

**THE BUREAU OF RECLAMATION'S TITLE TRANSFER
PROGRAM - EVALUATION AND LESSONS LEARNED**

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FOREWARD

INTRODUCTION

In the context of the FY 2003 President's Budget, the Bureau of Reclamation committed to evaluate its ongoing title transfer effort. The goal of the evaluation was to identify lessons learned and possible improvement to the title transfer process.

This assessment – which was drafted in late 2002 – provides such an evaluation. The analysis relies on information gathered through interviews and brainstorming sessions with non-Federal entities involved in title transfers, other stakeholders and Congressional staff, and the results of a survey of Reclamation staff involved in title transfer.

The paper has been updated to include new information on the title transfers that either had not been completed in 2002 or were subsequently authorized. The information provided by stakeholders and the survey of Reclamation staff have not been updated. However the lessons learned remain valid, and, in fact, are reinforced or confirmed by subsequent experiences. Since 2003, a number of additional title transfers have been authorized by Congress. These include:

1. Distribution facilities and lands of the Cachuma Project to the Montecito Water District. (P.L. 108-315).
2. Canals, lands and aqueducts of the Provo River Project to the Provo River Water Users Association and the Metropolitan Water District of Salt Lake and Sandy (P.L. 108-382).
3. Canals, lands and Delivery Systems associated with the Colorado Big Thompson Project to the Northern Colorado Water Conservancy District (P.L. 109-321)

In addition, a number of transfers that were authorized or were in the legislative process prior to 2003, but not transferred prior to completion of the analysis, have been transferred. These include:

1. Sugar Pine Dam and Reservoir (Foresthill Divide Subunit of Central Valley Project) to the Foresthill Public Utility District (Transferred November, 2003).
2. Sly Park Dam and Reservoir (Sly Park Unit of the Central Valley Project) to the El Dorado Irrigation District (Transferred December, 2003).
3. Distribution and Drainage facilities of the Harquahala Valley Unit of the Central Arizona Project to the Harquahala Valley Irrigation District (Transferred July, 2004).

4. Distribution facilities and the Tieton Wells of the Minidoka Project to the Fremont Madison Irrigation District (Transferred September, 2004).
5. Distribution facilities and lands of the Cachuma Project to the Carpinteria Valley Water District. (Transferred July, 2006).

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EXECUTIVE SUMMARY

Introduction

The purpose of this paper is to evaluate Reclamation's title transfer process and policies in order to determine if there are lessons learned that would provide additional opportunities to encourage and facilitate the transfer of title to Reclamation projects or parts of projects.

Reclamation committed to undertake this evaluation in the FY 2003 President's Budget. This evaluation is based on information gathered from three sources: 1) stakeholders, including water districts, Indian Tribes, and conservation organizations; 2) congressional staff; and 3) key Reclamation staff who have been involved in title transfers.

Reclamation's title transfer process, as articulated in the 1995 *Framework for the Transfer of Title*, includes public involvement; compliance with the National Environmental Policy Act (NEPA); calculation of the value or price of the facilities to be transferred; an "open" negotiation of the terms and conditions of transfer; and finally, submission of legislation reflecting the agreements reached. Under Reclamation's process, a Memorandum of Agreement (MOA) is developed with the entity seeking title outlining: how NEPA compliance activities are to proceed and costs are shared; the steps necessary to implement the transfer; who is responsible for completing each step; and the process for identifying the assets to be transferred.

Key Issues for Title Transfer

A number of key issues impact Reclamation's ability to implement its title transfer program. These include:

Goal Clarity: Absent clear goals from the outset, Reclamation and the entities interested in title transfer face uncertainties about the desired outcome. The current goal statements are very general and somewhat inconsistent.

Valuation Associated with Transferred Assets: The value attached to the facilities to be transferred impacts the willingness of the non-Federal entities to seek title. The goal of Reclamation's current valuation procedures are to ensure that the Federal government is no worse off, in a financial sense, than if title remained with the United States.

Liability Associated with Transferred Assets: One rationale for transferring title is to potentially reduce future Federal liabilities associated with the transferred facilities. Accepting the liability has been an issue with some districts. However, regardless of how much liability a district agrees to assume, the U.S. might be held liable for design flaws (if found to have been negligent) even after transfer.

Participation in Title Transfer process: The ability of interested stakeholders to participate and have input in the title transfer process can affect how quickly and smoothly the transfers proceed.

Transaction Costs: The costs to complete the transfer (e.g., costs associated with compliance with NEPA or land surveys), and who bears those costs, may impact the willingness of the non-Federal entities to seek title.

Projects Transferred to Date

To date, legislation to transfer title to Reclamation constructed facilities has been enacted for 24 projects, or parts of projects, including 10 transfers authorized in 2000. So far, 19 of the 24 have been transferred.¹

Lessons Learned

Initially, there was an expectation that title transfers would result in a smaller Bureau of Reclamation (i.e., fewer staff and/or lower appropriation levels). While Reclamation's budget declined by 19% and the number of Reclamation employees (FTEs) have been reduced by 26 percent between FY1992 and FY 2000, this did not occur as a result of title transfer. The explanation for this is multifaceted:

- 1) Only relatively small, "scattered" projects/facilities have been transferred;
- 2) Nearly all those facilities transferred to date were already being operated and maintained by non-Federal entities - which means there is limited budgetary savings to be identified;
- 3) Few employees (FTEs) and limited appropriated funds were associated with the projects and facilities that have been transferred;
- 4) The administrative costs avoided due to the transfers have been relatively minor. Additional Federal cost savings are unlikely to accrue unless a substantially larger number of projects or several large projects (e.g., the Central Valley Project) are transferred.

The goals of the title transfer program are not uniformly seen as clear or consistent by Reclamation's customers, employees or other stakeholders.

There seems to be a consensus among districts, congressional staff, and Reclamation staff that the majority of the transfers enacted since 2000 proceeded "relatively smoothly," especially in comparison to the title transfers of the early 1990s. This is not to imply that all entities are happy with every aspect of the process and outcomes, that all entities support title transfer, or that the process could not be improved. But it seems to be the case that where the parties reached

¹The 24 projects includes transfer of facilities associated with Oroville-Tonasket; this transfer was authorized by P.L. 105-9 and was the result of litigation.

consensus (or established a process to do so) prior to legislation being enacted, the process proceeded in a more orderly fashion and the time between enactment and implementation was shorter, less controversial, and less costly.

An informal set of general parameters for assessing title transfers appears to have become tacitly accepted by Congress. These include some sharing of the transaction costs between Federal and non-Federal entities; undertaking an appropriate level of NEPA compliance (“appropriate” is undefined, but is greater than none); and developing any necessary agreements among non-Federal entities prior to legislation being enacted. Relying on a process that is transparent, predictable, inclusive, and that allows for adaptive learning appears to benefit all parties. The “process” is also likely to function more efficiently if policy makers clearly indicate that Reclamation and the Department will be more supportive of title transfers that are consistent with the process than with those that are not.

Title transfer is not a costless process for the Federal government or for districts. While in the aggregate transaction costs may be relatively small, they may still represent relatively large and often unanticipated costs that must be absorbed by a district and a Reclamation Area Office. The extent to which the Federal government bears a relatively larger or smaller share of the transaction costs for title transfers is a policy decision that depends at least partially on the goals of the title transfer effort.

The transfer of large amounts of land associated with project facilities, particularly lands that were withdrawn from the public domain, makes the transfer process significantly more complicated, expensive and time consuming.

In some cases, assuming additional liability may be a disincentive for a non-Federal entity to seek title. There may be relatively little that can be done about this, absent the Federal government explicitly retaining some liability, which would be counter to the goals of divesting ownership.

Perceptions about the title transfer process are important. If the process is perceived to be “unfair” to districts, stakeholders, and/or the United States, the environment will be less conducive for additional future transfers.

1. INTRODUCTION AND BACKGROUND

The purpose of this paper is to evaluate Reclamation’s title transfer process and policies in order to determine if there are lessons learned that would provide additional opportunities to encourage and facilitate the transfer of title to Reclamation projects or parts of projects.

Reclamation committed to undertake this evaluation in the FY 2003 President’s Budget. This evaluation is based on information gathered from three sources: 1) stakeholders, including water districts, Indian Tribes, and conservation organizations; 2) congressional staff; and 3) key Reclamation staff who have been involved in title transfers.

2. KEY ISSUES FOR TITLE TRANSFER

There are a number of key issues that impact Reclamation’s ability to carry out its title transfer effort. These issues have been the critical drivers of the title transfer process since it was first considered and are identified below in order to set the stage for the material that follows. These key issues impact the willingness of non-Federal entities to pursue title transfer, the level of controversy associated with any particular title transfer, and the degree to which Reclamation’s goals can be achieved. The issues include:

- *Goal clarity.* Absent clear goals for its efforts, both Reclamation and the non-Federal entities interested in title transfer face uncertainty about the desired outcome and how much effort (financial and otherwise) each should devote to the activity. The goal statements in Reclamation policy guidance are very general and somewhat inconsistent.
- *Valuation of facilities to be transferred.* The value attached to the facilities to be transferred impacts the willingness of non-Federal entities to seek title, the extent to which the U.S. is kept “whole,” and the public’s perception of Reclamation’s title transfer efforts. The concept behind Reclamation’s valuation procedures is to leave the Federal government no worse off, in a financial sense, than if the transfer had not occurred.² Currently, Reclamation determines the value of its facilities based on the present value of the remaining repayment obligation plus the value of revenue streams associated with project lands and water (e.g., oil and gas revenues, hydropower revenue, grazing leases), plus adjustments (positive or negative) for likely changes in future facility use.³ In the case of a project or district that has fulfilled its contractual repayment obligation and has no additional revenue

²Appendix A contains additional details on Reclamation’s valuation procedures.

³For a change in future facility use to be accounted for in the valuation of facilities to be transferred, the future change would have to be expected to occur with a high degree of certainty.

streams, the value would be based only on expected future changes in facility use.⁴ In some cases, adjustments could be made to account for the repayment that the U.S. would receive if the district's repayment obligation changed due to the fact that additional water was converted from irrigation to municipal and industrial (M&I) use.

