

## **Appendix F Public Comment Letters and Response**



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September 14, 2007

U.S. Bureau of Reclamation  
Snake River Area Office  
Attn: Gretchen Fitzgerald  
230 Collins Road  
Boise, Idaho 83702-4520

*Re: Draft Environmental Assessment for Proposed Transfer of USBR Drainage Facilities to Pioneer Irrigation District*

Dear Ms. Fitzgerald:

I write on behalf of my client, the City of Caldwell, Idaho. The purpose of this letter is to comment on the draft Environmental Assessment (EA) dated August 2007 concerning the proposed transfer of U.S. Bureau of Reclamation (USBR) drainage facilities to Pioneer Irrigation District (PID).

**Current Situation**

According to the map included in the EA at Figure 1, virtually all of the facilities proposed for transfer to PID are located within the city limits or areas of city impact for Caldwell and Nampa. I understand that Nampa will be commenting on the draft EA as well. Caldwell wishes to acknowledge our joint interests in this matter with Nampa and support constructive resolution of Nampa's concerns. The EA documents that the area surrounding the drains is rapidly urbanizing and existing land use plans "anticipate conversion of all lands within the city AOIs (see Figure 1) to urban/suburban uses."

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The EA also documents current, existing and active storm water discharges from urban areas into the subject drains. EA at p.18. This appears to be consistent with the capacity and purpose of the drains, all of which were “designed, sized and constructed to manage instances of high ground water levels, irrigation return flows and storm water runoff from agricultural fields.”<sup>1</sup> While many of the lands devoted to agriculture have been and will continue to be converted to urban areas, such conversion obviously does not modify the capacity of the drains. The distinction between urban areas and agricultural fields with respect to storm water runoff and flood risk is addressed in more detail later in this letter.

1-1

While the EA seems to indicate that the transfer will not effect a change regarding urban storm water management policy, this oversimplifies an important distinction between USBR and PID. In Appendix B, the EA sets forth USBR’s urban storm water management in the form of the Regional Policy Letter of June, 1992. That document requires “proactive planning” and mandates that USBR “shall coordinate with local governments and irrigation districts where applicable to develop a comprehensive drainage plan...” The policy goes on to describe a permitting process that takes into consideration the thoughtful and logical consequences of urban storm water in USBR drainage facilities. The City of Caldwell has questioned the legal authority under which USBR requires permits for urban storm water runoff. Nonetheless, it has also expressed willingness to work in a cooperative approach with USBR toward “a comprehensive drainage plan” that includes review and issuance of a permit.

1-2

In reality, the entire Policy Letter is rendered moot through provisions requiring PID approval and consent. As PID’s storm water management policy clarifies (Appendix D), its approach is much more simplistic: No urban storm water is allowed in USBR or PID drainage facilities under any circumstances. To argue in the EA that the transfer of drainage facilities will not affect a change in policy (See pages 11 and 17) is disingenuous. This change has substantial consequences for the vast majority of project “beneficiaries” and requires further analysis.

1-3

With respect to efficiency, it is not true that PID alone maintains the drainage facilities. The City of Caldwell has the responsibility for maintaining all drainages at road crossings and many other piped drains. The City is also involved in drainage issues with interested third parties who are almost exclusively public and private landowners in the process of developing their property. In short, because conflicts are anticipated to continue or increase with PID ownership of the drainage facilities, and because USBR has taken little or no active management role<sup>2</sup> over the facilities, the EA should reevaluate what efficiencies are to be gained from the proposed transfer.

1-4

As the EA recognizes, there are six criteria that must be considered in evaluating any proposed transfer. The City has concerns that the EA is less an objective assessment of the criteria and

<sup>1</sup> Caldwell is concerned with the phrasing of this statement that would suggest the drains were *not* designed to handle storm water runoff from urban areas. Since the drains have been in place for decades while the land uses around them have changed, logic would dictate that the drains must have been designed to accommodate storm water at certain flow rates without regard to the character of lands where the storm water fell. Without further clarification, the City will assume the drains were designed to handle, and are capable of handling, storm water at flow rates expected from unimproved agricultural lands.

<sup>2</sup> “PID would continue to operate and maintain the facilities as part of its integrated system in a manner consistent with its legal and fiduciary responsibilities. *The title transfer would not alter the purpose, management or use of the facilities.*” EA at 11. (Emphasis added).



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more a cooperative effort with PID to express PID positions and rationale for seeking the title transfer. The City of Caldwell respectfully requests that the EA be reanalyzed and reviewed more objectively in light of the following concerns:

**1. Criterion 1: The Federal Treasury And Thereby The Taxpayers' Financial Interests Must Be Protected.**

1-5

The City is concerned about how the financial interests of our residents are advanced by a transfer of liabilities from the Federal Government to PID. It is clear from the EA that PID will be required to assume all liability associated with the drains. Because the vast majority of property owners assessed by PID are urban residents to whom PID would deny drainage rights, and because assessments will be PID's means of paying any liability associated with the drains, it would seem that the majority of assessment payers assume a liability with no benefit.

Ironically, the same urban residents who would help PID pay liabilities associated with the USBR drains would be required to fund construction of another storm water drainage system for their own use. Costs for right-of-way acquisition and infrastructure construction of a new system would be astronomical. Whether transfer truly works to the financial benefit of the taxpayers in the cities of Caldwell and Nampa must be more closely examined.

**2. Criterion 2: There Must Be Compliance With All Federal And State Laws.**

1-6

While the City has questioned whether USBR has the authority to deny urban residents the right to continue discharge of storm water into existing drains at historic levels, it is clear that PID's policy of prohibiting all urban storm water drainage violates Idaho law.

Initially, whether a property owner possesses land that is agricultural or urban in nature, the Idaho Supreme Court has recognized a right for that landowner to discharge storm water down gradient. Though the property may be modified (e.g. developed for urban use), the right exists unless the property has been altered to increase the flooding risk. See *Smith v. King Creek Grazing Ass'n.*, 105 Idaho 644 (Ct. App. 1983). As will be discussed, urban lands in Caldwell do not increase, but actually decrease, the risk of flooding when compared to unimproved agricultural lands.

Second, the vast majority of the property interests held by USBR and PID are undocumented, prescriptive easements. Certainly, the long history of use affords USBR and PID prescriptive rights. However, a prescriptive easement is limited in scope and does not prohibit the underlying property owner from making *any use* of his property as long as it does not "materially interfere" with the prescriptive easement holder's use of the easement area. The easement area is likewise restricted to only that portion of the underlying property that has been actually used historically. See *Bentel v. Bannock County*, 104 Idaho 130, 133 (1983).

Therefore, the underlying property owner has a right to use the drainage facility on his or her property for the conveyance of storm water as long as such use does not material interfere with the use of the prescriptive easement by USBR or PID. For USBR or PID to restrict a property owner from the free use of his property in the absence of any material interference with the



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historic scope of USBR or PID actual prescriptive use is unlawful. See *Nampa & Meridian Irr. Dist. v. Wash. Fed. Savings*, 135 Idaho 518 (2001). If PID's expressed storm water policy to prohibit all use is implemented, it may subject PID and Caldwell property owners and residents to litigation.

Third, from its own experience, the City understands that PID makes assessments on all lands in its district for the operation of its facilities. However, these assessments do not distinguish between PID's irrigation delivery function and PID's drainage function. Therefore, urban users, including the City itself, are assessed by PID for the funds needed by PID to maintain and operate the drains. For PID to make such assessments and then deny assessment payers access to the use of the drains violates the general principle of irrigation district assessments set out at Idaho Code § 43-701 *et. seq.*

Finally, USBR and PID facilities that were obtained by documented grant likely require USBR and PID to permit current property owners the benefits of the facilities. For example, Quitcalim Deed Instrument No. 71604, recorded in the records of Canyon County, transfers property from the Frosts to the United States of America acting under the provisions of the Reclamation Act for a portion of the West End Drain. The consideration given to the Frosts in that deed includes "the benefits to be derived from the construction of irrigation works in the vicinity of the land described herein." Almost certainly, this deed is not unique and many USBR facilities proposed for transfer were acquired upon the extension of similar consideration. Surely, the "benefits to be derived" include access to USBR drainage facilities in perpetuity. Prior to any transfer of USBR facilities to an entity that has expressed its intent to prohibit urban storm water runoff in those facilities, further legal review in the EA is needed.

