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Subtitle B—Regulations Relating to Public Lands

CHAPTER I—BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR

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PART 402—SALE OF LANDS IN FEDERAL RECLAMATION PROJECTS

Subpart A—Public Lands

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Subpart A—Public Lands

AUTHORITY: Sec. 10, 32 Stat. 390, as amended, sec. 6, 46 Stat. 368, sec. 5, 64 Stat. 40; 43 U.S.C. 373, 424e, 375f. Interpret or apply 41 Stat. 605, 46 Stat. 367, sec. 11, 53 Stat. 1197, 64 Stat. 39; 43 U.S.C. 375, 424 through 424d, 375a, 375b through 375f.

SOURCE: 18 FR 316, Jan. 15, 1953, unless otherwise noted.

§ 402.1 Purpose of this subpart.

The regulations in this subpart apply to the sale of certain classes of lands that are subject to the reclamation laws and that may be sold under one of the following statutes:

(a) The Act of May 20, 1920 (41 Stat. 605; 43 U.S.C. 375);

(b) The Act of May 16, 1930 (46 Stat. 367; 43 U.S.C. 424 through 424e); or

(c) The Act of March 31, 1950 (64 Stat. 39; 43 U.S.C. Sup. 375b through 375f).

§ 402.2 What lands may be sold; method of sale; limit of acreage.

(a) Lands which may be sold under the Act of May 20, 1920 (41 Stat. 605; 43 U.S.C. 375) are lands, not otherwise reserved, which have been withdrawn in connection with a Federal irrigation project and improved at the expense of the reclamation fund for administration or other like purposes and which are no longer needed for project purposes. Not more than 160 acres of such lands may be sold to any one person. With one exception, such lands must be sold at public auction. If, however, a tract is appraised at not more than $300, it may be sold at private sale or at public auction and without regard to the provisions of the Act of May 20, 1920 respecting notice of publication and mode of sale.

(b) Lands which may be sold under the Act of May 16, 1930 (46 Stat. 367; 43 U.S.C. 424 through 424e) are tracts of temporarily or permanently unproductive land of insufficient size to support a family. A purchaser must be a resident farm owner or entryman on the Federal irrigation project where such lands are located and is permitted to purchase not more than 160 acres or an area which together with lands already owned or entered on such project, does not exceed 320 acres. A resident farm owner means a farm owner who is actually residing on the farm he owns, and a resident entryman means a homestead entryman who is actually residing on the land in his homestead entry. These lands may be sold either at public auction or at private sale.

(c) Lands which may be sold under the Act of March 31, 1950 (64 Stat. 39; 43 U.S.C. Sup., 375b through 375f) are tracts of land too small to be classed as farm units under the Federal reclamation laws. A purchaser must be a resident farm owner or entryman (as defined in paragraph (b) of this section) on the Federal irrigation project where such lands are located and is permitted to purchase not more than 160 acres or an area which, together with land already owned or entered on such project, does not exceed 160 irrigable acres. These lands may be sold either at public auction or at private sale.

§ 402.3 Power to sell.

The Commissioner of Reclamation may, in accordance with the regulations in this subpart, sell lands under each of the three statutes listed in § 402.1. An Assistant Commissioner or an official in charge of an office, region, division, district, or project of the Bureau of Reclamation, if authorized in writing by the Commissioner of Reclamation, may also sell lands under the statutes mentioned in accordance

with this subpart, and whenever the term ''Commissioner'' is used in this subpart, it includes any official so authorized.

§ 402.4 Citizenship requirement.

Before patent may be issued to a purchaser under the regulations in this subpart, he must furnish satisfactory evidence that he is a citizen of the United States.

§ 402.5 Procedures within the Department.

(a) Before offering any land for sale under any of the statutes listed in § 402.1, the Commissioner should determine that the sale will be in the best interest of the project in which the lands are located and, if the lands sold are to be irrigated, that there is a sufficient water supply for such irrigation.

(b) When a decision is made to offer lands for sale under any of the statutes listed in § 402.1: (1) The Commissioner should notify the State Supervisor of the Bureau of Land Management in whose State the lands are located, (2) a report showing the status of the lands should be obtained from the Manager of the appropriate office of the Bureau of Land Management, and (3) a report should be obtained from the Geological Survey with respect to the mineral resources of the lands. A copy of the report of the Geological Survey should be furnished to the Manager of the appropriate land office of the Bureau of Land Management for his use in preparing the final certificate.

§ 402.6 Price.

The price of land sold under this subpart shall be not less than that fixed by independent appraisal approved by the Commissioner.

§ 402.7 Notice of sale.

The sale of lands at public auction under this part shall be administered by the Commissioner. Notice of such sales shall be given by publication in a newspaper of general circulation in the vicinity of the lands to be sold for either not less than 30 days or once a week for five consecutive weeks prior to the date fixed for any such sale. Under the Act of May 20, 1920 (41 Stat. 605; 43 U.S.C. 375) notice of sales of lands appraised at more than $300 shall also be given by posting upon the land. In the case of all sales under this subpart notice may be given by such other means as the Commissioner may deem appropriate. Where lands are to be sold at private sale, no public notice shall be required.

§ 402.8 Terms of sale.

(a) Under the Acts of May 16, 1930 (46 Stat. 367; 43 U.S.C. 424 through 424e) and March 31, 1950 (64 Stat. 39; 43 U.S.C. Sup., 375b through 375f) lands may be sold either for cash or upon deferred payments. A sale providing for deferred payments shall be upon terms to be established by the Commissioner, except that the Commissioner shall require the annual payment of interest at six percent per annum on the unpaid balance.

(b) Under the Act of May 20, 1920 (41 Stat. 605; 43 U.S.C. 375) lands may be sold either for cash or upon deferred payments. In connection with a sale providing for deferred payments the Commissioner shall require that not less than one-fifth the purchase price in cash be paid at the time of sale and that the remainder be payable in not more than four annual payments with interest at six percent per annum on the unpaid balance.

(c) All payments shall be made to the official of the Bureau of Reclamation specified in the contract of sale.

§ 402.9 Contracts.

A contract in form approved by the Commissioner shall be signed by the purchaser at the time of sale and executed on behalf of the United States by the Commissioner. A copy of the contract shall be furnished to the appropriate land office of the Bureau of Land Management for entering in the tract books. The contract shall contain a description of the land to be sold, the price and terms of sale, a full statement by the purchaser respecting his qualifications, including citizenship, a description by the purchaser of his present holdings, and a statement by him of the irrigable acreage of those holdings. The contract shall also contain a statement by the purchaser with respect to his knowledge as to whether the land is mineral or non-mineral in

character, as well as all appropriate reservations, mineral and otherwise, required by law to be made on entries and patents. Assignments of contracts may be made only with the consent of the Commissioner and to persons legally qualified to be purchasers.

§ 402.10 Patent.

When a purchaser has complied fully with the provisions of his contract and with the applicable provisions of law, including the regulations in this subpart, the Commissioner shall issue to the purchaser a final receipt so stating. The receipt shall show any liens that, under the reclamation laws, must be indicated in the final certificate and patent and shall state the statutory authority for such liens. The receipt shall be submitted to the Manager of the appropriate land office of the Bureau of Land Management and the Manager shall prepare a final certificate for the issuance of patent to the purchaser. The Manager shall show in the final certificate the above-mentioned reclamation liens and any reservations that are required by law to be made on the patent.

§ 402.11 Termination or cancellation.

Immediately upon the termination or cancellation of any contract for nonpayment or other appropriate reason the Commissioner shall notify the proper office of the Bureau of Land Management in order that the tract books located there may reflect the termination or cancellation of the contract.

Subpart B—Small Tracts; Public and Acquired Lands; Gila Project, Arizona

AUTHORITY: Sec. 15, 53 Stat. 1198, sec. 7, 61 Stat. 630; 43 U.S.C. 485i, 613e. Interpret or apply secs. 3–4, 61 Stat. 629; 43 U.S.C. 613b through 613c.

§ 402.21 Purpose of this subpart.

The regulations in this subpart apply to the sale of small tracts of public and acquired lands on the Gila Project, Arizona, that are subject to the reclamation laws and that may be sold to actual settlers or farmers under the Act of July 30, 1947 (61 Stat. 628; 43 U. S. C. 613–613e).

[19 FR 431, Jan. 26, 1954]

§ 402.22 Provisions of subpart A applicable.

The regulations in subpart A of this part relative to the sale of public lands under the Act of March 31, 1950 (64 Stat. 39; 43 U. S. C., Sup. 375b through 375f) shall be applicable to all sales proposed to be made under this subpart, except that the provisions of § 402.23(b) relative to deeds shall apply in lieu of the provisions of § 402.10 relative to patents; and excepting further that the residence requirements of § 402.2(b) shall not apply.

[18 FR 316, Jan. 15, 1953, as amended at 34 FR 5066, Mar. 11, 1969]

§ 402.23 Special provisions.

(a) After disposition of any lands under this subpart by contract of sale and during the time such contract shall remain in effect, said lands shall be (1) subject to the provisions of the laws of the State of Arizona relating to the organization, government, and regulation of irrigation, electrical power, and other similar districts, and (2) subject to legal assessment or taxation by any such district and by said State or political subdivisions thereof, and to liens for such assessments and taxes and to all proceedings for the enforcement thereof, in the same manner and to the same extent as privately-owned lands; *Provided,* however, That the United States shall not assume any obligation for amounts so assessed or taxed: *And provided further*, That any proceedings to enforce said assessments or taxes shall be subject to any title then remaining in the United States, to any prior lien reserved to the United States for unpaid installments under contracts of sale made under this subpart, and to any obligation for any other charges, accrued or unaccrued, for special improvements, construction, or operation and maintenance costs of the Gila Project. Any such lands situate within the Wellton-Mohawk Division of said project shall also be subject to the provisions of the Contract Between the United States and Wellton-Mohawk Irrigation and

Drainage District for Construction of Works and for Delivery of Water, dated March 4, 1952, including but not limited to the provisions of subdivisions (b) and (c) of Article 22.

(b) When a purchaser has complied fully with the provisions of his contract and with the applicable provisions of law, including the regulations in this subpart, the Commissioner shall issue a deed to the purchaser. The deed shall recite the reservations described in the contract of sale.

[19 FR 431, Jan. 26, 1954]

PART 404—RECLAMATION RURAL WATER SUPPLY PROGRAM

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AUTHORITY: Public Law 109–451 (43 U.S.C. 2401 *et seq.*)

SOURCE: 73 FR 67782, Nov. 17, 2008, unless otherwise noted.

Subpart A—Overview

§ 404.1 What is the purpose of this part?

The purpose of this part is to explain how the Reclamation Rural Water Supply Program is implemented. This part describes:

(a) The purpose and priorities of the program;

(b) How to apply for assistance under the program;

(c) How Reclamation will evaluate requests for assistance;

(d) How Reclamation will evaluate an appraisal investigation; and

(e) How Reclamation will evaluate a feasibility study.

§ 404.2 What terms are used in this part?

The following terms are used in this part:

Appraisal investigation means an analysis of domestic, municipal, and industrial water supply problems, needs, and opportunities in the planning area, primarily using existing data. An appraisal investigation includes a preliminary assessment of alternatives to address the identified water supply problems and needs. The purpose of an appraisal investigation is to determine if there is at least one viable alternative that warrants a more detailed investigation through a feasibility study.

Appraisal report means the document, prepared by Reclamation, setting forth the findings and conclusions reached by Reclamation in its evaluation of a completed appraisal investigation. The purpose of the appraisal report is for Reclamation to provide a recommendation on whether a feasibility study should be initiated.

Assistance means the transfer of a thing of value to a non-Federal project sponsor to carry out a public purpose of support or stimulation authorized by law. For purposes of this rule, assistance consists of funds provided by Reclamation through an assistance agreement (grant or cooperative agreement) and technical assistance performed by Reclamation, for the purpose of conducting an appraisal investigation or a feasibility study.

Commissioner means the Commissioner of the Bureau of Reclamation.

Feasibility report means the document, prepared by Reclamation, setting forth the findings and conclusions of a completed feasibility study. The purpose of the feasibility report is to provide an Administration recommendation to Congress regarding whether the proposed rural water supply project should be authorized for construction.

Feasibility study means a detailed investigation requiring the acquisition of primary data, and an analysis of a reasonable range of alternatives, including a preferred alternative, to meet identified water supply problems, needs, and opportunities in the planning area. A feasibility study also includes an analysis of the technical and economic feasibility of the proposed project, the impact of the proposed project on the environment in compliance with the National Environmental Policy Act and other applicable environmental laws, and the financial capability of the non-Federal project sponsor to pay the non-Federal costs associated with constructing, operating, and maintaining the rural water supply project. The completed feasibility study will form the basis for the recommendation to Congress in the feasibility report regarding whether the proposed rural water supply project should be authorized for construction.

Incidental noncommercial livestock watering means the supply of water to pasture taps for the purpose of watering livestock, and other livestock watering uses that are incidental to the purpose of the project.

Indian means a person who is a member of an Indian tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Noncommercial irrigation of vegetation means the supply of water to irrigate lawns, trees, small gardens, and similar vegetation of less than 1 acre.

Non-Federal project sponsor means a non-Federal project entity or entities meeting the eligibility criteria in § 404.6. A non-Federal project sponsor is also referred to as project sponsor, project sponsors, I, me, my, you, or your in this part.

Program means the Reclamation Rural Water Supply Program that is described in § 404.3.

Reclamation means the Bureau of Reclamation, U.S. Department of the Interior.

Reclamation states means the states and areas referred to in 43 U.S.C. 391, as amended.

Regional or watershed perspective means an approach to rural water supply planning directed at meeting the needs of geographically dispersed localities across a region or a watershed that will take advantage of economies of scale and foster opportunities for partnerships. This approach also takes into account the interconnectedness of water and land resources, encourages the active participation of all interested groups, and uses the full spectrum of technical disciplines in activities and decision-making.

Rural Water Supply Project, or project, means:

(a) A project that is designed to serve a community or groups of communities, each of which has a current population of not more than 50,000 inhabitants, which may include Indian tribes and tribal organizations, dispersed home sites, or rural areas with domestic, municipal, and industrial water, including incidental noncommercial livestock watering and noncommercial irrigation of vegetation.

(b) A rural water supply project may include the following, or any combination of the following:

(1) The construction or installation of new rural water supply infrastructure and facilities;

(2) The improvement or upgrade of existing rural water supply infrastructure and facilities;

(3) The extension of existing rural water supply infrastructure and facilities to reach an increased service area; and

(4) The inter-connection of existing rural water supply infrastructure and facilities currently serving individual communities, dispersed homesites, rural areas, or tribes.

Secretary means the Secretary of the Interior, acting through the Commissioner of the Bureau of Reclamation.

Tribal organization means:

(a) The recognized governing body of an Indian tribe; and

(b) Any legally established organization of Indians that is controlled, sanctioned, or chartered by the governing body, or democratically elected by the adult members of the Indian community to be served by the organization.

§ 404.3 What is the Reclamation Rural Water Supply Program?

This program addresses domestic, municipal, and industrial water supply needs in rural areas of the Reclamation States. Reclamation's experience, technical expertise, and financial resources assist rural communities to identify their water supply problems and needs, and evaluate options for addressing those needs. Using a regional or watershed perspective, Reclamation assists in planning projects that maximize regional and national benefits. Through this program, Reclamation works in cooperation with non-Federal project sponsors in Reclamation States on a cost-share basis to:

(a) Investigate and identify opportunities to ensure safe and adequate rural water supplies for domestic, municipal, and industrial use in rural areas and small communities, including Indian tribes;

(b) Plan the design and construction of rural water supply projects through the conduct of appraisal investigations and feasibility studies; and

(c) Oversee, as appropriate, the construction of rural water supply projects that the Secretary recommends to Congress, which are subsequently authorized and funded for construction by Congress.

§ 404.4 What are the goals of the program?

The goals of the program are to:

(a) Assess and address urgent and compelling rural water supply needs that are not currently met by other programs;

(b) Promote and apply a regional or watershed perspective to water resources management in planning rural water supply projects;

(c) Develop solutions to address rural water supply needs that are cost-effective, and that generate national net economic benefits as required under the ''Economic Principles and Guidelines for Water and Related Land Resources'' (Principles and Guidelines). The Principles and Guidelines, published in 1983 by the Water Resources Council pursuant to the Water Resources Planning Act of 1965 (Pub. L. 89–80) as amended, is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. The Principles and Guidelines are intended to ensure proper and consistent planning by Federal agencies in the formulation and evaluation of water and related land resources implementation studies. To enforce any edition other than that specified in this section, the material must be available to the public and approved by the Director of the Federal Register. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. Also, a copy of this publication may be obtained and inspected at: Bureau of Reclamation, Denver Federal Center, Building 67, Denver, CO 80225, Policy and Program Services, 303–445–2906 where copies are on file, or at the following website:

http://intra.gp.usbr.gov/resource_services/planning_process/principles_guidelines.pdf.

(d) Encourage partnerships among rural communities, Indian tribes or tribal organizations, states or political subdivisions of a state, water districts and associations, and other eligible entities, to address rural water supply issues; and

(e) Complement other existing programs and authorities that address rural water supply issues, and encourage collaboration between programs where appropriate.

§ 404.5 Who is responsible for implementing this rule?

Authority to implement and make determinations under this rule has been delegated from the Secretary to the Commissioner. The Commissioner is authorized to implement this program and may re-delegate that authority as needed. Questions regarding the program should be directed to your local Reclamation office.

§ 404.6 Who is eligible to participate in the program?

Those eligible to participate in the program include:

(a) A state or political subdivision of a state, including a department, agency, municipality, county, or other regional or local authority;

(b) An Indian tribe or tribal organization; or

(c) An entity created under state law that has water management or water delivery authority, including for example, an irrigation or water district, canal company, water users association, rural water association or district, a joint powers authority, or other qualifying entity; and

(d) Any combination of the entities listed above, which collectively are referred to as the non-Federal project sponsor, as defined in § 404.2.

§ 404.7 What types of projects are eligible for consideration under the program?

To be eligible for consideration under the program, a rural water supply project must:

(a) Meet the definition of a rural water supply project in § 404.2; and

(b) Be located in a Reclamation State, as defined in § 404.2.

§ 404.8 Are there any exceptions that would allow a community with greater than 50,000 inhabitants to be part of an eligible rural water supply project?

Yes. A town or community with a population in excess of 50,000 inhabitants may participate in or be served by an eligible rural water supply project under this program if Reclamation determines that the town or community is a critical partner whose involvement substantially contributes to the financial viability of the proposed project. Such a community could be expected to bear a greater proportionate share of the planning, design, and construction costs than other project sponsors, consistent with their capability to pay and the benefits they derive from the project.

§ 404.9 What types of infrastructure and facilities may be included in an eligible rural water supply project?

A rural water supply project may include, but is not limited to, the following types of infrastructure and facilities:

(a) Pumps, pipes, wells, surface water intakes and other diversion, transmission, or distribution systems;

(b) Storage tanks and small impoundments;

(c) Water treatment facilities for potable water supplies, including desalination facilities;

(d) Buildings necessary to house equipment and serve as a center for operations;

(e) Power transmission and related facilities required for the rural water supply project;

(f) Equipment and management tools for water conservation, groundwater recovery, and water reuse and recycling;

(g) Associated features to mitigate adverse environmental consequences of a project; and

(h) Appurtenances.

§ 404.10 Are there certain types of infrastructure and facilities that may not be included in a rural water supply project?

Yes. A rural water supply project may not include:

(a) Any infrastructure or facilities that would deliver water for commercial irrigation; and

(b) The construction of major impoundment structures.

§ 404.11 What type of assistance is available under the program?

Under the Reclamation Rural Water Supply Program, you may:

(a) Request Reclamation to conduct an appraisal investigation or feasibility study for a rural water supply project for you, with your cooperation;

(b) Request funding through a grant or cooperative agreement to enable you to conduct an appraisal investigation or feasibility study for a rural water supply project yourself, or through a contractor; or

(c) Request Reclamation to review and approve an appraisal investigation or feasibility study completed without assistance from Reclamation.

§ 404.12 Can Reclamation provide assistance with the construction of a rural water supply project under this program?

Reclamation may provide assistance with the construction of a rural water supply project developed under this program if Congress specifically authorizes the project and appropriates funds for construction.

§ 404.13 What criteria will Reclamation use to prioritize requests for assistance under the program?

All requests for assistance that meet the eligibility requirements in §§ 404.6 and 404.7 will be evaluated by applying the following prioritization criteria:

(a) Whether there is an urgent and compelling need for a rural water supply project that would:

(1) Address present or future water supply needs; or

(2) Promote public health and safety by addressing present and preventing future violations of drinking water standards;

(b) The extent to which a rural water supply project promotes and applies a regional or watershed perspective to water resources management as defined in § 404.2;

(c) The financial need of the project sponsors for assistance with the planning, design, and construction of a rural water supply project, as demonstrated by readily available local and regional economic indicators;

(d) The extent to which Reclamation is uniquely qualified to plan, design, and build the project;

(e) Whether a rural water supply project helps meet applicable requirements established by law;

(f) The extent to which a rural water supply project serves Indian tribes that have nonexistent or inadequate water systems;

(g) The extent to which a rural water supply project is ineligible for comprehensive funding (sufficient to fully fund planning and construction of the entire project) through other assistance programs;

(h) The extent to which a rural water supply project is identified as a priority by state, tribal or local governments;

(i) Whether a rural water supply project incorporates an innovative approach that effectively addresses water supply problems and needs, either by applying new technology or by employing a creative administrative or cooperative solution; and

(j) Other criteria that Reclamation deems appropriate.

§ 404.14 How will Reclamation provide notice of opportunities for assistance under the program?

Notice of opportunities for assistance to conduct an appraisal investigation or a feasibility study under § 404.11(a) or (b) will be posted as a program announcement on the required government-wide Web site for announcement of Federal assistance opportunities. Opportunities for assistance will also be advertised locally by Reclamation regional and area offices. You are encouraged to contact your local Reclamation office to find out about upcoming program announcements and to discuss your interest in the program.

§ 404.15 How can I request assistance under the program?

This table summarizes the requirements for requesting assistance under the program. The requirements are described in more detail in the sections that follow.

Type of assistance requested	How to request assistance
1. Request Reclamation to conduct an appraisal investigation.	Submit a statement of interest as described in § 404.16. Reclamation will then advise you whether you are eligible to submit a full proposal.
2. Request funding to conduct an appraisal investigation yourself or through a contractor.	Submit a statement of interest as described in § 404.16. Reclamation will then advise you whether you are eligible to submit a full proposal.
3. Request Reclamation to conduct a feasibility study.	Submit a full proposal as described in § 404.20.
4. Request funding to conduct a feasibility study yourself or through a contractor.	Submit a full proposal as described in § 404.20.
5. Request Reclamation to review and approve an appraisal investigation or a feasibility study completed without Reclamation assistance.	Submit the investigation or study and a cover letter to your local Reclamation office, as described in § 404.25.

§ 404.16 What information must I include in my statement of interest?

A statement of interest is a preliminary scope of work that must include sufficient information to address all of the eligibility criteria described in §§ 404.6 and 404.7 and the prioritization criteria in § 404.13, as well as any information required by the program announcement. In general, this may include, but is not limited to:

(a) Name, organization, and contact information, including the identification of any partners that may be involved in the appraisal investigation;

(b) Location map and description of the areas to be served by the proposed rural water supply project, including:

(1) Geographical scope;

(2) Demographics; and

(3) Existing rural water supply infrastructure, if any;

(c) Type of assistance being requested through this program as described in § 404.11;

(d) A general description of the problems, needs, and opportunities that the appraisal investigation is being formulated to address, supported by data or documentation where appropriate. The information provided must also address each of the prioritization criteria in § 404.13;

(e) A general description of project alternatives that may be considered in the investigation, including:

(1) Water supply management alternatives (e.g., types of infrastructure or facilities to deliver new water supplies), if known;

(2) Water demand management alternatives (e.g., water conservation and other approaches to reduce water consumption), if known; and

(3) Potential sources of water supply.

(f) A general description of any prior studies on the problems, needs, and water management alternatives at issue; and,

(g) A general description of existing sources of water supply.

§ 404.17 How will Reclamation evaluate my statement of interest?

(a) Reclamation will apply the eligibility requirements in §§ 404.6 and 404.7 and the prioritization criteria in § 404.13, to determine whether the proposed rural water supply project is eligible for further consideration through a full proposal;

(b) If the proposed project is not eligible for further consideration, Reclamation will notify you in writing of that outcome; and,

(c) If the proposed project is eligible for further consideration, Reclamation will notify you in writing that you are eligible to develop a full proposal to conduct an appraisal investigation, as described in § 404.20.

§ 404.18 How can I request assistance to conduct a feasibility study?

To request assistance to conduct a feasibility study under § 404.11(a) or (b), consistent with Reclamation's recommendation in an appraisal report, you must submit a full proposal to conduct a feasibility study in response to the program announcement, pursuant to § 404.20. You are not required to submit a statement of interest.

§ 404.19 What requirements must be met before I can request assistance to conduct a feasibility study?

All of the following requirements must be met before you can request assistance to conduct a feasibility study:

(a) An appraisal investigation must be completed, with or without assistance from Reclamation;

(b) Reclamation must have reviewed any appraisal investigation prepared without its assistance;

(c) Reclamation must have prepared an appraisal report evaluating the appraisal investigation; and,

(d) The appraisal report must include a recommendation by Reclamation, if appropriate, that a feasibility study should be conducted, as described in § 404.45.

§ 404.20 What information must I include in my full proposal to conduct an appraisal or a feasibility study?

A full proposal to conduct an appraisal investigation or a feasibility study is a detailed scope of work that must include sufficient information to address the eligibility criteria described in §§ 404.6 and 404.7, and the prioritization criteria in § 404.13. In general this may include, but is not limited to:

(a) The issues to be addressed in the appraisal investigation or feasibility study and a plan for addressing those issues. The information provided must also address each of the prioritization criteria in § 404.13;

(b) A description of who will conduct the appraisal investigation or feasibility study, which could include you, your contractor, or Reclamation;

(c) If you propose that either you or your contractor will conduct the appraisal investigation or feasibility study, you must include the information necessary for Reclamation to determine whether you or your contractor are qualified to conduct the investigation or study, and whether having you or your contractor conduct it is a cost-effective alternative, in accordance with the criteria in §§ 404.23 and 404.24;

(d) A schedule for conducting the work, identifying specific tasks and the duration of each task, and major milestones with dates for each milestone;

(e) A complete budget for conducting the appraisal investigation or feasibility study, including an itemized tabular summary of known or expected costs and a narrative description of those costs;

(f) A funding plan that details how the appraisal investigation or feasibility study will be paid for, taking into consideration applicable assistance and non-Federal cost-share requirements; and

(g) Any other information requested by Reclamation in the program announcement.

§ 404.21 What is Reclamation's role in preparing the full proposal?

(a) If you are requesting Reclamation to prepare an appraisal investigation or feasibility study on your behalf under § 404.11(a), Reclamation will work with you on a collaborative basis to provide the information requested in § 404.20(a), (b), (d), (e) and (f).

(b) If you are requesting funding through a grant or cooperative agreement under § 404.11(b), Reclamation will be available to provide you with guidance and assistance in preparing your full proposal, upon request.

§ 404.22 How will Reclamation evaluate my full proposal?

(a) Reclamation will evaluate the full proposal to conduct an appraisal or a feasibility study in order to ensure that it meets the requirements in § 404.20 and is, therefore, complete. Reclamation will notify you in writing of the outcome of this determination.

(b) If it is complete, Reclamation will evaluate your proposal against all other proposals received, using a competitive review process based on an application of the prioritization criteria in § 404.13.

(c) Full proposals will be selected for award of assistance based on:

(1) The evaluation process, as described in § 404.22(b); and

(2) The availability of appropriations; and

(3) Other criteria that Reclamation deems appropriate.

(d) Once the proposal evaluation and selection process is complete, you will be notified in writing of the outcome of your request for assistance.

§ 404.23 How will Reclamation determine whether you or your contractor is qualified to conduct an appraisal investigation or a feasibility study?

If you are requesting funding under § 404.11(b) to conduct an appraisal investigation or a feasibility study yourself or though a contractor, Reclamation will evaluate whether you, your technical staff, or contractor are qualified to perform the appraisal investigation or feasibility study based on their demonstrated qualifications and experience in performing or managing similar activities. Areas of expertise needed may include, but are not limited to, water management planning, engineering, hydrology, biology, demography, finance, and economics.

§ 404.24 How will Reclamation determine whether it is cost-effective for me or my contractor to conduct the appraisal investigation or feasibility study?

Reclamation will take the following steps to determine whether it is cost-effective for you or your contractor to conduct the appraisal investigation or feasibility study:

(a) Reclamation will review and evaluate the reasonableness of your full proposal, including the scope of work, the estimated costs, anticipated work schedule, and products to be delivered;

(b) At its discretion, Reclamation may also choose to prepare an independent government cost estimate to analyze whether it would be more cost-effective for Reclamation to complete the appraisal investigation or feasibility study;

(c) Reclamation will notify you in writing of its determination regarding the cost-effectiveness of your proposal and the basis for its decision.

§ 404.25 How can I request Reclamation to review an appraisal investigation or feasibility study that was not completed under this program?

(a) To request Reclamation to review an appraisal investigation or feasibility study that was not completed under this program as provided under § 404.11(c), you must submit the appraisal investigation or feasibility study to your local Reclamation office with a cover letter requesting Reclamation to review it.

(b) Your cover letter must address the eligibility criteria set forth in §§ 404.6 and 404.7 and the prioritization criteria in § 404.13.

(c) You may make your submittal at any time and are not required to submit a statement of interest in response to the program announcement, as required for requests to conduct an appraisal investigation or feasibility study under § 404.11(a) or (b).

§ 404.26 Must an appraisal investigation be completed before I can request Reclamation to review a feasibility study that was not completed under this program?

In general, Reclamation must review an appraisal investigation and prepare an appraisal report recommending that a feasibility study be conducted before Reclamation can review a feasibility study completed without Reclamation assistance under § 404.11(c). However, Reclamation may review a feasibility study without first reviewing and approving an appraisal investigation, if Reclamation determines that:

(a) No appraisal investigation was prepared for the project;

(b) The feasibility study satisfies the appraisal criteria set forth in § 404.44; and

(c) Reclamation documents these findings in the feasibility report.

§ 404.27 How will Reclamation evaluate my request to review an appraisal investigation or feasibility study completed without the support of Reclamation?

(a) Upon receipt of your submittal, Reclamation will apply the eligibility criteria in §§ 404.6 and 404.7 and the prioritization criteria in § 404.13, to determine whether the appraisal investigation or feasibility study is eligible to be reviewed under the program. Reclamation will notify you in writing of the outcome of this determination.

(b) If the proposed appraisal investigation or feasibility study is eligible for review, Reclamation will evaluate the investigation or study in accordance with the process set forth in § 404.43, for an appraisal investigation, or § 404.48, for a feasibility study.

§ 404.28 Is it possible to expedite the completion of an appraisal investigation or feasibility study?

Yes. If Reclamation determines that a community or groups of communities to be served by a proposed rural water supply project has urgent and compelling water needs, Reclamation will, to the maximum extent practicable, expedite appraisal investigations and reports and feasibility studies and reports conducted under this program.

§ 404.29 Can the level of effort needed to complete an appraisal investigation or feasibility study be scaled to be proportional to the size and cost of the proposed project?

Yes. In general, the level of effort for an appraisal investigation or feasibility study should be scaled to take into consideration the total size, cost, and complexity of the proposed rural water supply project in order to reduce the total cost of the investigation or study. However, the effort to scale the appraisal investigation or feasibility study must not diminish the quality of the data, the analysis, or the overall completeness of the investigation or study.

Subpart B—Cost-Sharing

§ 404.30 How much Federal funding can Reclamation provide for the completion of an appraisal investigation?

In general, Reclamation will be responsible for 100 percent of the cost of an appraisal investigation conducted under § 404.11(a) or (b), up to $200,000. If the cost of the appraisal investigation exceeds $200,000, your cost-share will be 50 percent of the amount exceeding $200,000.

§ 404.31 What forms of non-Federal cost-share payment are acceptable?

The non-Federal cost-share for an appraisal investigation or a feasibility study may be provided in the form of money or in-kind services that Reclamation determines are necessary and reasonable for the conduct and completion of the investigation or study. The determination of allowability, allocability, and reasonableness is governed by the Cost Principles of the Office of Management and Budget, codified at 2 CFR 220, 225, and 230, and in the Federal Acquisitions Regulations, Part 312.

§ 404.32 Can Reclamation reduce the non-Federal cost-share required for an appraisal investigation?

Yes. Reclamation may reduce the non-Federal cost-share for appraisal investigations below 50 percent of the costs exceeding $200,000, if:

(a) Reclamation determines that there is an overwhelming Federal interest in conducting the appraisal investigation, and you demonstrate financial hardship. Financial hardship will be determined in accordance with Reclamation's official policies, guidance and standards, which are available at your local Reclamation office; and

(b) Reclamation consults with other Federal agencies that are partners in the project and determines that a reduction in the non-Federal cost-share is appropriate.

§ 404.33 How much Federal funding can Reclamation provide for the completion of a feasibility study?

In general, Reclamation will be responsible for 50 percent of the cost of a feasibility study conducted under § 404.11(a) or (b). You will be responsible to pay for the remaining 50 percent of the cost of the study using non-Federal funding.

§ 404.34 Can Reclamation reduce the amount of non-Federal cost-share required for a feasibility study?

Yes. Reclamation may reduce the non-Federal cost-share required for a feasibility study to an amount less than 50 percent of the study costs if:

(a) Reclamation determines that there is an overwhelming Federal interest in conducting the feasibility study, and you demonstrate financial hardship. Financial hardship will be determined in accordance with Reclamation's standards, which are available at your local Reclamation office; and

(b) Reclamation consults with other Federal agencies that are partners in the project and determines that a reduction in the non-Federal cost-share is appropriate.

§ 404.35 Is there a different non-Federal cost-share requirement for feasibility studies that involve a community greater than 50,000 inhabitants?

Yes. If the feasibility study involves a rural water supply system that will serve a community with a population in excess of 50,000 inhabitants, pursuant to the exception provided in § 404.8, you may be required to pay more than 50 percent of the costs of the study. Determination of the appropriate amount of the non-Federal cost-share will be based on the same criteria used to evaluate your capability to pay the non-Federal share of construction costs, set forth in § 404.39.

§ 404.36 Will Reclamation reimburse me for the cost of an appraisal investigation or a feasibility study that was not completed under § 404.11(a) or (b)?

No. The cost-share provisions described in this rule only apply to appraisal investigations and feasibility studies that are completed under the program pursuant to § 404.11(a) or (b). Reclamation will not reimburse you or provide program funding for any expenses related to an appraisal investigation or a feasibility study that is completed without assistance from Reclamation.

§ 404.37 How will Reclamation determine the appropriate non-Federal share of construction costs?

Reclamation will determine the appropriate non-Federal share of construction costs in the process of developing the feasibility report. The non-Federal cost-share will be:

(a) At least 25 percent of the total construction costs; and

(b) An additional amount based on your capability to pay, as appropriate, to be determined by Reclamation based on the factors in § 404.39.

§ 404.38 Are there different requirements for determining the appropriate non-Federal share of construction costs to be paid by Indian tribes?

Yes. The appropriate non-Federal share of construction costs to be paid by Indian tribes will be based on:

(a) Consideration of an Indian tribe's capability to pay at least 25 percent of the construction costs, to be determined in accordance with the factors in § 404.39; and

(b) If Reclamation determines, based on the analysis in § 404.38(a), that an Indian tribe is not capable of paying at least 25 percent of the construction costs, Reclamation may recommend in its feasibility report that the collection of all or part of the non-Federal construction costs apportioned to an Indian tribe be deferred, unless or until Reclamation determines that the Indian tribe should pay all or a portion of those costs.

§ 404.39 What factors will Reclamation consider in evaluating my capability to pay 25 percent or more of the construction costs?

Reclamation will consider the following factors:

(a) Economic factors for the project area, relative to the state average, including:

(1) Per capita income;

(2) Median household income; and

(3) The poverty rate;

(b) The ability of the project sponsor to raise tax revenues or assess fees such as user fees and ad valorum taxes or issue bonds;

(c) The strength of the project sponsor financial statements in comparison to other similar entities over the previous 4 years, including a review of:

(1) Current (includes cash and inventory) and non-current assets (property, plants etc.);

(2) Net Assets (total assets minus total liabilities);

(3) Changes to net assets;

(4) Operating revenues (water and power sales);

(5) Operating expenses (variable costs and depreciation, maintenance and repair);

(6) Cash flow from operating activities (positive value from water sales minus payments to supplies and employees);

(7) Current (current bonds payable and accounts payable) and non-current liabilities (long term debt payable);

(8) Outstanding debts and all other financial obligations;

(9) Collateral/equity as appropriate;

(10) Cash flows from capital and related financing activities (negative value from principle paid on bonds and interest payments);

(11) Net cash flow; and

(12) Any non-operating revenues and expenses;

(d) Funding commitments from non-Federal sources, other than the non-Federal project sponsor, including resources committed by state, county, or local governments;

(e) The existing cost of water and the cost to develop new water supplies in the region; and

(f) The impact of the proposed project on water rates;

(g) The projected impact of the proposed project on the non-Federal project sponsor's ability to raise or generate revenues;

(h) The non-Federal project sponsor's financial history including their past performance on repaying loans and other debts; and

(i) Any other financial means of the non-Federal project sponsor that is not captured in this subsection.

§ 404.40 What is the non-Federal share of operation, maintenance, and replacement costs?

You are required to pay 100 percent of the operation, maintenance, and replacement costs of any rural water supply project planned under this program.

Subpart C—Appraisal Investigations

§ 404.41 How will an appraisal investigation be conducted under this program?

Appraisal investigations will be conducted in accordance with Reclamation-approved standards governing the approach, process and content of the appraisal investigation. You can obtain information about Reclamation's standards and requirements for conducting an appraisal investigation by contacting your local Reclamation office.

§ 404.42 How much time is provided to complete an appraisal investigation?

An appraisal investigation must be scheduled for completion not later than 2 years after the date on which the appraisal investigation is initiated, unless otherwise agreed to in writing by Reclamation.

§ 404.43 What process will Reclamation follow to determine if an appraisal investigation is ready for review?

(a) Reclamation will evaluate whether the appraisal investigation adequately addresses all of the items required in Reclamation's standards for conducting appraisal investigations, and is, therefore ready for review. Reclamation standards and requirements for the content of an appraisal investigation are available at your local Reclamation office. Reclamation will notify you in writing of the outcome of this determination within 90 business days from the date of Reclamation's receipt of the appraisal investigation;

(b) If the appraisal investigation does not include the required information, you will be notified in writing of the reasons why, and you will have an opportunity to make changes and re-submit the corrected appraisal investigation to Reclamation for additional review. As appropriate, Reclamation will work with you to suggest approaches to correct the appraisal investigation;

(c) Once Reclamation determines that the appraisal investigation includes all of the required information, Reclamation will review the investigation to determine, based on an application of the criteria set forth in § 404.44, whether or not it is appropriate to proceed to a feasibility study. Reclamation will document its findings in an appraisal report, as described in § 404.45;

(d) Reclamation's review of an appraisal investigation will take no longer than 180 business days from its receipt of the appraisal investigation to its completion of the appraisal report, excluding time when Reclamation is waiting for additional information from the project sponsor.

§ 404.44 What criteria will Reclamation apply to determine whether it is appropriate to recommend that a feasibility study be conducted?

In reviewing an appraisal investigation, Reclamation will apply the following criteria to determine whether at least one of the alternatives identified is appropriate for further analysis through a feasibility study, or whether the investigation should be terminated without conducting a feasibility study, including:

(a) Whether a reasonable range of alternatives (structural or non-structural) have been formulated and evaluated;

(b) Whether the recommendation for further study of one or more alternatives is clearly supported by the analysis in the appraisal investigation; and

(c) For each alternative considered in the investigation, whether the alternative:

(1) Identifies viable water supplies and water rights sufficient to supply the proposed service area, including all practicable water sources such as lower quality waters, non-potable waters, and water-reuse-based water supplies;

(2) Has a positive effect on public and health and safety;

(3) Will meet water demand, including projected future needs;

(4) Provides environmental benefits, including source water protection;

(5) Applies a regional or watershed perspective and promotes benefits in the region in which the project is carried out;

(6) Implements an integrated water resources management approach;

(7) Enhances water management flexibility, including providing for local control of water supplies and, where applicable, encouraging participation in water banking and markets;

(8) Promotes long-term protection of water supplies;

(9) Includes preliminary cost estimates that are reasonable and supported;

(10) Is cost-effective and generates national net economic benefits as required under the Principles and Guidelines (incorporated by reference at § 404.4);

(11) For each alternative proposed for further evaluation in a feasibility study, whether the project sponsor has the capability to pay 100 percent of the costs associated with the operation, maintenance, and replacement of the facilities constructed or developed; and

(12) Other factors that Reclamation deems appropriate.

§ 404.45 What will be included in the appraisal report prepared by Reclamation?

The appraisal report prepared by Reclamation will include Reclamation's finding as to whether or not it is appropriate to proceed to a feasibility study, based on Reclamation's review of the appraisal investigation and application of the criteria set forth in § 404.44, and the reasons supporting that finding.

§ 404.46 Who will the appraisal report be provided to?

A copy of the appraisal report will be provided to you. Reclamation will also publish a notice of availability of the appraisal report in the FEDERAL REGISTER and will make a copy of the report available to the public upon request.

Subpart D—Feasibility Studies

§ 404.47 How will a feasibility study be conducted under this program?

Feasibility studies will be conducted in accordance with Reclamation's standards governing the approach, process and content of the feasibility study, including the Principles and Guidelines (incorporated by reference at § 404.4). You can obtain information about Reclamation's standards and requirements for conducting feasibility studies by contacting your local Reclamation office.

§ 404.48 What process will Reclamation follow to determine if a feasibility study is ready for review?

(a) Reclamation will evaluate whether the feasibility study adequately addresses all of the items required in Reclamation's standards for conducting a feasibility study, and is, therefore, ready for review. Reclamation standards and requirements for the content

of a feasibility study are available at your local Reclamation office. Reclamation will notify you in writing of the outcome of this determination within 90 business days from the date of Reclamation's receipt of the feasibility study;

(b) If the feasibility study does not include the required information, you will be notified in writing of the reasons why, and you will have an opportunity to make changes and re-submit the corrected feasibility study to Reclamation for additional review. Where appropriate, Reclamation will work with you to suggest approaches to correct the feasibility study;

(c) Once Reclamation determines that the feasibility study includes all of the required information, Reclamation will review the study to determine, based on application of the criteria set forth in § 404.49, whether or not it is appropriate to recommend to Congress that it authorize construction of the project;

(d) Reclamation's review of the feasibility study will take no longer than 180 business days from the date that Reclamation determines that the study includes all of the required information and is ready for review; and

(e) Reclamation will document its findings in a feasibility report, as more fully described in section § 404.50.

§ 404.49 What criteria will Reclamation use to determine whether to recommend that a proposed rural water supply project be authorized for construction?

In reviewing a feasibility study, Reclamation will assure that the proposed project is consistent with the policies and programs of the President and will apply the following criteria to evaluate and determine whether it is appropriate to recommend authorization for construction:

(a) The degree to which the project meets the prioritization criteria in § 404.13;

(b) The outcome of the environmental analysis;

(c) Whether there is a Federal interest in the project, including;

(1) A clearly defined Federal nexus to a proposed project;

(2) The Federal cost of the project in relation to the amount of Federal resources likely to be available; and

(d) Whether the recommended project alternative is clearly supported by the feasibility study, based on application of the following factors, including the extent to which the alternative:

(1) Addresses near and long-term water demand;

(2) Advances public health and safety and consideration of other benefits of the proposed rural water supply project;

(3) Addresses environmental quality and source water protection issues;

(4) Addresses opportunities to treat and use low-quality or non-potable water, water-reuse based supplies, and brackish and saline waters, through innovative and economically viable treatment technologies;

(5) Addresses opportunities for water conservation through structural or non-structural approaches and demonstration technologies to reduce water use and water system costs;

(6) Addresses opportunities to take advantage of economic incentives and the use of market-based mechanisms;

(7) Includes a reasonable and supported estimate of construction costs and operation, maintenance, and replacement costs;

(8) Is consistent with the Principles and Guidelines (incorporated by reference at § 404.4).

(9) Includes a reasonable and supported operation, maintenance, and replacement plan to assist the project sponsor in establishing rates and fees and a schedule identifying how those costs should be allocated to each non-Federal project sponsor;

(10) Demonstrates your financial capability to pay at least 25 percent of the design and construction costs and 100 percent of the operation, maintenance, and replacement costs;

(11) Is eligible for guaranteed loans;

(12) Includes adequate administrative and financial controls to manage construction and operation, maintenance, and replacement of the project;

(13) Is eligible for assistance under other Federal authorities to pay for discrete features or portions of the project;

(14) Is technically feasible and can be constructed within industry standards;

(15) Involves partnerships with other state, local, or tribal governments or Federal entities; and

(16) In the case of Indian tribes and tribal organizations, the extent to which the alternative addresses the goal of economic self-sufficiency;

(17) The degree to which the proposed project demonstrates that it has clear deliverables, will be accomplished within a reasonable schedule, within budget, and is well managed; and

(18) Other factors and criteria that Reclamation deems appropriate.

§ 404.50 What information will be included in the feasibility report prepared by Reclamation.

The feasibility report prepared by Reclamation will include:

(a) Reclamation's finding as to whether the proposed rural water supply project is feasible and the reasons supporting that determination;

(b) A recommendation to Congress regarding whether or not the proposed rural water supply project should be authorized for construction, and the reasons supporting the recommendation. This recommendation will be based on Reclamation's review of the feasibility study and its application of the criteria set forth in § 404.49; and

(c) If the rural water supply project is recommended for construction, the feasibility report will also include:

(1) The appropriate Federal and non-Federal share of the capital construction costs for the project and for projects involving multiple project sponsors, the portion of those costs allocated to each project sponsor;

(2) What amount of grants, loan guarantees, or combination of grants and loan guarantees should constitute the Federal share of the project;

(3) The annual operation, maintenance, and replacement costs, and the portion of those costs allocated to each project sponsor participating in the rural water supply project; and

(4) An assessment of the financial capability of each project sponsor participating in the rural water supply project to pay the portion of the construction and operation, maintenance, and replacement costs allocated to it.

