Commissioner
Bureau of Reclamation
Department of the Interior
18th and C Streets, NW
Washington, D.C. 20240

Attn: Code 400

Re: Proposed Acreage Limitation
Reclamation Rules and Regulations
FEDERAL REGISTER, August 25, 1977

Dear Commissioner:

The proposed regulations are the result of the August 13, 1976 court order by the U.S. District Court for the District of Columbia. The basic content of the court order called upon the Bureau of Reclamation to develop rules under the Administrative Procedures Act with reference to the sale of excess land.

We are pleased to have an opportunity to express our views concerning this topic which is not only vital to those people served by reclamation projects but also ultimately affects all Americans who are dependent upon agricultural production.

Farm Bureau is the largest general farm organization in the United States with a membership of over 2.6 million families in 49 states and Puerto Rico. It is a voluntary, nongovernmental organization, representing farmers who produce virtually every agricultural commodity that is produced on a commercial basis in this country.

Farm Bureau policies are developed through study, discussion, and decision by majority vote at community, county, state, and national meetings. These comments are based on the following policies adopted by the voting delegates of the member State Farm Bureaus at the 1977 annual meeting of the American Farm Bureau Federation:

"The technology of modern agriculture has made the 160-acre limitation impractical and uneconomic. We support legislation to remove the 160-acre limitation. We oppose surcharges on water from state or federal projects used on land in excess of 160 acres in a single ownership."
"Governmental agencies should not purchase excess lands with the intent of reselling them. We recommend that in the future there be no land acquisition management provisions included in water development projects."

The American economy, as well as that of other countries, is dependent on the ability of the American farmer to maintain his productive capabilities. Water is a critical factor if agriculture is to maintain its outstanding record of food and fiber production. Farmers and ranchers are, therefore, vitally interested in, and are the nation's foremost supporters of, wise and careful use of water resources.

We are equally concerned that administration of those federal projects which provide water for agricultural and other beneficial uses, affecting all citizens, be judicious.

We remind the Bureau of Reclamation that the vast majority of landowners receiving project waters have already filed recordable contracts in compliance with Reclamation Law.

The Bureau has gone far beyond the requirements of the court order and has, in fact, gone beyond the scope of the present law. In effect, the Bureau has taken it upon itself to legislate Reclamation Laws, rather than to administer such laws.

The Bureau is proposing to "change the rules of the game" while the game is in progress. The result is that many landowners and lessees who have relied on Reclamation Law and Bureau of Reclamation policy in making significant economic decisions are now finding these substantial investments, as well as their very livelihood, threatened by these proposed rules and regulations.

We recognize the Bureau's obligation to enforce the law and to comply with the court order. However, we vigorously object to the Bureau's infringing on the legislative process and expanding on the court order through its rule-making procedures.

We submit the following objections to the proposed Reclamation Rules and Regulations:

Section 426.2 - Effective date, applicability.

We suggest striking all of subsection (c).

This proposal bases the 160-acre limitation on total acreage under single ownership in all projects or districts combined. This would have a far-reaching impact on landowners and lessees, as well as project water deliveries under existing water service contracts.
The Reclamation Laws and supplemental legislation make no mention of extending acreage limitations to farming operations that are in more than one project or district. There are many farming operations which are located in more than one irrigation district and which are served by reclamation projects. These arrangements have come about because of Bureau policy that acreage limitations apply separately within each district.

Any limitation of acreage which is applicable to the operations of an individual in two or more districts would have to be administered by the Bureau itself -- above and beyond the authority of each district.

Any attempt by the Bureau to administer an acreage limitation on a national basis would produce chaotic results due to the need to identify multiple ownerships and determine family relationships, etc.

Subsection 426.4(k) - Definition - Neighborhood of the land.

We suggest striking all of subsection (k).

In our opinion, "residency" is no longer a valid part of Reclamation Law as it was not included in the Omnibus Adjustment Act of 1926.

Stated intentions of the Department of the Interior are to publish proposed "regulations spelling out how the residency requirement will be reimplemented across-the-board...as soon as practical." Therefore, even if "residency" is still a valid part of Reclamation Law, it would be premature to adopt a definition of "neighborhood of the land" in these rules.

"Residency", as defined in these rules, is totally out of touch with the reality of ongoing farming operations and as out-of-date as horse-and-plow farming. Such rules would lead to chaos. A landowner previously in compliance with the Reclamation Laws and Rules and Regulations could suddenly be in noncompliance.

The 50-mile neighborhood definition is capriciously unrealistic. Modern-day transportation and farming technology make it feasible for a farmer to live extended distances from his farming operations. The distance that a farmer may live from his farm depends on a number of factors: economic, cultural, social, educational, and geographic; personal preferences; type of farming operation; and the availability and quality of roads or other means of transportation.
Section 426.7 - Types of land ownership.

We suggest striking all of section 426.7.

Reclamation Law does not prohibit joint or multiple ownership. It restricts the acreage held by any one owner. There is no mention of the various forms of joint or multiple ownership.

Family farms are often based on arrangements whereby two or more families share in the ownership of land.

The proposed Rules and Regulations allow joint and multiple ownership only if these owners have a direct lineal relationship. This is a capricious limitation of "family relationship."

Section 426.8 - Leases.

We suggest striking all of section 426.8.

The subject of leasing is not a part of Reclamation Law, nor has it been dealt with historically through administrative procedures of the Bureau. All reclamation laws and rulings have addressed the ownership of land. The Bureau has gone beyond the court ruling and created supplemental legislation. The Bureau is now proposing to impose leasing restrictions for which there is no legal or administrative precedent.

The rules on leasing discriminate against anyone who is only a lessee as opposed to one who both owns and leases land.

Subsection 426.10(b)(3) - Disposition of excess land.

We suggest striking all of subsection 426.10(b)(3).

This subsection proposes to deny a landowner his constitutional right of freedom of contract. The recordable contract provisions of Reclamation Law do not, under any implication, attempt to deny this constitutional right. A landowner is able to freely contract with whom he wants, provided there is no discrimination. The Bureau's proposed "lottery or other impartial means" method of disposing of excess lands would deny a landowner his freedom of contract.

There is an exception only for direct lineal descendants. Brothers, sisters, aunts, uncles, cousins, friends or employees are excluded from having a preference. While
attempting to promote the "family farm," the proposed Rules and Regulations capriciously determine that a family unit is only one in which relationships are directly lineal.

Section 426.12 - Appraisals of excess land.

We suggest modifying section 426.12.

An appraiser or panel of appraisers is to be selected by the Secretary. The landowner should be afforded the opportunity of having a voice in the selection of an appraiser. The appraiser should have to be qualified in accordance with local law.

Again, we say, these proposed Rules and Regulations go beyond the District Court's order and Reclamation Law. The Secretary's proposals are not even in the spirit of the Reclamation Act of 1902 and supplemental legislation. These Rules and Regulations would impose guidelines which would hinder rather than promote the family farm as an economic unit.

We challenge the Secretary's decision that an Environmental Impact Statement is not necessary. This matter is of such importance that a proper assessment should have been made.

Finally, due to the potential social, environmental, and economic impact of the proposed Rules and Regulations, we strongly recommend that these rules be withdrawn until: (1) an Environmental Impact Statement has been prepared as required by the National Environmental Policy Act; and (2) an Inflationary Impact Statement has been prepared as required by Executive Order No. 11821, as amended by E.O. 11949 and OMB Circular A-107.

Thank you for this opportunity to comment.

Sincerely,

Allan Grant, President

cc: John Datt, Director
    Washington Office