- *Liability associated with the transferred facilities.* One rationale for transferring title is that it potentially could reduce future Federal liabilities associated with the transferred facilities. Accepting liability has been an issue for some – but not all – districts since Reclamation's title transfer efforts were initiated.⁵ The reality is that the extent to which a district might be liable for a tort claim varies considerably among the western states. Some states have laws in place that limit the liability of districts for tort claims. Other states appear to be chipping away at existing grants of immunity from liability. Some states – California in particular – do not limit liability, but have private insurance pools that districts can participate in. The U.S. could be liable for design flaws (if the U.S. is found to be negligent) even after title had transferred.
- *Participation in the title transfer process.* The “openness” of the transfer process and the extent to which entities, other than that seeking title, can provide input or participate in the process can impact whether a transfer will proceed relatively smoothly or will be relatively drawn out and controversial.
- *Transaction costs.* The transaction costs faced by districts – costs associated with the National Environmental Policy Act (NEPA) compliance, cultural resources and hazardous material surveys, historical preservation, preparation of land descriptions and legal documents, in addition to other administrative costs – may impact their willingness to seek title. Reclamation's current policy is to share the cost of NEPA compliance, cultural resources and hazardous material surveys with the entity seeking title. Cost sharing is typically on a 50/50 basis, though in actual practice there is some variation. All other costs are the responsibility of the entity seeking title. In concept, non-Federal entities should be willing to bear transaction costs up to the value they place on obtaining title.

3. RECLAMATION'S TITLE TRANSFER PROCESS

⁴The fact that a district has fulfilled its contractual repayment obligation does not imply that the capital costs incurred by the U.S. in constructing the facility have been repaid. In most cases, the costs repaid by districts represent only a small proportion of the total capital costs.

⁵In fact, in 1996 the Association of State Dam Safety Officials passed a resolution opposing transfer of title unless: funding were provided to the states to address the increased workload that might accompany the transfer; documentation was provided to demonstrate that the condition of each dam meets or exceeds state dam safety criteria; that the transfer is accompanied by a written agreement with state dam safety officials; and that the new owner is willing to assume the financial and legal responsibilities of the dam(s).

EVOLUTION OF RECLAMATION’S TITLE TRANSFER PROGRAM

Introduction

Transferring title to Reclamation facilities was discussed as early as the 1950s. Over the past 20 years a number of proposals have surfaced to transfer ownership of various Reclamation-constructed water supply and delivery facilities to non-Federal entities. For example, during the 1980s a number of individual districts sought legislation to transfer title. The single largest title transfer to receive serious consideration was a proposal in the early 1990s to transfer ownership of the Central Valley Project (CVP) to either private interests or the state of California.⁶

More recently, policy statements supportive of title transfer began to appear in Reclamation publications in the late 1980s and early 1990s. “Assessment ‘87” called on the Bureau to evaluate the transfer of title to facilities, especially those which were single purpose (p. 10). In August, 1993 the Commissioner's Program and Organization Review Team stated, “To foster increased local responsibility for improving water resources management, we will seek general authority for transferring title to single purpose facilities to water users, thus eliminating the expenses of Federal oversight and providing the opportunity to recapitalize deferred maintenance expenses in the future” (p. 7). In 1994, in response to interest from water users in obtaining ownership of Federally constructed facilities, as well as in reconsidering its own mission, Reclamation undertook an effort to develop a set of policies to guide its title transfer efforts. This culminated in the development of Reclamation’s 1995 title transfer *Framework* document, discussed in more detail below.

Soon after the Department announced its title transfer initiative in 1995, more than 60 entities – irrigation districts, municipal authorities, and cities – contacted Reclamation and expressed their interest in title transfer. However, the majority decided not to pursue title transfer for a variety of reasons—the most common being concern about assuming liability for the facilities (testimony of the Commissioner of Reclamation on Burley Irrigation District legislation, Senate Report 105-131, November 3, 1998). This liability could be associated with O&M activities, future repairs, as well as catastrophic events.

Previous Legislative Efforts

⁶This is not the first time transferring CVP to the state has been considered. Proposals to transfer the CVP to the state of California were also discussed in the 1950s.

In 1992, legislation was enacted to transfer two projects – the Vermejo project in New Mexico and the distribution facilities of the Rio Grande project (New Mexico and Texas).⁷ Transfers of both of these projects were completed in 1996.

In 1995, several Members of Congress proposed legislation (S. 620 and H.R. 1231) to require the Secretary of the Interior to transfer title to Reclamation facilities to “eligible project beneficiaries” upon request of those beneficiaries. The transfers were to be undertaken at no cost to the eligible beneficiaries. “Eligible beneficiaries” were defined to be those entities that had “operated and maintained Federal Reclamation facilities” and who had fulfilled their contractual repayment obligations (paid-out). The legislation would have allowed other beneficiaries who had not paid-out who were interested in obtaining title to prepay the net present value of their remaining repayment obligation.

Congressional hearings on these measures revealed the different views on title transfer, which often split along regional rather than ideological lines. The hearings were contentious and it became clear that the generic approach proposed was problematic. For example, Senator Bradley (D - NJ) testified that, “...I am not opposed to the consideration of project transfer [however]...if the goal of a transfer is to lock up benefits and subsidies for one class of user at the expense of the general interest and the general purposes for which a project was established, I will be unalterably opposed...” (Senate Hearing 104-194). In contrast, Senator Kyl (R- AZ) testified that, “districts object to any proposal to sell these facilities at what the administration claims to be market prices or to sell them to the highest bidder...local districts have already paid for these facilities once, or are in the process of doing so, and are not willing to pay a second time for the privilege of owning title...”.

Senator Kyl was not alone in expressing this view. Proponents of title transfer—including Members of Congress in whose districts the facilities were located, as well as national level interest groups such as the National Water Resources Association (NWRA), argued that fulfillment of contractual repayment obligations was equivalent to attaining a right to own the facilities and a right to the unrestricted use of any revenues generated on project lands or as a result of project operations. Other proponents of transfers testified that non-reimbursable features and activities must be secondary to the project’s primary water supply purpose, and expressed concern that the Secretary might be given broad discretion to establish the terms of the transfer. In their view, those terms could take on characteristics of “environmental extortion,” or a means of using a transfer to accomplish other environmental objectives (p. 30,32 of Senate Hearing 104-194).

Opponents to the generic approach proposed favored establishing a more discretionary transfer process, with the Secretary of the Interior negotiating the terms of the transfers with the relevant

⁷The Vermejo transfer was complicated. The 1992 legislation amended legislation originally enacted in 1980 that transferred the facilities. The 1992 legislation clarified important aspects of the transfer that were not made explicit in the original legislation.

entities. This process was to be relatively open with opportunities for public participation from those project beneficiaries that might be affected by project operations but are not necessarily responsible for repaying project capital costs. These beneficiaries could include: recreation, fish and wildlife, neighboring M&I water users, or Native American interests. Environmental groups testifying were particularly concerned with project governance after transfer and the extent to which an irrigation district could balance any competing interests. Some opponents were also concerned about the requirement to transfer the facilities to “qualified project beneficiaries.”

By the late 1990s, a number of individual measures to transfer title were introduced in Congress. The substance of those measures varied greatly, as did the facilities they proposed to transfer. None of those measures were enacted. However, during the 105th Congress, title transfer proponents packaged eight individual title transfer proposals together in a standard format (H.R. 4389).⁸ The projects were: the Sly Park Unit of the CVP; the Clear Creek Distribution system of the CVP; the distribution facilities of the East Side Unit of the Minidoka project (which provide water to the Burley Irrigation District); certain lands and the distribution facilities of the Carlsbad Project; the Palmetto Bend Project; the Gila Project; the Canadian River Project; and the Pine River Project. This proposal directed that transfers occur under certain circumstances, shifted much of the transaction costs to the Federal government, as well as possibly lowering the transaction costs associated with transfers in many instances. All of the proposed transfers were structured in a similar manner:

- The Secretary would be directed to complete each conveyance, including all NEPA compliance activities, within 180 days of enactment if project operations were not expected to change following the conveyance, and within two years if they were;
- The Federal government and the water users would split equally the NEPA compliance costs and other transaction costs if the transfer occurs by the appropriate deadline; the Federal government would bear the full cost if it did not;
- The existing water users would operate and maintain each facility after conveyance; and;

⁸Related proposals had also surfaced in the 104th Congress. One proposal would have authorized the sale of the physical assets and terminated the operation of the Federal power marketing administrations (H.R. 310). The Clinton Administration also proposed authorizing the Secretary of Energy to conduct any studies and prepare plans for transferring the Western, Southeastern, and Southwestern power marketing administrations out of Federal ownership (Federal Power Administration Transfer Act). This proposal also would have set the minimum price for the assets as not less than the present value of the principle, interest, and capitalized deficit payments for the facilities. It also provided that the existing firm power customers were to receive a “preferential right of purchase” at a price not less than the minimum price.

- Except for the Sly Park Unit and the Clear Creek Distribution System, local water users would pay the present value of their remaining repayment obligation to the Federal government.⁹

H.R. 3489 was not enacted, at least partially because of opposition from the Clinton Administration and from environmentalists. The primary objections were related to the provisions that “directed” transfers of facilities to occur. Environmentalists feared that a *directed* transfer, regardless of the accompanying provisions related to compliance with NEPA, would effectively allow transfer proponents and Reclamation to avoid assessing or mitigating any adverse environmental effects associated with the transfer. Also, environmentalists were concerned that once a project left Federal ownership, the obligation for a district to consult with other Federal entities on project operations would no longer be required (as is now required of Reclamation under section 7 of the Endangered Species Act).

When it became clear that H.R. 3489 would not be enacted, title transfer proponents separated the various titles of the measure back into individual legislative proposals. Two of those proposals -- designed to transfer facilities associated with the Canadian River Project and the Burley Irrigation District -- were enacted.

While H.R. 3489 was not enacted, it did illustrate the tension between those who wanted to legislate the terms and conditions of title transfers and those who favored a negotiated process. Proponents of the legislation sought to legislatively limit NEPA compliance activities and to shift as much of the transaction costs onto the Federal government as possible.¹⁰ Opponents favored more complete NEPA activities and a locally developed approach to transfer activities.

Reclamation’s *Framework* Document

A key document associated with title transfer is the *Framework for the Transfer of Title Bureau of Reclamation Projects* (attached as appendix A) issued by Reclamation in 1995. The general purpose of this document was to establish a fair and predictable title transfer process to be applied Reclamation-wide. Reclamation’s *Framework* includes the following set of general criteria to guide its title transfer activities:

1. The Federal Treasury and thereby the taxpayer’s financial interests must be protected.
2. There must be compliance with all applicable state and Federal laws.