§ 404.51 Are proposed projects under the Rural Water Supply Program reviewed by the Administration?

Yes. The Administration will review all projects proposed for funding under the Reclamation's Rural Water Supply Program. This includes review under Executive Order 12322 to determine whether the project is consistent with the policies and programs of the President. This review will occur before the feasibility report is finalized.

§ 404.52 Who will the feasibility report be provided to?

Upon its completion, Reclamation will:

(a) Provide the feasibility report to you;

(b) Submit the feasibility report to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives;

(c) Make the report publicly available, along with associated study documents; and

(d) Publish in the FEDERAL REGISTER a notice of the availability of the results.

Subpart E—Miscellaneous

§ 404.53 Does this rule provide authority for the transfer of pre-existing facilities from Federal to private ownership, or from private to Federal ownership?

No. This rule does not authorize the transfer of pre-existing facilities or pre-existing components of any water system from Federal to private ownership, or from private to Federal ownership.

§ 404.54 Who will hold title to a rural water project that is constructed following the completion of an appraisal investigation or feasibility study under this program?

Title to any rural water project planned, designed and recommended for construction under this program will be held by the non-Federal project sponsor.

§404.55 Who is responsible for the operation, maintenance, and replacement costs?

You will be responsible for 100 percent of the operation, maintenance, and replacement costs for any rural water facility that is planned, designed, and recommended for construction under this program.

§404.56 If a financial assistance agreement is entered into for a rural water supply project that benefits more than one Indian tribe, is the approval of each Indian tribe required?

Yes. When a financial assistance agreement is entered into with an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe is a prerequisite to entering into the financial assistance agreement.

§404.57 Does this rule have any affect on state water law?

No. Neither the Act nor this rule preempts or affects state water law or any interstate compact governing water. Reclamation will comply with state water laws in carrying out this rule.

§404.58 Do rural water projects authorized before the enactment of the Rural Water Supply Act of 2006 have to comply with the requirements in this rule?

No. Neither the Act nor this rule imposes any additional requirements on rural water supply projects that were authorized for construction before the date of enactment of the Act.

§404.59 If the Secretary recommends a project for construction, is that a promise of Federal funding?

No. Congress must first authorize the project for construction and Federal funding is subject to the availability of appropriations.

§404.60 Does this rule contain an information collection that requires approval by the Office of Management and Budget (OMB)?

Yes. This rule does contain an information collection that is approved by OMB, under Control Number 1006–0029. The Paperwork Reduction Act provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

PART 413—ASSESSMENT BY IRRIGATION DISTRICTS OF LANDS OWNED BY THE UNITED STATES, COLUMBIA BASIN PROJECT, WASHINGTON

Sec.

413.1 Purpose.
413.2 Definitions.
413.3 Assessment of settlement lands.
413.4 Assessment of other project act lands and rights of way.
413.5 Reports on status of settlement lands.

AUTHORITY: Sec. 8, 57 Stat. 20; 16 U.S.C. 835c–4.

SOURCE: 23 FR 10360, Dec. 25, 1958, unless otherwise noted.

§413.1 Purpose.

The provisions of this part shall govern the levy and enforcement of assessments by or on behalf of irrigation districts against lands owned by the United States within the Columbia Basin Project, pursuant to the provisions of subsection 5 (b) and section 8 of the Columbia Basin Project Act (57 Stat. 14; 16 U. S. C. 835c–1 and 835c–4) and in keeping with the provisions of section 14, Chapter 275, Laws of Washington, 1943. (Section 89.12.120, Revised Code of Washington).

§413.2 Definitions.

As used in this part:

(a) *Project Manager* means the Project Manager of the Columbia Basin Project, a Federal reclamation project.

(b) *District* means any one of the irrigation districts organized under the laws of Washington which has contracted with the United States under the Columbia Basin Project Act to repay a portion of the construction cost of the project.

(c) *Settlement lands* means those public lands of the United States within the project or those lands acquired by the United States under the authority of the Columbia Basin Project Act, title to which is vested in the United States and which are being held pending their conveyance in accordance

with the project settlement and development program.

(d) *Other project act lands* means those public lands within the project and those lands or interests acquired and being held by the United States under the Columbia Basin Project Act, which are being held other than for conveyance in accordance with the project settlement and development program.

(e) *Rights of way* means lands or interests in lands acquired by the United States under the Federal Reclamation Laws (Act of June 17, 1902, 32 Stat. 388, 43 U. S. C. 391, and acts amendatory thereof or supplementary thereto) for the construction and operation of project works, rights of way, including improvements thereon, reserved to the United States, under the Act of August 30, 1890 (26 Stat. 391; 43 U. S. C. 945) or section 90.40.050 of the Revised Code of Washington and being asserted for project purposes.

§ 413.3 Assessment of settlement lands.

(a) Settlement lands, which the United States is not under contract to sell or exchange at the time a district makes its annual levy of assessments shall not be assessed, except as provided in paragraph (c) of this section. If the United States thereafter contracts to sell or exchange such lands before the end of the irrigation season following the date of the annual levy, the purchaser will be required to make appropriate payment to the district for the water service which will be available to the purchaser during that irrigation season or the remaining portion thereof.

(b) From the date the United States contracts to sell or exchange settlement lands until title thereto passes to the purchaser under such contract, or until the rights of the purchaser are terminated or reacquired by the United States settlement lands shall be subject to assessment by a district on the same basis as other lands of like character within the operation of the district.

(c) Settlement lands, which the United States is not under contract to sell or exchange at the time a district makes its levy may be assessed by a district to the extent of the construction charge obligation installment required to be levied for the following year on such lands on account of the district's construction cost obligation to the United States. No other levies shall be made by a district against settlement lands in this status.

(d) While settlement lands which the United States has leased for use as irrigated lands and which the United States has not contracted to sell or exchange may not be assessed by a district except as provided in paragraph (c) of this section, lessees shall pay the district the same amounts annually that would be required to be paid for water service if the lands were subject to assessment therefor, in addition to any assessment levied under paragraph (c) of this section.

(e) Assessments made by a district against settlement lands while the United States is under contract to sell or exchange such lands shall be subject to all interest and penalties for delinquency as provided by the laws of Washington, but interest and penalties shall cease to accumulate on the date such contract is terminated or the purchaser's interest therein reacquired by the United States.

(f) No action shall be taken by or for a district to enforce any lien created as permitted under the regulations in this part by assessment foreclosure or other means that would purport to transfer any right in or title to any land or interests therein while title thereto is vested in the United States. Although the United States does not assume any obligation for the payment of such liens, it will in any conveyance of settlement lands covered thereby convey subject to those liens.

§ 413.4 Assessment of other project act lands and rights of way.

(a) A district shall, as to other project act lands and rights of way the title to which passes to the United States on or after January 1 of any year and before the district has levied its assessments for that year, immediately remove the lands from its assessment rolls and shall not thereafter take any proceedings to complete or enforce the assessments. Any such removal from the rolls shall be effective as of January 1 of the year in which

title passes to the United States Action so to remove shall be taken promptly after the giving of written notice by the Project Manager to the district as to the lands involved, and the district shall provide the United States with a certificate stating that the lands have not been and will not be assessed so long as title thereto remains in the United States.

(b) There is no authority in law for the assessment of rights of way owned by the United States. Accordingly, a district shall make no assessment thereof while title thereto remains in the United States.

(c) Other project act lands while title thereto remains in the United States shall not be assessed for any district charge so long as they are in the ''other project act lands'' category.

§413.5 Reports on status of settlement lands.

The Project Manager will furnish each district prior to its annual levy every year a list of all the settlement lands owned by the United States for which water is available and which are not under contract of sale or exchange and therefore are not to be assessed by the district, except for construction charge obligation installments under §413.3(c) when such charges are required to be levied.

PART 414—OFFSTREAM STORAGE OF COLORADO RIVER WATER AND DEVELOPMENT AND RELEASE OF INTENTIONALLY CREATED UNUSED APPORTIONMENT IN THE LOWER DIVISION STATES

Subpart A—Purposes and Definitions

Sec.
414.1 Purpose.
414.2 Definitions of terms used in this part.

SUBPART B—STORAGE AND INTERSTATE RELEASE AGREEMENTS

414.3 Storage and Interstate Release Agreements.
414.4 Reporting Requirements and accounting under storage and interstate release agreements.

Subpart C—Water Quality and Environmental compliance

414.5 Water Quality.
414.6 Environmental Compliance and funding of Federal costs.

AUTHORITY: 5 U.S.C. 553; 43 U.S.C. 391, 485 and 617; 373 U.S. 546; 376 U.S. 340.

SOURCE: 64 FR 59006, Nov. 1, 1999, unless otherwise noted.

Subpart A—Purposes and Definitions

§414.1 Purpose.

(a) *What this part does.* This part establishes a procedural framework for the Secretary of the Interior (Secretary) to follow in considering, participating in, and administering Storage and Interstate Release Agreements in the Lower Division States (Arizona, California, and Nevada) that would:

(1) Permit State-authorized entities to store Colorado River water offstream;

(2) Permit State-authorized entities to develop intentionally created unused apportionment (ICUA);

(3) Permit State-authorized entities to make ICUA available to the Secretary for release for use in another Lower Division State. This release may only take place in accordance with the Secretary's obligations under Federal law and may occur in either the year of storage or in years subsequent to storage; and

(4) Allow only voluntary interstate water transactions. These water transactions can help to satisfy regional water demands by increasing the efficiency, flexibility, and certainty in Colorado River management in accordance with the Secretary's authority under Article II (B) (6) of the Decree entered March 9, 1964 (376 U.S. 340) in the case of *Arizona* v. *California*, (373 U.S. 546) (1963), as supplemented and amended.

(b) *What this part does not do.* This part does not:

(1) Affect any Colorado River water entitlement holder's right to use its full water entitlement;

(2) Address or preclude independent actions by the Secretary regarding Tribal storage and water transfer activities;

(3) Change or expand existing authorities under the body of law known as the ''Law of the River'';

(4) Change the apportionments made for use within individual States;

(5) Address intrastate storage or intrastate distribution of water;

(6) Preclude a Storing State from storing some of its unused apportionment in another Lower Division State if consistent with applicable State law; or

(7) Authorize any specific activities; the rule provides a framework only.

§ 414.2 Definitions of terms used in this part.

Authorized entity means:

(1) An entity in a Storing State which is expressly authorized pursuant to the laws of that State to enter into Storage and Interstate Release Agreements and develop ICUA (''storing entity''); or

(2) An entity in a Consuming State which has authority under the laws of that State to enter into Storage and Interstate Release Agreements and acquire the right to use ICUA (''consuming entity'').

Basic apportionment means the Colorado River water apportioned for use within each Lower Division State when sufficient water is available for release, as determined by the Secretary of the Interior, to satisfy 7.5 million acre-feet (maf) of annual consumptive use in the Lower Division States. The United States Supreme Court, in *Arizona* v. *California*, confirmed that the annual basic apportionment for the Lower Division States is 2.8 maf of consumptive use in the State of Arizona, 4.4 maf of consumptive use in the State of California, and 0.3 maf of consumptive use in the State of Nevada.

BCPA means the Boulder Canyon Project Act, authorized by the Act of Congress of December 21, 1928 (45 Stat. 1057).

Colorado River Basin means all of the drainage area of the Colorado River System and all other territory within the United States to which the waters of the Colorado River System shall be beneficially applied.

Colorado River System means that portion of the Colorado River and its tributaries within the United States.

Colorado River water means water in or withdrawn from the mainstream.

Consuming entity means an authorized entity in a Consuming State.

Consuming State means a Lower Division State where ICUA will be used.

Consumptive use means diversions from the Colorado River less any return flow to the river that is available for consumptive use in the United States or in satisfaction of the Mexican treaty obligation.

(1) Consumptive use from the mainstream within the Lower Division States includes water drawn from the mainstream by underground pumping.

(2) The Mexican treaty obligation is set forth in the February 3, 1944, Water Treaty between Mexico and the United States, including supplements and associated Minutes of the International Boundary and Water Commission.

Decree means the decree entered March 9, 1964, by the Supreme Court in *Arizona* v. *California*, 373 U.S. 546 (1963), as supplemented or amended.

Entitlement means an authorization to beneficially use Colorado River water pursuant to:

(1) The Decree;

(2) A water delivery contract with the United States through the Secretary; or

(3) A reservation of water from the Secretary.

Intentionally created unused apportionment or ICUA means unused apportionment that is developed:

(1) Consistent with the laws of the Storing State;

(2) Solely as a result of, and would not exist except for, implementing a Storage and Interstate Release Agreement.

Lower Division States means the States of Arizona, California, and Nevada.

Mainstream means the main channel of the Colorado River downstream from Lee Ferry within the United States, including the reservoirs behind dams on the main channel, and Senator Wash Reservoir off the main channel.

Offstream storage means storage in a surface reservoir off of the mainstream or in a ground water aquifer. Offstream storage includes indirect recharge

when Colorado River water is exchanged for ground water that otherwise would have been pumped and consumed.

Secretary means the Secretary of the Interior or an authorized representative.

Storage and Interstate Release Agreement means an agreement, consistent with this part, between the Secretary and authorized entities in two or more Lower Division States that addresses the details of:

(1) Offstream storage of Colorado River water by a storing entity for future use within the Storing State;

(2) Subsequent development of ICUA by the storing entity, consistent with the laws of the Storing State;

(3) A request by the storing entity to the Secretary to release ICUA to the consuming entity;

(4) Release of ICUA by the Secretary to the consuming entity; and

(5) The inclusion of other entities that are determined by the Secretary and the storing entity and the consuming entity to be appropriate to the performance and enforcement of the agreement.

Storing entity means an authorized entity in a Storing State.

Storing State means a Lower Division State in which water is stored off the mainstream in accordance with a Storage and Interstate Release Agreement for future use in that State.

Surplus apportionment means the Colorado River water apportioned for use within each Lower Division State when sufficient water is available for release, as determined by the Secretary, to satisfy in excess of 7.5 maf of annual consumptive use in the Lower Division States.

Unused apportionment means Colorado River water within a Lower Division State's basic or surplus apportionment, or both, which is not otherwise put to beneficial consumptive use during that year within that State.

Upper Division States means the States of Colorado, New Mexico, Utah, and Wyoming.

Water delivery contract means a contract between the Secretary and an entity for the delivery of Colorado River water in accordance with section 5 of the BCPA.

Subpart B—Storage and Interstate Release Agreements

§414.3 Storage and Interstate Release Agreements.

(a) *Basic requirements for Storage and Interstate Release Agreements*. Two or more authorized entities may enter into Storage and Interstate Release Agreements with the Secretary in accordance with paragraph (c) of this section. Each agreement must meet all of the requirements of this section.

(1) The agreement must specify the quantity of Colorado River water to be stored, the Lower Division State in which it is to be stored, the entity(ies) that will store the water, and the facility(ies) in which it will be stored.

(2) The agreement must specify whether the water to be stored will be within the unused basic apportionment or unused surplus apportionment of the Storing State. For water from the Storing State's apportionment to qualify as unused apportionment available for storage under this part, the water must first be offered to all entitlement holders within the Storing State for purposes other than interstate transactions under proposed Storage and Interstate Release Agreements.

(3) The agreement must specify whether the water to be stored will be within the unused basic apportionment or unused surplus apportionment of the Consuming State. If the water to be stored will be unused apportionment of the Consuming State, the agreement must acknowledge that any unused apportionment of the Consuming State may be made available from the Consuming State by the Secretary to the Storing State only in accordance with Article II(B)(6) of the Decree. If unused apportionment from the Consuming State is to be stored under a Storage and Interstate Release Agreement, the Secretary will make the unused apportionment of the Consuming State available to the storing entity in accordance with the terms of a Storage and Interstate Release Agreement and will not make that water available to other entitlement holders.

(4) The agreement must specify the maximum quantity of ICUA that will be developed and made available for release to the consuming entity.

(5) The agreement must specify that ICUA may not be requested by the consuming entity in a quantity that exceeds the quantity of water that had been stored under a Storage and Interstate Release Agreement in the Storing State.

(6) The agreement must specify a procedure to verify and account for the quantity of water stored in the Storing State under a Storage and Interstate Release Agreement.

(7) The agreement must specify that, by a date certain, the consuming entity will:

(i) Notify the storing entity to develop a specific quantity of ICUA in the following calendar year;

(ii) Ask the Secretary to release that ICUA; and

(iii) Provide a copy of the notice or request to each Lower Division State.

(8) The agreement must specify that when the storing entity receives a request to develop a specific quantity of ICUA:

(i) It will ensure that the Storing State's consumptive use of Colorado River water will be decreased by a quantity sufficient to develop the requested quantity of ICUA; and

(ii) Any actions that the storing entity takes will be consistent with its State's laws.

(9) The agreement must include a description of:

(i) The actions the authorized entity will take to develop ICUA;

(ii) Potential actions to decrease the authorized entity's consumptive use of Colorado River water;

(iii) The means by which the development of the ICUA will be enforceable by the storing entity; and

(iv) The notice given to entitlement holders, including Indian tribes, of opportunities to participate in development of this ICUA.

(10) The agreement must specify that the storing entity will certify to the Secretary that ICUA has been or will be developed that otherwise would not have existed. The certification must:

(i) Identify the quantity, the means, and the entity by which ICUA has been or will be developed; and

(ii) Ask the Secretary to make the ICUA available to the consuming entity under Article II(B)(6) of the Decree and the Storage and Interstate Release Agreement.

(11) The agreement must specify a procedure for verifying development of the ICUA appropriate to the manner in which it is developed.

(12) The agreement must specify that the Secretary will release ICUA developed by the storing entity:

(i) In accordance with a request of the consuming entity;

(ii) In accordance with the terms of the Storage and Interstate Release Agreement;

(iii) Only for use by the consuming entity and not for use by other entitlement holders; and

(iv) In accordance with the terms of the Storage and Interstate Release Agreement, the BCPA, Article II(B)(6) of the Decree and all other applicable laws and executive orders.

(13) The agreement must specify that ICUA shall be released to the consuming entity only in the year and to the extent that ICUA is developed by the storing entity by reducing Colorado River water use within the Storing State.

(14) The agreement must specify that the Secretary will release ICUA only after the Secretary has determined that all necessary actions have been taken under this part.

(15) The agreement must specify that before releasing ICUA the Secretary must first determine that the storing entity:

(i) Stored water in accordance with the Storage and Interstate Release Agreement in quantities sufficient to support the development of the ICUA requested by the consuming entity; and

(ii) Certified to the satisfaction of the Secretary that the quantity of ICUA requested by the consuming entity has been developed in that year or will be developed in that year under § 414.3(f).

(16) The agreement must specify that the non-Federal parties to the Storage and Interstate Release Agreement will indemnify the United States, its employees, agents, subcontractors, successors, or assigns from loss or claim for damages and from liability to persons or property, direct or indirect, and loss or claim of any nature whatsoever arising by reason of the actions taken

by the non-federal parties to the Storage and Interstate Release Agreement under this part.

(17) The agreement must specify the extent to which facilities constructed or financed by the United States will be used to store, convey, or distribute water associated with a Storage and Interstate Release Agreement.

(18) The agreement must include any other provisions that the parties deem appropriate.

(b) *How to address financial considerations.* The Secretary will not execute an agreement that has adverse impacts on the financial interests of the United States. Financial details between and among the non-Federal parties need not be included in the Storage and Interstate Release Agreement but instead can be the subject of separate agreements. The Secretary need not be a party to the separate agreements.

(c) *How the Secretary will execute storage and interstate release agreements.* The Regional Director for the Bureau of Reclamation's Lower Colorado Region (Regional Director) may execute and administer a Storage and Interstate Release Agreement on behalf of the Secretary. The Secretary will notify the public of his/her intent to participate in negotiations to develop a Storage and Interstate Release Agreement and provide a means for public input. In considering whether to execute a Storage and Interstate Release Agreement, the Secretary may request, and the non-Federal parties must provide, any additional supporting data necessary to clearly set forth both the details of the proposed transaction and the eligibility of the parties to participate as State-authorized entities in the proposed transaction. The Secretary will also consider: applicable law and executive orders; applicable contracts; potential effects on trust resources; potential effects on entitlement holders, including Indian tribes; potential impacts on the Upper Division States; potential effects on third parties; potential environmental impacts and potential effects on threatened and endangered species; comments from interested parties, particularly parties who may be affected by the proposed action; comments from the State agencies responsible for consulting with the Secretary on matters related to the Colorado River; and other relevant factors, including the direct or indirect consequences of the proposed Storage and Interstate Release Agreement on the financial interests of the United States. Based on the consideration of the factors in this section, the Secretary may execute or decide not to execute a Storage and Interstate Release Agreement.

(d) *Assigning interests to an authorized entity.* Non-Federal parties to a Storage and Interstate Release Agreement may assign their interests in the Agreement to authorized entities. The assignment can be in whole or in part. The assignment can only be made if all parties to the agreement approve.

(e) *Requirement for contracts under the Boulder Canyon Project Act.* Release or diversion of Colorado River water for storage under this part must be supported by a water delivery contract with the Secretary in accordance with Section 5 of the BCPA. The only exception to this requirement is storage of Article II(D) (of the Decree) water by Federal or tribal entitlement holders. The release or diversion of Colorado River water that has been developed or will be developed as ICUA under this part also must be supported by a Section 5 water delivery contract.

(1) An authorized entity may satisfy the requirement of this section through a direct contract with the Secretary. An authorized entity also may satisfy the Section 5 requirement of the BCPA, for purposes of this part, through a valid subcontract with an entitlement holder that is authorized by the Secretary to subcontract for the delivery of all or a portion of its entitlement.

(2) For storing entities that do not otherwise hold a contract or valid subcontract for the delivery of the water to be stored, the Storage and Interstate Release Agreement will serve as the vehicle for satisfying the Section 5 requirement for the release or diversion of that water.

(3) For consuming entities that do not otherwise hold a contract or valid subcontract for the delivery of the water to be released by the Secretary as ICUA, the Storage and Interstate

Release Agreement will serve as the vehicle for satisfying the Section 5 requirement for the release or diversion of that water.

(f) *Anticipatory release of ICUA.* The Secretary may release ICUA to a consuming entity before the actual development of ICUA by the storing entity if the storing entity certifies to the Secretary that ICUA will be developed during that same year that otherwise would not have existed.

(1) These anticipatory releases will only be made in the same year that the ICUA is developed.

(2) Before an anticipatory release, the Secretary must be satisfied that the storing entity will develop the necessary ICUA in the same year that the ICUA is to be released.

(g) *Treaty obligations.* Prior to executing any specific Storage and Interstate Release Agreements, the United States will consult with Mexico through the International Boundary and Water Commission under the boundary water treaties and other applicable international agreements in force between the two countries.

§ 414.4 Reporting requirements and accounting under Storage and Interstate Release Agreements.

(a) *Annual report to the Secretary.* Each storing entity will submit an annual report to the Secretary containing the material required by this section. The report will be due on a date to be agreed upon by the parties to the Storage and Interstate Release Agreement. The report must include:

(1) The quantity of water diverted and stored during the prior year under all Storage and Interstate Release Agreements; and

(2) The total quantity of stored water available to support the development of ICUA under each Storage and Interstate Release Agreement to which the storing entity is a party as of December 31 of the prior calendar year.

(b) *How the Secretary accounts for diverted and stored water.* The Secretary will account for water diverted and stored under Storage and Interstate Release Agreements in the records maintained under Article V of the Decree.

(1) The Secretary will account for the water that is diverted and stored by a storing entity as a consumptive use in the Storing State for the year in which it is stored.

(2) The Secretary will account for the diversion and consumptive use of ICUA by a consuming entity as a consumptive use in the Consuming State of unused apportionment under Article II(B)(6) of the Decree in the year the water is released in the same manner as any other unused apportionment taken by that State.

(3) The Secretary will maintain individual balances of the quantities of water stored under a Storage and Interstate Release Agreement and available to support the development of ICUA. The appropriate balances will be reduced when ICUA is developed by the storing entity and released by the Secretary for use by a consuming entity.

Subpart C—Water Quality and Environmental Compliance

§ 414.5 Water quality.

(a) *Water Quality is not guaranteed.* The Secretary does not warrant the quality of water released or delivered under Storage and Interstate Release Agreements, and the United States will not be liable for damages of any kind resulting from water quality problems. The United States is not under any obligation to construct or furnish water treatment facilities to maintain or improve water quality except as may otherwise be provided in relevant Federal law.

(b) *Required water quality standards.* All entities, in diverting, using, and returning Colorado River water, must:

(1) Comply with all applicable water pollution laws and regulations of the United States, the Storing State, and the Consuming State; and

(2) Obtain all applicable permits or licenses from the appropriate Federal, State, or local authorities regarding water quality and water pollution matters.

§414.6 Environmental compliance and funding of Federal costs.

(a) *Ensuring environmental compliance.* The Secretary will complete environmental compliance documentation, compliance with the National Environmental Policy Act of 1969, as amended, and the Endangered Species Act of 1973, as amended; and will integrate the requirements of other statutes, laws, and executive orders as required for Federal actions to be taken under this part.

(b) *Responsibility for environmental compliance work.* Authorized entities seeking to enter into a Storage and Interstate Release Agreement under this part may prepare the appropriate documentation and compliance document for a proposed Federal action, such as execution of a proposed Storage and Interstate Release Agreement. The compliance documents must meet the standards set forth in Reclamation's national environmental policy guidance before they can be adopted.

(c) *Responsibility for funding of Federal costs.* All costs incurred by the United States in evaluating, processing, and/or executing a Storage and Interstate Release Agreement under this part must be funded in advance by the authorized entities that are party to that agreement.

PART 417—PROCEDURAL METHODS FOR IMPLEMENTING COLORADO RIVER WATER CONSERVATION MEASURES WITH LOWER BASIN CONTRACTORS AND OTHERS

Sec.

417.1 Scope of part.
417.2 Consultation with contractors.
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417.4 Changed conditions, emergency, or hardship modifications.
417.5 Duties of the Commissioner of Indian Affairs with respect to Indian reservations.
417.6 General regulations.

AUTHORITY: 45 Stat. 1057, 1060; 43 U.S.C. 617; and Supreme Court Decree in ''Arizona v. California,'' 376 U.S. 340.

SOURCE: 37 FR 18076, Sept. 7, 1972, unless otherwise noted.

§417.1 Scope of part.

The procedures established in this part shall apply to every public or private organization (herein termed ''Contractor'') in Arizona, California, or Nevada which, pursuant to the Boulder Canyon Project Act or to provisions of other Reclamation Laws, has a valid contract for the delivery of Colorado River water, and to Federal establishments other than Indian Reservations enumerated in Article II(D) of the March 9, 1964, Decree of the Supreme Court of the United States in the case of ''Arizona v. California et al.'', 376 U.S. 340 (for purposes of this part each such Federal establishment is considered as a ''Contractor''), except that (a) neither this part nor the term ''Contractor'' as used herein shall apply to any person or entity which has a contract for the delivery or use of Colorado River water made pursuant to the Warren Act of February 21, 1911 (36 Stat. 925) or the Miscellaneous Purposes Act of February 25, 1920 (41 Stat. 451), (b) Contractors and permittees for small quantities of water, as determined by the Regional Director, Bureau of Reclamation, Boulder City, Nev. (herein termed ''Regional Director''), and Contractors for municipal and industrial water may be excluded from the application of these procedures at the discretion of the Regional Director, and (c) procedural methods for implementing Colorado River water conservation measures on Indian Reservations will be in accordance with §417.5 of this part.

§417.2 Consultation with contractors.

The Regional Director or his representative will, prior to the beginning of each calendar year, arrange for and conduct such consultations with each Contractor as the Regional Director may deem appropriate as to the making by the Regional Director of annual recommendations relating to water conservation measures and operating practices in the diversion, delivery, distribution and use of Colorado River water, and to the making by the Regional Director of annual determinations of each Contractor's estimated water requirements for the ensuing calendar year to the end that deliveries of

Colorado River water to each Contractor will not exceed those reasonably required for beneficial use under the respective Boulder Canyon Project Act contract or other authorization for use of Colorado River water.

§ 417.3 Notice of recommendations and determinations.

Following consultation with each Contractor and after consideration of all relevant comments and suggestions advanced by the Contractors in such consultations, the Regional Director will formulate his recommendations and determinations relating to the matters specified in § 417.2. The recommendations and determinations shall, with respect to each Contractor, be based upon but not necessarily limited to such factors as the area to be irrigated, climatic conditions, location, land classifications, the kinds of crops raised, cropping practices, the type of irrigation system in use, the condition of water carriage and distribution facilities, record of water orders, and rejections of ordered water, general operating practices, the operating efficiencies and methods of irrigation of the water users, amount and rate of return flows to the river, municipal water requirements and the pertinent provisions of the Contractor's Boulder Canyon Project Act water delivery contract. The Regional Director shall give each Contractor written notice by registered or certified mail, return receipt requested, of his recommendations and determinations. If the recommendations and determinations include a reduction in the amount of water to be delivered, as compared to the calendar year immediately preceding, the notice shall be delivered to the Contractor or timely sent by registered or certified mail, return receipt requested, so that it may reasonably be delivered at least 30 days prior to the first date water delivery would be affected thereby, and shall specify the basis for such reduction including any pertinent factual determinations. The recommendations and determinations of the Regional Director shall be final and conclusive unless, within 30 days of the date of receipt of the notice, the Contractor submits his written comments and objections to the Regional Director and requests further consultation. If, after such further consultation, timely taken, the Regional Director does not modify his recommendations and determinations and so advises the Contractor in writing, or if modifications are made but the Contractor still feels aggrieved thereby after notification in writing of such modified recommendations and determinations, the Contractor may, before 30 days after receipt of said notice, appeal to the Secretary of the Interior. During the pendency of such appeal, and until disposition thereof by the Secretary, the recommendations and determinations formulated by the Regional Director shall be of no force or effect. In the event delivery of water is scheduled prior to the new recommendations and determinations becoming final, said delivery shall be made according to the Contractor's currently proposed schedule or to the schedules approved for the previous calendar year, whichever is less.

§ 417.4 Changed conditions, emergency, or hardship modifications.

A Contractor may at any time apply in writing to the Regional Director for modification of recommendations or determinations deemed necessary because of changed conditions, emergency, or hardship. Upon receipt of such written application identifying the reason for such requested modification, the Regional Director shall arrange for consultation with the Contractor with the objective of making such modifications as he may deem appropriate under the then existing conditions. The Regional Director may initiate efforts for further consultation with any Contractor on his own motion with the objective of modifying previous recommendations and determinations, but in the event such modifications are made, the Contractor shall have the same opportunity to object and appeal as provided in § 417.3 of this part for the initial recommendations and determinations. The Regional Director shall afford the fullest practicable opportunity for consultation with a Contractor when acting under this section. Each modification under this section shall be transmitted to the Contractor by letter.

§ 417.5 Duties of the Commissioner of Indian Affairs with respect to Indian reservations.

(a) The Commissioner of Indian Affairs (herein termed ''Commissioner'') will engage in consultations with various tribes and other water users on the Indian Reservations listed in Article II (D) of said Supreme Court Decree, similar to those engaged in by the Regional Director with regard to Contractors as provided in § 417.2 of this part. After consideration of all comments and suggestions advanced by said tribes and other water users on said Indian Reservations concerning water conservation measures and operating practices in the diversion, delivery, distribution and use of Colorado River water, the Commissioner shall, within the limits prescribed in said decree, make a determination as to the estimated amount of water to be diverted for use on each Indian Reservation covered by the above decree. Said determination shall be made prior to the beginning of each calendar year. That determination shall be based upon, but not necessarily limited to, such factors as: The area to be irrigated, climatic conditions, location, land classifications, the kinds of crops raised, cropping practices, the type of irrigation system in use, the condition of water carriage and distribution facilities, record of water orders, and rejections of ordered water, general operating practices, the operating efficiencies and methods of irrigation of the tribes and water users on each reservation, the amount and rate of return flows to the river, municipal water requirements, and other uses on the reservation. The Commissioner of Indian Affairs shall deliver to the Regional Director written notice of the amount of water to be diverted for use upon each Indian Reservation for each year 60 days prior to the beginning of each calendar year and the basis for said determination. The determination of the Commissioner shall be final and conclusive unless within 30 days of the date of receipt of such notice the Regional Director submits his written comments and objections to the Commissioner of Indian Affairs and requests further consultation. If after such further consultation, timely taken, the Commissioner does not modify his determination and so advises the Regional Director in writing or if modifications are made by the Commissioner but the Regional Director still does not agree therewith, the Regional Director may, within 30 days after receipt of the Commissioner's response, appeal to the Secretary of the Interior for a decision on the matter. During the pendency of such appeal and until disposition thereof by the Secretary, water deliveries will be made to the extent legally and physically available according to the Commissioner's determination or according to the Commissioner's determination for the preceding calendar year, whichever is less.

(b) Modifications of said determinations due to changed conditions, emergency or hardship may be made by the Commissioner, subject, however, to the right of the Regional Director to appeal to the Secretary, as provided in the case of an initial determination by the Commissioner. During the pendency of such an appeal, water deliveries will be made on the basis of the initial determination.

§ 417.6 General regulations.

In addition to the recommendations and determinations formulated according to the procedures set out above, the right is reserved to issue regulations of general applicability to the topics dealt with herein.

PART 418—OPERATING CRITERIA AND PROCEDURES FOR THE NEWLANDS RECLAMATION PROJECT, NEVADA

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APPENDIX A TO PART 418—CALCULATION OF EFFICIENCY EQUATION

AUTHORITY: 43 U.S.C. 391, et seq.; 43 U.S.C. 373; 43 U.S.C. 614, et seq.; 104 Stat. 3289, Pub. L. 101–618.

SOURCE: 62 FR 66467, Dec. 18, 1997, unless otherwise noted.

GENERAL PROVISIONS

§ 418.1 Definitions.

Bureau means the Bureau of Reclamation.

Decrees means the *Alpine* decree (*United States* v. *Alpine Land and Reservoir Co.*, 503 F. Supp. 877 (D. Nev. 1980)) and the *Orr Ditch* decree (*United States* v. *Orr Water Ditch Co.*, Equity No. A–3 (D. Nev.))

District means the Truckee-Carson Irrigation District or any other approved Newlands Project operator.

Eligible land means Project land which at the time of delivery has a valid water right and either:

(1) Is classified as irrigable under Bureau land classification standards (Reclamation Instruction Series 510); or

(2) Has a paid out Project water right.

Full reservoir means 295,500 acre-feet in Lahontan Reservoir using Truckee River diversions. The Reservoir can fill above 295,500 acre-feet to 316,500 acre-feet with Carson River inflow and the use of flash boards. Intentional storage on the flash boards will occur only after the peak runoff.

Project means the Newlands Irrigation Project in western Nevada.

§ 418.2 How Project water may be used.

Project water may be delivered only to serve valid water rights used for:

(a) Maintenance of wetlands and fish and wildlife including endangered and threatened species;

(b) Recreation;

(c) Irrigation of eligible land; and

(d) Domestic and other uses of Project water as defined by the decrees.

§ 418.3 Effect of these regulations on water rights.

This part governs water uses within existing rights. This part does not in any way change, amend, modify, abandon, diminish, or extend existing rights. Water rights transfers will be determined by the Nevada State Engineer under the provisions of the *Alpine* decree.

§ 418.4 Prohibited deliveries.

The District must not deliver Project water or permit its use except as provided in this part. No Project water will be released in excess of the maximum allowable diversion or delivered to ineligible lands. Delivery of water to

land in excess of established water duties is prohibited.

§418.5 Responsibility for violations.

Violations of the terms and provisions of this part must be reported immediately to the Bureau. The District or individual water users will be responsible for any shortages to water users occasioned by waste or excess delivery or delivery of water to ineligible land as provided in this part.

§418.6 Fallon Paiute-Shoshone Indian Reservation.

Nothing in this part affects:

(a) The authority of the Fallon Paiute-Shoshone Tribe to use water on the Tribe's reservation which was delivered to the Reservation in accordance with this part; or

(b) The Secretary's trust responsibility with respect to the Fallon Paiute-Shoshone Tribe.

CONDITIONS OF WATER DELIVERY

§418.7 Who may receive irrigation deliveries.

Project irrigation water deliveries may be made only to eligible land to be irrigated. The District must maintain records for each individual water right holder indicating the number of eligible acres irrigated and the amount of water ordered and delivered.

§418.8 Types of eligible land.

(a) *Eligible land actually irrigated.* During each year, the District, in cooperation with the Bureau, must identify and report to the Bureau the location and number of acres of eligible land irrigated in the Project. Possible irrigation of ineligible land will also be identified. The Bureau will review data to ensure compliance with this part. The District, in cooperation with the Bureau, will be responsible for field checking potential violations and immediately stopping delivery of Project water to any ineligible land. The Bureau may also audit as appropriate.

(b) *Eligible land with transferred water rights.* The District water rights maps dated August 1981 through January 1983 will be used as the basis for determining which lands have a valid water right. The original maps will be maintained by the District. The District must provide copies of the maps to the Bureau. The District will alter the maps and the copies to account for water right transfers as the transfers are approved by the Nevada State Engineer.

(c) *Other eligible land.* The Bureau will also identify eligible land that was not irrigated during the prior irrigation season.

§418.9 Reporting changes in eligible land.

(a) *Eligible land anticipated to be irrigated.* (1) Anticipated changes in irrigated eligible land from the prior year will be reported to the Bureau's Lahontan Area Office by the District by March 1 of each year. The District will adjust the acreage of the eligible land anticipated to be irrigated to correct for inaccuracies, water right transfers that have been finally approved by the Nevada State Engineer, and any other action that affects the number of eligible acres, acres anticipated to be irrigated, or water deliveries.

(2) As the adjustments are made, the District will provide updated information to the Bureau for review and approval. The District must adjust anticipated water allocations to individual water users accordingly. The allocations will at all times be based on a maximum annual entitlement of 3.5 acre-feet (AF) per acre of bottom land, 4.5 AF per acre of bench land, and 1.5 AF per acre of pasture land that is anticipated to be irrigated and not on the number of water-righted acres.

(3) The District will provide the individual water users with the approved data regarding the anticipated acreage to be irrigated and water allocations for each water user that year.

(i) Any adjustments based on changes in lands anticipated to be irrigated during the irrigation season must be reported by the individual water user to the District.

(ii) The District will, in turn, notify the Bureau of any changes in irrigated acreage which must be accounted for.

(iii) Each landowner's anticipated acreage must be less than or equal to the landowner's eligible acreage.

(4) Should a landowner believe that the number of acres of eligible land he or she is entitled to irrigate is different from the number of acres as approved by the Bureau, the landowner must notify the District and present appropriate documentation regarding the subject acreage. The District must record the information and present the claim to the Bureau for further consideration.

(i) If the Bureau determines there is sufficient support for the landowner's claim, then adjustments will be made to accommodate the changes requested by the landowner.

(ii) If the Bureau disallows the landowner's claim, the Bureau must notify the District in writing. The District will, in turn, inform the landowner of the disposition of the claim and the reasons therefore, and will further instruct the landowner that he or she may seek judicial review of the Bureau's determination under the decrees. If the dispute affects the current year, then the Bureau and the District will seek to expedite any court proceeding.

(b) *Changes in domestic and other uses.* By March 1 of each year, the District must report to the Bureau all anticipated domestic and other water uses. This notification must include a detailed explanation of the criteria used in allowing the use and sufficient documentation on the type and amount of use by each water user to demonstrate to the satisfaction of the Bureau that each water user is in compliance with the criteria. With adequate documentation, the District may notify the Bureau of any changes in domestic water requirements at any time during the year.

§ 418.10 Determining the amount of water duty to be delivered.

(a) Eligible land may receive no more than the amount of water in acre-feet per year established as maximum farm headgate delivery allowances by the decrees. All water use is limited to that amount reasonably necessary for economical and beneficial use under the decrees.

(b) The annual water duty as assigned by the decrees is a maximum of 4.5 AF per acre for bench lands and a maximum of 3.5 AF per acre for bottom lands. The water duty for fields with a mixture of bench and bottom lands must be the water duty of the majority acreage. Bench and bottom land designations as finally approved by the United States District Court for the District of Nevada will be used in determining the maximum water duty for any parcel of eligible land. The annual water duty for pasture land established by contract is 1.5 AF per acre.

§ 418.11 Valid headgate deliveries.

The valid water deliveries at the headgate are set by the product of eligible land actually irrigated multiplied by the appropriate water duty in accordance with §§ 418.8 and 418.10. The District will regularly monitor all water deliveries and report in accordance with § 418.9. No amount of water will be delivered in excess of the individual water user's headgate entitlement. In the event excess deliveries should occur, such amount will be automatically reflected in the efficiency deficit adjustment to the Lahontan storage. Water delivered in excess of entitlements must not be considered valid for purposes of computing project efficiency.

§ 418.12 Project efficiency.

(a) The principal feature of this part is to obtain a reasonable level of efficiency in supplying water to the headgate by the District. The efficiency targets established by this part are the cornerstone of the enforcement and the incentive provisions and when implemented will aid other competing uses.

(b) The efficiency is readily calculable at the year's end, readily applicable to water appropriate to that year, able to be compared to other irrigation systems even though there may be many dissimilarities, appropriate for long term averaging, adjustable to any headgate delivery level including droughts or allocations, automatically adjusts to changes during the year and accurately accounts for misappropriated water. Efficiency also can be achieved through any number of measures from operations to changes in the facilities and can be measured as an

end product without regard to the approach. Thus it is flexible enough to allow local decision making and yet is fact based to minimize disputes.

(c) Assuming the headgate deliveries are valid and enforceable, conveyance efficiency is the only remaining variable in determining the quantity of water needed to be supplied to the District. Conveyance efficiency is a measure of how much water is released into the irrigation system relative to actual headgate deliveries. Differences in efficiency, therefore, are directly convertible to acre-feet. The differences in efficiency, expressed as a quantity in acre-feet, may be added to or subtracted from the actual Lahontan Reservoir storage level before it is compared to the monthly storage objective. Thus, the diversions from the Truckee River, operation of other facilities (e.g., Stampede Reservoir) and decisions related to Lahontan Reservoir are made after the efficiency storage adjustments have been made. Operating decisions are made as if the adjusted storage reflected actual conditions.

(1) *Efficiency incentive credits.* In any year that the District's actual efficiency exceeds the target efficiency for the actual headgate delivery, two-thirds of the resultant savings, in water, will be credited to the District as storage in Lahontan. This storage amount will remain in Lahontan Reservoir as water available to the District to use at its discretion consistent with Nevada and Federal law. Such uses may include wetlands (directly or incidentally), power production, recreation, a hedge against future shortages or whatever else the District determines. The storage is credited at the end of the irrigation season from which it was earned. This storage ''floats'' on top of the reservoir so that if it is unused it will be spilled first if the reservoir spills. The District may use all capacity of Lahontan Reservoir not needed for project purposes to store credits.

(2) *Efficiency disincentive debits.* In any year that the District's actual efficiency falls short of the target appropriate to the actual headgate deliveries, then the resultant excess water that was used is considered borrowed from the future. Thus it becomes a storage debit adjustment to the actual Lahontan Reservoir storage level for determining all operational decisions. The debit may accumulate but may not exceed a maximum as defined in §418.13(b). The debit must be offset by an existing incentive credit or, if none is available, by a subsequent incentive at a full credit (not a 2/3 credit), or finally by a restriction of actual headgate deliveries by the District. This would only be done prospectively (a subsequent year) so the District and the water users can prepare accordingly. Since the debit does not immediately affect other competing uses or the District (except in a real drought), it allows for future planning and averaging over time.

(3) *Efficiency targets.* To determine the efficiency target, the system delivery losses were divided into categories such as seepage, evaporation and operational losses. The ''reasonable'' level of savings for each category was then determined by starting with current operating experience and applying the added knowledge from several measures. Means of achieving the efficiency targets, including the specific conservation measures and amounts, are identified in the table Possible Water Conservation Measures for the Newlands Project. Applicable target efficiencies will be determined each year as described in §418.13 (a)(4).

(4) *Available conservation measures.* The water conservation measures referred to in paragraph (c)(3) of this section and others currently available to the District are listed in the following table. The table has been revised based upon the Bureau of Reclamation's Final Report to Congress of the Newlands Project Efficiency Study, 1994.

POSSIBLE WATER CONSERVATION MEASURES FOR THE NEWLANDS PROJECT

Conservation measures[1]	Expected savings in acre-feet (AF) per year[2]	Notes
1. Water ordering	1,000	Require 48-hour advance notice.
2. Adjust Lahontan Dam releases frequently	++[3]	Match releases to demand with daily adjustments.
3. Increase accuracy of delivery records and measurement devices	12,000	Account for deliveries to nearest cfs and to nearest minute.
4. Change operation of regulating reservoirs	??[4]	Eliminate use of all or parts of regulating reservoirs; drain at end of season.
5. Shorten irrigation season	4,000	Reduce by 2 weeks.
6. Control delivery system	++	Eliminate spills, better scheduling, grouping deliveries.
7. System improvements	??	O&M activity: repair leaky gates, reshape canals, improve measuring devices.
8. Dike off 2/3 S-Line Reservoir	2,720	500 ft. dike; (5′ evaporation, 0.75′ seepage).
9. Dike off south half of Harmon Reservoir	2,130	5,000 ft. dike; large savings considering canal losses (5′ evap., 1.8′ seepage).
10. Dike off west half of Sheckler Reservoir	2,400	6,000 ft. dike.
11. Eliminate use of Sheckler Reservoir	4,000	Use for Lahontan spill capture only; restore 200 ft. of E-Canal; A-Canal is OK.
12. Line 20 miles of Truckee Canal[5]	20,000	Reduces O&M.
13. Line large canals	26,100–31,000	Line large net losers first.
14. Line regulatory reservoirs	2.3 AF/acre	
15. Reuse drain water for irrigation	7,100	Assuming blended water quality would be adequate
16. Ditch rider training each year	??	
17. Canal automation	??	Reduced canal fluctuations.
18. Community rotation system	??	Grouping deliveries by area.
19. Reclamation Reform Act water conservation plan:	??	District implementation of water conservation plan.
a. Weed and phreatophyte control		
b. Fix gate leaks		
c. Water measurement		
d. Automation		
e. Communication		
20. Pumps and wells for small diverters	400	
21. Water pricing by amount used	++	Incurs administrative costs to implement.
22. Incentive programs	??	For District personnel and/or water users.
23. Drain canals	1,065	At the end of each irrigation season.
24. Acquire parcels with inefficient delivery[6]	22,280	Acquire and retire water rights from irrigated acreage with particularly inefficient delivery. Lesser savings from transferring water rights to lands with more efficient delivery.

