

INDIAN AFFAIRS MANUAL

1.1 Purpose. This chapter identifies authorities and establishes the policy and responsibilities for management, administration, construction, operation, maintenance, and rehabilitation of Bureau of Indian Affairs (BIA)-owned Indian Irrigation Projects where BIA assesses fees and collects monies to administer, operate, maintain, and rehabilitate each Indian Irrigation Project.

BIA's Division of Water and Power (DWP), and more specifically, its Branch of Irrigation and Power, provides oversight and technical assistance to BIA regions and agencies that have Indian Irrigation Projects within their respective jurisdictions, with the exception of the Rocky Mountain Region (as explained in the Regional Directive 50 IAM 1 - RM).

1.2 Scope. This policy applies to Indian Affairs (IA) employees and delegated officials responsible for Indian Irrigation Projects administered by the BIA. This policy may also apply to entities carrying out activities on behalf of BIA under contracts or other agreements if expressly agreed to in the contracts or agreements, or if the requirement to abide by such policy is otherwise required by law. These entities may include contractors or Tribes operating through contracts issued pursuant to Public Law (P.L.) 93-638.

Compact Tribes are not required to abide by the terms of this policy. Compliance is dependent upon specific compact language. However, compact Tribes are encouraged to use IA policy as guidance.

1.3 Policy. It is the policy of IA to endeavor to:

- A. deliver irrigation water to those lands authorized to be served by an Indian Irrigation Project;
- B. provide opportunities for participation by water users and Tribes in matters impacting Indian Irrigation Project operations;
- C. construct, operate, maintain, and rehabilitate Indian Irrigation Projects in accordance with applicable technical and safety standards;
- D. recover the construction costs of Indian Irrigation Projects where Congress has enacted laws requiring reimbursement for a particular project and where these costs are not deferred or identified as non-reimbursable. To the extent required by law or policy, the full cost of operation and maintenance (O&M) of Indian Irrigation Projects, unless assessed at a rate less than full cost (at the discretion of the Secretary) or otherwise deferred in accordance with law, will be reimbursed;
- E. ensure that O&M funds collected for each Indian Irrigation Project are added to its appropriate project-specific account and used for authorized purposes;
- F. prepare contingency plans for events or emergencies that might interrupt the delivery of irrigation water or threaten public safety or Tribal trust resources;

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- G. ensure that irrigation water is used for authorized purposes; and
- H. ensure Indian Irrigation Project interests are represented in river basin management decisions.

1.4 Authority.

A. Statutes, Regulations, and Guidance.

- 1) P.L. 93-638, Indian Self-Determination and Education Assistance Act of 1975
- 2) P.L. 98-146, Fiscal Year 1984 Department of the Interior and Related Agencies Appropriation Act (97 Stat. 919, 929)
- 3) P.L. 104-134, Debt Collection Improvement Act of 1996 (110 Stat. 1321–257, 1321–358)
- 4) 5 U.S.C. § 301, Departmental regulations
- 5) 25 U.S.C. § 13, Expenditure of appropriations by Bureau (Snyder Act)
- 6) 25 U.S.C. §§ 381-390, Irrigation of Allotted Lands
- 7) 31 U.S.C. § 3717, Interest and penalty on claims
- 8) 25 CFR 134, Partial Payment Construction Charges on Indian Irrigation Projects
- 9) 25 CFR 159, Sale of Irrigable Lands, Special Water Contract Requirements
- 10) 25 CFR 160, Inclusion of Liens in All Patents and Instruments Executed
- 11) 25 CFR 171, Irrigation Operation and Maintenance
- 12) 25 CFR 173, Concessions, Permits and Leases on Lands Withdrawn or Acquired in Connection with Indian Irrigation Projects
- 13) 31 CFR Chapter IX, Federal Claims Collection Standards
- 14) Executive Order No. 13175, *Consultation and Coordination with Indian Tribal Governments*, Nov. 6, 2000
- 15) 205 Departmental Manual (DM) 7, Claims by the United States for Money or Property

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16) 210 DM 8, Office of the Assistant Secretary – Indian Affairs

