

begin. Such notice should give the project name and location, the type of improvement planned, the date construction is scheduled to start, and the name and address of the office where more information can be obtained. The notice should be posted or published as determined by the Superintendent.

**§ 170.14 Notice of public hearing.**

Notice will be given to inform the local public of the scheduled hearing. The notice should give the date, time, and place of the scheduled hearing; the project location; the proposed work to be done; the place where the preliminary plans may be reviewed; and the place where more information on the project can be obtained. The notice should be posted or published as determined by the Superintendent. Notice should be given at least 15 days before the scheduled date of the public hearing and again, at least 5 days before the hearing date.

**§ 170.15 Record of hearing proceedings.**

A record of the hearing shall be made. The record shall include written statements submitted at the hearing or within 5 days following the hearing.

**§ 170.16 Conducting the public hearing.**

(a) The Superintendent will appoint a tribal or Bureau of Indian Affairs official to preside at the public hearing and to maintain a medium for free and open discussion designed to reach early and amicable resolution of issues.

(b) The Superintendent shall be responsible for maintaining a record of the hearing and shall make arrangements for appropriate officials to be present at the hearing to be responsive to questions which may arise.

(c) The purpose of the hearing and an agenda of items to be discussed should be presented at the beginning of the hearing. It should be made clear at the hearing that the tribal chairman or his designated roads committee are the officials responsible for setting reservation road priorities and considering the merits of one road project over another. Sufficient maps and project plans will be available at the hearing for public review. The hearing audience

should be informed of the Bureau's road construction and right-of-way acquisition procedures on reservations. If the project will require relocating residences or businesses, information on relocation services and authorized payments will be given.

**§ 170.17 Written statements.**

Written statements may be submitted as well as oral statements made at the public hearing. Written statements may also be submitted during the 5 days following the hearing.

**§ 170.18 Hearing statement.**

If significant issues develop at the public hearing which remain unresolved, the Superintendent will issue a hearing statement summarizing the results of the public hearing and his determination as to the further action to be taken in connection with the proposed project. The hearing statement shall be issued within 20 days of the date of the public hearing. The hearing statement will be posted at the place where the hearing was held, and shall be sent to interested persons upon request. The hearing statement will outline procedures whereby the determination may be appealed.

**§ 170.19 Appeals.**

Any determination concerning the proposed road project may be appealed in accordance with the procedures set forth in part 2 of this title.

**PART 171—OPERATION AND MAINTENANCE**

Sec.

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## § 171.1

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- 171.16 Excess water.
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AUTHORITY: Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385. Sec. 171.4(b) also issued under 34 Stat. 1024, 38 Stat. 583, and 68 Stat. 1026. Secs. 171.4(a), 171.4(c), 171.16(b), and 171.17(f) also issued under sec. 11, 39 Stat. 142.

SOURCE: 42 FR 30362, June 14, 1977, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 171.1 Administration.

(a) The Agency Superintendent, Project Engineer or such official as authorized by the Area Director is the Officer-in-Charge of those Indian Irrigation Projects or units operated or subject to administration by the Bureau of Indian Affairs, whether or not each project or unit is specifically mentioned in this part. The Officer-in-Charge is fully authorized to administer, carry out, and enforce these regulations either directly or through employees designated by him. Such enforcement includes the refusal to deliver water.

(b) The Officer-in-Charge is authorized to apply to irrigation subsistence units or garden tracts only those regulations in this part which in his judgment would be applicable in view of the size of the units and the circumstances under which they are operated.

(c) The Officer-in-Charge is responsible for performing such work and taking any action which in his judgment is necessary for the proper operation, maintenance and administration of the irrigation project or unit. In making such judgments, the Officer-in-Charge consults with water users and their representatives, and with tribal council representatives, and seeks advice on matters of program priorities and operational policies. The Officer-in-Charge will be guided by the basic requirement that the operation will be so administered as to provide the maximum possible benefits from the project's or unit's constructed facilities. The operations will insure safe, economical, beneficial, and equitable

use of the water supply and optimum water conservation.

(d) The Secretary of the Interior reserves the right to exercise at any time all rights, powers, and privileges given him by law, and contracts with irrigation districts within Indian Irrigation Projects. Close cooperation between the Indian tribal councils, the project water users and the Officer-in-Charge is necessary and will be to the advantage of the entire project.