**3. Criterion 6: The Public Aspects Of The Projects Must Be Protected.**

In an urbanizing area, the public has significant interest in drainages that crisscross developed properties. While the primary interest discussed thus far is the right to discharge urban storm water, public aspects surrounding the facilities themselves and the proposed transfer include the right or ability of the City or third parties to cross these facilities with roadways and utilities and to construct recreational and transportation pathways along their lengths. Prior to any transfer, these public aspects need to be established and protected in order for any true streamlining or efficiency to be achieved.

1-7

On page 9 of the EA, the writer concludes that "[n]o environmental justice issues are associated with the proposed title transfer." Clearly, PID's storm water management policy discriminates between agricultural landowners and urban landowners. The environmental consequences for the elimination of existing drains, or the inability of current agricultural lands to continue historic drainage after development may result in significant adverse environmental impacts. There is no analysis of how the elimination of drainage rights now or in the future might create standing water, flooding, property damage, require the construction of a new storm water system and/or other issues for urban residents to deal with. In light of such discrimination, the EA should clearly analyze the degree of risk posed not only to USBR and PID, but to urban residents who will be left with serious storm water management problems given PID's express intent to prohibit urban storm water discharge.

1-8



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The EA describes three alleged problems that arise in connection with urban storm water runoff: flooding, water quality issues, and governmental regulation. By letter dated March 1, 2007, the City advised PID's attorney of a detailed analysis undertaken by the City to evaluate the distinction between storm water runoff from agricultural areas and storm water runoff from urban areas that were developed in a manner consistent with the City's Storm Water Management Policy. That analysis concluded that the impact of the City's existing storm water policy is to reduce peak discharges of storm water over what would be anticipated from an undeveloped agricultural field. While the duration of discharge is longer from an urban storm water system and more total water is drained, the critical peak volume, which is most indicative of flood risk, is *reduced* over the peak volume discharged from undeveloped farm ground. I am happy to make this data available to USBR in a reevaluation of the EA.

1-9

Certainly this data would be much more germane than the obvious but irrelevant observation on page 19 that "impervious surfaces in urban areas [result in] greater runoff than from agricultural areas." The analysis in the EA does not take into consideration the impact of the City's Storm Water Management Policy. In order to have any clear understanding of flood risk from urbanizing areas, the EA must be reevaluated in light of the City's urban construction requirements concerning storm water management. At present, there is no thoughtful or compelling reason to believe that urban land use development in Caldwell will result in increased risk of flooding.

The existing EA does not analyze water quality issues outside the context of the Clean Water Act and NPDES permit requirements. It therefore appears to analyze together concerns regarding water quality and regulation. The EA simply sets forth "PID's position" that PID may lose irrigation return flow exemptions under the Clean Water Act and be required to obtain an NPDES permit. This is contrary to EPA's position on the matter. Obviously, since EPA is the primary enforcement authority in Idaho for Clean Water Act issues, the City would like to see EPA's analysis considered in the EA along with "PID's position."

In a letter dated July 22, 2007 from James A. Hanlon, Director of the Office of Wastewater Management for the EPA, to William J. Switzer of the Ada County Highway District, the EPA opinion is expressed that commingled irrigation return flows and urban storm water runoff do not require an NPDES permit as long as the non-agricultural flows in the drain are allowed by NPDES permit. The City of Caldwell has made application for and anticipates in the near future receiving and MS4 permit from EPA authorizing its urban storm water discharges. In light of the dramatic importance of urban storm water discharge to the City of Caldwell, it respectfully requests that the EA be reevaluated and the true regulatory risk assessed more clearly.

1-10

In light of the numerous and ongoing conflicts between the City and PID, it may well be in the greatest public good to see the drainages transferred to the City of Caldwell. By the express terms of the EA, this consideration was given no detailed analysis. In light of the potential for ongoing inefficiencies and conflicts described herein, it is certainly not clear that USBR's desire to "streamline" processes will be achieved by a transfer to PID, but not to the City of Caldwell.



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A transfer to PID rather than the City does not address what the long-term disposition of the facilities might be. The EA acknowledges that virtually all of the land surrounding the facilities to be transferred will be converted to urban or suburban uses within the foreseeable future. If suburban and urban land uses cannot discharge into the facilities, and agricultural lands do not exist in proximity to the facilities, they will have little or no utility. Further, it is questionable whether a reasonable, legal assessment base for the perpetual maintenance of the drains will exist.

1-11

Certainly, the future of the subject drains will be as features in a wholly urban landscape. As such, it would seem to be the urban entity that should be given serious consideration for the transfer. Contrary to the EA's iteration of "PID's position" on page 13, the City is authorized to operate irrigation and drainage facilities. See Idaho Code § 50-332-333; 50-1801 *et seq.*

**Guidelines and Conclusion**

In addition to the criteria set out above, the Framework for the Transfer of Title, Bureau of Reclamation Projects, August 7, 1995 sets forth several guidelines that must be considered in connection with any proposed transfer. Of significance to the City of Caldwell are the following:

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

1-12

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

The financial interests of the Government and the general taxpayers will be protected.

At this point, the City of Caldwell does not consent to the transfer of USBR facilities to PID. While the transfer makes sense in theory, there are far too many outstanding issues between the City and PID, including but not limited to urban storm water drainage, that must be resolved before the City will have any level of comfort in PID ownership of USBR facilities. We hope and believe that USBR can facilitate resolution of these issues. If such a resolution can be achieved through this current process of considering the proposed transfer, the City may yet withdraw its objection. However, clearly the majority of the "beneficiaries" of USBR facilities reside in the urbanized areas of Nampa and Caldwell. Pursuant to USBR's own framework, those concerns must be resolved or the facilities will remain in Federal ownership.

The City has little faith in the objectivity of the EA as currently drafted. It relies heavily and repeatedly on "PID's position," but misrepresents the City's. The Response List to PID Comments (Appendix C) characterizes a letter from Gordon N. Law of the City of Caldwell as "no objection." In fact, Mr. Law's letter raises no objection "as long as the transfer is made contingent on lands historically drained by said facilities retaining the right to drain at historical rates in perpetuity." Given the general lack of objectivity that characterizes the EA draft at this

1-13

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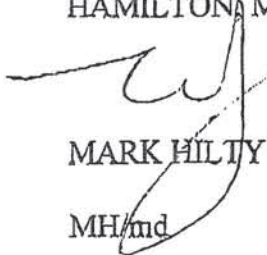
time, the City regrettably must doubt that the mischaracterization of Mr. Law's comments was inadvertent.

While there are inaccuracies and incomplete analyses fundamental to the transfer Framework, criteria and guidelines, the City is willing to work constructively with USBR, PID and other beneficiaries and interested parties to resolve its concerns and ultimately support the transfer. The City calls upon USBR to fulfill its "proactive planning" obligation to the public by negotiating and issuing storm water discharge permits, binding on PID in the event of transfer, pursuant USBR's regional policy letter.

