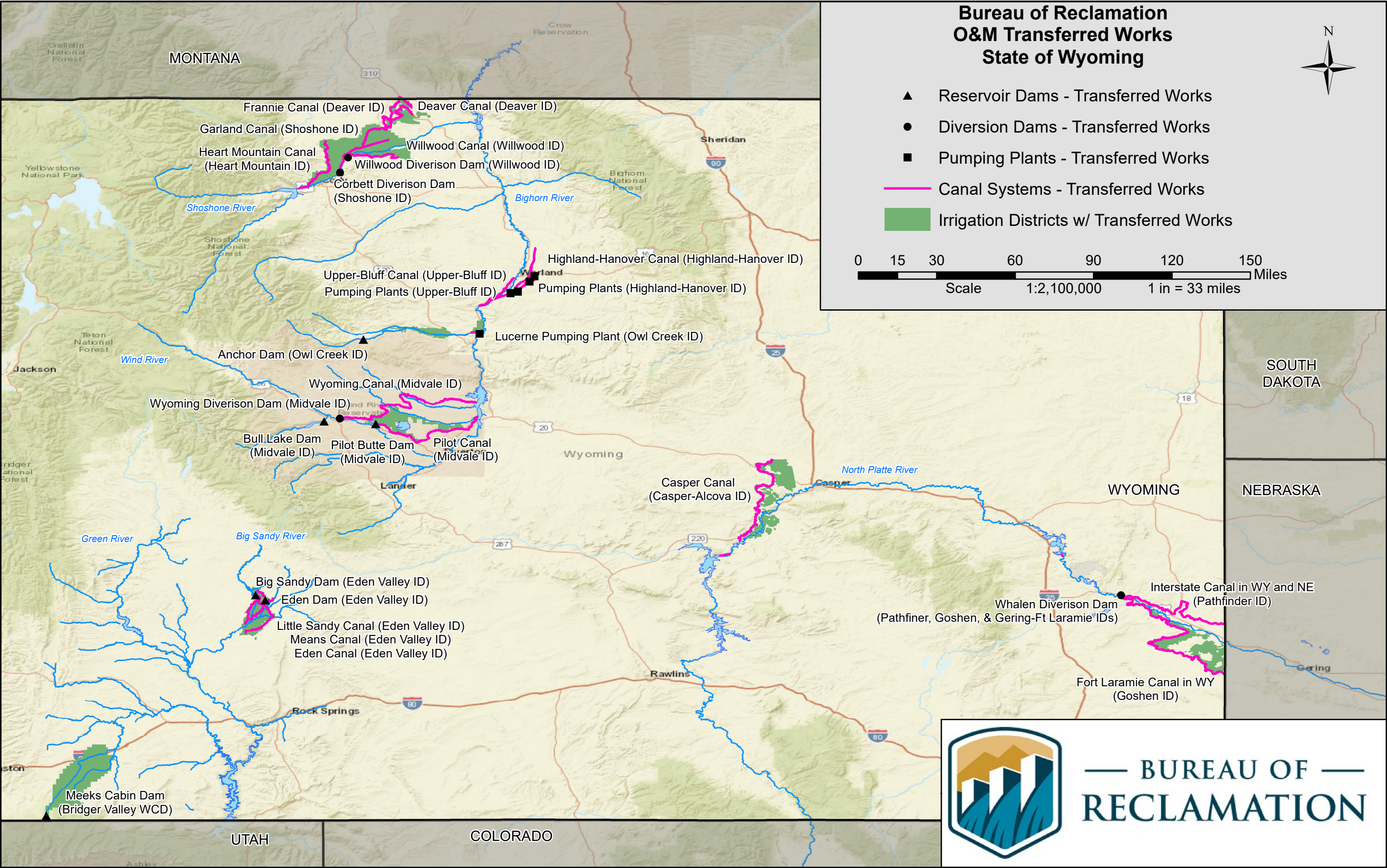


Bureau of Reclamation Operation and Maintenance Transferred Works in Wyoming

Irrigation District	Major Features	Details	Construction Date
Bridger Valley Water Conservancy District	Meeks Cabin Dam	Earth Dam 185 ft high, approx. 3,200 ft long, capacity approx. 32,500 acre-ft	1966-1971
Eden Valley Irrigation and Drainage District	Big Sandy Dam	Earth Dam 85 ft high, 2350 ft long, capacity approx. 39,700 acre-ft	1941-1952
	Eden Dam	Earth Dikes 27 ft high, 3500 ft long, capacity approx. 7,500 acre-ft	1910, refurbished 1959
	Little Sandy Canal	4 miles, capacity 150 cfs	1957
	Means Canal	6 miles, capacity 635 cfs	1952
	Eden Canal	11 miles, capacity 475 cfs	1952-1955
Deaver	Frannie Canal	44 miles, capacity 550 cfs	1917-1920
	Deaver Canal	24 miles, capacity 194 cfs	1916-1917
	Deaver Dam & Reservoir	Earth dam 14 ft high, 1300 ft long, capacity approx 600 acre-ft	1918
Heart Mountain	Shoshone River Siphon	Steel 10ft dia, 1640 ft bridges Shoshone River	1939
	Heart Mountain Canal	26 miles, capacity 915 cfs	1937-1947
Shoshone	Corbett Diversion Dam	Concrete dam 12 ft high, 400 ft long	1908
	Garland Canal	18 miles, capacity 1,000 cfs	1906-1908
Willwood	Willwood Diversion Dam	Concrete dam 41 ft high, 476 ft long	1924
	Willwood Canal	27 miles, capacity 320 cfs	1924-1927
Highland Hanover	Main Canal 1	2 miles, capacity 15 cfs	1956-1957
	Main Canal 2	13 miles, capacity 97 cfs	1956-1957

	5 pump stations	12 pumping units, 2,450 combined HP	1956-1957
Upper Bluff	3 pump stations	5 pumping units, 440 combined HP provides flow to about 8 miles of laterals	1956-1957
Owl Creek	Anchor Dam	Concrete dam 146 ft high, 660 ft long, approx. 7,000 acre-ft	1957-1960
	Lucerne Pumping Ditch	1 mile, capacity 94 cfs	1956
	Lucerne Relift Canal	3 miles, capacity 44 cfs	1956
	2 pump stations	6 pumping units, 1420 combined HP	1956
Midvale	Bull Lake Dam & Reservoir	Earth dam 60 ft high, 3,456 ft long, 152,000 acre-ft	1936-1938
	Diversion Dam	Concrete dam 19 ft high, 651 ft long	1923
	Wyoming Canal	62 miles, capacity 2,200 cfs	1920-1951
	Pilot Butte Dam & Reservoir	Earth dam 63 ft, 1,300 ft long, 32,000 acre-ft	1922-1926
	Pilot Canal	38 miles, capacity 1,000 cfs	1926-1947
Casper-Alcova	Casper Canal	59 miles, capacity 1,200 cfs (designed to serve a bigger project than was actually developed)	1934-1939
Goshen	Whalen Diversion Dam	Concrete dam 11 ft high, approx. 250 ft long, to Ft. Laramie Canal	1909
	Ft. Laramie Canal (WY)	85 miles, capacity 1,500 cfs	1915-1924
Pathfinder	Whalen Diversion Dam	Concrete dam 11 ft high, approx. 250 ft long, to Interstate Canal	1909
