION	CONSEQUENCES
<p>Form Submittal Violation - A landholder receives Reclamation irrigation water prior to submitting forms for the year in question.</p>	<p>(1) The \$260 administrative fee will be assessed.</p> <p>(2) The landholder is ineligible to receive Reclamation irrigation water until all the proper forms have been submitted. If Reclamation finds that a landholder is receiving Reclamation irrigation water in a current water year without having a form on file for that year, the deliveries will be terminated.</p>
<p>Form Error Violation - Form errors are not corrected within the specified timeframe.</p>	<p>The consequences vary depending on whether the errors are administrative or eligibility errors. See the following two rows.</p>
<p>Administrative Errors</p>	<p>The \$260 administrative fee will be assessed if the errors are not corrected within 60 calendar days of Reclamation's written request. Failure to correct administrative errors will not affect the landholder's eligibility to receive Reclamation irrigation water.</p>
<p>Eligibility Errors</p>	<p>(1) The \$260 administrative fee will be assessed if the errors are not corrected within 60 calendar days of Reclamation's request.</p> <p>(2) Generally a landholder is ineligible to receive Reclamation irrigation water in future water years until the errors are corrected. However, Reclamation will make exceptions for some errors, provided certain conditions are met.</p> <p>EXAMPLES</p> <p>Following are examples of uncorrected eligibility errors that will always affect a landholder's eligibility in future water years:</p> <ul style="list-style-type: none"> - Some of the landholder's owned and/or leased land is not disclosed. - The "operated by" box is not marked. - Name is not provided for a lessee, sublessee, or other operator in the "land directly owned" section or for a landowner (sublessor) in the "land directly leased" section. - Signature(s) is (are) missing for some or all of the parties required to sign the form. - A verification form was submitted when a standard form was required. - A Form 7-21XS or Form 7-21FC is not submitted by a landholder who is required to do so.

SUMMARY OF CONSEQUENCES FOR FORM VIOLATIONS

TYPE OF FORM VIOLATION	CONSEQUENCES
<i>Eligibility Errors (continued)</i>	<p><i>Consequences of Eligibility Errors (continued)</i></p> <ul style="list-style-type: none"> - A landholder submits an expired or outdated form. - A landholder does not provide "citizenship status" on Form 7-2180. In the case of married couples, (a) neither spouse provides "citizenship status" on Form 7-2180 or (b) only one spouse does and that spouse is a nonresident alien. - A nonresident alien does not provide "country of citizenship" on Form 7-2180. In the case of married couples who are nonresident aliens, (a) neither spouse provides "country of citizenship" on Form 7-2180 or (b) only one spouse does and that spouse is from a country that does not have a requisite treaty with the United States or is not a member of the Organization for Economic Cooperation and Development. - The "dependency" question is not answered on Form 7-2180. - State or country where entity is established or registered is not provided on Form 7-2181. - Some or all the names of wholly-owned subsidiaries that hold land are not listed on Form 7-2181 or Form 7-2191. - Name of the trustee/executor/administrator is missing on Form 7-21TRUST. - Box(es) regarding revocable trusts is (are) not marked on Form 7-21TRUST. - Grantor's name is missing on Form 7-21TRUST. - Part owners'/beneficiaries' names are not listed and/or other required information relating to part owners/beneficiaries is incomplete. - Any of the following items is not answered on Form 7-2184 or Form 7-2194: <ul style="list-style-type: none"> • Question regarding sales of produce • Question about "other parties" operating or leasing the land • Question about distribution of net earnings