

May 2005

## FACT SHEET 3

### HOW TO BECOME SUBJECT TO THE DISCRETIONARY PROVISIONS

Reclamation Reform Act of 1982 (RRA)

Included in the RRA is a specific group of provisions commonly known as the **discretionary provisions** (specifically RRA sections 203 through 208, except for section 203[b]). Districts and water users (landholders) **did not** automatically become subject to the discretionary provisions upon passage of the RRA. Instead, districts and landholders (direct or indirect landowners or lessees) must take specific actions in order for the discretionary provisions to apply. Landholders subject to the discretionary provisions are either qualified or limited recipients. Landholders not subject to the discretionary provisions are prior law recipients.

This Fact Sheet explains how to become subject to the discretionary provisions. If you represent a trust, estate, public entity, or foreign entity, or you are a nonresident alien, please see the section that begins on page 3 of this Fact Sheet.

#### SOME HIGHLIGHTS ASSOCIATED WITH THE DISCRETIONARY PROVISIONS

Generally, landholders subject to the discretionary provisions have higher ownership and nonfull-cost entitlements than landholders who remain subject to prior reclamation law. Landholders subject to the discretionary provisions must also pay at least the full operation and maintenance cost for all irrigation water deliveries from Bureau of Reclamation (Reclamation) projects.

Landholders subject to the discretionary provisions **cannot** revert to prior law status. When a landholder becomes subject to the discretionary provisions, all land in Reclamation projects **directly or indirectly owned or leased** by that landholder also becomes subject to the discretionary provisions. In other words, an individual or entity cannot be subject to the discretionary provisions in one district and subject to prior reclamation law in another district.

#### ACTIONS THAT MAY BE TAKEN BY DISTRICTS

A district that wants to become subject to the discretionary provisions may do so by submitting to Reclamation a written request to amend its contract for this purpose, accompanied by a resolution adopted by the district's board of directors. In addition, any district that executes a **new** contract or **renews** a contract with the United States, or **amends** its existing contract to provide **additional or supplemental benefits**, automatically becomes subject to the discretionary provisions.

As a result of any of these contract actions, all individuals and entities who **directly own or lease** irrigable or irrigation land within the district become subject to the discretionary provisions, except for nonresident aliens or legal entities not established under State or Federal law (foreign entities). Landholders who only **indirectly** own or lease irrigable or irrigation land within the district (stockholders, part owners, beneficiaries, etc.) are not forced to conform to the discretionary provisions because of the district's actions. For example, if a legal entity (such as a partnership, tenancy-in-common, joint tenancy, corporation, etc.) directly owns or leases land in a district that has amended its contract to conform to the discretionary provisions, the entity itself will be subject

to the discretionary provisions. But none of the part owners of the entity will be subject to the discretionary provisions unless they (1) make an **irrevocable election** or submit a certification form as explained within "ACTIONS THAT MAY BE TAKEN BY INDIVIDUALS AND ENTITIES" that follows, or (2) **directly** own or lease land in this district or another district that is subject to the discretionary provisions.

### **ACTIONS THAT MAY BE TAKEN BY INDIVIDUALS AND ENTITIES**

If a district chooses to remain under prior law, individuals or entities that hold land in the district may conform to the discretionary provisions by filing an **irrevocable election**. Once an irrevocable election is filed with and approved by Reclamation, it is **permanently binding** and all land held westwide by the individual or entity, either currently or in the future, will be subject to the discretionary provisions. However, an irrevocable election is not binding on any subsequent landholder of the land. In other words, the election follows the elector, not the land.

An irrevocable election binds only the elector. An **irrevocable election** by a legal entity does not make the entity's stockholders, part owners, or beneficiaries subject to the discretionary provisions. Similarly, an **irrevocable election** by a stockholder, part owner, or beneficiary does not make the entity subject to the discretionary provisions. If an entity makes an **irrevocable election** and a stockholder, part owner, or beneficiary would also like to become subject to the discretionary provisions, that part owner **must also** make an irrevocable election.

Landholders who want to make an irrevocable election should submit their completed irrevocable election (notarized, except for corporations), the appropriate certification form(s), and any additional required documents to their district. The district will submit the materials to Reclamation for review and approval. Copies of the election and the certification form(s) are to be submitted concurrently to **ALL** districts in which the landholder holds nonexempt land (irrigation land or irrigable land that is subject to the acreage limitation provisions). Upon completion of its review, Reclamation will advise the landholder and the district(s), in writing, of the approval or disapproval of the election. Irrevocable elections filed by or on behalf of prior law corporations must be accompanied by a corporate resolution in addition to the appropriate certification form(s).

A single family or surviving spouse who wishes to make an election, both on their own behalf and that of their wholly-owned entities, **must** identify such entities by both type and name on the individual's irrevocable election. All appropriate signatures and documentation (including a corporate resolution if the entity is a corporation) must accompany the submitted election. Any wholly-owned entities (including partnerships, tenancies, corporations, etc.) not identified on the election **will remain subject to prior law** until an irrevocable election is submitted by the entity on its own behalf.

If a married couple makes an irrevocable election and then divorces, a new spouse of the divorced husband or divorced wife will be subject to the discretionary provisions because an irrevocable election follows the elector, not the land. In other words, a spouse that **has never** made an irrevocable election (either personally or as part of another marriage) will become subject to the discretionary provisions by marrying someone that **has** made an irrevocable election (either personally or as part of another marriage).

