

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that land under recordable contract be sold at a price approved by Reclamation does not apply to land which is withdrawn from a recordable contract and included as part of a landowner's nonexcess landholding as a result of an equivalency determination.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

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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 non-excess 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 non-excess 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 non-excess 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 non-resident 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

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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 non-resident 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 non-excess 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: