

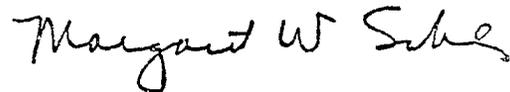
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MAY 18 1998

MEMORANDUM

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

From: Margaret W. Sibley
Director, Program Analysis Office



Subject: Nonresident Aliens and Foreign Entities

In our effort to implement the revised Acreage Limitation Rules and Regulations (regulations) as they apply to nonresident aliens and foreign entities, your Bureau of Reclamation (Reclamation) regional office last year sent a letter asking each district for information concerning any such landholders that had come to the district's attention. In that letter to the districts, it was stated that after January 1, 1998, Reclamation would provide the districts with a list of countries that do and do not meet the criteria established in section 426.8(d) of the revised regulations (43 CFR 426.8, Nonresident aliens and foreign entities, see enclosure 1). In addition, it was noted that after January 1, 1998, districts would play a greater initial role in applying the revised regulations to landholders who are nonresident aliens or foreign entities than they had while Reclamation was implementing those regulations.

For any nonresident alien or foreign entity, the most important fact to remember is that they may not **directly** own or lease land in a district that is subject to the discretionary provisions and have that land be eligible to receive Reclamation irrigation water under any circumstances. Nonresident aliens and foreign entities may own or lease land directly in a prior law district (assuming they have not made an irrevocable election), indirectly in a prior law district, or indirectly through an entity established under State or Federal law in a discretionary provisions district and have such land be eligible to receive Reclamation irrigation water, depending on their acreage limitation status and westwide landholdings.

We have prepared and enclosed two flowcharts (enclosure 2). One flowchart addresses how to determine the acreage limitation status of a nonresident alien, while the other flowchart addresses the same topic for foreign entities.

First Step

When you become aware of a nonresident alien or foreign entity in your district that has not been contacted by the district or Reclamation concerning section 426.8 of the revised regulations, it will be important to determine the following:

1. If the landholder is a nonresident alien, the country to which he or she is a citizen; or
2. If the landholder is a foreign entity, the country in which the entity is established.

The easiest way to determine this is to examine their Reclamation Reform Act of 1982 (RRA) forms, since nonresident aliens and foreign entities are required to include their country of citizenship or establishment, respectively, on those forms. Since all nonresident aliens and foreign entities must be prior law recipients until they make an irrevocable election, as specified later in this letter, the applicable RRA forms submittal threshold is 40 acres westwide. For those nonresident aliens or foreign entities that hold less than 40 acres westwide and do not submit RRA forms, whether they should be contacted to advise them of their prior law status and the 40-acre RRA forms submittal threshold is up to each district, unless you are a discretionary provisions district and they hold land directly in your district. In that case, you must make sure the land in question does not receive Reclamation irrigation water, even though RRA forms have not been filed. If nonresident aliens or foreign entities that hold less than 40 acres westwide would like to become subject to the discretionary provisions, it is their responsibility to contact their district offices.

Second Step

Once you have determined what country the nonresident alien is a citizen of or the foreign entity is established in, you will need to determine if that country is on either the "List of Countries that have a Requisite Treaty with the United States or are Members of the Organization for Economic Cooperation and Development" (enclosure 3, the "OK" list) or the "List of Countries that Do Not have a Requisite Treaty with the United States and Are Not Members of the Organization for Economic Cooperation and Development" (enclosure 4, the "Not OK" list).

Country is on the "OK" list

If the country in question is on the list provided as enclosure 3, the nonresident alien or foreign entity is eligible to make an irrevocable election to conform to the discretionary provisions. If they would like to take that action, you should only provide them with the "Irrevocable Election Form to be Used Only by Nonresident Aliens and Entities Not Established Under State or Federal Law (Foreign Entities)" (enclosure 5). The nonresident alien or foreign entity will need to submit their irrevocable election, completed certification form(s), and proof of citizenship or establishment, as the case may be, to the district who will forward the materials

to Reclamation. Copies of this package must also be filed concurrently in each district where the nonresident alien or foreign entity holds land subject to acreage limitations.

We would like to note that we have printed the "Irrevocable Election Form to be Used Only by Nonresident Aliens and Entities Not Established Under State or Federal Law (Foreign Entities)" on colored paper so that it will stand out from other irrevocable elections. The use of colored paper is not mandatory.

