



United States Department of the Interior



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Subject: Application of Acreage Limitation Provisions for Changes Made in Marital Status and Dependency of Children

Dear Ladies and Gentlemen:

The purpose of this letter and enclosure is to provide guidance for applying the acreage limitation provisions of Federal reclamation law and the associated forms requirements to:

- Certain divorce situations.
- Certain situations involving children and their dependency status.
- Certain situations involving a surviving prior law spouse and the identification of his/her nonfull-cost entitlement where leased land is concerned.

The enclosure provides answers to questions that are not directly addressed by the Acreage Limitation Rules and Regulations (Regulations, 43 CFR¹ part 426).

If you have any questions regarding the information provided in this letter or the enclosure to it, please contact the appropriate Reclamation office.

Sincerely,

Roseann Gonzales, Director
Office of Program and Policy Services

Enclosure

¹ Code of Federal Regulations

**Acreage Limitation Impacts
Caused by Changes in Marital Status and
Dependency of Children**

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I. Acreage Limitation Applicability to Divorce Situations

A. Is a “legal separation” treated differently from a separation that was not initiated in court?

For acreage limitation purposes, a legal (judicial) separation is treated no differently than a separation by “mutual consent.” In fact, until a divorce decree is finalized, the acreage limitation provisions that are applicable to a married couple continue to apply. For example, a married (albeit separated) couple must still submit only one (not two) standard Reclamation Reform Act of 1982 (RRA) form in order to receive Bureau of Reclamation irrigation water, the names of **both** spouses must appear on the RRA form, and **both** spouses must sign the RRA form or a spousal signature authorization must be on file.

B. When does the status of a landholder change from married to single?

For acreage limitation purposes, the marital status of a landholder changes when the divorce decree becomes final.

C. Does land acquired through a divorce constitute an involuntary acquisition?

No, it does not.

D. What happens if land that was acquired through a divorce places the acquiring landholder over the applicable ownership entitlement?

The acquiring landholder must designate as excess land the amount of land that exceeds his/her/its ownership entitlement. Such land will be ineligible to receive Reclamation irrigation water.

Example: Mr. Landholder and Mrs. Landholder are subject to the prior law provisions and own 320 acres as a married couple. Mr. and Mrs. Landholder divorce; as part of the divorce, Mr. Landholder assumes all of the former Mrs. Landholder’s interest in the land. Therefore, subsequent to the divorce Mr. Landholder owns 320 acres as a single prior law recipient that has only a 160-acre ownership entitlement.

Because the 160 acres of land acquired from the former Mrs. Landholder cannot continue to receive Reclamation irrigation water under the involuntary acquisition provisions [43 CFR 426.14(e)], Mr. Landholder must designate 160 acres as excess land that cannot receive Reclamation irrigation water.

II. Acreage Limitation Applicability to Situations Involving Irrevocable Elections and Remarriage¹

A. In a prior law district, what will the acreage limitation status be of a person who (1) has made an irrevocable election to conform to the discretionary provisions while in a previous marriage, AND (2) chooses to marry a new spouse that has never made an irrevocable election?

The new couple will have the acreage limitations status of a qualified recipient for two reasons:

1. An irrevocable election is an action associated with the landholder, not the land. Once a landholder becomes subject to the discretionary provisions, that landholder will always be subject to the discretionary provisions (hence, the usage of the word “irrevocable”).
2. Although the term “individual” under the discretionary provisions is defined to be a natural person and his or her spouse and other dependents (43 CFR 426.2), an individual cannot be subject to both the prior law and the discretionary provisions by virtue of each spouse having a different acreage limitation status. Therefore, even though one spouse in the newly married couple is subject to the prior law provisions by never before having made an irrevocable election or having held land directly in a discretionary provisions district, the other spouse in the new couple **has** made a previous irrevocable election. Therefore, the new couple must be subject to the discretionary provisions because of the previous irrevocable election made by one of the spouses.

Example: Mr. and Mrs. Landholder own land in a prior law district and make an irrevocable election to conform to the discretionary provisions as a married couple in order to increase their ownership entitlement. Mr. and Mrs. Landholder subsequently divorce. As part of the divorce, Mr. Landholder retains interest in all of the land, leaving the former Mrs. Landholder with no land associated with her name. Two years later, the former Mrs. Landholder marries Mr. Grower, who has never before made an irrevocable election.