[1]The first seven measures were considered in developing the water budget in Table 1 for the 1988 OCAP. Additional measures could be implemented by the District to help achieve efficiency requirements.
[2]Water savings have been updated in accordance with Bureau of Reclamation's Report to Congress on Newlands Project Efficiency, April 1994.
[3]++ indicates a positive number for savings but not quantifiable at this time.
[4]?? indicates uncertainty as to savings.
[5]This measure was included in the 1988 OCAP and effects overall Project efficiency; it is recognized that savings from this measure are not accounted for in the OCAP.
[6]Identified in the 1994 BOR Efficiency Study: 31 Corporation, below Sagouspe Dam, and N Canal.

(5) The measures in paragraph (c)(4) of this section are discretionary choices for the District. The range of measures available to the District provides a level of assurance that the target efficiency is reasonably achievable. The resultant efficiency targets were also compared to the range of efficiencies actually experienced by other irrigation systems that were considered comparable in order to provide a further check on ''reasonable.'' Most of the delivery losses are relatively constant regardless of the amount of deliveries. The efficiency will necessarily vary with the amount of headgate deliveries.

(6) The target efficiency for any annual valid headgate delivery can be derived from the table in Appendix A to this part.

§ 418.13 Maximum allowable limits.

(a) *Maximum allowable diversions.* (1) A provisional water budget in the Newlands Project Water Budget table must be recalculated for each irrigation season to reflect anticipated water-righted acres to be irrigated. At the start of the irrigation season, the maximum allowable diversion (MAD)

for each year must be determined by revising the first 10 lines of the Newlands Project Water Budget table based on acres of eligible land anticipated to actually be irrigated in that year (§418.9(a)) and the water duties for those lands (§418.10). At the end of the irrigation season, the required target efficiency must be recalculated for the irrigation season based on the actual irrigated acres and percent use of headgate entitlements.

NEWLANDS PROJECT WATER BUDGET

Line		1988 OCAP[1], Base	1988 OCAP, 1992 Assumptions	1988 0CAP, 1992 w/o Additional Acres	1995 Example
1	Irrigated Acreage (acres)	60,900	64,850	61,630	59,075
2	Maximum Headgate Entitlement [2]	226,450	237,485	226,555	206,230
	Distribution System Losses				
	Evaporation:				
3	Canals/Laterals	6,000	6,200	6,000	5,838
4	Regulatory Reservoirs	15,000	7,500	7,500	7,500
	Seepage:				
5	Canals/Laterals	50,000	51,000	48,500	46,481
6	Regulatory Reservoirs	7,000	4,000	4,000	4,000
7	Operational Losses	87,980	40,800	39,400	38,270
8	TOTAL LOSSES [3]	165,980	109,500	105,400	102,089
9	Max. Allowable Diversion[4] (MAD)	392,430	346,985	331,955	308,319
10	Projected Efficiency (%) [5] Assuming 100% Water Use	58.4	68.4	68.2	66.9
11	Expected Headgate Entitlement Unused[6]	20,930	23,700	22,700	13,611
12	Diversion Reduction for Unused Water[7]	25,430	26,500	25,400	15,279
13	Expected Irrigation Diversions[8]	367,000	320,485	306,555	293,040
14	Expected Efficiency (%) [9]	56.0	66.7	66.5	65.7 [10]

1. All values are in acre-feet except where noted. The first 3 columns of numbers come from the 1988 OCAP, Table 1.
2. Derived by multiplying the acreage by the appropriate water duty.
3. In deriving the 1988 OCAP water budget, it was recognized that the District had reduced losses by 7,400 acre-feet prior to 1988.
4. Maximum Headgate Entitlement (line 2) plus Total Losses (line 8).
5. Maximum Headgate Entitlement (line 2) divided by Maximum Allowable Diversion (line 9) multiplied by 100.
6. Water delivery records show that, historically, lands have been irrigated with less than their full entitlement. In the 1988 OCAP base, the unused portion of the entitlement was assumed to be approximately 9 percent; in the 1988 OCAP 10 percent; in the 1995 example 6.6 percent.
7. Unused Water (line 11) plus a proportional share of Operational Loss (line 7).
8. Maximum Allowable Diversion (line 9) minus Diversion Reduction (line 12).
9. Maximum Headgate Entitlement (line 2) minus Unused Water (line 11) divided by Expected Irrigation Diversion (line 13) multiplied by 100.
10. Expected efficiency at 93.4 percent use of headgate entitlement; other entries based on 90 percent.

(2) The MAD will be calculated annually to ensure an adequate water supply for all water right holders whose water use complies with their decreed entitlement and this part. The MAD is the maximum amount of water permitted to be diverted for irrigation use on the Project in that year. It is calculated to ensure full entitlements can be provided, but is expected to significantly exceed Project requirements. The MAD will be established by the Bureau at least 2 weeks before the start of each irrigation season. All releases of

water from Lahontan Reservoir and diversions from the Truckee Canal (including any diversions from the Truckee Canal to Rock Dam Ditch) must be charged to the MAD except as provided in §§ 418.23 and 418.35 of this part.

(3) On the basis of the methodology adopted in this part (i.e., actual irrigated acres multiplied by appropriate water duties divided by established project efficiency) an example of the MAD calculated for the projected irrigated acreage as shown in the Newlands Project Water Budget table would be 308,319 acre-feet for the 1995 Example. The sample MAD corresponds to a system efficiency for full deliveries at 66.9 percent for 1995 actual acres. Target efficiencies must be based on the percentage of maximum headgate entitlement delivered and not on the percent of water supply available.

(4) The table Expected Project Distribution System Efficiency shows the target efficiencies which will be used over the range of irrigated acreage and percent use of entitlement expected in the future. At the beginning of the irrigation season, the target efficiencies from the Expected Project Distribution System Efficiency table used to calculate the MAD will be based on the expected irrigated acreage and expected percent use of entitlement. At the end of the irrigation season, the actual acreage irrigated and actual percent use of entitlement will be used to determine the required efficiency from the Expected Project Distribution System Efficiency. The target efficiencies are read directly from the table if the acreage and use of entitlement values are shown, otherwise the target efficiency must be extrapolated from the table or calculated using the Efficiency Equation. Appendix A of this part shows the calculations used to derive the Efficiency Equation and the efficiency targets.

Expected Project Distribution System Efficiency (Not Valid Below 75 Percent Headgate Delivery)														
Project Acreage	Efficiency Equation A and B values: Effic. = AxD + B		Actual Project Headgate Delivery Expressed as a Percent of Full Entitlement (efficiency equation variable D)											
	A	B	75%	80%	85%	90%	91%	92%	93%	94%	95%	96%	98%	100%
64,850	0.1840	49.02	62.8	63.7	64.7	65.6	65.8	65.9	66.1	66.3	66.5	66.7	67.1	67.4
64,500	0.1842	48.97	62.8	63.7	64.6	65.5	65.7	65.9	66.1	66.3	66.5	66.7	67.0	67.4
64,000	0.1845	48.90	62.7	63.7	64.6	65.5	65.7	65.9	66.1	66.2	66.4	66.6	67.0	67.3
63,500	0.1847	48.83	62.7	63.6	64.5	65.5	65.6	65.8	66.0	66.2	66.4	66.6	66.9	67.3
63,000	0.1850	48.76	62.6	63.6	64.5	65.4	65.6	65.8	66.0	66.2	66.3	66.5	66.9	67.3
62,500	0.1853	48.69	62.6	63.5	64.4	65.4	65.5	65.7	65.9	66.1	66.3	66.5	66.8	67.2
62,000	0.1856	48.62	62.5	63.5	64.4	65.3	65.5	65.7	65.9	66.1	66.2	66.4	66.8	67.2
61,500	0.1858	48.54	62.5	63.4	64.3	65.3	65.5	65.6	65.8	66.0	66.2	66.4	66.8	67.1
61,000	0.1861	48.47	62.4	63.4	64.3	65.2	65.4	65.6	65.8	66.0	66.1	66.3	66.7	67.1
60,500	0.1864	48.39	62.4	63.3	64.2	65.2	65.4	65.5	65.7	65.9	66.1	66.3	66.7	67.0
60,000	0.1867	48.31	62.3	63.3	64.2	65.1	65.3	65.5	65.7	65.9	66.1	66.2	66.6	67.0
59,500	0.1870	48.24	62.3	63.2	64.1	65.1	65.3	65.4	65.6	65.8	66.0	66.2	66.6	66.9
59,000	0.1873	48.16	62.2	63.1	64.1	65.0	65.2	65.4	65.6	65.8	66.0	66.1	66.5	66.9
58,500	0.1876	48.08	62.1	63.1	64.0	65.0	65.1	65.3	65.5	65.7	65.9	66.1	66.5	66.8
58,000	0.1879	47.99	62.1	63.0	64.0	64.9	65.1	65.3	65.5	65.7	65.8	66.0	66.4	66.8
57,500	0.1882	47.91	62.0	63.0	63.9	64.9	65.0	65.2	65.4	65.6	65.8	66.0	66.4	66.7
57,000	0.1886	47.83	62.0	62.9	63.9	64.8	65.0	65.2	65.4	65.6	65.7	65.9	66.3	66.7
56,500	0.1889	47.74	61.9	62.9	63.8	64.7	64.9	65.1	65.3	65.5	65.7	65.9	66.3	66.6
56,000	0.1892	47.66	61.8	62.8	63.7	64.7	64.9	65.1	65.3	65.4	65.6	65.8	66.2	66.6
55,500	0.1895	47.57	61.8	62.7	63.7	64.6	64.8	65.0	65.2	65.4	65.6	65.8	66.1	66.5
55,000	0.1899	47.48	61.7	62.7	63.6	64.6	64.8	64.9	65.1	65.3	65.5	65.7	66.1	66.5
54,500	0.1902	47.39	61.7	62.6	63.6	64.5	64.7	64.9	65.1	65.3	65.5	65.6	66.0	66.4
54,000	0.1906	47.30	61.6	62.5	63.5	64.4	64.6	64.8	65.0	65.2	65.4	65.6	66.0	66.4
53,500	0.1909	47.20	61.5	62.5	63.4	64.4	64.6	64.8	65.0	65.1	65.3	65.5	65.9	66.3
53,000	0.1913	47.11	61.5	62.4	63.4	64.3	64.5	64.7	64.9	65.1	65.3	65.5	65.9	66.2
52,500	0.1916	47.01	61.4	62.3	63.3	64.3	64.4	64.6	64.8	65.0	65.2	65.4	65.8	66.2
52,000	0.1920	46.91	61.3	62.3	63.2	64.2	64.4	64.6	64.8	65.0	65.2	65.3	65.7	66.1

(5) Adjustments in the MAD must be made by the Bureau each year based on changes in irrigated eligible land from the prior year and subsequent decisions concerning transfers of Project water rights, using the methodology established in this section.

(6) If the MAD for a given year will not meet the water delivery requirements for the eligible land to be irrigated due to weather conditions, canal breaks, or some other unusual or unforeseen condition, the District must ask the Bureau for additional water.

(i) The District's request must include a written statement containing a detailed explanation of the reasons for the request.

(ii) The Bureau must promptly review the request and after consultation with the Federal Water Master and other interested parties, will determine if the request or any portion of it should be approved. The Bureau will make reasonable adjustments for unforeseen causes or events but will not make adjustments to accommodate waste or Project inefficiency or other uses of water not in accordance with this part or with State and Federal law.

(iii) The Bureau will then notify the District of its determination. If the District does not agree with the Bureau's decision, it may seek judicial review. The Bureau and the District will seek to expedite the court proceeding in order to minimize any potential adverse effects.

(b) *Maximum allowable efficiency debits (MED).* The debits in Lahontan Reservoir storage from the District's actual conveyance efficiency not achieving the target efficiency can accumulate over time. If these amounts of borrowed storage get too large they may not be offset later by increased efficiencies and may severely affect the District's water users by imposing an added ''drought'' on top of a real one. Therefore, the maximum efficiency debit cushion is set at 26,000 acre-feet. However, unlike the MAD, it only applies to the subsequent year's operation. The MED is approximately 9 percent of the headgate entitlements.

MONITORING DIVERSIONS

§ 418.14 Recordkeeping requirements.

(a) By the end of each month, the District must submit to the Bureau's Lahontan Area Office reports for the previous month which document monthly inflow and outflow in acre-feet from the Truckee and Carson divisions of the Project for that month. Reports must include any data the Bureau may reasonably require to monitor compliance with this part.

(b) Accounting for farm headgate deliveries must be based on the amount of water actually delivered to the water user. Project operations must provide for the amount of water ordered and the distribution system losses.

(c) The District must keep records of all domestic and other water uses showing the purpose and amount of water usage for each entity. The District must make the records available for review by the Bureau upon request. The Bureau may audit all records kept by the District.

§ 418.15 Operations monitoring.

(a) The Bureau will work with the District to monitor Project operations and will perform field inspections of water distribution during the irrigation season.

(1) Staff members of the Bureau's Lahontan Area Office and the District will meet as often as necessary during the irrigation season after each water distribution report has been prepared to examine the amounts of water used to that point in the season.

(2) On the basis of the information obtained from field observations, water use records, and consultations with District staff, the Bureau will determine at monthly intervals whether the rate of diversion is consistent with this part for that year.

(3) The District will be informed in writing of suggested adjustments that may be made in management of diversions and releases as necessary to achieve target efficiencies and stay within the MAD.

(b) Project operations will be monitored in part by measuring flows at key locations. Specifically, Project diversions (used in the calculations under § 418.18 below) will be determined by:

(1) Adding flows measured at:

(i) Truckee Canal near Wadsworth—U.S. Geological Survey (USGS) gauge number 10351300;

(ii) Carson River below Lahontan Dam—USGS gauge number 10312150;

(iii) Rock Dam Ditch near the end of the concrete lining; and

(2) Subtracting:

(i) Flows measured at the Truckee Canal near Hazen—USGS gauge number 10351400;

(ii) The Carson River at Tarzyn Road near Fallon (below Sagouspe Dam) for satisfying water rights outside of the Project boundaries as described in § 418.25, USGS gauge number 10312275;

(iii) Estimated losses in the Truckee Canal; and

(iv) Spills, precautionary drawdown, and incentive water released at Lahontan Dam under §§ 418.24 and 418.36.

OPERATIONS AND MANAGEMENT

§ 418.16 Using water for power generation.

All use of Project water for power generation must be incidental to releases charged against Project diversions, precautionary drawdown, incentive water (§ 418.35), or spills.

§ 418.17 Truckee and Carson River water use.

Project water must be managed to make maximum use of Carson River water and to minimize diversions of Truckee River water through the Truckee Canal. This will make available as much Truckee River water as possible for use in the lower Truckee River and Pyramid Lake.

§ 418.18 Diversions at Derby Dam.

(a) Diversions of Truckee River water at Derby Dam must be managed to maintain minimum terminal flow to Lahontan Reservoir or the Carson River except where this part specifically permits diversions.

(b) Diversions to the Truckee Canal must be managed to achieve an average terminal flow of 20 cfs or less during times when diversions to Lahontan Reservoir are not allowed (the flows must be averaged over the total time diversions are not allowed in that calendar year; i.e., if flows are not allowed in July and August and then are allowed in September then not allowed in October and November, the average flow will be averaged over the four months of July, August, October, and November).

(c) The Bureau will work cooperatively with the District on monitoring the flows at the USGS gage on the Truckee Canal near Hazen to determine if and when flows are in excess of those needed in accord with this part and bringing the flows back into compliance when excessive.

(d) Increases in canal diversions which would reduce Truckee River flows below Derby Dam by more than 20 percent in a 24-hour period will not be allowed when Truckee River flow, as measured by the gauge below Derby Dam, is less than or equal to 100 cfs.

(e) Diversions to the Truckee Canal will be coordinated with releases from Stampede Reservoir and other reservoirs, in cooperation with the Federal Water Master, to minimize fluctuations in the Truckee River below Derby Dam in order to meet annual flow regimes established by the United States Fish and Wildlife Service for listed species in the lower Truckee River.

§ 418.19 Diversions from the Truckee River to the Truckee Division.

Sufficient water, if available, will be diverted from the Truckee River through the Truckee Canal to meet the direct irrigation, domestic and other entitlements of the Truckee Division.

§ 418.20 Diversions from the Truckee River to Lahontan Reservoir, January through June.

(a) Truckee River diversions through the Truckee Canal will be made to meet Lahontan Reservoir end-of-month storage objectives for the months of January through June. The current month storage objective will be based, in part, on the monthly Natural Resources Conservation Service (NRCS) April through July runoff forecast for the Carson River near Fort Churchill. The forecast will be used to determine the target storage for Lahontan Reservoir and anticipated diversion requirements for the Carson Division. The Bureau, in consultation with the District, Federal Water Master, Fish and Wildlife Service, the Pyramid Lake

Paiute Tribe, and other affected parties, will determine the exceedance levels and predicted Carson River inflows based on the reliability of the NRCS forecast and other available information such as river forecasts from other sources. The end-of-month storage objectives may be adjusted any time during the month as new forecasts or other information become available.

(b) The January through June storage objective will be calculated using the following formula:

$$LSOCM=TSM/J-(C1^* AJ)+L+(C2^* CDT)$$

Where:

(1) LSOCM=current end-of-month storage objectives for Lahontan Reservoir.

(2) TSM/J=current end-of-month May/June Lahontan Reservoir target storage.

(3) C1* AJ=forecasted Carson River inflow for the period from the end of the current month through May or June, with AJ being the Bureau's April through July runoff forecast for the Carson River at Fort Churchill and C1 being an adjustment coefficient.

(4) L=an average Lahontan Reservoir seepage and evaporation loss from the end of the current month through May or June.

(5) C2* CDT=projected Carson Division demand from the end of the current month through May or June, with CDT being the total Carson Division diversion requirement (based on eligible acres anticipated to be irrigated times the appropriate duty times a 95 percent usage rate), and C2 being the estimate of the portion of the total diversion requirement to be delivered during this period.

(6) Values for TSM/J will vary with the Carson Division water demand as shown in § 418.22 and the Adjustments to Lahontan Reservoir Storage Targets table. Values C1, L and C2 are defined in the following table along with an example of TSM/J for Carson River water demand of 271,000 acre-feet.

MONTHLY VALUES FOR LAHONTAN STORAGE COMPUTATIONS

	January	February	March	April	May	June
TSM/J	174.0	174.0	174.0	174.0	174.0	190.0
C1/MAY	0.863	0.734	0.591	0.394		
C1/JUNE	1.190	1.061	0.918	0.721	0.327	
L/MAY	13.9	12.5	9.9	7.1		
L/JUNE	18.2	16.8	14.2	11.4	4.3	
C2/MAY	0.30	0.30	0.28	0.18		
C2/JUNE	0.47	0.47	0.45	0.35	0.17	

(c) The Lahontan Reservoir storage objective for each month is contained in the following table.

LAHONTAN RESERVOIR STORAGE OBJECTIVES

Period	Monthly storage objective
January through April	Lowest of the May calculation, the June calculation, or full reservoir.
May	Lower of the June calculation or full reservoir.
June	June storage target.

(d) Once the monthly Lahontan Reservoir storage objective has been determined, the monthly diversion to the Project from the Truckee River will be based upon water availability and Project demand as expressed in the following relationship:

$$TRD=TDD+TCL+CDD+LRL+LSOCM-ALRS-CRI$$

Where:

(1) TRD=current month Truckee River diversion in acre-feet to the Project.

(2) TDD=current month Truckee Division demand.

(3) TCL = current month Truckee Canal conveyance loss.

(4) CDD = current month Carson Division demand.

(5) LRL = current month Lahontan Reservoir seepage and evaporation losses.

(6) LSOCM = current month end-of-month storage objective for Lahontan Reservoir.

(7) ALRS = current month beginning-of-month storage in Lahontan Reservoir. (Includes accumulated Stampede credit described below and further adjusted for the net efficiency penalty or efficiency credit described in §§ 418.12, 418.36, and 418.37).

(8) CRI = current month anticipated Carson River inflow to Lahontan Reservoir (as determined by Reclamation in consultation with other interested parties).

(e) The following procedure is intended to ensure that monthly storage objectives are not exceeded. It may be implemented only if the following conditions are met:

(1) Diversions from the Truckee River are required to achieve the current month Lahontan Reservoir storage objective (LSOCM);

(2) Truckee River runoff above Derby Dam is available for diversion to Lahontan Reservoir;

(3) Sufficient Stampede Reservoir storage capacity is available.

(f) The Bureau, in consultation with the Federal Water Master, the District, Fish and Wildlife Service, the Bureau of Indian Affairs, and the Pyramid Lake Paiute Tribe will determine whether the calculated current month Truckee River diversion to Lahontan Reservoir (TRD-TDD-TCL) may be reduced during that month and the amount of reduction credit stored in Stampede Reservoir.

(1) Reductions in diversions may begin in November and continue until the end of June.

(2) Reductions in diversions to Lahontan Reservoir with credit storage in Stampede Reservoir may be implemented to the extent that:

(i) The reduction is in lieu of a scheduled release from Stampede Reservoir for the purpose of supplementing flows to Pyramid Lake; and/or

(ii) Water is captured in Stampede Reservoir that is scheduled to be passed through and diverted to the Truckee Canal.

(3) The Fish and Wildlife Service must approve any proposal to reduce diversions to Lahontan Reservoir for Newlands Project credit purposes without a comparable reduction in release from Stampede Reservoir or any conversion of Stampede Reservoir project water to Newlands Project credit water.

(4) The diversion to Lahontan Reservoir may be adjusted any time during the month as revised runoff forecasts become available. The accumulated credit will be added to current Lahontan Reservoir storage (ALRS) in calculating TRD. If the sum of accumulated credit and Lahontan Reservoir storage exceeds 295,000 acre-feet, credit will be reduced by the amount in excess of 295,000 acre-feet. Credit will also be reduced by the amount of precautionary drawdown or spills in that month. If the end-of-month storage in Lahontan Reservoir plus the accumulated credit in Stampede Reservoir at the end of June exceeds the end-of-month storage objective for Lahontan, the credit will be reduced by the amount exceeding the end-of-month storage objective.

(5) Following consultation with the District, the Federal Water Master, and other interested parties as appropriate, the Bureau will release credit water as needed for Project purposes from July 1 through the end of the irrigation season in which the credit accrues with timing priority given to meeting current year Project irrigation demands.

(6) Conveyance of credit water in the Truckee Canal must be in addition to regularly scheduled diversions for the Project and will be measured at the USGS gauge number 10351300 near Wadsworth.

(7) Newlands credit water in Stampede Reservoir storage will be subject to spill and will not carry over to subsequent years. Newlands credit water in Stampede can be exchanged to other reservoirs and retain its priority. The credit must be reduced to the extent that Lahontan Reservoir storage plus accumulated credit at the end of the previous month exceeds the storage objectives for that month. If Newlands credit water is spilled, it may be diverted to Lahontan Reservoir subject to applicable storage targets.

(i) The Bureau, in consultation with the District, the Federal Water Master, and other interested parties, may release Newlands Project credit water before July 1.

(ii) If any Newlands credit water remains in Stampede Reservoir storage after the end of the current irrigation season in which it accumulated, it will convert to water for cui-ui recovery and will no longer be available for Newlands credit water.

(iii) Newlands credit water stored in Stampede Reservoir will be available for use only on the Carson Division of the Newlands Project.

(g) Subject to the provisions of § 418.20 (b), LSOCM may be adjusted as frequently as necessary when new information indicates the need and diversions from the Truckee River to the Truckee Canal must be adjusted daily

or otherwise as frequently as necessary to meet the monthly storage objective.

§ 418.21 Diversion of Truckee River water to Lahontan Reservoir, July through December.

Truckee River diversions through the Truckee Canal to Lahontan Reservoir from July through December must be made only in accordance with the Adjustments to Lahontan Reservoir Storage Targets table and § 418.22. Diversions shall be started to achieve the end-of-month storage targets listed in the table in § 418.22 and will be discontinued when storage is forecast to meet or exceed the end-of-month storage targets at the end of the month. Diversions may be adjusted any time during the month as conditions warrant (i.e., new forecasts, information from other forecasts becoming available, or any other new information that may impact stream forecasts).

§ 418.22 Future adjustments to Lahontan Reservoir storage targets.

(a) The Lahontan Reservoir storage targets must be adjusted to accommodate changes in water demand in the Carson Division. Using the information reported by the District by March 1 of each year on eligible land expected to be irrigated and end-of-year data on eligible land actually irrigated (§ 418.9(b)), the Bureau will determine if the Lahontan Reservoir storage targets need to be changed. If no change is needed, the storage targets currently in effect will remain in effect.

(1) Only the actual water demand reported for full water years (100 percent water supply) will be considered. Targets will not be changed based on water demand reported for less than full water years.

(2) All changes in storage targets must start on October 1 of any year. If information provided by March 1 and other available information indicates that the Lahontan Reservoir storage targets must be changed, the new set of storage targets must be applied starting October 1 of the same year and remain in effect until changed according to this section.

(b) All changes to storage targets will be made according to the table in this section. The table of storage targets has been developed to provide a consistent Project water supply over a range of demands.

(1) A storage target adjustment must be made in increments of thousands of acre-feet for the change as indicated in the column listing Carson Division Demand and the complete set of monthly targets must be applied.

(2) If the change in reported water demand is above or below the values in the table of storage targets, the adjustment to the storage targets can be calculated. The calculated adjustment is the number that would appear in the column Target Adjustment in the table. The calculated Target Adjustment is then added or subtracted to the base storage target for each month. Target Adjustments must be made in whole increments of 1,000 acre-feet and calculated values will be rounded to the nearest 1,000 acre-feet.

(i) For demands greater than those set forth on the table, the formula for the Target Adjustment is: Target Adjustment = 0.00208 (Demand in acre-feet—271,000 acre-feet). For example, if water demand increased to 292,635 acre-feet per year, the Target Adjustment calculation would be = $0.00208 \times (292{,}535 - 271{,}000)$. The result would be a Target Adjustment of 45 or 45,000 acre-feet. This would be added to the base monthly storage target values so, the January-May target would be 219,000 acre-feet, June would be 235,000 acre-feet, and so on.

(ii) For demands less than those set forth on the table, the formula for the Target Adjustment is: Target Adjustment = 0.00174 (Demand in acre-feet—271,000 acre-feet). For example, if water demand decreased to 248,011 acre-feet per year, the Target Adjustment calculation would be = $0.00174 \times (248{,}011 - 271{,}000)$. The result would be a Target Adjustment of −40 or −40,000 acre-feet. This would be subtracted from the base monthly storage target values so, the January-May target would be 134,000 acre-feet, June would be 150,000 acre-feet, and so on.

ADJUSTMENTS TO LAHONTAN RESERVOIR STORAGE TARGETS

Increase in Storage Targets for Carson Division Diversion Demand Greater than 271,000 acre-feet									
Target Adjust-ment	Carson Division Demand	Jan-May	June	July	Aug	Sep	Oct	Nov	Dec
0	271.0	174	190	160	100	64	52	74	101
1	271.5	175	191	161	101	65	53	75	102
2	272.0	176	192	162	102	66	54	76	103
3	272.4	177	193	163	103	67	55	77	104
4	272.9	178	194	164	104	68	56	78	105
5	273.4	179	195	165	105	69	57	79	106
6	273.9	180	196	166	106	70	58	80	107
7	274.4	181	197	167	107	71	59	81	108
8	274.8	182	198	168	108	72	60	82	109
9	275.3	183	199	169	109	73	61	83	110
10	275.8	184	200	170	110	74	62	84	111
11	276.3	185	201	171	111	75	63	85	112
12	276.8	186	202	172	112	76	64	86	113
13	277.3	187	203	173	113	77	65	87	114
14	277.7	188	204	174	114	78	66	88	115
15	278.2	189	205	175	115	79	67	89	116
16	278.7	190	206	176	116	80	68	90	117
17	279.2	191	207	177	117	81	69	91	118
18	279.7	192	208	178	118	82	70	92	119
19	280.1	193	209	179	119	83	71	93	120
20	280.6	194	210	180	120	84	72	94	121
21	281.1	195	211	181	121	85	73	95	122
22	281.6	196	212	182	122	86	74	96	123
23	282.1	197	213	183	123	87	75	97	124
24	282.5	198	214	184	124	88	76	98	125
25	283.0	199	215	185	125	89	77	99	126
26	283.5	200	216	186	126	90	78	100	127
27	284.0	201	217	187	127	91	79	101	128
28	284.5	202	218	188	128	92	80	102	129
29	284.9	203	219	189	129	93	81	103	130
30	285.4	204	220	190	130	94	82	104	131
31	285.9	205	221	191	131	95	83	105	132
32	286.4	206	222	192	132	96	84	106	133
33	286.9	207	223	193	133	97	85	107	134
34	287.3	208	224	194	134	98	86	108	135
35	287.8	209	225	195	135	99	87	109	136
36	288.3	210	226	196	136	100	88	110	137
37	288.8	211	227	197	137	101	89	111	138
38	289.3	212	228	198	138	102	90	112	139
39	289.8	213	229	199	139	103	91	113	140
40	290.2	214	230	200	140	104	92	114	141

Decrease in Storage Targets for Carson Division Diversion Demand Less than 271,000 acre-feet									
Target Adjust-ment	Carson Division Demand	Jan-May	June	July	Aug	Sep	Oct	Nov	Dec
0	271.0	174	190	160	100	64	52	74	101
-1	270.4	173	189	159	99	63	51	73	100
-2	269.9	172	188	158	98	62	50	72	99
-3	269.3	171	187	157	97	61	49	71	98
-4	268.7	170	186	156	96	60	48	70	97
-5	268.1	169	185	155	95	59	47	69	96
-6	267.6	168	184	154	94	58	46	68	95
-7	267.0	167	183	153	93	57	45	67	94
-8	266.4	166	182	152	92	56	44	66	93
-9	265.8	165	181	151	91	55	43	65	92
-10	265.3	164	180	150	90	54	42	64	91
-11	264.7	163	179	149	89	53	41	63	90
-12	264.1	162	178	148	88	52	40	62	89
-13	263.5	161	177	147	87	51	39	61	88
-14	263.0	160	176	146	86	50	38	60	87
-15	262.4	159	175	145	85	49	37	59	86
-16	261.8	158	174	144	84	48	36	58	85
-17	261.2	157	173	143	83	47	35	57	84
-18	260.7	156	172	142	82	46	34	56	83
-19	260.1	155	171	141	81	45	33	55	82
-20	259.5	154	170	140	80	44	32	54	81
-21	258.9	153	169	139	79	43	31	53	80
-22	258.4	152	168	138	78	42	30	52	79
-23	257.8	151	167	137	77	41	29	51	78
-24	257.2	150	166	136	76	40	28	50	77
-25	256.6	149	165	135	75	39	27	49	76
-26	256.1	148	164	134	74	38	26	48	75
-27	255.5	147	163	133	73	37	25	47	74
-28	254.9	146	162	132	72	36	24	46	73
-29	254.3	145	161	131	71	35	23	45	72
-30	253.8	144	160	130	70	34	22	44	71
-31	253.2	143	159	129	69	33	21	43	70
-32	252.6	142	158	128	68	32	20	42	69
-33	252.0	141	157	127	67	31	19	41	68
-34	251.5	140	156	126	66	30	18	40	67
-35	250.9	139	155	125	65	29	17	39	66
-36	250.3	138	154	124	64	28	16	38	65
-37	249.7	137	153	123	63	27	15	37	64

§ 418.23 Diversion of Rock Dam Ditch water.

Project water may be diverted directly to Rock Dam Ditch from the Truckee Canal only when diversions cannot be made from the outlet works of Lahontan Reservoir. Such diversions will require the prior written approval of the Bureau and be used in calculating Project diversions.

§ 418.24 Precautionary drawdown and spills from Lahontan Reservoir.

(a) Even though flood control is not a specifically authorized purpose of the Project, at the request of the District

and in consultation with other interested parties and the approval of the Bureau, precautionary drawdown of Lahontan Reservoir may be made to limit potential flood damage along the Carson River. The Bureau will develop criteria for precautionary drawdown in consultation with the District and other interested parties.

(1) The drawdown must be scheduled sufficiently in advance and at such a rate of flow in order to divert as much water as possible into the Project irrigation system for delivery to eligible land or storage in reregulating reservoirs for later use on eligible land.

(2) During periods of precautionary drawdown, or when water is spilled from Lahontan Reservoir, Project diversions will be determined by comparison with other years' data and normalized by comparison of differences in climatological data. The Bureau will estimate the normalization in consultation with the District and other interested parties.

(3) Spills from Lahontan Reservoir and precautionary drawdown of the reservoir to create space for storing flood waters from the Carson River Basin that are in excess of the normalized diversions will not be used in calculating Project diversions.

(4) Water captured in Project facilities as a result of a precautionary drawdown or spill will not be counted as storage in Lahontan Reservoir for the purpose of calculating Truckee River Diversions. Such water will not be counted as diversions to the Project unless such water is beneficially applied as described in (a)(5) of this section.

(5) Water from precautionary drawdowns or spills that is captured in Project facilities must be used to the maximum extent possible, and counted as deliveries to eligible lands in the year of the drawdown. If all the drawdown water captured in Project facilities cannot be used in the year of capture for delivery to eligible lands, then that water must be delivered to eligible lands in subsequent years to the maximum extent possible and counted against the water users' annual allocation.

(b) If a precautionary drawdown in one month results in a failure to meet the Lahontan Reservoir storage objective for that month, the storage objective in subsequent months will be reduced by one-half of the difference between that month's storage objective and actual end-of-month storage. The Bureau is not liable for any damage or water shortage resulting from a precautionary drawdown.

§ 418.25 Water use for other than Newlands Project purposes.

The District will release sufficient water to meet the vested water rights below Sagouspe Dam as specified in the *Alpine* decree. These water rights are usually met by return flows. Releases for these water rights will in no case exceed the portion of 1,300 acre-feet per year not supplied by return flows. This water must be accounted for at the USGS gauge number 10312275 (the Carson River at Tarzyn Road near Fallon). Releases for this purpose will not be considered in determining Project diversions since the lands to which the water is being delivered are not part of the Project. (See § 418.15(b)(2)(ii).) Any flow past this gage in excess of the amount specified in this part will be absorbed by the District as an efficiency loss.

§ 418.26 Charges for water use.

The District must maintain a financing and accounting system which produces revenue sufficient to repay its operation and maintenance costs and to discharge any debt to the United States. The District should give consideration to adopting a system which provides reasonable financial incentives for the economical and efficient use of water.

§ 418.27 Distribution system operation.

(a) The District must permit only its authorized employees or agents to open and close individual turnouts and operate the distribution system facilities. After obtaining Bureau approval, the District may appoint agents to operate individual headgates on a specific lateral if it can be shown that the water introduced to the lateral by a District employee is completely scheduled and can be fully accounted for with a reasonable allowance for seepage and evaporation losses.

(b) If agents need to adjust the scheduled delivery of water to the lateral to accommodate variable field conditions, weather, etc., they must immediately notify the District so proper adjustments can be made in the distribution system. Each agent must keep an accurate record of start and stop times for each delivery and the flow during delivery. This record will be given to the District for proper accounting of water delivered.

(c) The program of using agents to operate individual headgates will be reviewed on a regular basis by the District and the Bureau. If it is found that problems such as higher than normal losses, water not accounted for, etc., have developed on an individual lateral, the program will be suspended and the system operated by District employees until the problems are resolved.

ENFORCEMENT

§ 418.28 Conditions of delivery.

There are four basic elements for enforcement with all necessary quantities and review determined in accordance with the relevant sections of this part.

(a) *Valid headgate deliveries*. If water is delivered to ineligible land or in excess of the appropriate water duty then:

(1) The District will stop the illegal delivery immediately;

(2) The District will notify the Bureau of the particulars including the known or estimated location and amounts;

(3) The amount will not be included as a valid headgate delivery for purposes of computing the Project efficiency and resultant incentive credit or debit to Lahontan storage; and

(4) If the amount applies to a prior year, then the amount will be treated directly as a debit to Lahontan storage in the same manner as an efficiency debit.

(b) *District efficiency*. To the extent that the actual District efficiency determined for an irrigation season is greater or less than the established target efficiency, as determined for the corresponding actual valid headgate deliveries, then the difference in efficiency, expressed as a quantity in acre-feet, may be added to or subtracted from the actual Lahontan Reservoir storage level before it is compared to the monthly storage objective as follows:

(1) Greater efficiency—Credited to the District as storage in Lahontan or subtracted from any accumulated debit, or two-thirds as storage in Lahontan for their discretionary use in accordance with state law.

(2) Less efficient—Debited or added to Lahontan storage as an adjustment to the actual storage level.

(c) *Maximum Allowable Diversion (MAD)*. The MAD must be computed each year to determine the amount of water required to enable the delivery of full entitlements at established Project efficiencies. Project diversions must not exceed the MAD. Within the operating year, the Bureau will notify the District in writing of any expected imminent violations of the MAD. The District will take prompt action to avoid such violations. The Bureau will exercise reasonable latitude from month to month to accommodate the District's efforts to avoid exceeding the MAD.

(d) *Maximum Efficiency Debit (MED)*. If the MED exceeds 26,000 AF at the end of any given year, the District must prepare and submit to the Bureau for review and approval, a plan detailing the actions the District will take to either earn adequate incentive credits or to restrict deliveries to reduce the MED to less than 26,000 AF by the end of the next year. The plan must be submitted to the Bureau in writing before the date of March 1 immediately subsequent to the exceeding of the MED. If the District fails to submit an approvable plan, Project allocations will be reduced by an amount equal to the MED in excess of 26,000 plus 13,000 (one-half the allowable MED). Nominally this will mean a forced reduction of approximately five percent of entitlements. The Bureau will notify the District in writing of the specific allocation and method of derivation in sufficient time for the District to implement the allocation. Liabilities arising from shortages occasioned by operation of this provision must be the responsibility of the District or individual water users.

§ 418.29 Project management.

In addition to the provisions of § 418.28, if the District is found to be operating Project facilities or any part thereof in substantial violation of this part, then, upon the determination by the Bureau, the Bureau may take over from the District the care, operation, maintenance, and management of the diversion and outlet works (Derby Dam and Lahontan Dam/Reservoir) or any or all of the transferred works by giving written notice to the District of the determination and its effective date. Following written notification from the Bureau, the care, operation, and maintenance of the works may be retransferred to the District.

§ 418.30 Provisions required in future contracts.

The Bureau must provide in new, amended, or replacement contracts for the operation and maintenance of Project works, for the reservation by the Secretary of rights and options to enforce this part.

WATER MANAGEMENT AND CONSERVATION

§ 418.31 Conservation measures.

(a) Specific conservation actions will be needed for the District and its members to achieve a reasonable efficiency of operation as required by this part. The District is best able to determine the particular conservation measures that meet the needs of its water users. This ensures that the measures reflect the priorities and collective judgment of the water users; and will be practical, understandable and supported. The District also has the discretion to make changes in the measures they adopt as conditions or results dictate.

(b) The District will keep the Bureau informed of the measures they expect to utilize during each year. This will enable the Bureau to stay apprised of any helpful information that may, in turn, help the Bureau assist other irrigation districts. The Bureau will work cooperatively in support of the District's selection of measures and methods of implementation.

§ 418.32 Cooperative programs.

(a) The Bureau and the District will work cooperatively to develop a water management and conservation program to promote efficient management of water in the Project. The program will emphasize developing methods, including computerization and automation, to improve the District's operations and procedures for greater water delivery conservation.

(b) The Bureau will provide technical assistance to the District and cooperatively assist the District in their obligations and efforts to:

(1) Document and evaluate existing water delivery and measurement practices:

(2) Implement improvements to these practices; and

(3) Evaluate and, where practical, implement physical changes to Project facilities.

IMPLEMENTATION

§ 418.33 Purpose of the implementation strategy.

The intent of the implementation strategy for this part is to ensure that the District delivers water within entitlements at a reasonable level of efficiency as a long term average.

(a) The incentives and disincentives provided in this part are designed to encourage local officials with responsibilities for Project operations to select and implement through their discretionary actions, operating strategies which achieve the principles of this part.

(b) The specified efficiencies in the Expected Project Distribution System Efficiency table (§ 418.13 (a)(4)) were developed considering implementation of reasonable conservation measures, historic project operations, economics, and environmental effects.

(c) The efficiency target will be used as a performance standard to establish at the end of each year on the basis of actual operations, whether the District is entitled to a performance bonus in the form of incentive water or a reduction in storage for the amount borrowed ahead.

§ 418.34 Valid headgate deliveries.

Project water may be delivered to headgates only as provided in §§ 418.8 and 418.10. Water delivered to lands that are not entitled to be irrigated or not in accord with decreed water duties is difficult to quantify at best because it is not typically measured. Since it is not likely to be a part of the total actual headgate deliveries, yet is a part of the total deliveries to the Project, it will manifest itself directly as a lower efficiency. Thus, it will either reduce the District's incentive credit or increase the storage debit by the amount improperly diverted. All other users outside the Project are thereby held harmless but the District incurs the consequence. This approach should eliminate any potential disputes between the District and the Bureau regarding the quantity of water misappropriated.

§ 418.35 Efficiencies.

The established target efficiencies under this part are shown in the Expected Project Distribution System Efficiency table (§ 418.13 (a)(4)). The efficiency of the Project will vary with the amount of entitlement water actually delivered at the headgates. Since most of the distribution system losses such as evaporation and seepage do not change significantly with the amount of water delivered (i.e., these losses are principally a function of water surface area and the wetted perimeter of the canals), the Project efficiency requirement is higher as the percent of entitlement water actually delivered at the headgates increases. The actual efficiency is calculated each year after the close of the irrigation season based on actual measured amounts. The application of any adjustments to Lahontan Reservoir storage or Truckee River diversions resulting from the efficiency is always prospective.

§ 418.36 Incentives for additional long term conservation.

(a) As an incentive for the District to increase the efficiency of the delivery system beyond the expected efficiency of 65.7 percent (66.9 percent with full delivery) as shown in the Newlands Project Water Budget table, 1995 Example, the District will be allowed to store and use the Carson River portion of the saved water at its discretion, in accordance with Nevada State Law and this part.

(1) If the District is able to exceed its expected efficiency, the District may store in Lahontan Reservoir two-thirds (2/3) of the additional water saved. (The remaining one-third (1/3) of the water saved will remain in the Truckee River through reduced diversions to Lahontan Reservoir). This water will be considered incentive water saved from the Carson River and will not be counted as storage in determining diversions from the Truckee River or computing the target storage levels for Lahontan Reservoir under this part.

(2) For purposes of this part, incentive water is no longer considered Project water. The District may use the water for any purpose (e.g., wetlands, storage for recreation, power generation, shortage reduction) that is consistent with Nevada State Law and Federal Law. The water will be managed under the District's discretion and may be stored in Lahontan Reservoir until needed subject to the limitations in (a)(3) of this section.

(3) The amount of incentive water stored in Lahontan Reservoir will be reduced under the following conditions:

(i) There is a deficit created and remaining in Lahontan Reservoir from operations penalties in a prior year;

(ii) The District releases the water from the reservoir for its designated use;

(iii) During a spill of the reservoir, the amount of incentive water must be reduced by the amount of spill; and

(iv) At the discretion of the District, incentive water may be used to offset the precautionary drawdown adjustment to the Lahontan storage objective.

(v) At the end of each year, the amount of incentive water will be reduced by the incremental amount of evaporation which occurs as a result of the increased surface area of the reservoir due to the additional storage. The evaporation rate used will be either the net evaporation measured or the net historical average after precipitation is taken into account. The method of calculation will be agreed to

by the District and the Bureau in advance of any storage credit.

(b) An example of this concept is:

Example: Incentive Operation—(1) At the end of the 1996 irrigation season, the Bureau and the District audit the District's water records for 1996. The District's water delivery records show that 194,703 acre-feet of water were delivered to farm headgates. On the basis of their irrigated acreage that year (59,075) the farm headgate entitlement would have been 216,337 acre-feet. On the basis of 90 percent deliveries for 59,075 acres (194,203 divided by 216,337 = 0.90) the established Project efficiency requirement was 65.1 percent. (2) On the basis of the established Project efficiency (66.1 percent), the Project diversion required to make the headgate deliveries would be expected to be 291,909 acre-feet (194,703 divided by 0.651 = 291,909). An examination of Project records reveals that the District only diverted 286,328 acre-feet which demonstrated actual Project efficiency was 68 percent and exceeded requirements of this part.

(3) The 5,581 acre-feet of savings (291,909–286,328 = 5,581) constitutes the savings achieved through efficiency improvements and the District would then be credited two-thirds (3,721 acre-feet=5,581×2/3) of this water (deemed to be Carson River water savings) as incentive water.

(4) This incentive water may be stored in Lahontan Reservoir or otherwise used by the District in its discretion consistent with State and Federal Law (e.g., power generation, recreation storage, wildlife, drought protection, etc.).

§ 418.37 Disincentives for lower efficiency.

(a) If the District fails to meet the efficiencies established by this part, then, in effect, the District has borrowed from a subsequent year. The amount borrowed will be accounted for in the form of a deficit in Lahontan Reservoir storage. This deficit amount will be added to the actual Lahontan Reservoir storage quantity for the purpose of determining the Truckee River diversions to meet storage objectives as well as all other operating decisions.