A note of caution: If the nonresident alien or foreign entity holds any land directly in a prior law district, Reclamation will not approve the irrevocable election until that land is held indirectly through a legal entity established under State or Federal law (see section 426.8[d][3][iii] of enclosure 1). Also, making an irrevocable election does not make a nonresident alien or foreign entity eligible to receive Reclamation irrigation water on land directly held in a discretionary provisions district.

For acreage limitation purposes, acceptable proof of citizenship for nonresident aliens is:

1. Copy of the page from the nonresident alien's currently valid passport that includes the name, picture, signature, etc., of the nonresident alien (not the "visa" pages); or
2. A copy of the nonresident alien's birth certificate.

The following will be accepted as proof of establishment for foreign entities:

1. A copy of the articles of incorporation or other document creating the entity, if the country of establishment is clearly identified within that document. Included must be proof that such documents have been submitted to the applicable governing unit in the country indicated or a notarized statement concerning the authenticity of the document; or
2. A letter from the embassy of the country in question attesting to the fact that the foreign entity in question is established in their country.

Country is on the "Not OK" list

If the country in question is included on the list provided as enclosure 4, the nonresident alien or foreign entity is to be told that their country of citizenship or establishment does not meet the criteria established in section 426.8(d) of the revised regulations. Consequently, they are only eligible for prior law entitlements for eligible land held westwide which includes all indirectly held land and land held directly in prior law districts. If the nonresident alien or foreign entity disagrees with this determination, please direct them to contact their local Reclamation office.

Country is not on either list

If the country in question is not included on either list, contact your local Reclamation office. Reclamation will work directly with such nonresident aliens and foreign entities, and provide courtesy copies of letters to such landholders to the districts in question. Those letters will provide the landholders with their interim acreage limitation status and any final determination once research on the country in question has been completed. Basically, such landholders will only be accorded prior law entitlements as we work with the United States Department of State to determine whether the country in question meets the specified criteria. As we receive additional information to update the two lists, we will have our regional offices forward those lists to each district.

Forms Issue

We would also like to take this opportunity to highlight an issue with the RRA forms that may cause confusion for nonresident aliens and foreign entities. On nearly every standard certification and reporting form, the landholder is asked to indicate why they are subject to either the discretionary provisions or the prior law provisions, as the case may be. This block of two or three questions is found before the signature section on those RRA forms. In completing these questions, the answers provided by a nonresident alien or foreign entity may cause confusion. For example, in completing a Form 7-2190, Report of Individual's Landholdings, a nonresident alien who is subject to the prior law provisions may indicate the answer to the following question is "false:"

"I have NEVER directly owned or directly leased irrigable and/or irrigation land in a district after that district conformed to the discretionary provisions of the Reclamation Reform Act of 1982."

Under normal circumstances a "false" answer to this question would indicate the landholder is subject to the discretionary provisions, not prior law, and, thus, the wrong form has been submitted. However, for a nonresident alien or a foreign entity, such an answer would only indicate that he or she currently holds or has held land directly in a discretionary provisions district that is ineligible to receive Reclamation irrigation water.

Regarding RRA forms for 1998 and 1999, please be aware that the only question in the acreage limitation status block that applies to nonresident aliens and foreign entities is the question that addresses whether an irrevocable election has been made. If the answer to that question is that an irrevocable election has been made, then you may assume that the landholder is subject to the discretionary provisions. You should have a copy of the irrevocable election approval letter from Reclamation, in addition to a copy of the irrevocable election itself, in your files as verification. If the landholder is new to your district and elected in the past, we strongly suggest that you contact your local Reclamation office to obtain a copy of the irrevocable election form and Reclamation's letter of approval for your records.

If the answer to that question indicates that the landholder has not made an irrevocable election, then the nonresident alien or foreign entity is subject to the prior law provisions, regardless of the answers to the other questions. In such cases, if the nonresident alien or foreign entity has submitted a certification form, then the wrong form has been submitted. We will modify the RRA forms and associated instructions starting with the year 2000 forms to clarify this matter.