(e) The Area Director, or his delegated representative, is authorized to fix as well as to announce, by notice published in the FEDERAL REGISTER, the annual operation and maintenance assessment rates for the irrigation projects or units within his area of responsibility. In addition to the rates, the notices will include such information as is pertinent to the assessment, payment, and collections of the charges including penalties and duty of water.

(f) The rates will be based on a carefully prepared estimate of the cost of the normal operation and maintenance of the project. Normal operation and maintenance is defined for this purpose as the average per acre cost of all activities involved in delivering irrigation water and maintaining the facilities.

(g) San Carlos Irrigation Project, Arizona. The administration, rights obligations and responsibilities for the operation and maintenance of this project are set forth in the Repayment Contract dated June 8, 1931 as supplemented or amended, between the San Carlos Irrigation and Drainage District and the United States as authorized by the Act of June 7, 1924 (43 Stat. 475-476) and the Secretarial Order of June 15, 1938, title "Order Defining Joint, District and Indian Works of the San Carlos Federal Irrigation Project: Turning over Operation and Maintenance of District Works to the San Carlos Irrigation and Drainage District." The regulations appearing in this subchapter apply only to the Indian lands works and in the San Carlos Irrigation Project unless specified otherwise, and should not be interpreted or construed

as amending or modifying the District Contract or the Secretarial Order.

[42 FR 30362, June 14, 1977, as amended at 43 FR 8799, Mar. 3, 1978. Redesignated at 47 FR 13327, Mar. 30, 1982]

**§ 171.2 Irrigation season.**

The irrigation season, when water shall be available for irrigation, will be established by the Officer-in-Charge.

**§ 171.3 Domestic and stock water.**

Domestic or stock water will not be carried in the project's or unit's irrigation system when in the judgment of the Officer-in-Charge such practice will:

- (a) Interfere with the operation and maintenance of the system.
- (b) Be detrimental to or endanger the canal, lateral system and/or related structures.
- (c) Adversely affect the stored water supply for irrigation.

**§ 171.4 Farm units.**

For the purpose of delivery of water and the administration of the project or unit, a farm unit is defined as follows:

(a) For the Blackfeet, Crow, Fort Belknap, and Fort Peck Irrigation Projects, Montana, and the Colville Irrigation Project, Washington.

(1) Forty (40) or more contiguous acres of land in single ownership with the exception that those original Indian allotments containing less than 40 irrigable acres of the same subdivision of the public land survey shall also be considered farm units.

(2) Forty (40) or more contiguous acres of Indian-owned land under lease to one party.

(3) Forty (40) contiguous acres in multiple ownership within the same forty (40) acre subdivision of the public land survey.

(b) For the Fort Hall Irrigation Project, Idaho:

(1) Twenty (20) or more contiguous acres of land in single ownership covered by one or more water rights contracts.

(2) Twenty (20) or more contiguous acres of Indian-owned land under lease to one party or being farmed by one Indian.

(3) Ten (10) or more contiguous acres of subdivided land in multiple ownership.

(c) For the Flathead Irrigation Project, Montana: A contiguous area of land in single ownership containing not less than one forty (40) acre subdivision of the public land survey, or the original allotment as established by the Secretary of the Interior and as recorded or amended in the records of the Bureau of Land Management. In the case of leased land, it is defined as a contiguous area under a single lease. For Bureau of Land Management regulations pertaining to Flathead Project, see 43 CFR 2211.8, Flathead Irrigation District, Montana.

(d) For the Wapato Irrigation Project (all units), Washington:

(1) Eighty (80) or more contiguous acres in single ownership at the time of the establishment of the delivery system, or when subsequent changes of ownership result in larger tracts under single ownership and the owner requests that this land be treated as a farm unit, whether covered by one or more water right contracts.

(2) Eighty (80) or more contiguous acres of Indian-owned land under lease to one person or being farmed by one Indian.

(3) Eighty (80) contiguous acres in multiple ownership: *Provided*, That such acreage shall be within the same eight (80) acre subdivision of the U.S. public land survey.

(4) In all cases where an original Indian allotment consisted of less than eighty (80) contiguous acres, such original Indian allotment, whether (i) under single or multiple ownership and/or covered by one or more water right contracts, (ii) under lease to the same or different lessees, or (iii) farmed by one or more Indians, shall be treated as a farm unit.