Because the new Mrs. Grower made a previous irrevocable election (albeit in a previous marriage to Mr. Landholder), Mrs. Grower has remained subject to the discretionary provisions since that election (even though she held no land for 2 years). By marrying the new Mrs. Grower, Mr. Grower became subject to the discretionary provisions.

¹ The information in this section also applies in situations characterized by the death of a spouse instead of a divorce, where all other circumstances remain the same as provided in this section. See section VI.D. for information pertaining to the death of a nonresident alien’s spouse.

III. Acreage Limitation Applicability to Divorce Situations Involving Dependent Children

The terms applicable to this scenario are:

custodian: “A person or institution that has charge or custody of property, papers, or other valuables; GUARDIAN.” (Black’s Law Dictionary, 7th edition)

custody: “The care, control and maintenance of a child awarded by a court to a relative, usu. one of the parents, in a divorce or separation proceeding.” (Black’s Law Dictionary, 7th edition)

joint custody: “An arrangement by which both parents share the responsibility for and authority over the child at all times.” (Black’s Law Dictionary, 7th edition)

sole custody: “An arrangement by which one parent has full control and responsibility to the exclusion of the other.” (Black’s Law Dictionary, 7th edition)

The acreage limitation status of the custodial parent will determine the acreage limitation status of the dependent child. This does not apply under the prior law provisions which allow a child to have his or her own entitlements, or if the child is an independent child (see section V. “Land Attribution to Dependent Versus Independent Children” for more information).

In the case of sole custody, the land will be attributed to whomever is the custodial parent. In the case of joint custody, the land will be attributed to both parents in the same percentages as custody of the child was given to the parents by the court. In other words, if the court established joint custody privileges to be 30 percent to the father and 70 percent to the mother, then 30 percent of the land in question will be attributed to the father and 70 percent will be attributed to the mother. This assumes that Reclamation has been provided with proof of the divorce decree providing for joint custody. If the court has not specified custody percentages, Reclamation will assume equal custody (i.e., a 50/50 split between the father and the mother).

Example: Mr. and Mrs. Landholder own land in a discretionary provisions district. They have four dependent children, two of whom each hold title to 200 acres and two of whom each hold title to 100 acres, for a total of 600 acres. Mr. and Mrs. Landholder divorce, and the court awards them joint custody, 50 percent to Mr. Landholder and 50 percent to Mrs. Landholder.

Because this is a divorce situation with a 50/50 custody arrangement, each parent is attributed with 50 percent of each child’s landholding. Therefore, Mr. Landholder is attributed with 300 acres (100 acres from each of two children and 50 acres each from the remaining two children, equaling 300 acres) and Mrs. Landholder is attributed with the remaining 300 acres. Such land will count against Mr. and Mrs. Landholder’s respective discretionary provisions entitlements.

IV. Acreage Limitation Applicability to Divorce Situations Involving Independent Children

An independent child will have his or her own acreage limitation entitlements and may own or lease land directly or indirectly. However, in order for Reclamation to consider a child to be independent for acreage limitation purposes, the parent or legal guardian must submit to Reclamation a "Parental Affirmation Regarding Nondependent Status of A Minor." The Parental Affirmation form was distributed to all districts subject to the acreage limitation provisions in a memorandum dated September 11, 2006.

Example: Mr. and Mrs. Landholder own land in a prior law district but are subject to the discretionary provisions because of a previous irrevocable election. They have three dependent children. Mr. and Mrs. Landholder divorce, and the court declares Mr. Landholder to be the full-time custodial parent of one child and Mrs. Landholder to be the full-time custodial parent of the other two children. Mr. Landholder subsequently buys 600 acres of land in the prior law district and divides it equally into three separate trusts that he created for each of the three children (200 acres per trust, the sole beneficiary of each trust is the applicable child).

Mr. Landholder then completes the appropriate steps to make the one dependent child of whom he has custody into an independent child.