Please be aware that in situations where a nonresident alien is married to a United States citizen or resident alien, we treat the couple as a United States citizen or resident alien for acreage limitation purposes. However, if the spouse that is a United States citizen or resident alien should die, the surviving spouse as a nonresident alien could be impacted. If this occurs, please contact your local Reclamation office.

If you have any questions concerning the matters discussed in this letter, please contact your local Reclamation office.

Enclosures

ENCLOSURE 1

SECTION 426.8 OF THE ACREAGE LIMITATION
RULES AND REGULATIONS

NONRESIDENT ALIENS AND FOREIGN ENTITIES
(43 CFR 426.8)

§ 426.8 Nonresident aliens and foreign entities.

(a) *Definitions for purposes of this section:*

Domestic entity means a legal entity established under State or Federal law.

Foreign entity means a legal entity not established under State or Federal law.

(b) *Restriction on receiving irrigation water.* Notwithstanding any other provision of Federal reclamation law or these regulations, a nonresident alien or foreign entity that directly holds land in a district that is subject to the discretionary provisions is not eligible to receive irrigation water on such land. Nonresident aliens and foreign entities may hold land indirectly in discretionary districts and both directly and indirectly in prior law districts and receive irrigation water on such land, subject to their acreage limitation entitlements.

(c) *Entitlements for nonresident aliens and foreign entities.* Except as provided in paragraph (d) of this section, all nonresident aliens and foreign entities will be considered prior law recipients, and shall have entitlements and eligibility only as prior law recipients as specified in §§ 426.5(d) and 426.6(b)(3).

(d) *Exception to prior law entitlement application.*

(1) If a nonresident alien is a citizen of or a foreign entity is established in a country that has one of the following treaties with the United States or is a member of the listed organization, then that nonresident alien or foreign entity will not be restricted to prior law entitlements, provided the eligible landholding subject to the acreage limitation provisions is held indirectly:

(i) Friendship, Commerce and Navigation Treaty;

(ii) Bilateral Investment Treaty;

(iii) North American Free Trade Agreement;

(iv) Canada--United States Free Trade Agreement; or

(v) Organization for Economic Cooperation and Development.

(2) Nonresident aliens and foreign entities that meet the criteria listed in paragraph (d)(1) of this section will be required to provide proof of citizenship or documentation certifying the country in which the entity in question was established. Districts will retain such documentation in the landholder's file.

(3) If a nonresident alien or foreign entity meets the criteria listed in paragraph (d)(1) of this section, and only holds eligible land subject to the acreage limitation provisions indirectly, then the nonresident alien may be treated as a United States citizen or the foreign entity may be treated as a domestic entity for purposes of application of the acreage limitation provisions for the land held indirectly.

(i) The nonresident alien or foreign entity may submit an irrevocable election to conform to the discretionary provisions as provided for in § 426.3(f). Conformance to the discretionary provisions through the submittal of a certification form will not be allowed as specified in § 426.3(f)(3).

(ii) Upon Reclamation's approval of the irrevocable election, a nonresident alien will be treated as having the ownership entitlement of a qualified recipient as described in § 426.5(b), for any land held indirectly. A foreign entity will be treated as a qualified recipient or a limited recipient as determined by the number of natural persons who are beneficiaries of the entity as specified by the definitions found in § 426.2, and the subsequent entitlement as provided in § 426.5(b) or (c), for any land held indirectly. The applicable nonfull-cost entitlements will be determined as described in § 426.6(b).

