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MEMORANDUM

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

From: J. Austin Burke
Director, Program Analysis Office

Subject: Minors, Nondependents, and Reclamation Reform Act of 1982 Requirements

The following provides guidance on what steps need to be taken in order for a minor to be considered nondependent (sometimes the term "independent" is used), and thus an individual, for purposes of obtaining their own acreage limitation status and the accompanying entitlements under the discretionary provisions of the Reclamation Reform Act of 1982 (RRA). The guidance in this memorandum was effective on April 4, 1997, and requires the use of the attached Parental Oath in situations where a parent or legal guardian wants to have the Bureau of Reclamation (Reclamation) consider a minor as being nondependent for acreage limitation purposes. Detailed information on the Parental Oath can be found below.

For acreage limitation purposes, how are the terms "individual," "dependent," and "minor" defined?

The RRA provides the following definition:

"The term 'individual' means any natural person, including his or her spouse, and including other dependents thereof within the meaning of the Internal Revenue Code of 1954 (26 U.S.C. 152)." (43 U.S.C. 390bb)

The Internal Revenue Code of 1954 provides the following:

"For purposes of this subtitle, the term 'dependent' means any . . . individuals over half of whose support . . . was received from the taxpayer [parents or legal guardians for acreage limitation purposes] . . ."

A "minor" is considered to be a person who is under the age of legal competence. In most states this is under the age of 18.

Under what circumstances can a minor, including a nonresident alien minor, be considered "nondependent?"

In order to be considered "nondependent," a minor must receive over one half of his/her support from an independent source, which could include income from a trust. This application applies to all minors and other natural persons who normally would be considered to be dependents, including nonresident alien minors. Accordingly, if a nonresident alien minor has over one half of his/her support from a source other than his/her parents or legal guardians, then he/she can be considered to be nondependent for acreage limitation purposes.

What action needs to be taken if a parent or legal guardian wants to have Reclamation consider any minor as being nondependent for acreage limitation purposes?

As of April 4, 1997, submittal of a Parental Oath (copy attached) to the applicable district(s) is required for each minor the parent or legal guardian wants Reclamation to consider as being nondependent for acreage limitation purposes. The only exception to this applies to minors that Reclamation has already been treating as nondependents in those districts that have not been required by Reclamation to collect Parental Oaths in the past. In such cases, we recommend the districts include a note in the landholder's file that Reclamation had been treating the minor as a nondependent prior to April 1997. If a parent or legal guardian wants Reclamation to consider other minors as being nondependent, they must complete and submit to the applicable district(s) a Parental Oath for each additional minor.

To whom is the Parental Oath submittal requirement applicable?

This requirement is applicable to all minors regardless of whether they are nonresident aliens, resident aliens, United States citizens, qualified recipients, prior law recipients, or directly or indirectly hold land. In the case of prior law recipients, a minor being considered as a nondependent confers no additional acreage limitation benefits because even dependent minors have their own entitlements under prior law provisions if title for the land is held by that minor. However, if prior law parents or legal guardians want their minor(s) to be recognized as nondependent by Reclamation, then the Parental Oath will be required.

How should the Parental Oath be submitted and what is its disposition?

The Parental Oath document is to be completed and signed as specified, notarized, and placed in the minor's file maintained by the district as a permanent record. The attached Parental Oath has been significantly revised from the previous version. While there is no need to resubmit previously submitted Parental Oaths, effective immediately the attached version will be exclusively used. Please discard any blank copies of previous versions of the Parental Oath document.

Parental Oaths and Irrevocable Elections

For minors who want to be considered qualified recipients, the Parental Oath must be submitted as part of the irrevocable election package. As with any nonresident alien wishing to conform to the discretionary provisions, a nonresident alien minor may not hold any land directly in a prior

law district if their irrevocable election is to be approved, and any land held directly in a discretionary provisions district will remain ineligible to receive Reclamation irrigation water even after the election is approved.

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

Attachment

SEE CLARIFICATION NOTE



Clarification Note:

The attached "Parental Oath" was removed on September 11, 2006.

The "Parental Oath" was revised on September 11, 2006, and is now entitled "Parental Affirmation Regarding Nondependent Status of a Minor" (Affirmation).

The revised affirmation is now attached to the September 11, 2006, letter.