B. Court Decisions and Other Authorities. Various court decisions may also apply to the operation, administration, or general functioning of Indian Irrigation Projects. In addition to the potentially relevant decisions listed below, federal legislation, including Indian water rights settlements, or other project-specific legal instruments may also apply and may specify something different from generally-applicable court decisions. Decisions or other authorities that relate to specific projects should be identified in each project’s respective O&M Guidelines. Although the Office of the Solicitor (SOL) should be consulted on appropriate legal authorities as issues arise, a sample of potentially relevant court decisions includes:

- 1) Winters v. United States, 207 U.S. 564 (1908) established the doctrine of federal reserved water rights (Winters Doctrine), holding that rights to water to fulfill the purposes of a reservation were implicitly reserved upon the establishment of an Indian reservation.
- 2) Arizona v. California, 373 U.S. 546 (1963) quantified water rights for certain Indian reservations using practicably irrigable acreage (PIA) standard. Subsequent federal and state court decisions have recognized that Winters rights may be quantified for other purposes, such as fishing (see item 3 below) or for broader “homeland” purposes. See, e.g., In re the General Adjudication of All Rights to Use Water in the Gila River System and Source, 35 P.3d 68 (Ariz. 2001).
- 3) Joint Board of Control v. United States, 832 F.2d 1127 (9th Cir. 1987), United States v. Adair, 723 F.2d 1394 (9th Cir. 1983), and Colville Confederated Tribes v. Walton, 647 F.2d 42 (9th Cir. 1981) acknowledged that Winters rights may also be recognized to support reserved fishing rights (or other aboriginal rights, recognized by treaty or otherwise) and that such water rights may be senior in priority to—and thus not subject to pro rata sharing with—water rights for irrigation purposes.
- 4) United States v. Powers, 305 U.S. 527 (1939) and Colville Confederated Tribes v. Walton, 647 F.2d 42 (9th Cir. 1981) recognized that, when allotments were made, the right to use some portion of Tribal waters reserved for irrigation passed to allottees and that an allottee’s right passes to non-Indians who subsequently obtain fee title to the allotments.
- 5) United States v. Parkins, 18 F.2d 642 (D. Wyo. 1926) and Hackford v. Babbitt, 14 F.3d 1457 (10th Cir. 1994) upheld BIA’s authority to charge operation and maintenance assessments for irrigable land within an Indian Irrigation Project.
- 6) Grey v. United States, 21 Cl. Ct. 285 (1990) held that BIA has no general trust obligation regarding the operation and maintenance of Indian Irrigation Projects.

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1.5 Responsibilities.

- A. **Assistant Secretary – Indian Affairs (AS-IA)** is responsible for:
- 1) signing new regulations and Public Notices of rate setting;
 - 2) coordinating with the Bureau of Reclamation (BOR) to ensure fair representation for irrigable Indian land that is included in Indian Irrigation Projects developed under the Reclamation Act of 1902, P.L. 57-161, 32 Stat. 388 (codified as amended at 43 U.S.C. § 371 et seq. (2012)); and
 - 3) approving land re-designation requests that propose a transfer of Presently Assessable (PA) or Temporarily Non-Assessable (TNA) acreage to Permanently Non-Assessable (PNA) status (landowner consent is required prior to final approval) within Indian Irrigation Projects.
- B. **Deputy Assistant Secretary – Indian Affairs (Management) (DAS-M)** is responsible for approving debt adjustment or cancellation and administrative termination and discharge of collection activities, and for coordinating these activities with the Branch of Irrigation and Power as they relate to Indian Irrigation Projects.
- C. **Chief Financial Officer** is responsible for the management of IA's debt management program and for monitoring adherence to debt management policies and procedures, including debt activities related to Indian Irrigation Projects' O&M and construction assessments.
- D. **Director, BIA** is responsible for:
- 1) concurring on Public Notices of rate setting and forwarding notices to the AS-IA;
 - 2) concurring with recommendations from the Regional Director, after the Branch Chief's technical review, on land re-designation requests that propose a transfer of PA or TNA acreage to PNA status (landowner consent is required prior to final approval) within Indian Irrigation Projects and forwarding these recommendations to the AS-IA; and
 - 3) establishing policies, procedures, requirements, and technical standards for management of Indian Irrigation Projects.
- E. **Deputy Bureau Director, Field Operations** is responsible for implementing policies, procedures, requirements, and technical standards for management of Indian Irrigation Projects.

