

# RECLAMATION

*Managing Water in the West*

Finding of No Significant Impact  
Final Environmental Assessment  
Pioneer Irrigation District  
Proposed Title Transfer  
Boise Project, Idaho



U.S. Department of the Interior  
Bureau of Reclamation  
Pacific Northwest Region  
Snake River Area Office  
Boise Idaho

December 2007

U.S. DEPARTMENT OF THE INTERIOR

The mission of the Department of the Interior is to protect and provide access to our Nation's natural and cultural heritage and honor our trust responsibilities to Indian tribes and our commitments to island communities.

MISSION OF THE BUREAU OF RECLAMATION

The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

# **FINDING OF NO SIGNIFICANT IMPACT**

## **Pioneer Irrigation District Proposed Title Transfer Boise Project, Idaho**

**U.S. Department of the Interior  
Bureau of Reclamation  
Snake River Area Office**

**PN FONSI 07-07**

### **Introduction**

The Bureau of Reclamation (Reclamation) prepared this Finding of No Significant Impact (FONSI) to comply with the Council on Environmental Quality's regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA). This document briefly describes the Proposed Action, the alternatives considered, the scoping process, Reclamation's consultation and coordination activities, and Reclamation's finding. The Final Environmental Assessment (EA) fully documents the analyses.

### **Background**

Where appropriate, Reclamation works with project beneficiaries and other stakeholders to transfer ownership of certain Federal irrigation facilities to non-Federal entities that request a transfer and are capable of managing the facilities, and where the Federal investment in the facilities has been repaid.

Pioneer Irrigation District (PID), established in 1901, diverts water from the Boise River into a system of laterals and canals for delivery to lands in Canyon County, Idaho. PID constructed the majority of the water conveyance system. Pursuant to contracts beginning in 1913 between Reclamation and PID, Reclamation constructed drainage system facility improvements (conveyance channels) within PID's service area. The United States holds title to these drainage facilities, including the associated land interests. These facilities represent approximately 35 percent of the total drainage system currently operated and maintained by PID.

At the request of PID, Reclamation analyzed the effects of transferring to the District, the United States' title, rights, and interests to these drainage facilities within PID's service area that were constructed and are owned by Reclamation. Through transfer of title, Reclamation

would be divested of any responsibility for the operation, maintenance, management, regulation of, and liability for the subject facilities. The primary result of the title transfer would be elimination of duplicative administrative actions performed by Reclamation and the District relative to the operation and maintenance (O&M) of the facilities. PID has fully met its repayment obligation to the United States Treasury for the costs associated with the construction of the drainage facilities.

In August 2007, Reclamation issued a Draft EA to document the analysis of the potential effects of title transfer on the human environment.

## **Purpose and Need**

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&M of the transferred facilities.

The facilities and land interests included in this proposal are limited to those federally-owned facilities which are operated and maintained by PID and lie within the District's boundary (approximately 35 percent of the total drainage system currently operated and maintained by PID). At present, even though PID has paid in full its repayment obligations for the federally-owned portion of the drainage system, title remains with the United States.

## **Alternatives Considered**

The EA addressed two alternatives: Alternative A – No Action; and Alternative B – Proposed Action, Title Transfer. NEPA regulations require the action agency to consider a No Action alternative for comparative analysis purposes.

### **Alternative A – No Action**

Under the No Action alternative, the United States (Reclamation) would retain its interests in the conveyance channels and PID would continue to operate and maintain these channels as part of its irrigation and drainage systems. Reclamation would continue to involve PID for review of and concurrence with any requests by individuals, organizations, or other government entities to modify, encroach upon, or use Reclamation's conveyances.

### **Alternative B – Proposed Action, Title Transfer**

Under the Proposed Action, the Secretary of the Interior would convey to PID all interest in and right/title to Reclamation's drainage facilities and associated land interests within the District's

service area. These facilities are all operated and maintained by PID and represent approximately 35 percent of the total drainage system currently operated and maintained by PID. These facilities consist of drainage conveyance channels and associated rights-of-way, easements, and fee title lands. No other land areas are involved. No water rights, storage rights, water distribution/management agreements, or facilities of other entities would be affected.

### **The Preferred Alternative**

Reclamation intends to proceed with further activities toward the transfer of title as described in Alternative B. This alternative would eliminate administrative costs associated with Reclamation's administration of the existing federally-owned facilities that lie within PID's boundary. This alternative is consistent with the Federal government's initiative to work better and cost less. The proposed transfer would require development of terms and conditions for a transfer, along with subsequent legislation by Congress to authorize Reclamation to complete a title transfer in accordance with defined terms and conditions.