⁹Sly Park and Clear Creek were to pay amounts less than their outstanding repayment obligations.

¹⁰While the legislation would have created a very strong incentive for Reclamation to complete NEPA compliance, it also would have established an incentive structure that rewarded districts for delaying on key elements of a title transfer, such as participating in NEPA compliance, developing cost sharing agreements, and approval of legal documents.

3. Interstate compacts and agreements must be protected.
4. The Secretary’s Native American trust responsibilities must be met.
5. Treaty obligations and international agreements must be fulfilled.
6. The public aspects of the project must be protected.

The criteria were to apply to “uncomplicated” projects, – defined as projects or facilities for which there are no competing interests, the facilities are not hydrologically integrated with other projects, the financial arrangements are relatively simple and easily defined, and the legal and institutional concerns associated with a transfer can be readily addressed. Complicated projects were defined to be large multi-purpose projects where there is no consensus among project beneficiaries concerning the transfer, where more than one competent beneficiary has expressed an interest in acquiring title, or where the institutional and legal concerns cannot be readily resolved.

These criteria are quite general and potentially leave a number of issues open to interpretation, such as the exact meaning of “protecting the taxpayer’s interests” and “protecting public aspects” of projects. The interpretation of those terms was effectively left to Reclamation staff involved in negotiations with the non-Federal entity that might assume ownership.

The transfer process is non-competitive, with the potential purchaser of a given set of facilities being limited to an entity representing the existing set of water users. This approach appears to have been adopted primarily to facilitate transactions and to avoid the political controversies that would have inevitably occurred had the facilities been offered to a wider group of potential buyers.

The transfer process established by Reclamation includes public involvement (usually in the form of public meetings); compliance with NEPA, with the extent and magnitude of compliance determined by a NEPA scoping effort; calculation of the value or price of the facilities to be transferred; an “open” negotiation of the terms and conditions of transfer; and finally, submission of legislation reflecting the agreements reached. Under Reclamation’s concept, an MOA is developed with the entity seeking title outlining: how NEPA compliance activities are to proceed and how costs will be shared; the steps necessary to implement the transfer; who is responsible for completing each step; and a process for identifying the assets to be transferred.

In 1998 Reclamation and the National Water Resources Association held a workshop in Albuquerque, NM and jointly developed a checklist to identify issues for use by Reclamation and interested water districts prior to initiating title transfer (see appendix B).¹¹

In practical terms, once the non-Federal entity decides to seek title, and the Board of Directors passes a resolution stating such, Reclamation conducts a base value asset valuation for the facilities proposed to be transferred. Reclamation issues a “Scoping Letter” to interested

¹¹ The Checklist was revised and updated in 2004.

parties/stakeholders (100 - 200 dependent upon location and perceived interests) to determine if there are issues that need to be resolved. If the asset valuation is acceptable to the recipient and there are no unresolved issues, Reclamation then negotiates the language and terms of the MOA with the District.

4. PROJECTS AUTHORIZED FOR TRANSFER TO DATE

Table 1 identifies the projects for which legislation to transfer facilities has been enacted, the year legislation was enacted and the remaining repayment obligation at the time of transfer. To date, legislation to transfer title to Reclamation constructed facilities has been enacted for 24 projects, including 10 transfers authorized in 2000. Of the total number of projects transferred, 18 were primarily irrigation or multipurpose projects and 6 were primarily M&I projects. Of the 24 authorized for transfer, 4 authorized transfer of the entire project, including dams and reservoirs. The remaining 19 transferred conveyance and distribution facilities only. In some cases water rights have also been transferred.

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Table 1. Legislation Enacted Authorizing Transfer of Title of Bureau of Reclamation-Constructed Facilities					
Project or district	Year legislation enacted to transfer title	Transfer completed	Legal authority for title transfer	Remaining repayment at time of transfer (\$mil) [a]	Assets transferred
<i>Primarily Irrigation or multi-purpose</i>					
1. Vermejo Project [b]	1980; 1992	yes	P.L. 96-550, P.L. 102-575	1.7	Project lands, storage, conveyance, and distribution facilities.
2. Rio Grande Project [c]	1992	yes	P.L. 102-575	0	Project lands, conveyance and distribution facilities serving 2 districts.
3. Central Arizona Project - Harquahala Valley ID [i]	1990	yes	P.L. 101-628	0	Distribution and drainage facilities.
4. Minidoka Project - Burley ID	1998	yes	P.L. 105-351	0	Project lands, conveyance facilities, lands, natural flow water rights.
5. Carlsbad Project	2000	yes	P.L. 106-220	0	Certain acquired project lands, distribution and drainage facilities, mineral and grazing rights.
6. Boise Project - Nampa-Meridian ID	2000	yes	P.L. 106-466	0	Distribution and conveyance facilities; canal laterals.
7. CVP - Sly Park Unit	2000	yes	P.L. 106-377	18.9	Storage and distribution facilities, associated lands, water rights.
8. Middle Loup	2000	yes	P.L. 106-366	37.7	Storage and distribution facilities, water rights serving 2 districts.
9. Gila Project - Wellton-Mohawk IDD [d]	2000	no	P.L. 106-221	0	Distribution facilities, Federal lands owned within and adjacent to district boundaries.
10. Colorado-Big Thompson-Northern Delivery System [h]	2000	yes	P.L. 106-376	~4.1	Selected canals serving M&I uses.
11. Colorado-Big Thompson – Southern Delivery System	2006	no	P.L. 109-321	Not Available	Not available
12. Sugar Pine Dam and Reservoir	2000	yes	P.L. 106-566	60.3	Storage and distribution facilities, associated lands, water rights

Table 1. Legislation Enacted Authorizing Transfer of Title of Bureau of Reclamation-Constructed Facilities					
Project or district	Year legislation enacted to transfer title	Transfer completed	Legal authority for title transfer	Remaining repayment at time of transfer (\$mil) [a]	Assets transferred
13. Minidoka Project – Freemont Madison ID (Tieton Wells)	2003	yes	P.L. 108-85	\$250,961	Diversion dam, canals, appurtenant acquired lands and easements, 5 existing Teton Exchange Wells, and a State of Idaho water rights permit for potential wells that were anticipated but never developed as part of the Teton Basin Project.
14. Cachuma Project - Carpinteria	2004	yes	P.L. 108-315	0	Distribution facilities and lands
15. Cachuma Project – Montecito	2004	No	P.L. 108-315	0	Distribution facilities and lands
16. Provo River	2004	Partial transfer	P.L. 108-382	.063	Canals, aqueducts, and lands
17. Humboldt	2002	No	P.L. 107-282	0	Canals, facilities and lands
<i>Single purpose or primarily M&I</i>					
18. Boulder City pipeline	1998	yes	P.L. 100-500	0	Park land, M&I water supply lines.
19. Canadian River Project[e]	1998	yes	P.L. 105-316	69.4	Pipeline.
20. San Diego Aqueduct [f]	1951	yes	65 Stat. 404	0	Aqueduct.
21. Palmetto Bend [g]	2000	yes	P.L. 106-512	73	Storage and distribution facilities.
22. Griffith Project	2000	yes	P.L. 106-249	271	Diversion facilities and pipeline for distributing M&I water.
23. Clear Creek	2000	yes	P.L. 106-576	0.4	Distribution facilities.

Table 1. Legislation Enacted Authorizing Transfer of Title of Bureau of Reclamation-Constructed Facilities					
Project or district	Year legislation enacted to transfer title	Transfer completed	Legal authority for title transfer	Remaining repayment at time of transfer (\$mil) [a]	Assets transferred
<p>^a Capital repayment obligation remaining at the time of transfer. A value of \$0 means that the project or entity had fulfilled its contractual repayment obligation. Due to the subsidies associated with irrigation construction, this does not mean that all capital costs incurred by the Federal government have been repaid.</p> <p>^b Authorized project purposes also include flood control and fish and wildlife. Legislation allowed repayment obligation to remain even after title transferred.</p> <p>^c Authorized project purposes also include: delivery of Treaty water to Republic of Mexico; flood control; hydropower; recreation; and fish and wildlife.</p> <p>^d The legislation gives the district and the U.S. the discretion to exchange or purchase lands with each other. The lands the district may acquire could be valued at as much as \$2 million.</p> <p>^e Project authorizing legislation mandated transfer upon completion of repayment. Section 2.(c)(3) of Public Law 81-898, authorizing the Canadian River Project included language allowing the transfer of title once project costs were repaid. P.L. Law 105-316 authorized the Authority to make a discounted prepayment of \$34.8 million to satisfy all payment obligations under the contract between CRMWA and the United States thereby triggering Section 3 of P.L. 81-898.</p> <p>^f Authorizing legislation mandated transfer upon pay out.</p> <p>^g Authorized project purposes include flood control, recreation, and fish and wildlife.</p> <p>^h Authorized project purposes include irrigation and M&I. Remaining repayment obligation includes districts' obligation of \$4 million and power user's obligation of \$29 million.</p> <p>ⁱ Legislation to authorize transfer of district facilities was included in legislation settling the Fort McDowell Indian water claims (P.L. 101-628). In December 2001, the district notified Reclamation that it was interested in pursuing title transfer of its CAP distribution facilities.</p> <p>Note: this table does not include the Oroville-Tonasket transfer, which resulted from the settlement of litigation.</p>					

Table 2 provides summary information on the benefits and costs for each enacted title transfer, as well as information for several title transfers that have not been completed.¹² Based on the information in table 2 the following observations can be made:

- The title transfers to date have raised little or no revenue relative to what the Federal government would have received absent the title transfer.
- The projects and facilities which have been transferred or are currently under consideration for title transfer already had the operations and maintenance (O&M) responsibilities transferred to the non-Federal entities. This means that the districts carry-out all O&M activities at their own expense using their own employees. Thus, annual Federal expenditures associated with these projects are relatively small and are typically for administrative activities undertaken on an intermittent basis (e.g., reviews of operation and maintenance, performed on a six-year cycle; review of water conservation plans; resolving contracting and billing issues; reviewing and issuing rights-of-way; and collecting crop census data). Title transfer could relieve the Federal government of potential future O&M liabilities, liabilities for repairing or rehabilitating facilities, and potentially liabilities associated with catastrophic events. In general, however, these liabilities have not been quantified and do not appear to have played an explicit role in establishing the Federal government’s reserve price for the facilities transferred.
- If transferring title was expected to result in a smaller Bureau of Reclamation (via reduced appropriations and/or staff reductions) this has not occurred to date, though Reclamation’s budget and FTEs have declined by 19 and 26 percent, respectively, between FY 1992 and FY 2000. The explanation for this has to do with the nature and magnitude of the title transfers. Essentially, the title transfers to date have been for small projects (or part of projects), scattered across Reclamation’s operating area. In order for a noticeable change to have occurred, a relatively large number of projects (either in the aggregate or concentrated in a region) or several large projects would have to be transferred. Based upon Reclamation’s experience, the transfer of title of a small project might free a portion of an FTE, but in all likelihood this FTE is absorbed by other ongoing work in the Area or Regional Office.
- In a financial sense, a title transfer is “worth it” to the Federal government if the net present value benefits of the transfer – i.e., the reduced Reclamation costs as result of fewer project-related operational or administrative responsibilities – exceed the present value costs of the transfer (i.e., the transaction cost, plus the potential cost of avoided future Federal liabilities, plus any foregone revenues). For the transfers that have been enacted to date, sufficient data are available to make these calculations in only three cases:

¹²In addition to the districts identified in the table, transfer of facilities associated with Oroville-Tonasket and Sunnyside irrigation districts was authorized by P.L. 105-9 and P.L. 102-575 respectively. The Oroville-Tonasket transfer was the result of litigation; the Sunnyside transfer was quite small, involving only 5 acres.