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F. Deputy Bureau Director, Office of Trust Services (OTS) is responsible for:

- 1) developing policies, procedures, requirements, and technical standards for management of Indian Irrigation Projects; and
- 2) approving funding documents for Indian Irrigation Projects.

G. Chief, Division of Water and Power (DWP) is responsible for providing oversight of Branch of Irrigation and Power activities.

H. Chief, Branch of Irrigation and Power is responsible for:

- 1) serving as a liaison with other federal, state, local, and Tribal governments regarding the BIA Indian Irrigation Program;
- 2) providing technical expertise, training, training material, and reference material to support Indian Irrigation Projects on irrigation construction, financials, operations, maintenance, asset management, safety, and requirements imposed by statutes, regulations, judicial decisions, and policies;
- 3) providing management and oversight of the centralized National Irrigation and Information Management System (NIIMS), including issuance of bills to water users for irrigation and construction assessments and demand letters;
- 4) preparing debt adjustment or cancellation, and termination and discharge of collection activities proposals for Indian Irrigation Projects' O&M and construction assessments, and submitting proposals to the Office of the Chief Financial Officer, Division of Financial Reporting and Analysis;
- 5) preparing and submitting timely delinquent debt referral packages for Indian Irrigation Projects' O&M and construction assessments to the U.S. Department of the Treasury in accordance with the Debt Collection Improvement Act of 1996; and providing management and oversight of collections;
- 6) performing technical review of and transmitting land re-designation recommendations received from Regional Directors to the Director, BIA;
- 7) administering appropriated funds and preparing funding documents for approval by the Deputy Bureau Director, OTS to transfer funds to regions and projects;
- 8) conducting periodic program reviews to evaluate and determine the effectiveness of Indian Irrigation Project O&M and to identify operational and financial risks; and
- 9) conducting periodic reviews of the Regional Office Irrigation Programs to determine effectiveness of oversight, monitoring, coordination, technical leadership, advice, training, assistance, engineering, and administrative support provided within the region.

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I. Regional Directors are responsible for:

- 1) advising the Deputy Bureau Director, Field Operations of issues affecting Indian Irrigation Projects within the region;
- 2) recommending annual O&M assessment rates to the Director, BIA, through the Branch of Irrigation and Power;
- 3) designating, in writing, a Project Manager/Engineer for each Indian Irrigation Project;
- 4) approving proposed land re-designation requests with recommendations from the Regional Irrigation Engineer, which propose a transfer of TNA acreage to PA status; and PA acreage to TNA status, within Indian Irrigation Projects; and
- 5) concurring with proposed land re-designation recommendations from Regional Irrigation Engineers that propose transfers of PA or TNA acreage to PNA status (landowner consent is required prior to final approval) within an Indian Irrigation Project, and referring recommendations to the Branch Chief for technical review and transmittal to the Director, BIA.

J. Regional Irrigation Engineers are responsible for:

- 1) providing advice to the Regional Director on all aspects of Indian Irrigation Project activities within the region;
- 2) providing program oversight, monitoring, and coordination of Indian Irrigation Project activities within the region;
- 3) providing technical assistance to Indian Irrigation Projects within the region, including project water supply and regional watershed issues for BIA and Tribes;
- 4) conducting periodic reviews of Indian Irrigation Project operations for compliance with technical standards and minimum staffing requirements;
- 5) training Indian Irrigation Project management staff, and distributing data and information applicable to Indian Irrigation Project management;
- 6) providing technical assistance in developing and maintaining O&M Guidelines for Indian Irrigation Projects, including coordination of periodic revisions to the O&M internal Guidelines document;
- 7) providing input to the rating official on the development of irrigation elements of the Indian Irrigation Project Manager's/Engineer's performance appraisal;
- 8) providing input, as requested by the rating official, on the technical components of the Indian Irrigation Project Manager's/Engineer's performance;
- 9) reviewing and approving annual budgets for Indian Irrigation Projects;

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- 10) reviewing and approving O&M activities relating to rehabilitation and repair of Indian Irrigation Project infrastructure;
- 11) concurring with the Superintendent's proposed land re-designation requests (with recommendations from Project Manager/Engineer and Superintendent) that propose a transfer of TNA acreage to PA status or PA acreage to TNA status within Indian Irrigation Projects, and forwarding recommendations to the Regional Director;
- 12) concurring with proposed land re-designation recommendations from the Superintendent that propose a transfer of PA or TNA acreage to PNA status (landowner consent is required prior to final approval) within an Indian Irrigation Project, and forwarding recommendations to the Regional Director; and
- 13) attending, at a minimum, one water user meeting per year at each Indian Irrigation Project within the region.

