

# **Equity Participation and other Cost Recovery Schemes in the Construction and Rehabilitation of Communal Irrigation Systems and Projects**



**A PRIMER ON EQUITY PARTICIPATION  
HIGHLIGHTING SALIENT PROVISIONS OF  
CERTAIN LAWS AND POLICIES**



# **Legal basis and pertinent guidelines of IA Participation in the construction and rehabilitation of Communal Irrigation Projects and Systems**

## **Republic Act No. 3601**

- An act creating the National Irrigation Administration (NIA) signed into law by then President Diosdado Macapagal on June 22, 1963. Presidential Decree Nos. 552 and 1701 amended certain section of R.A. 3601.

## **Who is the Irrigators' Association?**

- These are group of farmers who are identified as direct beneficiaries of an irrigation project/system, formed into Irrigators Association duly registered with the Securities and Exchange Commission.

## **Legal Basis of Equity Participation**

### **PD 552 – “AMENDING CERTAIN SECTIONS OF REPUBLIC ACT 3601 ENTITLED AN ACT CREATING THE NATIONAL IRRIGATION ADMINISTRATION”**

P.D. 552, Section 1 (b.1)

“To charge and collect from the beneficiaries of the water from all irrigation systems constructed by or under its administration, such fees or administration charges as may be necessary to cover the cost of operation, maintenance and insurance , and to recover the cost of construction within a reasonable period of time to the extent consistent with government policy; to recover funds or portions thereof expended for the construction and/or rehabilitation of communal irrigation systems which funds shall accrue to a special fund for irrigation development under Section 2 hereof”.

**NIA Board Resolution No. 2547 – 74 dated December 23, 1974 approving the Proposed Policy and Implementing Guidelines in the Development of Irrigation Projects.**

Item I.2 – “to recover from the beneficiaries of all irrigation systems, the full cost of construction or portion thereof within a reasonable period of

time and to extent consistent with government policy, in addition to the collection of irrigation fees covering insurance and expenses for the operations and maintenance of the system by the NIA or irrigation charges for management and administration”.

Item III-B2’ “The estimate of repayment of construction cost shall be in accordance with the following:

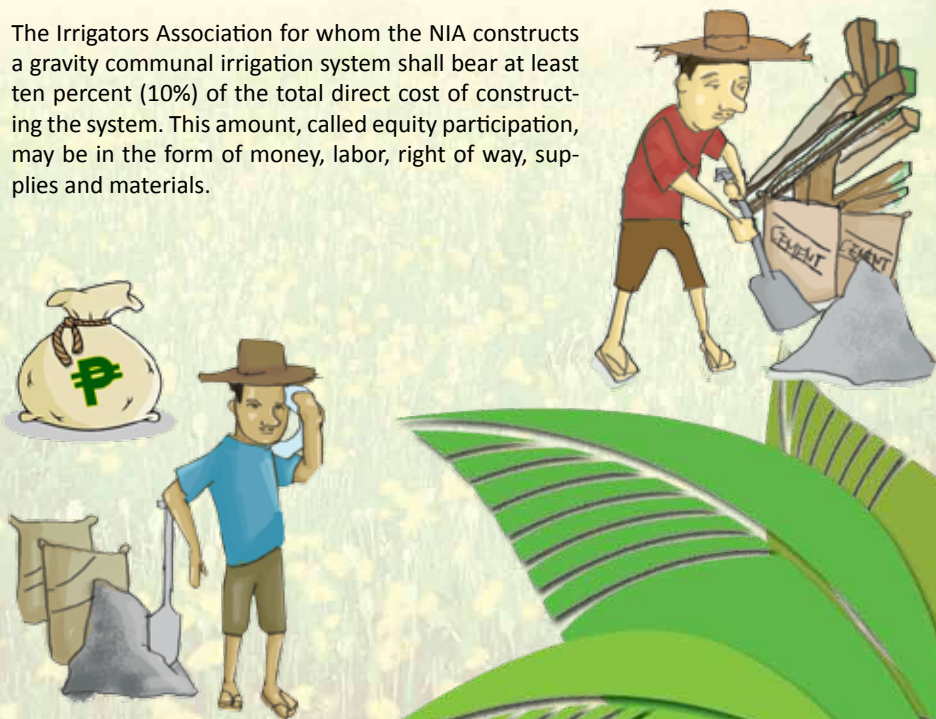
- (a) Ten percent (10%) of the total direct cost shall be free;
- (b) Seventy percent (70%) of the total cost shall be repaid without interest;
- (c) Twenty percent (20%) of the total cost shall be repaid with interest at 6% per annum; and
- (d) Period of repayment shall not be less than twenty-five years for gravity irrigation projects”.