-In the case of the Carlsbad transfer (transferred in July 2001), the annual estimated Reclamation cost savings of about \$20,000, do not come close to offsetting the annual foregone oil and gas revenue of about \$250,000 and the one-time transaction costs of \$379,000.

-Transfer of the Middle Loup facilities is estimated to be associated with annual cost savings of about \$53,000. In present value terms (using a 6% discount rate) this is equivalent to \$833,000, which more than offsets the approximately \$350,000 in transaction costs for the transfer.

-Transfer of the Palmetto Bend project is estimated to involve annual savings of about \$220,000. In present value terms (using a 6% discount rate) this is equivalent to about \$3.7 million, which substantially exceeds the \$215,000 in transaction costs.

- In general, for the projects where title has transferred, the irrigation projects had by and large fulfilled their contractual repayment obligations and the M&I projects typically had positive repayment balances. In most cases, the valuation of the facilities to be transferred involves some negotiation between the U.S. and the entity seeking title.
- In a small number of cases, the Federal government gave up (or would give up in the cases where the transfers have yet to occur) rights to revenue streams associated with project lands or resources. In at least one case (the Carlsbad project), these revenue streams were not included in the asset transfer price. Foregone revenues not associated with the repayment of contractual obligations, appear to have been treated differently in different cases. In cases where water rights were transferred (Sly Park, Burley, and Middle Loup) it is unclear how, if at all, the value of the water rights was factored into the price of the assets.
- Transaction costs associated with title transfers include any Reclamation and district costs incurred prior to entering into a MOU, NEPA compliance costs, appraisals, title searches, and hazardous materials and cultural resource surveys. Districts may also incur costs associated with lobbying or other administrative costs. For the title transfers where Reclamation and the district worked together to identify the nature and magnitude of the tasks to be completed, Reclamation's estimates of the transaction costs that were provided were reasonably accurate.
- The estimated transaction costs – not including costs incurred by Reclamation prior to the development of agreements with districts as well as lobbying and other administrative costs that might have been incurred by districts – varied considerably across the transferred facilities. For completed title transfers, the estimated transaction costs have ranged from \$15,000 (Carpinteria) to an estimated \$2 million (Gila). These costs were typically incurred over the course of several years.

- In several cases, a significant proportion of the transaction costs were related to addressing cultural resources such as compliance with the National Historic Preservation Act and/or real property issues, such as boundary survey and development of real estate documentation. For example, in the case of the Burley transfer, approximately 40% of the estimated \$165,000 in transaction costs represented costs associated with cultural resources surveys; and about 60% of the estimated \$650,000 transaction costs for the Griffith transfer were associated with addressing real property issues.
- Transfers conveying significant amounts of land, tend to be more expensive because of the need to address cultural resources and real property issues. As a result, these transfers take longer to complete. For example, the proposed transfer to the Wellton Mohawk Irrigation and Drainage District potentially involves the transfer of 40,000 -60,000 acres of land.
- The proportion of the transaction costs borne by entities seeking title ranged from 88% (San Diego pipeline) to 0% (the Vermejo and Rio Grande transfer legislation required Reclamation to pay all of the transfer costs). In general, the entities that were primarily M&I water suppliers appeared to be willing to bear a relatively larger proportion of the transaction costs than irrigation entities.
- The data suggest that in the aggregate, while the Federal cost savings have been quite small, the transaction costs also have been relatively small. However, considered from a local Reclamation Area or Regional Office or from an irrigation district's perspective, having to bear unanticipated transaction costs can impact their ability to undertake work associated with title transfers as well as other ongoing activities. In this context "costs" include costs incurred in the *development* of MOAs as well as the costs associated with the activities identified in a MOA (e.g., NEPA compliance). These costs can be financial costs or the cost of not being able to complete other work priorities. Districts also are likely to bear some similar costs prior to the development of an MOA.
- Reclamation does not generally budget, nor are funds appropriated, for conducting preliminary title transfer work or to cover the Federal share of the transaction costs. Accomplishing this work is often a key step in initiating a transfer of title. Offices addressing transfers must find resources from other programs and activities. This has resulted in reluctance on the part of some area managers to engage in title transfer activities. Examples of Reclamation costs incurred prior to the development of an MOA include the following: researching project history; reviewing water, power, O&M contracts and O&M reports; gathering information on repayment status; reviewing project maps, relevant correspondence, and existing environmental impact reports; and consulting internally with Reclamation staff to evaluate finance, hazardous materials, property, or environmental compliance issues.

- In a number of cases identified in the table, title has not yet transferred for a variety of reasons, including cases where the non-Federal entities opted not to continue their pursuit of title.
- For the Pine River Project in Colorado, the transfer impacted multiple entities and raised land and water management issues that were not easily resolved. The legislation to transfer title was subsequently withdrawn by its sponsor.
- The Collbran Project in Colorado serves two districts. Once one of the districts seeking title achieved its water management objectives by renewing a key contract with Reclamation, it was much less interested in seeking title. Absent interest by both districts, and given opposition by the town of Collbran, the title transfer did not advance.
- Similarly, once the Solano district in California had renewed a key contract with Reclamation, obtaining title became less important.
- Hearings were held on a proposal to transfer title to the Lower Yellowstone project in Montana, but legislation was not been enacted in the 108th Congress and was not reintroduced in the 109th Congress. Lower Yellowstone falls into the category of “controversial” because of issues associated with access to pumping power after transfer.
- Legislation to transfer title to facilities of the Gila and Humboldt projects has been enacted, but the transfers have not yet been completed. For these projects, concerns that have arisen in the course of complying with NEPA and Section 106 of the National Historic Preservation Act have slowed the transfer process.
- The environmental impacts associated with title transfer, at least in terms of the issues identified in NEPA compliance documents, in most – but not all – cases appear to be local or regional and can be mitigated. For cases where NEPA compliance and endangered species issues have arisen (e.g., the transfer of Colorado-Big Thompson facilities to the Northern Colorado Water Conservancy District; the transfer of the Sly Park facilities to the El Dorado Irrigation District; and the transfer of facilities on the Middle Loup project), these issues would have been present regardless of the transfer and would likely have to be addressed in the context of contract renewals or ongoing project operation decisions.

Table 2. Summary Information on Potential Economic Benefits and Costs of Transferring Title						
District or Project (state)	Transfer status	Estimated direct annual Federal appropriations associated with transferred facilities (\$) [a]	Non-repayment annual Federal revenues associated transferred facilities (\$) [b]	Estimated Transaction costs for title transfer (\$) [c]	Proposed or actual price (\$M) [d]	Primary environmental benefits or costs associated w/transfer
Irrigation projects						
Carlsbad (NM) [I]	Transferred	~20,000 annually	~250,000 oil and gas leasing revenue	379,000	0	Potential changes to the management of recreation, instream flows.
Vermejo (NM)	Transferred	0	0	not available	0	Management of Maxwell Wildlife Refuge. Refuge lands are completely surrounded by district lands and depend on district for water supplies.
Rio Grande [g] (NM & TX) Elephant Butte ID and El Paso WID#1	Transferred	Prior to transfer BoR spent ~2M to address health and safety issues associated w/colonias.	0	~500,000.	0	Continued access to areas adjacent to canals and laterals for recreation; potential adverse impacts on riparian and wetland areas adjacent to canals and laterals.
Pine River (CO)	Not transferred	120,000 annually; plus 600,000 in planned future hydrologic and seismic studies.	20,000 hydropower revenue.[I]	BoR: ~30,000 over about 3 years.	0.492	Extent and magnitude of recreation uses around Valecito Reservoir.