1-14

Very truly yours,

HAMILTON MICHAELSON & HILTY, LLP



MARK HILTY

MH/md





Reclamation's responses to the September 14, 2007 comments from Hamilton, Michaelson, & Hilty, LLP

Comment #	Reclamation's response
1-1, 1-2, & 1-3	<p>The September 14, 2007 letter from Hamilton, Michaelson &amp; Hilty, LLP, on behalf of the City of Caldwell, references an analysis of stormwater runoff from agricultural areas and from urban areas that was completed by the City. This information was subsequently provided by Hamilton, Michaelson &amp; Hilty, LLP, in an October 3, 2007 letter. Reclamation has revised the Final EA to reference this analysis (page 19). Reclamation's understanding is that following a potential transfer, the District would review and make decisions on future requests for stormwater discharge permits analogous to their current role in approving permit applications for Reclamation's authorization of any non-agricultural discharges to canals or drains. PID has indicated that the District would continue to operate and maintain the facilities as part of its integrated system in a manner consistent with past and current practices. Further, PID has indicated that current policies and processes would continue such that the Proposed Action would have no effect upon the use and development of land within the District's boundaries.</p> <p>The relevant drainage facilities are transferred facilities, meaning that PID is currently responsible for all operations and maintenance issues. This situation would not change following a title transfer.</p>
1-4	<p>Reclamation acknowledges that current authorized permittees have a responsibility to maintain drainages at road crossings.</p> <p>With respect to efficiencies, Reclamation's purpose and need for the proposed title transfer is to reduce or eliminate costs associated with administering the project facilities that could be efficiently and effectively managed by non-Federal entities and which are not of national importance. This action would allow Reclamation to use its resources more effectively in other areas of water resource management and allow PID to be more efficient in its O&amp;M of the transferred facilities. The facilities and land interests included in this proposed action are limited to those federally-owned facilities which are currently operated and maintained by PID and lie within the District's boundary. At present, even though PID has paid in full its repayment obligation for the federally-owned portion of the drainage system, title remains with the United States. The proposed transfer would address the defined purpose and need by consolidating all responsibilities for the drainage system with one entity, thereby reducing Reclamation's administrative oversight for facilities that PID has operated and maintained since they were constructed or improved in the early 1900s.</p>
1-5	<p>The majority of the drainage system is currently owned, operated, and maintained by PID. The proposed transfer of the remaining portion of the drainage system to PID would consolidate ownership with one entity that has demonstrated its ability to effectively operate and maintain the relevant facilities since the early 1900s. In addition, PID has fully met its repayment obligation to the U.S. Treasury for costs associated with construction of the facilities proposed for transfer; therefore, the Federal Treasury will be protected.</p> <p>Reclamation has identified five stormwater discharges to Reclamation facilities within the PID boundaries; these authorized discharges would not be affected by the proposed title transfer. Further, PID has indicated that following a potential transfer, the District would review and make decisions on future requests for stormwater discharge permits analogous to their current role in approving permit applications for Reclamation's authorization of any non-agricultural discharges to canals or drains. As a result, Reclamation believes that the proposed title transfer would not result</p>

Reclamation's responses to the September 14, 2007 comments from Hamilton, Michaelson, & Hilty, LLP

Comment #	Reclamation's response
	<p>in significant economic impacts to current or future authorized discharges.</p> <p>One comment letter referenced potential economic costs for urban members of PID if a transfer resulted in additional liabilities for these members without corresponding urban runoff benefits. The relevant drainage facilities are transferred facilities, meaning that PID is currently responsible for operations and maintenance issues. Accordingly, liability is effectively with PID in the current situation and would also be with the District following the proposed title transfer. The main effect of title transfer would be that Reclamation would no longer be involved in any questions regarding liabilities that may be incurred by PID for transferred portions of the drainage system, thereby eliminating the potential for Reclamation to incur costs related to such involvement (see Section 2.3 of the EA). As analyzed in the EA, title transfer would not affect PID's current stormwater runoff policies or the District's O&amp;M of the overall drainage system.</p>
1-6	<p>Reclamation fully intends to comply with all State and Federal laws during any potential title transfer. Specific legislation would be required to direct Reclamation to transfer title. Current disagreements between PID and other entities regarding PID's current approach to permitting stormwater discharges may be resolved or may continue, with or without title transfer. Reclamation's understanding is that following a potential transfer, the District would review and make decisions on future requests for stormwater discharge permits analogous to their current role in approving permit applications for Reclamation's authorization of any non-agricultural discharges to canals or drains. This understanding is reflected in the Final EA.</p>
1-7	<p>For the federally-owned drains of the PID drainage system, the public aspects of the project involve authorized non-reimbursable uses, i.e., authorized uses for which the United States is not reimbursed under a repayment contract or similar agreement. These uses generally include recreation, fish and wildlife enhancement, and/or flood control where authorized for specific Reclamation projects. The federally-owned drains of the PID drainage system were authorized under the Reclamation Act of 1902 for irrigation-related purposes and predominantly involve easements (rather than fee title ownership) obtained for those irrigation purposes. The authorized uses for the federally-owned drains of the PID drainage system do not include additional public aspects as referenced in the Framework for the Transfer of Title (i.e., nonreimbursable recreation, fish and wildlife enhancement, or flood control purposes). As a result, the proposed title transfer is consistent with Reclamation's application of the Framework for the Transfer of Title relative to public aspects of the project.</p>
1-8	<p>The environmental justice analysis assesses impacts to minority populations and low-income populations. Because the administration of authorized discharges to the PID drainage system would not significantly change after a title transfer, no environmental justice issues were identified.</p>
1-9	<p>The City's analysis is referenced in the Final EA in Section 3.2.</p>
1-10	<p>A July 20, 2007 letter from EPA (vs. July 22, as stated in the comment), is included in Appendix F in the Final EA, following the comment letter from Perkins Coie.</p>
1-11	<p>As stated previously, the majority of the drainage system is currently owned, operated, and maintained by PID. The proposed transfer of the remaining portion of the drainage system, which represents approximately 35 percent of the total system, would consolidate ownership with one</p>

Reclamation's responses to the September 14, 2007 comments from Hamilton, Michaelson, & Hilty, LLP

Comment #	Reclamation's response
	<p>entity that has demonstrated its ability to effectively operate and maintain the relevant facilities since the early 1900s. Additionally, PID has fully met its repayment obligation to the U.S. Treasury for costs associated with construction of the facilities proposed for transfer.</p> <p>Tile transfer to an entity other than PID would result in PID owning a majority of the drainage system and a second entity owning a minority of the system. This situation could increase rather than decrease coordination required for system operations; shift, rather than eliminate, the need for duplicative administrative actions (i.e., crossing permit review/approval); and add uncertainty about procedures, effectiveness, and legal relationships for continued O&amp;M of the drainage system.</p>
1-12	<p>These concerns are relevant to Reclamation's Framework for the Transfer of Title rather than to the NEPA analysis, and it is premature in the title transfer process to determine that such concerns cannot be resolved since the terms and conditions of a transfer are yet to be developed. The terms and conditions, along with any related transfer legislation, may address and resolve current objections.</p> <p>PID has met its repayment obligation; therefore, the Federal Treasury and public have been protected as noted for comment 1-5 above.</p>
1-13	<p>The Final EA incorporates changes regarding the relevant comments.</p>
1-14	<p>Reclamation will continue to seek opportunities to participate in potential multi-jurisdictional planning and negotiating processes.</p>





SEP -6 07

September 5, 2007

U.S. Bureau of Reclamation  
Snake River Area Office  
Attn: Gretchen Fitzgerald  
230 Collins Road  
Boise, ID 83702-4520

Re: Draft Environmental Assessment for Proposed Transfer Reclamation Drainage Facilities to the Pioneer Irrigation District

Dear Ms. Fitzgerald;

I wish to comment on the proposed transfer of title from the USBR to the Pioneer Irrigation District (PID).

PID has stated their intent in pursuing title transfer is in order to streamline operations and maintenance procedures and to enhance their management of the drainage system used to handle agricultural return flows. What agricultural return flows exist will be gone in a very few years as urban development continues in Canyon County. Those drains cited for transfer all lay within the city limits or impact areas of Nampa and Caldwell. The continued urban development will still require a means of irrigation transport from the reservoir systems so the need for entities such as PID will continue to be needed but maybe in an altered form. Agriculture will no longer be the primary focus but providing irrigation water to the urban dweller. The USBR and PID need to change their mindset.