Because the child of whom Mr. Landholder had custody is now independent, the land held in trust by that child will be attributed to the independent child and not to Mr. Landholder. In order for the independent child to be directly attributed with the full 200 acres in the trust and not limit the trust to the 160-acre acreage limitation entitlements applicable to a prior law individual, the independent child will have to make his/her own irrevocable election to conform to the discretionary provisions. Mrs. Landholder will still be attributed with 400 acres, equaling the amount of land held in the two trusts that were created by Mr. Landholder for the two dependent children of whom she has custody.

V. Land Attribution to Dependent Versus Independent Children²

In order for land to be attributed to any dependent child, the title to the land must be in the name of the child and the child must be subject to prior law.

The following tables compare land attribution to dependent and independent children under the discretionary and prior law provisions.

DISCRETIONARY PROVISIONS		
Kind of Land Held by the Child	How Land is Attributed to the:	
	Dependent Child	Independent Child
Directly held land	Under the discretionary provisions, a dependent child is considered to be part of an "individual" as defined by 43 CFR 426.2. Therefore, the child's acreage limitation status and entitlements are those of his/her parents, and the child's land is subsequently attributed to his or her parent(s) regardless of whether the land is directly or indirectly held.	An independent child has his/her own acreage limitation entitlements under the discretionary provisions. Therefore, land held directly or indirectly by the child will be attributed to the child.
Indirectly held land		

PRIOR LAW PROVISIONS		
Kind of Land Held by the Child	How Land is Attributed to the:	
	Dependent Child	Independent Child
Directly held land	Under the prior law provisions, a child has his/her own acreage limitation status and the corresponding entitlements regardless of whether that child is dependent or independent. Land that is directly held by the child (i.e., title to the land is in the name of the child) will be attributed to the child.	
Indirectly held land	Land held indirectly by the dependent child (e.g., held in a trust of which the child is a listed beneficiary) will be attributed to the child's parent(s).	Land held indirectly by the independent child (including land held in a trust of which the child is a listed beneficiary) will be attributed to the child.

² For illustration purposes within this section, the dependents and independents are presumed to be children (i.e., minors). However, the information in this section is applicable to anyone considered to be dependent/independent, regardless of whether the dependent/independent is a minor.

VI. Entitlements of a Surviving Prior Law Spouse

The Regulations specifically address the ownership and nonfull-cost entitlements for a married couple that is subject to the prior law provisions.

Regarding the ownership entitlement [43 CFR 426.5(d)(1)(ii)]:

“Married couples who hold equal interests are entitled to receive irrigation water on a maximum of 320 acres of jointly owned nonexempt land;”

Regarding the nonfull-cost entitlement [43 CFR 426.6(b)(3)]:

“The nonfull-cost entitlement for prior law recipients is equal to the recipient’s maximum ownership entitlement as set forth in § 426.5(d). However, for the purpose of computing the acreage subject to full cost, all owned and leased irrigation land westwide must be included in the computation.”

The Regulations also specify the ownership entitlement of a surviving prior law spouse that is to be applied upon a spouse’s death [43 CFR 426.5(d)(1)(iii)]:

“Surviving spouses until remarriage are entitled to receive irrigation water on that land owned jointly in marriage up to a maximum of 320 acres of owned nonexempt land. If any of that land should be sold, the applicable ownership entitlement would be reduced accordingly, but not to less than 160 acres of owned nonexempt land;”

A. How much land can a surviving prior law spouse and his/her children own and irrigate with Reclamation irrigation water?

The Regulations [43 CFR 426.5(d)(1)(iv)] specifically state that under the prior law provisions, “Children are each entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land, regardless of whether they are independent or dependent.” Again, however, in order for land to be attributed to any dependent child, the title to the land must be in the name of the child.

Example: A prior law widow owns 200 acres in a prior law district, all of which were owned jointly with her husband prior to his death. The execution of the deceased spouse’s will resulted in the purchase of 160 acres for each of their two children, with title to the applicable land being placed in each child’s own name.

Because each of her two children hold title to the applicable land in his/her own name and all remain subject to prior law, the widow can deliver Reclamation irrigation water to her children’s 320 acres (2 x 160 acres) in addition to the 200 acres she owns as a surviving prior law spouse, for a total of 520 acres. If for example, the land had been placed in a trust, then the 160 acres purchased for each child as a result of the deceased spouse’s will would not be eligible to receive Reclamation irrigation water unless the children were declared as independent (as detailed in section IV above).