(e) For all other projects or units: An original allotment, homestead, an assignment of unallotted tribal lands, or a contiguous, development lease area.

**§ 171.5 Delivery points.**

(a) Project operators will deliver irrigation water to one point on the boundary of each farm unit within the irrigation project. The Officer-in-

Charge may establish additional delivery points when in his judgment it is impractical for the landowner to irrigate his farm unit from the one delivery point for such reasons as topography, isolation, or cost. When irrigation water is supplied from wells, the delivery point may be established at the well head. Where portions of a farm unit lie at an elevation too high to be watered by gravity flow from the normal elevation of water in the project distribution system, no change will be made in the water level elevation of the project system so as to place water on such land. Where such land has been included in the project, the landowner may install and operate pumping equipment at his own expense to raise the water to such included land from a point designated by the Officer-in-Charge and in accordance with his specifications. If the landowner so installs pumping equipment and pays the construction and maintenance charges, the project will deliver the same amount of water per acre for this land as the project delivers at the delivery point for other lands on the project.

(b) If a farm unit for which a project delivery point has been established is subsequently subdivided into smaller units by the owner or owners of the farm unit, the following provisions apply:

(1) A plat or map of the subdivision must be recorded and a copy filed with the Officer-in-Charge. The plat or map must show how the irrigation water is to be delivered to the irrigable acres in the subdivision.

(2) No further extensions or alterations in the project's system will be provided officials to serve the subdivided units, except as agreed to by the Officer-in-Charge and at the landowner's expense.

(3) Any additional construction necessary to deliver irrigation water to these units must be mutually worked out between the original owner of the farm units and the new owners of the subdivided unit at their expense.

(4) The project will not bear any responsibility for the operation and maintenance of such internal systems, or the division of irrigation water after it is delivered to the established project delivery points.

(c) Where project points of delivery have been established for farm units which are to be combined under lease or ownership into a singular farm unit to be irrigated by means of a sprinkler of more efficient system, the Officer-in-Charge may approve the removal or relocation of project delivery facilities. Such reorganization shall be at the expense of the landowners or lessees in conformance with established project standards and a time schedule which will not disrupt water delivery service to others on the system.

(d) Where a reorganization has been approved and established as in § 171.5(c), any reversion requiring reestablishment of removed or relocated project delivery facilities must be approved by the Officer-in-Charge and conform to established project standards and time schedules which will not disrupt water delivery service to other water users on the system. All expenses incurred shall be the responsibility of the landowners or lessees.

**§ 171.6 Distribution and apportionment of water.**

(a) The Officer-in-Charge will establish the method of and procedures for the delivery and distribution of the available irrigation water supply. He will endeavor to apportion the water at all times on a fair and equitable basis between all project water users entitled to the receipt of irrigation water.

(b) Any person who interferes with the flow of water in or from the project's storage, carriage or lateral systems or opens or closes or in any other way changes the position of a headgate or any other water control structure without specific authority from the Officer-in-Charge or his designated representative will be subject to prosecution. Cutting a canal or lateral bank for the purpose of diverting water or placing an obstruction in such facilities in order to change the flow of water through a headgate will be considered a violation of this section.

(c) San Carlos Irrigation Project, Arizona—(1) The portion of the project's common water supply available for the Indian lands will be distributed subject to beneficial use in equal per acre amounts to each acre under irrigation and cultivation, insofar as possible.

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(2) All water users (Indian and non-Indian) will be notified at the beginning of the irrigation season of the amount of stored and pumped water available. An apportionment of this water will be recommended by the Officer-in-Charge of the irrigation project to the approval of the Area Director. Subsequent apportionments may be made if and when additional water is available.

(3) If it is determined by the Officer-in-Charge that there is water in excess of demands and available storage facilities, he will promptly notify all water users that such water is available. This water shall not be charged against the water apportionment of the land on which it is used.

(d) Uintah Irrigation Project, Utah—  
 (1) Water will be delivered to all lands under the Lakefork, Uintah and Whiterocks Rivers in accordance with the provisions of the decree of the Federal Court in the cases of the "United States v. Dry Gulch Irrigation Company, et al.," and the "United States v. Cedarview Irrigation Company, et al.," which decrees fix the maximum duty of three (3) acre-feet per acre for the period from March 1 to November 1 of each year. The rate of delivery will be substantially in accordance with the following schedule except that it may be modified by the Officer-in-Charge at such times as changed climatic conditions and the water supply indicate that such modification would be beneficial to the project.