This NIA Board Resolution was circularized thru MC # 10 S.1975.

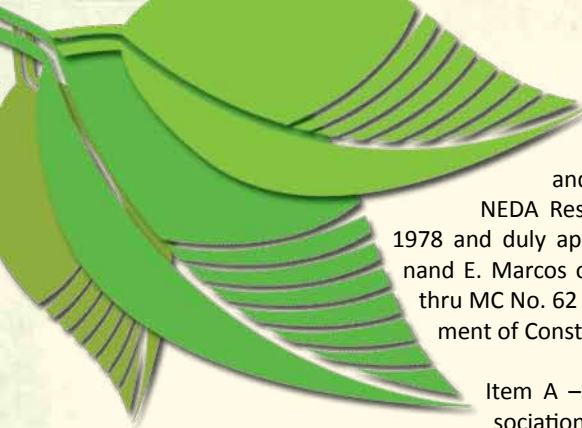
**MC # 59 S 1977 – DEFINING THE PARTICIPATION OF IRRIGATORS ASSOCIATIONS IN FINANCING THE CONSTRUCTION OF GRAVITY COMMUNAL IRRIGATION SYSTEMS AND AMENDING MC # 18 s 1977.**

Item A – Equity Participation by the Irrigators Associations

The Irrigators Association for whom the NIA constructs a gravity communal irrigation system shall bear at least ten percent (10%) of the total direct cost of constructing the system. This amount, called equity participation, may be in the form of money, labor, right of way, supplies and materials.







**NIA Board Resolution No. 2584 – 75** recommended to the National Economic and Development Authority, which issued NEDA Resolution No. 20 S 1978 dated August 24, 1978 and duly approved by His Excellency President Ferdinand E. Marcos on October 4, 1978. This was circularized thru MC No. 62 S 1978 entitled, “National Policy on Repayment of Construction Cost of Irrigation Facilities”.

Item A – Equity Participation by the Irrigators Association, “the Irrigators Association for whom the NIA constructs a gravity communal irrigation system shall bear during the construction at least ten percent (10%) of DIRECT COST (net of cost of roads, etc, if any) or P300.00 per hectare of area to be irrigated whichever is lower. This amount (minimum requirement, the association may contribute more if desired), which is known as equity participation could be in the form of money, labor, right-of-way, supplies and materials, etc. Overhead, including supervision and surcharge shall not exceed 10% of ESTIMATED DIRECT COST. This type of expense shall not be charged to the association.

Item B – The provisions on recovery of cost and interest shall apply to all communal irrigation projects/systems constructed by the NIA which is subject to repayment of cost under PD 552.”

**MC # 15 S 1981 – EQUITY OR COUNTERPART PARTICIPATION OF IRRIGATORS ASSOCIATIONS IN COMMUNAL IRRIGATION PROJECTS. “For the purpose of supplementing previous memoranda on the above subject the following guidelines are hereby issued:**

1. The term “equity participation” is the same as “counterpart participation”. As the latter is usually more understandable to the farmers, it should henceforth be used in lieu of the former.
2. In general, “counterpart” or “equity participation” by the association shall be at least 10% of the cost of labor, materials, and equipment use on the project and may be any or a combination of the following:
  - a. The cost of labor at NIA rates furnished by the association without payment from the NIA. The labor may be for canals, structures, farm ditches, drainage ditches, surveys, temporary field office, bodegas, taking and recording gage, readings, security and guarding services, and similar works done by the Association on the project.
  - b. The cost of materials and supplies used in the project furnished by the Association without payment from NIA.