	Interstate Canal (WY)	approx. 50 miles, capacity 2,100 cfs	1903-1913



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Subject:	Title Transfer for Reclamation Project Facilities
Purpose:	The purpose of this Directive and Standard (D&S) is to define requirements and responsibilities in executing title transfers. The benefit of this D&S is the establishment of uniform requirements and consistent implementation of Public Law 116-9, Title VIII, Subtitle A, and other authorized title transfers, across the Bureau of Reclamation's regions.
Authority:	John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019, (Pub. L. 116-9, Title VIII, Subtitle A; 133 Stat. 804; 43 U.S.C. 2902, et seq.); Reclamation Act of June 17, 1902 (Ch. 1093, 32 Stat. 388) and acts amendatory thereof and supplementary thereto.
Approving Official:	Director, Policy and Programs; Director, Dam Safety and Infrastructure
Contact:	Reclamation Law Administration Division (84-55000); Asset Management Division (86-67200)

1. **Introduction.** Public Law 116-9, Title VIII, Subtitle A (Pub. L. 116-9), authorizes Reclamation to transfer title to certain Federal facilities to non-Federal entities upon the completion of payment of all capital costs. Title to facilities that are not eligible for title transfer under Pub. L. 116-9 may only be transferred following specific authorization of the title transfer by the United States Congress. This D&S directs staff in implementing Reclamation's title transfer authorities and responsibilities. The transfer of title divests Reclamation of responsibility for the operation, maintenance, replacement, management, regulation of, and liability for Federal interests in lands and project¹ facilities. The transfer of title to dams will also result in a change in regulatory oversight and associated requirements. Ownership of assets may provide non-Federal entities with greater autonomy and flexibility to manage the facilities. The intent of this D&S is to define and streamline the title transfer process.
2. **Applicability.** This D&S applies to all Reclamation staff involved in the transfer of title to Reclamation project facilities under Pub. L. 116-9 and other specific authorizations, to the extent they apply.
3. **Initiating Title Transfers.**
 - A. An area manager or regional director will initiate the title transfer process after receiving a written request from an authorized official representing the requestor. The written request must identify the specific facilities to which title is being requested, although the scope of this request may change over time.

