

FACT SHEET 16

NONRESIDENT ALIENS AND FOREIGN ENTITIES

Reclamation Reform Act of 1982 (RRA)

This fact sheet details the acreage limitation entitlements of nonresident aliens and foreign entities and how those entitlements can change under certain circumstances. If you are unsure of the information discussed in this fact sheet, contact your district or the appropriate Bureau of Reclamation office, or see the **Sources for more information** section at the end of this fact sheet.

How does the RRA and its associated regulations define nonresident vs. resident aliens, and foreign vs. domestic entities?

- A **resident alien** of the United States is a natural person within the meaning of the term as defined in the Internal Revenue Act of 1954 (26 U.S.C. 7701) as it may be amended.
- A **nonresident alien** is a natural person who is neither a citizen nor a resident alien of the United States.
- A **domestic entity** is a legal entity established under State or Federal law.
- A **foreign entity** is a legal entity that is not established under State or Federal law.

What are the basic acreage limitation entitlements for a nonresident alien or foreign entity?

- The RRA and its associated regulations (43 CFR¹ part 426; Regulations) specify the initial acreage limitation entitlements of a prior law recipient. Specifically:
 - A maximum of 160 acres of directly or indirectly owned or leased land (that is, “held” land) for individuals and entities, and
 - A maximum of 320 acres of held land for married couples (provided the land is jointly held).
- For more information on the acreage limitation entitlements under the prior law provisions, refer to Fact Sheet 8 (Prior Law Recipient Entitlements).
- A nonresident alien that is legally married to a living resident alien or a living U.S. citizen is treated as a resident alien or U.S. citizen (as applicable).

Does it matter where the land held by a nonresident alien or foreign entity is located?

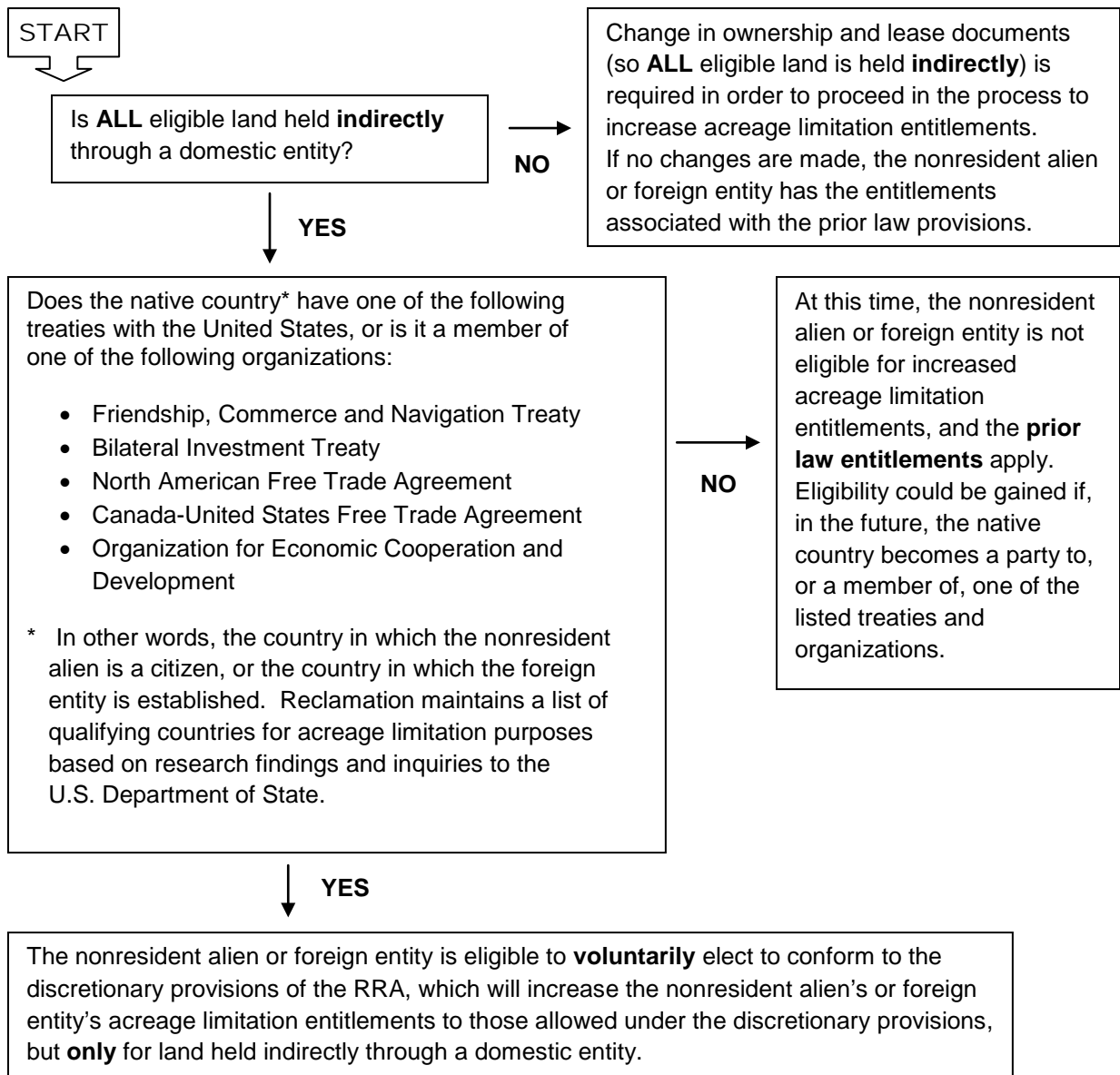
- Land located in a district that is subject to the **prior law provisions** of the RRA can receive Reclamation irrigation water up to the appropriate prior law ownership entitlement regardless of whether the land is **directly or indirectly held** by the nonresident alien or foreign entity.