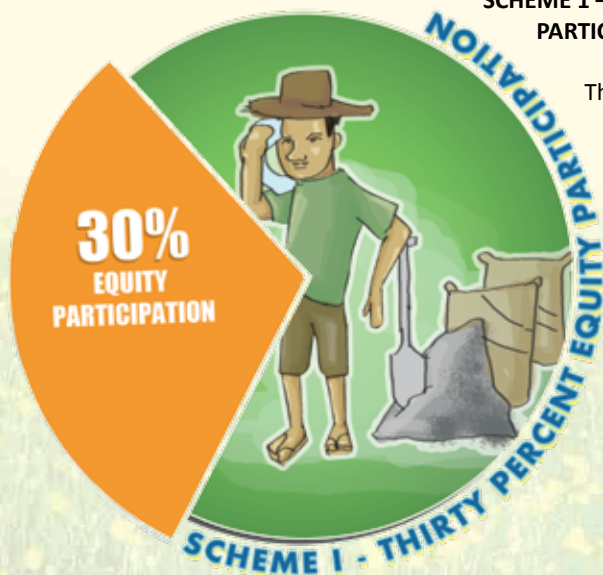


- c. The right-of-way of canals, diversion works, structures or access roads furnished by the Association without payment from NIA within the service area on lands owned by the beneficiaries of the project.
- d. Any right-of-way acquired by the Association on lands outside the service area of the project without payment from NIA.
- e. Cash contributed by the Association to the construction.

**MC # 29 S 1984 – GUIDELINES AND PROCEDURES IN THE RECORDING AND CONTROL OF EQUITY CONTRIBUTION OF IRRIGATORS ASSOCIATIONS FOR THE CONSTRUCTION OF COMMUNAL IRRIGATION PROJECTS.**

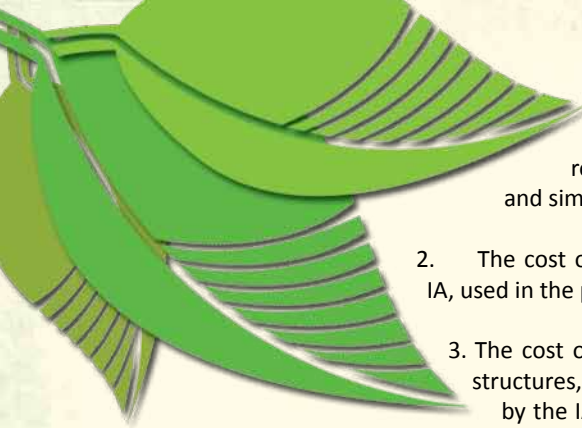
**MC # 27 S 1991 – COST RECOVERY SCHEMES AND OTHER PERTINENT GUIDELINES FOR COMMUNAL IRRIGATION PROJECTS.**

**SCHEME 1 – THIRTY PERCENT (30%) EQUITY PARTICIPATION**



This arrangement could be availed of by the Irrigators Associations in place of the regular amortization of the chargeable cost under the following conditions:

- a. That the IA is willing and capable to raise within the construction/rehabilitation period its equity participation which is defined as the amount equivalent to THIRTY PERCENT (30%) of the chargeable cost.
- b. That the money value of the IA equity participation may come from the following:
  - 1. The cost of labor valued at NIA rates furnished by the IA without payment from NIA. The labor may be for the construction of diversion works, canals, farm ditches, drainage ditches,



temporary field office, bodegas, conduct of surveys, taking and recording gage readings, security and guarding services, and similar works done by the IA on the project.