¹ A statutorily defined assembly of features and supporting assets necessary for the delivery of benefits authorized by Congress.

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- B. The area manager or regional director will respond to the requestor's written request within 2 weeks to acknowledge its receipt. The response will advise the requestor of each party's responsibilities during the initial stages of the title transfer process leading up to the development of a Memorandum of Agreement (MOA). The response will also inform the requestor of the requirement for payment, in advance, of the transaction and administrative costs for processing the title transfer request.
- C. Requestors must pay in advance the estimated transaction and administrative costs as determined by Reclamation to be associated with the process of a specific title transfer. Costs include those that Reclamation incurs for complying with environmental and cultural resource regulations and applicable laws, including those listed in Paragraph 7. Except for Paragraph 9, costs incurred by Reclamation to process a title transfer will be allocated between the requestor and Reclamation consistent with the project operation and maintenance cost allocation or existing authorized practices. If Reclamation collects any amount that it does not subsequently use on a title transfer process, Reclamation will refund that amount to the requestor. Reclamation staff will make all reasonable efforts to stay within the proposed budget and will notify the requestor if it is determined that the budget will need to be modified. See Reclamation Manual Policy, *Allocation of Operation, Cost Maintenance, and Replacement Costs* (PEC P07), and D&S, *Advance Collection of Reimbursable Costs for Water-Related Contracting Activities* (PEC 07-01).
- D. Reclamation staff will work with the requestor to complete the Title Transfer Information Sheet (Appendix A). Reclamation staff will use information collected with the Title Transfer Information Sheet to make an initial determination of whether the facility or requestor is eligible for title transfer under this D&S and under Pub. L. 116-9, and to identify actions needed to proceed with title transfer.
- E. Prior to initiating any detailed discussions and analyses for the requested title transfer, the appropriate area manager or regional director and the requestor will sign an MOA² describing the responsibilities of all parties, estimated project schedule, and estimated transaction and administrative costs during the title transfer process. For requestors who are organized with a Board of Directors, Reclamation must have a Board resolution approving the MOA before the area manager or regional director may sign it. The MOA is not the title transfer agreement.
- F. Reclamation staff will notify and seek frequent involvement from staff in the appropriate area, regional and Commissioner's Offices. This includes the Dam Safety and Infrastructure Office and the Policy and Programs Office, and appropriate repayment, lands, facilities, and power staff that will be involved in operational and administrative aspects of the title transfer process.

² MOA and Memoranda of Understanding are unenforceable and must not be written in the form of a contract or contain legally binding content.

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- G. If Reclamation staff determine that the title transfer is eligible for the categorical exclusion (CE) in 516 Departmental Manual 14.5 F (1), described below in Paragraph 7.A., and the costs of conducting the analysis are equal to or exceeded by the cost of recovering them, Reclamation will not collect those costs from the requestor. See Reclamation Manual D&S, *Advance Collection of Reimbursable Costs for Water-Related Contracting Activities* (PEC 07-01), Paragraph 6.E.
 - H. Reclamation staff will advise the requestor on the anticipated impacts of the title transfer, including impacts to its legal and regulatory requirements under the Reclamation Reform Act of 1982 (96 Stat. 1263; 43 U.S.C. 390aa, et seq.) (RRA) and other applicable laws.
4. **Public Outreach and Involvement for All Title Transfers.** The title transfer process will be carried out in an open and public manner³ and include the following:
- A. After the parties sign the MOA, Reclamation staff, including Public Affairs staff, will collaborate with the requestor to develop a communications plan and identify all known stakeholders. The communications plan must include notification to known stakeholders that the requestor and Reclamation have initiated the title transfer process.
 - B. After the parties sign the MOA, Reclamation staff and the requestor will meet or communicate with representatives from interested Federal, State, and local agencies and tribes to consider their concerns.
 - C. For high and significant hazard potential facilities, Reclamation staff will meet with the appropriate dam safety regulatory agencies and the requestor to discuss Reclamation's current understanding of the dam safety risks and the unresolved dam safety issues and recommendations.
 - D. Throughout the title transfer process, Reclamation staff will provide stakeholders with opportunities to comment on the scope of the title transfer and identify whether their interests may be affected. Reclamation staff will make available to stakeholders relevant information, including proposals, analyses, and reports related to the requested title transfer.
 - E. Reclamation staff will follow public outreach requirements under the National Environmental Policy Act (42 U.S.C. 4321, et seq.) (NEPA) process,⁴ as well as specific requirements for eligibility under the CE, if applicable.