(b) The amount of the deficit will be cumulative from year to year but will not be allowed to exceed 26,000 acre-feet (the expected variance between the MAD and actual water use). This limit is expected to avoid increasing the severity of drought and yet still allow for variations in efficiency over time due to weather and other factors. This approach should allow the District to plan its operation to correct for any deficiencies.

(c) The deficit can be reduced by crediting incentive water earned by the District or reducing the percentage of headgate entitlement delivered either through a natural drought or by the District and its water users administratively limiting deliveries while maintaining an efficiency greater than or equal to the target efficiency.

(d) If there is a natural drought and the shortage to the headgates is equal to or greater than the deficit, then the deficit is reduced to zero. If the shortage to headgates is less than the deficit then the deficit is reduced by an amount equal to the headgate shortage. During a natural drought, if the percentage of maximum headgate entitlement delivered is 75 percent or more then the District will be subject to the target efficiencies and resultant deficits or credits.

(e) If the District has a deficit in Lahontan Reservoir and earns incentive water, the incentive water must be used to eliminate the deficit before it can be used for any other purpose. The deficit must be credited on a 1 to 1 basis (i.e., actual efficiency savings rather than ⅓–⅔ for incentive water).

(f) An example of the penalty concept is:

Example: Penalty— In 1996 the District delivers 90 percent of the maximum headgate entitlement or 194,703 acre-feet 216,337×.90) but actually diverts 308,000 acre-feet. The efficiency of the Project is 63.2 percent (194,703 divided by 308,000). Since the established efficiency of 65.1 percent would have required a diversion of only 299,083 acre-feet (194,703 divided by .651) the District has operated the system with 8,917 acre-feet of excess losses. Therefore, 8,917 acre-feet was borrowed and must be added to the actual storage quantities of Lahontan Reservoir for calculating target storage levels and Truckee River diversions.

§ 418.38 Maximum allowable diversion.

(a) The MAD established in this part is based on the premise that the Project should be operated to ensure that it is capable of delivering to the headgate of each water right holder the full water entitlement for irrigable eligible acres and includes distribution system losses. The MAD will be established (and is likely to vary) each year.

The annual MAD will be calculated each year based on the actual acreage to be irrigated that year.

(b) Historically, actual deliveries at farm headgates have been approximately 90 percent of entitlements. This practice is expected to continue but the percentage is expected to change. This variance between headgate deliveries and headgate entitlements will be calculated annually under this part and is allowed to be diverted if needed and thereby provides an assurance that full headgate deliveries can be made. The expected diversion and associated efficiency target for the examples shown in the Newlands Project Water Budget table would be: 285,243 AF and 65.1 percent in 1996 and beyond. These are well below the MAD limits; however, the District may divert up to the MAD if it is needed to meet valid headgate entitlements.

Calculation of Efficiency Equation Slope and Y-Intercept for Adjusted OCAP

	1988 OCAP		With Adjusted OCAP										
	Projected for 1992	Without added ac.											
Irrigated Acreage	64,850	61,630	64,850	64,500	64,000	63,500	63,000	62,500	62,000	61,500	61,000	60,500	60,000
Max. Headgate Entitlement	237,485	226,555	226,586	225,363	223,616	221,869	220,122	218,375	216,628	214,881	213,134	211,387	209,640
Distribution System Losses													
Evaporation													
Canals/Laterals	6,200	6,000	6,200	6,178	6,147	6,116	6,085	6,054	6,023	5,992	5,961	5,930	5,899
Reg. Reservoirs	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500
Seepage													
Canals/Laterals	51,000	48,500	51,000	50,728	50,340	49,952	49,564	49,175	48,787	48,399	48,011	47,623	47,234
Reg. Reservoirs	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000
Operational Losses	40,800	39,400	40,800	40,648	40,430	40,213	39,996	39,778	39,561	39,343	39,126	38,909	38,691
Total System Losses	109,500	105,400	109,500	109,054	108,418	107,781	107,144	106,508	105,871	105,234	104,598	103,961	103,325
100% Use of Entitlement:													
Allowable Diversion	346,985	331,955	336,086	334,417	332,034	329,650	327,266	324,883	322,499	320,115	317,732	315,348	312,965
Conveyance Efficiency	68.44%	68.25%	67.42%	67.39%	67.35%	67.30%	67.26%	67.22%	67.17%	67.13%	67.08%	67.03%	66.99%
75% Use of Entitlement:													
Headgate Ent. Unused	59,371	56,639	56,646	56,341	55,904	55,467	55,031	54,594	54,157	53,720	53,284	52,847	52,410
Headgate Delivery	178,114	169,916	169,939	169,022	167,712	166,402	165,092	163,781	162,471	161,161	159,851	158,540	157,230
Diversion Reduction	68,717	65,554	65,563	65,209	64,704	64,198	63,693	63,187	62,682	62,176	61,671	61,165	60,660
Allowable Diversion	278,268	266,401	270,523	269,208	267,330	265,452	263,574	261,696	259,817	257,939	256,061	254,183	252,305
Conveyance Efficiency	64.01%	63.78%	62.82%	62.78%	62.74%	62.69%	62.64%	62.58%	62.53%	62.48%	62.43%	62.37%	62.32%
Slope	0.1774	0.1787	0.1840	0.1842	0.1845	0.1847	0.1850	0.1853	0.1856	0.1858	0.1861	0.1864	0.1867
Y-Intercept	50.70	50.38	49.02	48.97	48.90	48.83	48.76	48.69	48.62	48.54	48.47	48.39	48.31

Note: (1) The average water duty with Adjusted OCAP assumed to be 3.494 acre-feet/acre based on 1995 conditions.

(2) The conveyance efficiency of the unused entitlement (75% use) assumed to be 86.4% based on Figure 1 and Table 1 of 1988 OCAP.

Calculation of Efficiency Equation Slope and Y-Intercept for Adjusted OCAP

Adjusted OCAP (continued)

Calculation of Efficiency Equation Slope and Y-Intercept for Adjusted OCAP																
Adjusted OCAP (continued)																
Irrigated Acreage	59,500	59,000	58,500	58,000	57,500	57,000	56,500	56,000	55,500	55,000	54,500	54,000	53,500	53,000	52,500	52,000
Max. Headgate Ent.	207893	206146	204399	202652	200905	199158	197411	195664	193917	192170	190423	188676	186929	185182	183435	181688
Distribution Losses																
Evaporation																
Canal/Laterals	5868	5837	5806	5775	5743	5712	5681	5650	5619	5588	5557	5526	5495	5464	5433	5402
Reg. Reservoirs	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500	7500
Seepage																
Canal/Laterals	46846	46458	46070	45682	45293	44905	44517	44129	43741	43352	42964	42576	42188	41800	41411	41023
Reg. Reservoirs	4000	4000	4000	4000	4000	4000	4000	4000	4000	4000	4000	4000	4000	4000	4000	4000
Operational Losses	38474	38257	38039	37822	37604	37387	37170	36952	36735	36517	36300	36083	35865	35648	35430	35213
Total System Losses	102688	102051	101415	100778	100141	99505	98868	98231	97595	96958	96321	95685	95048	94411	93775	93138
100% Use of Ent.																
Allowable Diversion	310581	308197	305814	303430	301046	298663	296279	293895	291512	289128	286744	284361	281977	279593	277210	274826
Convey. Efficiency	66.94%	66.89%	66.84%	66.79%	66.74%	66.68%	66.63%	66.58%	66.52%	66.47%	66.41%	66.35%	66.29%	66.23%	66.17%	66.11%
75% Use of Ent.																
Entitlement Unused	51973	51537	51100	50663	50226	49790	49353	48916	48479	48043	47606	47169	46732	46296	45859	45422
Headgate Delivery	155920	154610	153299	151989	150679	149369	148058	146748	145438	144128	142817	141507	140197	138887	137576	136266
Diversion Reduction	60154	59649	59143	58638	58132	57627	57121	56616	56110	55605	55099	54594	54088	53583	53077	52572
Allowable Diversion	250427	248549	246670	244792	242914	241036	239158	237280	235401	233523	231645	229767	227889	226011	224133	222254
Convey. Efficiency	62.26%	62.20%	62.15%	62.09%	62.03%	61.97%	61.91%	61.85%	61.78%	61.72%	61.65%	61.59%	61.52%	61.45%	61.38%	61.31 %
Slope	0.1870	0.1873	0.1876	0.1879	0.1882	0.1886	0.1889	0.1892	0.1895	0.1899	0.1902	0.1906	0.1909	0.1913	0.1916	0.1920
Y-Intercept	48.24	48.16	48.08	47.99	47.91	47.83	47.74	47.66	47.57	47.48	47.39	47.30	47.20	47.11	47.01	46.91
Note: (1) The average water duty with Adjusted OCAP assumed to be 3.494 acre-feet/acre based on 1995 conditions.																
(2) The conveyance efficiency of the unused entitlement (75% use) assumed to be 86.4% based on Figure 1 and Table 1 of 1988 OCAP.																

PART 419—TRUCKEE RIVER OPERATING AGREEMENT

Sec.
419.1 What is the purpose of this part?
419.2 What are the definitions used in this part?
419.3 What general principles govern implementation of the TROA?
419.4 What specific provisions govern operations of the reservoirs?

AUTHORITY: Public Law 101–618 (104 Stat. 3289, 3294).

SOURCE: 73 FR 74038, Dec. 5, 2008, unless otherwise noted.

§419.1 What is the purpose of this part?

(a) This part satisfies the requirement of Section 205(a)(5) of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act (Settlement Act) that the negotiated agreement for operation of Truckee River Reservoirs be promulgated as a Federal regulation. The Truckee River Operating Agreement (TROA), published in September 2008 by the Bureau of Reclamation, is the agreement negotiated pursuant to Section 205(a) of the Settlement Act and is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 522 (a) and 1 CFR part 51. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. Also, a copy of TROA may be obtained from or inspected at the Bureau of Reclamation, 705 N. Plaza St., Carson City, NV 89701, 775–884–8356, where copies are on file, or at the following Web site: *http://www.usbr.gov/mp/troa/*.

(b) This part implements the Settlement Act by providing for operation of the Truckee River Reservoirs and other reservoirs in a manner that:

(1) Implements California's allocation of Truckee River basin water and the Nevada and California allocations of Lake Tahoe basin water;

(2) Enhances fish, wildlife, and recreational beneficial uses of water in the Truckee River basin;

(3) Carries out the terms, conditions, and contingencies of the Preliminary Settlement Agreement;

(4) Ensures that water is stored in, released from, and passed through Truckee River Reservoirs to satisfy the exercise of water rights in conformance with the Orr Ditch Decree and Truckee River General Electric Decree, except for rights voluntarily relinquished by any persons or transferred under State law;

(5) Provides for the enhancement of spawning flows available in the Lower Truckee River for Pyramid Lake Fishes in a manner consistent with the Secretary of the Interior's responsibilities under the Endangered Species Act, as amended;

(6) Satisfies all applicable dam safety and flood control requirements; and

(7) Minimizes the Secretary of the Interior's costs associated with operation and maintenance of Stampede Reservoir.

§419.2 What are the definitions used in this part?

Act means the Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990, title II, Public Law 101–618 (104 Stat. 3289, 3294).

Administrator means the individual appointed in accordance with Sections 2.A.2 through 2.A.3 of the Truckee River Operating Agreement (incorporated by reference at §419.1).

Preliminary Settlement Agreement means that Agreement between the Pyramid Lake Paiute Tribe and Sierra Pacific Power Company of May 23, 1989, as subsequently modified and ratified by the United States.

TROA means the Truckee River Operating Agreement.

Truckee River basin means the area which naturally drains into the Truckee River and its tributaries and into Pyramid Lake, including Pyramid Lake, but excluding the Lake Tahoe basin.

Truckee River Reservoirs means Boca Reservoir, Prosser Creek Reservoir, Martis Creek Reservoir, Stampede Reservoir, and the storage provided by the dam at the outlet of Lake Tahoe.

§ 419.3 What general principles govern implementation of the TROA?

The following are general operational principles which provide a framework for the Administrator in implementing the TROA (incorporated by reference at § 419.1). These general principles are intended to be consistent with the specific provisions of TROA, but if they conflict with those specific provisions, the specific TROA provisions control. Operations should meet all of the following criteria:

(a) Be conducted, consistent with the TROA and applicable legal requirements, so that the available water supply in the Truckee River basin satisfies, to the maximum extent possible, multiple beneficial purposes, including municipal and industrial, irrigation, fish, wildlife, water quality, and recreation purposes.

(b) Satisfy vested and perfected rights to use the water of the Truckee River and its tributaries, to the extent that water rights are scheduled to be exercised, and to the extent that water is lawfully available. This includes, but is not limited to, the exercise of water rights under the provisions of the Orr Ditch Decree, except as expressly provided in the Settlement Act and the TROA.

(c) Maintain minimum releases and, to the extent practicable consistent with existing water rights and the TROA, maintain enhanced minimum releases, preferred stream flows, and reservoir recreation levels as described in Article Nine of the TROA.

(d) Comply with applicable flood control requirements for Prosser Creek, Stampede, Boca, and Martis Creek Reservoirs.

(e) Comply with all applicable dam safety requirements.

(f) Use the integrated schedules developed by the Administrator through coordination with the scheduling parties.

(g) Respond to declared Federal, State, or local water-related emergencies presenting a clear and immediate danger to public health, life, property, or essential public services involving an upset or other unexpected occurrence to facilities and resources addressed in the TROA.

§ 419.4 What specific provisions govern operations of the reservoirs?

The specific provisions governing operations of the Truckee River Reservoirs and other reservoirs are contained in the TROA (incorporated by reference at § 419.1). The following table shows the location of the provisions in the TROA.

Provisions governing . . .	Are in the following sections of the TROA . . .
Recitals, Definitions	Recitals 1 through 9. Definitions (1) through (106).
Satisfaction of provisions of law, general operational principles, protection of water rights, imported water, remaining water of the Truckee River, and emergencies.	Sections 1.A through 1.F.
Administration	Sections 2.A through 2.C.
Accounting, reporting, forecasting, and monitoring	Sections 3.A through 3.E.
Incorporation of certain provisions of the preliminary settlement agreement	Sections 4.A through 4.G.
Operation of Floriston Rate and Project Water	Sections 5.A through 5.E.
Truckee River and Lake Tahoe Basin Allocation and Accounting	Sections 6.A through 6.E.
Credit Water Establishment, Storage, and Conversion	Sections 7.A through 7.H.
Priorities and Rules for Operations Following Impoundment or Accumulation of Water in Reservoirs.	Sections 8.A through 8.V.
Beneficial Uses of Water for Instream Flows and Recreation in California	Sections 9.A through 9.F.
Design of Water Wells in the Truckee River Basin in California	Sections 10.A through 10.H.
Scheduling	Sections 11.A through 11.H.
Effectiveness of the TROA	Sections 12.A and 12.B.
Relation of TROA to Settlement Act, Adjustments to Operations and Changes to Agreement.	Sections 13.A through 13.E.
Miscellaneous areas	Sections 14.A through 14.Q.

PART 420—OFF-ROAD VEHICLE USE

Sec.
420.1 Objectives.
420.2 General closure.
420.3 Adjacent lands.
420.4 Enforcement.
420.5 Definitions.

Subpart A—Operating Criteria

420.11 Requirements—vehicles.
420.12 Requirements—operators.

Subpart B—Designated Areas and Permitted Events

420.21 Procedure for designating areas for off-road vehicle use.
420.22 Criteria for off-road vehicle areas.
420.23 Public notice and information.
420.24 Permits for organized events.
420.25 Reclamation lands administered by other agencies.

AUTHORITY: 32 Stat. 388 (43 U.S.C. 391 *et seq.*) and acts amendatory thereof and supplementary thereto; EO 11644 (37 FR 2877).

SOURCE: 39 FR 26893, July 24, 1974, unless otherwise noted.

§ 420.1 Objectives.

The provisions of this part establish regulations for off-road vehicle use on reclamation lands to protect the land resources, to promote the safety of all users, to minimize conflicts among the various uses, and to ensure that any permitted use will not result in significant adverse environmental impact or cause irreversible damage to existing ecological balances.

§ 420.2 General closure.

Reclamation lands are closed to off-road vehicle use, except for an area or trail specifically opened to use of off-road vehicles in accordance with § 420.21.

§ 420.3 Adjacent lands.

When administratively feasible, the regulation of off-road vehicle use on Reclamation lands will be compatible with such use as permitted by recreation-managing agencies on adjacent lands (both public and private).

§ 420.4 Enforcement.

The provisions of this part will be enforced to the extent of Bureau authority, including entering into cooperative agreements with Federal, State, county, or local law enforcement officials.

§ 420.5 Definitions.

As used in this part, the term:

(a) *Off-road vehicle* means any motorized vehicle (including the standard automobile) designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or natural terrain. The term excludes: (1) Nonamphibious registered motorboats; (2) military, fire, emergency, or law enforcement vehicles when used for emergency purpose; (3) self-propelled lawnmowers, snowblowers, garden or lawn tractors, and golf carts while being used for their designed purpose; (4) agricultural, timbering, construction, exploratory, and development equipment and vehicles while being used exclusively as authorized by permit, lease, license, agreement, or contract with the Bureau; (5) any combat or combat support vehicle when used in times of national defense emergencies; and (6) ''official use'' vehicles.

(b) *Bureau* means the Bureau of Reclamation.

(c) *Reclamation lands* mean all lands under the custody and control of the Commissioner, Bureau of Reclamation.

(d) *Off-road vehicle area* means a portion or all of a specifically designated parcel of Reclamation lands opened to off-road vehicle use in accordance with the procedure in section 420.21.

(e) *Off-road vehicle trail* means a specifically delineated path or way varying in width which is designated to be used by and maintained for hikers, horsemen, snow travelers, bicyclists and for motorized vehicles.

(f) *Official use* means use of a vehicle by an employee, agent, or designated representative of the Federal Government who, with special permission from the Bureau of Reclamation, uses a vehicle for an officially authorized purpose.

(g) *Organized Event* means a structured, or consolidated, or scheduled meeting involving 15 or more vehicles for the purpose of recreational use of Reclamation lands involving the use of

off-road vehicles. The term does not include family groups participating in informal recreational activities.

[39 FR 26893, July 24, 1974, as amended at 44 FR 34909, June 15, 1979]

Subpart A—Operating Criteria

§ 420.11 Requirements—vehicles.

Each off-road vehicle that is operated on Reclamation lands shall meet the following requirements:

(a) It shall conform to applicable State laws and vehicle registration requirements.

(b) It shall be equipped with a proper muffler and spark arrestor in good working order and in constant operation. The spark arrestor must conform to Forest Service Spark Arrestor Standard 5100–1a, and there shall be no muffler cutout, bypass, or similar device.

(c) It shall have adequate brakes and, for operation from dusk to dawn, working headlights and taillights.

§ 420.12 Requirements—operators.

(a) In addition to the regulation of part 420, operators shall comply with any applicable State laws pertaining to off-road vehicles; if State laws are lacking or less stringent than the regulations established in this part, then the regulations in part 420 are minimum standards and are controlling.

(b) Each operator of an off-road vehicle operated on Reclamation lands shall possess a valid motor vehicle operator's permit or license; or, if no permit or license is held, he/she shall be accompanied by or under the immediate supervision of a person holding a valid permit or license.

(c) During the operation of snowmobiles, trail bikes, and any other off road vehicle the operator shall wear safety equipment, generally accepted or prescribed by applicable State law or local ordinance for use of the particular activity in which he/she is participating.

(d) No person may operate an off-road vehicle:

(1) In a reckless, careless or negligent manner;

(2) In excess of established speed limits;

(3) While under the influence of alcohol or drugs;

(4) In a manner likely to cause irreparable damage or disturbance of the land, wildlife, vegetative resources, or archeological and historic values of resources; or

(5) In a manner likely to become an unreasonable nuisance to other users of Reclamation or adjacent lands.

Subpart B—Designated Areas and Permitted Events

§ 420.21 Procedure for designating areas for off-road vehicle use.

The Regional Director shall, to the extent practicable, hold public hearings to obtain interested user groups, local populace, and affected Federal, State, and county agencies' opinions for opening or closing an area or trail in a manner that provides an opportunity for the public to express themselves and have their views taken into account. The Regional Director may act independently if he/she deems emergency action to open or close or restrict areas and trails is necessary to attain the objectives of the regulations of this part.

(a) Regional Directors shall designate and publicize those areas and trails which are open to off-road vehicle use in accordance with § 420.23.

(b) Before any area or trail is opened to off-road vehicle use, the Regional Director will establish specific regulations which are consistent with the criteria in these regulations.

(c) The Regional Director will inspect designated areas and trails periodically to determine conditions resulting from off-road vehicle use. If he determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat, or cultural or historic resources of particular areas or trails of the public lands, he shall immediately close such areas or trails to the type of off-road vehicle causing such effects. No area or trail shall be reopened until the Regional Director determines that adverse effects have been eliminated and that measures have been implemented to prevent future recurrence. The public

shall be notified of restrictions or closure in accordance with § 420.23.

[39 FR 26893, July 24, 1974, as amended at 44 FR 34909, June 15, 1979]

§ 420.22 Criteria for off-road vehicle areas.

(a) Areas and trails to be opened to off-road vehicle use shall be located:

(1) To minimize the potential hazards to public health and safety, other than the normal risks involved in off-road vehicle use.

(2) To minimize damage to soil watershed, vegetation, or other resources of the public lands.

(3) To minimize harassment of wildlife or significant disruption of wildlife habitats.

(4) To minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure compatibility of uses with existing conditions in populated areas, taking into account noise and other factors.

(5) In furtherance of the purposes and policy of the National Environmental Policy Act of 1969 (Pub. L. 91–190, 83 Stat. 852).

(b) Areas and trails shall not be located in areas possessing unique natural, wildlife, historic, cultural, archeological, or recreational values unless the Commissioner determines that these unique values will not be adversely affected.

§ 420.23 Public notice and information.

Areas and trails may be marked with appropriate signs to permit, control or prohibit off-road vehicle use on Reclamation lands. All notices concerning the regulation of off-road vehicles shall be posted in a manner that will reasonably bring them to the attention of the public. A copy of any notice shall be made available to the public in the regional office and field offices where appropriate. Such notice, and the reasons therefore, shall be published in the FEDERAL REGISTER together with such other forms of public notice or news release as may be appropriate and necessary to adequately describe the conditions of use and the time periods when the areas involved in an action under these regulations are to be (a) opened to off-road vehicle use, (b) restricted to certain types of off-road vehicle use and (c) closed to off-road vehicle use.

§ 420.24 Permits for organized events.

Regional Directors may issue permits for the operation of off-road vehicles in organized races, rallies, meets, endurance contests, and other events on areas designed for each event. The application for such an event shall:

(a) Be received by the Regional Director at least 60 days before the event;

(b) Provide a plan for restoration and rehabilitation of trails and areas used, and demonstrate that the prospective permittee can be bonded for or deposit the amount that may be required to cover the cost;

(c) Demonstrate that special precautions will be taken to:

(1) Protect the health, safety, and welfare of the public; and

(2) Minimize damage to the land and related resources.

(d) Application fees (in amounts to be determined) as authorized by section 2 of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897), as amended, shall accompany all applications.

§ 420.25 Reclamation lands administered by other agencies.

(a) Off-road vehicle use will be administered in accordance with Executive Order 11644, by those Federal and non-Federal agencies which have assumed responsibility for management of Reclamation lands for recreation purposes.

Specifically:

(1) Reclamation lands managed by the National Park Service, the Bureau of Sport Fisheries and Wildlife, the Bureau of Land Management, the Forest Service, and other Federal agencies will be administered in accordance with regulations of those agencies.

(2) Reclamation lands managed by non-Federal entities will be administered in a manner consistent with both part 420 and applicable non-Federal laws and regulations.

(b) Public lands withdrawn, but not yet utilized for Reclamation purposes, will be administered by the Forest

Service or by the Bureau of Land Management in accordance with regulations of those agencies, but consistent with Reclamation requirements for retaining the land.

PART 422—LAW ENFORCEMENT AUTHORITY AT BUREAU OF RECLAMATION PROJECTS

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AUTHORITY: 16 U.S.C. 4601-31; 43 U.S.C. 373b, 373c

SOURCE: 67 FR 38420, June 4, 2002, unless otherwise noted.

§ 422.1 Purpose of this part.

(a) This part implements Public Law No. 107–69, 115 Stat. 593 (November 12, 2001), an Act to Amend the Reclamation Recreation Management Act of 1992, by:

(1) Establishing eligibility criteria, such as fitness and training requirements, for Federal, State, local, and tribal law enforcement personnel to protect Bureau of Reclamation (Reclamation) facilities and lands; and

(2) Ensuring that Federal, State, local, and tribal law enforcement programs comply with applicable laws and regulations when they discharge the Secretary of the Interior's authority.

(b) This part does not apply to, or limit or restrict in any way, the investigative jurisdiction or exercise of law enforcement authority of any Federal law enforcement agency, under Federal law, within a Reclamation project or on Reclamation lands. The provisions of this part apply to non-Department of the Interior Federal law enforcement agents only where Reclamation has entered into a cooperative agreement or contract with a Federal law enforcement agency, pursuant to Public Law 107–69, for the services of specified individual Federal law enforcement agents.

(c) Nothing in this part shall be construed or applied to affect any existing right of a State or local government, or an Indian tribe, or their law enforcement officers, to exercise concurrent civil and criminal jurisdiction within a Reclamation project or on Reclamation lands.

§ 422.2 Definitions.

(a) *Department* means the United States Department of the Interior.

(b) *Reclamation* means the Bureau of Reclamation of the United States Department of the Interior.

(c) *Law Enforcement Program* means Reclamation's program to provide law enforcement and protective services at Reclamation project facilities and on Federal project lands. The activity is directed toward the preservation of public order, safety, and protection of resources and facilities, and their occupants.

(d) *Law Enforcement Administrator (LEA)* means the person designated by the Commissioner of Reclamation to:

(1) Direct the law enforcement program and units;

(2) Develop the policy, procedures, and standards for the law enforcement program within Reclamation; and

(3) Provide for inspection and oversight to control enforcement activity.

(e) *Chief Law Enforcement Officer (CLEO)* means the highest level duly authorized law enforcement officer for a non-Department law enforcement agency.

(f) *Law Enforcement Officer* means:

(1) A duly authorized Federal law enforcement officer, as that term is defined in Public Law 107–69, from any

non-Department Federal agency who is authorized to act as a law enforcement officer on Reclamation projects and lands; or

(2) Law enforcement personnel of any State, local government, or tribal law enforcement agency.

§ 422.3 Reclamation law enforcement policy.

The law enforcement policy of Reclamation is:

(a) To maintain an accountable, professional law enforcement program on Reclamation project facilities, and to protect Federal project lands and their occupants. Reclamation will meet its law enforcement responsibilities by establishing and promoting a law enforcement program which maintains law and order, and protects persons and property within Reclamation property and on Reclamation lands;

(b) To entrust law enforcement authority only to persons deemed to be qualified, competent law enforcement professionals;

(c) To maintain a continuing review and evaluation of Reclamation's law enforcement programs and operations to ensure compliance with applicable Federal laws, regulations, and policies of the Department;

(d) To ensure that approved standards are attained and maintained by each law enforcement unit undertaking a contract or cooperative agreement;

(e) To increase the effectiveness of law enforcement through the efficient handling and exchange of criminal and intelligence information with other Federal, State, local, and tribal agencies, as appropriate;

(f) To provide the public prompt access to information concerning its law enforcement program in accordance with the spirit and intent of the Freedom of Information Act, 5 U.S.C. 552; Department FOIA Regulations, 43 CFR 2; and 383 DM 15, Freedom of Information Act Handbook (*see www.doi.gov*);

(g) To ensure that the use of force by agency personnel under contracts or cooperative agreements with Reclamation complies with the Constitution and the law of the United States; and

(h) To negotiate contracts and cooperative agreements under this part to ensure that:

(1) Reclamation retains flexibility to meet its law enforcement needs; and

(2) Entities entering into contracts and cooperative agreements are appropriately reimbursed.

RESPONSIBILITIES

§ 422.4 Responsibilities of the Commissioner of Reclamation.

(a) The Secretary of the Interior has designated the Commissioner of Reclamation to implement law enforcement authority at Reclamation facilities. The Commissioner is responsible for:

(1) Implementing the provisions of Public Law 107–69;

(2) Ensuring consistency with applicable Departmental and Reclamation requirements for law enforcement officers;

(3) Carrying out the specific responsibilities listed in paragraph (b) of this section; and

(4) Developing any additional policies necessary for the successful accomplishment of Reclamation's law enforcement responsibilities.

(b) The Commissioner's specific responsibilities include the following:

(1) Designating Reclamation's Law Enforcement Administrator (LEA), with authority to discharge the responsibilities assigned by these regulations;

(2) Overseeing the LEA's ability to ensure that all law enforcement officers under contract or cooperative agreement for law enforcement services to Reclamation are properly trained and receive necessary authorizations; and

(3) Overseeing the LEA's development of policy, procedures, and standards for directing the law enforcement units, and the installation of management controls for proper implementation of the law enforcement program.

§ 422.5 Responsibilities of the Law Enforcement Administrator.

(a) The Law Enforcement Administrator (LEA):

(1) Reports directly to the Commissioner;

(2) Oversees the law enforcement program; and

(3) Is responsible for promulgating mission-oriented policy, procedures, and standards to ensure the effective

implementation of Reclamation's law enforcement authority.

(b) The chain of command for law enforcement will run from the Commissioner through the LEA to other positions designated as part of the Reclamation law enforcement managerial structure, which may include a Chief Law Enforcement Officer. The units will be staffed through cooperative agreements or contracts with law enforcement personnel from Department and non-Department Federal agencies or State, local, or tribal law enforcement organizations, with unit command being provided as part of the cooperative agreement or contract.

(c) Within the chain of command specified in paragraph (b) of this section, the LEA provides policy direction, inspection, and oversight for the law enforcement functions of Reclamation.

§ 422.6 Responsibilities of the Chief Law Enforcement Officer.

The Chief Law Enforcement Officer's (CLEO) responsibilities are to ensure that:

(a) Law enforcement officers working at Reclamation facilities and on Federal project lands are duly authorized under § 422.7;

(b) Law enforcement officers authorized under a contract or cooperative agreement meet training and fitness requirements established in this part and abide by standards of conduct and performance established in this part and in the contract or cooperative agreement;

(c) Law enforcement officers are under the immediate supervision of a commanding officer who is part of each law enforcement unit for which Reclamation enters into a contract or cooperative agreement; and

(d) Required reports are made to the LEA, or to another person designated by Reclamation, for purposes of carrying out the law enforcement functions for which Reclamation has a contract or cooperative agreement.

PROGRAM REQUIREMENTS

§ 422.7 Authorization to perform law enforcement duties.

(a) The CLEO must issue written authorization to each officer who is authorized to perform Reclamation law enforcement duties.

(b) Before issuing an authorization under paragraph (a) of this section, the CLEO must ensure that the officer meets:

(1) All the requirements for officers authorized under the law enforcement contract or cooperative agreement with Reclamation; and

(2) All requirements in §§ 422.10, 422.11, and 422.12.

(c) The CLEO must terminate an officer's authorization under paragraph (a) of this section and must notify the issuing Reclamation official when the officer:

(1) Terminates employment as a full-time police officer for any reason;

(2) Is transferred to another area of jurisdiction, where the continued performance of Reclamation duties would be impractical;

(3) Is suspended for any offense that would impair his/her fitness to perform law enforcement duties; or

(4) Is under indictment or has been charged with a crime.

(d) The LEA can, upon showing just cause, revoke the authorization of an individual officer to perform law enforcement services under Reclamation's law enforcement authority after providing written notice to the CLEO.

§ 422.8 Requirements for law enforcement functions and programs.

The requirements in this section apply to Reclamation and to each law enforcement unit exercising Reclamation's law enforcement authority.

(a) The law enforcement program must provide for control, accountability, coordination, and clear lines of authority and communication. This organizational structure must apply both within the law enforcement units, and between the law enforcement units and the LEA or other personnel designated as responsible under the law enforcement contract or cooperative agreement.

(b) Only duly authorized law enforcement officers may discharge law enforcement duties.

(c) Each law enforcement contract or cooperative agreement must specifically name those individuals within the contracting agency who are authorized to exercise Reclamation law enforcement authority consistent with applicable laws, regulations, and the requirements of this part. A CLEO can authorize only duly authorized officers who meet the standards in § 422.7 to exercise law enforcement authority.

(d) Any uniform worn by law enforcement officers must display distinctive identification to ensure that the officer is:

(1) Distinguishable from non-law enforcement personnel; and

(2) Easily recognized by the public as a law enforcement officer.

(e) Officers investigating a violation of Federal law under a law enforcement contract or cooperative agreement with Reclamation will notify applicable Federal law enforcement authorities, as appropriate, pursuant to 43 U.S.C. 373b(d)(4).

(f) The LEA must:

(1) Establish an incident reporting system for incidents that occur on Reclamation lands; and

(2) Include the reporting requirements for incidents as an element of each contract or cooperative agreement.

§ 422.9 Reclamation law enforcement contracts and cooperative agreements.

(a) The LEA, or a person that the LEA designates, may enter into contracts or cooperative agreements with Federal, State, local, or tribal law enforcement agencies to aid in enforcing or carrying out Federal laws and regulations on Reclamation facilities or Reclamation-managed property. Reclamation will rescind the contract or cooperative agreement if an elected governing body with jurisdiction over the local law enforcement agency adopts a resolution objecting to the use of that agency's personnel to enforce Federal laws.

(b) Each contract and cooperative agreement authorizing the exercise of Reclamation law enforcement authority:

(1) Must expire no later than 3 years from its effective date;

(2) May be revoked earlier by either party with written notice;

(3) May be revised or amended with the written consent of both parties;

(4) Must expressly include the requirements for exercise of Reclamation law enforcement authority listed in § 422.10;

(5) Must expressly state that the officer has completed the Federal Bureau of Investigation criminal history review as required by § 422.11; and

(6) Must expressly include the standards of conduct listed in section 422.12.

§ 422.10 Requirements for authorizing officers to exercise Reclamation law enforcement authority.

(a) The CLEO must ensure that each officer receiving an authorization under § 422.7(a):

(1) Is at least 21 years old;

(2) Is certified as a bona fide full-time peace officer under State Peace Officer Standards and Training (POST) requirements, or its functional equivalent or is certified as a Federal law enforcement officer;

(3) Has passed his/her agency's firearms qualifications (which must be consistent with Federal policy) within the 6-month period immediately preceding the granting of the authority;

(4) Re-qualifies to use firearms with all issued service weapons at least semi-annually;

(5) Has neither been convicted of a felony offense, nor convicted of a misdemeanor offense for domestic violence, preventing him/her from possessing a firearm in compliance with section 658 of Public Law 104–208 (the 1996 amendment of the Gun Control Act of 1968);

(6) Is not the subject of a court order preventing him/her from possessing a firearm;

(7) Has no physical impairments that will hinder performance as an active duty law enforcement officer; and

(8) Attends and successfully completes a mandatory orientation session developed by Reclamation to become familiar with Federal laws and procedures and with all pertinent provisions

of statutes, ordinances, regulations, and Departmental and Reclamation rules and policies.

(b) Qualification standards for guards as provided in the Departmental Manual or other Department or Reclamation guidance may only be used for those persons hired exclusively to perform guard duties.

§ 422.11 Position sensitivity and investigations.

Each law enforcement contract or cooperative agreement must include a provision requiring the CLEO to certify that each officer who exercises authority under the Act has completed an FBI criminal history check and is satisfactorily cleared.

§ 422.12 Required standards of conduct.

All law enforcement officers authorized to exercise Reclamation authority must adhere to the following standards of conduct:

(a) Be punctual in reporting for duty at the time and place designated by superior officers;

(b) Be mindful at all times and under all circumstances of their responsibility to be courteous, considerate, patient and not use harsh, violent, profane, or insolent language;

(c) Make required reports of appropriate incidents coming to their attention;

(d) When in uniform and requested to do so, provide their name and identification/badge number orally or in writing;

(e) Immediately report any personal injury or any loss, damage, or theft of Federal government property as required by § 422.13;

(f) Not be found guilty in any court of competent jurisdiction of an offense that has a tendency to bring discredit upon the Department or Reclamation;

(g) Not engage in any conduct that is prejudicial to the reputation and good order of the Department or Reclamation; and

(h) Obey all regulations or orders relating to the performance of the unit's duties under the Reclamation contract or cooperative agreement.

§ 422.13 Reporting an injury or property damage or loss.

(a) An officer must immediately report orally and in writing to his/her supervisor any:

(1) Injury suffered while on duty; and

(2) Any loss, damage, or theft of government property.

(b) The written report must be in detail and must include names and addresses of all witnesses.

(c) When an officer's injuries prevent him/her from preparing a report at the time of injury, the officer's immediate supervisor must prepare the report.

(d) The supervisor must submit all reports made under this section to the Reclamation official designated to receive them, as soon as possible after the incident occurs.

PART 423—PUBLIC CONDUCT ON BUREAU OF RECLAMATION FACILITIES, LANDS, AND WATERBODIES

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AUTHORITY: Public Law 107–69 (November 12, 2001) (Law Enforcement Authority) (43 U.S.C. 373b and 373c); Public Law 102–575, Title XXVIII (October 30, 1992) (16 U.S.C. 460l–31 through 34); Public Law 89–72 (July 9, 1965) (16 U.S.C. 460l–12); Public Law 106–206 (May 26, 2000) (16 U.S.C. 4601–6d); Public Law 59–209 (June 8, 1906) (16 U.S.C. 431–433); Public Law 96–95 (October 31, 1979) (16 U.S.C. 470aa–mm).

SOURCE: 73 FR 75349, Dec. 11, 2008, unless otherwise noted.

Subpart A—Purpose, Definitions, and Applicability

§ 423.1 Purpose.

The purpose of this part is to maintain law and order and protect persons and property within Reclamation projects and on Reclamation facilities, lands, and waterbodies.

§ 423.2 Definitions of terms used in this part.

Aircraft means a device that is used or intended to be used for human flight in the air, including powerless flight, unless a particular section indicates otherwise.

Archaeological resource means any material remains of past human life or activities which are of archaeological interest, as determined under 43 CFR part 7, including, but not limited to, pottery, basketry, bottles, weapons, projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human remains, or any portion of any of the foregoing items. Archaeological resources are a component of cultural resources.

Authorized official means the Commissioner of the Bureau of Reclamation and those Federal, State, local, and tribal officials, and agencies to which the Commissioner has delegated specific and limited authorities to enforce and implement this part 423.

Camping means erecting a tent or shelter; preparing a sleeping bag or other bedding material for use; parking a motor vehicle, motor home, or trailer; or mooring a vessel for the intended or apparent purpose of overnight occupancy.

Closed means a prohibition to all public access.

Cultural resource means any man-made or associated prehistoric, historic, architectural, sacred, or traditional cultural property and associated objects and documents that are of interest to archaeology, anthropology, history, or other associated disciplines. Cultural resources include archaeological resources, historic properties, traditional cultural properties, sacred sites, and cultural landscapes that are associated with human activity or occupation.

Explosive means any device or substance that can be ignited or detonated to produce a violent burst of gas and/or other materials, including, but not limited to, blasting caps and detonatable fireworks and pyrotechnics. This definition does not include fuel and ammunition when properly transported and used.

Firearm means a device that expels a projectile such as a bullet, dart, or pellet by combustion, air pressure, gas pressure, or other means.

Fishing means taking or attempting to take, by any means, any fish, mollusk, or crustacean found in fresh or salt water.

Geophysical discovery device means any mechanism, tool, or equipment including, but not limited to, metal detectors and radar devices, that can be used to detect or probe for objects beneath land or water surfaces.

Historic property means any prehistoric or historic district, site, building, structure, or object included on, or eligible for inclusion on, the National Register of Historic Places, including artifacts, records, and material remains related to such a property or resource.

Hunting means taking or attempting to take wildlife by any means, except by trapping or fishing.

Museum property means personal property acquired according to some rational scheme and preserved, studied, or interpreted for public benefit, including, but not limited to, objects selected to represent archaeology, art, ethnography, history, documents, botany, paleontology, geology, and environmental samples.

Natural resources means assets or values related to the natural world, including, but not limited to, plants, animals, water, air, soils, minerals, geologic features and formations, fossils and other paleontological resources, scenic values, etc. Natural resources are those elements of the environment not created by humans.

Off-road vehicle means any motorized vehicle (including the standard automobile) designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or natural terrain. The term excludes all of the following:

(1) Nonamphibious registered motorboats;

(2) Military, fire, emergency, or law enforcement vehicles when used for emergency purpose;

(3) Self-propelled lawnmowers, snowblowers, garden or lawn tractors, and golf carts while being used for their designed purpose;

(4) Agricultural, timbering, construction, exploratory, and development equipment and vehicles while being used exclusively as authorized by permit, lease, license, agreement, or contract with Reclamation;

(5) Any combat or combat support vehicle when used in times of national defense emergencies;

(6) ''Official use'' vehicles; and

(7) Wheelchairs and carts designed and used for transporting persons with disabilities.

Operator means a person who operates, drives, controls, has charge of, or is in actual physical control of any mode of transportation or other equipment.

Permit means any written document issued by an authorized official pursuant to subpart D of this part 423 authorizing a particular activity with specified time limits, locations, and/or other conditions.

Person means an individual, entity, or organization.

Pet means a domesticated animal other than livestock. (''Livestock'' is any hoofed animal used for agricultural, riding, pulling, or packing purposes.)

Public use limit means any limitation on public uses or activities established by law or regulation.

Real property means any legal interest in land and the water, oil, gas, and minerals in, on, and beneath the land surface, together with the improvements, structures, and fixtures located thereon.

Reclamation means the Bureau of Reclamation, United States Department of the Interior.

Reclamation facilities, lands, and waterbodies means Reclamation facilities, Reclamation lands, and Reclamation waterbodies.

Reclamation facility means any facility constructed or acquired under Federal reclamation law that is situated on Reclamation lands and is used or occupied by Reclamation under a lease, easement, right-of-way, license, contract, or other arrangement. The term includes, but is not limited to, any of the following that are under the jurisdiction of or administered by Reclamation: dams, powerplants, buildings,

switchyards, transmission lines, recreation facilities, fish and wildlife facilities, pumping plants, and warehouses.

Reclamation lands means any real property under the jurisdiction of or administered by Reclamation, and includes, but is not limited to, all acquired and withdrawn lands and lands in which Reclamation has a lease interest, easement, or right-of-way.

Reclamation project means any water supply, water delivery, flood control, or hydropower project, together with any associated facilities for fish, wildlife, recreation, or water treatment constructed or administered by Reclamation under the Federal reclamation laws (the Act of June 17, 1902 (32 Stat. 388, chapter 1093; 43 U.S.C. 371 *et seq.*), and Acts supplementary thereto and amendatory thereof).

Reclamation waterbody means any body of water situated on Reclamation lands or under Reclamation jurisdiction.

Refuse means any human or pet waste, litter, trash, garbage, rubbish, debris, contaminant, pollutant, waste liquid, or other discarded materials.

Sacred site means any specific, discrete, or narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the land managing agency of the existence of such a site.

Special use area means an area at or within a Reclamation facility, or an area of Reclamation lands or waterbodies, in which special rules for public conduct apply that may differ from those established in subpart C of this part 423. A special use area must be established by an authorized official as provided in subpart E of this part 423.

State and local laws means the laws, statutes, regulations, ordinances, codes, and court decisions of a State and of the counties, municipalities, or other governmental entities which are enabled by statute and vested with legislative authority.

Traditional cultural property means a discretely defined property that is eligible for inclusion on the National Register of Historic Places because of its association with cultural practices or beliefs of a living community that:

(1) Are rooted in that community's history; and

(2) Are important in maintaining the continuing cultural identity of the community.

Trapping means taking, or attempting to take, wildlife with a snare, trap, mesh, wire, or other implement, object, or mechanical device designed to entrap, ensnare, or kill animals, including fish.

Vehicle means every device in, upon, or by which a person or property is or may be transported or drawn on land, whether moved by mechanical, animal, or human power, including, but not limited to, automobiles, trucks, motorcycles, mini-bikes, snowmobiles, dune buggies, all-terrain vehicles, trailers, campers, bicycles, and those used exclusively upon stationary rails or tracks; except wheelchairs used by persons with disabilities.

Vessel means any craft that is used or capable of being used as a means of transportation on or under water or ice, including, but not limited to, powerboats, cruisers, houseboats, sailboats, airboats, hovercraft, rowboats, canoes, kayaks, ice yachts, or personal watercraft. Inner tubes, air mattresses, and other personal flotation devices are not considered vessels. A seaplane may be considered a vessel.

Weapon means a firearm or any other instrument or substance designed, used, or which can be used to cause or threaten to cause pain, injury, or death.

Wildlife means any non-domestic member of the animal kingdom and includes a part, product, egg, offspring, or dead body or part thereof, including, but not limited to, mammals, birds, reptiles, amphibians, fish, mollusks, crustaceans, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity.

You means a person or entity on Reclamation facilities, lands, or waterbodies.

§ 423.3 When does this part apply?

(a) This part and all applicable Federal, State, and local laws apply to all persons on Reclamation facilities, lands, and waterbodies, with the following exceptions:

(1) Certain exceptions apply to Federal, State, local, and contract employees, as further addressed in paragraph (b) of this section.

(2) Certain exceptions apply to non-Federal entities, as further addressed in paragraph (c) of this section;

(3) Certain exceptions apply on Reclamation facilities, lands, and waterbodies administered by other Federal agencies, as further addressed in paragraph (d) of this section; and

(4) Certain exceptions apply on Reclamation facilities, lands, and waterbodies subject to treaties and Federal laws concerning tribes and Indians, as further addressed in paragraph (e) of this section.

