

Reclamation Manual

Directives and Standards

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 (43 U.S.C. 2902, et seq.), authorizes Reclamation to transfer title to certain Federal facilities to non-Federal entities upon the completion of payment of all capital costs. Facilities not eligible for title transfer under 43 U.S.C. 2902, et seq. 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 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 43 U.S.C. 2902, et seq. and other specific authorizations, to the extent they apply.
3. **Initiating All 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. 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.
- D. Following completion of Appendix A, the regional director will submit a request for approval from the Commissioner to proceed with the title transfer MOA. The request will follow the approval process and content in Paragraphs 4.B. through 4.E and 5.B. of Reclamation Manual (RM) D&S *Preparing Bases of Negotiation for New and Amendatory Water Service, Repayment, and Other Water-Related Contracts* (PEC 06 - 01). Some of the content in PEC 06-01 may not be applicable to the title transfer MOA. If omitted, note it in the request.
- E. After receiving approval to proceed and prior to initiating negotiations and analyses for the requested title transfer, the appropriate area manager or regional director and the requestor will sign an MOA.² The MOA will describe the responsibilities of all parties, and estimated project schedule. A separate Contributed Funds Act, 43 U.S.C. 395, contract will be used to describe the estimated transaction and administrative costs during the title transfer process. Reclamation must have a resolution from the requestor's governing body approving the MOA before the area manager or regional director may sign it. The MOA is not the title transfer agreement.
- F. Requestors must pay the estimated transaction and administrative costs associated with their requested title transfer in advance. These costs will be determined by Reclamation. 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 (O&M) cost allocation or existing authorized purposes. 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 RM Policy, *Allocation of Operation, Cost Maintenance, and Replacement Costs*

² In this D&S, 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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(PEC P07), and D&S, *Advance Collection of Reimbursable Costs for Water-Related Contracting Activities* (PEC 07-01).

- G. 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 Directorate and the Policy and Programs Directorate, and appropriate repayment, lands, environmental and cultural compliance, facilities, and power staff that will be involved in operational and administrative aspects of the title transfer process.
 - H. If Reclamation staff determine that the title transfer is eligible for the categorical exclusion (CE) in 516 Departmental Manual (DM) 14.5 F (1) or an environmental assessment, 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 RM D&S, *Advance Collection of Reimbursable Costs for Water-Related Contracting Activities* (PEC 07-01), Paragraph 4.E.
 - I. 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 (e.g., district mailings, paid advertising, etc.) 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. Staff will contact and coordinate with Federal agencies that include, but is not exclusive to, the Bureau of Land Management (BLM), the National Park Service (NPS), United States Forest Service (USFS), Fish and Wildlife Service (FWS), Bureau of Indian Affairs, Bonneville Power Administration (BPA), or Western Area Power Administration (WAPA), if applicable, soon after signing the MOA due to potential overlaps in jurisdiction or interests in the eligible facilities. When applicable, Reclamation staff will also request a written statement from the relevant Federal power marketing administration on title transfer impacts to Federal power rates, repayment obligations, project power uses, or aid-to-irrigation payments to

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

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inform Reclamation's decision on title transfer. If the PMA does not respond within 120 days of Reclamation's request, Reclamation will consider their response to be no adverse impact.

- 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 any unresolved dam safety issues and recommendations.
- D. Throughout the title transfer process, and as documented in the communications plan, 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 relevant information, including proposals, analyses, and reports related to the requested title transfer available to stakeholders.
- 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.
- 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:

⁴ See requirements under 40 CFR 1500-1508, 43 CFR 46, and 516 DM 1.

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- (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. Any facilities that the requestor is unable to or unwilling to operate and maintain after taking title are not eligible for transfer under 43 U.S.C. 2902, et seq.
- D. Reclamation staff, in coordination with the requestor, must document the mutually agreed upon rationale for any facilities that are proposed to be excluded from the scope of the title transfer request and which are eligible and otherwise can be included in the title transfer.
- E. 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 RM Policy, *Decisions Related to Dam Safety Issues* (FAC P02).
- F. Reclamation will review all water-related, project use power, reserved power, and other contracts that will be affected by the title transfer and identify any that will be made void completely or in part. Reclamation staff will work with the requestor and document any resulting changes from the title transfer agreement to the other contracts.
- 6. Valuation for All Title Transfers.**
- A. The value of facilities, excluding withdrawn land,⁵ will be based on an estimate of base value and adjustments from that value.
- (1) The base value for requested facilities 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

⁵ Withdrawn lands 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.