³ See also Reclamation Manual Policy, *Public Involvement in Bureau of Reclamation Activities* (CMP P03), and D&S, *Public Involvement in Bureau of Reclamation Activities* (CMP 04-01).

⁴ See requirements under 40 CFR 1506.6, 43 CFR 46.110, 43 CFR 46.305, 43 CFR 46.430-435, and 516 DM 1.7.

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- F. Reclamation staff will provide public notice of the opportunity to review the negotiated draft of the final title transfer agreement for a minimum of 30 days before it is executed. The public review period will take place concurrent with the 90 days in which the report described in Paragraph 11.C. is available to Congress.

5. General Requirements for All Title Transfers.

- A. Reclamation staff must determine and document for the administrative record that the requested title transfer:
 - (1) is in the financial interest of the United States;
 - (2) protects the public aspects of the facility, including water rights managed for public purposes, such as flood control or fish and wildlife;
 - (3) complies with all applicable Federal and State laws;
 - (4) will not result in an adverse impact on fulfillment of existing water or power delivery obligations consistent with historical operations and applicable contracts; and
 - (5) is consistent with the responsibilities of the Secretary of the Department of the Interior:
 - (a) as trustee for federally recognized Indian tribes; and
 - (b) to ensure compliance with any applicable international and tribal treaties and agreements and interstate compacts and agreements.
- B. To implement Paragraphs 5.A.(4) and (5) above, Reclamation staff will work with the requestor, beneficiaries, and stakeholders to assess potential adverse impacts to the interests of beneficiaries and stakeholders. It is the responsibility of the requestor to coordinate with other beneficiaries to ensure that the proposed title transfer does not create unacceptable impacts to other beneficiaries. As needed, Reclamation staff will assist the requestor in communicating with the affected beneficiaries.
- C. Requestors must demonstrate the technical capabilities to operate and maintain the facilities permanently and their ability to satisfy financial obligations related to the facilities.
- D. Reclamation must prepare and transmit to the requestor and the appropriate dam safety regulatory agencies an updated dam safety decision document with the status of all the dam safety issues signed by the area manager, regional director, and the Chief of Dam Safety in accordance with Reclamation Manual Policy, *Decisions Related to Dam Safety Issues* (FAC P02).

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6. Valuation for All Title Transfers.

- A. The value of facilities, except for land and interests in land, will be based on an estimate of base value and adjustments from that value.
- (1) The base value for requested facilities, excluding land and interest(s) in land⁵, is the present value of all future Federal revenue streams at the time of transfer. Examples of future Federal revenue streams include the following: (1) water revenues, including revenues from water service and repayment contracts⁶ and their contract renewals, any operation and maintenance deficits owed to the United States that are outstanding as of the date of the title transfer, and projected full-cost pricing revenues⁷; (2) revenues from new or amended water delivery contracts expected to be executed due to changes in project water demand, such as conversion of project water use from agricultural irrigation to municipal and industrial use; (3) revenues from water transfers; (4) revenues from the sale of project use power and surplus power, including payments received as aid to irrigation⁸; and (5) all revenues from other authorized sources, such as lease of facilities. The present worth of the anticipated future Federal revenues and costs will be determined by discounting, as described in Paragraph 6.A.(2).
 - (2) The discount rate that will be used to determine the present worth of the future revenues and costs is Reclamation's water resources planning rate, which is published in the Federal Register annually, and is treated as the real not nominal rate.
 - (3) Any adjustments to the base value as initially provided to the requestor must be specified in the terms and conditions of the title transfer agreement.
- B. The valuation of withdrawn land or interest(s) in withdrawn land will be done in accordance with Reclamation Manual D&S, *Real Property Appraisal* (LND 05-01). Adjustments from the market value of the land will include, if appropriate, land management costs that Reclamation would no longer incur⁹ after title transfer, or Reclamation's costs for disposing of the land, or other pertinent reasonably foreseeable costs. If a self-contained complete appraisal report in compliance with the Uniform Standards of Professional Appraisal Practice is required to meet a specific situation,

⁵ The words "interests in land" are meant in this Paragraph to refer to easements, rights-of-way, and similar property interests that will be valued according to Paragraph 6.B. Some interests from lands that generate a revenue source, such as revenues from use authorizations including grazing, will be included in the base value calculation described in this Paragraph.