Table 2. Summary Information on Potential Economic Benefits and Costs of Transferring Title						
District or Project (state)	Transfer status	Estimated direct annual Federal appropriations associated with transferred facilities (\$) [a]	Non-repayment annual Federal revenues associated transferred facilities (\$) [b]	Estimated Transaction costs for title transfer (\$) [c]	Proposed or actual price (\$M) [d]	Primary environmental benefits or costs associated w/transfer
Collbran (CO) - Collbran CCD and Ute WCD	Not transferred	1,300,000 [m]	~1 million hydropower revenue. [m]	BoR: 50,000.	14.1	Formal NEPA compliance process never initiated. The project is covered under the Upper Colorado endangered fish recovery program. If title were to transfer, the new owner would simply need to sign a recovery agreement to obtain coverage under the program.
Colorado-Big Thompson – Northern Delivery System [j]	Transferred	0	not available	NEPA costs could range up to +100,000	2.1	Transfer itself likely to have few, if any, environmental costs. However, land-based threatened and endangered species are found in the project area and importation of west slope water raises concerns for threatened and endangered species in the North Platte basin. However, these issues would be present regardless of title transfer.
Colorado-Big Thompson – Southern Delivery System	Not transferred	Not available	Not available	Not available	Not available	Not available

Table 2. Summary Information on Potential Economic Benefits and Costs of Transferring Title						
District or Project (state)	Transfer status	Estimated direct annual Federal appropriations associated with transferred facilities (\$) [a]	Non-repayment annual Federal revenues associated transferred facilities (\$) [b]	Estimated Transaction costs for title transfer (\$) [c]	Proposed or actual price (\$M) [d]	Primary environmental benefits or costs associated w/transfer
Central Arizona Project - Harquahala ID	Transferred	0	0	\$50,000 - 100,000	0	The District agreed to continue to operate, maintain, replace, enhance, and improve the CAP distribution system including biological mitigation facilities (wildlife crossings). No other environmental impacts were identified.
Gila project - Wellton-Mohawk ID (AZ)	Legislation enacted, but not yet transferred	0	0	Total cost estimated to be 2M: approx 60% WMID; 40% U.S.	not available	Extent to which the lands district wishes to exchange has habitat values for listed or threatened species.
Clear Creek CSD (CA)	Transferred	0	0	BoR: ~25,000	0	none identified
Contra Costa Canal (CA)	Not transferred	0	0	BoR: ~25,000	~6	not available
Sly Park Unit - El Dorado ID (CA)	Transferred	0	12,000,000	48,710.27 [Represents Federal share of costs only]	~11	Potential change of use from irrigation to M&I
Solano (CA) [h]	Not transferred	not available	0	not available	Not available	unknown

District or Project (state)	Transfer status	Estimated direct annual Federal appropriations associated with transferred facilities (\$) [a]	Non-repayment annual Federal revenues associated transferred facilities (\$) [b]	Estimated Transaction costs for title transfer (\$) [c]	Proposed or actual price (\$M) [d]	Primary environmental benefits or costs associated w/transfer
Minidoka (ID) -Burley ID	Transferred	0	0	165,000 (68% Federal/32% district). [e]	0	None identified through the NEPA compliance process.
Minidoka (ID)-Fremont-Madison ID	Transferred	0	0	\$280,000	0.271	Potential establishment of new wells & impact on flows
Boise Project (ID) - Nampa - Meridian	Transferred	0	0	116,000 (50% Federal; 50% district)	0	Changes to recreational uses of lands along canals and conveyance facilities in urban areas.
Lower Yellowstone (Districts #1 and #2, Savage ID, Intake ID)	Not transferred	0	0	Est. total costs to date: 169,000.	0.14	Unknown
Middle Loup (NE) - Farwell and Sargent IDs	Transferred	53,000	0	362,500	2.85	Agreement executed between the IDs and the Nebraska Game and Parks Division to protect recreation, fish, wildlife, irrigation, agricultural, and related outdoor recreational uses and activities

Table 2. Summary Information on Potential Economic Benefits and Costs of Transferring Title						
District or Project (state)	Transfer status	Estimated direct annual Federal appropriations associated with transferred facilities (\$) [a]	Non-repayment annual Federal revenues associated transferred facilities (\$) [b]	Estimated Transaction costs for title transfer (\$) [c]	Proposed or actual price (\$M) [d]	Primary environmental benefits or costs associated w/transfer
Cachuma Project - Montecito Water District	Not transferred	None	None	10,000	.040	None
Provo River	Partial Transfer	None	None	250,000	872,731 (for partial transfer)	(1) Limited reduced impact on Reclamation land management staff and budget; (2) water users have more flexibility in operations and modifications to facilities; (3) water users have better ability to obtain long-term financing for major rehabilitation and modifications with possible creation of a public trail system of transferred facilities; (4) potential for conserved water to benefit endangered June sucker (5) enclosure of the Provo Reservoir Canal will provide safety benefits to the general public.
Forest Hill PUD - Sugar Pine Dam	Transferred	None	198,000	48,000	60,312,000	None identified
Carpinteria – Cachuma Project	Transferred	None	None – Paid out in 2002	15,000	None	None

Table 2. Summary Information on Potential Economic Benefits and Costs of Transferring Title						
District or Project (state)	Transfer status	Estimated direct annual Federal appropriations associated with transferred facilities (\$) [a]	Non-repayment annual Federal revenues associated transferred facilities (\$) [b]	Estimated Transaction costs for title transfer (\$) [c]	Proposed or actual price (\$M) [d]	Primary environmental benefits or costs associated w/transfer
Humboldt	Not transferred	None	~500	Est 1,500,000	Not available	Information not available
McGee Creek	Not Transferred	0	0	Not available	0	Not available
Single Purpose M&I Projects						
San Diego Pipeline (CA)	Transferred	0	0	~500,000	0	none identified
Griffith Project (NV)	Transferred	0	0	651,000	121.2	Management of lands in and around Lake Mead NRA.
Canadian River (TX)	Transferred	0	0	Not available.	34.8	Potential future groundwater pumping that could adversely affect T&E species; salinity in Lake Meredith.
Palmetto Bend (TX) [f]	Transferred	~220,000 annually for O&M for non-reimbursable for fish and wildlife components of project	0	214,300	51	Management of fish, wildlife and recreation uses at Lake Texana, including potential additional development of the shoreline; water releases to meet downstream environmental needs in Matagorta Bay.

Notes for Table 2.

For cases where information is not available, Reclamation and/or districts did not have ready access to the information.

^a Federal expenditures include costs associated with annual O&M activities, potential future safety-of-dams work, potential expenditures for rehabilitation of facilities (if information was available), and liability associated with project facilities and operations. The Burley district's transfer legislation authorizes the district to continue receiving project pumping power at a below market rate. In its legislative proposal, the Lower Yellowstone Project also seeks to continue to receive pumping power at a below market rate.

^b Includes Federal revenues over and above normal repayment for capital costs associated with water storage, supply and distribution. Federal revenues include revenues associated with project lands and operations, such as oil and gas revenues, grazing revenues, recreation fees and hydropower revenues.

^c These costs include the most easily identifiable costs associated with transferring title: NEPA compliance costs, appraisals, title searches, hazardous materials and cultural resource surveys, and staff time. Districts may have incurred additional costs that are not included in these totals, for example costs associated with lobbying or other administrative costs. Note that in some cases, these district costs may not be directly attributable to the district's title transfer activities.

^d For projects where title has not transferred, price shown is the Federal valuation of project facilities.

^e Legislation provided that costs were to be shared equally between the U.S. and the district up to \$80,000; all costs above \$80,000 were Federal. NEPA costs totaled \$92,000. Total includes costs for cultural resources survey that Reclamation would have undertaken at some point in the future regardless of the title transfer. The district estimated that it incurred lobbying costs of about \$100,000 over the 1995-98 period.

^f The existence of a longstanding contract dispute between Reclamation and the Lavaca-Navidad River Authority concerning the Authority's repayment obligation makes it extremely difficult to distinguish title transfer transaction costs from other transaction costs. One of the reasons the Authority pursued title transfer is to seek a resolution of the contract dispute that is relatively more favorable to the Authority's interests.

^g Only distribution system transferred; U.S. retains title to major storage facilities. Legislation required transfer at no expense to districts.

^h District(s) not pursuing title transfer at present.

ⁱ The Federal government and the district share transaction costs equally for costs above \$200,000. Oil and gas revenues accruing after enactment, but prior to actual transfer, to be used to cover the first \$200,000 of transaction costs.

^j Price composed of \$150,315 from district to fulfill repayment obligation; \$185,000 from district for future revenues that might have accrued to the Federal government for changed water uses; and \$1.79 million from power users. Transfer is of selected facilities that serve M&I users. Transfer is not expected to change how and the extent to which these facilities are used. Since only selected facilities are transferred, Reclamation's costs are not expected to change significantly. Much of the NEPA costs would likely be incurred absent the title transfer as they are associated with constructing a pipeline that would connect with the facilities proposed for transfer. Issues associated with threatened and endangered species would be present regardless of transfer of facilities.

^k Changing water use over time as water shifted from agricultural to M&I uses was estimated by Reclamation to be associated with increased repayment of \$100,000 per year beginning in 2002.

^l Repayment was also expected to increase in the future as water converted from agriculture to M&I uses.

^m Of the \$1.3 million, \$146,000 is for water and land management; \$588,000 is for O&M for the two Molina power plants; and \$595,000 is for annual O&M for 15 private dams and pipelines delivering water to the power plants.

Table 3 summarizes the extent to which the procedural steps identified in Reclamation's title transfer Framework process were completed prior to legislation to transfer title being enacted. This table was developed in order to evaluate which title transfers proceeded generally in accordance with Reclamation's process and whether these transfers were enacted and implemented more quickly than those that did not follow the process. The comparison is somewhat difficult as a number of the more contentious title transfers (Vermejo, Rio Grande, Burley, Sly Park) were initiated prior to the development of Reclamation's process. In addition, identifying a starting date is somewhat subjective. Table 3 uses the year legislation was first introduced as a starting point.¹³ While in some cases it is difficult to draw conclusions from this data, it is clear that the majority of the transfers enacted and implemented during and after 2000/2001 had completed substantial elements of the process identified by Reclamation prior to enactment. Further, the transfers where considerable work was done prior to consideration by Congress appeared to have been enacted more quickly and with less controversy. Furthermore, once the legislation was enacted, those transfers where work was done prior to legislative consideration were conveyed with fewer delays or unanticipated issues during the implementation process, than those that did not complete the process prior to legislative consideration.

Two projects identified in the table – Vermejo and Sly Park – both initially sought legislation to transfer title in the 1980s. Legislation to transfer title to the Vermejo project was enacted in 1980 and subsequently amended in 1992. Legislation to transfer the Sly Park unit was first introduced in 1986 but was not enacted until 2000. Legislation to authorize the transfer of facilities in the Harquahala ID was originally enacted in 1990, but, the district did not initiate efforts to implement the transfer of title until 2001.

The Vermejo and Sly Park transfers were complicated. Vermejo was complicated because district lands essentially surrounded a wildlife refuge and controlled the water supply for the refuge. Legislative drafting problems caused a need for subsequent clarifying legislation to be enacted. Outstanding contractual and repayment issues also complicated the process. The transfer of the Sly Park project to the El Dorado Irrigation District was complicated by repayment issues, the presence of threatened and endangered species on project lands, and issues raised by state health authorities related to the extent to which the reservoir operated by the project is used for recreational purposes. In both cases, the districts worked exclusively with their Congressional representatives and not Reclamation or other interested entities prior to legislation being introduced. As a result, technical and other problems were not identified or addressed prior to enactment of the legislation.

