

INDIAN AFFAIRS MANUAL

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1.1 Purpose. This chapter identifies the authorities and establishes the policies and responsibilities for building, operating, maintaining, and rehabilitating Indian Affairs' irrigation projects.

1.2 Policy. It is the policy of Indian Affairs to:

- A. Deliver** irrigation water to those authorized to be served by Indian irrigation projects;
- B. Provide** opportunities for water user participation in matters impacting irrigation project operations;
- C. Construct, operate, and maintain** irrigation projects in accordance with applicable technical and safety standards;
- D. Recover** the full cost of irrigation project construction and betterment, where not deferred, and the full cost of operations and maintenance, when required by law;
- E. Prepare** contingency plans for events or emergencies which might interrupt the delivery of irrigation water;
- F. Ensure** that users make beneficial use of irrigation water; and
- G. Ensure** irrigation project requirements are considered in river basin management decisions.

1.3 Authority.

A. Statutes. These statutes apply to most Indian irrigation projects. Statutes which relate to specific projects are identified in Project Operating Instructions.

(1) Title 25 U.S.C. § 13, Snyder Act, provides authority "...for extension, improvement, operation, and maintenance of existing Indian irrigation systems and for development of water supplies;"

(2) Title 25 U.S.C. Chapter 11, Irrigation of Allotted Lands;

(3) Act of March 7, 1928 (45 Stat. 200, 210) provides for assessments to recover costs and creates a first lien against lands charged with unpaid irrigation construction costs;

(4) Missouri River Basin authorization (55 Stat. 887, 891) excludes Indian fee lands from construction debt deferral; and

(5) Fiscal Year 1984 Department of the Interior and Related Agencies Appropriation Act (P.L. 98-146, dated November 4, 1983) authorizes the investment of operating revenues.

B. Judicial Decrees. These decisions apply to all Indian irrigation projects. Decisions which relate to specific projects are identified in Project Operating Instructions.

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(1) Winters v. United States, Court Judgment entered in 1908 (Winters Doctrine) which determined that rights to water to fulfill the purposes of a reservation were implicitly reserved when reservation lands were withdrawn from the public domain;

(2) Arizona v. California, Court Judgment entered in 1963 which quantified water rights for reservation lands using practicably irrigable acreage; and

(3) Scholder's Decision, Court Judgment in Civil Case 68-224-S, entered July 6, 1973, which clarified construction repayment requirements.

C. Regulations. These regulations apply to most Indian irrigation projects. Regulations which relate to specific projects are identified in Project Operating Instructions.

- Projects;
- (1) 4 CFR Chapter 2, Federal Claims Collection Standards;
 - (2) 25 CFR Part 134, Partial Payment Construction Charges on Indian Irrigation Projects;
 - (3) 25 CFR Part 159, Sale of Irrigable Lands, Special Water Contract Requirements;
 - (4) 25 CFR Part 160, Inclusion of Liens In All Patents and Instruments Executed;
 - (5) 25 CFR Part 171, Operation and Maintenance; and
 - (6) 25 CFR Part 173, Concessions, Permits and Leases on Lands Withdrawn or Acquired in Connection With Indian Irrigation Projects.

1.4 Guidance. This guidance applies to most Indian irrigation projects. Other guidance which relates to specific projects is identified in Project Operating Instructions.

A. Solicitor's Opinion M30133, issued April 13, 1939, clarifying deferral of construction repayment debt on Indian trust lands;

B. Handbooks. The following handbooks apply to project operations until specific Project Operating Instructions have been promulgated. These handbooks are available from the Irrigation and Power Liaison and Compliance Section, Western Bank Plaza, 500 Marquette NW, Room 1710, Albuquerque, NM 87102; (505) 248-5015.

- (1) Land Classification for Irrigation Projects;
- (2) Operation and Maintenance of Irrigation and Power Utilities;
- (3) Irrigation Construction;
- (4) National Irrigation Information Management System (NIIMS); and
- (5) Irrigation Debt.

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C. Project Operating Instructions. As Operating Instructions are developed for each project, they will have precedence over the handbooks listed in 1.4B of this chapter and will be available from the cognizant Agency Superintendent, Irrigation Engineer, or Officer-in-Charge.

1.5 Responsibilities.

A. Assistant Secretary-Indian Affairs.

- (1) Approves Public Notices of rate setting;
- (2) Coordinates with Bureau of Reclamation to ensure fair representation for irrigable Indian land which is included in irrigation projects undertaken under the Reclamation Act;
- (3) Concurs on cancellation of reimbursable irrigation charges in an equitable and just manner and submits reports of such adjustments or eliminations to Congress which may act favorably or unfavorably on the action; and
- (4) Concurs on the proposed elimination of non-irrigable lands included within an irrigation project boundaries from the benefits and responsibilities of inclusion in the project and refers such eliminations to Congress for approval.