⁶ See Reclamation Manual Policy, *Water-Related Contracts and Charges – General Principles and Requirements* (PEC P05) for descriptions of the various contracts referenced in this Paragraph.

⁷ See definitions in 3 CFR 426.2.

⁸ Aid to irrigation is repayment assistance to irrigation from surplus hydropower or municipal and industrial users.

⁹ Reclamation incurs costs when managing lands in accordance with Reclamation Manual Policy, *Land Program Management* (LND P06), Paragraphs 5.A. through 5.G.

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Reclamation staff will work with the requestor and the Department of the Interior's Appraisal and Valuation Services Office to secure the appraisal using the procedures for Non-Federal Payment for Valuation Services. Additional requirements for the valuation of lands under Pub. L. 116-9 are covered in Paragraph 10.C.

- C. Reclamation staff will provide an estimate of the net present value of the requested facilities and market value of withdrawn lands¹⁰, as of the approximate date of title transfer. Reclamation staff will adjust the estimate as appropriate and will support adjustments with complete documentation. The Reclamation Law Administration Division will have an economist review the valuation estimate before it is provided to the requestor or other stakeholders.

7. Environmental Requirements for All Title Transfers.

- A. Reclamation CE in 516 Departmental Manual 14.5 F (1) is appropriate to use for requested title transfers if the scope of the requested transfer is consistent with the terms of the CE and no extraordinary circumstances exist. This D&S, CMP 11-01, does not define the circumstances under which Reclamation will use a CE. If a requested title transfer does not satisfy the qualification factors of a CE or would trigger any of the extraordinary circumstances as described in 43 CFR 46.215, appropriate NEPA environmental review and documentation is required.
- B. Reclamation will comply with other applicable environmental laws including:
 - (1) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);
 - (2) the National Historic Preservation Act of 1966 (54 U.S.C. 300101 et seq.); and
 - (3) the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.).

- 8. **Land Requirements for All Title Transfers.** Reclamation staff will review all Reclamation project land or interests in land¹¹ associated with a requested title transfer to determine the current disposition and eligibility for transfer. This determination will identify and document the disposition status of land and interests in land into three categories: (1) eligible for title transfer and necessary for operation, maintenance, and replacement of facilities; (2) to be retained by Reclamation; or (3) not needed for project purposes and which will be disposed in accordance with Reclamation Manual D&S, *Land Disposal* (LND 08-02). Reclamation will also reserve an easement over conveyed property under certain conditions if staff determine that it is appropriate. See 43 U.S.C. 2903(b).

¹⁰ Reclamation's withdrawn lands are lands removed from the public domain, under Congressional authorization, for Reclamation's project objectives and authorized purposes, such as constructing reservoirs and distribution works. In some situations, other Federal agencies may have or manage withdrawn lands that overlap Reclamation's withdrawn lands. These cases will be addressed under Paragraph 4.B.

¹¹ Interests in land may be fee interests or other interests, such as an easement, right of way, or reservation.

