

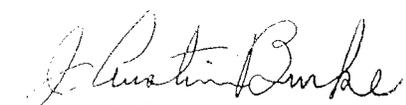
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MEMORANDUM

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

From: J. Austin Burke  
Director, Program Analysis Office



Subject: Change in Filing Requirements for Corporations that are Wholly-Owned by a Single Family or Surviving Spouse and Transmittal of Revised Irrevocable Election Document

As a result of a recent review of Federal Reclamation law as it applies to corporations that are 100 percent owned by a single family or surviving spouse in a prior law district, the Bureau of Reclamation (Reclamation) has determined that it is not appropriate for such corporations to be reported on the Report of Individual's Landholdings (Form 7-2190). Instead, these wholly-owned corporations must report their landholdings on Form 7-2191, Report of Entity's Landholdings. This memorandum addresses the most common questions that may arise as a result of this change in filing requirements.

**What is a Single Family?**

For the purposes of this memorandum, the term single family refers to any one individual or group of individuals eligible to report their combined landholdings on a single Form 7-2190.

**Why is Reclamation Changing the Filing Requirements for Corporations Subject to Prior Law that are Wholly-Owned by a Single Family or Surviving Spouse?**

Section 426.6(d)(5) of the Reclamation Reform Act of 1982 (RRA) implementing rules and regulations clearly indicates that all corporations are considered to be individual entities. No distinction is made between those corporations which are solely owned by a single family or surviving spouse and those that are owned by multiple individuals and/or entities. That same section provides that such corporations are limited to a maximum ownership entitlement of 160 acres in each district, provided the land was acquired on or before December 6, 1979. Owned lands acquired after that date are limited to a maximum 160-acre entitlement westwide.

Since a single family or surviving spouse may have an entitlement that is greater than that of the corporation, allowing the wholly-owned corporation to be reported on the individual's reporting form increases the potential for deliveries of Reclamation irrigation water to lands which exceed the ownership entitlement of the corporation.

### **What Forms Will Prior Law Corporations That Are Wholly-Owned by a Single Family or Surviving Spouse Be Required to File?**

In order to ensure that such prior law corporations do not exceed their individual ownership and nonfull-cost entitlements, Reclamation will require that they file a Report of Entity's Landholdings (Form 7-2191) if they hold title to the land.

### **When Does the Change in Filing Requirements Become Effective?**

This change becomes effective with filings for the 1997 water year.

### **Will This Change Be Addressed on Forms for the 1997 Water Year?**

Effective with forms for the 1997 water year, this change in filing requirements for prior law landholders will be addressed on both the revised Form 7-2190 and the instructions for that form. The instructions will read in part, "If you, your spouse, or your dependents hold land in the name of a corporation, the corporation must submit Form 7-2191."

### **What If Wholly-Owned Corporations Have Been Established That Fall Between the Single Family or Surviving Spouse and the Direct Landholder?**

If a single family or surviving spouse in a prior law district or an individual in a discretionary district have established a number of wholly-owned entities and the resultant structure is such that one or more entities exists between themselves and the entity serving as the direct landholder, they must fully disclose the names of all of the entities and describe the structure of the overall relationship. In addition, if any of the entities so established are prior law corporations, a Form 7-2191 must be submitted for each.

### **How Can a Single Family or Surviving Spouse Receive the Full Benefit of Their Entitlement if Their Wholly-Owned Corporation is Limited to a 160-Acre Entitlement?**

Even though the corporation established by the single family or surviving spouse is generally limited to a maximum ownership entitlement of 160 acres, the individuals may utilize the remainder of their ownership and/or nonfull-cost entitlements, if any, either directly, through establishment of one or more additional entities, or through part ownership in other entities. If the single family or surviving spouse desires to hold all of their land only through the one corporation, they must conform to the discretionary provisions in order for lands owned in excess of the 160-acre ownership entitlement to be eligible for the receipt of Reclamation irrigation water. An election will also be required if the parties wish the corporation to be eligible to receive Reclamation irrigation water at the nonfull-cost rate on leased lands which

exceed the 160-acre nonfull-cost entitlement. In order to facilitate such elections, the irrevocable election document (document) has been revised. Copies of the revised document are attached for your use.

### **What Changes Have Been Made to the Irrevocable Election Document?**

1. A new sentence has been added to the fifth bullet indicating that **both** signature blocks 1 and 2 must be completed if the election is to apply both to the single family or surviving spouse elector and their wholly-owned corporation.
2. A new section has been added (bullet six). This section applies **only** to entities that are wholly owned by a single family or surviving spouse, and requires that the elector indicate the type and name of all entities to be covered by the submitted election. In addition, it advises the elector that any entities not so identified will remain subject to prior law.
3. The notary statement and the expiration date of the notary's commission has been clarified.
4. Spacing and font size has been reduced to allow the document to be printed on two pages, consistent with the current format.

### **What if the Single Family's or Surviving Spouse's Wholly-Owned Entity is not Identified on their Election?**

If the entity is not identified by both type and name, Reclamation cannot be sure that the elector intended the entity to become subject to the discretionary provisions of Federal Reclamation Law. In accordance with 43 CFR 426.5(d), **any** wholly-owned entities, including partnerships, tenancies, and corporations, not identified on the election will remain subject to prior law until an irrevocable election is submitted by the entity on its own behalf. In addition, the entity will be required to file a Report of Entity's Landholdings (Form 7-2191) annually. Since the entity and its part owners will be subject to differing provisions of Reclamation law upon submittal of the election, the single family or surviving spouse may no longer report the entity's holdings on their Certification of Individual's Landholdings (Form 7-2180).

### **Must the Elector(s) Complete Both Signature Blocks 1 and 2 if the Election Covers Both Themselves and a Wholly-Owned Corporation?**

Yes. Even though the corporation in question is 100 percent owned by the single family or surviving spouse, it is a separate entity with corporate requirements outside those associated with the RRA. As such, it must conduct business on its own behalf in accordance with State and Federal requirements and its own bylaws. Signature Block 1 only covers the elector(s) as an individual(s) acting on his/her/their own behalf. Signature Block 2 requires the elector(s) to sign as an officer(s) of the corporation acting on behalf of the corporation.

**Must a Corporate Resolution and Certification Form for the Wholly-Owned Corporation Be Submitted With the Election?**

Yes. A corporation is not bound by the actions of its shareholders. The corporate resolution provides evidence to Reclamation that it is the intent of the corporation to become subject to the discretionary provisions. The election must be accompanied by certification forms for both the individual(s) (Form 7-2180) and the corporation(s) (Form 7-2181) in accordance with section 426.5(d)(2) of the RRA implementing rules and regulations. Subsequent to this one-time filing requirement for Form 7-2181, the landholdings of the elector's wholly-owned entity(ies) may be reported on their individual Form 7-2180.

**What are the Signature and Form Requirements for Wholly-Owned Partnerships and Tenancies Identified on the Individual's Election?**

The notarized signature of the elector and spouse (if applicable) in Signature Block 1 of the election is sufficient. A completed certification form for these entities is not required, however, they must be identified in the appropriate block on page 1 of the accompanying Certification of Individual's Landholdings (Form 7-2180).

**When Should Districts Begin Using the New Election Document?**

The revised document is effective immediately. Supplies of previously issued irrevocable election forms should be discarded.

If you have any questions regarding the information in this memorandum or if you require additional supplies of the irrevocable election document, please contact the Reclamation office that serves your district.

**Attachment**

The referenced attachment "Irrevocable Election Form" is attached to the **July 18, 2002**, memorandum as Attachment 1.