## **Environmental Commitments**

As part of the EA, Reclamation analyzed the potential effects of title transfer on the human environment. By regulation (36 CFR 800), title transfer is considered to adversely affect cultural resources where such resources exist. This section summarizes mitigation measures for these adverse effects. Implementation of these mitigation activities will be required prior to or as part of the proposed title transfer.

Alternative B includes the transfer of title to all conveyance facilities (drainage channels) that are currently owned by Reclamation. Federal law and regulation define "historic properties" to include prehistoric and historic sites, buildings, structures, districts, and objects that are included in or eligible for inclusion in the National Register of Historic Places. When a historic property is in Federal ownership, the agency must seek alternatives that would avoid or minimize adverse effects. Thus, Federal ownership provides a measure of protection to historic properties, and when title leaves Federal control, the loss of protection constitutes an adverse effect.

A Reclamation-sponsored Class III cultural resources survey identified one National Register-eligible property (i.e., the drainage system). Reclamation and the State Historic Preservation Office (SHPO) have agreed that Reclamation would mitigate the adverse effect to the PID drainage system by documenting the significance of the PID drainage system to the development of agriculture in the Treasure Valley. The documentation would be presented as a separate historic narrative and include historic records, modern and historic photographs, and drawings. This mitigation would be stipulated in a Memorandum of Agreement (MOA) to be signed by the SHPO, Reclamation, and PID, prior to implementation of the Proposed

Action. The stipulated mitigation could be completed prior to, or following the proposed transfer, in accordance with the MOA.

Reclamation found no other adverse environmental effects requiring mitigation during the analysis.

## **Consultation and Coordination**

During the EA process, Reclamation coordinated and consulted with other groups and agencies. This section briefly describes these activities.

### **National Historic Preservation Act of 1966**

The National Historic Preservation Act of 1966 (NHPA), requires that prior to authorizing an undertaking, Federal agencies must take into account the effect of the undertaking on any properties eligible for or listed on the National Register of Historic Places. Federal regulations entitled Protection of Historic Properties (36 CFR 800) defines the process for implementing requirements of the NHPA, including consultation with the appropriate State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation.

Continuing consultation and coordination has been conducted with the SHPO pursuant to requirement of the NHPA. The SHPO reviewed and concurred with the scope of work for addressing cultural resources (Section 3.6), and would be party to a negotiated MOA governing treatment and/or protection of any resources eligible for nomination to the National Register of Historic Places.

### **Endangered Species Act**

The Endangered Species Act (ESA) requires all Federal agencies to ensure that their actions do not jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat. On March 2, 2007, Reclamation sent letters to the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NOAA Fisheries) to request current lists of listed and proposed species for the area that may be affected by the transfer of title. In March 2007, Reclamation received an email from USFWS containing an updated species list covering the project area. Additionally, Reclamation received a letter dated March 12, 2007 from NOAA Fisheries concluding that no ESA-listed species under their jurisdiction occur within the watersheds of the project area. Reclamation concludes that title transfer will have no effect on any threatened and endangered species.

### **Tribal Coordination and Consultation**

The NEPA scoping letter referenced above was sent to involved Indian Tribes in order to determine if the tribes have issues or concerns related to the proposed title transfer. No

indication has been received from the tribes that such issues or concerns exist, and no further consultation is deemed warranted.

## **Public Comments during the Scoping Process and Reclamation's Responses**

Pursuant to NEPA requirements, as part of EA preparation, Reclamation sent a "scoping letter" (dated February 27, 2007) requesting comments, concerns and identification of issues related to Proposed Action. The letter was sent to potentially affected and concerned agencies, organizations, individuals, and Tribes. Appendix C contains a copy of the scoping letter and the mailing list.

Thirteen written responses to the scoping letter were received during a 30-day comment period; a listing of the entities and individuals who provided comments is provided below.

- Ada County Highway District (ACHD)
- Ada County Parks and Waterways
- Canyon County Parks, Recreation and Waterways
- City of Boise, Public Works Department
- City of Caldwell, Office of City Engineer and Public Works Director
- City of Caldwell, Mayor
- City of Nampa, Public Works Department
- F.A.C.T.S. (Foundation for Ada/Canyon Trail Systems)
- Hamilton, Michaelson & Hilty, LLP
- James Budolfson
- Idaho Water Users Association
- Idaho Department of Parks and Recreation
- Spectrum Environmental, Inc.