The rationale behind PID's thinking regarding storm water and urban runoffs seems flawed. PID's position is that because ...“a NPDES permit is required for municipal (urban) storm water discharges, if PID permits urban storm water discharges into its system, the agricultural exemption could be lost and the District would incur the expense and liability associated with obtaining a NPDES permit and meeting associated water treatment requirements.” PID should not be able to unilaterally deny cities and other urban areas storm water runoff ability. PID should be working together with Nampa and Caldwell to develop a partnership agreement for storm water and urban runoffs. PID would not have the US government oversight if title were transferred. The agricultural exemption may be withdrawn if the governing agencies became aware of the loss of agriculture lands in the Canyon County area.

The draft EA states only Mason Creek has a perennial flow. This is not correct most if not all drains have a year round water flow. The water level is lower during the non-

irrigation periods but there is definitely water flow. This water provides habitat for birds, animals, fish and other aquatic life during the winter months.

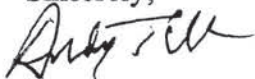
I fished the drains in my younger years and currently see young people fishing these drains – trout is present. So these are fishable waters. How will the transfer affect fishing opportunity? 2-2

The Idaho Department of Environmental Quality (DEQ) and Lower Boise Watershed Council are preparing a revision of the 2001 study of the “Lower Boise River Tributaries for Use Attainability Analyses” (UAA) for submittal to the USEPA. The Lower Boise River watershed is a complex network of natural drainages and manmade storage facilities and irrigation canals/drains. The UAA is being performed primarily on “creeks” but creeks are not the only year round waterways in Canyon County. As I stated above most if not all drains have perennial water flows due to high ground water levels. The drains being proposed to have title transferred in all probability have similar characteristics and are subject to a UAA. Mason Creek is one of those under the UAA study and is proposed for title transfer. 2-3

I do not feel it in the best interest of the citizens of Canyon County to transfer title of the USBR drainage facilities to PID at this time. Canyon County currently is going through tremendous growing pains. When Canyon County is more urbanized and the needs of its citizenry can be better understood a transfer of title may be more appropriate.

Please consider my comments in the final decision of title transfer.

Sincerely,



Andy Tiller  
738 West Kinghorn Drive  
Nampa, ID 83651  
208-465-5075

Reclamation's responses to the September 5, 2007 written comments from Andy Tiller

Comment #	Reclamation's response
2-1	Reclamation contacted PID regarding potential perennial flows in drains other than Mason Creek. All of the drains are reported to have perennial flows with the exception of the Bardsley Gulch Drain, Parker Gulch Drain, Solomon Drain, and the Yankee Drain. The Final EA has been revised to reflect this information.
2-2	Reclamation contacted the Idaho Fish and Game Department (IDFG) regarding potential fishing uses of the PID drainage system. IDFG indicated that while it is possible that some fishing may occur in the canals and drains, an Idaho fishing license would be required for this activity and it is permissible as long as there is no trespassing onto private property. Because PID has indicated that management of the drainage system will not change appreciably following a potential title transfer, the Proposed Action would not affect possible fishing uses.
2-3	The July 2007 Draft Work Plan, <i>Lower Boise River Tributaries Use Attainability Analyses</i> , prepared by the Idaho Department of Environmental Quality (IDEQ) and the Lower Boise Watershed Council, references Mason Creek. However, the document indicates that only one of the lower Boise tributaries (Fifteenmile Creek) is being targeted for further analysis at this time. Because the study is not targeting Mason Creek or other PID drains, and because PID has indicated that management of the drainage system will not change appreciably following a potential title transfer, the Proposed Action would not affect the referenced study or related efforts.





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September 14, 2007

VIA FACSIMILE (208-383-2275) AND U.S. MAIL

The Bureau of Reclamation  
Snake River Area Office  
Attn: Gretchen Fitzgerald  
230 Collins Road  
Boise, ID 83702-4520

**Re: Draft Environmental Assessment for Proposed Transfer of Title for Bureau of Reclamation Drainage Facilities to the Pioneer Irrigation District, Boise, Project, Idaho  
Client-Matter No. 58780-0004**

Dear Ms. Fitzgerald:

Thank you for the opportunity to provide comments on the Draft Environmental Assessment ("EA") for the proposed transfer of facilities from the U.S. Bureau of Reclamation ("BOR") to the Pioneer Irrigation District ("PID"). This letter comprises the Ada County Highway District ("ACHD") comments on the EA and incorporates by reference ACHD's initial comments submitted to BOR regarding the proposed transfer on or about March 21, 2007.

As a general matter, the EA is premised on inaccurate factual and legal assumptions. The integrity of the effects analysis in the EA is dependent upon no change in operations, yet the EA acknowledges that there will be changes in operations. For example, ACHD is currently discharging storm water into PID-managed facilities under an existing National Pollutant Discharge and Elimination System ("NPDES") permit. However, PID will not continue to allow current or future storm water discharge into the facilities once transferred. The EA states that "PID indicates that the District's current position of *not allowing urban runoff discharges* to its system would *remain in force*."<sup>1</sup>

3-1

<sup>1</sup> EA at page 20 (emphasis added).

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Perkins Coie LLP and Affiliates



The changes in operations resulting from transfer will result in significant environmental impacts presently unaccounted for in the EA. For example, if storm water can no longer drain into the facilities at issue, where will it go and what are the potential environmental impacts? What are the environmental impacts of constructing additional drainage facilities? The previous questions are just a few examples of questions that should be, but have not been, addressed in the EA. 3-2

ACHD is troubled that the only legal assertions BOR considers in the EA is that of PID.<sup>2</sup> The EA is replete with the legal assertions of PID, at least one of which is inaccurate, such as PID's assertion that the commingling of storm water and agricultural return flow compromise the exempt status of irrigation return flow.<sup>3</sup> 3-3

As more fully articulated in ACHD's initial comments, criteria numbers one (1), two (2), and six (6) of BOR's "Framework for the Transfer of Title" have not been met or adequately addressed in the EA. The EA's conclusion that PID meets the criteria for transfer is unsupported by the facts. 3-4

In conclusion, ACHD does not believe that the EA addressed the concerns raised by ACHD in its initial comments and asserts that the current NEPA analysis is inadequate. Please contact me with questions or concerns.

Very truly yours,

PERKINS COIE LLP



Erika E. Malmen

EEM:kjg  
Attachment

cc: Client

<sup>2</sup> See, e.g., EA at pages 13, 18, and 19.

<sup>3</sup> The U.S. Environmental Protection Agency's position is that commingling of irrigation return flow and storm water does not automatically revoke the exempt status of irrigation return flow and that commingled flow does not need its own NPDES permit for the commingled discharge. See attachment.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUL 20 2007

OFFICE OF  
WATER

Mr. William J. Schweitzer  
Director  
Ada County Highway District  
3775 Adams Street  
Garden City, Idaho 83714

Dear Mr. Schweitzer:

Thank you for your letter dated January 9, 2006, and subsequent correspondence dated February 21, 2007. You asked us whether the discharge from a conveyance that transports irrigation return flow is subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements if the conveyance also carries stormwater which has been discharged into the conveyance pursuant to an existing NPDES permit.<sup>1</sup> We apologize for the delay in responding to your initial inquiry.

The Clean Water Act (CWA) requires a permit for the "discharge of any pollutant by any person" (CWA § 301(a), USC § 1311(a)). "Discharge of a pollutant" is defined as "any addition of any pollutant to navigable waters from any point source." (CWA § 502(12), 33 U.S.C. § 1362(12)). A point source is defined as "any discernible confined and discrete conveyance, . . . from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff." (CWA § 502(14), 33 U.S.C. § 1362(14), 40 CFR § 122.2).