(b) This part does not apply to:

(1) Federal, State, and local law enforcement, fire, and rescue personnel in the performance of their official duties on Reclamation facilities, lands, and waterbodies;

(2) An employee or agent of the Federal, State, or local government, or other political subdivision, when the employee or agent is carrying out official duties; or

(3) An employee or agent of an entity that has entered into a contract or agreement with Reclamation to administer, operate, maintain, patrol, or provide security for Reclamation facilities, lands, and waterbodies, when the employee or agent is working within the scope of the defined activities described in the contract or agreement.

(c) If a non-Federal entity has assumed responsibility for operating, maintaining, or managing Reclamation facilities, lands, or waterbodies through a contract or other written agreement, public conduct in and on those Reclamation facilities, lands, and waterbodies will be regulated by this part 423 as well as any regulations established by the entity, the terms of the entity's contract with Reclamation, and applicable Federal, State, and local law.

(d) Public conduct on Reclamation facilities, lands, and waterbodies administered by other Federal agencies under statute or other authority will be governed by the regulations of those agencies rather than this part 423. However, Reclamation retains the authority to take necessary actions to safeguard the security and safety of the public and such Reclamation facilities, lands, and waterbodies.

(e) This part applies on all Reclamation facilities, lands, and waterbodies that are subject to Treaties with, and Federal laws concerning the rights of, federally recognized tribes, and individual Indians who are members thereof, to the extent that this part is consistent with those Treaties and Federal laws.

(f) This part 423 and other Federal laws will govern over any conflicting regulations of a non-Federal entity.

Subpart B—Areas Open and Closed to Public Use

§ 423.10 What areas are open to public use?

All Reclamation facilities, lands, and waterbodies are open to lawful use by the public unless they are closed to public use under this subpart B of this part 423, or as provided by 43 CFR part 420, Off-Road Vehicle Use.

§ 423.11 What areas are closed to public use?

The following Reclamation facilities, lands, and waterbodies, or portions thereof, are closed to public use:

(a) Those that were closed to public use as of April 17, 2006, as evidenced by fencing, gates, barriers, locked doors, road closures, signage, posting of notices, or other reasonably obvious means, as provided in § 423.14;

(b) Those that are closed after April 17, 2006 under § 423.12;

(c) Those that are closed periodically and regularly under § 423.13; and

(d) Those that are closed to off-road vehicle use pursuant to 43 CFR part 420.

§ 423.12 How will Reclamation notify the public of additional closed areas?

(a) *Non-emergency situations.* In non-emergency situations, an authorized official must provide 30 days advance

public notice before closing all or portions of Reclamation facilities, lands, or waterbodies. The notice must include publication in a newspaper of general circulation in the locale of the Reclamation facilities, lands, or waterbodies to be closed. Non-emergency situations covered by this section include:

(1) Protection and security of Reclamation facilities and of Reclamation's employees and agents;

(2) Protection of public health and safety, cultural resources, natural resources, scenic values, or scientific research activities;

(3) Safe and efficient operation and maintenance of Reclamation projects;

(4) Reduction or avoidance of conflicts among visitor use activities;

(5) National security; or

(6) Other reasons in the public interest.

(b) *Emergency situations.* In emergency situations where delay would result in significant and immediate risks to public safety, security, or other public concerns, an authorized official may close all or portions of Reclamation facilities, lands, or waterbodies without advance public notice.

§ 423.13 How will Reclamation establish periodic and regular closures?

Reclamation facilities, lands, or waterbodies that are closed periodically and regularly, regardless of the date of the initial closure, must be noticed as provided in § 423.12(a) only once, and at any time the schedule of closure is changed.

§ 423.14 How will Reclamation post and delineate closed areas at the site of the closure?

Before or at the time of closing all or portions of Reclamation facilities, lands, or waterbodies to public use, the responsible authorized official must indicate the closure by:

(a) Locked doors, fencing, gates, or other barriers;

(b) Posted signs and notices at conspicuous locations, such as at normal points of entry and at reasonable intervals along the boundary of the closed area; or

(c) Other reasonably obvious means including, but not limited to, onsite personal contact with a uniformed official.

§ 423.15 How will Reclamation document closures or reopenings?

(a) The authorized official must document the reason(s) for establishing any closure or reopening that occurs after April 17, 2006. The official must do this before the closure or reopening, except in the situations described in § 423.12(b). In such situations, the authorized official must complete the documentation as soon as practicable.

(b) Documentation of a closure must cite one or more of the conditions for closure described in § 423.12 of this part.

(c) Documentation of closures or reopenings will be available to the public upon request, except when the release of this documentation could result in a breach of national security or the security of Reclamation facilities.

§ 423.16 Who can be exempted from closures?

(a) You may be exempted from a closure, subject to any terms and conditions established under paragraph (c) of this section, by written authorization from the authorized official who effected or who is responsible for the closure, if you are:

(1) A person with a license or concession agreement that requires you to have access to the closed Reclamation facilities, lands, or waterbodies;

(2) An owner or lessee of real property, resident, or business in the vicinity of closed Reclamation facilities, lands, or waterbodies who cannot reasonably gain access to your property, residence, or place of business without entering and crossing such closed Reclamation facilities, lands, or waterbodies; or

(3) A holder of a permit granting you an exemption from the closure issued under subpart D of this part 423 by the authorized official who effected or who is responsible for the closure.

(b) You may request exemption from a closure by writing to the authorized official who effected or who is responsible for the closure. You need not do so if you have such an exemption in effect on April 17, 2006.

(c) An authorized official may establish terms and conditions on any exemption from a closure, or terminate such exemption, for any of the reasons listed in § 423.12.

§ 423.17 How will Reclamation reopen closed areas?

An authorized official may reopen to public use any Reclamation facilities, lands, and waterbodies, or portions thereof. The authorized official may do this at any time with advance or subsequent public notice, except as required by other statute or regulation, and must document the reopening as provided in § 423.15.

§ 423.18 Use of closures.

Closures are to be used only where all public access is to be prohibited. Special use areas are to be used to restrict specific activities as set forth in subpart E of this part 423.

Subpart C—Rules of Conduct

§ 423.20 General rules.

(a) You must obey all applicable Federal, State, and local laws whenever you are at or on any Reclamation facilities, lands, or waterbodies.

(b) You must comply with all provisions of this subpart C whenever you are at or on any Reclamation facilities, lands, or waterbodies, except as specifically provided by:

(1) A permit issued by an authorized official under subpart D of this part 423;

(2) A contract with Reclamation or agency managing Reclamation facilities, lands, and waterbodies;

(3) The rules established by an authorized official in a special use area under subpart E of this part 423; or

(4) A right-of-use issued under 43 CFR part 429.

§ 423.21 Responsibilities.

(a) You are responsible for finding, being aware of, and obeying all applicable laws and regulations, as well as notices and postings of closed and special use areas established by an authorized official under subpart B and subpart E of this part 423.

(b) You are responsible for the use of any device, vehicle, vessel, or aircraft you own, lease, or operate on Reclamation facilities, lands, or waterbodies. You may be issued a citation for a violation of regulations, including noncompliance with limitations, restrictions, closures, or special use areas applicable to the use of any device, vehicle, vessel, or aircraft as provided in this part as the owner, lessee, or operator.

(c) You are responsible for the use and treatment of Reclamation facilities, lands, and waterbodies, and the cultural resources, wildlife, and other natural resources located thereon, by you and those for whom you are legally responsible. This presumption is sufficient to issue a citation to you for violation of provisions of these regulations by you or by those for whom you are legally responsible.

(d) The regulations governing permits, other use authorizations, and fees on Reclamation lands that are found in subpart D of this part 423 apply to your use of Reclamation facilities, lands, and waterbodies.

(e) You must furnish identification information upon request by a law enforcement officer.

§ 423.22 Interference with agency functions and disorderly conduct.

(a) You must not assault, threaten, disturb, resist, intimidate, impede, or interfere with any employee or agent of Federal, State, or local government engaged in an official duty.

(b) You must comply with any lawful order of an authorized government employee or agent for the purpose of maintaining order and controlling public access and movement during law enforcement actions and emergency or safety-related operations.

(c) You must not knowingly give a false report or other false information to an authorized government employee or agent.

(d) You must not interfere with, impede, or disrupt the authorized use of Reclamation facilities, lands, or waterbodies or impair the safety of any person.

(e) The following acts constitute disorderly conduct and are prohibited:

(1) Fighting, or threatening or violent behavior;

(2) Language, utterance, gesture, display, or act that is obscene, physically threatening or menacing, or that is likely to inflict injury or incite an immediate breach of the peace;

(3) Unreasonable noise, considering the nature and purpose of the person's conduct, location, time of day or night, and other factors that would govern the conduct of a reasonably prudent person under the circumstances;

(4) Creating or maintaining a hazardous or physically offensive condition; or

(5) Any other act or activity that may cause or create public alarm, nuisance, or bodily harm.

§ 423.23 Abandonment and impoundment of personal property.

(a) You must not abandon personal property of any kind in or on Reclamation facilities, lands, or waterbodies.

(b) You must not store or leave unattended personal property of any kind.

(1) Unattended personal property is presumed to be abandoned:

(i) After a period of 24 hours;

(ii) At any time after a posted closure takes effect under subpart B of this part 423; or

(iii) At any time for reasons of security, public safety, or resource protection.

(2) If personal property is presumed abandoned, an authorized official may impound it, store it, and assess a reasonable impoundment fee.

(3) The impoundment fee must be paid before the authorized official will return the impounded property to you.

(c) An authorized official may impound or destroy unattended personal property at any time if it:

(1) Interferes with safety, operation, or management of Reclamation facilities, lands, or waterbodies; or

(2) Presents a threat to persons or Reclamation project resources.

(d) An authorized official may dispose of abandoned personal property in accordance with the procedures contained in title 41 CFR and applicable Reclamation and Department of the Interior policy.

§ 423.24 Trespassing.

You must not trespass on Reclamation facilities, lands, and waterbodies. Trespass includes any of the following acts:

(a) Unauthorized possession or occupancy of Reclamation facilities, lands, or waterbodies;

(b) Personal entry, presence, or occupancy on or in any portion or area of Reclamation facilities, lands, or waterbodies that have been closed to public use pursuant to subpart B of this part 423;

(c) Unauthorized extraction or disturbance of natural or cultural resources located on Reclamation facilities, lands, or waterbodies;

(d) Unauthorized conduct of commercial activities on Reclamation facilities, lands, or waterbodies;

(e) Holding unauthorized public gatherings on Reclamation facilities, lands, or waterbodies; or

(f) Unauthorized dumping or abandonment of personal property on Reclamation facilities, lands, or waterbodies.

§ 423.25 Vandalism, tampering, and theft.

(a) You must not tamper or attempt to tamper with, move, manipulate, operate, adjust, or set in motion property not under your lawful control or possession including, but not limited to, vehicles, equipment, controls, recreational facilities, and devices.

(b) You must not destroy, injure, deface, damage, or unlawfully remove property not under your lawful control or possession.

(c) You must not drop, place, throw, or roll rocks or other items inside, into, down, or from, dams, spillways, dikes, or other structures and facilities.

§ 423.26 Public events and gatherings.

You must not conduct public assemblies, meetings, gatherings, demonstrations, parades, and other events without a permit issued pursuant to subpart D of this part 423. Public gatherings that involve the possession or occupancy of Reclamation facilities, lands, and waterbodies are governed by 43 CFR part 429.

§ 423.27 Advertising and public solicitation.

You must not engage in advertising or solicitation on Reclamation facilities, lands, or waterbodies except as allowed under a valid contract with Reclamation, or as allowed by a permit issued pursuant to subpart D of this part 423.

§ 423.28 Memorials.

You must not bury, deposit, or scatter human or animal remains, or place memorials, markers, vases, or plaques on Reclamation facilities, lands, or waterbodies. This section does not apply to the burial of parts of fish or wildlife taken in legal hunting, fishing, or trapping.

§ 423.29 Natural and cultural resources.

(a) You must not destroy, injure, deface, remove, search for, disturb, or alter natural resources or cultural resources, including abandoned buildings or structures, on or in Reclamation facilities, lands, or waterbodies except in accordance with § 423.29(g) and other applicable Federal, State, and local laws.

(b) You must not introduce wildlife, fish, or plants, including their reproductive bodies, into Reclamation lands and waterbodies.

(c) You must not drop, place, throw, or roll rocks or other items inside, into, at, or down, caves, caverns, valleys, canyons, mountainsides, thermal features, or other natural formations.

(d) You may bring firewood to or gather dead wood on Reclamation lands for fires as allowed under § 423.31. You must not damage or remove any live tree or part thereof except with proper authorization under 43 CFR part 429.

(e) You must not walk on, climb, enter, ascend, descend, or traverse cultural resources on Reclamation lands, including monuments or statues, except as specifically allowed in special use areas designated by an authorized official under subpart E of this part 423.

(f) You must not possess a metal detector or other geophysical discovery device, or use a metal detector or other geophysical discovery techniques to locate or recover subsurface objects or features on Reclamation lands, except:

(1) When transporting, but not using, a metal detector or other geophysical discovery device in a vehicle on a public road as allowed under applicable Federal, State, and local law; or

(2) As allowed by a permit issued pursuant to subpart D of this part 423.

(g) You may engage in renewable natural resource gathering activities such as picking berries and mushrooms, collecting antlers, and other similar activities as regulated by this part 423 and other applicable Federal, State, and local laws.

§ 423.30 Weapons, firearms, explosives, and fireworks.

(a) You may possess firearms, ammunition, bows and arrows, crossbows, or other projectile firing devices on Reclamation lands and waterbodies, provided the firearm, ammunition, or other projectile firing device is stowed, transported, and/or carried in compliance with applicable Federal, State, and local law, with the following exceptions:

(1) You must not have a weapon in your possession when at or in a Reclamation facility.

(2) You must comply with any prohibitions or regulations applicable to weapons in a special use area established by an authorized official under subpart E of this part 423.

(b) You must not discharge or shoot a weapon unless you are:

(1) Using a firearm or other projectile firing device lawfully for hunting or fishing as allowed under § 423.32, or at an authorized shooting or archery range; and

(2) In compliance with applicable Federal, State, and local law.

(c) You must not use or possess explosives, or fireworks or pyrotechnics of any type, except as allowed by a permit issued pursuant to subpart D of this part 423, or in special use areas so designated by an authorized official under subpart E of this part 423.

§ 423.31 Fires and flammable material.

(a) You must not leave a fire unattended, and it must be completely extinguished before your departure.

(b) You must not improperly dispose of lighted smoking materials, including cigarettes, cigars, pipes, matches, or other burning material.

(c) You must not burn materials that produce toxic fumes, including, but not limited to, tires, plastic, flotation materials, or treated wood products.

(d) You must not transport gasoline and other fuels in containers not designed for that purpose.

(e) You must comply with all applicable Federal, State, and local fire orders, restrictions, or permit requirements.

§ 423.32 Hunting, fishing, and trapping.

(a) You may hunt, fish, and trap in accordance with applicable Federal, State, and local laws, and subject to the restrictions of § 423.30, in areas where both of the following conditions are met:

(1) The area is not closed to public use under subpart B of this part 423; and

(2) The area has not been otherwise designated by an authorized official in a special use area under subpart E of this part 423.

(b) You must comply with any additional restrictions pertaining to hunting, fishing, and trapping established by an authorized official in a special use area under subpart E of this part 423.

§ 423.33 Camping.

(a) You may camp on Reclamation lands, except that you must comply with any restrictions, conditions, limitations, or prohibitions on camping established by an authorized official in a special use area under subpart E of this part 423.

(b) You must not camp on Reclamation lands at any single Reclamation project for more than 14 days during any period of 30 consecutive days, except as allowed by a permit issued under 43 CFR part 429;

(c) You must not attempt to reserve a campsite for future use by placing equipment or other items on the campsite, or by personal appearance, without camping on and paying the required fees for that campsite daily;

(d) You must not camp on or place any equipment at a campsite that is posted or otherwise marked as ''reserved'' or ''closed'' by an authorized official without a valid reservation for that campsite, except as allowed by a permit issued under subpart D of this part 423; and

(e) You must not dig in or level any ground, or erect any structure other than a tent, in a designated campground.

§ 423.34 Sanitation.

(a) You must not bring or improperly dispose of refuse on Reclamation facilities, lands, and waterbodies. Both the owner and the person bringing or disposing refuse may be issued a citation for violating this provision.

(b) Campers, picnickers, and all other persons using Reclamation lands must keep their sites free of trash and litter during the period of occupancy and must remove all personal equipment and clean their sites before departure.

(c) You must not place or construct a toilet or latrine such that its lowest point is lower than the high water mark of any Reclamation waterbody, or within 150 feet horizontally of the high water mark of any Reclamation waterbody.

§ 423.35 Animals.

(a) You must not bring pets or other animals into public buildings, public transportation vehicles, or sanitary facilities. This provision does not apply to properly trained animals assisting persons with disabilities, such as seeing-eye dogs.

(b) You must not abandon any animal on Reclamation facilities, lands, or waterbodies, or harass, endanger, or attempt to collect any animal except game you are attempting to take in the course of authorized hunting, fishing, or trapping.

(c) Any unauthorized, unclaimed, or unattended animal on Reclamation lands may be:

(1) Removed in accordance with Federal law, and applicable State and local laws; and

(2) Confined at a location designated by an authorized official, who may assess a reasonable impoundment fee

that must be paid before the impounded animal is released to its owner.

(d) The following animals are prohibited and are subject to removal in accordance with Federal law, and applicable State and local laws:

(1) Captive wild or exotic animals (including, but not limited to, cougars, lions, bears, bobcats, wolves, and snakes), except as allowed by a permit issued under subpart D of this part 423; and

(2) Any pets or animals displaying vicious or aggressive behavior or posing a threat to public safety or deemed a public nuisance.

§ 423.36 Swimming.

(a) You may swim, wade, snorkel, scuba dive, raft, or tube at your own risk in Reclamation waters, except:

(1) Within 300 yards of dams, power plants, pumping plants, spillways, stilling basins, gates, intake structures, and outlet works;

(2) Within 100 yards of buoys or barriers marking public access limits;

(3) In canals, laterals, siphons, tunnels, and drainage works;

(4) At public docks, launching sites, and designated mooring areas; or

(5) As otherwise delineated by signs or other markers.

(b) You must display an international diver down, or inland diving flag in accordance with State and U.S. Coast Guard guidelines when engaging in any underwater activities.

(c) You must not dive, jump, or swing from dams, spillways, bridges, cables, towers, or other structures.

§ 423.37 Winter activities.

(a) You must not tow persons on skis, sleds, or other sliding devices with a motor vehicle or snowmobile, except that you may tow sleds designed to be towed behind snowmobiles if joined to the towing snowmobile with a rigid hitching mechanism, and you may tow disabled snowmobiles by any appropriate means.

(b) You must not ice skate, ice fish, or ice sail within 300 yards of dams, power plants, pumping plants, spillways, stilling basins, gates, intake structures, or outlet works.

(c) You must comply with all other posted restrictions.

§ 423.38 Operating vessels on Reclamation waters.

(a) You must comply with Federal, State, and local laws applicable to the operation of a vessel, other watercraft, or seaplane on Reclamation waters, and with any restrictions established by an authorized official.

(b) You must not operate a vessel, other watercraft, or seaplane in an area closed to the public.

(c) You must observe restrictions established by signs, buoys, and other regulatory markers.

(d) You must not operate a vessel, or knowingly allow another person to operate a vessel, in a reckless or negligent manner, or in a manner that endangers or is likely to endanger a person, property, natural resource, or cultural resource.

(e) You must not operate a vessel when impaired or intoxicated under the standards established by applicable State and local law.

(f) You must not occupy a vessel overnight, except where otherwise designated under applicable Federal, State, or local law, or where otherwise designated by an authorized official in a special use area.

(g) You must not use a vessel as a place of habitation or residence.

(h) You must remove your vessels from Reclamation lands and waters when not in actual use for a period of more than 24 hours, unless they are securely moored or stored at special use areas so designated by an authorized official.

(i) You must not attach or anchor a vessel to structures such as locks, dams, regulatory or navigational buoys, or other structures not designed for such purpose.

(j) You must display an international diver down, or inland diving flag in accordance with State and U.S. Coast Guard guidelines when operating a vessel involved in any underwater activities.

(k) You may engage in towing activities, including, but not limited to, waterskiing and tubing, only during daylight hours and subject to any applicable Federal, State, and local law.

§ 423.39 Standards for vessels.

(a) All vessels on Reclamation waters must:

(1) Be constructed and maintained in compliance with the standards and requirements established by, or promulgated under, Title 46 United States Code, and any applicable State and local laws and regulations;

(2) Have safety equipment, including personal flotation devices, on board in compliance with U.S. Coast Guard boating safety requirements and in compliance with applicable State and local boating safety laws and regulations; and

(3) If motorized, have and utilize a proper and effective exhaust muffler as defined by applicable State and local laws. Actions or devices which render exhaust mufflers ineffective are prohibited.

(b) Owners or operators of vessels not in compliance with this § 423.39 may be required to remove the vessel immediately from Reclamation waterbodies until items of non-compliance are corrected.

§ 423.40 Vehicles.

(a) When operating a vehicle on Reclamation lands and Reclamation projects, you must comply with applicable Federal, State, and local laws, and with posted restrictions and regulations. Operating any vehicle through, around, or beyond a restrictive sign, recognizable barricade, fence, or traffic control barricade, is prohibited.

(b) You must not park a vehicle in violation of posted restrictions and regulations, or in a manner that would obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property, or natural feature. Vehicles so parked are subject to removal and impoundment at the owner's expense.

(c) You must not operate any vehicle, or allow another person to operate a vehicle in your control, in a careless, negligent or reckless manner that would endanger any person, property, natural resource, or cultural resource.

(d) In addition to the regulations in this part, the regulations governing off-road-vehicle use in 43 CFR part 420 apply.

§ 423.41 Aircraft.

(a) You must comply with any applicable Federal, State, and local laws, and with any additional requirements or restrictions established by an authorized official in a special use area under subpart E of this part 423, with respect to aircraft landings, takeoffs, and operation on or in the proximity of Reclamation facilities, lands, and waterbodies. Pilots are responsible for awareness of all applicable laws, regulations, requirements, and restrictions. This paragraph does not apply to pilots engaged in emergency rescue or in the official business of Federal, State, or local governments or law enforcement agencies, or who are forced to land due to circumstances beyond the pilot's control.

(b) You must not operate any aircraft while on or above Reclamation facilities, lands, and waterbodies in a careless, negligent, or reckless manner so as to endanger any person, property, or natural feature.

(c) This section does not provide authority to deviate from Federal or State regulations, or prescribed standards, including, but not limited to, regulations and standards concerning pilot certifications or ratings and airspace requirements.

(d) Except in extreme emergencies threatening human life or serious property loss, you must not use non-standard boarding and loading procedures to deliver or retrieve people, material, or equipment by parachute, balloon, helicopter, or other aircraft.

(e) You must comply with all applicable U.S. Coast Guard rules when operating a seaplane on Reclamation waterbodies.

(f) You must securely moor any seaplane remaining on Reclamation waterbodies in excess of 24 hours at mooring facilities and locations designated by an authorized official. Seaplanes may be moored for periods of less than 24 hours on Reclamation waterbodies, except in special use areas otherwise designated by an authorized official, provided:

(1) The mooring is safe, secure, and accomplished so as not to damage the rights of the Government or the safety of persons; and

(2) The operator remains in the vicinity of the seaplane and reasonably available to relocate the seaplane if necessary.

(g) You must not operate model aircraft except as allowed in special use areas established by an authorized official under subpart E of this part 423.

§ 423.42 Gambling.

Commercial gambling in any form, or the operation of gambling devices, is prohibited on Reclamation facilities, lands, and waterbodies unless authorized by applicable treaties or Federal, State, and local laws or regulations.

§ 423.43 Alcoholic beverages.

You must not possess or consume alcoholic beverages in violation of Federal, State, or local law, or the rules of a special use area established by an authorized official under subpart E of this part 423.

§ 423.44 Controlled substances.

You must not possess, consume, deliver, or be under the influence of, controlled substances included in schedules I, II, III, IV, or V of part B of the Controlled Substance Act (21 U.S.C. 812) on Reclamation facilities, lands, or waterbodies, unless the controlled substance was legally obtained through a valid prescription or order.

Subpart D—Authorization of Otherwise Prohibited Activities

§ 423.50 How can I obtain permission for prohibited or restricted uses and activities?

(a) Authorized officials may issue permits to authorize activities on Reclamation facilities, lands, or waterbodies otherwise prohibited or restricted by §§ 423.16(a)(3), 423.26, 423.27, 423.29(f), 423.30(c), 423.33(d), and 423.35(d)(1), and may terminate or revoke such permits for non-use, noncompliance with the terms of the permit, violation of any applicable law, or to protect the health, safety, or security of persons, Reclamation assets, or natural or cultural resources.

(b) You may apply for permission to engage in activities otherwise prohibited or restricted by the sections listed in paragraph (a) of this section. You may apply to the authorized official responsible for the area in which your activity is to take place, and this authorized official may grant, deny, or establish conditions or limitations on this permission.

(c) You must pay all required fees and properly display applicable permits, passes, or receipts.

(d) You must not violate the terms and conditions of a permit issued by an authorized official. Any such violation is prohibited and may result in suspension or revocation of the permit, or other penalties as provided in subpart F of this part 423, or both.

(e) You must, upon request by a law enforcement officer, security guard, or other government employee or agent acting within the scope of their official duties, display any permit authorizing your presence or activity on Reclamation facilities, lands, and waterbodies.

Subpart E—Special Use Areas

§ 423.60 How special use areas are designated.

(a) After making a determination under paragraph (b) of this section, an authorized official may:

(1) Establish special use areas within Reclamation facilities, lands, or waterbodies for application of reasonable schedules of visiting hours; public use limits; and other conditions, restrictions, allowances, or prohibitions on particular uses or activities that vary from the provisions of subpart C of this part 423, except § 423.28; and

(2) From time to time revise the boundaries of a previously designated special use area and revise or terminate previously imposed schedules of visiting hours; public use limits; and other conditions, restrictions, allowances, or prohibitions on a use or activity.

(b) Before taking action under paragraph (a) of this section, an authorized official must make a determination that action is necessary for:

(1) The protection of public health and safety;

(2) The protection and preservation of cultural and natural resources;

(3) The protection of environmental and scenic values, scientific research, the security of Reclamation facilities,

the avoidance of conflict among visitor use activities; or

(4) Other reasons in the public interest.

(c) An authorized official establishing a special use area must document in writing the determination described in paragraph (b) of this section. Such documentation must occur before the action, except in emergencies or situations of immediate need as described in § 423.61(c), in which case the documentation is required within 30 days after the date of the action. Reclamation will make documents produced under this section available to the public upon request except where such disclosure could compromise national or facility security, or human safety.

§ 423.61 Notifying the public of special use areas.

When establishing, revising, or terminating a special use area, Reclamation must notify the public as required by this section.

(a) *What notices must contain*. The notice must specify:

(1) The location of the special use area; and

(2) The public use limits, conditions, restrictions, allowances, or prohibitions on uses and activities that are to be applied to the area or that are to be revised or terminated.

(b) *How notice must be made*. Reclamation must notify the public at least 15 days before the action takes place by one or more of the following methods:

(1) Signs posted at conspicuous locations, such as normal points of entry and reasonable intervals along the boundary of the special use area;

(2) Maps available in the local Reclamation office and other places convenient to the public;

(3) Publication in a newspaper of general circulation in the affected area; or

(4) Other appropriate methods, such as the use of electronic media, brochures, and handouts.

(c) *When notice may be delayed*. (1) Notice under this section may be delayed in an emergency or situation of immediate need where delaying designation, revision, or termination of a special use area would result in significant risk to:

(i) National security;

(ii) The safety or security of a Reclamation facility, Reclamation employees, or the public; or

(iii) The natural or cultural environment.

(2) If the exception in paragraph (c)(1) of this section applies, Reclamation must comply with paragraph (b) of this section within 30 days after the effective date of the designation.

(3) Failure to meet the notice deadlines in paragraphs (b) or (c)(2) of this section will not invalidate an action, so long as Reclamation meets the remaining notification requirements of this section.

(d) *When advance notice is not required*. Advance notice as described in paragraph (b) of this section is not required if all the following conditions are met:

(1) The action will not result in a significant change in the public use of the area;

(2) The action will not adversely affect the area's natural, esthetic, scenic, or cultural values;

(3) The action will not require a long-term or significant modification in the resource management objectives of the area; and

(4) The action is not highly controversial.

§ 423.62 Reservations for public use limits.

To implement a public use limit, an authorized official may establish a registration or reservation system.

§ 423.63 Existing special use areas.

Areas where rules were in effect on April 17, 2006 that differ from the rules set forth in subpart C are considered existing special use areas, and such differing rules remain in effect to the extent allowed by subpart A, and to the extent they are consistent with § 423.28. For those existing special use areas, compliance with §§ 423.60 through 423.62 is not required until the rules applicable in those special use areas are modified or terminated.

Subpart F—Violations and Sanctions

§ 423.70 Violations.

(a) When at, in, or on Reclamation facilities, lands, or waterbodies, you must obey and comply with:

(1) Any closure orders established under subpart B of this part 423;

(2) The regulations in subpart C of this part 423;

(3) The conditions established by any permit issued under subpart D of this part 423; and

(4) The regulations established by an authorized official in special use areas under subpart E of this part 423.

(b) Violating any use or activity prohibition, restriction, condition, schedule of visiting hours, or public use limit established by or under this part 423 is prohibited.

(c) Any continuous or ongoing violation of these regulations constitutes a separate violation for each calendar day in which it occurs.

§ 423.71 Sanctions.

Under section (1)(a) of Public Law 107–69, you are subject to a fine under chapter 227, subchapter C of title 18 United States Code (18 U.S.C. 3571), or can be imprisoned for not more than 6 months, or both, if you violate:

(a) The provisions of this part 423; or

(b) Any condition, limitation, closure, prohibition on uses or activities, or public use limits, imposed under this part 423.

PART 424—REGULATIONS PERTAINING TO STANDARDS FOR THE PREVENTION, CONTROL, AND ABATEMENT OF ENVIRONMENTAL POLLUTION OF CONCONULLY LAKE AND CONCONULLY RESERVOIR, OKANOGAN COUNTY, WASH.

§ 424.1 Regulations.

Pursuant to the provisions of Article 34 and 25 of repayment contract I1r–1534, dated September 20, 1948, between the United States and the Okanogan Irrigation District, it is ordered as follows:

The Okanogan Irrigation District shall require that all recipients of cabinsite and recreation resort leases on Federal lands situated on Conconully Lake (formerly Salmon Lake) and Conconully Reservoir, Okanogan County, Wash., comply with applicable Federal, state and local laws, rules and regulations pertaining to water quality standards and effluent limitations for the discharge of pollutants into said reservoirs, including county regulations governing subsurface waste disposal systems.

(The Reclamation Act of June 17, 1902, as amended and supplemented, Articles 34, and 25 of the Repayment Contract I1r–1534 dated Sept. 20, 1948, between the United States and the Okanagon Irrigation District)

[42 FR 60144, Nov. 25, 1977]

PART 426—ACREAGE LIMITATION RULES AND REGULATIONS

Sec.

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AUTHORITY: 5 U.S.C. 301; 5 U.S.C. 553; 16 U.S.C. 590z–11; 31 U.S.C. 9701; and 32 Stat. 388 and all acts amendatory thereof or supplementary thereto including, but not limited to, 43 U.S.C. 390aa to 390zz–1, 43 U.S.C. 418, 43 U.S.C. 423 to 425b, 43 U.S.C. 431, 434, 440, 43 U.S.C. 451 to 451k, 43 U.S.C. 462, 43 U.S.C. 485 to 485k, 43 U.S.C. 491 to 505, 43 U.S.C. 511 to 513, and 43 U.S.C. 544.

SOURCE: 61 FR 66805, Dec. 18, 1996, unless otherwise noted.

§ 426.1 Purpose.

These rules and regulations implement certain provisions of Federal reclamation law that address the ownership and leasing of land on Federal Reclamation irrigation projects and the pricing of Federal Reclamation project irrigation water, and establish terms and conditions for the delivery of Federal Reclamation project irrigation water.

§ 426.2 Definitions.

As used in these rules:

Acreage limitation entitlements mean the ownership and nonfull-cost entitlements.

Acreage limitation provisions mean the ownership limitations and pricing restrictions specified in Federal reclamation law, including but not limited to, Sections 203(b), 204, and 205 of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*).

Acreage limitation status means whether a landholder is a qualified recipient, limited recipient, or prior law recipient.

Commissioner means the Commissioner of the Bureau of Reclamation, U.S. Department of the Interior.

Compensation rate means a water rate applied, in certain situations, to water delivery to ineligible land that is not discovered until after the delivery has taken place. The compensation rate is equal to the established full-cost rate that would apply to the landholder if the landholder was to receive irrigation water on land that exceeded a nonfull-cost entitlement.

Contract means any repayment or water service contract or agreement between the United States and a district providing for the payment to the United States of construction charges and normal operation, maintenance, and replacement costs under Federal reclamation law, even if the contract does not specifically identify the portion of the payment that is to be attributed to operation and maintenance and that portion that is to be attributed to construction. This definition includes contracts made in accordance with the Distribution System Loans Act, as amended (43 U.S.C. 421).

Contract rate means the assessment, as set forth in a contract, that is to be paid by a district to the United States, and recomputed if necessary on a per acre or per acre foot basis.

Dependent means any natural person within the meaning of the term dependent in the Internal Revenue Code of 1954 (26 U.S.C. 152) and any subsequent amendments.

Direct when used in connection with the terms landholder, landowner, lessee, lessor, or owner, means that the party is the owner of record or holder of title, or the lessee of a land parcel, as appropriate. However, landholdings of joint tenants and tenants-in-common will not be considered direct under these regulations.

Discretionary provisions refer to Sections 390cc through 390hh, except for 390cc(b), of the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*).

District means any individual or any legal entity established under State law that has entered into a contract or can potentially enter into a contract with the United States for irrigation water service through federally developed or improved water storage and/or distribution facilities.

Eligible, except where otherwise provided, means permitted to receive an irrigation water supply from a Reclamation project under applicable Federal reclamation law.

Entity, *see* definition of *legal entity*.

Excess land means nonexempt land that is in excess of a landowner's maximum ownership entitlement under the applicable provisions of Federal reclamation law.

Exempt, except where otherwise provided, means not subject to the acreage limitation provisions.

Extended recordable contract means a recordable contract whose term was extended due to moratoriums established in 1976 and 1977 on the sale of excess land.

Full cost or *full-cost rate* means an annual rate established by Reclamation that amortizes the expenditures for construction properly allocable to irrigation facilities in service, including all operation and maintenance deficits funded, less payments, over such periods as may be required under Federal reclamation law, or applicable contract provisions. Interest will accrue on both the construction expenditures and

funded operation and maintenance deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982. The full-cost rate includes actual operation, maintenance, and replacement costs required under Federal reclamation law.

Full-cost charge means the full-cost rate less the actual operation, maintenance, and replacement costs required under Federal reclamation law.

Indirect, when used in connection with the terms landholder, landowner, lessee, lessor or owner, means that such party is not the owner of record or holder of title, or the lessee of a land parcel, but that such party has a beneficial interest in the legal entity that is the owner of record or holder of title, or the lessee of a land parcel. Landholdings of joint tenants and tenants-in-common will be considered indirect under these regulations. A security interest held by lenders, who are not otherwise considered a landholder of the land in question, in a legal entity or in a land parcel will not be considered an indirect interest or a beneficial interest for purposes of these regulations.

Individual means any natural person, including his or her spouse, and including other dependents; provided that, under prior law, the term individual does not include a natural person's spouse or dependents.

Ineligible, except where otherwise provided, means not permitted to receive an irrigation water supply under applicable Federal reclamation law regardless of the rate paid for such water.

Intermediate entity means an entity that is a part owner of another entity and in turn is owned by others, either another entity or individuals.

Involuntary acquisition means land that is acquired through an involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract or deed of trust), inheritance, or devise.

Irrevocable election means the execution of the legal instrument that a landholder subject to prior law provisions submits to become subject to the discretionary provisions of Federal reclamation law.

Irrevocable elector means a landholder who makes an irrevocable election to conform to the discretionary provisions of Federal reclamation law.

Irrigable land means land so classified by Reclamation under a specific project plan for which irrigation water is, can be, or is planned to be provided, and for which facilities necessary for sustained irrigation are provided or are planned to be provided.

Irrigation land means any land receiving water from a Reclamation project facility for irrigation purposes in a given water year, except for land that has been specifically exempted by statute or administrative action from the acreage limitation provisions of Federal reclamation law.

Irrigation water means water made available for agricultural purposes from the operation of Reclamation project facilities pursuant to a contract with Reclamation.

Landholder means a party that directly or indirectly owns or leases nonexempt land.

Landholding means the total acreage of nonexempt land directly or indirectly owned or leased by a landholder.

Lease means any arrangement between a landholder (the lessor) and another party (the lessee) under which the economic risk and the use or possession of the lessor's land is partially or wholly transferred to the lessee. If a management arrangement or consulting agreement is one in which the manager or consultant performs a service for the landholder for a fee, but does not assume the economic risk in the farming operation, and the landholder retains the right to the use and possession of the land, is responsible for payment of the operating expenses, and is entitled to receive the profits from the farming operation, then the agreement or arrangement will not be considered to be a lease.

Legal entity or entity for the purpose of establishing application of the acreage limitation entitlements means, but is not limited to, corporations, partnerships, organizations, and any business or property ownership arrangements such as joint tenancies and tenancies-in-common. For purposes of the

information requirements specified in § 426.18 only, trusts will be considered to be legal entities.

Limited recipient means any legal entity established under State or Federal law benefiting more than 25 natural persons. In order to become limited recipients, legal entities must be subject to the discretionary provisions through either district contract action or irrevocable election.

Nondiscretionary provisions means sections 390cc(b) and 390ii through 390zz 1 of the RRA.

Nonexempt land means either irrigation land or irrigable land that is subject to the acreage limitation provisions. Areas used for field roads, farm ditches and drains, tailwater ponds, temporary equipment storage, and other improvements subject to change at will by the landowner, are included in the nonexempt acreage. Areas occupied by and currently used for homesites, farmstead buildings, and corollary permanent structures such as feedlots, equipment storage yards, permanent roads, permanent ponds, and similar facilities, together with roads open for unrestricted use by the public are excluded from nonexempt acreage.

Nonfull-cost entitlement means the maximum acreage a landholder may irrigate with irrigation water at a nonfull-cost rate.

*Nonfull-cost rate*means any water rate other than the full-cost rate. Nonfull-cost rates are paid for irrigation water made available to land in a landholder's nonfull-cost entitlement.

Nonproject water means water from sources other than Reclamation project facilities.

Nonresident alien means any natural person who is neither a citizen nor a resident alien of the United States.

Operation and maintenance costs or *O&M costs* mean all direct charges and overhead costs incurred by the United States after the date that Reclamation has declared a project, or a part thereof, substantially complete to operate, maintain, provide replacements of, administer, manage, and oversee project facilities and lands.

Ownership entitlement means the maximum acreage a landholder may directly or indirectly own and irrigate with irrigation water.

Part owner means an individual or legal entity that has a beneficial interest in a legal entity, but does not own 100 percent of that legal entity. A lender, who is not otherwise considered a landholder of the land in question, with a security interest in a legal entity or land owned by a legal entity shall not be considered a part owner under these regulations.

Prior law means the Reclamation Act of 1902, and acts amendatory and supplementary thereto (43 U.S.C. 371 *et seq.*) that were in effect prior to the enactment of the RRA, and as amended by the RRA.

Prior law recipient means an individual or legal entity that has not become subject to the discretionary provisions.

Project means any irrigation project authorized by Federal reclamation law, or constructed by the United States pursuant to such law, or in connection with a repayment or water service contract executed by the United States pursuant to such law, or any project constructed by the United States through Reclamation for the reclamation of lands. The term project includes any incidental features of an irrigation project.

Public entity means States, political subdivisions or agencies thereof, and agencies of the Federal Government.

Qualified recipient means an individual who is a citizen or a resident alien of the United States or any legal entity established under State or Federal law that benefits 25 natural persons or less. A married couple may become a qualified recipient if either spouse is a United States citizen or resident alien. In order to become qualified recipients, individuals and legal entities must be subject to the discretionary provisions through either district contract action or irrevocable election.

Reclamation means the Bureau of Reclamation, U.S. Department of the Interior.

Reclamation fund means a special fund established by the Congress under the Reclamation Act of 1902, as amended, for the receipts from the sale of public lands and timber, proceeds from the Mineral Leasing Act, and certain other revenues.

Recordable contract means a written contract between Reclamation and a landowner capable of being recorded under State law, providing for the disposition of land held by that landowner in excess of the ownership limitations of Federal reclamation law.

Resident alien means any natural person within the meaning of the term as defined in the Internal Revenue Act of 1954 (26 U.S.C. 7701) as it may be amended.

RRA means the Reclamation Reform Act of 1982, Public Law 97–09293, Title II, 96 Stat. 1263, (43 U.S.C. 390aa *et seq.*) as amended.

Secretary means Secretary of the U.S. Department of the Interior.

Standard certification or reporting forms mean forms on which landholders provide complete information about the directly and indirectly owned and leased nonexempt lands in their landholdings.

Water year means a 365-day period (or 366 days during leap years) whose start date is specified within a contract between Reclamation and the district or through some other agreement between Reclamation and the district.

Westwide means the 17 Western States where Reclamation projects are located, namely: Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

§ 426.3 Conformance to the discretionary provisions.

(a) *Districts that are subject to the discretionary provisions.* Unless an exemption in § 426.16 applies, a district is subject to the discretionary provisions if:

(1) The district executes a new or renewed contract with Reclamation after October 12, 1982. The discretionary provisions apply as of the execution date of the new or renewed contract;

(2) The district amends its contract to conform to the discretionary provisions:

(i) A district may ask Reclamation to amend its contract to conform to the discretionary provisions;

(ii) The district's request to Reclamation must be accompanied by a duly adopted resolution dated and signed by the governing board of the district obligating the district to take, in a timely manner, actions required by applicable State law to amend its contract; and

(iii) If the requirements of paragraphs (a)(2)(i) and (ii) of this section are met, then Reclamation will amend the contract, and the district becomes subject to the discretionary provisions from the date the district's request was submitted to Reclamation;

(iv) If the district only wants to amend its contracts to become subject to the discretionary provisions, the amendments need only be to the extent required to conform to the discretionary provisions; or

(3) The district amends its contract after October 12, 1982, to provide the district with additional or supplemental benefits. The amendment must also include the district's conformance to the discretionary provisions:

(i) The discretionary provisions apply as of the date that Reclamation executes the contract amendment;

(ii) For purposes of application of the acreage limitation provisions Reclamation considers a contract amendment as providing additional or supplemental benefits if that amendment:

(A) Requires the United States to expend significant funds;

(B) Requires the United States to commit significant additional water supplies; or

(C) Substantially modifies contract payments due the United States; and

(iii) For purposes of application of the acreage limitation provisions Reclamation does not consider the following contract actions as providing additional or supplemental benefits:

(A) The construction of facilities for conveyance of irrigation water for which districts contracted on or before October 12, 1982;

(B) Minor drainage and construction work contracted under a prior repayment or water service contract;

(C) Operation and maintenance (O&M) amendments;

(D) The deferral of payments provided the deferral is for a period of 12 months or less;

(E) A temporary supply of irrigation water as set forth in § 426.16(d);

(F) The transfer of water on an annual basis from one district to another, provided that:

(*1*) Both districts have contracts with the United States;

(*2*) The rate paid by the district receiving the transferred water:

(*i*) Is the higher of the applicable water rate for either district;

(*ii*) Does not result in any increased operating losses to the United States above those that would have existed in the absence of the transfer; and

(*iii*) Does not result in any decrease in capital repayment to the United States below what would have existed in the absence of the transfer; and

(*3*) The recipients of the transferred water pay a rate for the water that is at least equal to the actual O&M costs or the full-cost rate in those cases where, for whatever reason, the recipients would have been subject to such costs had the water not been considered transferred water;

(G) Contract actions pursuant to the Reclamation Safety of Dams Act of 1978, as amended (43 U.S.C. 506); or

(H) Other contract actions that Reclamation determines do not provide additional or supplemental benefits.

(b) *Districts that are subject to prior law*. Any district which had a contract in force on October 12, 1982, that required landholders to comply with the ownership limitations of Federal reclamation law remains subject to prior law unless and until the district:

(1) Enters into a new or renewed contract requiring it to conform to the discretionary provisions, as provided in paragraph (a)(1) of this section;

(2) Makes a contract action requiring conformance to the discretionary provisions, as provided in paragraphs (a)(2) or (3) of this section; or

(3) Becomes exempt, as provided in § 426.16.

(c) *Standard RRA contract article*. (1) New or renewed contracts executed after October 12, 1982, or contracts that are amended to conform to the discretionary provisions before or on the effective date of these rules must include the following clause:

> The parties agree that the delivery of irrigation water or use of Federal facilities pursuant to this contract is subject to reclamation law, as amended and supplemented, including but not limited to the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq*..

(2) New or renewed contracts executed after the effective date of these rules, or contracts that are amended to conform to the discretionary provisions after the effective date of these rules must include the following clause:

> The parties agree that the delivery of irrigation water or use of Federal facilities pursuant to this contract is subject to Federal reclamation law, including but not limited to the Reclamation Reform Act of 1982 (43 U.S.C. 390aa *et seq.*), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal reclamation law.

(d) *The effect of a master contractor's and subcontractor's actions to conform to the discretionary provisions*. If a district provides irrigation water to other districts through subcontracts and the master contracting district is subject to:

(1) The discretionary provisions, then all subcontracting districts who are entitled to receive irrigation water must also conform to the discretionary provisions; or

(2) Prior law, then the subcontracting district can amend its subcontract to conform to the discretionary provisions without subjecting the master contractor or any other subcontractor of the master contractor to the discretionary provisions. If a subcontract that does not include the United States as a party is amended to conform to the discretionary provisions, or the subcontract is a new or renewed contract executed after October 12, 1982, then the amended, new, or renewed subcontract must include the United States as a party.