Comment correspondence is summarized in a table and included in Appendix C. The main issues mentioned, which are addressed in the EA, were:

- Transfer of the subject facilities to a different public entity (addressed in Section 2.4)
- Use of facility corridors (easements, rights-of-way, etc.) for public pathways (addressed in Section 3.1),
- Status of other use agreements (e.g. city utility easements) associated with facility segments (addressed in Section 3.1), and

- Use of drains for urban stormwater runoff (addressed in Section 3.2).

## **Comments to the Draft Environmental Assessment and Reclamation's Responses**

The Draft EA was mailed to approximately 110 Federal, State, local agencies, elected officials, Indian tribes, irrigation districts, and interest groups for a 30-day comment period. During the preparation of the Final EA, Reclamation focused on the respondent's issues and questions from initial scoping to determine if there were any significant effects.

Reclamation received letters supporting the proposed action from the City of Eagle, the Idaho Waters Users Association, and Moffatt Thomas representing Pioneer Irrigation District. Comments letters noting specific concerns were received from Ada County Development Services; City of Nampa Public Works Department; Andy Tiller; Hamilton, Michaelson, and Hilty representing the City of Caldwell; and Perkins Coie representing Ada County Highway District. The Final EA includes the specific comments and Reclamation's associated responses in Appendix F. Several common concerns were addressed in the comment letters. These concerns are summarized in the subsections below, along with Reclamation's general response to each concern.

### **Concern 1 – Environmental Protection Agencies' (EPA) Statement on Stormwater Runoff**

The September 14, 2007 letter from Perkins Coie, on behalf of the ACHD, included a July 20, 2007 letter from the EPA regarding irrigation return flows and stormwater runoff (Appendix F). 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 the current situation, where some of the drains within the PID boundaries are federally owned, and a post-transfer situation, where the full drainage system would be owned by PID. The EPA 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 *Regional Policy on the Discharge of Stormwater Drainage*, Appendix B). Reclamation has identified five authorized stormwater discharges to Reclamation facilities within the PID boundaries; these authorized discharges would not be affected by the proposed title transfer. 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.



## **Concern 2 – Urban Runoff: Volume/Timing and Water Quality Issues**

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 for considering a potential title transfer is reflected in its title transfer framework (Appendix A) which is to reduce costs and responsibility for project facilities that can be efficiently and effectively managed by non-Federal entities and that are not of national importance. 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.

## **Concern 3 – Reclamation's Framework for the Transfer of Title**

Several comment letters referenced Reclamation's Framework for the Transfer of Title and questioned whether the proposed transfer to PID would meet criteria in the Framework. Specific criteria that were referenced in the comments involve:

- The Federal Treasury, and thereby the taxpayer's financial interest, must be protected (criterion #1). In this case, PID has met its repayment obligation and the Federal Treasury will therefore be protected.
- There must be compliance with all applicable State and Federal laws (criterion #2). Reclamation fully intends to comply with all State and Federal laws during any potential title transfer. Specific Federal legislation would be required to authorize Reclamation to transfer title. Regarding issues relating to PID's approach to permitting stormwater discharges, Reclamation's understanding is that if a transfer is authorized, 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.
- The public aspects of the project must be protected (criterion #6). Public aspects referenced in the Framework for the Transfer of Title 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 above (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.

Comment letters also noted the Framework's general guidance that a project would remain in Federal ownership if substantive objections by a project beneficiary cannot be resolved. Reclamation recognizes that other entities are interested in, and have expressed concerns about, management of stormwater runoff in a potential post-transfer scenario. 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. The terms and conditions for a transfer, along with any related transfer legislation, may address and resolve current objections.

#### **Concern 4 – Economic Issues**

Economic issues referenced in comments received by Reclamation include potential costs to taxpayers for drainage infrastructure that may be needed if urban stormwater could not be discharged to PID drains. Reclamation has identified five authorized stormwater discharges to Reclamation facilities within the PID boundaries; these authorized discharges would not be affected by the proposed title transfer. 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. Reclamation understands that PID's current policy is to not allow or accept stormwater from non-agricultural sources in its facilities. While PID's policy may affect third-party costs for accommodating stormwater runoff, Reclamation believes that the proposed title transfer would not change PID's current policy and would not result in significant economic impacts to current or future authorized discharges.

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 O&M issues. As a result, liability is effectively with PID in the current situation and would also be with the District following the proposed title transfer. One 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&M of the overall drainage system.

## **Concern 5 – General Information Not Included in the Draft EA Analysis**

Some comments on the Draft EA included references to additional information not directly referenced or incorporated in Reclamation’s NEPA analysis.