As you know, irrigation return flows are excluded from regulation under the NPDES program (40 CFR § 122.3(f)). Even though an operator may retain irrigation return flow exemptions for portions of its discharge, the stormwater portions of its discharge may still be subject to NPDES regulation. As defined in section 40 CFR 122.26, stormwater discharges from certain municipal separate storm sewer systems (MS4s), construction sites greater than one acre, certain industries, and other designated sources require an NPDES permit. MS4s are defined at 40 CFR § 122.26(b)(4) and (b)(7).

---

<sup>1</sup> In this letter, the Environmental Protection Agency (EPA or Agency) is not addressing whether the Bureau of Reclamation conveyance and drain facilities in question would be considered part of a municipal separate storm sewer system, waters of the United States, both, or neither.

As noted in the preamble to the NPDES Permit Application Regulations for Storm Water Discharges (Phase I Rule), EPA's longstanding position is that irrigation return flows are exempt from permit coverage and commingling of irrigation return flow and stormwater does not automatically revoke the exempt status of irrigation return flow:

One commenter stated that irrigation flows combined with stormwater discharges should be excluded from consideration in the stormwater program. The Agency would note that irrigation return flows are excluded from regulation under the NPDES program. Section 402(1) states that the Administrator or the State shall not require permits for discharges composed entirely of return flows from irrigated agriculture. The legislative history of the 1977 Clean Water Act, which enacted this language, states that the word "entirely" was intended to limit the exception to only those flows which do not contain additional discharges from activities unrelated to crop production. Congressional Record Vol. 123 (1977), pg. 4360, Senate Report No. 95-370. Accordingly, a stormwater discharge component, from an industrial facility for example, included in such "joint" discharges may be regulated pursuant to an NPDES permit either at the point at which the stormwater flow enters or joins the irrigation return flow, or where the combined flow enters waters of the United States or a municipal separate storm sewer. 55 Fed. Reg. 47990, 47996 (Nov. 16, 1990)

Regulated stormwater may not be discharged into receiving waters without a permit. Additionally, other point source discharges of pollutants to waters of the United States are only permissible pursuant to an NPDES permit. It is the position of the Agency that these point source discharges may be authorized by a permit at the point they discharge to receiving waters or at the point they discharge into a separate conveyance. If an operator of a conveyance is transporting commingled irrigation return flow and a regulated point source discharge, the conveyance operator may need to be authorized to discharge under an NPDES permit if the regulated point source discharge is not already covered under a permit. In other words, if the point source discharge is already subject to an NPDES permit (e.g., an MS4 permit) before it is commingled with the irrigation return flow, the operator of the conveyance transporting that commingled flow does not need its own NPDES permit for the commingled discharge.

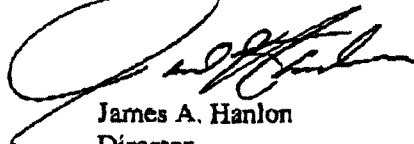
However, if there are any sources of stormwater discharged into the conveyance that require a permit but have not received that permit, then the discharge of the resulting mixture of the stormwater and irrigation return flows could be subject to NPDES permit requirements. The permitting authority may then determine that the operator of the conveyance must seek permit coverage as a permittee or co-permittee. Hence, if the operator of the irrigation conveyance wants to assure that their discharge of commingled stormwater and irrigation return flows will not be subject to NPDES permitting requirements, they must make certain that all regulated stormwater discharged into their conveyance has received appropriate permit coverage. In the facts you describe, if the Ada County Highway District (ACHD) holds an MS4 permit for the stormwater it introduces to the Bureau of Reclamation irrigation canals, the Bureau of Reclamation will not need to obtain an NPDES permit to lawfully discharge the resulting commingled irrigation return flows and stormwater.

Your letter also asked whether "agricultural runoff and irrigation return flows that are also conveyed through these Bureau of Reclamation facilities to waters of the U.S. remain exempt from NPDES permit requirements." The answer is yes. Commingling of agricultural runoff, irrigation return flow and NPDES-permitted stormwater discharges does not revoke the exempt status of irrigation return flow from NPDES program requirements. In other words, the discharge of regulated stormwater authorized by a permit does not affect the status of the irrigation return flow with which it is commingled.

In summary, ACHD's stormwater discharge does not need to be authorized under two NPDES permits. If all regulated stormwater is subject to a permit before entering the conveyance, then the Bureau of Reclamation will not be required to obtain permit coverage for its discharge of commingled irrigation return flow and regulated stormwater.

I hope this addresses your request. If you have further questions, please contact Ryan Albert of my staff at (202) 564-0763 or Karyn Wendelowski in the Office of General Counsel at (202) 564-5493.

Sincerely,

A handwritten signature in black ink, appearing to read "James A. Hanlon", written over a large, stylized flourish that loops back to the left.

James A. Hanlon  
Director  
Office of Wastewater Management



Reclamation's responses to the September 14, 2007 written comments from Perkins Coie

Comment #	Reclamation's response
3-1	<p>Reclamation understands that PID's current position is that unauthorized discharges to the District drainage system will not be allowed, and that this position will remain the same with or without a title transfer. The five currently authorized stormwater discharges would also not be affected by the proposed transfer.</p>
3-2	<p>Your September 14, 2007, letter on behalf of the Ada County Highway District (ACHD) included a July 20, 2007 letter from the U.S. Environmental Protection Agency (EPA) regarding irrigation return flows and stormwater runoff. Reclamation acknowledges that EPA's letter provides clarification of issues associated with a long-standing legal or regulatory concern that Reclamation and affected irrigation districts have had regarding the introduction of stormwater runoff to single-purpose irrigation drains. The EPA statement is applicable to both (a) the current situation, where some of the drains within the PID boundaries are federally owned, and (b) a post-transfer situation, where the full drainage system would be owned by PID. EPA's position does not affect the existing requirement for discharges to federally-owned drainage facilities within the PID boundaries to be authorized under a permit from Reclamation and approved by the irrigation district (see Reclamation's <i>Regional Policy on the Discharge of Stormwater Drainage</i>, Appendix B). Reclamation has identified five stormwater discharges to Reclamation facilities within the PID boundaries; these authorized discharges would not be affected by the proposed title transfer.</p> <p>PID has indicated that following a potential transfer, the District would review and make decisions on future requests for stormwater discharge permits analogous to their current role in approving permit applications for Reclamation's authorization of any non-agricultural discharges to canals or drains. Additionally, following a potential transfer, the District would continue to review and make decisions on future requests for consent to use and/or crossing agreements equal to their current role in approving permit applications for Reclamation's authorization of consent to use and/or crossing agreements.</p>
3-3	<p>The Draft EA summarized positions taken by PID regarding the District's concerns about managing urban stormwater volumes in the drainage system facilities and the regulatory status of irrigation return flows and/or stormwater runoff. As noted above, legal and regulatory concerns are clarified by EPA's July 20, 2007 guidance letter. The information included in the Draft EA was intended to disclose and clarify the District's interest in approaching Reclamation about a potential title transfer. Reclamation's purpose and need for the proposed title transfer is to reduce or eliminate costs associated with administering the project facilities that could be efficiently and effectively managed by non-Federal entities and which are not of national importance. This action would allow Reclamation to use its resources more effectively in other areas of water resource management and allow PID to be more efficient in its O&amp;M of the transferred facilities. While the proposed title transfer would address Reclamation's purpose and need and satisfy PID's intent for seeking title transfer, it would not resolve current disagreements between PID and other entities regarding urban runoff volume and timing and urban runoff water quality. Reclamation has revised the Final EA to reflect the differing positions of other entities regarding urban runoff volume and timing and urban runoff water quality.</p>
3-4	<p><b>Criterion 1</b> – The majority of the drainage system is currently owned, operated, and maintained by PID. The proposed transfer of the remaining portion of the drainage system to PID would consolidate ownership with one entity that has demonstrated its ability to effectively operate and</p>