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service and repayment contracts⁶ and known or reasonably foreseeable new contract or renewals, any O&M deficits owed to the United States that are outstanding as of the date of the title transfer, and projected full-cost pricing revenues;⁷ (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 irrigation;⁸ 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 in the year that the transfer is submitted to Congress, which is published in the Federal Register annually, and is treated as the real not nominal rate.
 - (3) When calculating the net present value, Reclamation will not credit or consider any non-reimbursable Federal costs for operating and maintaining the requested facilities and lands other than (1) funds that have been appropriated historically for O&M and Dam Safety Inspections, or (2) the Federal share of O&M costs on the project facilities that have been appropriated in the current fiscal year in which the title transfer will be executed.
 - (4) 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 will be done in accordance with RM 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. Reclamation will not credit or consider any non-reimbursable Federal costs for operating and maintaining withdrawn lands other than funds that have been appropriated historically for administrative costs specific to the Federal government that a private entity would not reasonably incur. If a self-contained complete appraisal report in compliance with the Uniform Standards of Professional Appraisal Practice is required to meet a specific situation, Reclamation staff will work with the requestor and the Department of the Interior's Appraisal and Valuation

⁶ See RM 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 RM Policy, *Land Program Management* (LND P06), Paragraphs 5.A. through 5.G.

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Services Office to secure the appraisal using the procedures for Non-Federal Payment for Valuation Services. Additional requirements for the valuation of lands under 43 U.S.C. 2902, et seq. 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 lands,¹⁰ 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 will comply with other applicable environmental laws including¹¹:
 - (1) NEPA
 - (2) the Endangered Species Act (ESA) of 1973 (16 U.S.C. 1531 et seq.);¹²
 - (3) the National Historic Preservation Act of 1966 (54 U.S.C. 300101 et seq.);
 - (4) the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.); and
 - (5) the Clean Water Act (33 U.S.C. 1251 et seq.).
- B. In cases where assumptions, requestor affirmations, or conditions have changed during the title transfer process, a change in NEPA documentation may be required. Evaluation of the appropriate level of NEPA review will be assessed when the proposal is initiated and must be revalidated at the time of transfer.
- C. Reclamation CE in 516 DM 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 all qualification factors (see Appendix B) and no extraordinary circumstances exist. 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. Although the qualification

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 rights to or manage withdrawn lands that overlap Reclamation's withdrawn lands. These cases will be addressed under Paragraph 4.B.

¹¹ This list is not exhaustive.

¹² If there is an existing consultation with, or Biological Opinion from, FWS or the National Marine Fisheries Service, staff will ensure that the requestor continues to meet existing ESA compliance commitments.

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factors for the CE are similar to eligibility criteria under the law, eligibility under one does not indicate eligibility under the other.

8. Land Requirements for All Title Transfers.

- A. Reclamation staff will review all Reclamation project land or interests in land¹³ 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 will be disposed in accordance with RM 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).
- B. Reclamation staff will consult with and coordinate with other State and Federal agencies that have interests in the requested lands. This includes, but is not exclusive to, USFS, FWS, BLM, NPS, BPA, WAPA and others that have easements or other property rights in project lands.

9. Inspection of Facilities for All Title Transfers.

Reclamation staff will organize and conduct an onsite pre-transfer review of the facilities. The purpose of this review is to facilitate the discussion of facility condition, O&M 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 facilities will participate in the review, including, as necessary, personnel from the area office, regional office, Dam Safety and Infrastructure Directorate (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 RM 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 43 U.S.C. 2902, et seq.

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 facilities will be eligible for transfer under 43 U.S.C. 2902, et seq., Section 8003(a)(1), (43 U.S.C. 2903). The criteria applied by this D&S to determine 43 U.S.C. 2902, et seq.