As noted above, the EPA’s July 20, 2007 letter was attached to one comment letter and was referenced in another letter. It is included in this Final EA (Appendix F).

The September 14, 2007 letter from Hamilton, Michaelson & 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 & Hilty, LLP, in an October 3, 2007 letter. Reclamation has added language to the Final EA to reference this analysis.

One of the comment letters references: (a) the potential for perennial flow in most or all of the drains, (b) observations that some fishing occurs in the drains, and (c) an Idaho Department of Environmental Quality (DEQ) study that includes Mason Creek. Reclamation contacted PID about drain flows. Reclamation has further evaluated each of these issues as noted in Appendix F. Reclamation has added language to the Final EA, as appropriate, to address these issues.

## **Changes to the Final Environmental Assessment**

Reclamation received comments from the aforementioned entities and where appropriate, the Final EA was revised to reflect their concerns.

The Bald eagle was delisted and subsequently removed from the threatened and endangered species list in July 2007 (72 FR 37346). Therefore, the analysis covering this species has been deleted from the Final EA.

Reclamation also updated the distribution list and added Appendix F to present the comments received on the Draft EA and Reclamation’s responses to those comments.

In addition, the Draft EA included a draft version of Reclamation’s *Regional Policy on the Discharge of Stormwater Drainage (Water Quality)*. The finalized version is included as Appendix B to the Final EA.

Where appropriate the FONSI and Final EA reflect clarification and/or revisions regarding specific comments related to stormwater and urban runoff, the public aspects of the project, and the economic issues associated with the proposed title transfer. Additionally, Reclamation incorporated editorial revisions to clarify aspects of the document and to address additional information.

## Finding

Reclamation's EA for the proposed title transfer shows that the Proposed Action will have no significant effect on the human environment. Reclamation therefore concludes that preparation of an Environmental Impact Statement is not required, and that this FONSI satisfies the requirements of NEPA.

### Recommended:

Celestino P. Tafoya

Celestino Tafoya  
Deputy Area Manager  
Boise, Idaho

December 10, 2007

Date

### Approved:

James H. Gregg

Mr. Jerrold Gregg  
Snake River Area Manager  
Boise, Idaho

12/10/2007

Date

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## Acronyms and Abbreviations

ACHP	Advisory Council on Historic Preservation
ACHD	Ada County Highway District
AOI	Area of impact
CDC	Conservation Data Center
CWA	Clean Water Act
District	Pioneer Irrigation District
EA	Environmental Assessment
EPA	Environmental Protection Agency
ESA	Endangered Species Act
FONSI	Finding of No Significant Impact
IDEQ	Idaho Department of Environmental Quality
IDFG	Idaho Department of Fish and Game
ITA	Indian Trust Asset
MOA	Memorandum of Agreement
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act of 1966
NMID	Nampa & Meridian Irrigation District
NOAA Fisheries	National Oceanic and Atmospheric Administration Fisheries
NPDES	National Pollution Discharge Elimination System
O&M	Operation and maintenance
PID	Pioneer Irrigation District
Reclamation	Bureau of Reclamation
SHPO	State Historic Preservation Office
T&E	Threatened and Endangered
USFWS	U.S. Fish and Wildlife Service





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# Chapter 1 INTRODUCTION

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Where appropriate, the U.S. Bureau of Reclamation (Reclamation) works with project beneficiaries and other stakeholders to transfer ownership of certain Federal irrigation facilities to non-Federal entities that request a transfer and are capable of managing the facilities, and where the Federal investment in the facilities has been repaid.

Pioneer Irrigation District (PID or District) has requested transfer to the District of all rights, title, and interest in the drainage facilities within PID's service area which were constructed, and are owned, by the United States. These facilities represent approximately 35 percent of the total drainage system currently operated and maintained by PID. On November 27, 2006, Reclamation and PID entered into a Memorandum of Agreement (MOA) to document the areas of responsibility and cooperative efforts necessary for pursuing the title transfer process.

Reclamation's goal in considering PID's request for title transfer is to reduce or eliminate its administrative costs associated with the operation and maintenance (O&M) of the facilities. While Reclamation provides oversight, PID operates, maintains, manages, and administers the facilities proposed for title transfer, and has done so since the facilities were originally constructed. Reclamation involves PID for review and concurrence with any actions affecting the facilities or related land interests. The proposed title transfer presents opportunities for enhancing efficiencies for both Reclamation and PID.

