

## Rural Utilities Service, USDA

## § 1781.6

(1) Organizing, installing, operating, and maintaining proposed WS works of improvement or RCD measures or projects.

(2) Borrowing money, giving security, levying taxes, making assessments or raising revenues for operation and maintenance of the facility and repayment of loans.

(3) Land use zoning.

(4) Acquiring necessary property, lands, and rights.

(5) Obtaining approval of construction plans and specifications by appropriate Federal, State, and local agencies and construction facilities.

(6) Health and sanitation standards, water pollution control, and environmental regulations.

(7) Design and installation standards.

(8) Public service commission or similar State public body rules and regulations.

(d) Be financially sound and capable of providing service essential to the rural development needs of the area.

(e) If it is a nonprofit corporation.

(1) Membership should be broadly based and representative of the area benefiting from the facility. Membership on the governing board of the corporation will be limited to those living in the area to be benefited unless for justifiable reasons the Rural Development State Director gives prior approval for other than local residents to serve on the board of directors.

(2) The corporation must propose a facility which will primarily serve or generate other substantial, tangible benefits for farmers and other residents of the area. In the case of a recreational development at least two-thirds of the membership must be farmers and other residing in the area.

(3) Nonprofit corporations will not be formed to serve an area which could be served by a public agency which has adequate authority to provide the needed service unless prior approval of the National Office is obtained.

### § 1781.6 Loan purposes.

(a) *WS and RCD loans.* WS and RCD loans may be used for:

(1) Water development, storage, treatment and conveyance to farms for irrigation and other farm use, includ-

ing farmstead, livestock, orchard, and crop spraying.

(2) Drainage systems and facilities in farm areas to sustain agricultural production or protect farmers and rural residents from water damage.

(3) Agricultural water management practices for annual streamflow stabilization, recharging ground water reservoirs, and conserving water supplies by management and control of vegetation along waterways and in drainage basins.

(4) Soil conservation and water control facilities such as dikes, terraces, detention reservoirs, stream channels, ditches, and other special land treatment and stabilization measures needed to protect farms and rural residents from water damage, provided such facilities cannot be installed or improved under, or will not conflict with, other public programs such as those administered by the Corps of Engineers.

(5) Special treatment measures or equipment primarily, though not exclusively, for flood prevention such as:

(i) Facilities and equipment for fire prevention and control.

(ii) Tree planting and establishment of other vegetative cover for stabilizing critical runoff and sediment-producing areas.

(iii) Structural and vegetative measures to stabilize stream channels and gullies.

(iv) Basic farm conservation practices to control runoff, erosion, and sedimentation.

(6) Installing, repairing, and improving water storage facilities, including outlets for immediate and future domestic, municipal and industrial water supply and water quality management, and conveying water to treatment facilities or distribution systems. When payment of loans for such facilities are primarily dependent upon revenues from use of water stored the loan approval official must determine the adequacy of facility for use of the water before a loan is closed.

(7) Public water based recreation and fish and wildlife developer loans will only be made to public bodies for the local share of cost for such developments for which NRCS is providing technical or financial assistance from WS or RCD funds. Loans will not be

made for developments larger or more elaborate than that which is included in the WS or RCD plan. Loans may include funds for:

(i) Construction of necessary water resource improvements such as storage capacity in multipurpose and single purpose reservoirs, water level control structures in reservoirs and streams, and stream channel improvements necessary for the development of the facilities. This may include practices for improvement of fish and wildlife habitat and environment and related areas and facilities for proper protection and management of the development.

(ii) Essential developments, improvements, equipment and facilities for access, public health and safety, and efficient operation management and maintenance; such as energy utilities, water supply and waste disposal systems, maintenance buildings, fences, cattle guards, roads and trails, parking, picnicking, camping, beaches, playgrounds, and related shelters and equipment.

(iii) Special areas and structures such as forest and other vegetative cover, marshes, pits, shelters and fish ladders to provide protected natural spawning, breeding, nesting, and feeding for fish and wildlife.

(8) *Soil and water management for agriculture-related pollutant control.* Measures to reduce agriculture-related pollutants that adversely affect the community and the general public. Measures may include, but are not limited to, holding ponds, debris basins, diversions, terraces, and community distribution systems.