If an entity, other than a foreign entity, is subject to the discretionary provisions because it directly holds land in a district subject to the discretionary provisions, any part owners of the entity (other than nonresident aliens or foreign entities) that are subject to prior law will

become subject to the discretionary provisions if they submit a **CERTIFICATION** (blue) form to the district. In such cases, the submittal of a certification form is treated in the same manner as an irrevocable election. If the part owners wish to remain subject to prior law and are required to submit RRA forms, they must submit a **REPORTING** (brown) form to the district.

### **ACTIONS THAT MAY BE TAKEN BY DISTRICTS THAT ARE LANDHOLDERS**

A landholder that has a contract with Reclamation to receive Reclamation irrigation water (individual contractor) and wants to become subject to the discretionary provisions may do so by taking one of the two following actions:

1. Submitting to Reclamation a written request to amend its contract to become subject to the discretionary provisions, accompanied by a resolution to amend its contract for this purpose. As a result of this contract action, the individual contractor and all individuals and entities who directly lease irrigable or irrigation land from the individual contractor become subject to the discretionary provisions, except for nonresident aliens or foreign entities. Landholders who only indirectly own or lease irrigable or irrigation land from the individual contractor (stockholders, part owners, beneficiaries, etc. are not forced to conform to the discretionary provisions because of the individual contractor's actions. For example, if a legal entity (such as a partnership, tenancy-in-common, joint tenancy, corporation, etc.) directly leases land from an individual contractor that has amended its contract to conform to the discretionary provisions, the entity itself will be subject to the discretionary provisions. But none of the part owners of the entity will be subject to the discretionary provisions unless they (a) make an irrevocable election or submit a certification form as explained above within "ACTIONS THAT MAY BE TAKEN BY INDIVIDUALS AND ENTITIES," or (b) directly own or lease land in another district that is subject to the discretionary provisions.

**L** An individual contractor is able to obtain a Category 1 forms submittal threshold if the contractor amends its contract to become subject to the discretionary provisions and the individual contractor is current in its financial obligations to Reclamation.

2. Filing a completed irrevocable election (notarized, except for corporations), the appropriate certification forms(s), and any additional required documents to Reclamation for review and approval. Irrevocable elections filed by or on behalf of prior law corporations must be accompanied by a corporate resolution in addition to the appropriate certification forms. Upon completion of its review, Reclamation will advise the individual contractor, in writing, of the approval or disapproval of the election. The impacts of an individual contractor's irrevocable election are the same as explained above within "ACTIONS THAT MAY BE TAKEN BY INDIVIDUALS AND ENTITIES."

**L** An individual contractor that makes an irrevocable election has a Category 2 forms submittal threshold because the individual contractor has not conformed to the discretionary provisions by a contract action.

### **INFORMATION CONCERNING TRUSTS, ESTATES, PUBLIC ENTITIES, NONRESIDENT ALIENS, AND FOREIGN ENTITIES**

Trusts, estates, and public entities **do not** have acreage limitation entitlements. The amount of eligible land that may be held by trusts and estates is determined by the acreage limitation entitlements of the individuals or entities to which land is attributed. See **Fact Sheet 12** for more

information on trusts and estates. There is no limit on the amount of eligible land a public entity may hold as long as certain criteria and the RRA forms requirements are met. In addition, any public entity land that is leased to other landholders must be included as owned land by the lessee and be eligible to receive Reclamation irrigation water in the lessee's ownership entitlement. For more information on the application of acreage limitations to public entities, contact your district or the appropriate Reclamation office.

With regard to **nonresident aliens and foreign entities**, any land **directly** owned or leased in a discretionary provisions district is ineligible to receive Reclamation irrigation water under **any circumstances**. Thus, if a prior law district should conform to the discretionary provisions, any eligible land directly owned or leased by nonresident aliens and foreign entities becomes ineligible to receive Reclamation irrigation water unless that land is placed under recordable contract, the land is sold to an eligible buyer, or the nonresident alien or foreign entity becomes an indirect landholder of that land. A nonresident alien or foreign entity that **does not hold land directly** in a prior law district and who is a citizen of or established in, respectively, a country that meets the criteria specified in section 426.8(d) of the Acreage Limitation Rules and Regulations (43 CFR part 426) is eligible to make an irrevocable election using a special irrevocable election created for use by only nonresident aliens and foreign entities. For more information regarding the applicability of the acreage limitation provisions to nonresident aliens and foreign entities, including eligibility to make an irrevocable election, contact your district or the appropriate Reclamation office.

**NEED MORE INFORMATION?**

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For irrevocable election forms or additional information, contact your district or the appropriate Reclamation office. If you would like to know if a contract action would require your district to become subject to the discretionary provisions or even result in application of the acreage limitation provisions to your exempt district, contact the appropriate Reclamation office.

Also visit [www.usbr.gov/rra](http://www.usbr.gov/rra) for more information.

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Mission of the Bureau of Reclamation: To manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

The Department of the Interior has established a 24-hour toll-free telephone number (1-800-424-5081) for anyone wishing to report suspected violations of the Reclamation Reform Act of 1982 (RRA). Anyone reporting suspected violations will be protected under Federal privacy laws.

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