Reclamation has determined that the title transfer would not interfere with PID's capability to continue to operate and maintain the relevant facilities, and that PID has fully met its repayment obligation to the United States Treasury for the costs associated with construction of these facilities, including acquisition of associated land interests. The proposed transfer also would not interfere with O&M for the remaining Federal portions of the Boise Project.

Pursuant to requirements of the National Environmental Policy Act (NEPA), this environmental assessment (EA) documents Reclamation's analysis of the environmental effects of transferring title for the subject facilities and associated land interests to PID as proposed.

## 1.1 Background

PID, established in 1901, is an irrigation district organized and existing under the laws of the State of Idaho. The boundaries of PID are shown on Figure 1.

PID diverts water from the Boise River into a system of canals and laterals for delivery to lands in Canyon County, Idaho, including the Cities of Caldwell and Nampa. PID manages return flows from irrigated lands through a system of drainage channels. PID constructed the majority of the water conveyance system and currently owns approximately 65 percent of the total drainage system.

Pursuant to contracts beginning in 1913 between Reclamation and PID, Reclamation constructed drainage system facility improvements (conveyance channels) within PID's service area. This work included utilizing existing land interests and obtaining necessary land interests (primarily easements and/or rights-of-way, with limited instances of fee title) for construction, operation, and maintenance of the facilities.

The facilities constructed by Reclamation on behalf of PID (the proposed title transfer facilities) are shown on Figure 1. The United States holds title to these drainage facilities, including the associated land interests. These facilities represent approximately 35 percent of the total drainage system operated and maintained by PID. The District has operated and maintained the facilities constructed by Reclamation, as an integral part of its system, since the facilities were first completed. This relationship between PID and Reclamation has been governed by a series of contracts.

In 1995, as part of the Federal Government's National Performance Review and with the goal of increasing the efficiency and cost-effectiveness of government, Reclamation established a national program to transfer title of facilities that had national importance and which could more efficiently and effectively be managed by non-Federal entities.

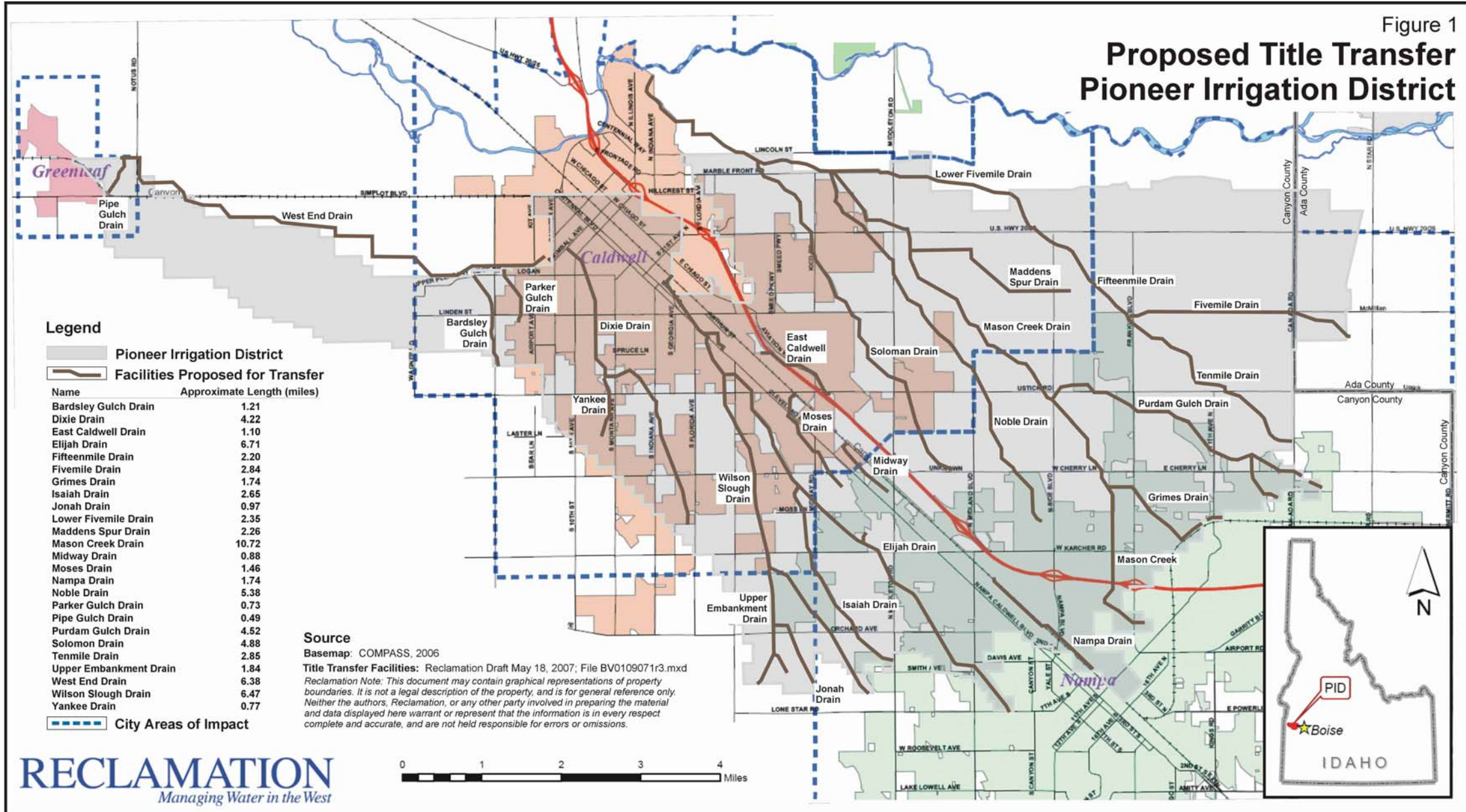
Reclamation's "Framework for the Transfer of Title" (Appendix A) outlines the criteria that must be met prior to implementing any transfer of title action. These criteria are:

