



United States Department of the Interior

BUREAU OF RECLAMATION
PO Box 25007
Denver, Colorado 80225-0007



IN REPLY REFER TO:

84-53000
LND-9.00

MAY 16 2006

Subject: Application of the Acreage Limitation Provisions to Certain Indian Situations

Dear Ladies and Gentlemen:

The purpose of this letter is to provide guidance for applying the Reclamation Reform Act of 1982 (RRA) acreage limitation provisions and form requirements to Indian tribes¹ that hold (directly or indirectly own or lease) land that is not Indian trust or restricted land.² Indian trust land and restricted land are excluded from the application of acreage limitation provisions as specified in the Acreage Limitation Rules and Regulations 43 CFR³ 426.16(f) (Regulations). This exclusion does not apply to non-trust land or non-restricted land that is held by Indian tribes, legal entities owned by Indians, or individual Indians. Non-trust or non-restricted land held by such Indian parties is subject to the acreage limitation provisions.

Indian Tribes Are To Be Treated Like Public Entities

For acreage limitation purposes, Indian tribes that hold non-trust or non-restricted land that is subject to the acreage limitation provisions are to be treated in the same way as public entities. This conclusion is based on the fact that an Indian tribe is more similar to a public entity than it is to any other type of landholder addressed in the RRA and the Regulations (i.e., individuals, legal entities, trusts, and religious or charitable organizations). More specifically, while Indian tribes have their own unique attributes of sovereignty, both public entities and Indian tribes have the common characteristic of being types of governmental entities.

Application of the acreage limitation provisions to public entities is set forth in Public Law 91-310 (enacted July 7, 1970), section 426.10 of the Regulations, and in a district letter dated August 13, 2004. These provisions apply to non-trust or non-restricted land held by Indian tribes. To summarize briefly, this means that:

¹ In this memorandum, "Indian tribe" or "tribe" refers only to Federally recognized tribes, and "individual Indian" refers to a member of a Federally recognized Indian tribe.

² Pursuant to 25 CFR 151.2(d), "'Trust land' * * * means land the title to which is held in trust by the United States for an individual Indian or a tribe." Pursuant to 25 CFR 151.2(e), "'Restricted land' * * * means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to Federal law or because of a Federal law directly imposing such limitations."

³ Code of Federal Regulations

- Non-trust or non-restricted land held by Indian tribes is not counted against a tribe's acreage limitation entitlements, if it is farmed primarily for public benefits afforded by the use of such land rather than for generating revenues. Examples of public benefits provided by the use of land are: golf courses, cemeteries, airports, corrections facilities, and parks or recreation areas/facilities. In addition, non-trust or non-restricted land acquired by Indian tribes prior to January 1, 2005, is not subject to the acreage limitation provisions.
- Non-trust or non-restricted land that Indian tribes lease to other landholders counts against both the lessee's ownership and nonfull-cost entitlements, as would any land leased from a public entity.
- As a general rule, non-trust or non-restricted land held by Indian tribes is subject to the acreage limitation provisions if the land was acquired or leased after December 31, 2004; is not considered exempt from the "revenue test" as is set forth in the aforementioned August 13, 2004, letter; and is farmed primarily for the purpose of generating revenues. The acreage limitation status and entitlements that apply are as follows: If an Indian tribe remains subject to prior law, the tribe is to be treated like a prior law recipient, and as such, the tribe's ownership entitlement and nonfull-cost entitlement are each 160 acres. If an Indian tribe is subject to the discretionary provisions, the tribe is to be treated like a public entity with limited recipient status. As a limited recipient, the tribe has a 640-acre ownership entitlement. The tribe's nonfull-cost entitlement is 320 acres if it first received Bureau of Reclamation irrigation water on or before October 1, 1981, and zero acres if it did not first receive water by that date.
- The RRA forms submittal threshold for Indian tribes is 40 acres. Indian tribes must annually submit an RRA form if the amount of non-trust and non-restricted land held westwide exceeds this threshold and include all such land on the form. Tribes required to complete RRA forms are to disclose their landholdings on Form 7-21PE (Declaration of Public Entity's Landholdings) and, if applicable, Form 7-21PE-IND (Attachment Sheet for Form 7-21PE). If the Indian tribe's non-trust and non-restricted land is 40 acres or less, they need to complete Form 7-2565, Public Entity Information Sheet, upon Reclamation's request.
- Lessees that exceed the applicable forms submittal threshold and lease non-trust or non-restricted land from an Indian tribe must also include this land on their RRA forms as owned land.

Individual Indians Hold Non-trust or Non-restricted Land

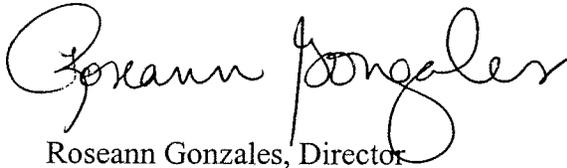
Individual Indians that directly or indirectly own or lease non-trust or non-restricted land are considered as meeting the definition of "individual," as that term is defined in the Regulations. The acreage limitation provisions apply to them in the same way they apply to any other individual.

Indians Indirectly Hold Non-trust or Non-restricted Land

It is possible to have situations where non-trust or non-restricted land is held by a legal entity that is wholly or partially owned by an Indian tribe or individual Indians. In such cases, the legal entity is treated the same way as any other legal entity. From an acreage limitation perspective, the fact that one or more of the legal entity's part owners is an Indian tribe or an individual Indian basically has no effect on the entity itself. An Indian tribe that partially or wholly owns a legal entity will be treated the same as any other Indian tribe, that is, like a public entity. (Also see district letter dated September 5, 2003.) Individual Indians that are part owners will be treated in the same way as any other individuals.

If you have any questions, please contact your appropriate Reclamation office.

Sincerely,

A handwritten signature in cursive script that reads "Roseann Gonzales". The signature is written in black ink and is positioned above the printed name and title.

Roseann Gonzales, Director
Office of Program and Policy Services