



United States Department of the Interior

BUREAU OF RECLAMATION

Commissioner's Office

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Denver, Colorado 80225-0007

IN REPLY REFER TO:

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DEC 29 1997

MEMORANDUM

To: All Districts Subject to the Discretionary Provisions of the Reclamation Reform Act of 1982

For
From: Margaret W. Sibley *Margaret W. Sibley*
Acting Director, Program Analysis Office

Subject: Impacts of the Tiered Reclamation Reform Act of 1982 Forms Requirements

As you know, effective on January 1, 1997, the Acreage Limitation Rules and Regulations (43 CFR Part 426) were revised to provide a tiered Reclamation Reform Act of 1982 (RRA) forms submittal threshold. Depending on a district's RRA forms submittal threshold category, the general RRA forms submittal thresholds are as follows:

TYPE OF LANDHOLDER	TYPE OF DISTRICT	
	CATEGORY 1 DISTRICT	CATEGORY 2 DISTRICT
Qualified Recipient	240 acres	80 acres
Limited Recipient	40 acres	40 acres
Prior Law Recipient	40 acres	40 acres
Public Entity	40 acres	40 acres
Trust	**	**

** The RRA forms submittal thresholds for trusts varies depending on the acreage limitation status of to whom the land is attributed and the district(s) where the land is located. Contact your local Bureau of Reclamation office if you have any questions.

Even under the previous universal RRA forms submittal threshold of 40 acres, the Bureau of Reclamation (Reclamation) realized that some landholders may be receiving benefits to which they were not entitled. For example, there may be some limited recipients who hold 40 acres or less, did not receive Reclamation irrigation water on or before October 1, 1981, and thus, have a nonfull-cost entitlement of zero acres; yet, because such limited recipients do not have

to submit RRA forms, they may receive Reclamation irrigation water at the nonfull-cost rate, unless the district or Reclamation becomes aware of their existence through some other means.

With the increased RRA forms submittal threshold for qualified recipients, the likelihood that additional limited recipients will receive Reclamation irrigation water at the nonfull-cost rate, who are not eligible for such benefits, will increase. This is because districts may not be aware that a landholder is a limited recipient rather than a qualified recipient and the entity that has conformed to the discretionary provisions does not submit an RRA form.

Another possible problem is that there may be landholders who hold land only indirectly in discretionary provisions districts and have neither made an irrevocable election nor submitted a certification form. In theory, such landholders remain subject to the prior law provisions and the applicable 40-acre RRA forms submittal threshold. However, with the increase to the RRA forms submittal threshold, the question becomes: If the indirect landholder holds less than 80 acres westwide and holds land in an RRA forms submittal threshold Category 2 district, or less than 240 acres westwide and holds land in a Category 1 district, what status is applicable to such landholders if they do not submit a prior law form?

What follows are steps districts should take to minimize these problems.

IDENTIFYING LIMITED RECIPIENTS

Since 1997 was a transition year, it will be important for all districts that are subject to the acreage limitation provisions to compare all Tabulation A's, Form 7-21SUMM-C, prepared for the 1997 water year to Form 7-1781A, Sheet 2 (District Summary of Certification Forms), prepared for the 1996 water year to determine which entities subject to the discretionary provisions did not submit RRA forms for 1997. For those entities that you find that did not submit a 1997 form, it will be important to review their 1996 RRA Form 7-2181's (Certification of Entity's Landholding) to determine if they are limited recipients.

If the entity in question is a limited recipient and you do not know why a 1997 RRA form was not submitted, you need to contact that entity immediately to find out if: (1) the limited recipient's landholdings have changed so that they did not hold more than 40 acres in 1997; (2) the entity is no longer a limited recipient because it has fewer part owners; (3) the limited recipient only holds land indirectly and has experienced no landholding change since they last submitted a standard RRA form; or (4) they are confused as to whom the increased RRA forms submittal threshold is applicable. If it should turn out that the reason an RRA form was not submitted for the entity was confusion with the RRA forms submittal threshold, the representatives for the entity need to be told of the continuing 40-acre threshold applicable to limited recipients and the consequences of not submitting RRA forms. We have enclosed a draft letter you may use for this purpose (enclosure A).