Period	Acres per second-foot	Acre feet per acre
Mar. 1 to 18 .....	None	None
Mar. 19 to 31 .....	1,000	0.023
Apr. 1 to 10 .....	800	.025
Apr. 11 to 20 .....	400	.050
Apr. 21 to 30 .....	200	.099
May 1 to 10 .....	180	.110
May 11 to 20 .....	135	.147
May 21 to 31 .....	95	.229
June 1 to 20 .....	70	.566
June 21 to 31 .....	85	.233
July 1 to 10 .....	90	.220
July 11 to 20 .....	95	.208
July 21 to 31 .....	100	.218
Aug. 1 to 10 .....	133	.147
Aug. 11 to 20 .....	155	.128
Aug. 21 to 31 .....	175	.124
Sept. 1 to 10 .....	195	.101
Sept. 11 to 30 .....	220	.180
Oct. 1 to 10 .....	220	.090
Oct. 11 to 20 .....	300	.066
Oct. 21 to 31 .....	600	.036

Period	Acres per second-foot	Acre feet per acre
Total .....	.....	3,000

(2) The rotation method will be used in distributing the water diverted from the Lakefork, Uintah and Whiterocks Rivers. Rotation schedules will be prepared under direction of the Officer-in-Charge and will be put into effect each season as soon as it is determined what acreage is to be irrigated. A written copy of the water schedule will be delivered to each water user showing the time that his turn starts on each tract and the duration of each turn.

(3) In the event a rotation system is adopted for lands receiving water from the Duchesne River, the same procedure will be used as for the lands under the Lakefork, Uintah and Whiterocks Rivers. The Officer-in-Charge will advise all water users sufficiently in advance of the time the rotation schedule will go into effect.

(e) Wapato Irrigation Project, Washington—  
 (1) To protect adjoining lands against seepage and erosion by the excess use of water on the bench lands of the Wapato-Satus Unit, the maximum delivery of water to the bench lands shall not exceed 4.5 acre-feet per acre per season.

(2) The rate of delivery to lands of the Satus 2 and Satus 3 subunits shall not exceed one (1) cubic foot per second for each 50 irrigated acres.

(3) The measurement and distribution of water for the lands on the Ahtanum Unit shall take place at the mutually advantageous points on the Ahtanum Main or Lower Canals. The conveyance of the water from these points of distribution to the irrigable acres of the farm units shall be entirely by and at the expense of the individual operators of the farms. However, when several such users join together to use one single channel for the conveyance of their water to the points of final diversion, they shall be jointly responsible for the channel of conveyance and the apportionment of the water to their respective farm units.

**§ 171.7 Application for and record of deliveries of irrigation water.**

(a) Except when rotation schedules have been established and are being

followed, water users in requesting the delivery of water will so notify the Officer-in-Charge or his designated representative by such means and with such advance notice as may be required by system operations and as established by the Officer-in-Charge. The request shall indicate the time the water is to be delivered, the period of time it will be used, the rate of flow desired, and where the water will be used.

(b) It is the responsibility of the ditchriders during the irrigation season to maintain records showing the beginning and ending time of each water delivery, the amount of such delivery, and the estimated acreage irrigated. Such records are to be filed at the irrigation project office at the end of the season.

(c) Water users on the Indian portion of the San Carlos Indian Irrigation Project will submit their requests for water to the Superintendent, Pima Agency.

**§ 171.8 Surface drainage.**

(a) The water users will be responsible for all waste water resulting from their irrigation practices and for its conveyance to project canals, drains, wasteways or natural drainage channels. Any expenses involved in doing this will be borne by the water user. Waste water may be emptied into project constructed ditches only at points designated by and in a manner approved by the Officer-in-Charge. In those situations involving two or more landowners and/or water users, it is their responsibility to work out a satisfactory arrangement among themselves for the conveyance of their waste water to project ditches or natural drainage channels.

(b) Waste water shall not be permitted to flow upon or collect in road or project rights-of-way. Failure to comply with this requirement could result in the Officer-in-Charge refusing the further delivery of water.

**§ 171.9 Structures.**

(a) All structures, including bridges or other crossings, which are necessary as a part of the project's irrigation and drainage system will be installed and maintained by the project.