(9) Acquiring fee simple title to lands or perpetual easements, or rights-of-way for sites for works of improvement or project measures and related costs for removal, relocation, or replacement of existing improvements including relocation payments for displaced persons, business enterprises and facilities, and other related purposes. Funds for land acquisition will be limited to costs necessary for WS works of improvement or RCD measures. Final construction plans will indicate minimum essential lands and rights-of-way to be acquired. In some cases, sponsoring local organizations may need to acquire lands in excess of actual needs

when it is expedient for planned development. If the Rural Development State Director determines that the acquisition of excess land is necessary or expedient for the orderly development of a WS works of improvement, or RCD measure, he may authorize the action subject to the following conditions:

(i) The applicant must agree to sell excess land as soon as practicable and apply the proceeds, together with any income from excess land, on the debt to RUS.

(ii) The applicant must furnish legal evidence of authority to acquire additional land and dispose of it as agreed.

(iii) Evidence must be provided to justify acquisition of additional land.

(iv) Easements for land or water resource protection structures must be perpetual and must not include clauses that terminate the easement with the dissolution or abandonment of the applicant organization. Loan funds will not be used for an easement that deviates in any way from that provided in the standard NRCS form unless modifications of it are approved by both NRCS and RUS.

(10) Acquisition of water supply or water right by purchase or by appropriation under local, State, and Federal laws. The loan may include funds for the purchase of land on which the water supply or water right is presently being used when:

(i) The water supply or water right cannot be purchased without the land; and

(ii) The value of the land is not the major portion of the cost; and

(iii) Any excess land thus acquired will be sold as soon as possible and the proceeds applied on the loan.

(11) Purchase of equipment and machinery necessary for development and operation of planned WS works of improvement or RCD measures or projects including:

(i) *Special-purpose equipment.* Purchase or rent special-purpose equipment to install or maintain any community facility in categories in paragraph (a)(11) of this section or to establish on farms soil and water conservation measures such as terraces, ponds, land leveling for irrigation or drainage, subsoiling, seeding, tree planting, and

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removal of brush, scattered trees, and stumps, provided:

(A) Such equipment is not otherwise available when needed.

(B) There is sufficient need and local demand to justify ownership or rental.

(C) Rates to be charged include, among other things, an allowance for depreciation, obsolescence, and replacement based upon the recommendations of the equipment manufacturer or the experience of contractors engaged in providing services for similar types of work.

(ii) *Forestry equipment and services.* Purchase or rent basic special-purpose equipment, facilities, certain land or land rights, and supplies needed for furnishing services for the establishment, improvement, protection, and harvesting of timber (not processing) suitable for lumber, pulp, poles or posts; providing that the forest program and forest practices benefiting from such services are in accordance with approved conservation practices for the development, use, and control of water resources on farms and in forests. Special-purpose equipment may include such items as tractors, bull dozers, plows, planters, trucks, loaders, fire-fighting equipment, and sprayers. Facilities may include such items as ponds and reservoirs, pipelines, buildings for storage of equipment and supplies, nurseries, access roads, fire lanes, and lookout towers. Supplies may include such things as seed, seedlings, fertilizers, fencing, and pesticides. Land or land-rights acquisition will be limited to that necessary for sites for facilities listed above which are directly related to the forestry program. Loans for these purposes may be made only when the equipment, supplies, and facilities to be provided:

(A) Are not readily available when needed.

(B) Will be justified by local need and demand.

(C) Will be available to users at rates sufficient to cover loan amortization, obsolescence, replacement, operation, and cost of supplies.

(D) Will more efficiently serve the group through cooperative effort.

(12) Refinancing debt obligations of the sponsoring local organization that were incurred before application for a

WS or RCD loan when that is not the primary purpose of the loan and:

(i) The debt being refinanced was for works of improvement or measures for which loan funds could be used; and

(ii) The debt is a valid obligation of the sponsor; and

(iii) Creditors will not modify payment terms on existing debts, and the organization cannot pay existing debts and a loan from RUS over the same period of time; and

(iv) Long-term debts will not be refinanced unless necessary to provide a sound basis for the loan or WS advance and concurrence is obtained from the National Office.

