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Acreage Limitation; Proposed Rules
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Bureau of Reclamation

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How much subsidy is enough?

Central to the concept of Federal support for reclamation and the expansion of irrigated farming in the West has been the the notion that there must be limits to the amount of Federal subsidy that accrues to any one landowner or farm operator. The original law limited that subsidy to an amount of Federally provided water needed to irrigate 160 acres of land owned by a farmer who resided on or in the immediate proximity of the farm.

Under the provisions of the 1982 Reclamation Reform Act the amount of this Federal subsidy has been expanded most generously to an amount of water needed to irrigate as much as 960 acres of owned land. The actual value of this subsidy has been placed at \$171.02 per acre in a sworn statement by James Markusen, who is Secretary-Manager of the Westside Water District. Based on the 960 acre limit, the subsidy amounts to \$164,179.20 per year.

Over the 40 year schedule of existing contracts this amounts to \$6,567,168 per owner. It is nothing short of incredible that those who benefit from such generous Federal largesse should argue that this subsidy is not enough, that they want even more.

Even on the more modest 160 acres of leased acreage under discussion today the Federal subsidy amounts to \$27,363.20 per year. Over the 40 year schedule of existing contracts this 160 acre parcel receiving Federal water would benefit from a total intended subsidy of \$1,094,528.

Who has benefited from the Federal water subsidy?

We have determined the size distribution of farms with at least some portion of their operations in one or more of ten water or irrigation districts in California. The ten districts we have chosen for study are listed below, together with the amount of irrigable land in each that is eligible to receive Federal water.

Table I

Water/Irrigation Districts Examined Amount of Land Eligible to Receive Federal Water

District	Amount of Land
Arvin-Edison W. S. D. Delano-Earlimart I. D. Feather W. D. Glenn-Colusa I. D. Kern-Tulare W. D. Lower Tule River I. D. Orland-Artois W. D. Reclamation District No. 108 San Luis W. D. Westlands W. D.	53,532 acres 54,716 7,644 157,984 26,303 99,775 31,269 57,460 59,697 527,917
Total	1,076,297 acres

The districts selected for intensive study represent a range of size, cropping pattern and geographic location within California's diverse agricultural system. We have identified all businesses conducting farming operations within these ten districts. For each such farm business we have determined the amount of land eligible for Project water located within District boundaries as well as the total land being farmed by each on a state-wide basis. The principal data sources have included water district records (for Arvin-Edison and Westlands), USDA records maintained by County ASCS offices, applications for permits to apply restricted use materials filed by farm operators with County Agricultural Commissioners, and copies of Financing Statements filed under the Uniform Commercial Code of the State of California. Table II shows the size distribution of farms eligible for Project water in the ten districts.

Table II

Farm Size Distribution, Land Eligible for Project Water
Ten California Districts, 1985

<u>Size Class</u>	Number	Total Land
80 acres or less 81-160 acres 161-320 321-640 641-960 961-1280 1281-2560 2561-5120 5,121 acres or more	534 284 317 282 145 64 94 44 27	20,632 37,042 77,924 133,047 117,207 70,611 167,971 153,539 241,900
Total	1,791	1,019,873

Those farms with more than 960 acres of land eligible for Project water comprise 229 of the 1,791 farms. However, they farm 634,021 acres of the total of 1,019,873 acres eligible for Project water in the ten districts. Thus, at least 62.57% of land eligible for Project water is in farms exceeding 960 acres. By considering land farmed by these businesses outside of the ten districts of our sample, their statewide holding of irrigated crop land is found to be 1,877,286 acres, or 1,048 acres per farm.

The average California irrigated farm has a holding of 145 2 acres of irrigated land. This means that farms receiving the Federal water subsidy are, on average, 7.2 times larger than the average California irrigated farm. Clearly, the Federal water subsidy, whether by design or otherwise, has preferentially benefited the state's largest farm businesses.

Tenancies in common are single units

One of the most important positive elements of the proposed regulations is the recognition that tenancies in common, partnerships, joint ventures and other mechanisms for collective

ownership or holding of real property reflect an essential unity of common property interest. Thus, in limiting eligibility for Federal water subisidies to holdings of 960 acres irrespective of the number of joint holders involved (up to 25 such holders) the proposed regulations bring reclamation law into full accord with well established understandings in the commercial real estate business.

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With respect to title to property, it has been long established that any right to the use of property can only be granted by unanimous action of all of the joint owners. Whether lease, easement or sale, all owners must act in unison. Standard real estate reference manuals support the notion that a single "ownership unit" is the only appropriate concept regarding rights to property for tenancies in common.