2. The cost of materials and supplies furnished by the IA, used in the project and without payment from NIA.

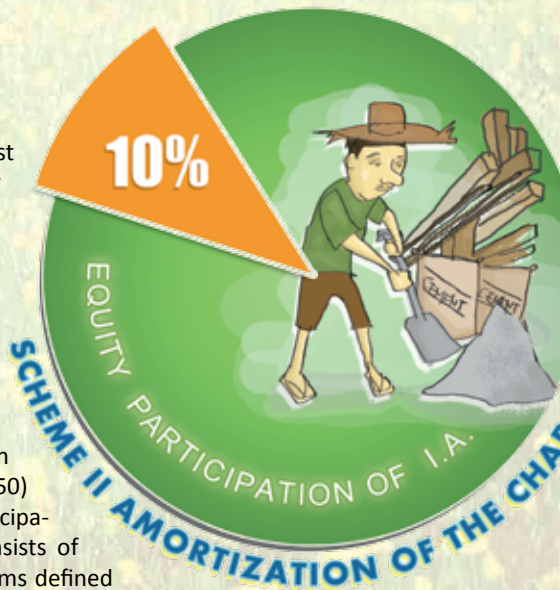
3. The cost of right-of-way for canals, diversion works, structures, or access roads negotiated and acquired by the IA either within or outside the service area of the project and without payment from NIA.

4. Cash contributed by the Irrigators Associations,

c. If the required THIRTY PERCENT (30%) EQUITY PARTICIPATION is not met during the construction/rehabilitation period, the IA shall be given grace period of one cropping season after project completion and turnover to raise the remaining amount. After the one cropping season grace period, whatever be the remaining amount which the IA was not able to settle shall be paid by the same immediately within the succeeding season. However, this unpaid balance of the IA equity participation shall be subjected to a maximum interest of ONE PERCENT (1%) PER MONTH. If the IA was not able to put up completely the required equity participation after the two (2) cropping seasons, Scheme II shall be adopted – the IA will amortize the remaining balance of construction/rehabilitation cost which is net of the total chargeable cost and the total equity which the IA was able to raise (Amount to be Amortized = total chargeable cost – total equity raised).

#### **SCHEME II – AMORTIZATION OF THE CHARGEABLE COST**

This is the long-term arrangement on cost amortization which has been availed of by most of our communal IAs. Under this arrangement, the IA is required to put up an equity participation of NOT LESS THAN TEN PERCENT (10%) of the chargeable cost during the construction/rehabilitation period of the project and amortize the remaining amount (without interest) within an agreed period, the duration of which shall not exceed fifty (50) years. The equity participation of the IA shall consist of the money value of the items defined under Scheme I.b hereof.





## OTHER PERTINENT GUIDELINES

- IA Wishing to Convert from Scheme II to Scheme I
- The IA should forward its intention through a Board Resolution addressed to the Regional Irrigation Manager, attention thru the Division Manager, Irrigation Management Office (IMO);



- The IA Board Resolution shall be endorsed by the Division Manager, IMO to the RIM attaching thereto a current status of amortization payment of the requesting IA which shall be duly certified by the Regional Accountant;
- The equity participation of the IA shall be THIRTY PERCENT (30%) of the remaining balance of the amortizable amount plus any back accounts, if there are any; and
- The equity participation of the IA shall be payable in cash and within a maximum period of six (6) months, the effectivity of which shall be reckoned from the date the IA has received the notice of the RIM approving the IA request. Any unpaid amount within the designated period shall be subjected to a maximum interest of ONE PERCENT (1%) per month and to be settled by the IA within the next six months.



**MEMORANDUM OF AGREEMENT  
BY AND BETWEEN  
THE NATIONAL IRRIGATION ADMINISTRATION  
AND  
\_\_\_\_\_ IRRIGATORS' ASSOCIATION, INC.**

**KNOW ALL MEN BY THESE PRESENTS:**

This agreement executed and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ in \_\_\_\_\_.

THE NATIONAL IRRIGATION ADMINISTRATION, a government –owned and controlled corporation created under Republic Act 3601, as amended by Presidential Decree No. 552 with principal office at EDSA, Diliman, Quezon city, represented herein by \_\_\_\_\_ in his capacity as \_\_\_\_\_ referred to as the NIA:

**AND**

\_\_\_\_\_ IRRIGATORS' ASSOCIATION, INC., an association organized and registered with the Securities and Exchange Commission with principal office at \_\_\_\_\_, represented in this agreement by \_\_\_\_\_ in his capacity as President, herein referred to as the ASSOCIATION.