B. What is the ownership entitlement of a surviving prior law spouse who, after the death of his/her spouse, (a) establishes a trust [of which the surviving spouse is the sole beneficiary] and (b) transfers to the trust some of the land that was jointly owned with the deceased spouse?

The act of transferring some of the land into the newly created trust changes the ownership of that land. Because the transfer of land is treated the same way as the sale of land for acreage limitation purposes (43 CFR 426.12, various cites), the surviving spouse's ownership entitlement will be reduced accordingly as specified in 43 CFR 426.5(d)(1)(iii).

Example: A prior law widow owns 270 acres in a prior law district, all of which were owned jointly with her husband prior to his death. The widow establishes a trust, of which she is the sole beneficiary, and intends to transfer 70 of her owned acres into the trust.

Because the transfer of 70 acres into the trust changes the ownership of those acres, the widow's ownership entitlement will be reduced accordingly (by 70 acres). That means her new ownership entitlement will be 200 acres following the transfer, and the 70 acres in the trust (attributed to the widow because she is the sole beneficiary) will be considered ineligible excess land. In order to continue to receive Reclamation irrigation water on the 70 acres held in the trust the widow must complete an irrevocable election to conform to the discretionary provisions, which will increase her ownership entitlement to 960 acres (held westwide).

C. The Regulations specify the ownership entitlement of a surviving prior law spouse, but what is the nonfull-cost entitlement of a surviving prior law spouse?

Although the Regulations are specific with regard to the ownership entitlement of a surviving prior law spouse, if a surviving prior law spouse's landholding includes leased land the Regulations do not address the *nonfull-cost entitlement* of that spouse. The Regulations only state that leased land "must be included" when computing the nonfull-cost entitlement of a prior law recipient (in this case, the surviving prior law spouse).

A surviving prior law spouse's nonfull-cost entitlement will generally be applied in a similar manner to the ownership entitlement. However, if leased land is involved, the application of the nonfull-cost entitlement will be lease-specific. In other words:

- The 320-acre nonfull-cost entitlement applicable to prior law married couples will continue to be applicable for the surviving spouse, but only for land selected as nonfull-cost under a specific lease before the spouse died.
- The surviving spouse will continue to be able to receive nonfull-cost Reclamation irrigation water on the land that was eligible to receive such water until the lease terminates, is renewed, or the land is reselected as full-cost.

- Upon lease termination, lease renewal, or reselection of land as full-cost, the nonfull-cost entitlement of the surviving prior law spouse will be reduced accordingly but not to less than 160 acres.

Example: For eight years, a prior law couple has been leasing 320 acres in a prior law district under a 10-year lease. The husband dies, and the surviving spouse decides to continue to farm the same 320 acres for two more years until the lease expires.

Because the 320 acres was eligible to receive nonfull-cost water under a lease that existed before the husband died, the surviving spouse can continue to receive Reclamation irrigation water on those 320 acres at the nonfull-cost rate for the two years that remain on the lease. Once the two years have elapsed and the lease has expired, the surviving spouse's nonfull-cost entitlement will be reduced to a 160-acre entitlement (as applicable to any other prior law individual). From then on, until remarriage, the surviving spouse can receive Reclamation irrigation water at the nonfull-cost rate on up to 160 acres of owned and/or leased land as a prior law recipient.

D. Will there be an impact on the acreage limitation entitlements of a nonresident alien that becomes a surviving prior law spouse due to the death of a spouse that was a United States citizen or resident alien?

A table detailing various situations dealing with the entitlements of surviving nonresident alien (prior law) spouses was distributed to all districts subject to the acreage limitation provisions in a memorandum dated April 4, 2000. Generally, the citizenship status of the nonresident alien is overlooked while he or she is married to a United States citizen or resident alien. However, once the spouse who is a United States citizen or resident alien dies, Reclamation must re-evaluate the acreage limitation status and landholdings of the surviving nonresident alien spouse based on the citizenship status of that person. In other words, if the couple was subject to the discretionary provisions then (1) the death of the spouse who was a United States citizen or resident alien may impact the surviving spouse's acreage limitation entitlements, and (2) the specific impact will depend on a number of factors such as whether the land in question is held directly or indirectly, the amount of land held, and how the couple became subject to the discretionary provisions.