Reclamation's responses to the September 14, 2007 written comments from Perkins Coie

Comment #	Reclamation's response
	<p>maintain the relevant facilities since the early 1900s. In addition, PID has fully met its repayment obligation to the U.S. Treasury for costs associated with construction of the facilities proposed for transfer; therefore, the Federal Treasury will be protected.</p> <p>One comment letter referenced potential economic costs for urban members of PID if a transfer resulted in additional liabilities for these members without corresponding urban runoff benefits. The relevant drainage facilities are transferred facilities, meaning that PID is currently responsible for all operations and maintenance issues. This situation would not change following a title transfer.</p> <p><b>Criterion 2</b> – Reclamation fully intends to comply with all State and Federal laws during any potential title transfer. Specific legislation would be required to authorize Reclamation to transfer title. Reclamation's understanding is that following a potential transfer, the District would review and make decisions on future requests for stormwater discharge permits analogous to their current role in approving permit applications for Reclamation's authorization of any non-agricultural discharges to canals or drains. This understanding is reflected in the Final EA.</p> <p><b>Criterion 6</b> – For the federally-owned drains of the PID drainage system, the public aspects of the project involve authorized non-reimbursable uses, i.e., authorized uses for which the United States is not reimbursed under a repayment contract or similar agreement. These uses generally include recreation, fish and wildlife enhancement, and/or flood control where authorized for specific Reclamation projects. The federally-owned drains of the PID drainage system were authorized under the Reclamation Act of 1902 for irrigation-related purposes and predominantly involve easements (rather than fee title ownership) obtained for those irrigation purposes. The authorized uses for the federally-owned drains of the PID drainage system do not include additional public aspects as referenced in the Framework for the Transfer of Title (i.e., nonreimbursable recreation, fish and wildlife enhancement, or flood control purposes). As a result, the proposed title transfer is consistent with Reclamation's application of the Framework for the Transfer of Title relative to public aspects of the project.</p>



Michael J. Fuss, P.E., MBA  
Public Works Director



Sheri L. Murray  
Executive Assistant

City of Nampa  
Public Works Department

September 14, 2007

United States Department of the Interior  
Bureau of Reclamation  
Snake River Area Office  
230 Collins Road  
Boise, ID 83702-4520

Attn: Gretchen Fitzgerald

Re: Draft Environmental Assessment for Proposed Transfer of Title for Bureau of Reclamation Drainage Facilities to the Pioneer Irrigation District, Boise Project, Idaho

Dear Ms. Fitzgerald:

The City of Nampa is submitting these comments in response to the Bureau of Reclamation's proposed transfer of nearly 77 miles of water conveyance facilities to Pioneer Irrigation District (PID). While the City of Nampa recognizes that the intent of this proposed transfer is to eliminate the Bureau's role in the ownership of these facilities, we object to the proposed transfer because the Bureau has not provided a complete analysis as to how such a proposed action would meet goals 1 and 6 as stated in the draft environmental assessment (EA). Specifically, this requires a showing and analysis that the transfer will satisfy this:

- 1) The Federal Treasury and thereby the taxpayers' financial interests must be protected, and 4-1
- 6) The public aspects of the project must be protected. 4-2

The proposed agreement does not appear to address either of these requirements except to conclude that there is a belief that these criteria are met with the proposed transfer.

The City's concerns with the proposed transfer to PID focus upon the changing use of the lands through rapid urbanization to which these facilities serve. These concerns of urbanizing uses were originally raised by the City of Boise's Public Works Department in their response to the Scoping of Issues for this transfer in a letter dated April 13, 2007, received by the Bureau. As such, those comments



and concerns are adopted herein. The urbanization of these areas served by this infrastructure causes concern to the local jurisdictions because of PID's well known policy to not accept any future storm water from urbanizing areas and the District's intentions to scale back the facilities current acceptance of historical waters from urbanized landscapes. While the future landscapes of these areas develop, the proposed transfer will be to an agriculture based irrigation district whose demonstrated intentions are to limit the use of such facilities. The urbanization of these areas coupled with PID's policies will create the need for additional infrastructure to be developed, at a direct cost to the taxpayers. The draft EA has failed to address any of these concerns at this time. If these issues of the urbanization of the traditional agricultural uses can be resolved and the future needs of those areas can be rectified with PID's policies, then the City of Nampa would consider withdrawing its present opposition to the proposed transfer.

4-3

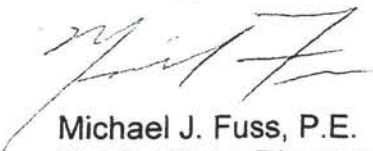
The draft EA also states that no other entity has the legal qualifications to receive title to the facilities. The City of Nampa manages its own separate municipal irrigation system within the City boundaries, pursuant to Idaho Code § 50-1801 *et seq.* and has the authority to "regulate, control and supervise the distribution of all water used by the inhabitants thereof for irrigation purposes." Idaho Code § 50-1802. While a transfer of such facilities to the City of Nampa may not meet the Bureau's stated goal of consolidating management with a single entity, there is no support for the conclusion that the City is not legally qualified as a recipient of such facilities.

4-4

Additionally, the City of Nampa has previously submitted comment on March 21, 2007, regarding its concerns for pathway easements. As such, those comments have remained unaddressed and the City further incorporates those comments herein. The City of Nampa understands that the City of Caldwell is also submitting comments regarding this proposed transfer to PID. As such, the concerns raised by the City of Caldwell are substantially similar as the City of Nampa and such comments by Caldwell are fully supported by Nampa and are adopted herein.

4-5

Sincerely,



Michael J. Fuss, P.E.  
Public Works Director

CG

cc: Terrence R. White, Attorney, White Peterson  
Robin Finch, City of Boise  
Gordan Law, P.E., City of Caldwell

Reclamation's responses to the September 14, 2007 written comments from the City of Nampa Public Works Dept.

Comment #	Reclamation's response
4-1	Within the framework of the proposed transfer of title for the PID drainage facilities, PID has met its repayment obligation; therefore, the Federal Treasury will be protected.
4-2	<p>For the federally-owned drains of the PID drainage system, the public aspects of the project involve authorized non-reimbursable uses, i.e., authorized uses for which the United States is not reimbursed under a repayment contract or similar agreement. These uses generally include recreation, fish and wildlife enhancement, and/or flood control where authorized for specific Reclamation projects. The federally-owned drains of the PID drainage system were authorized under the Reclamation Act of 1902 for irrigation-related purposes and predominantly involve easements (rather than fee title ownership) obtained for those irrigation purposes. The authorized uses for the federally-owned drains of the PID drainage system do not include additional public aspects as referenced in the Framework for the Transfer of Title (i.e., nonreimbursable recreation, fish and wildlife enhancement, or flood control purposes). As a result, the proposed title transfer is consistent with Reclamation's application of the Framework for the Transfer of Title relative to public aspects of the project.</p>
4-3	<p>PID has indicated that following a potential transfer, the District would review and make decisions on future requests for stormwater discharge permits analogous to their current role in approving permit applications for Reclamation's authorization of any non-agricultural discharges to canals or drains. Additionally, following a potential transfer, the District would continue to review and make decisions on future requests for consent to use and/or crossing agreements equal to their current role in approving permit applications for Reclamation's authorization of consent to use and/or crossing agreements. As a result, Reclamation believes that the proposed title transfer would not result in significant economic impacts to current or future authorized discharges.</p>
4-4	<p>The Final EA has been revised to clarify these issues. Reclamation's purpose and need for the proposed title transfer is to reduce or eliminate costs associated with administering the project facilities that could be efficiently and effectively managed by non-Federal entities and which are not of national importance. This action would allow Reclamation to use its resources more effectively in other areas of water resource management and allow PID to be more efficient in its O&amp;M of the transferred facilities. The majority of the drainage system is currently owned, operated, and maintained by PID. The proposed transfer of the remaining portion of the drainage system, which represents approximately 35 percent of the total system, would consolidate ownership with one entity that has demonstrated its ability to effectively operate and maintain the relevant facilities since the early 1900s. Additionally, PID has fully met its repayment obligation to the U.S. Treasury for costs associated with construction of the facilities proposed for transfer.</p> <p>Tile transfer to an entity other than PID would result in PID owning a majority of the drainage system and a second entity owning a minority of the system. This situation could increase rather decrease coordination required for system operations; shift, rather than eliminate, the need for duplicative administrative actions (i.e., crossing permit review/approval); and add uncertainty about procedures, effectiveness, and legal</p>