(e) *The effect on a landholder's status when a district becomes subject to the discretionary provisions*. If a district conforms to the discretionary provisions and the landholder is:

(1) Other than a nonresident alien or a legal entity that is not established under State or Federal law, and is:

(i) A direct landholder in that district, then the landholder becomes subject to the discretionary provisions and the associated acreage limitation status will apply in any district in which the landholder holds land; or

(ii) Only an indirect landholder in that and all other discretionary provisions districts, then the landholder's acreage limitation status is not affected. Such a landholder can receive irrigation water as a prior law recipient on indirectly held lands in districts that conform to the discretionary provisions.

(2) A nonresident alien, or legal entity not established under State or Federal law, and the landholder is:

(i) A direct landholder, then since such a landholder cannot become subject to, and has no eligibility under the discretionary provisions:

(A) All direct landholdings in districts that conform to the discretionary provisions become ineligible; and

(B) Directly held land that becomes ineligible as a result of the district's action to conform to the discretionary provisions may be placed under recordable contract as subject to the conditions specified in § 426.12; or

(ii) An indirect landholder, then such a landholder may receive irrigation water on land indirectly held in districts conforming to the discretionary provisions, with the entitlements for such landholder determined as specified in § 426.8.

(f) *Landholder actions to conform to the discretionary provisions.* (1) In the absence of a district's action to conform to the discretionary provisions, United States citizens, resident aliens, or legal entities established under State or Federal law, can elect to conform to the discretionary provisions by executing an irrevocable election. Upon execution of an irrevocable election:

(i) The elector's entire landholding in all districts shall be subject to the discretionary provisions;

(ii) The election shall be binding on the elector and his or her landholding, but will not be binding on subsequent landholders of that land;

(iii) An irrevocable election by a legal entity is binding only upon that entity and not on the part owners of that entity;

(iv) An irrevocable election by a part owner of a legal entity binds only the part owner making the election and not the entity or other part owners of the entity; and

(v) An irrevocable election by a lessor does not affect the status of a lessee, and vice versa. However, the eligibility and entitlement of neither a lessor nor a lessee may be enhanced through leasing.

(2) A landholder makes an irrevocable election by completing a Reclamation issued irrevocable election form:

(i) The elector's original irrevocable election form must be filed by the district with Reclamation and must be accompanied by a completed certification form, as specified in § 426.18;

(ii) The elector must file copies of the irrevocable election and certification forms concurrently with each district where the elector holds nonexempt land;

(iii) Reclamation will prepare a letter advising the recipient of the approval or disapproval of the election. Reclamation will base approval upon whether the election form and the accompanying certification form(s) indicate the elector's satisfaction of the various requirements of Federal reclamation law and these regulations;

(iv) If the election is approved, the letter of approval, with a copy of the irrevocable election form and the original certification form(s), will be sent by Reclamation to each district where the elector holds land;

(v) The district(s) shall retain the forms; and

(vi) If the irrevocable election is disapproved, the landholder and the district will be advised by letter along with the reasons for disapproval.

(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.

(g) *District reliance on irrevocable election form information.* The district is entitled to rely on the information contained in the irrevocable election form. The district does not need to make an

independent investigation of the information.

(h) *Time limits for amendments or elections to conform to the discretionary provisions.* Reclamation will allow at anytime a landholder to elect or a district to amend its contract to conform to the discretionary provisions. An irrevocable election that was made after April 12, 1987, but on or before May 13, 1987, shall be considered effective as of April 12, 1987.

§ 426.4 Attribution of land.

(a) *Prohibition on increasing acreage limitation entitlements.* Except as specifically provided in these rules, a landholder cannot increase acreage limitation entitlements or eligibility by acquiring or holding a beneficial interest in a legal entity. Similarly, the acreage limitation status of an individual or legal entity that holds or has acquired a beneficial interest in another legal entity will not be permitted to enlarge the latter legal entity's acreage limitation entitlements or eligibility.

(b) *Attribution of owned land.* For purposes of determining acreage to be counted against acreage limitation entitlements, acreage will be attributed to all:

(1) Direct landowners in proportion to the direct beneficial interest the landowners own in the land; and

(2) Indirect landowners in proportion to the indirect beneficial interest they own in the land.

(c) *Attribution of leased land.* Leased land will be attributed to the direct and indirect landowners as well as to the direct and indirect lessees in the same manner as described in paragraphs (b) and (d) of this section.

(d) *Attribution of land held through intermediate entities.* If land is held by a direct landholder and a series of indirect landholders, Reclamation will attribute that land to the acreage limitation entitlements of the direct landholder and each indirect landholder in proportion to each landholder's beneficial interest in the entity that directly holds the land.

(e) *Leasebacks.* Any land a landholder directly or indirectly owns and that is directly or indirectly leased back will only count once against that particular landholder's nonfull-cost entitlement.

(f) *Effect on an entity of attribution to part owners.* For purposes of determining eligibility, the entire landholding will be attributed to all the direct and indirect landholders. If the interests in a legal entity are:

(1) Undivided, then all of the indirect part owners must be eligible in order for the entity to be eligible; or

(2) Divided, in such a manner that specific parcels are attributable to each indirect landholder, then the entity may qualify for eligibility on those portions of the landholding not attributable to any part owner who is ineligible.

§ 426.5 Ownership entitlement.

(a) *General.* Except as provided in §§ 426.12 and 426.14, all nonexempt land directly or indirectly owned by a landholder counts against that landholder's ownership entitlement. In addition, land owned or controlled by a public entity that is leased to another party counts against the lessee's ownership entitlement, as specified in § 426.10.

(b) *Qualified recipient ownership entitlement.* A qualified recipient is entitled to receive irrigation water on a maximum of 960 acres of owned nonexempt land, or the Class 1 equivalent thereof. This entitlement applies on a westwide basis.

(c) *Limited recipient ownership entitlement.* A limited recipient is entitled to receive irrigation water on a maximum of 640 acres of owned nonexempt land, or the Class 1 equivalent thereof. This entitlement applies on a westwide basis.

(d) *Prior law recipient ownership entitlement.* (1) Ownership entitlements for prior law recipients are determined by whether the recipient is one individual or a married couple, and for entities by the type of entity, as follows:

(i) An individual subject to prior law is entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land;

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

(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;

(iv) 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;

(v) Joint tenancies and tenancies-in-common subject to prior law are entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land per tenant, provided each tenant holds an equal interest in the tenancy;

(vi) Partnerships subject to prior law are entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land per partner if the partners have separable and equal interests in the partnership and the right to alienate that interest. Partnerships where each partner does not have a separable interest and the right to alienate that interest are entitled to receive irrigation water on a maximum of 160 acres of nonexempt land owned by the partnership; and

(vii) All corporations subject to prior law are entitled to receive irrigation water on a maximum of 160 acres of owned nonexempt land.

(2) Prior law recipient ownership entitlements specified in this section apply on a westwide basis unless the land was acquired by the current owner on or before December 6, 1979. For land acquired by the current owner on or before that date, prior law ownership entitlements apply on a district-by-district basis.

(3) For those entities where an equal interest held by the part owners would result in a 160-acre per part owner entitlement for the entity, if the part owners interests are not equal then the entitlement of the entity will be determined by the relative interest held in the entity by each part owner.

§ 426.6 Leasing and full-cost pricing.

(a) *Conditions that a lease must meet.* Districts can make irrigation water available to leased land only if the lease meets the following requirements. Land that is leased under a lease instrument that does not meet the following requirements will be ineligible to receive irrigation water until the lease agreement is terminated or modified to satisfy these requirements.

(1) The lease is in writing;

(2) The lease includes the effective date and term of the lease, the length of which must be:

(i) 10 years or less, including any exercisable options; however, for perennial crops with an average life longer than 10 years, the term may be equal to the average life of the crop as determined by Reclamation, and

(ii) In no case may the term of a lease exceed 25 years, including any exercisable options;

(3) The lease includes a legal description, that is at least as detailed as what is required on the standard certification and reporting forms, of the land subject to the lease;

(4) Signatures of all parties to the lease are included;

(5) The lease includes the date(s) or conditions when lease payments are due and the amounts or the method of computing the payments due;

(6) The lease is available for Reclamation's inspection and Reclamation reviews and approves all leases for terms longer than 10 years; and

(7) If either the lessor or the lessee is subject to the discretionary provisions, the lease provides for agreed upon payments that reflect the reasonable value of the irrigation water to the productivity of the land; except

(8) Leases in effect as of the effective date of these regulations do not need to meet the criteria specified under paragraphs (a) (3) and (4) of this section, unless and until such leases are renewed.

(b) *Nonfull-cost entitlements.* (1) The nonfull-cost entitlement for qualified recipients is 960 acres, or the Class 1 equivalent thereof.

(2) The nonfull-cost entitlement for limited recipients that received irrigation water on or before October 1, 1981, is 320 acres or the Class 1 equivalent thereof. The nonfull-cost entitlement for limited recipients that did not receive irrigation water on or prior to October 1, 1981, is zero.

(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.

(c) *Application of the nonfull-cost and full-cost rates.* (1) A landholder may irrigate at the nonfull-cost rate directly and indirectly held acreage equal to his or her nonfull-cost entitlement.

(2) If a landholding exceeds the landholder's nonfull-cost entitlement, the landholder must pay the appropriate full-cost rate for irrigation water delivered to acreage that equals the amount of leased land that exceeds that entitlement.

(3) In the case of limited recipients, a landholder does not have to lease land to exceed a nonfull-cost entitlement, since the nonfull-cost entitlement is less than the ownership entitlement. Therefore, limited recipients must pay the appropriate full-cost rate for irrigation water delivered to any acreage that exceeds their nonfull-cost entitlement.

(d) *Types of lands that count against the nonfull-cost entitlement.* (1) All directly and indirectly owned irrigation land and irrigation land directly or indirectly leased for any period of time during 1-water year counts towards a landholder's nonfull-cost entitlement, except:

(i) Involuntarily acquired land, as provided in §§ 426.12 and 426.14; and

(ii) Land that is leased for incidental grazing or similar purposes during periods when the land is not receiving irrigation water.

(2) Reclamation's process for determining if a nonfull-cost entitlement has been exceeded is as follows:

(i) All land counted toward a landholder's nonfull-cost entitlement will be counted on a cumulative basis during any 1-water year;

(ii) Once a landholder's nonfull-cost entitlement is met in a given water year, any additional eligible land may be irrigated only at the full-cost rate; and

(iii) Irrigation land will be counted towards nonfull-cost entitlements on a westwide basis, even for prior law recipients, regardless of the date of acquisition.

(e) *Selection of nonfull-cost land.* (1) A landholder that has exceeded his or her nonfull-cost entitlement may select in each water year, from his or her directly held irrigation land, the land that can be irrigated at a nonfull-cost rate and the land that can be irrigated only at the full-cost rate. Selections for full-cost or nonfull-cost land may include:

(i) Leased land;

(ii) Nonexcess owned land;

(iii) Land under recordable contract, unless that land is already subject to application of the full-cost rate under an extended recordable contract; or

(iv) A combination of all three.

(2) Once a landholder has received irrigation water on a given land parcel during a water year, the selection of that parcel as full cost or nonfull-cost is binding until the landholder has completed receiving irrigation water westwide for that water year.

(f) *Applicability of a full-cost selection to an owner or lessee.* If a landowner or lessee should select land as subject to full-cost pricing, then that land can receive irrigation water only at the full-cost rate, regardless of eligibility of the other party to receive the irrigation water at the nonfull-cost rate.

(g) *Subleased land.* Land that is subleased (the lessee transfers possession of the land to a sublessee) will be attributed to the landholding of the sublessee and not to the lessee.

(h) *Calculating full-cost charges.* Reclamation will calculate a district's full-cost charge using accepted accounting procedures and under the following conditions.

(1) The full-cost charge does not recover interest retroactively before October 12, 1982. But, interest on the unpaid balance does accrue from October 12, 1982, where the unpaid balance equals the irrigation allocated construction costs for facilities in service plus cumulative federally funded O&M deficits, less payments.

(2) The full-cost charge will be determined:

(i) As of October 12, 1982, for contracts entered into before that date regardless of amendments to conform to the discretionary provisions; and

(ii) At the time of contract execution for new and renewed contracts entered into on or after October 12, 1982.

(3) For repayment contracts, the full-cost charge will fix equal annual payments over the amortization period. For water service contracts, the full-cost charge will fix equal payments per acre-foot of projected water deliveries over the amortization period.

(4) If there are additional construction expenditures, or if the cost allocated to irrigation changes, then a new full-cost charge will be determined.

(5) Reclamation will notify the respective districts of changes in the full-cost charge at the time the district is notified of other payments due the United States.

(6) In determining full-cost charges, the following factors will be considered:

(i) *Amortization period.* The amortization period for calculating the full-cost charge is the remaining balance of:

(A) For contracts entered into before October 12, 1982, the contract repayment period as of October 12, 1982;

(B) For contracts entered into on or after October 12, 1982, the contract repayment period;

(C) For water service contracts, the period from October 12, 1982, or the execution date of the contract, whichever is later, to the anticipated date of project repayment; and

(D) In cases where water services rates are designed to completely repay applicable Federal expenditures in a specific time period, that time period may be used as the amortization period for full-cost calculations related to these expenditures; but, in no case will the amortization period exceed the project payback period authorized by the Congress;

(ii) *Construction costs.* For determining full cost, construction costs properly allocable to irrigation are those Federal project costs for facilities in service that have been assigned to irrigation within the overall allocation of total project construction costs. Total project construction costs include all direct expenditures necessary to install or implement a project, such as:

(A) Planning;

(B) Design;

(C) Land;

(D) Rights-of-way;

(E) Water-rights acquisitions;

(F) Construction expenditures;

(G) Interest during construction; and

(H) When appropriate, transfer costs associated with services provided from other projects;

(iii) *Facilities in service.* Facilities in service are those facilities that are in operation and providing irrigation services;

(iv) *Operation and maintenance (O&M) deficits funded.* O&M deficits funded are the annual O&M costs including project-use pumping power allocated to irrigation that have been federally funded and that have not been paid by the district;

(v) *Payments received.* In calculating the payments that have been received, all receipts and credits applied to repay or reduce allocated irrigation construction costs in accordance with Federal reclamation law, policy, and applicable contract provisions will be considered. These may include:

(A) Direct repayment contract revenues;

(B) Net water service contract income;

(C) Contributions;

(D) Ad valorem taxes; and

(E) Other miscellaneous revenues and credits excluding power and municipal and industrial (M&I) revenues;

(vi) *Interest rates.* Interest rates to be used in calculating full-cost charges will be determined by the Secretary of the Treasury as follows:

(A) For irrigation water delivered to qualified recipients, limited recipients receiving water on or before October 1, 1981, and extended recordable contract land owned by prior law recipients, the interest rate for expenditures made on or before October 12, 1982, will be the greater of 7.5 percent per annum or the weighted average yield of all interest-bearing marketable issues sold by the Treasury during the fiscal year when the expenditures were made by the United States. The interest rate for expenditures made after October 12, 1982, will be the arithmetic average of:

(*1*) The computed average interest rate payable by the Treasury upon its outstanding marketable public obligations that are neither due nor callable

for redemption for 15 years from the date of issuance at the beginning of the fiscal year when the expenditures are made; and

(*2*) The weighted average yield on all interest-bearing marketable issues sold by the Treasury during the fiscal year preceding the fiscal year the expenditures are made;

(B) For irrigation water delivered to limited recipients not receiving irrigation water on or before October 1, 1981, and prior law recipients, except for land owned subject to extended recordable contract, the interest rate will be determined as of the fiscal year preceding the fiscal year the expenditures are made, except that the interest rate for expenditures made before October 12, 1982, will be determined as of October 12, 1982. The interest rate will be based on the arithmetic average of:

(*1*) The computed average interest rate payable by the Treasury upon its outstanding marketable public obligations that are neither due nor callable for redemption for 15 years from the date of issuance; and

(*2*) The weighted average yield on all interest-bearing marketable issues sold by the Treasury.

(C) Landholders who were prior law recipients and become subject to the discretionary provisions after April 12, 1987, are eligible for the full-cost interest rate specified in paragraph (h)(6)(vi)(A) of this section, unless they are limited recipients that did not receive irrigation water on or before October 1, 1981, in that case they remain subject to the full-cost interest rate specified in paragraph (h)(6)(vi)(B) of this section.

(i) *Direct and proportional charges for full-cost water*. In situations where water delivery charges are contractually or customarily levied on a per-acre basis, full-cost assessments will be made on a per-acre basis. In situations where water delivery charges are contractually or customarily levied on a per acre-foot basis, one of the following methods must be used to make full-cost assessments:

(1) Assessments will be based on the actual amounts of water used in situations where measuring devices are in use, to the satisfaction of Reclamation, to reasonably determine the amounts of irrigation water being delivered to full-cost and nonfull-cost land; or

(2) In situations where, as determined by Reclamation, measuring devices are not a reliable method for determining the amounts of water being delivered to full-cost and nonfull-cost land, then water charges must be based on the assumption that equal amounts of water per acre are being delivered to both types of land during periods when both types of land are actually being irrigated.

(j) *Disposition of revenues obtained through full-cost water pricing*—(1) *Legal deliveries*. If irrigation water has been delivered in compliance with Federal reclamation law and these regulations, then:

(i) That portion of the full-cost rate that would have been collected if the land had not been subject to full cost will be credited to the annual payments due under the district's contractual obligation;

(ii) Any O&M revenues collected over and above those required under the district's contract will be credited to the project O&M account; and

(iii) The remaining full-cost revenues will be credited to the Reclamation fund unless otherwise provided by law, with any capital component of the full-cost rate credited to project repayment, if applicable.

(2) *Illegal deliveries*. Revenues resulting from the assessment of compensation charges for illegal deliveries of irrigation water will be deposited into the Reclamation fund in their entirety, and will not be credited toward any contractual obligation, or O&M or repayment account of the district or project. For purposes of these regulations only, this does not include revenues from any charges that may be assessed by the district to cover district operation, maintenance, and administrative expenses.

§ 426.7 Trusts.

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

Grantor revocable trust means a trust that holds irrigable land or irrigation land that may be revoked at the discretion of the grantor(s), or terminated by the terms of the trust, and revocation or termination results in title to the

land held in trust reverting either directly or indirectly to the grantor(s).

Irrevocable trust means a trust that holds irrigable land or irrigation land and does not allow any individual, including the grantor or beneficiaries, the discretion to decide when or under what conditions the trust terminates, and that upon termination the title to the land held in trust transfers either directly or indirectly to a person(s) or entity(ies) other than the grantor(s).

Otherwise revocable trust means a trust that holds irrigable land or irrigation land and that may be revoked at the discretion of the grantor(s) or other parties, or terminated by the terms of the trust, and revocation or termination results in the title to the land held in trust transferring either directly or indirectly to a person(s) or entity(ies) other than the grantor(s).

(b) *Attribution of land held by a trust.* The acreage limitation entitlements of a trust are only limited by the acreage limitation entitlements of the trustees, grantors, or beneficiaries to whom land held by the trust must be attributed as provided for in § 426.4. The entitlements of the parties to whom trusted land is attributed are determined according to §§ 426.5, 426.6, and 426.8, and other applicable provisions of Federal reclamation law and these regulations. Reclamation attributes nonexempt land held by a trust to the following parties:

(1) For land held in an *irrevocable trust,* the land is attributed to the beneficiaries in proportion to their beneficial interest in the trust. However, this attribution is only made if the criteria listed in paragraphs (b)(1) (i) and (ii) of this section are met. If the trust fails to meet any portion of these criteria, Reclamation attributes the land held in the trust to the trustee.

(i) The trust is in written form and approved by Reclamation; and

(ii) The beneficiaries of the trust and the beneficiaries' respective interests are identified within the trust document.

(2) For land held in a *grantor revocable trust,* the land is attributed to the grantor according to the grantor's acreage limitation status and the land's eligibility immediately prior to its transfer to the trust. However, this attribution is only made if the criteria listed in paragraphs (b)(2) (i), (ii), (iii), and (iv) of this section are met. If the trust fails to meet any portion of these criteria, the land held in trust will be ineligible to receive irrigation water until all of the criteria are met. The only exception is if the trust's and grantor's standard certification or reporting forms indicate that the land held by the trust has been attributed to the trust's grantor(s).

(i) The trust meets the criteria specified in paragraph (b)(1) of this section;

(ii) The grantor(s) of all land held by the trust is (are) identified within the trust document;

(iii) The conditions under which the trust may be revoked or terminated are identified within the trust document; and

(iv) The recipient(s) of the trust land upon revocation or termination is (are) identified within the trust document.

(3) For land held in an *otherwise revocable trust,* the land is attributed to the beneficiaries in proportion to their beneficial interests in the trust. However, this attribution is only made if the trust meets the criteria specified in paragraph (b)(1) of this section and the trust meets the additional criteria specified in paragraph (b)(2) of this section.

(i) If Reclamation cannot determine who will hold the land in trust upon termination or revocation of the trust, or who is the grantor(s) of the land held in trust, then irrigation water will not be made available to the land held in trust until the trust satisfies the additional criteria listed in paragraph (b)(2) of this section.

(ii) If the trust fails to meet the criteria listed in paragraph (b)(1) of this section, but does meet the additional criteria listed in paragraphs (b)(2) (ii) through (iv) of this section, then the land is attributed to the trustee.

(c) *Class beneficiaries.* For purposes of identifying beneficiaries, a class of beneficiaries specified within the trust document will be acceptable, as long as the trust document is specific as to the beneficial interest to which each member of the class will be entitled and the members of the class are identifiable.

(1) Attribution during any given water year will be provided only to

class beneficiaries that are natural persons and established legal entities. For purposes of administering the acreage limitation provisions, attribution to unborn or deceased persons, or entities not yet established, will not be allowed.

(2) If a trust includes a class of beneficiaries to which land subject to the acreage limitation provisions will be attributed, the trustee and each of the beneficiaries will be required to submit standard certification or reporting forms annually. The submittal of verification forms, as provided in § 426.18(l), will not be applicable to such trusts.

(d) *Application of full-cost rate to land held by grantor revocable trusts.* If a grantor revocable trust that meets the criteria specified in paragraph (b)(2) of this section is revised by the grantor in a manner that precludes attribution of the land held in trust to the grantor:

(1) Before April 20, 1988, Reclamation will not assess full-cost rates for the land held by the revised trust for the period before it was revised; or

(2) On or after April 20, 1988, Reclamation will charge the full-cost rate for irrigation water delivered to any land held by the trust that exceeds the grantor's nonfull-cost entitlement, commencing December 23, 1987, until the trust agreement is revised to make it an irrevocable trust or an otherwise revocable trust.

§ 426.8 Nonresident aliens and foreign entities.

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

Domestic entity means a legal entity established under State or Federal law.

Foreign entity means a legal entity not established under State or Federal law.

(b) *Restriction on receiving irrigation water.* Notwithstanding any other provision of Federal reclamation law or these regulations, a nonresident alien or foreign entity that directly holds land in a district that is subject to the discretionary provisions is not eligible to receive irrigation water on such land. Nonresident aliens and foreign entities may hold land indirectly in discretionary districts and both directly and indirectly in prior law districts and receive irrigation water on such land, subject to their acreage limitation entitlements.

(c) *Entitlements for nonresident aliens and foreign entities.* Except as provided in paragraph (d) of this section, all nonresident aliens and foreign entities will be considered prior law recipients, and shall have entitlements and eligibility only as prior law recipients as specified in §§ 426.5(d) and 426.6(b)(3).

(d) *Exception to prior law entitlement application.* (1) If a nonresident alien is a citizen of or a foreign entity is established in a country that has one of the following treaties with the United States or is a member of the listed organization, then that nonresident alien or foreign entity will not be restricted to prior law entitlements, provided the eligible landholding subject to the acreage limitation provisions is held indirectly:

(i) Friendship, Commerce and Navigation Treaty;

(ii) Bilateral Investment Treaty;

(iii) North American Free Trade Agreement;

(iv) Canada-United States Free Trade Agreement; or

(v) Organization for Economic Cooperation and Development.

(2) Nonresident aliens and foreign entities that meet the criteria listed in paragraph (d)(1) of this section will be required to provide proof of citizenship or documentation certifying the country in which the entity in question was established. Districts will retain such documentation in the landholder's file.

(3) If a nonresident alien or foreign entity meets the criteria listed in paragraph (d)(1) of this section, and only holds eligible land subject to the acreage limitation provisions indirectly, then the nonresident alien may be treated as a United States citizen or the foreign entity may be treated as a domestic entity for purposes of application of the acreage limitation provisions for the land held indirectly.

(i) The nonresident alien or foreign entity may submit an irrevocable election to conform to the discretionary provisions as provided for in § 426.3(f). Conformance to the discretionary provisions through the submittal of a certification form will not be allowed as specified in § 426.3(f)(3).

(ii) Upon Reclamation's approval of the irrevocable election, a nonresident alien will be treated as having the ownership entitlement of a qualified recipient as described in § 426.5(b), for any land held indirectly. A foreign entity will be treated as a qualified recipient or a limited recipient as determined by the number of natural persons who are beneficiaries of the entity as specified by the definitions found in § 426.2, and the subsequent entitlement as provided in § 426.5(b) or (c), for any land held indirectly. The applicable nonfull-cost entitlements will be determined as described in § 426.6(b).

(iii) Reclamation will not approve irrevocable elections submitted by a nonresident alien or a foreign entity that holds any land directly in any prior law district.

(iv) Reclamation will not approve irrevocable elections submitted by a nonresident alien that is not a citizen of or foreign entity that has not been established in a country that has a treaty or international membership as specified in paragraph (d)(1) of this section.

§ 426.9 Religious or charitable organizations.

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

Central organization means the organization to which all subdivisions, such as parishes, congregations, chapters, etc., ultimately report.

Religious or charitable organization means an organization or each congregation, chapter, parish, school, ward, or similar subdivision of a religious or charitable organization that is exempt from paying Federal taxes under § 501 of the Internal Revenue Code of 1954, as amended.

(b) *Acreage limitation status of religious or charitable organizations that are subject to the discretionary provisions.* (1) Religious or charitable organizations or their subdivisions that are subject to the discretionary provisions have qualified recipient status, if:

(i) The organization's or subdivision's agricultural produce and proceeds from the sales of such produce are used only for charitable purposes;

(ii) The organization or subdivision, itself, operates the land; and

(iii) No part of the net earnings of the organization or subdivision accrues to the benefit of any private shareholder or individual.

(2) If Reclamation determines that a religious or charitable organization or any of its subdivisions does not meet the criteria listed in paragraph (b)(1) of this section, then:

(i) If the central organization has not met the criteria, Reclamation will treat the entire organization, including all subdivisions, as a single entity; or

(ii) If a subdivision has not met the criteria, only that subdivision and any subdivisions of it will be treated as a single entity and not the central organization or other subdivisions of the central organization; and

(iii) In order to ascertain the acreage limitation status, Reclamation determines the total number of members in both the organization that has not met the criteria and in any subdivisions that are under that organization. If Reclamation determines that total number equals:

(A) More than 25 members, then Reclamation treats that organization and every subdivision under that organization as a single legal entity with a limited recipient status; or

(B) 25 members or less, then Reclamation treats that organization and every subdivision under that organization as a single legal entity with a qualified recipient status.

(c) *Acreage limitation status of prior law religious or charitable organizations or subdivisions.* (1) Religious or charitable organizations and each of their subdivisions are treated as separate prior law corporations, if neither the district nor that religious or charitable organization or its subdivisions elect to conform to the discretionary provisions.

(2) Reclamation will treat the entire organization, including all subdivisions, as a single prior law corporation, if the central organization or any subdivisions do not meet the criteria specified in paragraph (b)(1) of this section.

(d) *Affiliated farm management between a religious or charitable organization and a more central organization of the same*

affiliation. Reclamation permits a subdivision of a religious or charitable organization to retain its status as an individual entity while cooperating with a more central organization of the same affiliation in farm operation and management. Reclamation permits affiliated farm management regardless of whether the subdivision is the owner of the land being operated.

§ 426.10 Public entities.

(a) *Application of the acreage limitation provisions to public entities*. Reclamation does not subject public entities to the acreage limitation provisions of Federal reclamation law with respect to land that Reclamation determines public entities farm primarily for nonrevenue producing functions. However, public entities are required to meet certification and reporting requirements as specified in § 426.18.

(b) *Sale of public land*. Reclamation does not require public entities to seek price approval before they sell nonexempt lands. Once sold, Reclamation can make irrigation water available to such land if the purchaser meets RRA eligibility requirements.

(c) *Leasing of public land*. Public entities can lease irrigation land that they own or control to eligible landholders. Land leased from a public entity counts towards the lessee's ownership and nonfull-cost entitlement.

§ 426.11 Class 1 equivalency.

(a) *General application*. Class 1 equivalency determinations will establish, on a district-wide basis, the acreage of land with lower productive potential (Classes 2, 3, and 4) that would be equivalent in productive potential to the most suitable land (Class 1) in the local agricultural economic setting.

(1) Reclamation establishes equivalency factors by comparing the weighted average farm size required to produce a given level of income on each of the lower classes of land with the farm size required to produce that income level on Class 1 land.

(2) For equivalency purposes, Reclamation will classify all irrigable land as Class 1, 2, or 3; no other classifications are permissible for irrigable land. Class 4 and special-use land classes will be allocated to one of these three classes on a case-by-case basis.

(3) Once the Class 1 equivalency determinations have been made, individual landowners with land classified as 2 or 3 for equivalency purposes will have the right to adjust their actual landholding acreage to its Class 1 equivalent acreage.

(4) In a district subject to prior law, Class 1 equivalency can be applied only to landholders who are subject to the discretionary provisions.

(5) Requests for equivalency determinations will be scheduled by region, with the regional director of each Reclamation region having responsibility for such scheduling. Generally, requests will be honored on a first-come-first-served basis. However, if requests exceed the region's ability to fulfill them expeditiously, priority will be given on the basis of greatest immediate need.

(b) *Who may request a Class 1 equivalency determination?* Only districts may request Class 1 equivalency determinations. Upon the request of any district subject to the acreage limitation provisions, Reclamation will make a Class 1 equivalency determination for that district. Equivalency determinations can be made only on a district-wide basis.

(c) *Definition of Class 1 land*. Class 1 land is defined and will be classified as that irrigable land within a particular agricultural economic setting that:

(i) Most completely meets the various parameters and specifications established by Reclamation for irrigable land classes;

(ii) Has the relatively highest level of suitability for continuous, successful irrigation farming; and

(iii) Is estimated to have the highest relative productive potential measured in terms of net income per acre (reflecting both productivity and costs of production). The equivalency analysis will establish the acreage of each of the lower classes of land which is equal in productive potential (measured in terms of net farm income) to 1 acre of Class 1 land.

(2) All land that Reclamation has not classified, or for which Reclamation has not yet performed the necessary economic studies, will be considered

Class 1 land for the purposes of determining entitlements under these rules until such time as the necessary classifications or studies have been completed.

(d) *Determination of land classes.* The extent and location of Class 1 land and land in lower land classes in a district have been, or will be, determined by Reclamation.

(1) Reclamation will take into account the influence of economic and physical factors upon the productive potential of the land lying within the district. These factors will include, but are not limited to the following and their effect on agricultural practices:

(i) The physical and chemical characteristics of the soil;

(ii) Topography;

(iii) Drainage status;

(iv) Costs of production;

(v) Land development costs;

(vi) Water quality and adequacy;

(vii) Elevation;

(viii) Crop adaptability; and

(ix) Length of growing season.

(2) Acceptable levels of detail for land classification studies to be utilized in making Class 1 equivalency determinations for a given district will be evaluated on the basis of the physical and agricultural economic characteristics of the area. For districts where the sole purpose of the land classification study is for a Class 1 equivalency determination, the level of detail of the land classification to be made will never be greater than that required to make a Class 1 equivalency determination.

(3) Reclamation will pay for at least a portion of the costs associated with the land classification study. The amount to be paid by Reclamation will be determined as follows:

(i) Reclamation has provided basic land classification data as part of the project development process since 1924. Accordingly, if Reclamation determines that acceptable land classification data are not available for making requested Class 1 equivalency determinations and if the project was authorized for construction since 1924, such data will be made available at Reclamation's expense; or

(ii) For each district located in projects authorized for construction prior to 1924, Reclamation will pay 50 percent of the costs and the district must pay 50 percent of the costs of new land classification studies required to make accurate Class 1 equivalency determinations.

(4) When basic land classification data are available for a district, but the district does not agree with the accuracy or asserts that the data have become outdated, the district may request, and Reclamation may perform, a reclassification under the authority contained in the Reclamation Project Act of 1939 (43 U.S.C. 485), with the following conditions:

(i) The requesting district will pay 50 percent of the costs of performing such reclassifications and 100 percent of the costs of all other studies involved in the equivalency process; and

(ii) The results of such reclassifications will be binding upon the requesting district and Reclamation.

(e) *Additional studies required for Class 1 equivalency determinations.* Economic studies related to Class 1 equivalency determinations will measure net farm income by land classes within the district.

(1) Net farm income will be determined by considering the disposable income accruing to the farm operator's labor, management, and equity from the sale of farm crops and livestock produced on irrigated land, after all fixed and variable costs of production, including costs of irrigation service, are accounted for.

(2) Net farm income will be the measure of productivity to establish equivalency factors reflecting the acreage of each of the lower classes of land which is equal in productive potential to 1 acre of Class 1 land.

(3) The cost of performing new or additional economic studies and computations inherent in the equivalency process will be the responsibility of the requesting district.

(f) *Use of Class 1 equivalency with the acreage limitation provisions.* Class 1 land and land in lower classes will be identified on a district basis by Reclamation using a standard approach in which the land classification for the entire district is considered. Equivalency factors will then be computed for the district and applied to specific

tracts within individual landholdings. If adequate land classification data are not available, they will be developed as specified in paragraph (d) of this section using standard procedures established by Reclamation.

(1) For purposes of ownership entitlement, Class 1 equivalency will not be applied until a final determination has been made by Reclamation concerning the district's request for equivalency.

(i) Reclamation will protect excess landowners' property interests by ensuring that equivalency determinations are completed in advance of maturity dates on recordable contracts, provided the district requests an equivalency determination at least 6 months prior to the maturity of the recordable contract, the district fulfills its obligations under this section, and the district notifies Reclamation 6 months in advance of the maturity dates for the need for an expedited review.

(ii) Once the determination has been made, owners of land subject to recordable contracts may withdraw land from such recordable contracts in order to reach their ownership entitlement in Class 1 equivalent acreage.

(iii) The requirement that land under recordable contract be sold at a price approved by Reclamation does not apply to land which is withdrawn from a recordable contract and included as part of a landowner's nonexcess landholding as a result of an equivalency determination.

(iv) In cases of equivalency determination disputes, Reclamation will not undertake the sale of the reasonable increment of the excess land under a matured recordable contract which could be affected by a reclassification, provided the dispute is determined by Reclamation not to be an attempt to thwart the sale of excess land.

(2) For purposes of nonfull-cost entitlement, Class 1 equivalency will not be applied until a final determination has been made by Reclamation on a district's request for equivalency.

(i) During the time when such determinations are pending, the full-cost rate will be assessed based on a landholder's nonfull-cost entitlement as determined in the absence of Class 1 equivalency.

(ii) Following Reclamation's final determination, Reclamation will reimburse the district for any full-cost charges that would not have been assessed had Class 1 equivalency been in place from the date of the district's request. Districts will return such reimbursements to the appropriate landholders.

(3) A landholder with holdings in more than one district is entitled to equivalency only in those districts which have requested equivalency (or are already subject to equivalency). That part of the landholding in a district or districts not requesting equivalency will be counted as Class 1 land for purposes of overall entitlement.

(g) *Prior equivalency determinations*. In districts where equivalency was a provision of project authorization, those equivalency factor determinations will be honored as originally calculated unless the district requests a reclassification.

§ 426.12 Excess land.

(a) *The process of designating excess and nonexcess land*. If a landowner owns more land than the landowner's ownership entitlement, all of the landowner's nonexempt land must be designated as excess and nonexcess as follows:

(1) The landowner designates which land is excess and which is nonexcess in accordance with the instructions on the appropriate certification or reporting forms; or

(2) If a landowner fails to designate his or her land as excess or nonexcess on the appropriate certification or reporting forms:

(i) And all of the landowner's nonexempt land is in only one district:

(A) If the district's contract with Reclamation includes designation procedures, then the land is designated according to those procedures; or

(B) If the district's contract with Reclamation does not include designation procedures, then:

(*1*) Reclamation will notify the landowner and the district that the landowner must designate the land as excess and nonexcess on the appropriate certification or reporting forms within 30-calendar days of the notification;

(*2*) If the landowner fails to make the designation within 30-calendar days of

notification, the district will make the designation within 30-calendar days thereafter; or

(*3*) If the district does not make the designation within its 30-calendar days, Reclamation will make the designation; or

(ii) If the landowner owns nonexempt land in more than one district, then Reclamation will notify the landowner and the districts that the landowner has 60-calendar days from the date of notification to make the designation. If the landowner does not make the designation in the 60-calendar days, Reclamation will make the designation.

(b) *Changing excess and nonexcess land designations.* (1) Landowners must file with the district(s) in which the land is located and with Reclamation the designation of excess and nonexcess land. The designation of land as excess is binding on the land. However, the landowner may change the designation under the following circumstances without Reclamation's approval if:

(i) The excess land becomes eligible to receive irrigation water because the landowner becomes subject to the discretionary provisions as provided in § 426.3;

(ii) A recordable contract is amended to remove excess land when the landowner's entitlement increases because the landowner becomes subject to the discretionary provisions as provided in paragraph (j)(5) of this section; or

(iii) The excess land becomes eligible to receive irrigation water as a result of Class 1 equivalency determinations, as provided in § 426.11.

(2) No other redesignation of excess land is allowable without the approval of Reclamation in accordance with established Reclamation procedures. Reclamation will not approve a redesignation request if:

(i) The purpose of the redesignation is for achieving, through repeated redesignation, an effective farm size in excess of that permitted by Federal reclamation law; or

(ii) The landowner sells some or all of his or her land that is currently classified as nonexcess.

(3) When a redesignation involves an exchange of nonexcess land for excess land, a landowner must make an equal exchange of acreage (or Class 1 equivalent acreage) through the redesignation.

(c) *Land that becomes excess when a district first contracts with Reclamation.* (1) If a landowner owned irrigable land on the execution date of the district's first water service or repayment contract, and the execution date was on or before October 12, 1982, the landowner's excess land is ineligible until the landowner:

(i) Becomes subject to the discretionary provisions and the landowner designates the excess land, up to his or her ownership entitlement, as nonexcess as provided for in paragraph (b)(1)(i) of this section;

(ii) Places such excess land under a recordable contract, provided the period for executing recordable contracts under the district's contract has not expired;

(iii) Sells or transfers such excess land to an eligible buyer at a price and on terms approved by Reclamation; or

(iv) Redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section.

(2) If the landowner owned irrigable land on the execution date of the district's first water service or repayment contract and the execution date is after October 12, 1982, the landowner's excess land is ineligible until the landowner:

(i) Places such excess land under a recordable contract, provided the period for executing recordable contracts under the district's contract has not expired;

(ii) Sells or transfers such excess land to an eligible buyer at a price and on terms approved by Reclamation; or

(iii) Redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section.

(d) *Land acquired into excess after the district has already contracted with Reclamation.* (1) If a landowner acquires land after the date the district first entered into a repayment or water service contract that was nonexcess to the previous owner and is excess to the acquiring landowner, the first repayment or water service contract was executed on or before October 12, 1982, and:

(i) Irrigation water was physically available when the landowner acquires such land, then the land is ineligible to receive such water until:

(A) The landowner becomes subject to the discretionary provisions and the landowner designates the excess land, up to his or her ownership entitlement, as nonexcess as provided for in paragraph (b)(1)(i) of this section;

(B) The landowner sells or transfers such land to an eligible buyer at a price and on terms approved by Reclamation;

(C) The sale from the previous landowner is canceled; or

(D) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section; or

(ii) Irrigation water was not physically available when the landowner acquired the land, then the land is ineligible to receive water until:

(A) The landowner becomes subject to the discretionary provisions and the landowner designates the excess land, up to his or her ownership entitlement, as nonexcess as provided for in paragraph (b)(1)(i) of this section;

(B) The landowner sells or transfers the land to an eligible buyer at a price and on terms approved by Reclamation;

(C) The sale from the previous landowner is canceled;

(D) The landowner places the land under recordable contract when water becomes available; or

(E) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section.

(2) If a landowner acquires land after the date the district first entered into a repayment or water service contract that was nonexcess to the previous owner and is excess to the acquiring landowner, the first repayment or water service contract was executed after October 12, 1982, and:

(i) Irrigation water was physically available when the landowner acquired such land, then the land is ineligible until:

(A) The landowner sells or transfers the land to an eligible buyer at a price and on terms approved by Reclamation;

(B) The sale from the previous landowner is canceled; or

(C) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section; or

(ii) Irrigation water was not physically available when the landowner acquired such land, then the land is ineligible to receive water until:

(A) The landowner sells or transfers the land to an eligible buyer at a price and on terms approved by Reclamation;

(B) The sale from the previous landowner is canceled;

(C) The landowner redesignates the land as nonexcess with Reclamation's approval as provided for in paragraph (b)(2) of this section; or

(D) The landowner places the land under recordable contract when water becomes available.

(e) *If the status of land is changed by law or regulations.* (1) If the district had a contract with Reclamation on or before October 12, 1982, and eligible land became excess because the landowner's entitlement changed from being based on a district-by-district basis to a westwide basis, then such formerly eligible land is ineligible until:

(i) The landowner places such land under recordable contract. The recordable contract does not need to include the sales price approval clause and application of the deed covenant provision will not be required; or

(ii) The landowner sells or transfers such land to an eligible buyer. The sales price does not need Reclamation's approval.

(2) If the district had a contract with Reclamation on or before October 12, 1982, and the landowner was a nonresident alien or a legal entity not established under State or Federal law, who directly held eligible land and such land is no longer eligible to receive water, then such formerly eligible land is ineligible until:

(i) The landowner places such land under recordable contract. The recordable contract does not need to include the sales price approval clause and application of the deed covenant provision will not be required; or

(ii) The landowner sells or transfers such land to an eligible buyer. The

sales price does not need Reclamation's approval.

(3) If the district first entered a contract with Reclamation after October 12, 1982, and land would have been eligible before October 12, 1982, but is now ineligible because the landowner is a direct landholder and either a nonresident alien or a legal entity not established under State or Federal law, then such land that would have been eligible remains ineligible until:

(i) If the landowner acquired such land before the date of the district's contract:

(A) The landowner places such land under a recordable contract requiring Reclamation sales price approval; or

(B) Sells or transfers the land to an eligible buyer subject to Reclamation sales price approval; or

(ii) If the landowner acquired such land after the date of the district's contract, the landowner sells or transfers such land to an eligible buyer subject to Reclamation sales price approval.

(4) Eligible nonexcess land that is indirectly owned on or before December 18, 1996 by a nonresident alien or a legal entity not established under State or Federal law, and that becomes ineligible because of § 426.8 is ineligible until:

(i) The landowner places such land under recordable contract. The recordable contract does not need to include the sales price approval clause and application of the deed covenant provision will not be required; or

(ii) The landowner sells or transfers such land to an eligible buyer. The sales price does not need Reclamation's approval.

(f) *Excess land that is acquired without price approval.* If a landowner acquires land that is subject to Reclamation price approval, without obtaining such approval, the land is ineligible to receive water until:

(1) The sales price is reformed to conform to the price approved by Reclamation and is eligible to receive irrigation water in the landowner's ownership entitlement; or

(2) Such landowner sells or transfers the land to an eligible buyer at a price approved by Reclamation.

(g) *Excess land that is disposed of and subsequently reacquired.* Districts may not make available irrigation water to excess land disposed of by a landholder at a price approved by Reclamation, whether or not under a recordable contract, if the landholder subsequently becomes a direct or indirect landholder of that land through either a voluntary or involuntary action, unless:

(1) The landholder became or contracted to become a direct or indirect landholder of that land prior to December 18, 1996, and the land in question is otherwise eligible to receive irrigation water;

(2) Such land becomes exempt from the acreage limitations of Federal reclamation law;

(3) The landholder pays the full-cost rate for any irrigation water delivered to the landholder's formerly excess land that is otherwise eligible to receive irrigation water. If a landholder is a part owner of a legal entity that becomes the direct or indirect landholder of the land in question, then the full-cost rate will be applicable to the proportional share of irrigation water delivered to the land that reflects the part owner's interest in that legal entity; or

(4) The deed covenant associated with the sale has expired as provided for in paragraph (i) of this section.

(h) *Application of the compensation rate for irrigating ineligible excess land with irrigation water.* Reclamation will charge the following for irrigation water delivered to ineligible excess land in violation of Federal reclamation law and these regulations:

(1) The appropriate compensation rate for irrigation water delivered; and

(2) any other applicable fees as specified in § 426.20.

(i) *Deed covenants.* (1) All land that is acquired from excess status after October 12, 1982, must have the following covenant (that runs with the land) placed in the deed transferring the land to the acquiring party in order for the land to be eligible to receive irrigation water except as otherwise specified in these regulations. The covenant must be in the deed regardless of whether or not the land was under recordable contract.