Three other completed transfers took approximately six years each. These transfers might have proceeded much more rapidly if not for project specific issues associated with each. The issues associated with Palmetto Bend revolved around repayment and cost allocation (which the district was pursuing independently of title transfer), future uses of project lands, and the extent to which

¹³It is recognized that in some cases legislation may have been drafted but not introduced.

the Lavaca-Navidad River Authority (operator of the project) had agreements with state fish and game and cultural and historical resources agencies to establish basic management parameters. Once the agreements with the state agencies were in place and the repayment and cost allocation issues were resolved, the transfer proceeded in an orderly manner.

The transfer of the facilities of the Sugar Pine unit to the Forest Hills Public Utility District was complicated by the need to address historic and cultural resources issues on National Forest lands (much of the district's lands are surrounded by National Forest); by the need to resolve repayment issues arising because the Unit was financially integrated into the Central Valley Project; and by issues associated with rights-of-way for a pipeline that was to be transferred to the district.

The transfer of lands and facilities of the Gila project to the Wellton-Mohawk Irrigation and Drainage District was initially expected to take approximately six years. However, because of the controversies associated with some parts of the proposed transfer, the process has been broken up into phases with the first portion expected to be conveyed in 2007 with the rest to be conveyed in subsequent years. This transfer has been addressing numerous issues associated with compliance with section 106 of the National Historic Preservation Act as well as concerns raised by several Indian Tribes.

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Table 3. Cooperation and Activities Prior to Introduction of Legislation to Transfer Title												
Project	Prior to Legislation Being Enacted								Year legislation first introduced	Date legislation enacted	Date of transfer or est. date	Elapsed time or estimated time (years)
	MOA in place	NEPA begun	NEPA completed	Public meetings held	Valuation of facilities completed	Lands to be transferred identified	Haz materials survey	Agreement to transfer title in place				
<i>Enacted title transfers</i>												
Vermejo	No	No	No	No	No	No	No	No	1980	1992	1996	16
Rio Grande	No	No	No	No	No	No	No	No	1992	1992	1996	4
Canadian R.	No	None necessary	None	None	None	Yes	No	N/A	1997	10/98	1999	2
Burley	No	No	No	No	Yes	No	No	No	1996	11/98	2/2000	4
Clear Creek**	Yes	Yes	FONSI	Yes	Yes	Yes	Yes	Yes	1998	12/00	5/2001	3.4
Palmetto Bend	Yes	Yes	Draft completed	Yes	Yes	No	No	No	1995	11/00	6/2001	6.5
Griffith	Yes	Yes	No	Yes	Yes	Yes	No	No	1999	7/00	7/01	2
Nampa Meridian	Yes	Yes	No	Yes	Yes	Yes	Yes	No	2000	11/00	7/2001	1.5
Carlsbad	No	No	No	No	No	No	No	No	1996	6/00	7/2001	5.6
Colorado-Big Thompson-Northern Delivery System.	Yes	No	No	No	Yes	Yes	No	No	2000	10/00	11/02	2
Colorado-Big Thompson - Southern Del. System	Yes	No	No	No	No	Yes	No	No	2005	10/2006	10/2007	1 (est)
Gila Project (Wellton-Mohawk)	Yes	No	No	No	No	No	No	No	1998	6/00	2007 ^a	7+

Table 3. Cooperation and Activities Prior to Introduction of Legislation to Transfer Title												
Project	Prior to Legislation Being Enacted								Year legislation first introduced	Date legislation enacted	Date of transfer or est. date	Elapsed time or estimated time (years)
	MOA in place	NEPA begun	NEPA completed	Public meetings held	Valuation of facilities completed	Lands to be transferred identified	Haz materials survey	Agreement to transfer title in place				
Middle Loup	Yes	Yes	No	No	Yes	No	No	No	1995	10/00	11/02	7
Sugar Pine	No	No	No	No	Yes	No	No	No	1999	12/00	2003	7
Sly Park	No	No	No	No	No	No	No	No	1986	10/00	2003	17
Provo River	Yes	Yes	No	Yes	No	Yes	No	No	2003	2004	2006	3+
Fremont-Madison	Yes	No	No	Yes	Yes	Yes	No	No	2002	2003	2004	2
Carpinteria**	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	2002	2004	2006	4
Montecito**	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	2002	2004	2006	4
Humboldt	No	No	No	No	No	No	No	No	2002	10/2002	Est. 2010	na
Currently pending title transfers												
American Falls REs. #2**	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	2005	n/a	na	na
Yakima Tieton**	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	2005	n/a	n/a	n/a
McGee Creek ^b	Yes	Yes	No	Yes	Yes	Yes	Yes	No	2006	n/a	n/a	n/a
<p>**These transfers proceeded substantially in accordance with Reclamation's process.</p> <p>^athis transfer will be completed in phases with the first portion to be conveyed in 2007.</p> <p>^bS. 4023 was introduced on September 29, 2006, only days prior to the adjournment of the 109th Congress. The Congress did not take any action on this legislation prior to its adjournment.</p>												

5. FEEDBACK FROM RECLAMATION STAFF AND STAKEHOLDERS ON THE TITLE TRANSFER PROCESS

This section summarizes the information gathered from interviews with entities interested in the title transfer process and from a survey of Reclamation staff. Information was also gathered from districts at a title transfer forum held at the August 2002 meeting of the National Water Resources Association.

Water Districts

- Reclamation should be more proactive in determining which projects or facilities are good candidates for transfer. This could include undertaking an “appraisal-level” analysis of a transfer in order to provide better information to districts and stakeholders about the complexity of the issues associated with a particular transfer.
- Reclamation should do additional state-specific analysis on how and the extent to which state agencies/entities could protect identified Federal interests
- Guidelines tailored to individual states could be developed.
- All districts contacted recognized the importance of engaging with Reclamation on the issues. Appealing directly to Congress was seen as a way of forcing the Bureau to engage in the issues and to keep the process moving along. However, for the title transfers that were enacted during the last two years, it was recognized that going through “the process” with Reclamation ultimately is likely to have made enacting legislation smoother, less controversial and easier to implement.
- A number of districts undertook the necessary studies themselves in order to better control the costs of the studies and get them accomplished in a timely manner.
- Including time frames in legislation was perceived as a way of keeping the process on track.
- The attitudes of Reclamation area and regional office staff are important in facilitating the process and making it proceed smoothly. It was suggested that establishing teams of individuals dedicated to working on title transfers at the regional level might be of use.
- It would be useful to clearly designate a lead Federal agency in cases where multiple agencies are involved. Districts identified the need to have closer coordination with the Bureau of Land Management.

- Reduce the uncertainty associated with the title transfer process by initially identifying all of the tasks that need to be accomplished, the costs associated with completing those tasks, setting out a time frame for completing each task, and sharing this information with districts.
- The Department and Reclamation need to establish some general policy principles to guide the process. This would include designating a single Departmental-level point of contact for each (or all) title transfer(s) to ensure that it stays on track.
- Clearer lines of accountability for transaction costs need to be established and caps should be put on the level of costs incurred by districts.
- It is impossible to have generic title transfer legislation because of differences between districts.
- Accepting liability was not an issue for many of the districts that have completed the title transfer process.

Tribes

- While entities representing Native American interests expressed some interest in title transfer when the policy was initially proposed, few tribes have been directly involved in specific title transfers. The only case where a tribe was directly involved was the proposed transfer of the Pine River project. In this case, an interview with a representative of the tribe indicated that the Southern Ute tribe did not oppose the transfer as it was proposed by the entity seeking title, but they would have opposed the transfer if they perceived it as adversely impacting their interests.
- **Environmentalists**
- The Bureau's *Framework* is not relevant as a practical matter. The concepts, however, are acceptable, and if followed might be a reasonable way to approach title transfers.
- Title transfer is not necessarily a good thing, in and of itself.
- Analysis of environmental impacts should be completed prior to a title transfer being authorized.
- In general, the environment should be made better off as a result of the transfer.
- It is erroneous to assume that districts will continue operations unchanged once title has transferred.

- It would be worthwhile for Reclamation to specifically identify which projects they believe might be good candidates for transfer.
- Reclamation needs to do a better job of getting a district's expectations in line with reality associated with the necessary steps and the time required for the transfer process.
- Reclamation should establish more systematic opportunities for local cooperation and involvement.
- It might be worthwhile for Congress to establish a set of procedures to be followed.

Congressional Staff

- The title transfers enacted more recently have gone smoothly and with relatively little controversy because much of the details have been agreed to through MOAs, etc., prior to districts pursuing legislation.
- Doing the necessary outreach to stakeholders and completing NEPA compliance prior to legislation being introduced helps the legislative process precede more smoothly.
- Reclamation should not engage in extended debates with districts about the potential future use of facilities.
- Identify the cases where existing contracts or legislation permits title transfer and focus on these cases first.
- Get districts' expectations in line with reality. It is likely to take longer and probably will cost more than districts think.
- Set the correct tone. Having a commissioner who wants to do title transfers can make a difference.
- Identify and clarify the role of other Federal agencies.
- Do an inventory of all Reclamation projects and identify the Federal interest in each one. Those with minimal Federal interest should be transferred. The Department and Bureau should move to initiate the transfers in cases where Federal interests are minimal.

Reclamation Staff

A survey was developed and distributed to all Reclamation staff identified as having been involved in title transfers. The purpose of the survey was to obtain information on how Reclamation staff perceived the title transfer process. A key issue addressed by the survey was the extent to which Reclamation staff perceived that the goals of Reclamation's title transfer effort as clear. In general, the survey results were somewhat mixed, some believing the effort's goals to be clear and others saw them as less so. It is interesting to note that, in general, those Reclamation staff with more experience in working on title transfer thought the goals were less clear. The responses on this question suggest that goal clarity is an issue that should be addressed by Reclamation policy makers.

Reclamation staff was also asked about the extent to which Reclamation had articulated its goals to the public. Almost 25% of respondents perceived that Reclamation's goals were not clearly articulated to the public and an additional 20% were uncertain about whether Reclamation's goals were clearly articulated to the public.

Reclamation staff perceived that the transfer process for most title transfers was generally consistent with Reclamation's process. However, a small number of title transfers, that were particularly controversial and time consuming were not consistent. These included Vermejo, Rio Grande, Burley, Carlsbad, and Sly Park. While Vermejo and Rio Grande preceded the development of the Framework, the others identified followed few, if any, of the steps identified by Reclamation as being necessary prior to legislation being enacted.