¹³ Interests in land may be fee interests or other interests, such as an easement, right-of-way, or reservation.

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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;
- (2) determine that the requested title transfer would not have an unmitigated significant effect on the environment;
- (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; and
- (4) determine that the conveyance will not adversely impact applicable Federal power rates, repayment obligations, or other project power uses.

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- 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 domain,¹⁴ and the qualifying entity agrees to pay market value based on the historical or existing uses for the withdrawn land to be conveyed.¹⁵ 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 43 U.S.C. 2902, et seq.

A. Sequence.

- (1) After Reclamation staff have sufficient information to determine if the title transfer is eligible under 43 U.S.C. 2902, et seq. and have completed the requirements in Paragraphs 3 through 10 of this D&S, they will prepare a package of the relevant analyses and compliance documentation required by this D&S and a briefing paper for the Commissioner's Office through the appropriate regional director.
- (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.
- (3) Following the Commissioner's approval, the Commissioner's Office staff will transmit the report to Congress, as required by 43 U.S.C. 2902, et seq. and Paragraph 11.C. of this D&S.
- (4) 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

¹⁴ 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.

¹⁵ Reclamation staff will also follow the requirements in RM D&S, *Land Withdrawal, Withdrawal Management, and Withdrawal Revocation* (LND 03-01).

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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 43 U.S.C. 2902, et seq.; and
- (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 43 U.S.C. 2902, et seq.** If a facility or requestor seeking title transfer is not eligible under 43 U.S.C. 2902, et seq., new legislation must specifically authorize transfer of title of that facility to the requestor, as it did before the date of enactment of 43 U.S.C. 2902, et seq., March 12, 2019. For title transfers that are not eligible under 43 U.S.C. 2902, et seq. 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 43 U.S.C. 2902, et seq.**

- 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

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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. Reclamation and the requestor will notify any contractors who are affected by the title transfer and of any changes to their contract rights.
- E. Except as provided in Paragraph 14, the qualifying entity receiving the conveyed property will not be eligible to receive any benefits,¹⁶ including project use 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.
- F. 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 Senior Advisor of Hydropower, Attention 86-61000; the Policy and Programs Directorate, Attention 84-55000; and the Dam Safety and Infrastructure Directorate, 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) Staff will coordinate with appropriate regional offices and Denver directorates to update all systems of record and remove transferred facilities and lands from relevant databases, for example DSIS, FBMS, the Enterprise Asset Registry, and CARMA.
 - (3) The regional director will send copies of the executed title transfer agreement to appropriate offices within other Federal agencies, appropriate offices within the region, and to area offices that need to be aware of the title transfer.
 - (4) 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

¹⁶ 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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is responsible for dam safety, security, public safety, or regulatory function of the facility.

14. **Project Use Power Under 43 U.S.C. 2902, et seq.**

A. During the title transfer process, Reclamation staff will determine if the qualifying entity is eligible to continue to receive project use power.¹⁷ 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;¹⁸ and
- (3) Reclamation and the qualifying entity enter into a new or amended project use power agreement¹⁹ under which the qualifying entity agrees to continue to be responsible for a proportionate share of O&M and capital costs for the Federal facilities that generate and deliver, if applicable, power used 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 historic, pre-transfer project use power consumption levels.

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.²⁰

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 records. Records will be made available for review and copying by the requestor at its expense. Records shall be kept in the Department of the Interior's approved repository and managed in accordance with the Information Management Handbook as referenced in RM D&S, *Information Management* (RCD 05-01) after completing the title transfer.

¹⁷ See RM D&S, *Project Use Power* (FAC 04-06).

¹⁸ For purposes of this paragraph, project water is defined as water that was considered project water at the time of title transfer. As stated in Paragraph 15, any transfer of water rights must be made in a separate agreement. If by law, project water is no longer project water after title transfer, the requestor is still eligible to receive Project Use Power to move water that had been considered project water prior to transfer.

¹⁹ See RM D&S, *Project Use Power Contracts Development and Modification* (FAC 04-09) for contract requirements.

²⁰ Generally, State law requirements will determine the process for transferring water rights, except to the extent that it is preempted by Federal law.