This covenant is to satisfy the requirements in 209(f)(2) of Pub. L. 97–293 (43 U.S.C 390, *et seq.*). This covenant expires on (date)

. Until the expiration date specified herein, sale price approval is required on this land. Sale by the landowner and his or her assigns of these lands for any value that exceeds the sum of the value of newly added improvements plus the value of the land as increased by the market appreciation unrelated to the delivery of irrigation water will result in the ineligibility of this land to receive Federal project water, provided however:

(i) The terms of this covenant requiring price approval shall not apply to this land if it is acquired into excess status pursuant to a bona fide involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), inheritance, or devise (hereinafter Involuntary Conveyance). Thereafter, this land may be sold to a landholder at its fair market value without regard to any other provision of the Reclamation Reform Act of 1982 enacted on October 12, 1982, (43 U.S.C. 390aa *et seq.*), or to Section 46 of the Act entitled ''an Act to adjust water rights charges, to grant certain relief on the Federal irrigation projects, and for other purposes,'' enacted May 25, 1926 (43 U.S.C. 423e);

(ii) If the status of this land changes from nonexcess into excess after a mortgage or deed of trust in favor of a lender is recorded and the land is subsequently acquired by a bona fide Involuntary Conveyance by reason of a default under that loan, this land may thereupon or thereafter be sold to a landholder at its fair market value;

(iii) The terms of this covenant requiring price approval shall not apply to the sales price obtained at the time of the Involuntary Conveyances described in subparagraphs (i) and (ii), nor to any subsequent voluntary sales by a landholder of this land after the Involuntary Conveyances or any subsequent Involuntary Conveyance;

(iv) Upon the completion of an Involuntary Conveyance, Reclamation shall reconvey or otherwise terminate this covenant of record;

(v) However, the deed covenant shall not be reconveyed or otherwise terminated if the involuntarily acquiring landowner is the landowner who sold this land from excess status, unless that landowner is a financial institution as defined in § 426.14(a) of the Acreage Limitation Rules and Regulations (43 CFR Part 426); and

(vi) The party whose excess ownership originally required the placement of this covenant may not receive Federal reclamation project irrigation water on the land subject to this covenant as a direct or indirect landowner or lessee, unless an exception provided for in § 426.12(g) is met.

NOTE 1 Clauses (v) and (vi) of this covenant shall only be required on those covenants placed in deeds transferring land after January 1, 1998.

NOTE 2 The date that the covenant expires shall be 10 years from the date the land was first transferred from excess to nonexcess status.

(2) A landholder may purchase or otherwise voluntarily acquire into nonexcess status, land subject to a deed covenant, at a price approved by Reclamation if the land is within the landholder's ownership entitlement.

(3) Upon expiration of the terms of the deed covenant, a landowner may resell such land at fair market value. A landowner may not sell more of such land in his or her lifetime than an amount equal to his or her ownership entitlement. Once the landowner reaches this limit, any additional excess land or land subject to a deed covenant the landowner acquires is ineligible to receive irrigation water, until such land is sold to an eligible buyer at a price approved by Reclamation.

(4) If a landholder acquires land burdened by such a deed covenant through involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt, including, but not limited to, a mortgage, real estate contract, or deed of trust, inheritance, or devise, and is not the party whose excess ownership originally required placement of the deed covenant, then Reclamation must terminate the deed covenant upon the landholder's request. The provisions in paragraph (i)(1)(v) of this section and § 426.14(e) address termination of deed covenants for landholders whose excess ownership originally required placement of the deed covenant.

(j) *Recordable contracts*—(1) *Qualifications for recordable contracts.* A landowner can make excess land eligible to receive irrigation water by entering into a recordable contract with the United States if the landowner qualifies under applicable provisions of:

(i) The district's contract with Reclamation;

(ii) Federal reclamation law; and

(iii) These regulations.

(2) *Clauses to be included in recordable contracts.* A recordable contract must include:

(i) A clause whereby the landowner agrees to dispose of the excess land to an eligible buyer, excluding mineral rights and easements, under terms and

conditions of the sale, in accordance with § 426.13; and within the period allowed for the disposition of excess land, that must be within 5 years from the date that the recordable contract is executed by Reclamation (except for the Central Arizona Project wherein the time period is 10 years from the date water becomes available to the land); and

(ii) A clause granting power of attorney to Reclamation to sell the land held under the recordable contract, if the landholder has not already sold the land by the recordable contract's maturation.

(3) *Date Reclamation can make irrigation water available.* Reclamation can make available irrigation water to land that the landowner plans to place under a recordable contract on the day that Reclamation receives the landowner's written request to execute a recordable contract. The landowner has 20-working days in which to execute the recordable contract from the date Reclamation sends the recordable contract to the landowner. Reclamation, in its discretion, may extend this period upon the landowner's request.

(4) *Water rate.* The rate for irrigation water delivered to land placed under recordable contract will be determined as follows:

(i) If both the landowner and any lessee are prior law recipients, land placed under a recordable contract can receive irrigation water at a contract rate that does not cover full operation and maintenance (O&M) costs;

(ii) If either landowner or any lessee is subject to the discretionary provisions, the water rate applicable to the recordable contract must cover, at a minimum, all O&M costs; or

(iii) If a landholder leases land subject to a recordable contract and is in excess of his or her nonfull-cost entitlement, the lessee may select such land as the land on which the full-cost rate will be charged for the delivery of irrigation water, unless the land is already subject to the full-cost rate because of an extended recordable contract.

(5) *Amending a recordable contract to include less acreage.* (i) Reclamation permits a landowner to amend a recordable contract to transfer land out of a recordable contract to nonexcess status, if:

(A) The landowner has an increased ownership entitlement because of becoming subject to the discretionary provisions; or

(B) Land becomes eligible by implementation of Class 1 equivalency, if the landowner amends the recordable contract prior to performance of appraisal.

(ii) Landholders must receive Reclamation's approval to amend recordable contracts.

(A) The disposition period for any land remaining under a recordable contract will not change because of an amendment to remove some land.

(B) For land removed from a recordable contract based on paragraph (j)(5)(i) of this section, any requirement for application of a deed covenant will no longer be applicable.

(6) *Sale of land by Reclamation.* If the landowner does not dispose of the excess land held under recordable contract within the period specified in the recordable contract, Reclamation will sell that land. Reclamation will not sell the land if the landowner complies with all requirements for sale of excess land under these rules within the period specified, regardless if Reclamation gives final approval of the sale within that period or after.

(7) *Delivery of water when a recordable contract has matured.* Reclamation can make available irrigation water at the current applicable rate, pursuant to paragraph (j)(4) of this section, to excess land held under a matured recordable contract until Reclamation sells the land.

(8) *Procedures Reclamation follows in selling excess land.* If Reclamation must sell excess land, the following procedures will be used:

(i) If Reclamation determines it to be necessary, a qualified surveyor will make a land survey. The United States will pay for the survey initially, but such costs will be added to the approved sales price for the land. The United States will be reimbursed for these costs from the sale of the land;

(ii) Reclamation will appraise the value of the excess land, in the manner prescribed by § 426.13, to determine the appropriate sales price. The United

States will pay for the appraisal initially, but such costs will be added to the approved sales price for the land. The United States will be reimbursed for these costs from the sale of the land; and

(iii) Reclamation will advertise the sale of the property in farm journals and in newspapers within the county in which the land lies, and by other public notices as deemed advisable. The United States will pay for the advertisements and notices initially, but such costs will be added to the approved sales price for the land. The United States will be reimbursed for these costs from the sale of the land. The notices must state:

(A) The minimum acceptable sales price for the property (which equals the appraised value plus the cost of the appraisal, survey, and advertising);

(B) That Reclamation will sell the land by auction for cash, or on terms acceptable to the landowner, to the highest eligible bidder whose bid equals or exceeds the minimum acceptable sales price; and

(C) The date of the sale (which must not exceed 90 calendar days from the date of the advertisement and notices);

(iv) The proceeds from the sale of the land will be paid:

(A) First, to the landowner in the amount of the appraised value;

(B) Second, to the United States for costs of the survey, appraisal, advertising, etc.; and

(C) Third, any remaining proceeds will be credited to the Reclamation fund or other funds as prescribed by law; and

(v) Reclamation will close the sale of the excess land when parties complete all sales arrangements. Reclamation will execute a deed conveying the land to the purchaser. Reclamation will not require the purchaser to include a covenant in the deed, as specified in paragraph (i) of this section, that restricts any further resale of the land.

§ 426.13 Excess land appraisals.

(a) *When does Reclamation appraise the value of a landowner's land?* Reclamation appraises excess land or land burdened by a deed covenant upon a landowner's request or when required by Reclamation. If a landowner does not request an appraisal within 6 months of the maturity date of a recordable contract, Reclamation, in its discretion, can initiate the appraisal.

(b) *Procedures Reclamation uses to determine the sale price of excess land or land burdened by a deed covenant.* Reclamation complies with the following procedures to determine the sale price of excess land and land burdened by a deed covenant, except if a landholder owns land subject to a recordable contract that was in force on October 12, 1982, or other pertinent contract that was in force on that date, and these regulations would be inconsistent with provisions in such a contract:

(1) *Appraisals of land.* Reclamation will base all appraisals of land on the fair market value of the land at the time of appraisal without reference to the construction of the irrigation works. Reclamation must use standard appraisal procedures including: the income, comparable sales, and cost methods, as applicable. Reclamation will consider nonproject water supply factors as provided in paragraph (c)(1) of this section as appropriate; and

(2) *Appraisal of improvements to land.* Reclamation will assess the contributory fair market value of improvements to land, as of the date of appraisal, using standard appraisal procedures.

(c) *Appraisals of nonproject water supplies.* (1) The appraiser will consider nonproject water supply factors, where appropriate, including:

(i) Ground water pumping lift;

(ii) Surface water supply;

(iii) Water quality; and

(iv) Trends associated with paragraphs (c)(1) (i) through (iii) of this section, where appropriate.

(2) Reclamation will develop the nonproject water supply and trend information with the assistance of:

(i) The district in which the land is located, if the district desires to participate;

(ii) Landowners of excess land or land burdened by a deed covenant and prospective buyers who submit information either to the district or Reclamation; and

(iii) Public meetings and forums, at the discretion of Reclamation.

(3) Data submitted may include:

(i) Historic geologic data;

(ii) Changing crops and cropping patterns; and

(iii) Other factors associated with the nonproject water supply.

(4) If Reclamation and the district cannot reach agreement on the nonproject water supply information within 60-calendar days, Reclamation will review and update the trend information as it deems necessary and make all final determinations considering the data provided by Reclamation and the district. Reclamation will provide these data to the appraisers who must consider the data in the appraisal process, and clearly explain how they used the data in the valuation of the land.

(d) *The date of the appraisal.* The date of the appraisal will be the date of last inspection by the appraiser(s) unless there is a prior signed instrument, such as an option, contract for sale, agreement for sale, etc., affecting the property. In those cases, the date of appraisal will be the date of such instrument.

(e) *Cost of appraisal.* If the appraisal is:

(1) The land's first appraisal, the United States will initially pay the costs of appraising the value of the land, but such costs will be added to the approved sale price for the land. The United States will reimburse itself for these costs from the sale of the land;

(2) Not the land's first appraisal, the landowner requesting the appraisal must pay any costs associated with the reappraisal, unless the value set by the reappraisal differs by more than 10 percent, in which case the United States will pay for the reappraisal; or

(3) Associated with a sales price reformation as specified in § 426.12(f)(1), the landowner requesting the appraisal must pay any costs associated with the appraisal.

(f) *Appraiser selection.* Reclamation will select a qualified appraiser to appraise the excess land or land burdened by a deed covenant, except as specified within paragraph (g) of this section.

(g) *Appraisal dispute resolution.* The landowner who requested the appraisal may request that the United States conduct a second appraisal of the excess land or land burdened by a deed covenant if the landowner disagrees with the first appraisal. The second appraisal will be prepared by a panel of three qualified appraisers, one designated by the United States, one designated by the district, and the third designated jointly by the first two. The appraisal made by the panel will fix the maximum value of the excess land and will be binding on both parties after review and approval as provided in paragraph (h) of this section.

(h) *Review of appraisals of excess land or land burdened by a deed covenant.* Reclamation will review all appraisals of excess land or land burdened by a deed covenant for:

(1) Technical accuracy and compliance with these rules and regulations;

(2) Applicable portions of the ''Uniform Appraisal Standards for Federal Land Acquisition-Interagency Land Acquisition Conference 1973,'' as revised in 1992;

(3) Reclamation policy; and

(4) Any detailed instructions provided by Reclamation setting conditions applicable to an individual appraisal.

§ 426.14 Involuntary acquisition of land.

(a) *Definitions for purposes of this section. Financial institution* means a commercial bank or trust company, a private bank, an agency or branch of a foreign bank in the United States, a thrift institution, an insurance company, a loan or finance company, or the Farm Credit System.

Involuntarily acquired land means land that is acquired through an involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract or deed of trust), inheritance, or devise.

(b) *Ineligible excess land that is involuntarily acquired.* Reclamation cannot make available irrigation water to land that was ineligible excess land before the new landowner involuntarily acquired it, unless:

(1) The land becomes nonexcess in the new landowner's ownership; and

(2) The deed to the land contains the 10-year covenant requiring Reclamation sale price approval, and that deed

commences when the land becomes eligible to receive irrigation water.

(3) If either of these conditions is not met, the land remains ineligible excess until sold to an eligible buyer at an approved price, and the seller places the 10-year covenant requiring Reclamation price approval, as specified in § 426.12(i), in the deed transferring title to the land to the buyer.

(c) *Land that was held under a recordable contract and is acquired involuntarily*. Reclamation can make available irrigation water to land held under a recordable contract that is involuntarily acquired under the terms of the recordable contract to the extent the land continues to be excess in his or her landholding, if the landowner:

(1) Assumes the recordable contract; and

(2) Executes an assumption agreement provided by Reclamation.

(3) This land will remain eligible to receive irrigation water for the longer of 5 years from the date that the land was involuntarily acquired, or for the remainder of the recordable contract period. The sale of this land shall be under terms and conditions set forth in the recordable contract and must be satisfactory to and at a price approved by Reclamation.

(d) *Mortgaged land*. Reclamation treats mortgaged land that changed from nonexcess status to excess status after the mortgage was recorded, and which is subsequently acquired by a lender through an involuntary foreclosure or similar process of law, or by a bona fide conveyance in satisfaction of a mortgage, in the following manner:

(1) If the new landowner designates the land as excess in his or her holding, then:

(i) The land is eligible to receive irrigation water for a period of 5 years or until transferred to an eligible landowner, whichever occurs first;

(ii) During the 5-year period Reclamation will charge a rate for irrigation water equal to the rate paid by the former owner, unless the land becomes subject to full-cost pricing through leasing; and

(iii) The land is eligible for sale at its fair market value without a deed covenant restricting its future sales price; or

(2) If the new landowner is eligible to designate the land as nonexcess and he or she designates the land as nonexcess, the land will be treated in the same manner as any other nonexcess land and will be eligible for sale at its fair market value without a deed covenant restricting its future sales price.

(e) *Nonexcess land that becomes excess when acquired involuntarily*. (1) Reclamation can make irrigation water available for a period of 5 years to a landowner who involuntarily acquires land that becomes excess in the involuntarily acquiring landowner's holding provided the land was nonexcess to the previous owner and:

(i) The acquiring landowner never previously held such land as ineligible excess land or under a recordable contract;

(ii) The acquiring landholder is a financial institution; or

(iii) The acquiring landowner previously held the land as ineligible excess or under a recordable contract and § 426.12(g)(1), (3), or (4) applies.

(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 nonexcess.* 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 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, Reclamation 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 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 purposes. 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 by Section 223 of the RRA, prior to October 27, 1986, then the acreage provisions of the contract continue in effect, unless the contract is amended to conform to the SRPA as amended by section 307 of Pub. L. 99–546.

(ii) Amended the loan contract to conform to the SRPA, as amended by Section 223 of the RRA, prior to October 27, 1986, the contract is subject to the increased acreage provisions provided in Section 223 of the RRA. Reclamation cannot alter, modify or amend any other provision of the SRPA loan contract without the consent of the non-Federal party.

(b) *Other sections of these regulations that apply to SRPA loans.* No other sections of these regulations apply to SRPA loans, except as specified in § 426.3(a)(3)(ii) and paragraph (d) of this section.

(c) *Effect of SRPA loans in determining whether a district has repaid its construction obligations on a water service or repayment contract.* If a district has a water service or repayment contract in addition to an SRPA contract, Reclamation does not consider the SRPA loan:

(1) In determining whether the district has discharged its construction cost obligation for the project facilities;

(2) As a basis for reinstating acreage limitation provisions in a district that has completed payment of its construction cost obligation(s); or

(3) As a basis for increasing the construction obligation of the district and extending the period during which acreage limitation provisions will apply to that district.

(d) *Districts that have an SRPA loan contract and a contract as defined in § 426.2.* If a district has an SRPA loan contract and a contract as defined in § 426.2, the SRPA contract does not supersede the RRA requirements applicable to such contracts.

§ 426.18 Landholder information requirements.

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

Irrigation season means the period of time between the district's first and last water delivery in any water year.

(b) *Who must provide information to Reclamation?* All landholders and other parties involved in the ownership or operation of nonexempt land must provide Reclamation, as required by these regulations or upon request, any records or information, in a form suitable to Reclamation, deemed reasonably necessary to implement the RRA or other provisions of Federal reclamation law.

(c) *Required form submissions.* (1) Landholders who are subject to the discretionary provisions must annually submit standard certification forms, except as provided in paragraph (l) of this section.

(2) Landholders who make an irrevocable election must submit the standard certification forms with their irrevocable election in the year that they make the election.

(3) Landholders who are subject to prior law must annually submit standard reporting forms, except as provided in paragraph (l) of this section.

(4) Landholders who qualify under an exemption as specified in paragraph (g) of this section need not submit any forms.

(d) *Required information.* Landholders must declare on the appropriate certification or reporting forms all nonexempt land that they hold directly or indirectly westwide and other information pertinent to their compliance with Federal reclamation law.

(e) *District receipt of forms and information.* Landholders must submit the appropriate, completed form(s) to each district in which they directly or indirectly hold irrigation land.

(f) *Certification or reporting forms for wholly owned subsidiaries.* The ultimate parent legal entity of a wholly owned subsidiary or of a series of wholly owned subsidiaries must file the required certification or reporting forms. The ultimate parent legal entity must disclose all direct and indirect landholdings of its subsidiaries as required on such forms.

(g) *Exemptions from submitting certification and reporting forms.* (1) A landholder is exempt from submitting the certification and reporting forms only if:

(i) The landholder's district has Category 1 status, as specified in paragraph (h) of this section, and the landholder is a:

(A) Qualified recipient who holds a total of 240 acres westwide or less; or

(B) Limited recipient or a prior law recipient who holds a total of 40 acres westwide or less.

(ii) The landholder's district has Category 2 status, as specified in paragraph (h) of this section, and the landholder is a:

(A) Qualified recipient who holds a total of 80 acres westwide or less; or

(B) Limited recipient or a prior law recipient who holds a total of 40 acres westwide or less.

(2) A wholly owned subsidiary is exempted from submitting certification or reporting forms, if its ultimate parent legal entity has properly filed such forms disclosing the landholdings of each of its subsidiaries.

(3) In determining whether certification or reporting is required for purposes of this section:

(i) Class 1 equivalency factors as determined in § 426.11 shall not be used; and

(ii) Indirect landholders need not count involuntarily acquired acreage designated as excess by the direct landowner.

(h) *District categorization.* (1) For purposes of this section each district has Category 2 status, unless the following

criteria have been met. If the district has met both criteria, it will be granted Category 1 status.

(i) The district has conformed by contract to the discretionary provisions; and

(ii) The district is current in its financial obligations to Reclamation.

(2) Reclamation considers a district current in its financial obligation if as of September 30, the district is current in its:

(i) Financial obligations specified in its contract(s) with Reclamation; and

(ii) Payment obligations established by the RRA, and these rules.

(i) *Application of Category 1 status.* Once a district achieves Category 1 status, it will only be withdrawn if the Regional Director determines the district is not current in its financial obligations as specified in paragraph (h)(2) of this section. The withdrawal of Category 1 status will be effective at the end of the current water year and can be restored only as provided under paragraph (h) of this section. With the withdrawal of Category 1 status, the district will have a Category 2 status.

(j) *Submissions by landholders holding land in both a Category 1 district and a Category 2 district.* If a qualified recipient holds land in a Category 1 district, then the 240-acre forms threshold will be applicable in determining if the landholder must submit a certification form to that Category 1 district. If the same qualified recipient also holds land in a Category 2 district, then the 80-acre forms threshold will be applicable in determining if the landholder must submit a certification form to the Category 2 district.

(k) *Notification requirements for landholders whose ownership or leasing arrangements change after submitting forms.* If a landholder's ownership or leasing arrangements change in any way:

(1) During the irrigation season, the landholder must:

(i) Notify the district office, either verbally or in writing within 30-calendar days of the change; and

(ii) Submit new forms to all districts in which the landholder holds nonexempt land, within 60-calendar days of the change.

(2) Outside of the irrigation season, then the landholder must submit new standard certification or reporting forms to all districts in which nonexempt land is held prior to any irrigation water deliveries following such changes.

(l) *Notification requirements for landholders whose ownership or leasing arrangements have not changed.* If a landholder's ownership or leasing arrangements have not changed since last submitting a standard certification or reporting form, the landholder can satisfy the annual certification or reporting requirements by submitting a verification form instead of a standard form. On that form the landholder must verify that the information contained on the last submitted standard certification or reporting form remains accurate and complete.

(m) *Actions taken if required submission(s) is not made.* (1) If a landholder does not submit required certification or reporting form(s), then:

(i) The district must not deliver, and the landholder is not eligible to receive and must not accept delivery of, irrigation water in any water year prior to submission of the required certification or reporting form(s) for that water year; and

(ii) Eligibility will be regained only after all required certification or reporting forms are submitted by the landholder to the district.

(2) If one or more part owners of a legal entity do not submit certification or reporting forms as required:

(i) The entire entity will be ineligible to receive irrigation water until such forms are submitted; or

(ii) If the documents forming the entity provide for the part owners' interest to be separable and alienable, then only that portion of the land attributable to the noncomplying part owners will be ineligible to receive irrigation water.

(n) *Actions taken by Reclamation if a landholder makes false statements on the appropriate certification or reporting forms.* If a landholder makes a false statement on the appropriate certification or reporting form(s) Reclamation can prosecute the landholder pursuant to the following statement which

is included in all certification and reporting forms:

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction. False statements by the landowner or lessee will also result in loss of eligibility. Eligibility can only be regained upon the approval of the Commissioner.

(o) *Information requirements and Office of Management and Budget approval.* The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned control numbers 1006–0005 and 1006–0006. The information is being collected to comply with Sections 206, 224(c), and 228 of the RRA. These sections require that, as a condition to the receipt of irrigation water, each landholder in a district which is subject to the acreage limitation provisions of Federal reclamation law, as amended and supplemented by the RRA, will furnish to his or her district annually a certificate/report which indicates that he or she is in compliance with the provisions of Federal reclamation law. Completion of these forms is required to obtain the benefit of irrigation water. The information collected on each landholding will be summarized by the district and submitted to Reclamation in a form prescribed by Reclamation.

(p) *Protection of forms pursuant to the Privacy Act of 1974.* The Privacy Act of 1974 (5 U.S.C. 552) protects the information submitted in accordance with certification and reporting requirements. As a condition to execution of a contract, Reclamation requires the inclusion of a standard contract article which provides for district compliance with the Privacy Act of 1974 and 43 CFR part 2, subpart D, in maintaining the landholder certification and reporting forms.

§ 426.19 District responsibilities.

A district that delivers irrigation water to nonexempt land under a contract with the United States must:

(a) Provide information to landholders concerning the requirements of Federal reclamation law and these regulations;

(b) Provide Reclamation, as required by these regulations or upon request, and in a form suitable to Reclamation, records and information as Reclamation may deem reasonably necessary to implement the RRA and other provisions of Federal reclamation law;

(c) Be responsible for payments to Reclamation of all appropriate charges specified in these regulations. Districts must collect the appropriate charges from each landholder based on the landholder's acreage limitation status, landholdings, and entitlements, and must not average the costs over the entire district, unless the charges prove uncollectible from the responsible landholders;

(d) Distribute, collect, and review landholder certification and reporting forms;

(e) File and retain landholder certification and reporting forms. Districts must retain superseded landholder certification and reporting forms for 6 years; thereafter, districts may destroy such superseded forms, except:

(1) Districts must keep on file the last fully completed standard certification or reporting form, in addition to the current verification form; or

(2) If Reclamation specifically requests a district to retain superseded forms beyond 6 years.

(f) Comply with the requirements of the Privacy Act of 1974, with respect to landholder certification and reporting forms;

(g) Annually summarize information provided on landholder certification and reporting forms on separate summary forms provided by Reclamation and submit these forms to Reclamation on or before the date established by the appropriate regional director;

(h) Withhold deliveries of irrigation water to any landholder not eligible to receive irrigation water under the certification or reporting requirements or any other provision of Federal reclamation law and these regulations; and

(i) Return to Reclamation, for deposit as a general credit to the Reclamation fund, all revenues received

from the delivery of water to ineligible land. For purposes of these regulations only, this does not include revenues from any charges that may be assessed by the district to cover district operation, maintenance, and administrative expenses.

§ 426.20 Assessment of administrative costs.

(a) *Assessment of administrative costs for delivery of water to ineligible land.* Reclamation will assess a district administrative costs as described in paragraph (e) of this section if the district delivers irrigation water to land that was ineligible because the landholders did not submit certification or reporting forms prior to the receipt of irrigation water in accordance with § 426.18; or to ineligible excess land as provided in § 426.12.

(1) Reclamation will apply the assessment on a yearly basis in each district for each landholder that received irrigation water in violation of § 426.18, or for each landholder that received irrigation water on ineligible land as specified above.

(2) In applying the assessment to legal entities, compliance by an entity will be treated independently from compliance by its part owners or beneficiaries.

(3) The assessment in paragraph (a) of this section will be applied independently of the assessment specified in paragraph (b) of this section.

(b) *Assessment of administrative costs when form corrections are not made.* Reclamation will assess a district for the administrative costs described in paragraph (e) of this section, unless the district provides Reclamation with requested reporting or certification form corrections within 60-calendar days of the date of Reclamation's written request. If Reclamation receives the required corrections within this 60-calendar day time period, Reclamation will consider the requirements of § 426.18 satisfied.

(1) Reclamation will apply the assessment on a yearly basis in each district for each landholder that received irrigation water and for whom the district does not provide corrected forms within the applicable 60-calendar day time period.

(2) In applying the assessment to legal entities, compliance by an entity will be treated independently from compliance by its part owners or beneficiaries.

(3) The assessment in paragraph (b) of this section will be applied independently of the assessment specified in paragraph (a) of this section.

(c) *Party responsible for paying assessments.* Districts are responsible for payment of Reclamation assessments described under paragraphs (a) and (b) of this section.

(d) *Disposition of assessments.* Reclamation will deposit to the general fund of the United States Treasury, as miscellaneous receipts, administrative costs assessed and collected under paragraphs (a) and (b) of this section.

(e) *Amount of the assessment.* The administrative costs assessment required under paragraphs (a) and (b) of this section is set at $260. Reclamation will review the associated costs at least once every 5 years, and will adjust the assessment amount, if needed, to reflect new cost data. Notice of the revised assessment for administrative costs will be published in the FEDERAL REGISTER in December of the year the data are reviewed.

§ 426.21 Interest on underpayments.

(a) *Definition of underpayment.* For the purposes of this section *underpayment* means the difference between what a landholder owed for the delivery of irrigation water under Federal reclamation law and what that landholder paid.

(b) *Collection of interest on underpayments.* If a landholder has incurred an underpayment, Reclamation will collect from the appropriate district such underpayment with interest. Interest accrues from the original payment due date until the district pays the amount due. The original payment due date is the date the district should have paid the United States for water delivered to the landholder.

(c) *Underpayment interest rate.* The Secretary of the Treasury determines the interest rate charged the district based on the weighted average yield of all interest-bearing marketable issues sold by the Department of the Treasury during the period of underpayment.

§ 426.22 Public participation.

(a) *Notification of contract actions.* Except for proposed contracts having a duration of 1 year or less for the sale of surplus water or interim irrigation water, Reclamation will:

(1) Provide notice of proposed irrigation or amendatory irrigation contract actions 60-calendar days prior to contract execution by publishing announcements in general circulation newspapers in the affected area;

(2) Issue announcements in the form of news releases, legal notices, official letters, memoranda, or other forms of written material; and

(3) Directly notify individuals and entities who made a timely written request for such notice to the appropriate Reclamation regional or local office.

(b) *Notification of modification of a proposed contract.* In the event that modifications are made to a proposed contract the regional director must:

(1) Provide copies of revised proposed contracts to all parties who requested copies of the proposed contract in response to the initial notice; and

(2) Determine whether or not to republish the notice or to extend the comment period. The regional director must consider, among other factors:

(i) The significance of the impact(s) of the modification to possible affected parties; and

(ii) The interest expressed by the public over the course of contract negotiations.

(c) *Information that Reclamation will include in published announcements.* Each published announcement will include, as appropriate:

(1) A brief description of the proposed contract terms and conditions being negotiated;

(2) Date, time, and place of meetings, workshops, or hearings;

(3) The address and telephone number to which inquiries and comments may be addressed to Reclamation; and

(4) The period of time during which Reclamation will accept comments.

(d) *Public availability of proposed contracts.* Anyone can get copies of a proposed contract from the appropriate regional director or his or her designated public contact when the proposed contracts become available for review and comment, as specified in the published announcement.

(e) *Opportunities for public participation.* (1) Reclamation can provide, as appropriate: meetings, workshops, or hearings to provide local information. Advance notice of meetings, workshops, or hearings will be provided to those parties who make timely written request for such notice. Request for notice of meetings, workshops, or hearings should be sent to the appropriate Reclamation regional or local office.

(2) Reclamation or the district can invite the public to observe any contract proceedings.

(3) All public participation procedures will be coordinated with those involved with National Environmental Policy Act compliance, if Reclamation determines that the contract action may or will have ''significant'' environmental effects.

(f) *Individuals authorized to negotiate the terms of contract proposals.* Only persons authorized to act on behalf of the district may negotiate the terms and conditions of a specific contract proposal.

(g) *Agency use of comments submitted during the period provided for comment or made at hearings.* (1) Reclamation will review and summarize for use by the contract approving authority, testimony presented at any public hearing or any written comments submitted to the appropriate Reclamation officials at locations and within the comment period, as specified in the advance published announcement.

(2) Reclamation will make available to the public all written correspondence regarding proposed contracts under the terms and procedures of the Freedom of Information Act (5 U.S.C. 552), as amended.

§ 426.23 Recovery of operation and maintenance (O&M) costs.

(a) *General.* All new, amended, and renewed contracts shall provide for payment of O&M costs as specified in this section.

(b) *Amount of O&M costs a district must pay if it executes a new or renewed contract.* If a district executes a new or renewed contract after October 12, 1982, then that district must pay all of the

O&M costs that Reclamation allocates to irrigation.

(c) *Amount of O&M costs a district must pay if it amends its contract to conform to the discretionary provisions.* If a district has a contract executed prior to October 12, 1982, and the district amends the contract after October 12, 1982, as provided for in § 426.3(a)(2) to conform to the discretionary provisions, then the following applies:

(1) The district must pay all of the O&M costs that Reclamation allocates to irrigation;

(2) If in the year the amendment is executed, the district's contract rate was more than the O&M costs allocated to the district in that year then that positive difference at the time of the contract amendment must continue to be factored into the contract rate and annually paid to the United States. This would be in addition to any adjusted O&M cost that results from paragraph (c)(1) of this section. The positive difference would be factored into the contract rate for the remainder of the term of the contract; and

(3) The district will not be required to pay an increased amount toward the construction costs of a project as a condition of the district's agreeing to a contract amendment pursuant to paragraph (c) of this section.

(d) *Amount of O&M cost a district must pay if it amends its contract to provide supplemental or additional benefits.* If a district amends its contract after October 12, 1982, to provide supplemental or additional benefits, as provided for in § 426.3(a)(3), then the following must be complied with:

(1) The district must pay all of the O&M costs that Reclamation allocates to irrigation;

(2) If in the year the amendment is executed, the district's contract rate was more than the O&M costs allocated to the district in that year then that positive difference at the time of the contract amendment must continue to be factored into the contract rate and annually paid to the United States. This would be in addition to any adjusted O&M cost that results from paragraph (d)(1) of this section. The positive difference would be factored into the contract rate for the remainder of the term of the contract; and

(3) The district must pay any increases in the amount paid annually toward the construction costs of a project that the United States requires the district to pay as a condition of agreeing to provide the district with supplemental and additional benefits.

(e) *Amount of O&M a district pays under a prior contract.* For a district whose prior contract was executed prior to October 12, 1982, the district must pay all of the O&M costs allocated by Reclamation to irrigation unless the contract specifically provides contrary terms.

(f) *Amount of O&M that Reclamation charges an irrevocable elector.* (1) Regardless of any terms to the contrary within a prior contract with a district, a landholder who makes an irrevocable election, as provided for in § 426.3(f) must pay, annually, his or her proportionate share of all O&M costs allocated by Reclamation to irrigation. The irrevocable elector's proportionate share is based upon the ratio of:

(i) The amount of land in the district held by the irrevocable elector that received irrigation water to the total amount of land in the district that received irrigation water; or

(ii) The amount of irrigation water in the district received by the irrevocable elector to the total amount of irrigation water that the district delivered.

(2) The district(s) where the irrevocable elector's landholding is located must collect from the irrevocable elector an amount equal to the irrevocable elector's proportionate share of all O&M costs allocated by Reclamation to irrigation and the following apply:

(i) If in the year the election is executed, the district's contract rate was more than the O&M costs allocated to the district in that year, then that positive difference at the time of the contract amendment must continue to be factored into the contract rate. This would be in addition to any adjusted O&M cost that results from paragraph (f)(1) of this section. The positive difference would be factored into the contract rate for the remainder of the term of the contract; and

(ii) Such collections must be forwarded annually to the United States.

(g) *Amount of O&M that Reclamation charges if a landholder is subject to full-*

cost pricing. In a district subject to prior law, if a landholder is subject to full-cost pricing the district must ensure that all O&M costs are included in any full-cost assessment, regardless of whether the landholder is subject to the discretionary provisions. The revenues from such full-cost assessments must be collected and submitted to the United States.

§ 426.24 Reclamation decisions and appeals.

(a) *Reclamation decisions*—(1) *Decision-maker for Reclamation's final determinations*. The appropriate regional director makes any final determination that these regulations require or authorize. If Reclamation's final determination is likely to involve districts, or landholders with landholdings located in more than one region, the Commissioner designates one regional director to make that final determination.

(2) *Notice to affected parties*. The appropriate regional director will transmit any final determination to any district and landholder, as appropriate, whose rights and interests are directly affected.

(3) *Effective date for regional director's final determinations*. A regional director's decisions will take effect the day after the expiration of the period during which a person adversely affected may file a notice of appeal unless a petition for stay is filed together with a timely notice of appeal.

(b) *Appeal of final determinations*—(1) *Appeal Submittal*. Any district or landholder whose rights and interests are directly affected by a regional director's final determination can submit a written notice of appeal. Such notice of appeal must be submitted to the Commissioner of Reclamation within 30-calendar days from the date of the regional director's final determination.

(2) *Submittal of supporting information*. The affected party will have 60-calendar days from the date that the regional director issues a final determination to submit a supporting brief or memorandum to the Commissioner. The Commissioner may extend the time for submitting a supporting brief or memorandum, if:

(i) The affected party submits a request to the Commissioner in a timely manner;

(ii) The request includes the reason why additional time is needed; and

(iii) The Commissioner determines the appellant has shown good cause for such an extension and the extension would not prejudice Reclamation.

(3) *Requests for stay of the final determination pending appeal*. (i) The Commissioner will determine whether to stay a regional director's final determination within 30 days after receiving a properly filed petition for stay if the requesting party:

(A) Submits a request for stay in writing to the Commissioner, with, or in advance of, the notice of appeal, and states the grounds upon which the party requests the stay; and

(B) Demonstrates that the harm that a district or landholder would suffer if the Commissioner does not grant the stay outweighs the interest of the United States in having the final determination take effect pending appeal.

(ii) A decision, or that portion of the decision, for which a stay is not granted will become effective immediately after the Commissioner denies or partially denies the petition for stay, or fails to act within 30 days after receiving the request.

(iii) A Commissioner's decision on a petition for a stay or any other Commissioner decision is appealable.

(c) *Appeal of Commissioner's decision*—(1) *Appeal to the Office of Hearing and Appeals*. A party can appeal the Commissioner's decision to the Secretary by writing to the Director, Office of Hearings and Appeals (OHA), U.S. Department of the Interior. For an appeal to be timely, OHA must receive the appeal within 30-calendar days from the date of mailing of the Commissioner's decision.

(2) *Rules that govern appeals to OHA*. 43 CFR part 4, subpart G, and other provisions of 43 CFR Part 4, where applicable, govern the OHA appeal process, except for the accrual of underpayment interest as specified in paragraph (e) of this section.

(d) *Effective date of an appeal decision*. Reclamation will apply decisions made by the Commissioner or by OHA under paragraphs (b) and (c) of this section as

of the date of the violation or other problem that was addressed in the regional director's final determination. If, during the appeal process, irrigation water has been delivered to land subsequently found to be ineligible, for other than RRA forms submittal violations, the compensation rate may be applied to such deliveries retroactively.

(e) *Accrual of interest on underpayments during appeal.* Interest on any underpayments, as provided in § 426.21, continues to accrue during an appeal of a regional director's final determination, an appeal of the Commissioner's decision, or judicial review of final agency action. Underpayment interest accrual will continue even during a stay under paragraphs (b)(4) or (c)(3) of this section.

(f) *Status of appeals made prior to the effective date of these regulations.* (1) Appeals to the Commissioner of a regional director's final determination which were decided by the Commissioner or his or her delegate prior to the effective date of these regulations are hereby validated.

(2) Appeals to the Commissioner of final determinations made by a regional director and appeals to OHA, which are pending on appeal as of the effective date of these regulations will be processed and decided in accordance with the regulations in effect immediately prior to the effective date of these regulations.

(g) *Addresses.* All requests for stays, appeals, or other communications to the United States under this section must be addressed as follows:

(1) Commissioner, Bureau of Reclamation, Office of Policy, Attention: D–5200, P.O. Box 25007, Denver, Colorado 80225.

(2) Director, Office of Hearings and Appeals, Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203.

[61 FR 66805, Dec. 18, 1996, as amended at 67 FR 13702, Mar. 25, 2002]

§ 426.25 Reclamation audits.

Reclamation will conduct reviews of a district's administration and enforcement of and landholder compliance with Federal reclamation law and these regulations. These reviews may include, but are not limited to:

(a) Water district reviews;

(b) In-depth reviews; and

(c) Audits.

§ 426.26 Severability.

If any provision of these regulations or the application of these rules to any person or circumstance is held invalid, then the sections of these rules or their applications which are not held invalid will not be affected.

PART 427—WATER CONSERVATION RULES AND REGULATIONS

AUTHORITY: 5 U.S.C. 301; 5 U.S.C. 553; 16 U.S.C. 590y *et seq.*; 31 U.S.C. 9701; and 32 Stat. 388 and all acts amendatory thereof or supplementary thereto including, but not limited to, 43 U.S.C. 390b, 43 U.S.C. 390jj, 43 U.S.C. 422a *et seq.*, and 43 U.S.C. 523.

SOURCE: 61 FR 66825, Dec. 18, 1996, unless otherwise noted.

§ 427.1 Water conservation.

(a) *In general.* The Secretary shall encourage the full consideration and incorporation of prudent and responsible water conservation measures in all districts and for the operations by non-Federal recipients of irrigation and municipal and industrial (M&I) water from Federal Reclamation projects.

(b) *Development of a plan.* Districts that have entered into repayment contracts or water service contracts according to Federal reclamation law or the Water Supply Act of 1958, as amended (43 U.S.C. 390b), shall develop and submit to the Bureau of Reclamation a water conservation plan which contains definite objectives which are economically feasible and a time schedule for meeting those objectives. In the event the contractor also has provisions for the supply of M&I water under the authority of the Water Supply Act of 1958 or has invoked a provision of that act, the water conservation plan shall address both the irrigation and M&I water supply activities.

(c) *Federal assistance.* The Bureau of Reclamation will cooperate with the district, to the extent possible, in studies to identify opportunities to augment, utilize, or conserve the available water supply.

PART 428—INFORMATION REQUIREMENTS FOR CERTAIN FARM OPERATIONS IN EXCESS OF 960 ACRES AND THE ELIGIBILITY OF CERTAIN FORMERLY EXCESS LAND

Sec.

428.1 Purpose of this part.
428.2 Applicability of this part.
428.3 Definitions used in this part.
428.4 Who must submit forms under this part.
428.5 Required information.
428.6 Where to submit required forms and information.
428.7 What happens if a farm operator does not submit required forms.
428.8 What can happen if a farm operator makes false statements on the required forms.
428.9 Farm operators who are former owners of excess land.
428.10 Districts' responsibilities concerning certain formerly excess land.
428.11 Effective date.

AUTHORITY: 5 U.S.C. 301; 5 U.S.C. 553; 16 U.S.C. 590z–11; 31 U.S.C. 9701; 32 Stat. 388, as amended.

SOURCE: 65 FR 4324, Jan. 26, 2000, unless otherwise noted.

§ 428.1 Purpose of this part.

This part addresses Reclamation Reform Act of 1982 (RRA) forms requirements for certain farm operators and the eligibility of formerly excess land that is operated by a farm operator who was the landowner of that land when it was excess.

§ 428.2 Applicability of this part.

(a) This part applies to farm operators who provide services to:

(1) More than 960 acres held (directly or indirectly owned or leased) by one trust or legal entity; or

(2) The holdings of any combination of trusts and legal entities that exceed 960 acres.

(b) This part also applies to farm operators who provide services to formerly excess land held in trusts or by legal entities if the farm operator previously owned that land when the land was ineligible excess or under recordable contract.

(c) This part supplements the regulations in part 426 of this chapter.

§ 428.3 Definitions used in this part.

Custom service provider means an individual or legal entity that provides one specialized, farm-related service that a farm owner, lessee, sublessee, or farm operator employs for agreed-upon payments. This includes, for example, crop dusters, custom harvesters, grain haulers, and any other such services.

Farm operator means an individual or legal entity other than the owner, lessee, or sublessee that performs any portion of the farming operation. This includes farm managers, but does not include spouses, minor children, employees for whom the employer pays social security taxes, or custom service providers.

We or *us* means the Bureau of Reclamation.

You means a farm operator.

§ 428.4 Who must submit forms under this part.

(a) You must submit RRA forms to districts annually as specified in § 428.6 if:

(1) You provide services to more than 960 nonexempt acres westwide, held by a single trust or legal entity or any combination of trusts and legal entities; or

(2) You are the ultimate parent legal entity of a wholly owned subsidiary or of a series of wholly owned subsidiaries that provide services in total to more than 960 nonexempt acres westwide, held by a single trust or legal entity or any combination of trusts and legal entities.

(b) Anyone who is the indirect owner of a legal entity that is a farm operator meeting the criteria of paragraph (a) of this section must submit forms to us annually, if any of the land to which services are being provided by that legal entity is land that the part owner formerly owned as excess land and sold or transferred at an approved price.

(c) If you must submit RRA forms due to the requirements of this section, then you may not use a verification form for your annual submittal as provided for in § 426.18(l) of this chapter to meet the requirements of this section.

(d) If you must submit RRA forms solely due to the requirements of this section, then once you have met the requirement found in paragraph (a) of

this section you need not submit another RRA form during the current water year, even if you experience a change to your farm operating arrangements. Specifically, the requirements of § 426.18(k)(1) of this chapter are not applicable.

§ 428.5 Required information.

(a) We will determine which forms you must use to submit the information required by this section.

(b) You must declare all nonexempt land to which you provide services westwide.

(c) You must give us other information about your compliance with Federal reclamation law, including but not limited to:

(1) Identifier information, such as your name, address, telephone number;

(2) If you are a legal entity, information concerning your organizational structure and part owners;

(3) Information about the land to which you provide services, such as a legal description, and the number of acres;

(4) Information about whether you formerly owned, as ineligible excess land or under recordable contract, the land to which you are providing services;

(5) Information about the services you provide, such as what they are, who decides when they are needed, and how much control you have over the daily operation of the land;

(6) If you provide different services to different land parcels, a list of services that you provide to each parcel;

(7) Whether you can use your agreement with a landholder as collateral in any loan;

(8) Whether you can sue or be sued in the name of the landholding; and

(9) Whether you are authorized to apply for any Federal assistance from the United States Department of Agriculture in the name of the landholding.

§ 428.6 Where to submit required forms and information.

You must submit the appropriate completed RRA form(s) to each district westwide that is subject to the acreage limitation provisions and in which you provide services.

§ 428.7 What happens if a farm operator does not submit required forms.

(a) If you do not submit required RRA form(s) in any water year, then:

(1) The district must not deliver irrigation water before you submit the required RRA form(s); and

(2) You, the trustee, or the landholder(s) who holds the land (including to whom the land held in trust is attributed) must not accept delivery of irrigation water before you submit the required RRA form(s).

(b) After you submit all required RRA forms to the district, we will restore eligibility.

(c) If a district delivers irrigation water to land that is ineligible because you did not submit RRA forms as required by this part, we will assess administrative costs against the district as specified in § 426.20(e) of this chapter. We will determine these costs in the same manner used to determine costs for landholders under §§ 426.20(a)(1) through (3) of this chapter.

§ 428.8 What can happen if a farm operator makes false statements on the required forms.

If you make a false statement on the required RRA form(s), Reclamation can prosecute you under the following statement:

> Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction. False statements by the farm operator will also result in loss of eligibility. Eligibility can only be regained upon the approval of the Commissioner.

§ 428.9 Farm operators who are former owners of excess land.

(a) Land held in trust or by a legal entity may not receive irrigation water if:

(1) You owned the land when the land was excess, whether or not under recordable contract;

(2) You sold or transferred the land at a price approved by Reclamation; and

(3) You are the direct or indirect farm operator of that land.

(b) This section does not apply if:

(1) The formerly excess land becomes exempt from the acreage limitations of Federal reclamation law; or

(2) The full-cost rate is paid for any irrigation water delivered to your formerly excess land that is otherwise eligible to receive irrigation water. If you are a part owner of a legal entity that is the direct or indirect farm operator of the land in question, then the full-cost rate will apply to the proportional share of the land that reflects your interest in that legal entity.

§ 428.10 Districts' responsibilities concerning certain formerly excess land.