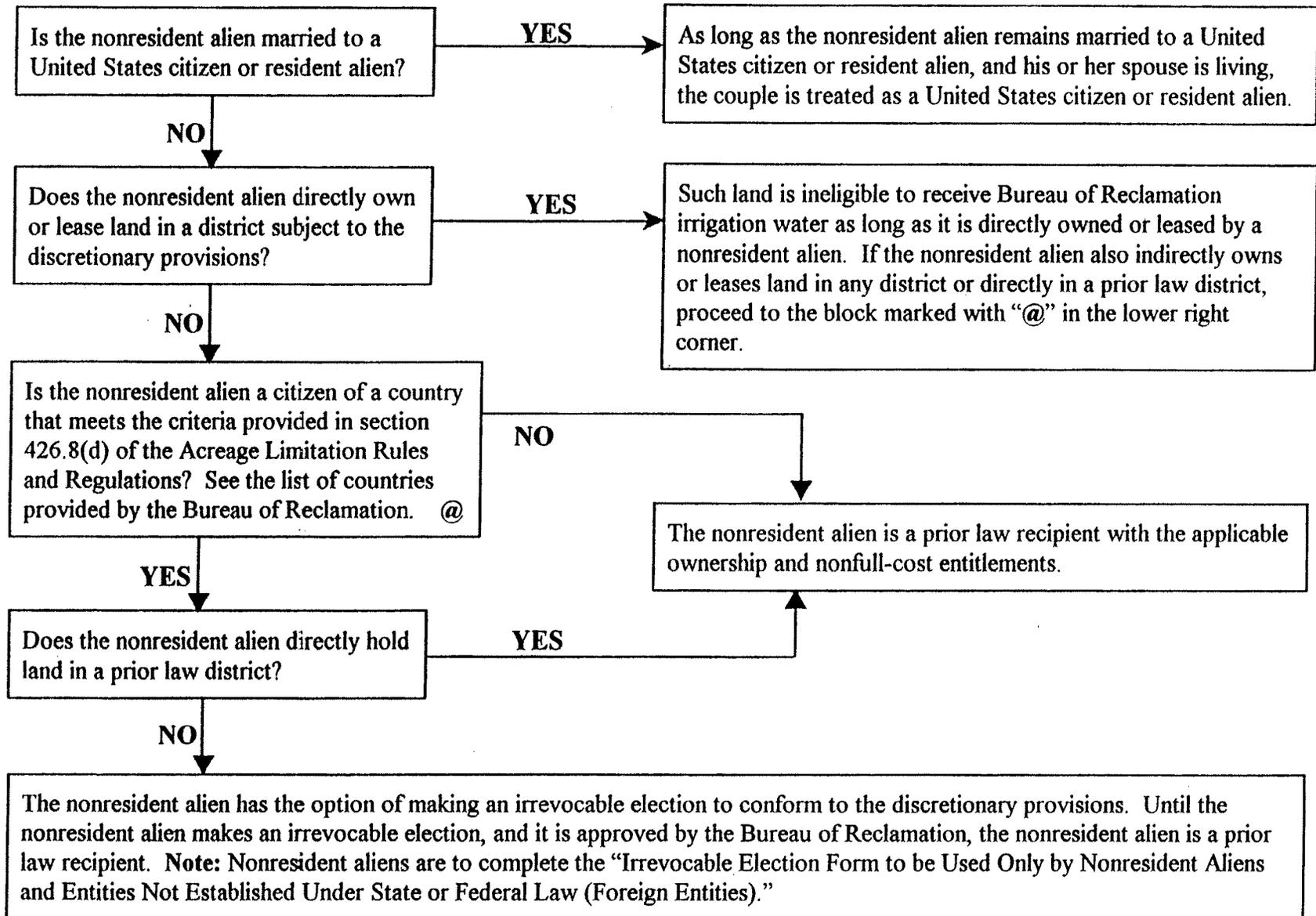
(iii) Reclamation will not approve irrevocable elections submitted by a nonresident alien or a foreign entity that holds any land directly in any prior law district.

(iv) Reclamation will not approve irrevocable elections submitted by a nonresident alien that is not a citizen of or foreign entity that has not been established in a country that has a treaty or international membership as specified in paragraph (d)(1) of this section.