In addition, a set of questions were asked about the effectiveness of Reclamation's internal structure for dealing with title transfers. Respondents perceived that Reclamation's internal organizational structure – with the majority of interactions and negotiations being handled at the area and regional office level with a centralized coordination function to identify policy issues and to ensure consistency among the region. – was the appropriate manner to effectively work through the issues and processes. Generally the roles of the Area offices, regional offices, and headquarters were thought to be appropriate, though respondents perceived that establishing teams in regional offices to deal with title transfers might be useful. There was a strong view that fully centralizing Reclamation's title transfer activities would not be useful.

6. OBSERVATIONS AND LESSONS LEARNED

As a result of the information gathered during the course of this evaluation, the following observations are presented.

1. In concept, transferring title to single purpose-projects should be easier. However, in practice each project (whether single- or multi-purpose) is unique with its own set of complexities – whether they be hydrologic, financial, contractual, related to land

management, environmental and so forth. As such, a one size fits all approach is impractical.

2. As the title transfer process began in the 1990s, there was an expectation that title transfers would result in a smaller Bureau of Reclamation with fewer staff and/or lower appropriation levels. Although Reclamation's budget declined by 19 percent and FTEs by 26 percent between FY 1992 and FY 2000, neither the budget decline or the downsizing occurred as a result of title transfer. Staffing levels and appropriations on a bureau-wide and an area or project office level have been largely unchanged as a result of title transfer. The explanation for this is simple, yet multifaceted:
 - Only relatively small facilities, which tend to be widely "scattered" across Reclamation's jurisdictional areas, have been transferred – thereby diluting any potential Reclamation-wide, regional, or even area office impacts.
 - Nearly all those facilities transferred to date were already being operated and maintained by non-Federal entities at their expense. This means that neither Reclamation employees nor Reclamation appropriated funds were being used to operate and maintain the facilities. Therefore, there are limited budgetary savings to be identified.
 - Reclamation's administration of the facilities prior to transfer involved relatively few Reclamation staff (on a substantially less than full-time basis) and very modest levels of Reclamation financial resources. In those cases where some staff time may have been freed up, these resources have been redirected to other ongoing issues faced by their offices.
 - The administrative costs avoided due to the transfers have been relatively minor.
3. Sufficient data are available in only a small number of cases to evaluate the extent to which title transfers have resulted in a budgetary savings to the Federal government. Thus, no conclusions can be drawn about the extent to which the transfers are "worth it" from the Federal financial perspective. However, given that the bulk of the Federal cost savings occurred when project operations and maintenance is (or was) transferred to the non-Federal entity, noticeable additional Federal cost savings (e.g., reduced appropriations or FTEs) are unlikely to accrue unless a bigger and/or significantly greater number of projects are transferred.
4. The transfer of large amounts of land associated with project facilities, particularly lands that were withdrawn from the public domain, require a significant amount of activity to comply with Section 106 of the National Historic Preservation Act and require other realty related work. This makes the transfer process significantly more complicated,

expensive and time consuming than in those cases where there is mostly facilities and acquired lands.

5. Procedural expectations need to be made very clear to all involved. Whatever goals are selected, an important step for policy makers is to clearly articulate these to districts, other stakeholders, Reclamation, and other Interior agencies. This could also include clearly articulating expectations on appropriate levels of NEPA compliance, cost sharing for transaction costs, coordination among Interior agencies, and stakeholder involvement. It needs to be recognized that title transfers are essentially real estate transactions. Like many real estate transactions, even “simple” title transfers can have complexities that slow the process.
6. There seems to be consensus among districts, congressional staff, and Reclamation staff that the majority of the transfers enacted since 2000 proceeded “relatively smoothly,” especially in comparison to the title transfers of the early 1990s. This is not to imply that all entities are happy with every aspect of the process and outcomes, that all entities support title transfer, or that the process could not be improved. But it seems to be the case that where the parties reached consensus (or established a process to do so) prior to legislation being enacted, the process proceeded in a more orderly fashion and the time between enactment and implementation was shorter, less controversial and less costly.
7. An informal set of general parameters for assessing title transfers appears to have become tacitly accepted by Congress. These parameters include: some sharing of the transaction costs between Federal and non-Federal entities; undertaking an appropriate level of NEPA compliance; and the need to develop any necessary agreements among non-Federal entities prior to legislation being enacted. It might be worth considering whether these parameters could be formalized or articulated clearly in order to reduce the uncertainty facing all entities participating in the title transfer process.
8. There appear to be benefits to all parties to relying on a process that is transparent, predictable, inclusive, and that allows for adaptive learning. If nothing else, relying on an established process can assist in protecting Reclamation when it comes to defending agency actions in court. In cases where issues concerning a transfer arise, the “process” can potentially facilitate reaching a consensus among the interested parties. The process does not necessarily have to be the process outlined in Reclamation’s existing Framework, but some process is necessary.
9. The “process” will also function more efficiently if policy makers clearly indicate that Reclamation and the Department will be more supportive of title transfers that are consistent with the process than with those that are not.
10. Pursuing title transfer is not a costless process for the Federal government or the districts. While in the aggregate, transaction costs may be relatively small, they may still represent

a relatively large cost that must be absorbed by a Reclamation Area Office or a district. Area Offices or water districts may not have budgeted for these costs because they were impossible to foresee. Area Offices may also be even more reluctant to incur “pre-MOA” costs because they have no mechanism for funding them.

11. Since 2000, Reclamation, water districts and other stakeholders have become more sophisticated and more realistic in terms of their expectations concerning the process, the costs, and the terms and conditions of the transfers.
12. The evidence on the extent to which the transaction costs affect districts’ willingness to seek title is inconclusive. This evaluation did not assess the expected net benefits to districts. However, it is reasonable to assume that from the district’s perspective, if the benefits of the transfer (e.g., cost savings) do not exceed the costs (including the transaction costs), the district would not be likely to seek title.
13. Whether the Federal government pays a larger share of the transaction costs might depend on the goals of the title transfer process. However, perceptions also might play a role here. If the perception is created that the Federal government, by paying a larger share of the transaction costs, is “giving the project away,” then some care must be taken in assuming greater Federal responsibility for these costs. Of course, it might be possible to mitigate any negative perceptions if a larger Federal cost share were accompanied by measures that protected the “public interest” (e.g., more systematic and wider public involvement, up front commitment by district to maintain existing levels of “public benefits,” etc.). Conversely, asking non-Federal entities to pay all of the transaction costs could be perceived as Reclamation not being seriously interested in title transfer.
14. In some cases, assuming additional liability may be a disincentive for a non-Federal entity to seek title. There may be relatively little that can be done about this, absent the Federal government explicitly retaining some liability, which would be counter to the goals of divesting ownership.
15. Many of the entities – Federal and non-Federal – involved in title transfer appear to have learned how to deal with many of the procedural issues associated with title transfer
16. Perceptions about how well the title transfer process serves all participants are important. If the process (in general and in any particular situation) is perceived to be “unfair” to districts, stakeholders, and/or the U.S., the atmosphere for possible transfers in the future will be less conducive.

APPENDIX A
FRAMEWORK
FOR THE
TRANSFER OF TITLE
BUREAU OF RECLAMATION PROJECTS
AUGUST 7, 1995

The criteria and guidance outlined in this document applies to "uncomplicated" projects. "Uncomplicated" projects are generally defined in the Scope of Application section following. This guidance is intended to initiate the Bureau of Reclamation's title transfer process.

This guidance does not apply to the more complicated projects, e.g., large multi-purpose projects where there is no consensus among the project beneficiaries concerning the transfer, where more than one competent beneficiary has expressed an interest in acquiring title, or where the institutional and legal concerns cannot be readily resolved.

BACKGROUND: The Reclamation program was founded in 1902. Its original mission was one of civil works construction to develop the water resources of the arid Western United States to promote the settlement and economic development of that region. The results of that work are well known in the hundreds of projects that were developed to store and deliver water. That substantial infrastructure made Reclamation the largest wholesale supplier of water in the United States, the sixth largest electric power generator, and the manager of 45 percent of the surface water in the Western United States. Many of these projects were constructed at a time when there were no local communities and utilities. Today much of the West is settled and is, in some respects, the most urbanized region of the country. Reclamation owns and operates public utility facilities which, if located in other parts of the country, would likely be owned, operated, and funded by publicly regulated private corporations or local government agencies. While it has been Reclamation's policy for decades to transfer operation and maintenance of projects to local entities where and when appropriate, interest in the actual transfer of title (with its attendant responsibilities) is now growing.

PURPOSE

As part of the second phase of the National Performance Review (REGO II), Reclamation is undertaking a program to transfer title of facilities that could be efficiently and effectively managed by non-Federal entities and that are not identified as having national importance. This effort is a recognition of Reclamation's commitment to a Federal Government that works better and costs less. The transfer of title will divest Reclamation of the responsibility for the operation, maintenance, management, regulation of, and liability for the project. The transfer of title to a project will, in effect, sever Reclamation's ties with that project.¹⁴

SCOPE OF APPLICATION OF FRAMEWORK

It is the intent of Reclamation to transfer title and responsibility for certain projects or facilities, when and where appropriate, to qualifying non-Federal interests. Uncomplicated projects are projects or facilities where there are no competing interests, the facilities are not hydrologically integrated with other projects, the financial arrangements are relatively simple and easily defined, and the legal and institutional concerns¹⁵ associated with a transfer can be readily addressed. In other words, after meeting the requirements set forth in the Criteria section below, projects will be selected for title transfer on the basis of the transfer being achievable and able to move forward quickly.

For purposes of this document and the transfer of title to the projects, the terms "beneficiary" and "stakeholder" are defined as follows: (a) **beneficiary** refers to (i) contractors and others who receive direct benefits under the authorized purposes for that project and (ii) non-Federal governmental entities in the project area; (b) **stakeholder** is a broader term and includes the beneficiaries, as well as those individuals, organizations, or other entities which receive indirect benefits from the project or may be particularly affected by any change from the status quo.

CRITERIA FOR TITLE TRANSFER

Following are the six major criteria that must be met before any project is transferred:

- 1) The Federal Treasury, and thereby the taxpayer's financial interest, must be protected
- 2) There must be compliance with all applicable State and Federal laws
- 3) Interstate compacts and agreements must be protected

¹⁴ Note: Reclamation recognizes that the complete severance of the relationship between Reclamation and the transferee may not be possible in all instances.