(b) During the construction of a new irrigation project or the extension of an existing project, bridges, crossings or other structures may be built by the Officer-in-Charge for private use where justified by severance agreements or other practical considerations. Title to these structures may or may not be vested in the United States depending upon the agreement with the landowner. Structures built partially or wholly in lieu of severance damages may be required to be maintained by the landowner even though title remains with the United States.

(c) After a project is completed, additional structures crossing or encroaching on project canal, lateral or drain rights-of-way which are needed for private use may be constructed privately in accordance with plans approved by the Officer-in-Charge or by the project. In either case the cost of installing such structures will not be at the project's expense. Such structures will be constructed and maintained under revocable permits on proper forms issued by the Officer-in-Charge of the irrigation project to the party or parties desiring such structures.

(d) If it is determined that a crossing constructed for and by the project is no longer needed for operation and maintenance of the system. It should be removed. However, if a private party, corporation, State, or other Federal entity desires to use the crossing, it may be transferred to such entity by the Officer-in-Charge under a permit which relieves the United States from any further liability or responsibility for the crossing, including its maintenance. The following provisions pertain:

(1) Permits issued in such situations shall stipulate what is granted, and accepted by the permittee on the condition that the repair and maintenance of the structure shall be the duty of the permittee or his successors without cost to the irrigation project.

(2) The permit shall further provide that if any such structure is not regularly used for a period of one year or is not properly maintained, the Officer-in-Charge may notify the person responsible for the structure's maintenance either to remove it or to correct

any unsafe conditions within a period of 90 days.

(3) If the structure is not removed or the unsafe condition corrected within the time allowed, it may be removed by the Officer-in-Charge, the cost of such removal to be paid by the party responsible for the maintenance of the structure.

**§ 171.10 Fencing.**

Fences across project rights-of-way will not be constructed without the approval of the Officer-in-Charge. The granting of such approval shall be dependent upon proper installation so as not interfere with the flow of water or the passage of project operators and equipment. In case an unauthorized fence is installed, the landowner shall be notified to remove it. If it is not removed within a reasonable period of time or satisfactory arrangements made with the Officer-in-Charge, it may be removed by project personnel at the landowner's expense.

**§ 171.11 Obstructions.**

No obstructions of any kind including service or farm ditches, will be permitted upon project rights-of-way. Due notice will be given to an operator or landowner to remove any obstructions. If not removed within a reasonable period of time after notice is given, an obstruction will be removed by project forces at the expense of the operator or landowner.

**§ 171.12 Rights-of-way.**

(a) Rights-of-way reserved for the project's irrigation system are of sufficient width to permit passage and use of equipment necessary for construction and proper operation and maintenance of the project's canals, laterals, and other irrigation works.

(b) In the construction of new irrigation projects or extension of existing projects, rights-of-way which have not been reserved across Indian lands will be obtained in accordance with part 169 of this chapter.

**§ 171.13 Crops and statistical reports.**

An annual project crops and statistical report shall be prepared by the Officer-in-Charge. The landowner or farm

unit operator shall cooperate in furnishing such information as requested.

**§ 171.14 Carriage agreements and water right applications.**

(a) *Pine River Indian Irrigation Project, Colorado.* If the Area Director determines that there is sufficient capacity in the project's carriage and/or distribution system in excess of that required by the project he is authorized to enter into carriage agreements with non-project water users to convey non-project water through project facilities for delivery to non-project lands.

(b) *Uintah Indian Irrigation Project, Utah.* If the Superintendent determines that there is sufficient capacity in the irrigation project's carriage and/or distribution system in excess of that required by the project, he is authorized to enter into carriage agreements with non-project water users to convey non-project lands. The Superintendent is also authorized to enter into carriage agreements with private irrigation or ditch companies for the conveyance of project water through non-project facilities for delivery to isolated Indian lands that cannot be served from project facilities.

(c) *Wapato Irrigation Project, Washington.* The Project Engineer is authorized to execute water right applications submitted by landowners in the project on behalf of the Secretary of the Interior. Such applications should be submitted on the approved Departmental form.

**§ 171.15 Leaching water.**

(a) The Officer-in-Charge is authorized to furnish irrigation water for leaching purposes without the payment of operation and maintenance charges to any Indian trust land, or patent in fee land covered by a repayment contract, as an aid to improve land within the project that is impregnated by alkali or in the development of new project land.