"There is a unity of possession in tenancy in common, meaning each owner has a right to possession and none can exclude the other nor claim any specific portion for himself or herself alone." (3)

The inability of a single owner, in such a case, to claim any portion of the property for exclusive possession means that an artificial division of such jointly held property for the purpose of establishing qualification for Federal water subsidies is most irregular and contrary to established real estate practice.

Similarly, in the case of general partnerships (and joint ventures), each of the partners has full and unidivided liability for actions of the partnership. Moreover, a single one of the partners can only act on behalf of the others if granted power of attorney by them. Hence, as in the case of property held by a tenancy in common, no single partner has exclusive claim to

any of the property rights of the partnership.

Only by rigidly insisting that landholdings held in such joint arrangements be subject to the 960 acre limitation, no matter how many persons are involved and regardless of their personal relationships, can Reclamation Law adhere to established practice in the business community. Those who insist on artificial division of property rights are, in my view, merely seeking to evade the intent of Reclamation Law. They would, of course, oppose such artificial divisions with respect to all of their rights established under existing property law.

Paper farms are being established to evade Reclamation Law.

The regulations appear to be quite clear about the hiring of farm management businesses. Less clear is the treatment of multiple entities who share some, but not all, principals. For example, a person with shared ownership in two or more landholding entities that are not legally affiliated would appear to be able to separately qualify each entitity as a "qualified recipient." More subtle arrangements, such as business associates or family members establishing seemingly unrelated entities for the purpose of qualification for Project water, also seem possible.

We have found evidence that a number of the largest farms have already created a network of "paper farms" with the effect of avoiding compliance with Reclamation Law.

A specific example of this kind of corporate trick will serve best to illustrate what is going on. Figure 1 shows the land currently farmed by seven discrete business entities in the Westlands Water District. The land is located in T14SR13E (Mt.

Diablo B & M) in western Fresno County. The names of these seven farm entities and the amount of irrigated cropland farmed by each is shown in Table III.

Table III

Name	ASCS Farm No.	Cropland
Tony & Ann Costa Larry J Enos Cindy Pruett Trust Gregory Pruett Trust Kelley Pruett Trust Stacy Pruett Trust Louis B Souza	Fresno 81 & 338 Fresno 79 Fresno 78 Fresno 80 Fresno 82 Fresno 84 Fresno 83	1006 589 945 902 956 966 915

Source: Fresno Co ASCS Office of USDA. Farm number shown is the "new" farm number as maintained in that office's computer file.

Each of these separate "farms" reports the identical address to USDA and six have made an irrevocable election, as a land-holder, to be subject to the pricing provisions of the RRA. It is important to note that five of these entities are smaller than 960 acres so that of the total of 6,279 acres being farmed just 63 acres are subject to full cost pricing. The balance of the land is subject to 0 & M charges as well as the base rate.

A search of records at the Westlands Water District shows that each of these seven entities is a "separate" water user but, curiously, all seven report the same address, telephone number and name of contact person. A telephone call to that number produced the response from the person answering "Hello, Vaquero Farms." What is interesting about this response is that Vaquero Farms, Inc, a California corporation, reports farming land, all included in the seven entities above, just prior to the passage of the RRA. Corporate records reveal that Ann P. Costa and Louis B. Souza are sister and brother, and that they,

the trusts named above, and Larry J. Enos are the sole individual stockholders of Vaquero Farms.7 Futher examination of these records show that Ann P. Costa or Louis B. Souza are each sole 8 trustee of one or more of the above named trusts. It can hardly be an accident that the seven "separate" farms listed above were formed subsequent to the passage of the RRA and that, with two exceptions, each have landholdings less than 960 acres. This suggests that rather than being seven independent farms they form, in fact, a single farming unit.

Their banker, Wells Fargo Bank, an institution not easily fooled, has provided operating loans to the various entities in a manner that undoubtedly reflects the true situation. Copies of the Financing Statements filed under the Uniform Commercial Code of the State of California for these entities are presented as Figures 2 - 8. A typical one reads "Debtor - Vaquero Farms, Inc." and "Additional Debtor - Gregory Robert Pruett Trust."

The fact that Vaquero Farms, perhaps as farm manager, actually conducts farming operations on the "paper farms" created in response to the passage of the RRA is in no way hidden from the view of the bankers.

Finally, the directors and officers of Vaquero Farms, Inc., are Louis B. Souza, President, Larry J. Enos, Vice-President, Tony L. Costa, Vice-President, Ann P. Costa, Chief Financial Officer, and James W. Hannum (who is trustee of the Josephine 10 P. Souza Trust).

Not only do the seven farms listed in Table III above reap the benefits of the Federal Water subsidy, but a search of the payment records for the 1985 USDA Deficiency and Diversion Crop programs discloses that each of the "farms" received a payment 11 of \$50,000 from the Federal government. Thus, the entities created in reponse to the RRA also qualified for a total cash payment of \$350,000 under the 1985 Federal farm program. The real skill of Vaquero Farms may be its ability to "farm" Federal water and agricultural programs.