¹⁵ Such concerns include, but are not limited to, unresolved Native American claims, endangered species considerations, international or interstate issues, absence of consensus among beneficiaries, significant disagreements raised by the stakeholders, a need to prepare an Environmental Impact Statement, and substantive objections from other governmental entities.

- 4) The Secretary's Native American trust responsibilities must be met
- 5) Treaty obligations and international agreements must be fulfilled
- 6) The public aspects of the project must be protected

GENERAL GUIDANCE FOR DETERMINING PROJECTS ELIGIBLE FOR TRANSFER

Reclamation Area offices will review projects nominated by an interested transferee and will pursue negotiations regarding those projects where the issues associated with transfer are relatively easy to resolve. This could include projects with multiple purposes and numerous stakeholders, but only if it is clear that outstanding issues are resolved and that there is consensus among the stakeholders.

Reclamation will not initiate negotiations on those projects where title transfer will involve a protracted process to ensure that the six criteria listed above are met.

Generally, Reclamation will not pursue transfer of powerhouses and generating facilities where power is marketed by the Power Marketing Administrations or where such power is used for purposes not directly associated with project purposes.

GENERAL GUIDELINES APPLYING TO TRANSFERS

All transfers will be voluntary.

Reclamation's intent is to transfer projects to current project beneficiaries, including no-Federal governmental entities, or to entities approved by the current beneficiaries.

All transfers must have the consent of other project beneficiaries. If another beneficiary raises substantive objections which cannot be resolved, the project will remain in Federal ownership.

Reclamation will comply with National Environmental Policy Act and other applicable laws in all transfers.¹⁶

¹⁶ Reclamation is proceeding to develop a new Categorical Exclusion (CE) for those title transfers which would not significantly impact the environment and thus could be categorically excluded from a detailed NEPA review. Generally, Reclamation would anticipate such a CE would apply on projects involving transfer of title of Reclamation projects or facilities, in whole or in part, to entities who would operate and maintain the facilities or manage the lands so that there would be no significant changes in operation and maintenance or in land and water use in the reasonably foreseeable future. It is Reclamation's expectation that a CE would apply to a relatively small number of projects, i.e. some of the small single-purpose projects where no change in use is anticipated after the transfer.

All transfers must ensure the United States' Native American trust responsibilities are satisfied. In addition, outstanding Native American claims that are directly pending before the Department and that would be directly affected by the proposed transfer will be resolved prior to transfer.

Reclamation officials will meet with representatives from all interested Federal and State agencies to consider their concerns early in the transfer process.

Potential transferees must be competent to manage the project and be willing and able to fulfill all legal obligations associated with taking ownership of that project, including compliance with Federal, State, and tribal laws that apply to facilities in private ownership and assumption of full liability for all matters associated with ownership and operation of the transferred facilities. Potential transferees must be able to demonstrate the technical capability to maintain project safety on a permanent basis and an ability to meet financial obligations associated with the project.

In general, it is Reclamation's expectation that, upon the transfer of title to a project, its jurisdiction over that project will be divested. Reclamation further recognizes that in some cases the complete divestiture of jurisdiction may not be attainable because the transferee still receives water supplied from a Reclamation facility, or only a portion of the project was transferred and the rest of the project remains in Federal ownership, or there are other extenuating circumstances. The degree to which the Reclamation Reform Act of 1982 will apply following transfer will be negotiated on a case-by-case basis.

The financial interests of the Government and general taxpayers will be protected. Transferees must agree to fair and equitable terms based upon the factual circumstances associated with each project. (See attachment which describes the valuation of projects.) Transferees will be expected to pay upfront the estimated transaction costs, such as costs associated with compliance with the National Environmental Policy Act, real estate boundary surveys, and so forth. Reclamation will not provide new loans to finance transfers.

No transferred Federal asset will be considered for Federal assistance for project operation, maintenance, and replacement or capital construction purposes following completion of the transfer.

Prior to the initiation of detailed discussions on title transfer, Reclamation and the potential transferees will execute an agreement covering the responsibilities of all parties during the negotiations.

A base value will be determined for each project as it becomes the subject of serious negotiations for transfer. (See attached guidance on valuation.) The negotiated price for the project may deviate up or down from the base value. It will be necessary for Reclamation and the interested non-Federal entity to document how the factual circumstances and equitable treatment

considerations justify such adjustments. In addition, Reclamation may consider future uses on the transferred lands and waters in establishing a price.

Potentially affected State, local, and tribal governments, appropriate Federal agencies, and the public will be notified of the initiation of discussions to transfer title and will have (1) the opportunity to voice their views and suggest options for remedying any problems and (2) full access to relevant information, including proposals, analyses, and reports related to the proposed transfer. The title transfer process will be carried out in an open and public manner.

Once Reclamation has negotiated an agreement with a transferee, Reclamation will seek legislation specifically authorizing the negotiated terms of the transfer of each project or feature.

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APPENDIX B
Title Transfer Checklist

1. Why do you want to transfer?	District	BOR	Comments/Explanations
2. Who would oppose this transfer and why?			
3. Project Features			
A. Multiple Purpose			
B. Single Purpose			
C. Authorized Project Purposes?			
1. Irrigation			
2. M&I			
3. Power			
4. Flood Control			
5. Fish & Wildlife			
6. Recreation			
7. Highway Improvements			
8. Other Considerations			

3. Project Features			
D. Project Facilities/Assets			
1. Dam			
2. Reservoir			
3. Power Generation			
4. Distribution			
5. Drainage and Conveyance			
6. Lands			
7. Others (e.g., Dikes, Fish Facilities, Diversion Structures, Pumping Plants, etc.)			
E. Determine what specific facilities are proposed for transfer.			
F. Physical Considerations of other interests adjacent to or intermingled with the project?			
1. State Parks			
2. Forest Service or BLM Lands			
3. Tribal			
4. Cabin Sites			
5. Recreation Facilities			
6. Districts			
7. Other			
4. Issues/Consideration	District	BOR	Comments/Explanations
A. Does District intend to change or modify project purposes?			

4. Issues/Consideration	District	BOR	Comments/Explanations
1. International Treaties (e.g., Water to Mexico, Flyway & Habitat Treaties, US-Canada Trade, GATT, NAFTA)			
2. Interstate Compacts or Concerns			
3. Are there Tribal issues (e.g., Tribes nearby, Tribes with water rights, non-adjudicated water)?			
4. Threatened or Endangered Species?			
5. Are there other facilities integrated operationally or financially with this facility?			
5. Repayment Status	District	BOR	Comments/Explanations
6. Land Ownership Status	District	BOR	Comments/Explanations
A. Fee Title			
B. Withdrawn			
C. BLM			
D. USFS			
E. Canal Act			
F. Subsurface Rights			
G. Easements and Rights of Way			
H. Other			
7. Water Rights (Do they want Water Rights Transfer as well?)	District	BOR	Comments/Explanations
A. Direct Flow			
B. Storage Rights			

7. Water Rights (Do they want Water Rights Transfer as well?)	District	BOR	Comments/Explanations
C. Other State Requirements			
8. RRA Compliance	District	BOR	Comments/Explanations
A. Full Transfer (Exempt)			
B. Partial Transfer (Comply)			
9. Incidental Revenues From Project Lands	District	BOR	Comments/Explanations
A. Grazing Leases			
B. Oil & Gas			
C. Timber			
D. Minerals			
E. Water Sales			
F. Wheeling			
G. Other			

10. Existing Contracts			
A. Repayment (9D)			
B. Water Service			
C. M&I			
D. Renewal			
E. Other			
11. Safety of Dams Issues	District	BOR	Comments/Explanations
12. Who will serve as the “responsible party” for Safety of Dams Program?	District	BOR	Comments/Explanations
13. Environmental Mitigation Lands	District	BOR	Comments/Explanations
14. Legal Compliance	District	BOR	Comments/Explanations
A. NEPA Compliance			
B. ESA-Imposed Restrictions			
C. Cultural/Historic/Preservation Resources			
15. Pre-Acquisition Environmental Site Assessment	District	BOR	Comments/Explanations
A. Hazardous Materials			
16. Unauthorized uses of water which complicate possible transfer.	District	BOR	Comments/Explanations
17. Water Quality Concerns (i.e. Salinity or Selenium)	District	BOR	Comments/Explanations
18. Does District currently carry-out O,M&R?	District	BOR	Comments/Explanations

A. How is O&M funded? How will it be funded after title transfer?			
B. What is the District's capabilities and competence? Describe in some detail.			
C. Critical Maintenance Issues			
D. O&M reviews			
E. Workforce considerations.			
a. Will Federal employees be affected by transfer? How?			
b. Can existing Federal employees be protected in title transfer?			
c. Rights of First Refusal			
19. Aid to Irrigation (BOR to explain)	District	BOR	Comments/Explanations
20. Project Power	District	BOR	Comments/Explanations
A. Difference between preference and project rates? Contracts?			
B. What is the authorizing legislation?			
C. Which power marketing agency is involved?			
21. Liability: Is District(s) willing to accept Liability?	District	BOR	Comments/Explanations
22. Outstanding litigation that could impact transfer.	District	BOR	Comments/Explanations
23. Public Involvement & Participation	District	BOR	Comments/Explanations

24. Delineate beneficiaries (contractees), stake-holders, general public. Have all interested parties been notified of potential transfer?	District	BOR	Comments/Explanations
25. Stakeholders	District	BOR	Comments/Explanations
A. Non-Federal			
1. Irrigation			
2. Environmental Groups			
3. Recreation			
4. Power			
5. County Government			
6. City Government			
7. State (Water Resources, State Engineer, Fish & Game, Water Quality, Public Health, Parks and Historic Preservation)			
8. Tribal			

25. Stakeholders <u>cont.</u>	District	BOR	Comments/Explanations
9. Private Landowners			
10. Lessees			
11. Others			
B. Federal			
1. BLM			
2. NPS			
3. Corps of Engineers			
4. State Department			
5. FWS			
6. NMFS			
7. Forest Service			
8. Treasury Dept.			
9. OMB/CBO			
10. IG/GAO			
11. BIA			
12. WAPA/BPA			
13. FERC			
14. Justice/Solicitors			
15. EPA*			

25. Stakeholders <u>cont.</u>	District	BOR	Comments/Explanations
16. Congressional Staff			
17. DOD			
26. What is the status of official documents of the district and BOR relative to TT? What documents are needed?	District	BOR	Comments/Explanations

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