K. Superintendents and Deputy Superintendents are responsible for:

- 1) advising the Regional Director of issues affecting Indian Irrigation Projects within the Agency;
- 2) reviewing and recommending annual O&M assessment rates to the Regional Director and the Deputy Regional Director, OTS;
- 3) reviewing and submitting the annual Indian Irrigation Project budget to the Regional Irrigation Engineer;
- 4) concurring with Project Manager's/Engineer's determinations regarding land re-designations that propose a transfer of TNA acreage to PA status and PA acreage to TNA status within Indian Irrigation Projects, and forwarding determinations to the Regional Irrigation Engineer;
- 5) establishing a Land Designation Committee after receiving a recommendation to do so from the Project Manager/Engineer in accordance with relevant program processes; and
- 6) concurring with Project Manager/Engineer determinations and Land Designation Committee recommendations regarding land re-designations that propose a transfer of PA or TNA acreage to PNA status (landowner consent is required prior to final approval); and forwarding determinations to the Regional Irrigation Engineer.

L. Indian Irrigation Project Managers/Engineers are responsible for:

- 1) project management, administration, operation, maintenance, and rehabilitation of Indian Irrigation Projects;

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- 2) developing contingency plans for anticipated events or emergencies that might interrupt the delivery of irrigation service to customers;
- 3) developing and maintaining internal O&M Guidelines, including periodic review of the O&M Guidelines document and coordination of revisions to the O&M Guidelines document with the Regional Irrigation Engineer;
- 4) training project staff in project operations and other applicable requirements;
- 5) establishing the time period when irrigation service will be provided;
- 6) managing supplemental water, where authorized by law or regulation;
- 7) receiving requests for water delivery and maintaining permanent records of water delivery;
- 8) determining rehabilitation and construction requirements of project facilities;
- 9) contracting or transferring the operation, maintenance, construction, and/or other project responsibilities to others, where authorized by regulation, contract, or other applicable agreement;
- 10) ensuring that activities comply with U.S. Treasury requirements for projects that perform collections;
- 11) utilizing NIIMS to process O&M assessments and collections for the Indian Irrigation Project and maintaining a system of record for payment/collection of irrigation assessments;
- 12) developing and monitoring the annual operation, maintenance, and rehabilitation budget for the project;
- 13) developing the Indian Irrigation Project's annual O&M assessment rate and submitting the rate to the Regional Irrigation Engineer and the Regional Director for review;
- 14) developing annual irrigation project work plan and submitting the plan to the Regional Irrigation Engineer;
- 15) submitting annual work plan accomplishments to the Regional Irrigation Engineer;
- 16) meeting, at a minimum, twice annually with water users to discuss proposed O&M assessment rates, water apportionments, and the project's general O&M;
- 17) establishing and maintaining minimum staffing requirements for the Indian Irrigation Project;
- 18) conforming the Indian Irrigation Project to technical standards and requirements;

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- 19) preparing and justifying proposals for debt adjustment or cancellation and the administrative termination and discharge of collection activities for Indian Irrigation Projects' O&M and construction assessments, and referring proposals to the Branch Chief;
- 20) documenting and justifying proposed changes in monetary assessments such as O&M, conveying proposed changes to affected Tribes and water users, and submitting proposals for review to the Superintendent;
- 21) recommending to the Superintendent the formation of a Land Designation Committee when land re-designation request(s) for transfer of PA or TNA acreage to PNA status are warranted; and
- 22) reviewing, surveying, and making determinations and recommendations regarding land re-designation requests (from landowner/operator, Water User Association official, or Bureau official) with regard to PA, TNA, and PNA land designations; and forwarding official determinations and recommendations to the Superintendent or other appropriate approving official.

Approval



Darryl LaCounte
Acting Director, Bureau of Indian Affairs

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Date