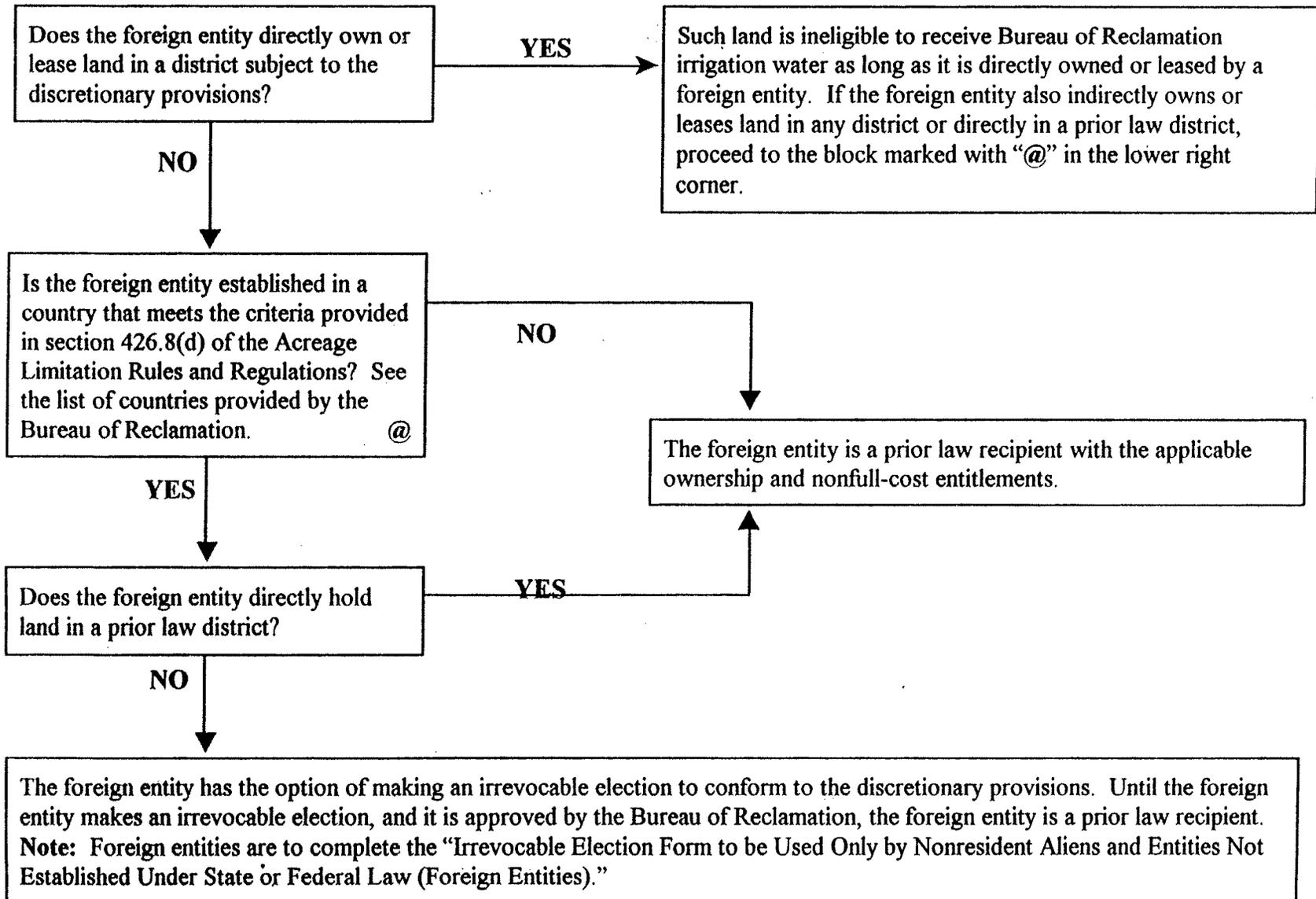
ENCLOSURE 2

FLOWCHARTS PROVIDING INFORMATION TO
ASSIST IN DETERMINING THE ACREAGE
LIMITATION STATUS OF NONRESIDENT ALIENS
AND FOREIGN ENTITIES

ACREAGE LIMITATION STATUS AND ELIGIBILITY FLOWCHART FOR NONRESIDENT ALIENS



ACREAGE LIMITATION STATUS AND ELIGIBILITY FLOWCHART FOR FOREIGN ENTITIES



**May 18, 1998, Letter “Nonresident Aliens and Foreign Entities”
Enclosures 3-5**

ENCLOSURE 3

“List of Countries that have a Requisite Treaty with the United States or are member of the Organization for Economic Cooperation and Development”

(For information on this list, contact the nearest Bureau of Reclamation office.)

ENCLOSURE 4

“List of Countries that Do Not have a Requisite Treaty with the United States and Are Not Member of the Organization for Economic Cooperation and Development”

(For information on this list, contact the nearest Bureau of Reclamation office.)

ENCLOSURE 5

“Irrevocable Election Form to be Used Only by Nonresident Aliens and Entities Not Established Under State or Federal Law (Foreign Entities)”

(See Memorandum dated [July 18, 2002](#), Attachment 2 for this form.)