Districts must not make irrigation water available to formerly excess land that meets the criteria under § 428.9(a), unless an exception provided in § 428.9(b) applies.

§ 428.11 Effective date.

(a) All provisions of this part apply on January 1, 2001, except:

(1) For those districts whose 2001 water year commences prior to January 1, 2001, the applicability date of §§ 428.1 through 428.8 is October 1, 2000.

(b) On January 1, 2001, this part applies to all farm operating arrangements between farm operators and trusts or legal entities that:

(1) Are then in effect; or

(2) Are initiated on, or after, January 1, 2001.

PART 429—USE OF BUREAU OF RECLAMATION LAND, FACILITIES, AND WATERBODIES

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AUTHORITY: 43 U.S.C. 373; 43 U.S.C. 373b; 43 U.S.C. 387; 43 CFR part 21; Public Law 108–447, Title VIII; 31 U.S.C. 9701, as amended.

SOURCE: 73 FR 74335, Dec. 5, 2008, unless otherwise noted.

Subpart A—Purpose, Definitions, and Applicability

§ 429.1 What is the purpose of this part?

The purpose of this part is to notify the public that any possession or occupancy of any portion of, and the extraction or disturbance of any natural resources from Reclamation land, facilities, or waterbodies are prohibited without written authorization from Reclamation, unless excepted as listed in § 429.4. This part describes:

(a) How to apply to Reclamation for a use authorization to allow your activity on Reclamation land, facilities, and waterbodies;

(b) How Reclamation reviews and processes your application, including the criteria for approval or denial of your application;

(c) The requirement for collection of application and use fees and the recovery of administrative costs;

(d) How Reclamation determines and collects costs and fees;

(e) Prohibited uses on Reclamation land, facilities, and waterbodies;

(f) How Reclamation will address existing authorized uses which are otherwise prohibited, including the criteria for approval or denial of requests to renew these use authorizations;

(g) The process and penalties associated with resolution of unauthorized uses; and

(h) How to appeal an action or determination made under this part.

§ 429.2 What definitions are used in this part?

The following definitions are used in this part:

Administrative costs means all costs incurred by Reclamation in processing your application and all costs associated with evaluating, issuing, monitoring, and terminating your use authorization on Reclamation land, facilities, and waterbodies. Administrative costs are distinct and separate from application and use fees and typically include, but are not limited to:

(1) Determining the use fee;

(2) Evaluating and documenting environmental and cultural resources compliance;

(3) Performing engineering review;

(4) Preparation of the use authorization; and

(5) Personnel and indirect costs directly associated with these actions.

Applicant means you as any person or entity (such as a private citizen, business, non-governmental organization, public entity, Indian tribe, or foreign government) who submits an application requesting use of Reclamation land, facilities, and waterbodies.

Application means either Form 7–2540 or SF 299. The choice of application form is dependent on the type of use requested.

Application fee means a $100 nonrefundable charge, which you must submit with your application to cover the costs of our initial review of your request. Application fees are distinct and separate from administrative costs and use fees.

Commissioner means the senior executive of the Bureau of Reclamation, Department of the Interior.

Consent document means a written agreement or notification listing conditions which will prevent unreasonable interference with our easement on non-Reclamation land.

Cultural resource means any prehistoric, historic, architectural, sacred, or traditional cultural property and associated objects and documents that are of interest to archaeology, anthropology, history, or other associated disciplines. Cultural resources include archaeological resources, historic properties, traditional cultural properties, sacred sites, and cultural landscapes that are associated with human activity or occupation.

Easement refers to an interest in land that consists of the right to use or control the land for a specific purpose, but does not constitute full ownership of the land.

Environmental compliance means complying with the requirements of the National Environmental Policy Act; the Endangered Species Act; the Clean Water Act; the Clean Air Act; the Comprehensive Environmental Response, Compensation, and Liability Act; applicable regulations associated with these statutes; and other related laws and regulations.

Form 7–2540 means the Bureau of Reclamation Right-of-Use Application form required for all proposed uses of Reclamation land, facilities, and waterbodies, except those associated with construction and/or placement of transportation, communication, and utility systems and facilities.

Grantee means you as the recipient or holder of a use authorization regardless of the contractual format.

Interior means the United States Department of the Interior.

Managing partner means a Federal or non-Federal public entity that manages land, facilities, or waterbodies through a management agreement with Reclamation entered into pursuant to the Federal Water Project Recreation Act, as amended.

Part 21 of this title means title 43 of the Code of Federal Regulations part 21, which is titled Occupancy of Cabin Sites on Public Conservation and Recreation Areas.

Part 423 of this chapter means title 43 of the Code of Federal Regulations part 423, which is titled Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies.

Possession or occupancy and possess or occupy mean to control, use, or reside on Reclamation land, facilities, or waterbodies.

Private exclusive recreational or residential use means any use that involves structures or other improvements used for recreational or residential purposes to the exclusion of public uses that are not associated with the official management of a Reclamation project. This includes, but is not limited to the following:

(1) Cabin sites and associated improvements (including those currently defined in part 21 of this title); mobile homes, residences, outbuildings, and related structures; and associated landscaping, patios, decks, and porches;

(2) Boat houses, docks, moorings, piers, and launch ramps;

(3) Floating structures or buildings, including moored vessels used as residences or unauthorized business sites;

(4) Sites for such activities as hunting, fishing, camping, and picnicking (other than transitory uses allowed under part 423 of this chapter) that attempt to exclude general public access; and

(5) Access routes to private land, facilities, or structures when other reasonable alternative means of access is available or can be obtained.

Public entity means States, political subdivisions or agencies thereof; public and quasi-governmental authorities and agencies; and agencies of the Federal Government.

Public needs mean the recreational requirements of the general public at areas where existing authorized private exclusive recreational or residential uses are present.

Reclamation means the Bureau of Reclamation, United States Department of the Interior.

Reclamation facility means any facility under our jurisdiction. The term includes, but is not limited to, buildings, canals, dams, ditches, drains, fish and wildlife facilities, laterals, powerplants, pumping plants, recreation facilities, roads, switchyards, transmission and telecommunication lines, and warehouses.

Reclamation land means any land under the jurisdiction of, or administered by, Reclamation and may include, but is not limited to, the following:

(1) All land acquired by Reclamation through purchase, condemnation, exchange, or donation for Reclamation project and water related purposes;

(2) All land withdrawn by Reclamation from the public domain for Reclamation purposes; and

(3) All interests in land acquired by Reclamation, including easements and rights exercised by the United States under the 1890 Canal Act (43 U.S.C. 945).

Reclamation law means the Reclamation Act of June 17, 1902 (32 Stat. 388, 43 U.S.C. 371 *et seq.*), and all Acts which supplement or amend the 1902 Act.

Reclamation project means any land, facilities, or waterbodies used for water supply, water delivery, flood control, hydropower, or other authorized purposes including fish, wildlife, and recreation administered by Reclamation under Federal laws.

Reclamation waterbodies means any body of water situated on Reclamation land and under Reclamation jurisdiction. Examples of Reclamation waterbodies include, but are not limited to, reservoirs, lakes, and impoundments.

Regional Director means any one of the representatives of the Commissioner, or their delegates, who are responsible for managing their respective region's land, facilities, and waterbodies and for the decisions made under this part.

Standard Form (SF) 299 means the form titled Application for Transportation and Utility Systems and Facilities on Federal Lands used when requesting permission for construction and/or placement of transportation, communication, or utility systems and facilities.

Unauthorized use means use of Reclamation land, facilities, and waterbodies without proper authorization.

Use authorization means a document that defines the terms and conditions under which we will allow you to use Reclamation land, facilities, and waterbodies. Use authorizations can take the form of easements, leases, licenses, permits, and consent documents. This document is also referred to as a ''right-of-use'' in part 423 of this chapter.

Use fee means the amount due to Reclamation for the use of Federal land, facilities, or waterbodies under our jurisdiction or control. Use fees are distinct and separate from application fees and administrative costs.

Valuation means the method used to establish the fee for a use authorization by appraisal, waiver valuation, or other sound or generally accepted business practice.

Water user organization means any legal entity established under State law that has entered into a contract with the United States pursuant to the Federal reclamation laws.

We, us, or *our* mean Reclamation.

You, your, I, me, or *my,* mean an applicant, grantee, or unauthorized user.

§ 429.3 What types of uses are subject to the requirements and processes established under this part?

Possession or occupancy of, or extraction or removal of natural resources from, Reclamation land, facilities, or waterbodies require a use authorization in accordance with this part. Typical uses of or activities on Reclamation land, facilities, or waterbodies regulated by this part include, but are not limited to the following:

(a) Commercial filming and photography;

(b) Commercial guiding and outfitting;

(c) Commercial or organized sporting events;

(d) Grazing, farming, and other agricultural uses;

(e) Infrastructure, such as transportation, telecommunications, utilities, and pipelines;

(f) Organized recreational activities, public gatherings, and other special events that involve the possession or occupancy of Reclamation lands;

(g) Removal of, or exploration for, sand, gravel, and other mineral resources;

(h) Timber harvesting, or removal of commercial forest products or other vegetative resources; and

(i) Any other uses deemed appropriate by Reclamation, subject to the exclusions listed in § 429.4.

§ 429.4 What types of uses are not subject to the requirements and processes established under this part?

(a) Individual, non-commercial use of Reclamation land, facilities, or waterbodies for occasional activities such as hiking, camping for periods of 14 days or less during any period of 30 consecutive days, sightseeing, picnicking, hunting, swimming, boating, and fishing, consistent with applicable laws, regulations and policies. Public conduct associated with these activities is governed by part 423 of this chapter;

(b) Buildings and structures used by concessionaires or managing partners to facilitate their operations or that are made available by them for the general, non-exclusive use of the public. Examples include, but are not limited to the following:

(1) Boat docks available for short-term use by the public;

(2) Marina slips available for rent by the public;

(3) Publicly available boat ramps;

(4) Houseboats available for short-term rent by the public;

(5) Stores and restaurants;

(6) Employee housing; and

(7) Rental cabins, hotels, campgrounds, and other short-term lodging facilities.

(c) While not subject to other requirements and processes established under this part, the following types of uses must be in compliance with the requirements in subpart H of this part:

(1) Recreational activities at sites managed by non-Federal managing partners under Public Law 89–72, titled Federal Water Project Recreation Act, July 9, 1965;

(2) Activities managed by other Federal agencies or Interior bureaus by agreement or under other authority;

(3) Activities at sites directly managed by Reclamation where fees or fee schedules are established for general public recreation use;

(4) Uses authorized under concession contracts on Reclamation land, facilities, and waterbodies;

(5) Reclamation contracts for water supply or water operations;

(6) Authorized operation and maintenance activities on Reclamation land, facilities, and waterbodies undertaken by water user organizations, or their contractors, or by Reclamation contractors;

(7) Agreements and real property interests granted for the replacement or relocation of facilities, such as highways, railroads, telecommunication, or transmission lines or infrastructure governed by Section 14 of the Reclamation Project Act of August 4, 1939 (43 U.S.C. 389). Payments to equalize land values may still be required and administrative costs may still be recovered; and

(8) Activities specifically authorized under other Federal statutes or regulations.

§ 429.5 Who is authorized to issue use authorizations under this part?

Unless otherwise provided by law or regulation, only Reclamation or another Federal agency acting for Reclamation under delegated authority is authorized to issue use authorizations that convey an interest in Reclamation land, facilities, or waterbodies. Recreation managing partners under the Federal Water Projects Recreation Act, 16 U.S.C. 4601 *et seq.*, and water user organizations who have assumed responsibility for operation and maintenance of Reclamation land, facilities, or waterbodies, and provide a copy of the use authorization to the local Reclamation office, pursuant to a contract with Reclamation may issue limited use authorizations to third parties for activities on Reclamation land, facilities, or waterbodies when all of the following apply:

(a) The recreation managing partner or water user organization is authorized to do so under its contract with Reclamation;

(b) Such limited use authorizations do not convey ownership or other interest in the Federal real property;

(c) The uses authorized are not permanent or for an indefinite period;

(d) The limited use authorization does not provide for an automatic right of renewal;

(e) The limited use authorization is fully revocable at the discretion of Reclamation; and

(f) All revenues collected for the use of Reclamation land, facilities, and waterbodies are handled in compliance with all statutory, regulatory, and policy requirements.

§ 429.6 When must water user organizations also approve use authorizations?

(a) Use authorizations for easements and rights-of-way for periods in excess of 25 years are also subject to approval from water user organizations under contract obligation for repayment of the project or division. This requirement does not apply to any other type of use authorizations.

(b) At a minimum, the appropriate water user organizations will be notified of all use authorizations prior to their issuance to avoid potential conflicts between the requested use authorization and the water user organizations' need to operate and maintain the facilities for which they have contractual responsibility.

(c) At the discretion of the responsible Regional Director, concurrence of the appropriate water user organizations not addressed in paragraph (a) of this section may be requested.

Subpart B—Proposed Uses Involving Reclamation Easements

§ 429.7 Can I use land where Reclamation holds an easement?

(a) To prevent conflicts where Reclamation holds an easement on land owned by others, you should submit an application for the proposed use. If after review of the application, Reclamation determines that your requested use would not unreasonably interfere with Reclamation's easement, a consent document may be issued to you. The consent document will contain the conditions with which you must comply to ensure that your use will not unreasonably interfere with Reclamation's use of its easement.

(b) In accordance with subpart C of this part, you should submit either SF 299 or Form 7–2540 to the local Reclamation office to request a consent document.

(c) If you are not the underlying landowner, you must also secure the permission of the landowner for your requested use of the area covered by Reclamation's easement.

§ 429.8 Is there a fee for uses involving a Reclamation easement?

Reclamation will not charge a use fee for a consent document. However, depending upon the complexity of your requested use and issues associated with it, Reclamation may charge an application fee and administrative costs, unless waived in accordance with subpart F of this part.

Subpart C—Requesting Authorization to Use Reclamation Land, Facilities, and Waterbodies

§ 429.9 What should I do before filing an application?

Before filing an application, it is important that you contact the local Reclamation office to discuss your proposed use. This discussion can help expedite your application process.

§ 429.10 What application form should I use?

You must use one of the following application forms depending on the nature of your requested use:

(a) Use SF 299 to request a use authorization for the placement, construction, and use of energy, transportation, water, or telecommunication systems and facilities on or across all Federal property including Reclamation land, facilities, or waterbodies.

Examples of such uses are:

(1) Canals;

(2) Communication towers;

(3) Fiber-optics cable;

(4) Pipelines;

(5) Roads;

(6) Telephone lines; and

(7) Utilities and utility corridors.

(b) Use Form 7–2540 to request any other type of use authorization. Examples of such uses are:

(1) Commercial filming and photography;

(2) Commercial guiding and outfitting;

(3) Commercial or organized sporting events;

(4) Grazing, farming, and other agricultural uses;

(5) Organized recreational activities, public gatherings, and other special events;

(6) Removal of, or exploration for, sand, gravel, and other mineral materials;

(7) Timber harvesting, or removal of commercial forest products or other vegetative resources; and

(8) Any other uses deemed appropriate by Reclamation.

(c) Application forms may not be required where Reclamation solicits competitive bids.

§ 429.11 Where can I get the application forms?

Both forms can be obtained from any Reclamation office or from our official internet Web site at *http://www.usbr.gov*. These forms contain specific instructions for application submission and describe information that you must furnish. However, when you submit either form to your local Reclamation office for review, the form must contain your original signature as the applicant.

§ 429.12 Where do I file my application?

File your completed and signed application, including the $100 nonrefundable application fee, with the Reclamation office having jurisdiction over the land, facility, or waterbody associated with your request. Reclamation office locations may be found on *http://www.usbr.gov*, the official Reclamation Internet Web site.

§ 429.13 How long will the application review process take?

(a) Reclamation will acknowledge in writing your completed and signed application and application fee within 30 calendar days of receipt. Reclamation may request additional information needed to process your application, such as legal land descriptions and detailed construction specifications.

(b) The processing time depends upon the complexity of your requested use, issues associated with it, and the need for additional information from you.

(c) Should your requested use be denied at any time during the review process, Reclamation will notify you in writing of the basis for the denial.

§ 429.14 What criteria will Reclamation consider when reviewing applications?

Reclamation will consider the following criteria when reviewing applications:

(a) Compatibility with authorized project purposes, project operations, safety, and security;

(b) Environmental compliance;

(c) Compatibility with public interests;

(d) Conflicts with Federal policies and initiatives;

(e) Public health and safety;

(f) Availability of other reasonable alternatives; and

(g) Best interests of the United States.

§ 429.15 Is Reclamation required to issue a use authorization?

No. The issuance of a use authorization is at Reclamation's discretion. At a minimum, the criteria listed at § 429.14 must be considered prior to issuance of any use authorizations. Not all requests will be authorized. If issued, Reclamation will provide only the least estate, right, or possessory interest needed to accommodate the approved use.

Subpart D—Application Fees and Administrative Costs

§ 429.16 How much is the application fee and when should it be paid?

You must remit a nonrefundable application fee of $100 to cover costs associated with our initial review of your application, unless the payment is waived pursuant to subpart F of this part. This initial review will determine if your requested use is appropriate for consideration and not likely to interfere with Reclamation project purposes or operations.

§ 429.17 When will Reclamation collect administrative costs?

Reclamation will collect, in advance, its administrative costs for processing your application, except as provided under subpart F of this part.

§ 429.18 When do I have to pay the administrative costs?

(a) Following the initial review, you will be notified in writing whether your application appears to be appropriate for further processing. At that time, Reclamation will give you an initial estimate of administrative costs required to continue processing your application.

(b) You must pay these initial, estimated administrative costs before Reclamation can continue to process your application, unless you are granted a waiver of administrative costs under subpart F of this part. If payment is not received within 90 days after the estimate is provided to you, Reclamation may close your file. If this occurs and you later wish to proceed, you must submit both a new application and another $100 nonrefundable application fee.

§ 429.19 What happens if the initial estimate for administrative costs is insufficient?

If the initial estimate to cover Reclamation's administrative costs is found to be insufficient, Reclamation will notify you in writing of the additional amount needed. You must pay the amount requested before Reclamation will continue processing your application.

§ 429.20 Can I get a detailed explanation of the administrative costs?

Yes, you are entitled to receive an explanation of all administrative costs relevant to your specific application. You must request this information in writing from the Reclamation office where you submitted your application.

§ 429.21 If I overpay Reclamation's administrative costs, can I get a refund?

If, in reviewing your application, Reclamation uses all the monies you have paid, you will not receive a refund regardless of whether you receive a use authorization. If the money collected from you exceeds administrative costs, a refund of the excess amount will be made to you consistent with Reclamation's financial policies.

§ 429.22 Can Reclamation charge me additional administrative costs after I receive a use authorization?

(a) After you receive your use authorization, Reclamation may charge you for additional administrative costs incurred for activities such as:

(1) Monitoring your authorized use over time to ensure compliance with the terms and conditions of your use authorization; and

(2) Periodic analysis of your long-term use to adjust your use fee to reflect current conditions.

(b) If your additional payment is not received by Reclamation within 90 days after notification to you in writing of the additional administrative costs, Reclamation may take action to terminate your use authorization.

Subpart E—Use Fees

§ 429.23 How does Reclamation determine use fees?

The use fee is based on a valuation or by competitive bidding. Use fees may be adjusted as deemed appropriate by Reclamation to reflect current conditions, as provided in the use authorization.

§ 429.24 When should I pay my use fee?

(a) If Reclamation offers you a use authorization, you must pay the use fee in advance, unless you are granted a waiver under subpart F of this part.

(b) Your use authorization will clearly state the use fee. Should periodic payments apply, your use authorization will also describe when you should pay those periodic use fees.

§ 429.25 How long do I have to submit my payment for the use fee and accept the offered use authorization?

You have 90 days to accept and return the use authorization and required fees, otherwise Reclamation may consider the offer to be rejected by you and your file may be closed. If this occurs and you later wish to proceed, you must submit a new application and another $100 nonrefundable application fee. You may not commence your use of Reclamation's land, facilities, or waterbodies until Reclamation has issued a use authorization to you. A use authorization will

only be issued upon receipt by Reclamation of all required costs and fees, and the use authorization signed by you.

Subpart F—Reductions or Waivers of Application Fees, Administrative Costs, and Use Fees

§ 429.26 When may Reclamation reduce or waive costs or fees?

(a) As determined appropriate and approved and documented by the applicable Regional Director, the application fees may be waived, and charges for administrative costs or use fees may be waived or reduced as indicated by a ✓ in the following table:

Situations where costs and fees may be reduced or waived	Application fee	Administrative costs	Use fee
(1) The use is a courtesy to a foreign government or if comparable fees are set on a reciprocal basis with a foreign government	✓	✓	✓
(2) The use is so minor or short term that the cost of collecting fees is equal to or greater than the value of the use	✓	✓	✓
(3) The use will benefit the general public with no specific entity or group of beneficiaries readily identifiable	✓	✓	✓
(4) Applicant is a public entity or Indian tribe	✓	✓	✓
(5) Applicant is a non-profit or educational entity and the use provides a general public benefit	✓	✓	✓
(6) Applicant is a rural electric association or municipal utility or cooperative	✓	✓	✓
(7) The use directly supports United States' programs or projects	✓	✓	✓
(8) The use secures a reciprocal land use of equal or greater value to the United States	✓	✓	✓
(9) Applicant for a consent document is the underlying owner of the property subject to Reclamation's easement	✓	✓	(1)
(10) The use is issued under competitive bidding	✓	✓	(2)

[1] Not applicable.
[2] Set by Bid.

(b) When a statute, executive order, or court order authorizes the use and requires specific treatment of administrative cost recovery and collection of use fees associated with that use, that requirement will be followed by Reclamation.

Subpart G—Terms and Conditions of Use Authorizations

§ 429.27 What general information appears in use authorizations?

Each use authorization will contain:

(a) An adequate description of the land, facilities, or waterbodies where the use will occur;

(b) A description of the specific use being authorized together with applicable restrictions or conditions that must be adhered to;

(c) The conditions under which the use authorization may be renewed, terminated, amended, assigned or transferred, and/or have the use fee adjusted; and

(d) Primary points of contact and other terms and conditions.

§ 429.28 What terms and conditions apply to all use authorizations?

(a) By accepting a use authorization under this part, you agree to comply with and be bound by the following terms and conditions during all construction, operation, maintenance, use, and termination activities:

(1) The grantee agrees to indemnify the United States for, and hold the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or

method of performing any construction, care, operation, maintenance, supervision, examination, inspection, or other activities of the grantee.

(2) The United States, acting through Reclamation, Department of the Interior, reserves rights to construct, operate, and maintain public works now or hereafter authorized by the Congress without liability for termination of the use authorization or other damage to the grantee's activities or facilities.

(3) Reclamation may, at any time and at no cost or liability to the United States, terminate any use authorization in the event of a natural disaster, a national emergency, a need arising from security requirements, or an immediate and overriding threat to public health and safety.

(4) Reclamation may, at any time and at no cost or liability to the United States, terminate any use authorization for activities other than existing authorized private exclusive recreational or residential use as defined under § 429.2 if Reclamation determines that any of the following apply:

(i) The use has become incompatible with authorized project purposes, project operations, safety, and security;

(ii) A higher public use is identified through a public process described at § 429.32(a)(1); or

(iii) Termination is necessary for operational needs of the project.

(5) Reclamation may, at any time and at no cost or liability to the United States, terminate any use authorization if Reclamation determines that the grantee has failed to use the use authorization for its intended purpose. Further, failure to construct within the timeframe specified in the terms of the use authorization may constitute a presumption of abandonment of the requested use and cause termination of the use authorization.

(6) Reclamation may, at any time and at no cost or liability to the United States, terminate any use authorization if the grantee fails to comply with all applicable Federal, State, and local laws, regulations, ordinances, or terms and conditions of any use authorization, or to obtain any required permits or authorizations.

(b) The Regional Director may, upon advice of the Solicitor, modify these terms and conditions with respect to the contents of the use authorization to meet local and special conditions.

§ 429.29 What other terms and conditions may be included in my use authorization?

Reclamation may include additional terms, conditions, or requirements that address environmental law compliance, the protection of cultural and natural resources, other interests of the United States, and local laws and regulations.

§ 429.30 May use authorizations be transferred or assigned to others?

Your use authorization may not be transferred or assigned to others without prior written approval of Reclamation, unless specifically provided for in your use authorization or as provided under subpart H of this part for existing private exclusive recreational and residential uses. Should you wish to transfer or assign your use authorization to another individual or entity, you must contact the Reclamation office that issued your use authorization prior to taking such action.

Subpart H—Prohibited and Unauthorized Uses of Reclamation Land, Facilities, and Waterbodies

§ 429.31 What uses are prohibited on Reclamation land, facilities, and waterbodies?

(a) Reclamation prohibits any use that would not comply with part 423 of this chapter.

(b) Reclamation prohibits any use that would result in new private exclusive recreational or residential use of Reclamation land, facilities, or waterbodies as of the effective date of this part. Improvements that are within the terms and conditions of an existing authorization will not be considered new private exclusive recreational or residential use.

§ 429.32 How will Reclamation address currently authorized existing private exclusive recreational or residential uses?

The administration and potential renewal of use authorizations, existing as of January 1, 2008, for private exclusive recreational or residential uses of Reclamation land, facilities, and waterbodies, as defined in this part, will be administered in accordance with the following requirements.

(a) Existing private exclusive recreational or residential uses must be compatible with public needs and with authorized project purposes, project operations, safety, and security. A review of whether existing private exclusive recreational or residential uses is compatible with public needs and authorized project purposes, project operations, safety, and security will be made at least once every 20 years, except where part 21 requires a more frequent review.

(1) Reclamation will only make final determinations regarding the compatibility of existing private exclusive recreational or residential uses with public needs or project purposes through a public process involving one or more public meetings. Examples of such public processes include resource management plan development, recreation demand analysis studies, and project feasibility studies.

(2) Reclamation will notify in writing all potentially affected holders of existing authorizations for private exclusive recreational or residential use regarding the opportunities for public participation when any action is proposed that could lead to an incompatibility determination.

(3) Determinations that existing private exclusive recreational or residential uses are not compatible with public needs will be published in the FEDERAL REGISTER.

(4) If a determination of incompatibility with public needs is made, affected use authorizations may be extended up to 5 years from the date of publication in the FEDERAL REGISTER, if the Regional Director determines that such extension is necessary to the fair and efficient administration of this part.

(b) Reclamation will conduct a compliance review of all existing private exclusive recreational or residential uses at least once every 5 years to determine if the following criteria are being met:

(1) Environmental requirements;

(2) Public health and safety requirements; and

(3) Current in financial obligations to Reclamation.

(c) Reclamation will provide the holder of the use authorization with a written report of the results of the compliance review by certified mail, return receipt requested. The report will state whether the existing use meets the required criteria listed in paragraph (b) of this section and will list any deficiencies that can be corrected. A minimum of 90 days will be provided to make corrections identified in the report. Failure to correct the deficiencies within the time provided in the report will result in termination of the use authorization.

(d) In addition to the compliance reviews described above, Reclamation will initiate a review of the existing private exclusive recreational or residential uses for compliance with the required criteria listed in paragraph (b) of this section at least 6 months prior to the expiration date of the existing use authorization. Reclamation will provide the holder of the use authorization with a written report of the results of the compliance review results by certified mail, return receipt requested. The report will state whether the existing use meets the required criteria under this section as applicable and will list any deficiencies that must be corrected prior to a renewal of the use authorization. A minimum of 90 days will be provided prior to the expiration of the permit to make corrections identified in the report. In addition, this report will serve as a reminder that it is time to seek renewal of the use authorization and provide information on the process that needs to be followed.

(e) Reclamation must be notified in advance by certified mail, return receipt requested, of any transfers of use authorizations for existing private exclusive recreational or residential uses.

(f) Any renewal of use authorizations for existing private exclusive recreational or residential uses of Reclamation land, facilities, and waterbodies will not exceed 20-year terms. Any such renewals will be subject to the periodic reviews described in paragraphs (a) and (b) of this section and these reviews could potentially result in the termination of the use agreement prior to the end of the term of years.

(g) Upon non-renewal or termination of a use authorization for an existing private exclusive recreational or residential use of Reclamation land, facilities, and waterbodies, the grantee will remove any improvements from the site within 90 days from the date of termination or non-renewal of the use authorization. The grantee will return the property as near as possible to its original undisturbed condition. Any property not removed within 90 days may be removed by Reclamation at the expense of the prior grantee.

(h) Renewal decisions of use authorizations for existing private exclusive recreational or residential uses located on Reclamation land, facilities, and waterbodies will be made by the Regional Director. If the Regional Director determines that deficiencies identified under paragraph (d) of this section cannot be corrected prior to the expiration date of the use authorization, the use authorization may be extended for a period not to exceed 6 months.

(i) Requests for the renewal, extension, or reissuance of use authorizations for private exclusive recreational or residential uses that expired and were not renewed prior to the effective date of this part and were not renewed or are subsequently not renewed or terminated under the procedures of this section will be considered requests for uses prohibited under § 429.31 and will not be approved. Conversely, requests for the renewal, extension, or reissuance of use authorizations for private exclusive recreational or residential uses that were in existence on the effective date of these regulations and that are in compliance with all requirements of the applicable use authorization at the time a request is made will not be considered requests for uses prohibited under § 429.31. Requests for renewal, extension, or reissuance of use authorizations for private exclusive recreational or residential uses must be made by submitting Form 7–2540 as stated under § 429.10(b) and in compliance with subpart D of this part.

(j) Unauthorized existing private exclusive recreational or residential uses will be administered under §§ 429.31 and 429.33 and part 423 of this chapter.

§ 429.33 What are the consequences for using Reclamation land, facilities, and waterbodies without authorization?

(a) Reclamation may seek to collect the following:

(1) All administrative costs incurred by Reclamation in resolving the unauthorized use;

(2) All costs of removing structures, materials, improvements, or any other real or personal property;

(3) All costs of rehabilitation of the land, facilities, or waterbodies as required by Reclamation.

(4) The use fee that would have applied had your use been authorized from the date your unauthorized use began;

(5) Interest accrued on the use fee from the date your unauthorized use began as specified in paragraph (a)(4) of this section; and

(6) The interest charge rate shall be the greater of either the rate prescribed quarterly in the FEDERAL REGISTER by the Department of the Treasury for application to overdue payments or the interest rate of 0.5 percent per month. The interest charge rate will be determined as of the due date and remain fixed for the duration of the delinquent period.

(b) As an unauthorized user, you will receive a written notice in which Reclamation will outline the steps you need to perform to cease your unauthorized use.

(c) If appropriate, you will receive a final determination letter detailing the applicable costs and fees, as set forth under paragraph (a) of this section, which must be paid to Reclamation for your unauthorized use. Payment must be made within 30 days of receipt of this letter unless Reclamation extends this deadline in writing. Failure to

make timely payment may result in administrative or legal action being taken against you.

(d) Reclamation may determine that issuing a use authorization to you for an existing unauthorized use is not appropriate; and may deny future use applications by you because of this behavior. As noted at § 429.15, use authorizations are always issued at Reclamation's discretion.

(e) If, however, your unauthorized use is deemed by Reclamation to be an unintentional mistake, consideration may be given to issuing a use authorization provided that you qualify and meet the criteria at § 429.14; and, in addition to the normal costs, you agree to pay the following:

(1) The use fee that would have been owed from the date your unauthorized use began; and

(2) Interest accrued on the use fee from the date your unauthorized use began as specified in paragraph (f)(1) of this section.

(f) Under no circumstances will your unauthorized use or payment of monies to the United States in association with an unauthorized use either:

(1) Create any legal interest or color of title against the United States; or

(2) Establish any right or preference to continue the unauthorized use.

(g) Under part 423 of this chapter, unauthorized use of Reclamation land, facilities, or waterbodies is a trespass against the United States. You may be subject to legal action including criminal prosecution as specified under § 423.71.

Subpart I—Decisions and Appeals

§ 429.34 Who is the decisionmaker for Reclamation's final determinations?

(a) The appropriate Regional Director, or the Regional Director's designee, makes any final determination associated with an action taken under this rule and will send that final determination in writing to you by mail.

(b) The Regional Director's final determination will take effect upon the date of the final determination letter.

§ 429.35 May I appeal Reclamation's final determination?

(a) Yes, if you are directly affected by a final determination, you may appeal by writing to the Commissioner within 30 calendar days after the postmark date of the Regional Director's determination letter.

(b) You have an additional 30 calendar days after the postmark of your written appeal to the Commissioner within which to submit any additional supporting information.

(c) The Regional Director's final determination will remain in effect until the Commissioner has reviewed your appeal and provided you with that decision, unless you specifically request a stay and a stay is granted by the Commissioner.

§ 429.36 May I appeal the Commissioner's decision?

(a) Yes, you may appeal the Commissioner's decision by writing to the Director, Office of Hearing and Appeals (OHA), U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203.

(b) For an appeal to be timely, OHA must receive your appeal within 30 calendar days from the date of mailing of the Commissioner's decision. Rules that govern appeals to OHA are found at part 4, subparts B and G, of this title.

(c) Notwithstanding the provisions of § 4.21(a) of this title, the Commissioner's decision will take effect upon issuance and remain in effect unless you specifically request a stay and a stay is granted under § 4.21(b) of this title.

§ 429.37 Does interest accrue on monies owed to the United States during my appeal process?

Except for any period in the appeal process during which a stay is then in effect, interest on any nonpayment or underpayment, as provided in § 429.33(a), continues to accrue during an appeal of a Regional Director's final determination, an appeal of the Commissioner's decision to OHA, or during judicial review of final agency action.

PART 430—RULES FOR MANAGEMENT OF LAKE BERRYESSA

AUTHORITY: Title VII, Pub. L. 93–493, 88 Stat. 1494.

§ 430.1 Concessioners' appeal procedures.

The procedures detailed in title 43 CFR part 4, subpart G, are made applicable to the concessioners at Lake Berryessa, Napa County, California, as the procedure to follow in appealing decisions of the contracting officer of the Bureau of Reclamation, Department of the Interior, or his authorized representatives on disputed questions concerning termination for default or unsatisfactory performance under the concession contracts.

[40 FR 27658, July 1, 1975]

PART 431—GENERAL REGULATIONS FOR POWER GENERATION, OPERATION, MAINTENANCE, AND REPLACEMENT AT THE BOULDER CANYON PROJECT, ARIZONA/NEVADA

Sec.
431.1 Purpose.
431.2 Scope.
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431.6 Power generation estimates.
431.7 Administration and management of the Colorado River Dam Fund.
431.8 Disputes.
431.9 Future regulations.

AUTHORITY: Reclamation Act of 1902 (32 Stat. 388), Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*), Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*), Colorado River Storage Project Act of 1956 (43 U.S.C. 620 *et seq.*), Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 *et seq.*), and Hoover Power Plant Act of 1984 (98 Stat. 1333).

SOURCE: 51 FR 23962, July 1, 1986, unless otherwise noted.

§ 431.1 Purpose.

(a) The Secretary of the Interior (Secretary), acting through the Commissioner of Reclamation (Commissioner), is authorized and directed to operate, maintain, and replace the facilities at the Hoover Powerplant, and also to promulgate regulations as the Secretary finds necessary and appropriate in accordance with the authorities in the Reclamation Act of 1902, and all acts amendatory thereof and supplementary thereto.

(b) In accordance with the Boulder Canyon Project Act of 1928, as amended and supplemented (Project Act), the Boulder Canyon Project Adjustment Act of 1940, as amended and supplemented (Adjustment Act), and the Hoover Power Plant Act of 1984 (Hoover Power Plant Act), the Bureau of Reclamation (Reclamation) promulgates these ''General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada'' (General Regulations) which include procedures to be used in providing Contractors and the Western Area Power Administration (Western) with cost data and power generation estimates, a statement of the requirements for administration and management of the Colorado River Dam Fund (Fund), and methods for resolving disputes.

§ 431.2 Scope.

These General Regulations shall be effective on June 1, 1987, and shall apply to power generation, operation, maintenance, and replacement activities at the Boulder Canyon Project after May 31, 1987. ''General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project'' are the subject of a separate rule, under 10 CFR part 904, by the Secretary of Energy, acting by and through the Administrator of Western. The ''General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act,'' dated May 20, 1941, and the ''General Regulations for Lease of Power,'' dated April 25, 1930, terminate May 31, 1987.

§ 431.3 Definitions.

As used in this part:

Additions and betterments shall mean such work, materials, equipment, or facilities which enhance or improve the Project and do more than restore the Project to a former good operating condition.

Colorado River Dam Fund or *Fund* shall mean that special fund established by section 2 of the Project Act and which is to be used only for the purposes specified in the Project Act, the Adjustment Act, the Colorado River Basin Project Act, and the Hoover Power Plant Act.

Contractor shall mean any entity which has a fully executed contract with Western for electric service pursuant to the Hoover Power Plant Act.

Project or *Boulder Canyon Project* shall mean all works authorized by the Project Act, the Hoover Power Plant Act, and any future additions authorized by Congress, to be constructed and owned by the United States, but exclusive of the main canal and appurtenances authorized by the Project Act, now known as the All-American Canal.

Replacements shall mean such work, materials, equipment, or facilities as determined by the United States to be necessary to keep the Project in good operating condition, but shall not include (except where used in conjunction with the word ''emergency'' or the phrase ''however necessitated'') work, materials, equipment, or facilities made necessary by any act of God, or of the public enemy, or by any major catastrophe.

Uprating Program shall mean the program authorized by section 101(a) of the Hoover Power Plant Act for increasing the capacity of existing generating equipment and appurtenances at Hoover Powerplant, as generally described in the report of Reclamation, entitled ''Hoover Powerplant Uprating, Special Report,'' issued in May 1980, supplemented in January 1985, and further supplemented in September 1985.

§431.4 Power generation responsibilities.

(a) Power generation, and the associated operation, maintenance, and making of replacements, however necessitated, of facilities and equipment at the Hoover Powerplant, are the responsibilities of Reclamation.

(b) Subject to the statutory requirement that Hoover Dam and Lake Mead shall be used: First, for river regulation, improvement of navigation and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights mentioned in section 6 of the Project Act; and third, for power, Reclamation shall release water, make available generating capacity, and generate energy, in such quantities, and at such times, as are necessary for the delivery of the capacity and energy to which Contractors are entitled.

(c) Reclamation reserves the right to reschedule, temporarily discontinue, reduce, or increase the delivery of water for the generation of electrical energy at any time for the purpose of maintenance, repairs, and/or replacements, and for investigations and inspections necessary thereto, or to allow for changing reservoir and river conditions, or for changes in kilowatthours generation per acre-foot, or by reason of compliance with the statutory requirement as referred to in paragraph (b) of this section; *Provided, however,* That Reclamation shall, except in case of emergency, give Western reasonable notice in advance of any change in delivery of water, and that Reclamation shall make such inspections and perform such maintenance and repair work at such times and in such manner as to cause the least inconvenience possible to Contractors and that Reclamation shall prosecute such work with diligence and, without unnecessary delay, resume delivery of water as scheduled.

(d) Should a Contractor have concerns regarding power generation and related matters and request a meeting in writing, including a description of areas of concern, Reclamation shall convene such meeting within 10 days of receipt of such request and shall notify all Contractors and Western of the date and location of the meeting, and the areas of concern to be discussed.

[51 FR 23962, July 1, 1986; 51 FR 24531, July 7, 1986]

§431.5 Cost data and fund requirements.

Reclamation shall submit annually on or before April 15 to Western and Contractors, cost data, including one year of actual costs for the last completed fiscal year and estimated costs

for the next 5 fiscal years, for operation, maintenance, replacements, additions and betterments, non-Federal funds advanced for the uprating program by non-Federal purchasers, and interest on and amortization of the Federal investment. Such cost data shall identify major items. Upon 5 days prior written notice to Reclamation, any Contractor shall have the right, subject to applicable Federal laws and regulations, to review records used to prepare such cost data at Reclamation offices during regular business hours. Contractors shall have an opportunity to present written views within 30 days of the transmittal of the cost data. Reclamation responses to written views shall be provided within 60 days of transmittal of the cost data or 30 days after a meeting with Contractors convened pursuant to § 431.4(d), whichever is later.

§ 431.6 Power generation estimates.

Reclamation shall submit annually on or before April 15 to Western and Contractors, an estimated annual operation schedule for the Hoover Powerplant showing estimated power generation and estimated maintenance outages for review, and shall provide an opportunity to present written views within 30 days of the transmittal of the schedule. Reclamation responses to written views shall be provided within 60 days of the transmittal of the schedule or 30 days after a meeting with Contractors convened pursuant to § 431.4(d), whichever is later. The estimated annual operation schedule of Hoover Powerplant shall be subject to necessary modifications, in accordance with § 431.4(c). Upon 5 days prior written notice to Reclamation, any Contractor shall have the right, subject to applicable Federal laws and regulations, to review records used to prepare such power generation estimates at Reclamation offices during regular business hours.

§ 431.7 Administration and management of the Colorado River Dam Fund.

Reclamation is responsible for the repayment of the Project and the administration of the Colorado River Dam Fund and the Lower Colorado River Basin Development Fund.

(a) All receipts to the Project shall be deposited in the Fund along with electric service revenues deposited by Western and shall be available without further appropriation for:

(1) Defraying the costs of operation (including purchase of supplemental energy to meet temporary deficiencies in firm energy which the Secretary of Energy is obligated by contract to supply), maintenance, and replacements of all Project facilities, including emergency replacements necessary to insure continuous operations;

(2) Payment of annual interest on the unpaid investments in accordance with appropriate statutory authorities;

(3) Repayment of capital investments including amounts readvanced from the Treasury;

(4) Payments to the States of Arizona and Nevada as provided in section 2(c) of the Adjustment Act and section 403(c)(2) of the Colorado River Basin Project Act;

(5) Transfers to the Lower Colorado River Basin Development Fund and subsequent transfers to the Upper Colorado River Basin Fund, as provided in section 403(c)(2) of the Colorado River Basin Project Act and section 102(c) of the Hoover Power Plant Act, as reimbursement for the monies expended heretofore from the Upper Colorado River Basin Fund to meet deficiencies in generation at Hoover Dam during the filling period of storage units of the Colorado River Storage Project in accordance with the provisions of sections 403(g) and 502 of the Colorado River Basin Project Act, such transfers, totalling $27,591,621.25, to be effected by 17 annual payments of $1,532,868.00 beginning in 1988 and a final payment of $1,532,865.25 in 2005; and

(6) Any other purposes authorized by existing and future Federal law.

(b) Appropriations for the visitor facilities program and any other purposes authorized by existing and future Federal law advanced or readvanced to the Fund shall be disbursed from the Fund for those purposes.

(c) All funds advanced by non-Federal Contractors for the Uprating Program shall be deposited in the Fund, shall be

available without further appropriation, and shall be disbursed from the Fund to accomplish the Uprating Program.

(d) The Fund shall be administered and managed in accordance with applicable Federal laws and regulations, by the Secretary acting through the Commissioner.

[51 FR 23962, July 1, 1986; 51 FR 24531, July 7, 1986]

§431.8 Disputes.

(a) All actions by Reclamation or the Secretary shall be binding unless and until reversed or modified in accordance with the provisions herein.

(b) Any disputes or disagreements as to interpretation or performance of the provisions of these General Regulations under the responsibility of the Secretary shall first be presented to and decided by the Commissioner. The Commissioner shall be deemed to have denied the Contractor's contention or claim if it is not acted upon within 60 days of its having been presented. The decision of the Commissioner shall be subject to appeal to the Secretary by a notice of appeal accompanied by a statement of reasons filed with the Secretary within 30 days after such decision. The Secretary shall be deemed to have denied the appeal if it is not acted upon within 60 days of its having been presented.

(c) The decision of the Secretary shall be final unless, within 30 days from the date of such decision, a written request for arbitration is received by the Secretary. The Secretary shall have 90 days from the date of receipt of a request for arbitration either to concur in or deny in writing the request for such arbitration. Failure by the Secretary to take any action within the 90 day period shall be deemed a denial of the request for arbitration. In the event of a denial of a request for arbitration, the decision of the Secretary shall become final. Upon a decision becoming final, the disputing Contractor's remedy lies with the appropriate Federal court. Any claim that a final decision of the Secretary violates any right accorded the Contractor under the Project Act, the Adjustment Act, or title I of the Hoover Power Plant Act is barred unless suit asserting such claim is filed in a Federal court of competent jurisdiction within one year after final refusal by the Secretary to correct the action complained of, in accordance with section 105(h) of the Hoover Power Plant Act.

(d) When a timely request for arbitration is received by the Secretary and the Secretary concurs in the request, the disputing Contractor and the Secretary shall, within 30 days of receipt of such notice of concurrence, each name one arbitrator to the panel of arbitrators which will decide the dispute. All arbitrators shall be skilled and experienced in the field pertaining to the dispute. In the event there is more than one disputing Contractor in addition to the Secretary, the disputing Contractors shall collectively name one arbitrator to the panel of arbitrators. In the event of their failure collectively to name such arbitrator within 15 days after their first meeting, that arbitrator shall be named as provided in the Commercial Arbitration Rules of the American Arbitration Association. The two arbitrators thus selected shall name a third arbitrator within 30 days of their first meeting. In the event of their failure to so name such third arbitrator, that arbitrator shall be named as provided in the Commercial Arbitration Rules of the American Arbitration Association. The third arbitrator shall act as chairperson of the panel. The arbitration shall be governed by the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be limited to the issue submitted. The panel of arbitrators shall render a final decision in this dispute within 60 days after the date of the naming of the third arbitrator. A decision of any two of the three arbitrators named to the panel shall be final and binding on all parties involved in the dispute.

§431.9 Future regulations.

(a) Reclamation may from time to time promulgate additional or amendatory regulations deemed necessary for the administration of the Project, in accordance with applicable law; *Provided,* That no right under any contract made under the Hoover Power Plant Act shall be impaired or obligation thereunder be extended thereby.

(b) Any modification, extension, or waiver of any provision of these General Regulations granted for the benefit of any one or more Contractors shall not be denied to any other Contractor.

PARTS 432–999 [RESERVED]