	relationships for continued O&M of the drainage system. Transfer of title for federally-owned segments of the drainage system to a non-Federal entity other than PID would not consolidate management with a single entity and could be counterproductive to the goal of enhancing process efficiencies. The proposed title transfer is consistent with the objectives outlined in Reclamation's title transfer program.
4-5	As described in Section 3.1.2 of the Final EA, Reclamation's understanding is that PID would continue current policies and processes such that the Proposed Action would have no effect on the use of land within the District's boundaries. Any existing authorized uses would continue to be honored by the District and would not be affected by the proposed transfer.

ADA COUNTY  
DEVELOPMENT SERVICES

RECEIVED  
SNAKE RIVER AREA OFFICE  
BOISE, IDAHO



PHONE (208) 287-7900  
FAX (208) 287-7909

200 W. FRONT, BOISE, IDAHO 83702-7399

BUILDING • ENGINEERING • PLANNING • ZONING

August 15, 2007

The Bureau of Reclamation  
Snake River Area Office  
Attn: Gretchen Fitzgerald  
230 Collins Road  
Boise, ID 83702-4520

Re: Draft Environmental Assessment for Proposed Transfer of Title for Bureau of Reclamation Drainage Facilities to the Pioneer Irrigation District, Boise Project, Idaho

Dear Ms. Fitzgerald,

I reviewed the draft EA sent to Ada County for the above referenced subject and have only one comment. Page 16 (3.1.1, Land Use – Affected Environment) states “section of the Fivemile Drain that lies in Ada County (but still within Nampa’s AOI)” – which is not correct, Ada County does not have an Area Of Impact agreement with the City of Nampa. The confusion may stem from the COMPASS map (labeled Figure 1), which does not show the “City Areas of Impact” line type (thick dashed blue line) along the county boundaries (artistic license taken by COMPASS). At present, the four square miles north of Ustick Road and east of Can-Ada Road are not within any City Area Of Impact.

5-1

Sincerely,

*David Wells*  
David Wells, P.E.  
ASSISTANT COUNTY ENGINEER  
Ada County Development Services  
DLW/dw  
File: Engineering correspondence



Reclamation's responses to the August 15, 2007 written comments from Ada County Development Services

Comment #	Reclamation's response
5-1	Thank you for this clarification. The Final EA has been revised.







BUREAU OF RECLAMATION  
SNAKE RIVER AREA OFFICE  
BOISE, IDAHO  
RECEIVED

10000  
3100  
6100

AUG 30 07

Mayor: Nancy C. Merrill

CITY OF EAGLE

P.O. Box 1520  
Eagle, Idaho 83616  
939-6813

Council: Stanley J. Bastian  
Phil Bandy  
Steve Guerber  
Scott Nordstrom

August 28, 2007

Mr. Jerrold Gregg  
United States Department of the Interior  
Bureau of Reclamation  
Snake River Office  
230 Collins Road  
Boise, Idaho 83702

Dear Mr. Gregg

The City of Eagle offers this letter of support to Pioneer Irrigation District's (PID) request to transfer the title, rights, and interests held by the United States in certain drainage facilities constructed by the Bureau of Reclamation (BOR) within the PID's service area.

We understand BOR provides oversight, and the PID operates, maintains, manages, and administers the facilities proposed for the title transfer, and has done so since the facilities were originally constructed. Should the PID's request for transfer be granted, it is our understanding, BOR would continue to request the PID's approval of any actions affecting the facilities or related land interests. This process would present opportunities for enhancing efficiencies for both BOR and the PID. 6-1

During the flooding of 2006 the City of Eagle and the PID worked closely to help mitigate the impacts on homeowners in the City of Eagle. We learned local agencies working with local agencies can solve problems working together for the benefit of the general public.

We support PID's request and look forward to many more years of good working relationships with both the Pioneer Irrigation District and the Bureau of Reclamation.

Sincerely,

Nancy C. Merrill  
Mayor

cc: Eagle City Council  
Allen Newbill Chairman Pioneer Irrigation District  
Pioneer District Board of Directors





Reclamation's responses to the August 30, 2007 comment letter from the City of Eagle

Comment #	Reclamation's response
6-1	For clarification, if the proposed title transfer is authorized, Reclamation would no longer be involved in reviewing or approving actions affecting the facilities or related land interests.



# Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Boise  
Idaho Falls  
Pocatello  
Twin Falls

Eugene C. Thomas  
John W. Barrett  
R. B. Rock  
Richard C. Fields  
John S. Simko  
John C. Ward  
D. James Manning  
David B. Lincoln  
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Scott L. Campbell  
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Michael E. Thomas  
Patricia M. Olsson  
Christine E. Nicholas  
Bradley J. Williams  
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C. Clayton Gill  
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Kimberly D. Evans Ross  
Jason G. Murray  
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Jon A. Stenquist  
Tyler J. Henderson  
C. Edward Cather III  
Andrew J. Walders  
Tyler J. Anderson  
Dylan B. Lawrence  
Benjamin C. Ritchie  
Rebecca A. Rainey  
Nathan R. Starnes

Robert E. Bakes, *of counsel*

*Willis C. Moffatt, 1907-1980*  
*Kirk R. Helvie, 1956-2003*

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September 14, 2007  
via E-mail  
gfitzgerald@pn.usbr.gov  
and U.S. Mail

Gretchen Fitzgerald  
The Bureau of Reclamation  
Snake River Area Office  
230 Collins Road  
Boise, ID 83702-4520

**Re: Written Comments on Draft EA for Proposed Title Transfer to Pioneer Irrigation District**

MTBR&F File No. 18-946.0111

Dear Gretchen:

The purpose of this letter is to provide you with Pioneer Irrigation District's written comments on the Bureau's draft Environmental Assessment ("EA") of August 2007. As you know, the draft EA evaluates the potential impacts of a proposal to transfer the Bureau's interests in federally-owned drains lying within Pioneer's boundaries to Pioneer. For the following reasons that are discussed in the draft EA, Pioneer supports the proposed title transfer.

1. Pioneer fully repaid its obligations to the federal government for the construction of the drains many years ago. In addition, transferring title to Pioneer would relieve the Bureau of the responsibilities and potential liabilities associated with ownership of the drains. Accordingly, title transfer would be protective of the federal treasury and taxpayer interests, which is one of the criteria in the Bureau's title transfer framework document.
2. Pioneer has had sole responsibility for the operation and maintenance of the drains to be transferred since their construction, and Pioneer would continue to operate and maintain the transferred drains as it had prior to title transfer. Accordingly, as the draft EA indicates, title transfer should not adversely impact land use, hydrology and water quality, biological resources, and protected species.
3. The only potential adverse consequence identified by the draft EA with respect to cultural resources would be the transfer of the drains out of federal ownership. However, as the draft EA notes, if the title transfer is approved, then Pioneer, the

Bureau, and the State Historic Preservation Officer would execute a Memorandum of Agreement to mitigate the loss of federal ownership by documenting the significance of Pioneer's drainage system.