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9. **Inspection of Facilities for All Title Transfers.** Reclamation staff will organize and conduct an onsite pre-transfer review of the facility. The purpose of this review is to facilitate the discussion of facility condition, operation and maintenance recommendations, operating information, emergency plans, monitoring systems, dam safety, security, and other issues of importance. Reclamation staff with significant knowledge of the operations related to the facility will participate in the review, including, as necessary, personnel from the area office, regional office, Dam Safety and Infrastructure Office (for high and significant hazard potential facilities), Security Office, and the Technical Service Center. Reclamation staff will encourage the requestor, the appropriate regulatory agencies, and other entities, as appropriate, to participate in the review. Reclamation staff will document the results of the review in a letter to appropriate entities. For high and significant hazard potential dams, the facility review will be conducted and documented in accordance with requirements for Comprehensive Reviews in Reclamation Manual D&S *,Review/Examination Program for High and Significant Hazard Dams* (FAC 01-07). Reclamation's related costs for the review will be non-reimbursable.
10. **Eligibility Criteria for Title Transfers Under Pub. L. 116-9.** In addition to the requirements in Paragraphs 5 through 8, if the qualifying entity is not entitled to title transfer under other specific legislation, and if all the criteria listed below are met, the facility will be eligible for transfer under Pub. L. 116-9, Section 8003(a)(1), (43 U.S.C. 2903). The criteria applied by this D&S to determine Pub. L. 116-9 eligibility will be used to evaluate title transfers under separate authorities only to the extent such application is consistent with the other specific legislation.
- A. The qualifying entity must have agreed to:
- (1) accept title to the eligible facilities;
 - (2) continue to use the eligible facilities for substantially the same purposes for which the eligible facilities are being used at the time Reclamation evaluates the potential title transfer; and
 - (3) provide or have provided on their behalf, as consideration for the assets to be conveyed, compensation to the Reclamation Fund established by the first section of the Act of June 17, 1902 (32 Stat. 388, Chapter 1093), in an amount that is the equivalent of the net present value of any repayment obligation, including payment made through aid to irrigation, to the United States or other income stream that the United States derives from the eligible facilities to be transferred, as of the date of the transfer.
- B. Reclamation must:
- (1) be able to enter into an agreement with the qualifying entity with respect to the legal, institutional, and financial arrangements relating to the conveyance of title;

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- (2) determine that the requested title transfer would not have an unmitigated significant effect on the environment; and
 - (3) if the eligible facilities requested to be transferred include a dam or diversion works (not including canals or other project features that receive or convey water from the diverting works) diverting water from a water body containing a species listed as a threatened species or endangered species or critical habitat under the Endangered Species Act of 1973, determine that:
 - (a) the eligible facilities continue to comply with the Endangered Species Act of 1973 in a manner that provides no less protection to the listed species as existed under Federal ownership; and
 - (b) the eligible facilities are not part of the Central Valley Project in the State of California.
 - (4) determine that the conveyance will not adversely impact applicable Federal power rates, repayment obligations, or other project power uses.
- C. Any land or interests in land to be conveyed under this D&S must be necessary for the operation, maintenance, reconstruction, and security of the requested facilities and be either:
- (1) land or land interests acquired by Reclamation; or
 - (2) land withdrawn and currently administered by Reclamation only if Reclamation determines in writing that the withdrawn land is encumbered by facilities to the extent that it is unsuitable for return to the public domain¹², and the qualifying entity agrees to pay market value based on the historical or existing uses for the withdrawn land to be conveyed.¹³ When determining market value, Reclamation staff will consider the costs that the Federal government will no longer incur as a result of the title transfer (see Paragraph 6.B.).

11. Title Transfer Final Approval Process Under Pub. L. 116-9.

A. Sequence.

- (1) After Reclamation staff have sufficient information to determine if the title transfer is eligible under Pub. L. 116-9 and have completed the requirements in Paragraphs 3 through 10 of this D&S, they will prepare a package of the relevant

¹² If the requestor needs a right-of-way to operate facilities and if that right-of-way is on withdrawn land that is not encumbered and is eligible to be relinquished to the Bureau of Land Management and returned to the public domain, Reclamation staff will consider its authority to waive certain costs in 43 CFR 429.26. Retention of encumbered or fragmented adjoining or underlying land interests should be avoided.

¹³ Reclamation staff will also follow the requirements in Reclamation Manual D&S, *Land Withdrawal, Withdrawal Management, and Withdrawal Revocation* (LND 03-01).

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analyses and compliance documentation required by this D&S and a briefing paper for the Commissioner's Office. When the regional director agrees that sufficient information is assembled to justify or support the completion of a requested title transfer, the regional director will send the package to the Commissioner's Office. The package will include, at the regional director's discretion, a request for a delegation of authority from the Commissioner to execute the title transfer agreement described in Paragraph 11.B.¹⁴

- (2) The Commissioner's Office staff, through the Asset Management and Reclamation Law Administration Divisions, will make a recommendation to the Commissioner regarding execution of the title transfer and the requested delegation of authority, and will respond to the regional director's analysis and request.
- (3) After completing all requirements in Paragraphs 3 through 10 and receiving the Commissioner's response and approval to proceed, Reclamation staff will negotiate and draft the final title transfer agreement with the requestor.
- (4) The regional director will transmit final title transfer materials including environmental compliance documentation and the requested title transfer agreement to the Commissioner.
- (5) The Commissioner's Office staff will transmit the report to Congress, as required by Pub. L. 116-9 and Paragraph 11.C. of this D&S.
- (6) Reclamation staff will post for public notice the final draft of the title transfer agreement. It will be posted for 30 days in the appropriate print and online media.