(13) If repayment is based on revenues, loan funds (not WS advances) can be used for payment of interest installments until the facility is generating enough revenue to make accrued interest payments. Loan funds for interest payments will not exceed the estimated amount that will accrue to the end of the third full calendar year after loan closing without prior approval from the National Office.

(14) Relocation payment to displaced persons, businesses, and farm operations and for relocation assistance advisory services in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646, 84 Stat. 1894), the Regulations issued by the Secretary of Agriculture under the Act (7 CFR part 21), and the Memorandum of Understanding Between NRCS and RUS.

(15) Services of engineers, architects, attorneys, auditors, construction foremen, managers, clerks, and others for organizing, planning, surveying, supervising, analyzing, developing, operating, managing, and accounting for activities related to loan processing and closing and development for which the loan is made.

(16) Buildings, fences, roads, utilities, facilities, and relocation:

(i) To construct buildings of modest design essential for the operation and maintenance of the works of improvement or measure.

(ii) To provide support facilities and utilities such as gas, electricity, water, sewer, and waste disposal.

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(iii) To build or relocate roads, bridges, utilities, fences, and other improvements when necessary to acquire rights-of-ways or to construct or operate the facility.

(17) Services and fees. To pay costs for services for any purposes listed under this section such as:

(i) Fees or other legal expenses for establishing a water right through appropriation, agreement, permit, or court decree.

(ii) Purchase of water stock or membership in an incorporated water users' association to acquire a water supply.

(iii) Costs of labor, technical or professional services, and fees to be incurred in obtaining the loan and in planning and completing the facilities or services to be financed with loan funds.

(iv) Services such as those listed in paragraph (a)(16) of this section.

(b) *RCD loans*. Purposes for which RCD loans may be made in addition to those included in paragraph (a) of this section are:

(1) *Solid waste management*. Lands, equipment and facilities to collect, transport, and dispose of solid waste in sanitary landfills for which NRCS is providing technical assistance.

(2) *Shifts-in-land use*. Lands for uses such as grazing, forestry, wildlife, natural areas and parks, greenbelts, and other open spaces.

(3) *Purchase existing facilities*. Purchase existing facilities for shift-in-land use, soil and water development, conservation, control and use when it is determined that purchase is necessary to provide efficient service through a facility owned and operated by a public agency (or a nonprofit corporation in a rural area), or the owner is either unwilling or unable to make improvements, enlargement, or extensions needed to provide significant additional or improved service for present users or for a new group of users at reasonable rates.

(c) *NRCS watershed advances*. NRCS watershed advances are loans that may be made from NRCS construction funds for the following purposes included in a watershed work plan agreement:

(1) To pay construction costs including cost of engineering and related services for increasing reservoir capac-

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ity (including intake and outlet structures) for a future water supply for municipal, domestic, industrial, or agricultural uses.

(2) To preserve sites for authorized watershed works of improvement by acquiring land, easements, and rights-of-ways or other property rights.

### § 1781.7 Loan and advance limitations and obligations incurred before loan closing.

(a) *WS and RCD loan limitations*. (1) Loans will not be used for:

(i) Land treatment measures on individual farms except as provided in § 1781.6(a)(5)(iv).

(ii) Buildings and facilities to be used for lodging, dining or entertainment purposes.

(iii) Building industrial parks or constructing facilities in them, or establishing private industrial or commercial enterprises, or purchasing land to be used primarily for industrial purposes.

(iv) Paying costs allocated to structural measures for flood prevention.

(v) Facilities for the production and harvesting of fish and wildlife such as hatcheries, rearing ponds, and related facilities other than those under natural conditions.

(vi) Facilities primary for treatment and distribution of water or for sewerage, collection and treatment for domestic or industrial use or for municipal or community systems.

(vii) Electric generating, transmission, and distribution facilities, except when provided as part of the minimum basic facilities for recreation and fish and wildlife developments authorized in § 1781.6(a)(7).

(viii) Storm and sanitary sewers and solid waste disposal facilities other than authorized in § 1781.6(b)(1).

(ix) Payment for a tract of land, easements, or rights-of-ways on which NRCS will share the cost if the amount to be paid with loan funds exceeds the difference between the NRCS share and the value on which the NRCS share is based.

(x) Purchasing tracts of land primarily for later resale to private developers or individuals for agricultural or nonagricultural use.