1. The Federal Treasury and thereby the taxpayers' financial interests must be protected.
2. There must be compliance with all Federal and State laws.
3. Interstate compacts and agreements must be protected.
4. The Secretary of Interior's Native American trusts responsibilities must be met
5. Treaty obligations and international agreements must be fulfilled.
6. The public aspects of the projects must be protected.

Reclamation's intent is to transfer title directly to non-Federal entities that are competent to manage the facilities and are willing and able to fulfill legal obligations associated with taking ownership of those facilities. Reclamation believes that PID meets these requirements and is a viable candidate for title transfer.

Figure 1

# Proposed Title Transfer Pioneer Irrigation District







## 1.2 Purpose and Need for Action

At the request of PID, Reclamation is considering a proposal to transfer title for certain Federal drains and associated real property interests to PID. The facilities and land interests included in this proposal are limited to those federally-owned facilities which are operated and maintained by PID and lie within the District's boundary (approximately 35 percent of the total drainage system currently operated and maintained by PID). At present, even though PID has paid in full its repayment obligations for the federally-owned portion of the drainage system, title remains with the United States.

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.

PID's purpose and need is to reduce or eliminate costs associated with Reclamation's oversight and coordination and to fully consolidate its authority to manage the drainage facilities.

PID operates and maintains the subject Federal facilities as part of its larger, integrated irrigation water conveyance system, and is responsible for decisions regarding facility use or modification consistent with the contracts beginning in 1913 between Reclamation and PID. In this case, increasingly frequent third-party requests for modification to or encroachment on these Federal facilities require separate review by both Reclamation and PID. Prior to granting a request, Reclamation involves PID for review and approval per Regional policy. The administrative process associated with joint Reclamation/PID review and approval presents an opportunity for streamlining and improving efficiencies for both Reclamation and PID, as well as for the applicants.

Overall, the proposed title transfer would address the defined purpose and need by consolidating all responsibilities for the drainage system with one entity, thereby reducing Reclamation's administration for facilities that PID has operated and maintained since they were constructed or improved in the early 1900s. The proposed transfer is consistent with the criteria outlined in Reclamation's "Framework for the Transfer of Title" (Appendix A).

## 1.3 Scope of the Proposed Transfer

### 1.3.1 Project and Facilities Description

The Reclamation facilities proposed for title transfer to PID are illustrated on Figure 1 and listed on Table 1. These facilities are comprised of 25 water conveyance channel segments totaling approximately 77 miles in length. All are drainage channels designed, sized, and constructed to manage high groundwater levels, irrigation return flows, and stormwater runoff from agricultural fields.

Land interests associated with the title transfer facilities are primarily easements or rights-of-way reserved in the initial patents or acquired by Reclamation from underlying landowners as part of the development process, prior to construction.<sup>1</sup> The purposes of and rights granted by the easements and rights-of-way are centered on construction, operation, and maintenance of PID's agricultural irrigation/drainage water management system.

These easements and rights-of-way are defined as narrow strips of land within which the drainage channel is constructed and include sufficient room on one or both sides of the channel to provide access for operations and maintenance (e.g., monitoring and adjusting waterflows, removing sediment and debris, lining and refurbishing ditches and performing other maintenance activities with appropriate personnel and equipment).