In order to assist your staff and Reclamation in future compliance activities, we recommend that a list of limited recipients who hold land in your district be prepared. That list should include notes as to how you made each determination (e.g., information provided on the entity's RRA forms). To help determine if a landholding entity is a qualified or limited recipient, especially entities that are new landholders in your district, we have developed and enclosed a sample "worksheet" that can be provided to new landholders who are entities (enclosure B). Such "worksheets" when completed can be placed in landholder files at the district office as evidence of the action taken to determine if the entity is a qualified or limited recipient. Please be aware that during future water district reviews, Reclamation staff will increase their emphasis on identifying limited recipients.

STATUS OF INDIRECT LANDHOLDERS IN DISCRETIONARY PROVISIONS DISTRICTS

The revised Acreage Limitation Rules and Regulations provide the following in section 426.3(f):

"(3) A landholder that only holds land indirectly in a district that has conformed to the discretionary provisions, other than a nonresident alien or a legal entity not established under State or Federal law, may make an irrevocable election also by simply submitting certification forms to all districts where the landholder holds land subject to the acreage limitation provisions. An election made in this manner is binding in all districts in which such elector holds land."

This provision has been Reclamation's practice for some time as evidenced by information provided on instructions to various RRA forms. With the increased RRA forms submittal thresholds, qualified recipients whose westwide landholdings are between 40 and 80 acres and hold land in Category 2 districts, or between 40 and 240 acres and hold land in Category 1 districts, as the case may be, no longer have to submit RRA forms. This raises the following question: For a landholder who only holds land indirectly in a discretionary provisions district and has submitted prior law forms in the past, but would not be required to submit an RRA form as a qualified recipient, what acreage limitation status is applicable if that landholder does not submit an RRA form for 1997 or later water years?

There are obvious benefits to conforming to the discretionary provisions for many landholders--primarily the increase in the acreage limitation entitlements. However, conformance to the discretionary provisions also has negative consequences for some landholders. One of the negative consequences applies to limited recipients that did not first receive Reclamation irrigation water on or before October 1, 1981, in that their nonfull-cost entitlement would be reduced from 160 acres under prior law to zero. This means the full-cost rate must be paid for all Reclamation irrigation water received. A second negative consequence would be for those landholders who hold land in districts where the current contract rate does not cover the full operation and maintenance costs. Once they conform to

the discretionary provisions, the minimum water rate for all deliveries of Reclamation irrigation water to them must at least cover the full operation and maintenance charges.

Reclamation considered two ways to address this matter. The first would be to assume all landholders in discretionary provisions districts who only hold land indirectly and hold more than 40 acres westwide, but less acres than the applicable RRA forms submittal threshold for qualified recipients in that district, remain subject to prior law until they either submit a certification form or an irrevocable election. The other option was to assume that landholders in this group who do not submit an RRA form will be considered to have elected to conform to the discretionary provisions, because they did not submit a prior law form and they are not required to submit a certification form based on their westwide landholdings.

Reclamation decided the latter option was less burdensome on districts and landholders. Accordingly, the absence of the submittal of an RRA form by a landholder (1) who only holds land indirectly in discretionary provisions districts, (2) whose westwide landholding is more than 40 acres, but does not exceed the applicable RRA forms submittal threshold for a qualified recipient in each district where land is held, and (3) who has not submitted a certification form in the past or made an irrevocable election will be taken as evidence that the landholder has conformed to the discretionary provisions. (This does not apply to nonresident aliens and foreign entities who indirectly hold land. They must submit irrevocable elections in order to conform to the discretionary provisions.) As with all actions to conform to the discretionary provisions, the decision to conform by not submitting an RRA form will be considered irrevocable.

Since 1997 was a transition year, we would like to encourage you to contact all indirect landholders, except nonresident aliens and foreign entities, who hold between 40 acres westwide and the RRA forms submittal threshold applicable to qualified recipients in your district, and have submitted prior law forms in the past, to notify them of the consequences of not submitting prior law forms. To facilitate this action we have prepared a draft letter you may use to contact landholders who received irrigation water during 1997 and included it as enclosure C. Nonresident aliens and foreign entities are being addressed in a separate action.

Our goal is to work with you in minimizing any confusion and problems the tiered RRA forms submittal threshold may cause. If you have any questions on this matter, please contact your local Reclamation office.