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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 43 U.S.C. 2902, et seq. 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.
- 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 43 U.S.C. 2902, et seq.
- 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 O&M 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 O&M 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

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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: _____

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Title Transfer Information Sheet

Questions	Notes/Responses/Discussion	Action Items and Outstanding Questions
1. Why is title transfer being requested?		
2. Who is the current operator of the requested facilities?		
3. What are the Project's features? Which ones are requested for title transfer?		
A. Dam		
B. Reservoir		
C. Water conveyance or water distribution facilities		
D. Lands		
E. Buildings		
F. Power generation facilities		
G. Pumping plants		
H. Transmission lines and equipment		
I. Recreation areas		
J. Other (dikes, fish facilities, etc.)		

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Questions	Notes/Responses/Discussion	Action Items and Outstanding Questions
4. What are the current and planned Project purposes? Which ones are impacted by title transfer?		
A. Irrigation		
B. Municipal and industrial		
C. Power		
D. Flood control		
E. Fish and wildlife		
F. Recreation		
G. Highway improvement		
H. Other considerations		
5. What facilities are operationally, hydrologically, or financially integrated with the requested facilities? Consider the following:		
A. Non-project facilities		
B. Other Reclamation Project facilities		
C. Other Project purposes and beneficiaries		

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Questions	Notes/Responses/Discussion	Action Items and Outstanding Questions
6. What other interests are adjacent to or intermingled with the Project? Consider the following:		
A. State parks		
B. Federal lands ¹		
C. Cabin sites		
D. Other recreation facilities		
E. Other water users		
F. Other		
7. Are the requested facilities tied to the following?		
A. International treaties that affect Project operations (e.g., water to Mexico, flyway and habitat treaties)		
B. Interstate compacts or concerns		
C. Tribal interests (e.g., water rights, nearby Tribes, sacred sites, non-adjudicated water, tribal trust assets)		

¹ Consider the U.S. Forest Service, Bureau of Land Management and the National Park Service.

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Questions	Notes/Responses/Discussion	Action Items and Outstanding Questions
D. Public benefits associated with the requested facilities (e.g., fish and wildlife, flood control, and recreation)		
E. Threatened or endangered species		
8. Who might oppose this transfer and why?		
9. What actions have been taken to resolve any potential opposition?		
10. What contracts apply to the requested facilities? What is the repayment status and expiration date (if applicable)? Consider the following:		
A. Repayment		
B. Water service		
C. Exchange		
D. Warren Act		
E. Safety of Dams		
F. Extraordinary maintenance		
G. Project use power		
H. Lease of power privilege		

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Questions	Notes/Responses/Discussion	Action Items and Outstanding Questions
I. Operations and maintenance transfer		
J. Recreation		
K. Other		
11. Does the requestor receive aid to irrigation for any obligation based on its ability to pay?		
A. What preference power group(s) are responsible for repaying requestor aid to irrigation costs?		
B. What is the total sum of costs due and when are costs due?		
C. How will Reclamation and the requestor communicate with preference power groups?		
12. What land interests are being requested for title transfer?		
A. Lands		
(1) Fee title lands		
(2) Withdrawn lands		
a. Bureau of Land Management		
b. U.S. Forest Service		

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Questions	Notes/Responses/Discussion	Action Items and Outstanding Questions
c. Other		
B. Easements		
(1) On fee title		
(2) On withdrawn land		
C. Canal Act		
D. Subsurface rights		
E. Rights-of-way		
F. Environmental mitigation lands		
G. Other		
13. Are boundary surveys current? Is other title research necessary?		
14. What water rights are being sought? What water rights could be impacted by title transfer? Consider the following:		
A. Direct flow		
B. Storage rights		
C. Exchange rights		

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Questions	Notes/Responses/Discussion	Action Items and Outstanding Questions
D. Reserved rights, including Indian or Federal water rights		
E. State law requirements		
F. Ownership		
G. Other		
15. Are there incidental revenues? Consider the following:		
A. Grazing		
B. Oil and gas		
C. Timber		
D. Minerals		
E. Water-related contracts		
F. Wheeling of power		
G. Lease of power privilege		
H. Other		
16. How are operations and maintenance activities carried out?		

