## FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: The RRA limits the amount of owned land on which a landholder can receive irrigation water and places a limit on the amount of leased land that can receive such water at a subsidized water rate. In order to ensure compliance with the ownership limitations and the limitations on subsidies, certain statutory and regulatory requirements must be met.

One of these requirements applies to all landholders whose landholdings in districts subject to the acreage limitation provisions total more than 40 acres. These landholders must complete RRA certification or reporting forms before receiving irrigation water. The forms must be completed annually and submitted to each district in which the landholder receives irrigation water. Landholders must disclose on the forms all the land they own and lease directly or indirectly in Reclamation projects that are subject to the acreage limitation provisions. The forms must be resubmitted whenever a landholding change occurs. If a landholding does not change, a verification form to that effect must be submitted each year.

While the RRA and the Acreage Limitation Rules and Regulations (43 CFR Part 426) set limits on the receipt of irrigation water and establish requirements that must be met in order to receive such water, the current rules do not address situations in which water has been delivered to landholders who failed to meet all the requirements and thus, were ineligible to receive the water. These situations were not addressed because the RRA does not contemplate such deliveries.

Districts, rather than Reclamation, generally control the deliveries of irrigation water to landholders. Under their contracts with the United States, districts are legally obligated not to deliver irrigation water to landholders who do not meet the eligibility requirements of the RRA.

With respect to the form requirements discussed previously, § 426.10(k) specifically states that failure by landholders to submit the required certification or reporting form(s) will result in loss of eligibility to receive irrigation water. However, during its water district reviews, Reclamation has found that in some instances, districts have delivered irrigation water to

landholders who had failed to meet the form requirements and other requirements of the law and rules.

İn 1988, Reclamation adopted a compensation policy whereby full-cost charges were assessed for irrigation water that had been delivered to ineligible landholders. This policy is based on the legal theory of conversion in that when irrigation water is delivered to ineligible recipients, it is an unlawful conversion of the Government's property interest in the water, and the Government is therefore entitled to be compensated for the conversion. Since Reclamation cannot recover the water that was delivered to the ineligible recipients, it has been Reclamation's position that it is entitled to recover the value of its property interest in that water and that the fullcost water rate prescribed in the RRA is an appropriate measure of the water's value.

In 1993, Reclamation decided to review certain agency policies, one of which was the full-cost compensation policy for RRA form violations. The Commissioner of Reclamation asked the Department of the Interior's Office of the Solicitor whether Reclamation is permitted to impose charges other than full-cost compensation charges for such violations. In a July 23, 1993, memorandum, the Associate Solicitor, Division of Energy and Resources, advised the Commissioner that several laws "\* \* \* authorize Reclamation to promulgate regulations necessary to carry out its mission, including those which would assess fees. This means that Reclamation may, by regulation, impose administrative fees or other charges designed to recover the costs it incurs for processing improperly submitted forms or for collecting forms from those who have not submitted them." The Associate Solicitor further concluded that "\* \* Reclamation has considerable discretion in determining how to calculate those costs, so long as the charges imposed bear a demonstrable relationship to the costs incurred by the agency and have the intended effect of improving compliance with the Act and achieving congressional objectives.

Based on the Associate Solicitor's conclusions, Reclamation decided to amend the Acreage Limitation Rules and Regulations by adding a provision to impose assessments to recover its administrative costs when landholders do not comply with the RRA form requirements. Reclamation notified the public of its intent in the **Federal Register** (see 58 FR 59427) Nov. 9, 1993, and published the proposed rule at 59 FR 33251, June 28, 1994.

## **Summary of Amendment to the Rules**

The amendment to the Acreage Limitation Rules and Regulations provides that Reclamation will assess a district for administrative costs when RRA forms are not submitted before receipt of irrigation water. The assessment will be applied on a yearly basis in each district for each landholder that failed to comply with the form requirements. A district will also be assessed for administrative costs when corrections to RRA forms are not provided within a 60-day grace period. The assessment will be applied on a yearly basis for each landholder for which corrected forms are not provided within the grace period. These assessments for administrative costs will replace the full-cost charges that Reclamation has assessed in the past for form violations under its compensation policy. The administrative cost assessments will not be subject to the underpayment interest component set forth in § 426.23.

The assessment for administrative costs shall be set periodically on the basis of the average costs associated with performing activities to address RRA form violations. The assessment reflects the average direct and indirect costs incurred Reclamation-wide for: (1) Communicating with district representatives or landholders to obtain missing or corrected forms, (2) assisting landholders in completing certification or reporting forms for the period of time they were not in compliance with the form requirements, (3) performing onsite visits to determine if irrigation water deliveries have been terminated to landholders that failed to submit the required forms, and (4) performing other activities necessary to address form violations. Initially the amount of the assessment will be \$260. The amount is based on a review of the costs Reclamation incurred in 1991, 1992, and 1993 performing activities to address RRA form violations. The assessment will be reviewed at least once every 5 years and, if needed, will be adjusted to reflect new cost data.

As with other assessments, districts will be held responsible for payment of the assessments because of their contractual obligation with the United States. Charges collected through the imposition of assessments for administrative costs will be credited to the general fund of the Treasury as miscellaneous receipts.

Payment of the assessments set forth in the proposed rule does not exempt districts and landholders from the form requirements of the RRA or Acreage Limitation Rules and Regulations.