A second example of this type demonstrates that the above described pattern may be a way for quite a number of large farms to evade the intent of the RRA. This second case is more complex in that some portions of the various entities within the Westlands Water District are irrigated with private water and those lands are not eligible for Project water.

The land involved totals some 6,308 irrigable acres and was farmed for a number of years by El Dorado Farms, a partnership.

Table IV identifies the seven entities that are newly created and report to USDA as the "farms" operating this property.

Table IV

Name of Entity Doris Farms, Inc. Guijarral Farms, Inc. I-5 Farms, A Ptp Jacalitos Farms, A Ptp Robert M. Lee Farming, Inc. Los Gatos Farms, A Ptp Warthan Farms, A Ptp	862	Land Served by Project Water 897 acres 931 320 898 795 572 612
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Source: Fresno Co ASCS Office of USDA and Westlands W.D. water user map for 1985 crop year.

Figure 9 shows how these "separate farms" fit together like the pieces of a jigsaw puzzle. All seven of these entities have made irrevocable elections to be subject to the discretionary provisions of the RRA. However, none of the land is paying full-cost water prices even though the total receiving Project water

is 5,025 acres.

A call placed to the common telephone number for all seven entities as listed in the Westlands Water District Water directory produced the response "Hello, Lee and Mouren." This company is one of a number of firms operated by Robert M. Lee and William J. Mouren. Lee and Mouren Farming, Inc., reportedly farms a total of 26,517 acres in Fresno, Kern and Kings Counties in addition to the land identified in Table IV. Two other companies of the same group are La Cuesta Verde Ginning Co. and William J. Mouren Farming, Inc. Both of the latter entities have irrevocable elections to be subject to the made provisions of the RRA. And they did so on precisely the same day each of the seven entities listed in Table IV. All nine of these entities reported no acreage subject to full-cost water prices.

While the above information does not prove that the various entities of this group are farmed as a single unit it is highly suggestive. It also presents a case where entities have been created subsequent to the RRA and, at first glance, appear to be completely independent of one another. Quite obviously, they are far from being independent.

A third example shows the actual process of division of land held in tenancy in common into holdings which fall just below the 960 acre limit. The land in this case is located in western Fresno County and is entirely within the San Luis Water District.

The property is commonly known as the Choperena Ranch and has been held by members of the Telles family and trusts created for the benefit of members of the same family. Subsequent to

passage of the RRA the property has been divided into three units. These are San Luis Farms (803.71 acres), Monte Vista 17 Farms (894.55 acres) and Little Panoche Farms (882.49 acres).

That each unit is smaller than 960 acres can hardly be an accident. The holdings of the various Telles family members have been adjusted to maintain the same overall share in the full 2,580.75 acre property of the original Choperena Ranch. The farm operator of the property has been Tri Farms, Inc., a company that is part of a group of some eleven Telles family entities.

In this last example the actual division of the property into parts which, at face value, would seem to be in compliance with the RRA has clearly been designed to mask the tenancy in common. Otherwise, why choose such different names for the units? If this analysis is correct then we would expect that the three new units will soon be registered with ASCS as distinct farms and that crop loans and other records will appear showing the existence of these "separate farms" where formerly only one held the land. Another potential test of this hypothesis may be found by monitoring irrevocable elections by landholders to be subject to the discretionary provisions of RRA. If the three new entities make such an election and if none of the land is found to be subject to full-cost pricing then it would be rather clear that the intention of the land partition was the circumvention of the RRA.

We have found a total of nineteen cases of relationships of various kinds among presumably independent farm entities. They are listed in Appendix I of our report How Much Is Enough? that is submitted as an attachment to these comments. While some are

of the type described in the three examples cited above others appear to correspond to the more common situation of multiple entities operated by a single family or group of business associates. These nineteen farm groups include some seventy-two distinct entities (all counted as separate farms in Table II). Their aggregate holdings of land eligible for Project water amount to 59,313 acres, or 3,122 acres per farming group. These figures do not include land outside of the ten districts chosen for intensive study.

Conclusion

The proposed regulations under consideration represent an important step forward in the proper implementation of the RRA. However, unless the issues addressed above are given careful thought there is a significant danger that the creation of multiple "paper farms" will frustrate the intent of Congress.

REFERENCES

 Civil No. S-86-0657-RAR, U.S. District Court for the Eastern District of California.