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Questions	Notes/Responses/Discussion	Action Items and Outstanding Questions
A. When was the last Reclamation operations and maintenance facility review completed?		
B. Has a title transfer inspection been scheduled or completed?		
C. Are there outstanding operations and maintenance corrective maintenance recommendations?		
17. What are the requestor’s capabilities to carry out all operations and maintenance responsibilities of the requested facilities?		
18. Are there outstanding Safety of Dams issues or monitoring equipment on facilities being considered for transfer?² Consider the following:		
A. Is there currently instrumentation monitoring done by Reclamation?		
B. After title transfer, who will serve as the responsible party for Safety of Dams activities?		

² See Reclamation Manual Directives and Standards *Dam Safety Issues in Title Transfers* (FAC 06-02).

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Questions	Notes/Responses/Discussion	Action Items and Outstanding Questions
C. After title transfer, who will carry out dam safety inspections?		
D. Is the State’s Safety of Dams program able to assume these responsibilities?		
19. Have disclosures been made of environmental, health, or safety findings, such as asbestos, lead, or pending environmental liabilities?		
20. How might title transfer impact Reclamation Reform Act compliance³?		
21. What are the anticipated environmental compliance issues and activities?		
A. What actions will trigger National Environmental Policy Act analysis?		
(1) Transfer of title		
(2) Possible changes in Project operations		
(3) Other actions		

³ Consider whether the Project is currently subject to Reclamation Reform Act, and whether this is a full or partial title transfer.

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Questions	Notes/Responses/Discussion	Action Items and Outstanding Questions
B. What are the Endangered Species Act considerations?		
C. What are the National Historic Preservation Act considerations?		
D. What hazardous sites and associated remediation may be necessary?		
E. What Water Quality or Clean Water Act requirements might apply? ⁴		
F. What other compliance activities may be necessary?		
22. Do the requested facilities receive Project Use Power?		
A. How much Project Use Power is currently under contract or otherwise obligated to the requestor and the facilities?		
B. What are the historic Project Use Power monthly and annual consumption levels?		
C. Is this anticipated to continue after the transfer?		

⁴ Consider salinity or selenium issues.

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Questions	Notes/Responses/Discussion	Action Items and Outstanding Questions
D. What are the existing load sources authorized for Project Use Power?		
E. Which Power Marketing Agency is involved?		
23. Is the requestor willing to assume all liability for the requested facilities?		
A. Does the requestor know what their insurance requirements and costs will be?		
24. Is there outstanding litigation regarding the facilities, land, or requestor that could impact the title transfer?		
25. Are there any Federal employees working at the facilities who would be affected by the title transfer?		
26. Who are the Project beneficiaries, stakeholders, and other members of the public that might have an interest in this title transfer? Identify all parties, including those within the following categories:		
A. Non-Federal		
(1) Irrigation		

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Questions	Notes/Responses/Discussion	Action Items and Outstanding Questions
(2) Municipal and industrial		
(3) Recreation		
(4) Environmental groups		
(5) Power		
(6) Landowners		
(7) County government		
(8) City and municipal government		
(9) State government ⁵		
(10) Tribes		
(11) Leaseholders – cabins, grazing, oil and gas, others		
(12) Other		
B. Departments and Federal Agencies		
(1) Bureau of Land Management		
(2) The National Park Service		
(3) Bureau of Indian Affairs		

⁵ Consider sub-divisions, such as water resources, State engineer, fish and game, State Historic Preservation Officer, water quality, public health, and parks and recreation agencies.

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Questions	Notes/Responses/Discussion	Action Items and Outstanding Questions
(4) U.S. Fish and Wildlife Service		
(5) Office of Natural Resource Revenue		
(6) The U.S. Army Corps of Engineers		
(7) The National Oceanic and Atmospheric Administration, Fisheries		
(8) Western Area or Bonneville Power Administrations		
(9) The Treasury Department		
(10) The Department of Defense (Army, Navy, etc.)		
(11) Federal Energy Regulatory Commission		
(12) Environmental Protection Agency		
(13) Office of Management and Budget/Congressional Budget Office		
C. Congressional Staff		
(1) House member(s)		
(2) Senator(s)		