(b) Delivery of such water will depend upon the availability of water and the preparation of a definite plan of operation by the land operator satisfactory to the Officer-in-Charge. In addition, the operator shall agree to meet such

reasonable leaching and cropping activities as shall be prescribed by the Officer-in-Charge.

(c) If prompt and beneficial use of the leaching water is not made by or before July 1 of the season for which it is granted, the Officer-in-Charge may declare the leaching permit forfeited. The normal water charges will be considered as assessed and any delinquency enforced as though no leaching privilege had been granted.

(d) In the case of patent in fee lands no water will be delivered for leaching purposes until the annual construction costs, when assessed, are paid.

**§ 171.16 Excess water.**

(a) *General.* On those irrigation projects where a water duty or water quota has been established each water user will be notified when his quota of water, as covered by the basic assessment and as announced in the public notice, has been delivered. In such cases, additional irrigation water, if available, may be delivered providing the water user so requests it and agrees to pay for the excess water in accordance with the excess water provisions as set forth in the public notice.

(b) *Flathead Indian Irrigation Project, Montana.* (1) After an agreement has been reached by the Commissioners of the irrigation district and the Officer-in-Charge as to the duty of water on individual tracts where water users claim excess requirements above the duty of water established for the project on account of porous or gravelly soils, the Officer-in-Charge is authorized to increase the quantity of water to be delivered to such tracts.

(2) The amount of water delivered in such cases will not exceed four (4) acre feet per assessable acre except in the Moiese Division where the amount shall not exceed six (6) acre feet providing there is sufficient water available in Lower Crow Reservoir without having to draw on the water supply for the Mission Valley Division.

(3) The charge for such water shall be at the same general rate as established for project land not having such a porous or gravelly condition.

**§ 171.17 Delivery of water.**

(a) Irrigation water will not be delivered until the annual operation and maintenance assessments are paid in accordance with the established annual rate schedule as set forth in the public notice issued by the Area Director. Under the following special circumstances, this rule may be waived and water delivered to:

(1) Trust and restricted lands farmed by the Indian owner when the Superintendent has certified that the operator is financially unable to pay the assessment and he has made arrangements to pay such assessments from the proceeds received from the sale of crops or from any other source of income. In such cases the unpaid charges will stand as a first lien against the land until paid but without penalty on account of delinquency.

(2) Non-Indian lands on which there is an approved deferred payment contract executed under the provisions of the Act of June 22, 1936 (49 Stat, 1803).

(3) Land on which an adjustment or cancellation of unpaid assessments has been recommended and final action is pending.

(b) Water will not be delivered to Indian trust or restricted land that are under lease approved by the Secretary of the Interior or his authorized representative acting under delegated authority until the lessee has paid the annual assessed operation and maintenance charges.

(c) No water will be delivered to Indian trust land under a lease that has been negotiated by an Indian owner until the owner has paid the annual assessed operation and maintenance charges or has made satisfactory arrangements for their payment with the Superintendent who has so notified the Officer-in-Charge.

(d) Water will not be delivered to any lands within an irrigation district which has executed a repayment contract with the United States until all irrigation charges, as assessed, are paid in accordance with the terms and conditions of the contracts and the public notice as issued by the Area Director.

(e) All irrigation districts may make such rules and regulations as they may find necessary in regard to the delivery of the water to water users within the

district who are delinquent in their payments to the district of assessed irrigation charges. Such rules and regulations will be adhered to by the Officer-in-Charge when it appears to be in the best interests of the United States and the district to do so.

(f) Water will not be delivered to lands that are subject to construction assessments not paid in accordance with part 134 of this chapter.

(g) Flathead Indian Irrigation Project, Montana—(1) *Secretarial Water Right holders.* (i) For all acres recognized by the Secretary of the Interior as entitled to a "Secretarial Water Right", the Officer-in-Charge is authorized to carry such water in the project's carriage and distribution system and deliver it: *Providing,* That landowner holding such a right requests it and his land is so located that the water can be delivered without undue expense to the project. Before this service is provided, the landowner must also agree to pay a minimum of fifty (50) percent of up to a maximum of one hundred (100) percent of the annual operation and maintenance charges as assessed against project lands in the same general area as his. Under such agreement the project will not be obligated to deliver more than that allowed for each acre of land under the Secretary's private water right findings less a proportionate share of the project's normal losses in transporting the water from the point of entry into the project's system to the point of delivery.