¹ Code of Federal Regulations

- Land that is located in a district that is subject to the **discretionary provisions** of the RRA is eligible to receive Reclamation irrigation water only if the land is **indirectly held** by the nonresident alien or foreign entity through a domestic entity. In other words, the domestic entity holds title to the land or is the lessee of the land.
- Land that is **directly held** by a nonresident alien or foreign entity in a **discretionary provisions district** is **ineligible** to receive Reclamation irrigation water under any circumstances.

Is a nonresident alien or foreign entity restricted to the prior law entitlements?

Not necessarily, a nonresident alien or foreign entity can raise their acreage limitation entitlements to those applicable under the discretionary provisions of the RRA if **all** applicable criteria are met:



What are the important things to note when deciding to irrevocably elect to conform to the discretionary provisions?

- **An irrevocable election is permanent and binding.** There will be no opportunity to revert to the prior law entitlements once an irrevocable election is made.
- **Be aware of your acreage limitation entitlements under the discretionary provisions** prior to making an irrevocable election.
 - A nonresident alien will have qualified recipient entitlements. Refer to Fact Sheet 4 (Qualified Recipient Entitlements) for more information.
 - A foreign entity will have either qualified recipient entitlements or limited recipient entitlements, depending on whether the foreign entity benefits more than 25 natural persons. Refer to Fact Sheet 6 (Limited Recipient Entitlements) for more information.
- If an irrevocable election is made, **all eligible land must be held indirectly through a domestic entity now and in the future**, even if that land is located in a prior law district.
- **Until an irrevocable election is approved by Reclamation**, the nonresident alien or foreign entity has the acreage limitation entitlements associated with the prior law provisions.

What are the steps in making an irrevocable election to conform to the discretionary provisions of the RRA?

- **Country identification**
 - The water district must verify that your native country is a party to, or a member of, one of the requisite treaties and organizations using the list Reclamation maintains of qualifying countries for acreage limitation purposes.
- **Proof of citizenship or country of establishment**, provided the country in question is found on Reclamation's list of qualifying countries. The following are forms of **acceptable proof**:

Nonresident alien:

- A copy of the page from the nonresident alien's currently valid passport that includes a name, photo, signature, etc. (a copy of the "visa" pages is not acceptable).
- A copy of the nonresident alien's birth certificate.

Foreign entity:

- A copy of the articles of incorporation or other document creating the foreign entity, provided the country of establishment is clearly identified within the document. Also one of the following is required:
 - Proof that the document(s) has been submitted to the applicable governing unit in the country indicated, or
 - A notarized statement attesting to the authenticity of the document.
- A letter from the embassy of the country in question attesting to the fact that the foreign entity is established in that country.

- **Submittal of a completed irrevocable election form**, which is available from the appropriate district office, with one of the acceptable forms of citizenship/establishment proof.
 - The irrevocable election form to be used is titled, “Irrevocable Election Form to be Used Only by Nonresident Aliens and Entities Not Established Under State or Federal Law (Foreign Entities).”
 - The irrevocable election form **must be accompanied by all** of the following:
 - The required, appropriate certification form(s), as specified on the irrevocable election form.
 - The proof of citizenship or country of establishment as detailed above.
 - Any other required documents as specified on the irrevocable election form (for example, a corporate resolution).
 - Copies of the irrevocable election and accompanying documents must also be submitted concurrently to all districts in which the nonresident alien or foreign entity holds land.
 - The district(s) will forward the irrevocable election and accompanying documents to Reclamation for approval.
 - Reclamation will not approve an irrevocable election that involves **directly held** land in a prior law district until arrangements are made to hold that land indirectly through a domestic entity.
 - Making an irrevocable election does not make a nonresident alien or foreign entity eligible to receive Reclamation irrigation water on land that is directly held in any district that is subject to the acreage limitation provisions.

Sources for more information

More information for your landholding situation and the corresponding acreage limitation entitlements can be found in the following documents. Contact your district or the appropriate Reclamation office for further guidance.

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| Form 7-21INFO | General Information About the RRA Forms | The RRA Fact Sheets and the current water year’s RRA forms and instructions are available online and at your district or the appropriate Reclamation office. |
| Separate instructions to each RRA form applicable to your landholding situation | | |
| RRA Fact Sheet 2 | Acreage Limitation Status | |
| RRA Fact Sheet 3 | How to Become Subject to the Discretionary Provisions | |
| RRA Fact Sheet 4 | Qualified Recipient Entitlements | |
| RRA Fact Sheet 5 | Qualified Recipient RRA Forms | |
| RRA Fact Sheet 6 | Limited Recipient Entitlements | |
| RRA Fact Sheet 7 | Limited Recipient RRA Forms | |
| RRA Fact Sheet 8 | Prior Law Recipient Entitlements | |
| RRA Fact Sheet 9 | Prior Law Recipient RRA Forms | |
| RRA Fact Sheet 10 | Signature Requirements for RRA Forms | |
| RRA website (including the RRA forms, District Reference Sources, and the text of the RRA and its associated Regulations) | | www.usbr.gov/rra |