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Questions	Notes/Responses/Discussion	Action Items and Outstanding Questions
(3) House committee staff		
(4) Senate committee staff		
27. Which stakeholders or other interested parties have been notified of the potential transfer?		
28. What level of public involvement and participation is the requestor willing to carry out?		
29. What title transfer activities have already been initiated or completed?		
A. Memorandum of Agreement between Reclamation and the requestor		
B. Initial transaction cost and valuation estimate		
C. Public outreach and communications plan		
D. Environmental compliance activities (National Environmental Policy Act, Hazardous Materials, National Historic Preservation Act)		
E. Land surveys (as needed)		
F. Asset valuation		

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Questions	Notes/Responses/Discussion	Action Items and Outstanding Questions
G. Draft title transfer agreement		

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Reclamation Categorical Exclusion (CE) in 516 Departmental Manual (DM) 14.5 F (1)

1. Qualification factors under 516 DM 14.5 F (1) are as follows:
 - A. The potential transferee must demonstrate the technical capability to maintain and operate the facilities and lands on a permanent basis and an ability to meet financial obligations associated with the transferred assets.
 - B. The potential transferee must affirm that it has no plans to change the maintenance, operations, or use of the lands and water associated with the transferred facilities.
 - C. The potential transferee must ensure that there are no competing demands for use of the transferred facilities, with the exception of those demands accommodated by existing contractual arrangements.
 - D. The potential transferee must ensure that the facilities proposed for transfer are not hydrologically integrated with other facilities, thereby impacting other contractors, stakeholders or activities, with the exception of those impacts accommodated by existing contractual arrangements.
 - E. The transfer would not include lands or facilities involving Indian trust responsibilities.
 - F. The potential transferee must ensure that issues involving existing contracts and agreements, and interstate compacts and agreements, are resolved, and treaty and international agreement obligations are fulfilled prior to transfer.
 - G. The potential transferee must assume responsibility for all commitments and agreements into the future.
 - H. Potentially affected state, local, and tribal governments, appropriate Federal agencies, and the public will be notified of the initiation of discussion to transfer title and will have: (a) the opportunity to comment and suggest options for remedying any problems; and (b) full access to relevant information, including proposals, analyses, and reports related to the proposed transfer.
2. Considerations to determine whether the project is consistent with the CE language and Qualification Factors include the following:
 - A. The requestor's future project plans include maintenance, rehabilitation, and replacement of existing federal facilities within the same facility footprint and prism, and for the same type, location, and size of existing infrastructure. The following are examples of activities would not qualify for the CE:
 - (1) new routing of pipelines, canals, or laterals;

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- B. The requestor's future project plans include only minor construction activities that would result in no new ground disturbance and no adverse effect. The following are examples of activities would not qualify for the CE:
 - (1) lining existing canals within the same footprint but would dewater adjacent wetlands; or
 - (2) construction of new roads, facilities and/or buildings.
- C. The requestor's future project plans include no increase or change in timing of diversions and discharges and there would be no new ground disturbance and no adverse effect. For example, replacement or addition of measurement systems to monitor and regulate flows, would qualify for the CE, if contained within the existing facility prism and
- D. The requestor's future project plans for the transferred facilities do not change or lead to changes in use of project lands or waters. The following are examples of activities would not qualify for the CE:
 - (1) plans to change project purposes from ag to M&I; or
 - (2) plans for the facilities to serve new uses, such as for water transfers or excess capacity; or
 - (3) future plans to expand project water delivery.
- 3. Reclamation will make the determination on the appropriate level of NEPA review and documentation, including whether a requested title transfer satisfies the CE language and qualification factors or would trigger any of the extraordinary circumstances as described in 43 CFR 46.215,
- 4. Although the qualification factors for the CE are similar to eligibility criteria under the 43 U.S.C. 2902, et seq., eligibility under one does not indicate eligibility under the other.
- 5. Consistent with the tenants of NEPA, the NEPA analysis is to be proportionate to the significance of issues. Therefore, the inability to apply the CE because the language or Qualification Factors are not met, would not indicate an extensive analysis unless there are other indicators of significant issues.