**WITNESSETH THAT:**

WHEREAS, the Association has petitioned the NIA to construct/rehabilitate the \_\_\_\_\_ communal irrigation system, which shall irrigate lands situated at \_\_\_\_\_.

WHEREAS, the construction of the project in the area is in accordance with the irrigation development of the NIA;

NOW THEREFORE, for and in consideration of the foregoing premises and by authority of the provisions of Republic Act 3601 as amended by PD 552






and 1701, the Guiding Principles and the Rules and Regulations of the NIA which are incorporated part of this agreement, the Parties have agreed and by these presents do hereby agree as follows; to wit:

**ON THE PART OF THE  
NATIONAL IRRIGATION ADMINISTRATION**

1. The NIA shall bear the cost of investigation and survey, plan preparation and other pre-construction engineering activities for the project, including the cost of the community organizers.
2. The NIA shall have the right to enter private property of the Association in connection with the construction of the proposed project and the NIA or its employees shall not be held liable whatsoever to damages which the Association may sustain on account of said activities, unless there is gross negligence or willful acts done by the NIA or its employees to cause such damages.
3. The NIA shall likewise bear the cost of construction of diversion works and appurtenant structures, the canals and other irrigation structures including the turn-outs of the irrigation projects.
4. The NIA shall render assistance to the said Association in the organization and/or strengthening the Irrigators Association/cooperative and shall train the beneficiaries or those persons duly selected and are qualified to undertake the operation, maintenance and management of the irrigation system upon its completion and turn-over.
5. The NIA and the Association shall conduct monthly cost reconciliation to determine the actual chargeable cost to the Irrigators' Association and in order to facilitate turn-over of the system.

**ON THE PART OF THE  
IRRIGATORS ASSOCIATION**

1. The Association shall be responsible for securing and complying with all the legal requirements related to the construction of the irrigation system, such as water permit, legal fees or charges and other similar requirements.
2. The Association shall acquire by legal means Right-of-Way of private properties affected by the construction of the project and its appurtenances.
3. The Association shall make available to the NIA for training all persons who shall be ultimately responsible for the operation,



maintenance and management of the irrigation systems.

4. Upon the turn-over of the irrigation system, the Association shall maintain and administer the same in accordance with the By-Laws of the Association.

5. The Association shall formulate policies and rules and regulations on operation and maintenance with concurrence of the NIA.

6. The beneficiaries shall spend for the cost of repair, rehabilitation and improvement of the irrigation system. Provided that major repair or rehabilitation of diversion facilities and major structures may upon request of the Association and under such terms and conditions which be embodied in the supplemental agreement between the Parties herein, be undertaken by the NIA.

7. The Association is obliged to abide by the terms and conditions as stipulated in the agreement irrespective of whether or not the set of officers changes from time to time.

8. The Association shall contribute as its counterpart to the construction of the project, cash, labor and materials, the total value of which is not less than TEN PERCENT (10%) of the total chargeable cost of the project.


9. The Association shall formulate its Equity Generation Program based on the approved Program of Work of the project using the Equity Generation Format, which shall form part of this agreement.

10. The Association shall amortize for the following chargeable cost incurred by the NIA on the project such as expenditures for:

- a. Materials
- b. Equipment rental
- c. Fuel and Oil
- d. Right-of-Way paid by NIA, if any
- e. Labor up to the level of Construction Foreman, Project-In-Charge, Institutional Development Officer including TEV, and allowances in connection with the project.
- f. Other expenditures not covered above but agreed upon by both parties.

The Association shall not however amortize for the following;

- a. Construction of access road or service roads
- b. Flood control or protection dikes that are not part of the diversion works
- c. Power engineering facilities
- d. Reforestation and other non-irrigation related facilities.