Enclosures

[Name of Landholder]

[Address]

[City, State, Zip]

Subject: The Reclamation Reform Act of 1982 Forms Submittal Threshold and Limited Recipients

Dear :

Our records indicate that your entity is a limited recipient. As such the applicable Reclamation Reform Act of 1982 (RRA) forms submittal threshold remains at 40 acres. To date, we have not received an RRA form for your entity for the 1997 water year. There may be a number of reasons why such a form has not been submitted, including:

1. Your entity's westwide landholdings have changed so that it now holds (owns or leases directly or indirectly) 40 acres or less;
2. The entity is no longer a limited recipient because it now has fewer than 26 part owners;
3. Your entity only holds land indirectly westwide and has experienced no landholding changes since it last submitted a standard RRA form; or
4. There has been some confusion as to whom the increased RRA forms submittal threshold applies.

The purpose of this letter is to notify you that if your entity continues to be a limited recipient and holds more than 40 acres westwide, you must turn in an RRA form annually prior to your entity's landholdings receiving Bureau of Reclamation (Reclamation) irrigation water. The only exception is if your entity only holds land indirectly westwide and neither the acres attributed to your entity nor the percentage of the entity, trust, or estate attributed to your entity has changed since your entity last submitted a standard RRA form, and all other information previously submitted on your entity's standard RRA form remains the same. If RRA forms are not submitted as required, it will result in Reclamation assessing this district with an administrative fee for noncompliance with the RRA forms submittal requirements. In addition, depending on your entity's nonfull-cost entitlement, you may owe the full-cost rate for water delivered to your landholding. If so, any delay may result in an underpayment for which Reclamation will also issue a bill, including underpayment interest.

Your cooperation in this matter will be appreciated.

Sincerely,



District letter dated December 29, 1997
Enclosure B has been removed from this letter.

See district letter dated January 5, 2006, page 2, Program Changes. Effective January 2006, Form 7-2536 (Limited Recipient Identification Sheet) will be sent out only by Bureau of Reclamation staff. This decision was made to reduce the burden on districts with regard to the administration and enforcement of the acreage limitation provisions of federal reclamation law.



[Name of Landholder]
[Address]
[City, State, Zip]

Subject: The Reclamation Reform Act of 1982 Forms Submittal Threshold and Indirect Landholders

Dear :

Our records indicate that you hold (own or lease) westwide between [insert as appropriate for your district either: 40 to 80 acres or 40 to 240 acres] and you only hold land indirectly. In the past you have been submitting prior law Reclamation Reform Act of 1982 (RRA) forms. To date we have not received your prior law form for the 1997 water year. We are concerned that with the changes to some of the RRA forms submittal thresholds you may be confused as to whether you still have to submit a form.

The RRA forms submittal threshold for prior law recipients remains at 40 acres. If you want to remain subject to the prior law provisions, then you must submit a prior law form to this office as soon as possible. Since you received irrigation water deliveries during 1997, the late submittal of your RRA forms will result in an assessment of the Bureau of Reclamation's (Reclamation's) administrative fee (\$260).

If you do not submit a prior law form, you will be permanently subject to the discretionary provisions. More specifically, Reclamation has determined that prior law recipients who meet the criteria listed below will be considered to have automatically conformed to the discretionary provisions if they do not submit a prior law form:

1. The landholder only holds land indirectly in discretionary provisions districts; and
2. The landholder's westwide landholding is greater than 40 acres, but does not exceed the RRA forms submittal threshold for qualified recipients applicable to this district.

The only exception is if you only hold land indirectly westwide and neither the acres attributed to you nor the percentage of the entity, trust, or estate attributed to you has changed since you last submitted a standard RRA form, and all other information previously submitted on your standard RRA form remains the same. In such cases, you must contact this office immediately to notify us of your intention to remain subject to the prior law provisions.

If you represent an entity that benefits more than 25 natural persons, under the discretionary provisions your entity would be a limited recipient for which the applicable RRA forms submittal threshold is 40 acres. If your entity does benefit more than 25 natural persons and you want to conform to the discretionary provisions, either an irrevocable election must be submitted, or if your entity only holds land indirectly westwide in discretionary provisions districts, a Form 7-2181 (Certification of Entity's Landholding) may be submitted to conform to the discretionary provisions. That form must be submitted annually prior to receiving Reclamation irrigation water, unless as an indirect landholder you have not experienced a landholding change.

Your cooperation in this matter will be appreciated. If you believe you do not meet any of the criteria provided in this letter but would like to conform to the discretionary provisions, please contact this office.

Sincerely,