B. Written Agreement. Transfer of title will be made by written agreement, along with appropriate associated legal instruments, such as deeds, between Reclamation and the qualifying entity. The agreement will be developed in consultation with any existing water and power customers and other beneficiaries affected by the conveyance of the eligible facilities.

C. Written Notice to Congress. Reclamation is authorized to convey to a qualifying entity all right, title, and interest of the United States in and to any eligible facility if:

- (1) Reclamation determines that the entity and facilities qualify under Pub. L. 116-9; and

¹⁴ The authority to execute title transfer agreements is reserved to the Commissioner. Reclamation Manual *Delegations of Authority*, Paragraph 4.E.(5).

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- (2) not later than 90 days before the date on which Reclamation makes the conveyance:
 - (a) Reclamation submits to Congress a written notice of the proposed conveyance and a description of the reasons for the title transfer; and
 - (b) a joint resolution by Congress disapproving the conveyance is not enacted before the date on which Reclamation makes the title transfer.
- 12. **Title Transfers Not Eligible Under Pub. L. 116-9.** If a facility or requestor seeking title transfer is not eligible under Pub. L. 116-9, new legislation must specifically authorize transfer of title of that facility to the requestor, as it did before the date of enactment of Pub. L. 116-9, March 12, 2019. For title transfers that are not eligible under Pub. L. 116-9 or are otherwise authorized under specific legislation, Reclamation staff will collaborate with the requestor to complete the Title Transfer Information Sheet and follow the process in this D&S (see Paragraphs 1 – 9, 15 – 17) to the extent it is consistent with the specific legislation. If a proposed title transfer will require additional authorization from Congress for any other reason, it is not eligible for transfer under Paragraph 11.C.
- 13. **After Title Transfer Under Pub. L. 116-9.**
 - A. After transferring title to a Reclamation facility or land, Reclamation, on behalf of the United States, divests itself of the property. In some cases, following title transfer of a facility, Reclamation may retain jurisdiction over other facilities or land in the project if only a portion of the Reclamation project was transferred, if access is needed to operate and maintain another project or facility, or if the transferee still receives Reclamation project water from facilities in the same project that were not transferred.
 - B. Effective on the date of conveyance of any eligible facilities under this D&S, the United States will not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the eligible facilities, other than damages caused by acts of negligence committed by the United States or by agents or employees of the United States prior to the date of the conveyance. Nothing in this section increases the liability of the United States beyond that currently provided in Chapter 171 of Title 28, United States Code (commonly known as the Federal Tort Claims Act).
 - C. The degree to which the RRA will apply following title transfer will be addressed on a case-by-case basis.
 - D. Except as provided in Paragraph 14, the qualifying entity to which the conveyed property is conveyed will not be eligible to receive any benefits¹⁵, including project use

¹⁵ Relevant benefits will vary by project and requestor and must be assessed on a case-by-case basis. Benefits include project monitoring for water operations, extraordinary maintenance repayment, and Safety of Dams cost-sharing.

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power, with respect to the conveyed property, except for any benefit that would be available to a similarly situated entity with respect to property that is not a part of a Reclamation project.

E. A notification process following the execution of a title transfer agreement will include:

- (1) The regional director will send copies of the executed title transfer agreement to the regional finance office; Mission Support Organization, Finance and Accounting Division, Attention 84-27720; the Policy and Programs Office, Attention 84-55000; and the Dam Safety and Infrastructure Office, Asset Management Division, Attention 86-67200 within 30 business days after the title transfer agreement is signed. For high and significant hazard potential facilities, the Dam Safety Office, Attention 86-67100, must also receive a copy of the executed title transfer agreement.
- (2) The regional director will send copies of the executed title transfer agreement to appropriate offices within the region and to area offices that need to be aware of the title transfer.
- (3) For high and significant hazard potential facilities, the regional director will send a letter to the appropriate dam safety regulatory agencies. Copies will be sent to the appropriate local and State emergency management officials, as well as other Federal agencies with an interest in the operations of the dam. The letter should indicate the effective date of the transfer and that Reclamation no longer owns nor is responsible for dam safety, security, public safety, or regulatory function of the facility.