(ii) "Secretarial Water rights" are defined as those rights allocated to Indian allotments by the Assistant Secretary of the Interior by his approval on November 25, 1921, of the findings of the Commission appointed by him to investigate the "private rights" on the Flathead Indian Reservation. Authority: Sec. 9, Act of May 29, 1908 (35 Stat. 449).

(2) *Pump lands—Flathead Irrigation Project.* (i) The Officer-in-Charge is authorized to deliver irrigation water to lands (pump lands) within a project farm unit that are too high to be served from the project's gravity flow system: *Providing,* The holder of legal title to the lands so requests it in writing and agrees to have such land des-

ignated by the Secretary of the Interior or his authorized representative as a part of the irrigation project. Land so designated shall be subject to the assessment and payment of the pro rata per acre share of the project's construction, operation and maintenance costs the same as all other lands within the irrigation project in the same general area. In addition, such "pump lands" shall be obligated to pay an additional assessment on an annual basis as determined by the Officer-in-Charge to defray the cost of pumping the water from the Flathead River for those lands in the Mission Valley Division, and from the Little Bitterroot Lake for lands in the Camas Division.

(ii) At the time he submits the request, the landowner must also agree in writing to include the "pump lands" in an existing irrigation district or a district that may be subsequently formed pursuant to the laws of the State of Montana. This will not apply to Indian trust or restricted lands as such lands cannot be included within an irrigation district.

(iii) A request for the inclusion of "pump lands" into the project will not be considered until the Officer-in-Charge determines that there is sufficient project water available to serve these lands without adversely affecting in any way the water entitlement of the designated project lands for which the project was designed and constructed.

(iv) All costs incidental to the pumping and distribution of the delivered water from the project farm unit delivery point to the "pump lands" shall be borne by the landowner.

#### § 171.18 Service or farm ditches.

The service or farm ditches into which water is delivered from project canals or laterals must have ample capacity and be maintained by the water user in proper condition to receive water and convey it to the place of use with a minimum of loss. Water delivery will be refused to such ditches not satisfactorily maintained. Project irrigation water shall be put to beneficial use.

**§ 171.19 Operation and maintenance assessments.**

(a) Operation and maintenance assessments will be levied against the acreage within each allotment, farm unit or tribal unit that is designated as assessable and to which irrigation water can be delivered by the project operators from the constructed works whether water is requested or not, unless specified otherwise in this section.

(1) *Colville Indian Irrigation Project, Washington.* Operation and maintenance assessments will be levied against all patent in fee and Indian trust lands to which water can be delivered for irrigation and for which an application for water has been made by the water user and approved by the Superintendent.

(2) *Wapato Irrigation Project-Toppenish-Simcoe Unit, Washington.* Operation and maintenance assessments will be levied against all lands which can be irrigated from the constructed works for which application for water is made annually and approved by the Project Engineer.

(b) Subdivided farm units—(1) *General.* (i) Where farm units, as defined in § 171.4 have been subdivided into smaller units, the Area Director or such official as he may so delegate may, at his discretion, fix a higher operation and maintenance rate for such subdivided acreage than the rate fixed for the acreage in the original farm unit. In such cases the higher rate will also be announced in the annual public notice.

(ii) In the event higher rates are fixed for a subdivided farm unit, the individual owners thereof may obtain for their lands the same rate as fixed for acreages within farm units not so divided by joining in a written contract with the other owners within the subdivided unit. Under such a contract, the various owners will appoint an agent in whom shall be vested full power and authority to enter into a contract with the Area Director, hereafter referred to as the Contracting Officer, or such official as he may so authorize, covering the water rights for the entire area of the several small acreages: *Provided, however,* Such contract must not represent less acreage than that included in the original farm unit unless a smaller unit has been es-

tablished by project regulation as eligible for a subdivision contract; *And provided further,* That whether the contract involves acreage in one or more farm units, it must represent contiguous acreages.

(iii) The contract between the agent of the owners of the small tracts and the Contracting Officer shall be executed on or before February 1 of the year preceding the next irrigation season. The agent shall at the time of the execution of this contract, on a form approved by the Secretary of the Interior, furnish a certified copy of the contract executed by the several landowners of the subdivided tract appointing the agent to act in their behalf.