With one exception, all facilities proposed for title transfer are within Canyon County, Idaho. The exception is a stretch of the Fivemile Drain less than one mile in length located in Ada County in the northeastern portion of the PID.

No land parcels or facilities outside of the drainage channel corridors listed on Table 1 are involved in the proposed PID title transfer. No water rights or water storage facilities/capacities would be transferred or affected by the Proposed Action.

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<sup>1</sup> In a limited number of cases, Reclamation obtained fee title to lands within which the channels are constructed, operated, and maintained.

**Table 1. Proposed PID title transfer facilities**

<b>Conveyance</b>	<b>Approximate Length (miles)</b>
Bardsley Gulch Drain	1.21
Dixie Drain	4.22
East Caldwell Drain	1.70
Elijah Drain	6.71
Fifteenmile Drain	2.20
Fivemile Drain	2.84
Grimes Drain	1.74
Isaiah Drain	2.65
Jonah Drain	0.97
Lower Fivemile Drain	2.35
Maddens Spur Drain	2.26
Mason Creek Drain	10.72
Midway Drain	0.88
Moses Drain	1.46
Nampa Drain	1.61
Noble Drain	5.38
Parker Gulch Drain	0.73
Pipe Gulch Drain	0.49
Purdam Gulch Drain	4.52
Solomon Drain	4.88
Tenmile Drain	2.85
Upper Embankment Drain	1.84
West End Drain	6.38
Wilson Slough Drain	6.47
Yankee Drain	0.77
<b>Total</b>	<b>77.36</b>

### **1.3.2 Reclamation Interests to be Transferred**

The proposed title transfer would completely divest Reclamation of any interest in the subject facilities. All responsibility for the ownership, operation, maintenance, management, regulation, and liability for the facilities would be completely with PID.

Ownership of the 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, including (but not limited to) five authorized stormwater discharges that have been identified.

## **1.4 Regulatory Compliance**

Various laws and Executive Orders apply to the Proposed Action. The legal and regulatory environment within which the Federal activity would be conducted depends on which alternative is implemented. A summary of major laws and Executive Orders follows.

### **1.4.1 National Environmental Policy Act**

Under the NEPA, Reclamation is responsible for determining if the Proposed Action might have significant effects to the environment. If Reclamation, based upon the analysis presented in the EA, determines that effects would not be significant, a Finding of No Significant Impact (FONSI) would be completed to fulfill the NEPA compliance. If potentially significant effects are identified, Reclamation must consider these, including potential for avoidance or mitigation in issuing its Record of Decision (ROD). This EA reports Reclamation's analysis pursuant to NEPA requirements.

### **1.4.2 Endangered Species Act**

The Endangered Species Act (ESA) requires all Federal agencies to ensure that their actions do not jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat. As part of the ESA's Section 7 process, an agency must request a list of species from the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NOAA Fisheries) that identifies threatened and endangered species within or near the action area. The agency then must evaluate impacts to those species. If the action may impact any listed species, the agency must consult with USFWS or NOAA Fisheries. Section 3.4 presents analysis of and conclusions regarding potential for impact to listed species.

### **1.4.3 National Historic Preservation Act**

The National Historic Preservation Act of 1966 (NHPA), requires that prior to authorizing an undertaking, Federal agencies must take into account the effect of the undertaking on any properties eligible for or listed on the National Register of Historic Places. Federal regulations entitled Protection of Historic Properties (36 CFR 800) defines the process for implementing requirements of the NHPA, including consultation with the appropriate State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP). Section 3.6 presents analysis and conclusions relevant to NHPA requirements.

### **1.4.4 Executive Order 13007: Indian Sacred Sites**

Executive Order 13007, dated May 24, 1996, instructs Federal agencies to promote accommodation of, access to, and protection of the physical integrity of American Indian sacred sites. A “sacred site” is a specific, discrete, narrowly delineated location on Federal land. An Indian tribe or an Indian individual determined to be an appropriately authoritative representative of an Indian religion must identify a site as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion. However, this is provided that the tribe or authoritative representative has informed the agency of the existence of such a site. Analysis related to this requirement is presented in Section 3.7.

