



# United States Department of the Interior

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

MAY 08 2013

IN REPLY REFER TO:

84-53000  
LND-9.00

Subject: Tracking Formerly Excess Land

Dear Ladies and Gentlemen:

The purpose of this letter is to provide information as to why districts are strongly encouraged to track formerly excess land as well as land that is currently designated as excess. It is vitally important that district staff is knowledgeable concerning any land that is currently designated as excess within their districts because most, if not all, land with such a designation is ineligible to receive Bureau of Reclamation irrigation water. The consequences associated with delivering such water to ineligible excess land include application of the compensation rate (full-cost) and administrative fees.

Since January 1, 1998, the Acreage Limitation Rules and Regulations (43 CFR<sup>1</sup> part 426; Regulations) have also included restrictions on the delivery of Reclamation irrigation water to formerly excess lands under certain circumstances. Reclamation's regional offices have implemented their own systems to track formerly excess land in each region. However, districts that maintain their own tracking system for formerly excess land will be able to facilitate their own efforts to avoid potential consequences associated with delivering Reclamation irrigation water to formerly excess land that is ineligible to receive such water.

## **What is formerly excess land?**

Excess land can be purchased or transferred to an eligible buyer from a seller at a price approved by Reclamation (a process called sales price approval)<sup>2</sup>. Once such a sale or transfer takes place, the land is no longer "excess;" rather, it is referred to as "formerly excess land." An "eligible buyer" is an individual or entity that has ownership entitlement available when taking the purchased or transferred land into account, so that the land may be designated as "nonexcess" and, therefore, be eligible to receive Reclamation irrigation water.

## **If formerly excess land becomes nonexcess land through the sale price approval process, why is it important to track land that is no longer designated as excess land?**

Formerly excess land likely appears as nonexcess land that is eligible in the current landholder's landholding to receive Reclamation irrigation water. However, there are two situations in which

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<sup>1</sup> Code of Federal Regulations.

<sup>2</sup> Generally, if excess land is acquired without sales price approval, that land remains ineligible to receive Reclamation irrigation water until action is taken to obtain the required sales price approval.

formerly excess land will remain **ineligible** to receive Reclamation irrigation water even if it is now designated as nonexcess land in the current landholder's landholding:

1. Formerly excess land was disposed of, and subsequently the same landholder who disposed of the land when it was excess land directly or indirectly reacquires it (either voluntarily or involuntarily), or directly or indirectly leases the land.
2. Formerly excess land is disposed of, and subsequently the same landholder who disposed of the land when it was excess land becomes the direct or indirect farm operator of that land.

In both cases, the only exceptions to the restrictions on the delivery of Reclamation irrigation water are (1) the land in question becomes exempt from the acreage limitation provisions of Federal reclamation law, or (2) the full-cost rate is paid for all Reclamation irrigation water delivered to the land in question. With regard to formerly excess land that becomes owned or leased by the former owner who sold it at an approved price, the restrictions are also lifted when the deed covenant associated with the sale price approval (which restricts the future sale price) is removed, usually after 10 years. But for the farm operator scenario identified in item 2 above, the restriction is **permanent**.

#### **What are the regulatory sources of these restrictions?**

The following regulatory citations state these requirements:

#### **43 CFR 426.12(g)** [Emphasis added where pertinent]:

*“Excess land that is disposed of and subsequently reacquired. Districts may **not** make available irrigation water to **excess land disposed of by a landholder** at a price approved by Reclamation, whether or not under a recordable contract, **if the landholder subsequently becomes a direct or indirect landholder of that land** through either a voluntary or involuntary action, \* \* \*”*

#### **43 CFR 428.9 (Information Requirements for Certain Farm Operations in Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land)** [Emphasis added where pertinent]:

*“Farm operators who are **former owners of excess land**.*

- (a) Land held in trust or by a legal entity may **not** receive irrigation water if:
  - (1) You owned the land when the land was excess, whether or not under recordable contract;
  - (2) You sold or transferred the land at a price approved by Reclamation; and
  - (3) You are the **direct or indirect farm operator** of that land.”

**How will a tracking system for formerly excess land help the district?**

The most efficient way to ensure that formerly excess land is not receiving Reclamation irrigation water for which it is not eligible is to be continually aware of the formerly excess land in the district. If formerly excess land appears on a landholder's RRA forms, the district will be able to cross reference that land with their tracking system and ascertain if there might be a problem based on the identity of the landowner, lessee, operator, or any of the listed part owners of an entity that is the owner, lessee, or operator of the land. If a problem is indicated, district staff can then contact the appropriate Reclamation office to determine what action to take. That way, the landholder or farm operator and district staff will not be surprised if a future audit or review discovers a problem with formerly excess land that could have been avoided with a simple comparison of names included on the RRA forms versus the name of the landholder who sold the land when it was excess at a price approved by Reclamation.

**What happens if Reclamation irrigation water is delivered to formerly excess land that is ineligible to receive such water?**

The Regulations as noted above require the assessment of full-cost bills, including interest on the amount due,<sup>3</sup> for the delivery of Reclamation irrigation water to the formerly excess land. Once the Reclamation irrigation water is delivered, the landholder or farm operator who triggered the restriction will have to pay the higher rate. But if they know up front there is an issue, they can choose to not receive the water. If they do not know until after Reclamation irrigation water is delivered, the option to not receive a bill is gone. The district also takes the risk that if the delivery is not immediately discovered, the landholder or farm operator may not be around to pay the bill when it is issued and, ultimately, the district is responsible for all acreage limitation bills.

**Are districts going to be required to maintain a tracking system for formerly excess land?**

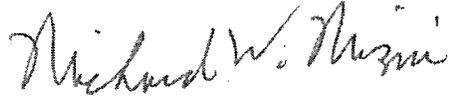
No. However, districts are strongly encouraged to use a tracking system because without such a system, districts will find themselves at a significant disadvantage to avoid potential consequences, such as those listed above for delivering Reclamation irrigation water to ineligible land.

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<sup>3</sup> Section 224(i) of the Reclamation Reform Act of 1982 (Public Law 97-293) requires the following: "When the Secretary finds that any individual or legal entity subject to reclamation law, including this Act, has not paid the required amount for irrigation water delivered to a landholding pursuant to reclamation law, including this Act, he shall collect the amount of any underpayment with interest accruing from the date the required payment was due until paid. The interest rate shall be determined by the Secretary of the Treasury on the basis of the weighted average yield of all interest bearing marketable issues sold by the Treasury during the period of underpayment. [(43 U.S.C. 390ww)] [25 U.S.C. 383)]."

Please contact the appropriate Reclamation office if you have any questions regarding formerly excess land and its eligibility to receive Reclamation irrigation water, the sales price approval process, etc.

Sincerely,

A handwritten signature in cursive script that reads "Richard W. Rizzi".

Richard W. Rizzi  
Manager, Land Resources Division