7-1

4. Title transfer would streamline the approval process for requests by developers and governmental entities to alter the drainage facilities and easements. Currently, both Pioneer and the Bureau review these types of requests. Title transfer would eliminate this need, vesting sole responsibility for reviewing such proposals with Pioneer -- the entity in the best position to assess the potential effects of the proposed alteration.

I would also like to briefly respond to comments on the title transfer scoping letter that were submitted to the Bureau by various state and local governmental entities and which are summarized in Appendix C of the draft EA. Based upon my reading of those comment letters, the primary concerns expressed were: (1) consideration of title transfer to local governmental entities other than Pioneer; (2) reservation of easements for future pathways along the drains; and (3) ensuring that Pioneer will allow discharges of storm water into the drains. I will briefly address each of these concerns in turn.

As the draft EA explains, the transfer of title to the drains to governmental entities other than Pioneer would not meet the purpose and need of the proposed title transfer. Part of the justification for title transfer is to consolidate ownership and operation of the drains in one entity. Doing so would result in efficiencies, particularly with respect to the review of proposals to alter the drains and their associated easements. By transferring ownership to an entity other than Pioneer, ownership and operation of the drains would still be split between two entities.

7-2

In addition, the drains in question are operated as part of a much larger, integrated delivery and drainage system. In fact, some of the drains carry live irrigation water. Simply put, Pioneer is the only entity with the expertise and legal obligation to operate the drains in connection with the rest of its delivery and drainage system. Transferring title to the drains to another entity would be inconsistent with state law, the contracts between the Bureau and Pioneer, the purpose of the drains, the rights of underlying landowners, and the efficient exercise of Pioneer's operational responsibilities.

The title transfer should not include reservations of easements for public pathways along the drains. Pioneer has allowed paths along its facilities in appropriate circumstances in the past and will continue to consider such proposals in the future. However, pathway proposals must be evaluated on a case-by-case basis. Before accepting such a proposal, Pioneer must ensure that it would not interfere with Pioneer's operation and maintenance activities, increase repair and maintenance requirements, or create unacceptable safety or liability risks. In addition, obtaining such easements would require the approval of the underlying fee title owner, since the Bureau's interests in the drain segments consist primarily of easements and rights-of-way,

7-3



Gretchen Fitzgerald  
September 14, 2007  
Page 3

rather than outright ownership. Simply put, including a blanket reservation of pathway easements in the title transfer would not be appropriate.

While Pioneer understands the concerns expressed over storm water discharges into the drains, those concerns are misplaced in the context of the National Environmental Policy Act (NEPA)—the statute that governs this process. The purpose of NEPA is to analyze the environmental effects of a proposed federal action. As the draft EA explains, it is already the official policy of the Bureau to refer all requests to discharge storm water into the drains to Pioneer. Accordingly, transferring title to Pioneer would not affect the review of those requests. If a party feels that it has been aggrieved by a Pioneer decision on such a request, then it may challenge that decision at that time.

7-4

I would also like to express my agreement with the draft EA's characterization of Pioneer's concerns regarding discharges of urban storm water runoff into its facilities. As the draft EA notes, these drains were constructed almost 100 years ago for the purpose of draining away agricultural "seepage" water. However, urban storm water runoff generally occurs in larger volumes and at faster rates than agricultural seepage due in large part to the impervious surfaces that are associated with urban development. Allowing urban storm water runoff into these drains would simply overwhelm them, exposing adjacent landowners to flood damages and exposing Pioneer to liability for such damages.

Allowing urban storm water discharges into its facilities would also expose Pioneer to liabilities under the Clean Water Act (CWA). The CWA has stringent permitting and treatment requirements for discharges of municipal storm water runoff, but specifically exempts agricultural return flows from those requirements. If Pioneer were to allow discharges of urban storm water runoff into its facilities, then it could lose the benefit of the agricultural return flow exemption. Pioneer would then potentially be required to obtain a CWA discharge permit and implement stringent and costly water treatment. Ultimately, these costs would be passed on to the landowners within Pioneer's district boundaries.

7-5

Thank you for the opportunity to comment on the draft EA.

Very truly yours,

  
Scott L. Campbell

DBL/llw

cc: Board of Directors, Pioneer Irrigation District





Reclamation's responses to the September 14 2007 comments from Moffatt Thomas	
Comment #	Reclamation's response
7-1	The MOA for mitigation would be executed prior to title transfer. While this would mean that mitigation would be formally agreed to prior to transfer, actual mitigation efforts could be completed after transfer of title.
7-2 & 7-3	As indicated in Section 1.3 of the Final EA, ownership of the relevant facilities would be transferred to PID, including associated land interests (primarily easements and rights-of-way). Related to easements and rights-of-way, the purposes of and rights granted under the original agreements would remain unchanged. Any other third party legal rights or agreements related to the facilities, involving individuals or entities other than Reclamation and PID, would also be transferred and remain unchanged.
7-4	Reclamation's <i>Regional Policy on the Discharge of Stormwater Drainage (Water Quality)</i> is provided in Appendix B of the Final EA. This document more fully explains the relevant policy and approach.
7-5	A July 20, 2007 letter from EPA provides additional information regarding irrigation return flows and stormwater runoff relative to regulatory requirements. This letter is included in Appendix F, following the comment letter from Perkins Coie in the Final EA





# Idaho Water Users Association, Inc.

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September 11, 2007

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Bureau of Reclamation  
Snake River Area Office  
Attn: Gretchen Fitzgerald  
230 Collins Road  
Boise, ID 83702-4520

Re: Draft EA for Proposed Title Transfer to Pioneer Irrigation District

Dear Ms. Fitzgerald:

These comments regarding the above-referenced draft environmental assessment (EA) are provided by the Idaho Water Users Association (IWUA).

IWUA represents more than 300 irrigation districts, canal companies, ground water districts, water districts, municipalities, public water suppliers, hydropower interests, aquaculture companies, agri-businesses, professional firms and individuals, all dedicated to the wise and efficient development and use of our water resources. IWUA members deliver water to approximately 2.5 million acres of irrigated land. IWUA is affiliated with the National Water Resources Association and the Family Farm Alliance. IWUA is proud to count Pioneer Irrigation District among its members.

IWUA previously commented in favor of the proposed title transfer during the scoping process. We remain strongly in favor of the proposed title transfer to Pioneer Irrigation District and urge the Bureau of Reclamation to adopt Alternative B (Proposed Action, Title Transfer), as set forth in the draft EA. For your convenience, we have enclosed an additional copy of IWUA's resolution, as adopted at its Annual Conference in January, 2007, expressing support for Pioneer's title transfer. As with our previous comments, we request that this letter be included in the administrative record for this action.

Thank you for the opportunity to comment on the draft EA.

Sincerely,

Norman M. Semanko  
Executive Director & General Counsel

Enclosure

cc: Pioneer Irrigation District

**RESOLUTION NO. 2007-24**  
**PIONEER IRRIGATION DISTRICT TITLE TRANSFER**

WHEREAS, Pioneer Irrigation District ("Pioneer") is involved in a process to obtain the transfer of the legal title of portions of certain physical facilities used by Pioneer, including certain drains and a portion of a canal delivery system, all of which property rights are presently held by the United States Bureau of Reclamation ("Bureau"); and

8-1

WHEREAS, Pioneer is also working with the Bureau to complete the administrative process for the title transfer and will be drafting a bill to convey the said facilities to Pioneer for introduction in the Congress of the United States; and

WHEREAS, Pioneer has operated and maintained the said facilities at all times since they were constructed, pursuant to contracts with the Bureau.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports Pioneer in its efforts to acquire legal title from the Bureau to the drains and a portion of the canal delivery system.

Reclamation's responses to the September 17, 2007 written comments from the Idaho Water Users Association, Inc.

Comment #	Reclamation's response
8-1	The drainage facilities proposed for title transfer are identified in Table 1 of the Final EA. No canals are specifically involved.



