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43 CFR, Subtitle B, Ch. I (10-1-06 Edition)

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

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pay, on an annual basis, O&M costs applicable to the district or landowner;

(iii) Upon request by the owner of land for which repayment has occurred, provide a certificate from Reclamation acknowledging that the land is free of the acreage limitation provisions of Federal reclamation law;

(iv) Except as provided for in § 426.19(e), no longer apply the certification and reporting requirements to the district, if the entire district is exempt, or to exempt landowners as specified in paragraph (b)(2) of this section; and

(v) Consider on a case-by-case basis continuation of the exemption if additional construction funds for the project are requested.

(c) *Rehabilitation and Betterment loans.* If Reclamation makes a Rehabilitation and Betterment loan (pursuant to the Rehabilitation and Betterment Act of October 7, 1949, as amended, 43 U.S.C. 504) to a project that was authorized under Federal reclamation law prior to the submittal of the loan request, by or for the district, Reclamation:

(1) Considers the loan as a loan for maintenance, including replacements that cannot be financed currently;

(2) Does not consider the loan in determining whether the district has discharged its obligation to repay the construction cost of project facilities used to make irrigation water available for delivery to land in the district; and

(3) Will not allow such a loan to serve as the basis for reinstating acreage limitation provisions in a district that has completed payment of its construction obligation, nor serve as the basis for increasing the construction obligation of the district and thereby extending the period during which acreage limitation provisions will apply.

(d) *Temporary supplies of water.* If Reclamation announces availability of temporary supplies of water resulting from an unusually large water supply, not otherwise storable for project purposes, or from infrequent and otherwise unmanaged floodflows of short duration a district may request that Reclamation make such supplies available to excess land. However, such water deliveries must not have an adverse effect on other authorized project pur-

poses. Upon approval of the district's request, Reclamation will notify the requesting district of the availability of the temporary supply of water under the following conditions:

(1) The contract for the temporary supply of water will be for 1 year or less in accordance with prior policies and practices;

(2) The acreage limitation provisions will not be applicable to the temporary supply of water;

(3) An applicable price for the water, if any, will be established; and

(4) Such other conditions as Reclamation may include.

(e) *Isolated tracts.* If a landowner requests that Reclamation determine that portions of his or her owned land are isolated tracts that can be farmed economically only if included in a farming operation that already exceeds the landowners ownership entitlement, and Reclamation makes such a determination, then Reclamation:

(1) Will exempt such land from the ownership limitations of Federal reclamation law; and

(2) Will assess the full-cost rate for any irrigation water delivered to the isolated tract that exceeds the landowner's nonfull-cost entitlement.

(f) *Indian trust or restricted lands.* (1) Indian trust or restricted lands are excluded from application of the acreage limitation provisions.

(2) Indian tribes and tribal entities operating on Indian trust or restricted lands are excluded from application of the water conservation provisions.

§ 426.17 Small reclamation projects.

(a) *Effect of the RRA on loan contracts made under the Small Reclamation Projects Act.* (1) If a district entered into a loan contract under the Small Reclamation Projects Act of 1956 (43 U.S.C. 422) (SRPA) on or after October 12, 1982, the contract is subject to the provisions of the SRPA, as amended by Section 223 of the RRA and as amended by Title III of Pub. L. 99-546.

(2) If a district entered into an SRPA loan contract prior to October 12, 1982, and the district:

(i) Did not amend the loan contract to conform to the SRPA, as amended