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11. The Association shall pay the sum due to the NIA in an annual installment without interest, the amount of the installment to be the money value at prevailing government price of 1 ½ cavans (50kg/cav), multiplies by the wet season actually benefitted area in hectares provided the resulting period of payment does not exceed 50 years, the maximum paying period. If the repayment period exceeds 50 years, the installment shall be increased so that repayment shall be within the period not longer than 50 years from the turn-over of the project.
  12. Amortization shall be paid annually, the first payment to commence within one year after project turn-over.
  13. Counterpart participation reduced the amount the Association will pay NIA. Thus the Association shall keep a record of the contribution/participation of each member.

### **SPECIAL CONDITION**

To further ensure recovery of the NIA investment in the project, the Association choice of its Operation's Manager shall be subject to NIA's approval.

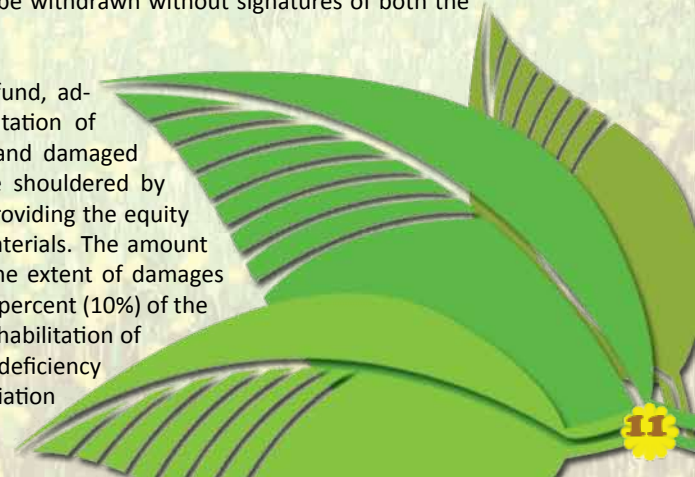
The NIA reserves the right to supervise the activities and operation of the Association for as long as the consideration of this Agreement has not been fully paid by the Association. The Association shall submit itself to NIA supervision as a safeguard that the provisions of this Agreement shall be faithfully observed and that the interests of the members are protected.

In the exercise of these supervisory functions, the NIA may audit the Book of Accounts and records of the Association and may issue necessary guidelines and such guidelines shall form part of this Agreement.

The Association is required to register its official receipts with the BIR and submit statements of financial conditions and operations to the SEC, copy furnished NIA for control and monitoring activities.

The by-laws of the Association shall contain a provision that all fees received by the Association from its members and beneficiaries shall be directly deposited in a bank of choice and that the same account cannot be withdrawn without signatures of both the President and the Treasurer.

In the absence of a calamity fund, additional cost of repair/rehabilitation of projects not yet turned over and damaged due to force majeure shall be shouldered by the NIA with the Association providing the equity in the form of labor and/or materials. The amount of equity shall depend upon the extent of damages but should be not less than ten percent (10%) of the total cost. The cost of repair/rehabilitation of damages not due to technical deficiency shall be charged to the Association loan.







Amortization payment shall not include the cost of access roads or service roads, flood control or protection dikes that are not part of the diversion works, power operating facilities, reforestation and should be only for the recovery of cost of irrigation and farm drainage facilities.

For rehabilitation project, where there is an existing loan, restructuring of amortization schedule should be done to accommodate the old loan and new loan, provided that the resulting period of amortization will not exceed fifty years.

The NIA thru the Engineer-in-Charge and the Institutional Development Officer shall keep a record of the counterpart participation of the Association.

IN WITNESS WHEREOF, the PARTIES to this Agreement have hereunto singed this instrument this \_\_\_\_\_ day of \_\_\_\_\_.

**NATIONAL IRRIGATION ADMINISTRATION**

**IRRIGATORS ASSOCIATION, INC.**

By:

By:

\_\_\_\_\_  
Division Manager, IMO

\_\_\_\_\_  
IA President

**SIGNED IN THE PRESENCE OF:**

\_\_\_\_\_  
Project-in-Charge

\_\_\_\_\_  
IA Vice President

\_\_\_\_\_  
Institutional Development Officer

**RECOMMENDING APPROVAL:**

\_\_\_\_\_  
Division Manager, Engineering and Operations Division

**APPROVED:**

\_\_\_\_\_  
Regional Manager