B. Commissioner or Deputy Commissioner of Indian Affairs.

- (1) Concurs on Public Notices of rate setting; and
- (2) Concurs on debt cancellation and land redesignation proposals for irrigation projects.

C. Director, Office of Trust Responsibilities.

- (1) Defines and implements policies, standards and procedures for management of Indian irrigation projects;
- (2) Approves Funding Documents to projects; and
- (3) Concurs on land redesignation proposals.

D. Chief, Division of Water and Land Resources

- (1) Coordinates Indian Affairs' irrigation management program and reviews activities;
- (2) Serves as liaison with other federal, state, local and tribal governments regarding irrigation management; and
- (3) Provides technical assistance and training for Indian Affairs' personnel on irrigation construction; operation and maintenance; and requirements imposed by statutes, regulations, judicial decrees, and policies.

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E. Chief, Irrigation and Power Liaison and Compliance Section.

- (1) Maintains and operates the National Irrigation Information Management System (NIIMS) database;
- (2) Issues bills to water users for irrigation assessments, and follows up with demand letters, as necessary;
- (3) Coordinates the investment of irrigation revenues with the Division of Accounting Management and the Office of Trust Funds Management (OTFM);
- (4) Initiates, in conference with OTFM, the action to purchase or redeem long-term securities;
- (5) Reviews debt referral packages before submitting to Department of Treasury;
- (6) Prepares Funding Documents for approval by the Office of Trust Responsibilities based on a review of revenue collected, interest earned, and expenditures at each project; and
- (7) Serves as liaison between individual projects and the Regional Offices, the Division of Accounting Management, and the Office of Trust Responsibilities.

F. Regional Directors.

- (1) Advise the Commissioner or Deputy Commissioner of issues affecting irrigation projects within the Region;
- (2) Evaluate and determine adequacy of project operations;
- (3) Recommend annual operation and maintenance assessment rates;
- (4) Designate an Officer-in-Charge to manage each irrigation project; and
- (5) Refer debt cancellation and land redesignation proposals to Assistant Secretary - Indian Affairs after determining that proposals are equitable and just.

G. Regional Irrigation Engineers.

- (1) Coordinate irrigation management activities in the Region;
- (2) Provide technical leadership, advice, and assistance to irrigation projects within the Region;
- (3) Train irrigation staff and distribute data and information applicable to irrigation project management;
- (4) Provide engineering or administrative support for any irrigation action under the Regional Director's supervision for which operating support is required; and

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(5) Provide technical assistance in developing and maintaining Project Operating Instructions.

H. Officers-in-Charge.

- (1) Provide operation and maintenance (O & M) of Indian irrigation projects;
- (2) Evaluate adequacy of O & M program; anticipate evolving conditions and take action to ensure continued, successful project operations;
- (3) Develop and maintain the Project Operating Instructions;
- (4) Compile and maintain project monitoring reports, including surveys, crop production data, and tests of soil conditions, water tables, and water logging;
- (5) Train project staff in project operations and other applicable federal requirements;
- (6) Set schedule for irrigation season;
- (7) Determine availability of stock water;
- (8) Decide whether to construct more than one turn-out for a farm unit and manage project delivery point;
- (9) Manage excess water supplies, where authorized by law or regulation;
- (10) Receive requests for water delivery and maintain the record of water delivery;
- (11) Decide construction requirements and features to be provided for private use where justified by contract agreement; authorize transfer of property to private party where authorized by regulation;
- (12) Provide leaching water;
- (13) Deposit collections promptly to maximize earnings;
- (14) Maintain record of payment for irrigation assessments and prepare debt referral packages for Department of Treasury;
- (15) Prepare and justify debt cancellation proposals and submit to Regional Director;
- (16) Convene Land Designation Committee, as required, to determine irrigable status of lands included within the irrigation project; document and justify proposed changes and submit package to Regional Director;
- (17) Meet regularly with water users to discuss proposed O&M assessment rates, water apportionments, and general operation and maintenance of the project; and
- (18) Recommend to the Regional Director the annual O&M assessment rates.

I. Chief, Division of Accounting Management.

(1) Invests funds received from payment of operation and maintenance assessments until the proceeds are needed for project operation; and

(2) Apportions interest earnings to individual irrigation projects based on cash balances at the projects and records the distribution.

1.6 Project Lands.

A Designation of Project Lands. Before an irrigation project is authorized by Congress, the specific parcels of land to be included in the project are identified in surveys, agricultural evaluation reports and environmental evaluations. After construction, a land designation committee is convened to officially designate those lands within the project boundaries, and the public is notified. Lands so designated receive all the benefits of the project, including increased land value, and landowners are subject to all the responsibilities for project inclusion including repayment of construction debt and O&M assessments.