14. Project Use Power Under Pub. L. 116-9.

A. During the title transfer process, Reclamation staff will determine if the qualifying entity is eligible to continue to receive project use power.¹⁶ At a minimum, all three conditions below must be met:

- (1) the qualifying entity was receiving project use power as of March 12, 2019;
- (2) the project use power will be used for the delivery of Reclamation project water; and
- (3) Reclamation and the qualifying entity enter into a new or amended project use power agreement¹⁷ under which the qualifying entity agrees to continue to be responsible for a proportionate share of operation and maintenance and capital costs for the Federal facilities that generate and deliver, if applicable, power used

¹⁶ See Reclamation Manual D&S, *Project Use Power* (FAC 04-06).

¹⁷ See Reclamation Manual D&S, *Project Use Power Contracts Development and Modification* (FAC 04-09) for contract requirements.

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for delivery of Reclamation project water after the date of conveyance, in accordance with Reclamation project use power rates.

- B. Any continued provision of project use power to the conveyed property will not exceed existing contracted project use power generation or capacity commitments in place at the time the title to the facilities was transferred.
15. **Water Rights for All Title Transfers.** No interests in water will be conveyed unless the conveyance is provided for in a separate, quantified agreement between Reclamation and the qualifying entity, subject to applicable State and Federal law and public process requirements.¹⁸
16. **Records for All Title Transfers.** Reclamation staff will advise the requestor of the availability of all relevant operations, dam safety-related, and security-related documents. Documents will be made available for review and copying by the requestor at its expense. Reclamation staff will retain, compile, and archive original documents in accordance with existing records management policies found in Reclamation Manual D&S, *Information Management* (RCD 05-01) after completing the title transfer.
17. **Definitions.**
- A. **Beneficiary.** Individuals, districts, associations, and other entities who contract with Reclamation to receive direct benefits of the authorized purposes of the project, including Federal power marketing administrations. For the purpose of this D&S, the term beneficiary does not include those whose interest in the project is derived from membership in or contracts with the entity directly contracting with Reclamation.
 - B. **Conveyed Property.** A facility for which title has been transferred from Reclamation to a non-Federal entity.
 - C. **Eligible Facility.** A facility that meets the criteria for potential title transfer established under Pub. L. 116-9. Eligible facilities do not include a Reclamation project facility, or a portion of a Reclamation project facility, (i) that is a reserved works as of March 12, 2019; (ii) that generates hydropower marketed by a Federal power marketing administration; or (iii) that is managed for recreation under a lease, permit, license, or other management agreement that contributes to capital repayment.
 - D. **Facility.** A dam or appurtenant works, canal, lateral, ditch, gate, control structure, pumping station, other infrastructure, recreational facility, building, power generating and transmission infrastructure, pipelines, distribution and drainage works, and associated land or interest in land or water.

¹⁸ Generally, State law requirements will determine the process for transferring water rights, except to the extent that it is preempted by Federal law, such as the Law of the River on the lower Colorado River.

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- E. **Qualifying Entity.** An agency of a State or political subdivision of a State, a joint action or powers agency, a water users association, or an Indian tribe or tribal utility authority that, as of the date of conveyance under this D&S, is the current operator of the eligible facility pursuant to a contract with Reclamation; and, as determined by Reclamation, has the capacity to continue to manage the eligible facilities for the same purposes for which the property has been managed under the Reclamation laws; and that meets the criteria for potential title transfer established under Pub. L. 116-9.
 - F. **Requestor.** The entity requesting title transfer of a Reclamation project facility.
 - G. **Reserved Works.** Any building, structure, facility, or equipment that is owned by the United States and for which operations and maintenance are performed, regardless of the source of funding, by an employee of Reclamation or through a contract entered into by Reclamation. A contract under this definition does not include an operation and maintenance transfer contract, repayment, water-related contracts, or other legal instruments that transfer operation, maintenance, and replacement responsibilities from Reclamation to the project beneficiary.
 - H. **Stakeholder.** Any individual, organization, or other entity, including power customers, that receives direct or indirect benefits from the project or that may be affected by title transfer. In addition, federally recognized tribes, and State and local governmental entities or other political subdivisions whose interests, property or regulatory authority could be impacted by the title transfer.
18. **Review Period.** The originating offices will review this release every 2 years.

RECLAMATION MANUAL TRANSMITTAL SHEET

Effective Date: _____

Release No. _____

Ensure all employees needing this information are provided a copy of this release.

Reclamation Manual Release Number and Subject

Summary of Changes

NOTE: This Reclamation Manual release applies to all Reclamation employees. When an exclusive bargaining unit exists, changes to this release may be subject to the provisions of collective bargaining agreements.

Filing instructions

Remove Sheets

Insert Sheets

All Reclamation Manual releases are available at <http://www.usbr.gov/recman/>

Filed by: _____

Date: _____