

## Bureau of Reclamation, Interior

## § 426.15

(2) The following will be applicable in situations that meet the criteria specified under paragraph (e)(1) of this section:

(i) Reclamation will charge a rate for irrigation water delivered to such land equal to the rate paid by the former owner, except Reclamation will charge the full-cost rate if:

(A) The land becomes subject to full-cost pricing through leasing; or

(B) If the involuntarily acquired land is eligible to receive irrigation water only because § 426.12(g)(3) applies and the deed covenant has not expired;

(ii) The new landowner may not place such land under a recordable contract;

(iii) The new landowner may request that Reclamation remove a deed covenant as provided in § 426.12(i)(4), and may sell such land at any time without price approval and without the deed covenant. However, the deed covenant will not be removed and the terms of the deed covenant will be fully applied if the new landowner is the landowner who sold the land in question from excess status, except for:

(A) Financial institutions; or

(B) Landowners for which § 426.12(g)(1) or (2) apply; and

(iv) Such land will become ineligible to receive irrigation water 5 years after it was acquired and will remain ineligible until sold to an eligible buyer or redesignated as provided for in paragraph (f) of this section.

(f) *Redesignation of excess land to non-excess.* Landholders who designate involuntarily acquired land as excess as provided for in paragraphs (d)(1) and (e)(1) of this section and want to redesignate the land as nonexcess, must utilize the redesignation process specified under § 426.12(b)(2).

(1) However, such redesignations will not be approved if the water rate specified in paragraphs (d)(1)(ii) or (e)(2)(i) of this section is less than what would have been charged for water deliveries to the land in question if the landholder that involuntarily acquired the land had originally designated the land as nonexcess.

(2) Such landholders may utilize the redesignation process, if they remit to Reclamation the difference between the rate paid and the rate that would have been paid, if the land had been

designated as nonexcess when involuntarily acquired, for all irrigation water delivered to the land in question while the land was designated as excess.

(g) *Effect of involuntarily acquiring land subject to the discretionary provisions.* A landowner does not automatically become subject to the discretionary provisions if the landowner acquires irrigation land involuntarily which was formerly subject to the discretionary provisions. However, a landholder that is subject to the prior law provisions will become subject to the discretionary provisions upon involuntarily acquiring land if:

(1) The land is located in a district that is subject to the discretionary provisions;

(2) The landholder in question will be the direct landowner of the land; and

(3) The landholder in question declares the land as nonexcess.

(h) *Land acquired by inheritance or devise.* If a landowner receives irrigation land through inheritance or devise, the 5-year eligibility period for receiving irrigation water on the newly acquired land per paragraphs (c)(3) and (e) of this section begins on the date of the previous landowner's death.

### § 426.15 Commingling.

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

*Commingled water* means irrigation water and nonproject water that use the same facilities.

(b) *Application of Federal reclamation law and these regulations to prior commingling provisions in contracts.* If a district entered into a contract with Reclamation prior to October 1, 1981, and that contract has provisions addressing commingled water situations, those provisions stay in effect for the term of that contract and any renewals of it.

(c) *Establishment of new commingling provision in contracts.* New, amended, or renewed contracts may provide that irrigation water can be commingled with nonproject water as follows:

(1) If the facilities used for the commingling of irrigation water and nonproject water are constructed without funds made available pursuant to Federal reclamation law, the provisions of

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Federal reclamation law and these regulations will apply only to the landholders who receive irrigation water, provided:

(i) That the water requirements for eligible lands can be established; and

(ii) The quantity of irrigation water to be used is less than or equal to the quantity necessary to irrigate eligible lands.

(2) If the facilities used for commingling irrigation water and nonproject water are funded with monies made available pursuant to Federal reclamation law, landholders who receive nonproject water will be subject to Federal reclamation law and these regulations unless:

(i) The district collects and pays to the United States an incremental fee which reasonably reflects an appropriate share of the cost to the Federal Government, including interest, of storing or delivering the nonproject water; and

(ii) The fee will be established by Reclamation and will be in addition to the district's obligation to pay for capital, operation, maintenance, and replacement costs associated with the facilities required to provide the service.

(3) If paragraphs (c)(2) (i) and (ii) of this section are met, the provisions of Federal reclamation law and these regulations will be applicable to only those landholders who receive irrigation water. Accordingly, the provisions of Federal reclamation law and these regulations will not be applicable to landholders who receive nonproject water delivered through facilities funded with monies made available pursuant to Federal reclamation law if those paragraphs are met.

(d) *When Federal reclamation law and these regulations do not apply.* Federal reclamation law and these regulations do not apply to landholders receiving irrigation water from federally financed facilities if the irrigation water is acquired by an exchange and that exchange results in no material benefit to the recipient of the irrigation water.

**§ 426.16 Exemptions and exclusions.**

(a) *Army Corps of Engineers (Corps) projects.* (1) If Reclamation determines that land receives its agricultural water from a Corps project, Reclama-

tion will exempt that land from specific provisions of Federal reclamation law, including the RRA, unless:

(i) Federal law explicitly designates, integrates, or incorporates that land into a Federal Reclamation project; or

(ii) Reclamation provides project works for the control or conveyance of the agricultural water supply from the Corps project to that land.

(2) Upon such determination, Reclamation will:

(i) Notify the district of its exemption status;

(ii) Require the district's agricultural water users to continue, under contracts made with Reclamation, to repay their share of construction, operation and maintenance, and contract administration costs of the Corps project allocated to conservation or irrigation storage; and

(iii) At the request of the district delete provisions of the district's repayment or water service contract that imposes acreage limitation for those lands served by Corps projects.

(b) *Repayment of construction obligations.* The acreage limitation provisions do not apply to land in a district after the district has repaid, in accordance with the district's contract with Reclamation, all obligated construction costs for project facilities.

(1) Payments by periodic installments over the contract repayment term, as well as lump-sum and accelerated payments, if allowed by the district's contract with Reclamation, will qualify the district to become exempt.

(2) If a district has a contract with the United States providing for individual landowner repayment of construction charges allocated to land, and the landowner has repaid all obligated construction costs allocated for that landowner's land, that landowner will become exempt from the acreage limitation provisions.

(3) Upon payout Reclamation will:

(i) Notify the district, and individual landowner in cases of individual landowner payout, of the exemption from the acreage limitation provisions;

(ii) Notify the district or individual landowner that the exemption does not relieve the district or individual landowner of the obligation to continue to