B. Redesignation of Project Lands.

(1) Temporary Redesignation. Under the land redesignation process, land may be temporarily withdrawn from inclusion in a project based on soil or drainage conditions, topography, land preparation requirements, or engineering considerations such as the inability of the project to deliver water. Such lands are designated as temporarily non-assessable (TNA). In no case may lands be determined to be TNA based solely on the inability of a landowner to pay the assessment.

(2) Permanent Redesignation. Redesignation of fee land within project boundaries as permanently non-assessable (PNA) must be approved by Congress. For lands to be permanently withdrawn from the project, full repayment of the owner's share of the construction debt and payment of all O&M debt is required unless such debt has otherwise been forgiven.

1.7 Collection of Construction Debt. Authorizing legislation requires some projects to recover the costs for construction from water beneficiaries.

A Projects. The following irrigation projects require recovery of construction costs:

- (1) Blackfeet Irrigation Project;
- (2) Colorado River Irrigation Project;
- (3) Crow Irrigation Project;
- (4) Duck Valley Irrigation Project;
- (5) Flathead Irrigation Project;
- (6) Fort Belknap Irrigation Project;
- (7) Fort Hall Irrigation Project;
- (8) Fort Peck Irrigation Project;
- (9) Fort Yuma Irrigation Project;
- (10) Pima Irrigation Project;
- (11) Pine River Irrigation Project;

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- (12) Pyramid Lake Irrigation Project;
- (13) Salt River Irrigation Project;
- (14) San Carlos-Coolidge Irrigation Project;
- (15) Uintah and Ouray Irrigation Project;
- (16) Walker River Irrigation Project;
- (17) Wapato Irrigation Project; and
- (18) Wind River Irrigation Project.

B. Agreements to Repay. Water users for projects subject to cost recovery must enter into contractual agreement with the Federal government to repay project costs. To recover construction debt, each project must amortize the cost of construction over the life of the project as defined in the enabling legislation.

C. Billing. Water users are billed for the annual installment in compliance with 4 CFR and federal debt management instructions.

D. Trust Lands. The Leavitt Act, 25 U.S.C. § 386a, provides that repayment of irrigation construction debt for lands in trust status is deferred until the land passes to fee status.

1.8 Other Projects. Indian irrigation systems which were constructed under Snyder Act authority are not cost recoverable and thus are not required to follow this rigorous land designation process.

1.9 Operation and Maintenance (O&M) Assessments.

A. Full Cost. Calculation of full cost of project operation and maintenance includes: current operating expenses, replenishment of operating reserves and emergency funds, and creation of a sinking fund for future and current equipment and facilities replacement.

B. Assessments. Assessments to recover the full cost are billed annually to water users in compliance with 4 CFR and federal debt management instructions.

C. Delivery of Water. Assessments must be paid prior to delivery of water unless an exception is granted under the circumstances specified in 25 CFR 171.17.

1.10 Referral of Delinquent Debts to U.S. Treasury Department. Delinquent irrigation debts are referred to Treasury in accordance with the "Irrigation Debt Handbook" and federal debt management instructions.

1.11 Cancellation of Irrigation Debt.

A. Legislative Cancellation of Debt.

(1) **Land Held in Trust Status.** The Secretary may adjust or eliminate debts against individual Indians or Indian tribes in such a way as shall be "equitable and just in consideration of all the circumstances under which such charges were made." The Leavitt Act, 25 U.S.C. § 386a,

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requires the Secretary of the Department of the Interior to report proposals for debt cancellation for Indian irrigation projects to Congress. Congress has 90 days to consider a proposal. If Congress takes no action, the proposal becomes effective.

(2) Land Held in Fee Status. The Secretary may adjust, defer, or cancel irrigation debt in whole or in part if he determines owners are unable to pay irrigation charges because of inability to operate such lands profitably by reason of lack of fertility of the soil, inadequacy of water supply, defects of irrigation works, or for any other causes. The White-Leavitt Act, 25 U.S.C. § 389 requires the Secretary to report proposals for these debt cancellations for Indian irrigation projects to Congress, and Congressional approval is required for the cancellations to become effective.

B. Administrative Termination of Collection Activities or Compromise of Debt.

Collection activities may be terminated under 4 CFR based on: inability to collect any substantial amount, inability to locate debtor, cost of collection exceeds recovery, the statute of limitations has run, a claim which is legally without merit, or a claim which cannot be substantiated by evidence.

1.12 National Irrigation Information Management System (NIIMS). Billing and collection for irrigation debt are supported by the NIIMS data base. NIIMS maintains records of lands subject to cost recovery for each irrigation project. Based on land records, NIIMS generates bills for construction repayment and O&M assessments. Bills for excess water sales are also generated by NIIMS. NIIMS interfaces all billing and collection records with the Federal Financial System (FFS) and maintains records of delinquent debts for referral to Treasury.