- U.S. Department of Commerce, Bureau of the Census, 1982 Census of Agriculture, Vol 1, Part 5, California. State and County Data, Table 2, p. 2.
- 3. California Department of Real Estate, <u>Reference Book</u>, 1979-80 Edition, Sacramento, CA 95814, pp. 85-86.
- 4. U.S. Department of Interior, Bureau of Reclamation, Letter from Forrest D. Coleman to Hamilton Candee, September 10, 1985, Enclosure titled "Landholders Subject to Discretionary Provisions of RRA."
- 5. Telephone call placed to (209) 659 2421, the number listed in the Westlands Water District, Water User Directory, as the contact phone for all of the entitities.
- 6. See Financing Statement filed by Vaquero Farms, Inc., with the Fresno County Recorder. Fresno County Official Records Vol. 6897, p. 202. All of the land listed in the legal description of the secured property is now farmed by one or more the the entitites listed in Table III.
- California Department of Corporations, File No. 700-5671, Vaquero Farms, Inc.
- 8. ibid.
- 9. Financing Statement filed by Vaquero Farms, Inc. Fresno County Official Records #85009868
- 10. California Secretary of State, Statement of Officers and Directors of Vaquero Farms, Inc., Corporation Number 538118.
- 11. U.S. Department of Agriculture, Agricultural Stabilization and Conservation Service, Letter from Earle J. Bedenbaugh, Acting Adminstrator, to Hon. George Miller, Chair, Sub-Committee on Water and Power Resources, House of Representatives, September 5, 1986, Enclosure titled "Deficiency and Diversion Payments for Program Year 1985 for Selected California Counties."
- 12. U.S. Department of Interior, op. cit.
- 13. These include Claremont Farms, L.C.V. Gin, Inc., La Cuesta Verde Ginning Co., Inc., La Cuesta Verde Ranches, William J. Mouren Farming, Inc., and Shandon Valley Vineyards.
- 14. Financing Statement filed by Lee and Mouren Farming, Inc. Fresno County Official Records #85024780.

- 15. U.S. Department of Interior, op. cit.
- 16. Partition Agreement for division of Choperena Ranch, Fresno County Official Records #85054965.
- 17. ibid.
- 18. ibid.
- 19. Financing Statement filed by Tri Farms, Inc. Fresno County Official Records #85054969.

Figure 1 - VAQUERO FARMS

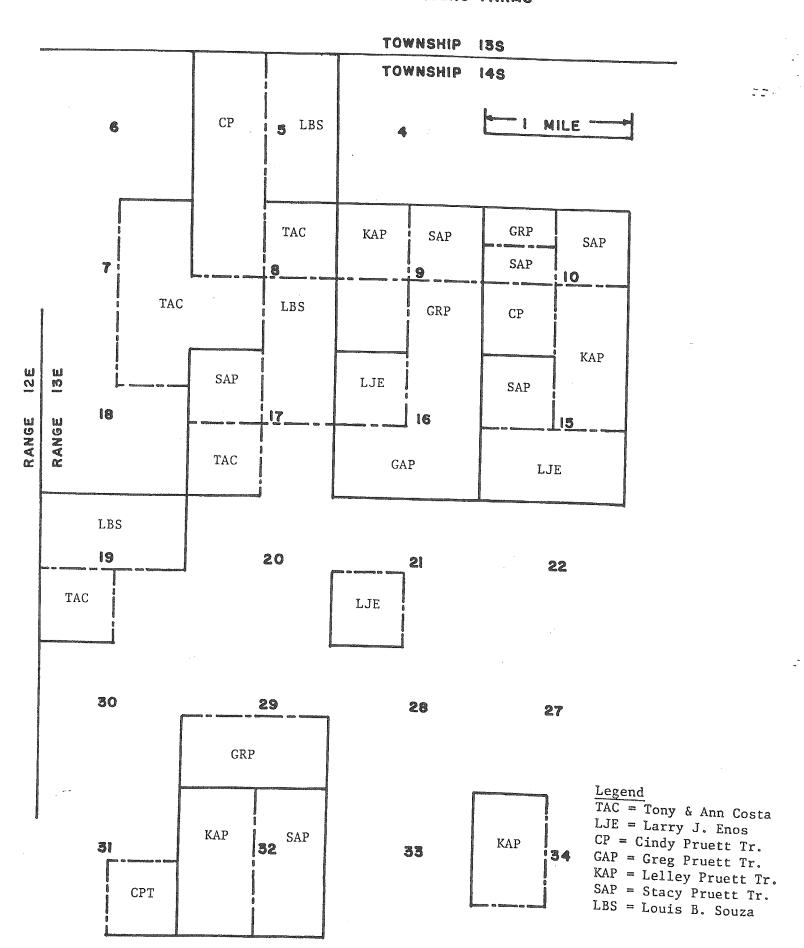


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This FINANCING STATEMENT is presented for filing pursuant to the C	olifornia Uniform	COMMENCION COOR.
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KELLY ANN PRUETT TRUST		94-6514163
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FRESNO COUNTY RECORDERS OFFICE

Figure 7

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