(iv) Any owner of a tract within a subdivided unit, with the written consent of the owners of a majority of the acreage, under a contract as set forth in paragraph (b)(1)(iii) of this section, may voluntarily withdraw from the contract by filing a written notice of his intent to withdraw with the Contracting Officer on or before February 1 of the year, such withdrawal is to be effective, together with the consent of the owners of the majority of the acreage endorsed thereon; *Provided,* That, the remaining acreage is contiguous; such withdrawal does not reduce the remaining acreage under the contract to less than the acreage included in the original farm unit before it was subdivided or less than the minimum acreage established on a project as eligible for a subdivision contract; and all irrigation charges due under said contract have been paid. Upon the receipt of said notice, the Contracting Officer, if the notice meets the requirements as herein provided, shall note his approval thereon and send a copy thereof to the agent of the landowners. Thereafter the land of the withdrawing owner shall no longer be subject to the contract.

(v) If one or more owners under a contract desire to withdraw, and if, by so doing, it would reduce the total remaining contiguous acreage under the contract to less than the total acreage included in the original farm unit, or the minimum eligible acreage established on the project, the contract can be terminated. However, before such a termination can be approved, a written

notice from the owners of the majority of the acreage must be filed with the Contracting Officer indicating their consent to and requesting his approval of the termination. The notice must be filed on or before February 1 of the year the termination is to become effective, and must include the payment of any irrigation charges then due under the existing contract. Upon the receipt of the written notice, the contracting Officer shall note his approval thereon provided that the requirements set forth herein are satisfied. A copy of the approved notice will be given to the agent of the landowners concerned.

(2) *Fort Hall Irrigation Project.* The Superintendent, Fort Hall Agency, is authorized to approve contracts as set forth in this section as well as withdrawals or termination of such contracts. However, no contracts will be entered into if the total contiguous acreage is less than 10 acres.

(3) *Wapato Irrigation Project.* The Project Engineer is authorized to approve contracts as set forth in paragraph (b) of this section, as well as withdrawals or termination of such contracts. However, no contracts will be entered into if the total contiguous acreage is less than 40 acres.

**§ 171.20 Water users' ledgers.**

(a) Water users' ledgers will be maintained by the Officer-in-Charge on all irrigation projects or units where irrigation assessments are levied and collected. Separate entries shall be made in the ledger for each farm tract, and bills issued to the owner or owners of record. When payment is received, it will be credited to the proper ledger account.

(b) When Indian trust or restricted land is leased and the Officer-in-Charge has been so advised by the Superintendent, irrigation bills will be submitted to the lessee. Upon receipt of payment, it will be credited to the Indian owner or owners of record in the ledger account.

(c) On those projects where irrigation districts have been formed and have executed repayment contracts, irrigation bills will be rendered to the district. When payment is received, it will be credited to the proper ledger accounts.

**§ 171.21 Health and sanitation.**

Use of Government storage reservoirs, canals, laterals or drains for disposal of sewage and trash shall not be permitted under any circumstances. If such conditions occur, and project forces are unable to correct them, the Officer-in-Charge shall request the Area Director to arrange for the necessary legal action.

**§ 171.22 Complaints.**

All complaints must be made in writing to the Project Engineer or the Officer-in-Charge of the project.

**§ 171.23 Disputes.**

In case of a dispute between a water user and the Project Engineer or Officer-in-Charge of the project concerning the application of the regulations of this part or a decision rendered by such official, the water user within 30 days may appeal to the Area Director. Further appeals may be made to the Commissioner of Indian Affairs pursuant to part 2 of this chapter.

**PART 172—PUEBLO INDIAN LANDS BENEFITED BY IRRIGATION AND DRAINAGE WORKS OF MIDDLE RIO GRANDE CONSERVANCY DISTRICT, NEW MEXICO**

AUTHORITY: 45 Stat. 312.

**§ 172.1 Acreage designated.**

Pursuant to the provisions of the act of March 13, 1928 (45 Stat. 312) the contract executed between the Middle Rio Grande Conservancy District of New Mexico and the United States under date of December 14, 1928, the official plan approved pursuant thereto, as modified, and the terms of section 24 of a contract between said parties dated September 4, 1936, dealing among other things with the payment of operation and maintenance and betterment assessments by the United States to the District, and section 24 of a similar contract dated April 8, 1938 executed by the representative of the United States, on this date, it is found that a total of 20,242.05 acres of Pueblo Indian lands of the Pueblos of Cochiti, Santo Domingo, San Felipe, Santa Ana,