### **1.4.5 Executive Order 12898: Environmental Justice**

Executive Order 12898, dated February 11, 1994, instructs Federal agencies, to the greatest extent practicable and permitted by law, make achieving environmental justice part of its mission by addressing, as appropriate, disproportionately high and adverse human health or environmental effects on minority populations and low income populations. Environmental justice means the fair treatment of people of all races, income, and cultures with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment implies that no person or group of people should shoulder a disproportionate share of negative environmental impacts resulting from the execution of environmental programs. No environmental justice issues are associated with the proposed title transfer.

## **1.5 Similar or Related Actions**

In 2001, a comparable title transfer was completed in the Nampa & Meridian Irrigation District (NMID) immediately east of PID. In this transfer, NMID received title to all Reclamation distribution, conveyance, and drainage facilities, and associated land interests.

## 1.5 Similar or Related Actions

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Three other transfer of title actions have occurred or are in process within Reclamation's Snake River Area Office administrative boundaries. These actions involve Reclamation facilities within the Burley Irrigation District, the Fremont-Madison Irrigation District, and the American Falls Reservoir District No. 2 (Section 3.10).

## **Chapter 2 DESCRIPTION OF THE ALTERNATIVES**

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This EA addresses two alternatives: Alternative A – No Action and Alternative B – Proposed Action, Title Transfer. As required by NEPA, the No Action alternative (i.e., the future without the Proposed Action) forms the basis for analyzing the effects of the Proposed Action.

Another alternative considered, but eliminated from detailed consideration, is transfer of the subject facilities to a different local jurisdiction, specifically one or more of the local municipalities. Discussion of the reasons why this alternative was not considered is provided in Section 2.4, below.

### **2.1 Alternative A – No Action**

Under the No Action alternative, the United States (Reclamation) would retain its interests in the conveyance channels and PID would continue to operate and maintain these channels as part of its irrigation and drainage systems. Reclamation would continue to involve PID for review of and concurrence with any requests by individuals, organizations, or other government entities to modify, encroach, or use Reclamation's conveyances.

### **2.2 Alternative B – Proposed Action, Title Transfer**

If the proposed transfer of title occurs, the purposes of the facilities (i.e., either irrigation or agricultural drainage) would remain the same. 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. The title transfer would not alter the purpose, management, or use of the facilities.

#### **2.2.1 Facilities and Land Interests**

The Proposed Action is a transfer by Reclamation to PID of all interest in and right/title to Reclamation's drainage facilities and associated land interests within PID's service area. The subject facilities are illustrated on Figure 1 and listed (with approximate length) on Table 1.

These facilities are operated and maintained by PID and lie generally within the PID boundary. These facilities consist of drainage conveyance channels and associated rights-of-way, easements, and fee title lands. No other land areas are involved. No water rights, storage rights, water distribution/management agreements, or facilities of other entities would be affected.

Reclamation does not currently have the authority to transfer title of these facilities and lands. Specific legislation would need to be passed by Congress. If the decision is made to proceed with the title transfer, Reclamation understands that PID would work with their Congressional delegation to draft legislation with provisions that are consistent with Reclamation's 1995 Framework for Title Transfer (USBR 1995) and, where appropriate, environmental commitments made by Reclamation through the NEPA process.

### **2.2.2 Costs**

PID has met its repayment obligation to the United States for construction of the segments and has borne the cost of operating and maintaining the facilities since they were constructed. Specific to the proposed title transfer, PID entered into a MOA (November 27, 2006) with Reclamation which provides for sharing all necessary and reasonable costs of complying with NEPA. Outside of hazardous materials surveys, costs not associated with the NEPA process would generally be paid by PID. Subsequent to the title transfer, if authorized, PID would bear all costs of continuing O&M of the facilities.

## **2.3 Limitations and Liabilities**

It is Reclamation's intent that effective on the transfer of title to PID, the U.S. Government would no longer be held liable for damages of any kind arising out of any act, omission, or occurrence relating to the title transfer segments. Nothing in this alternative would increase the liability of the U.S. Government beyond that currently provided in the Federal Tort Claims Act (28 U.S.C. 2671 et seq.).

## **2.4 Alternatives Considered but Eliminated from Further Study**

NEPA requires Reclamation to consider alternatives developed through public scoping. However, only those alternatives that are reasonable and meet the purpose and need of the Proposed Action must be analyzed.



Some comments received during scoping (Appendix C), suggested that Reclamation's interests in the federally-owned drainage system segments should be transferred to an entity or entities other than PID (specifically, local municipalities). The intent of this suggestion was that one or more of those entities might utilize the segments for recreational pathways or for urban stormwater runoff.

Reclamation's framework for title transfer indicates that non-Federal governmental entities may be considered as beneficiaries for the purposes of title transfer. In this case, 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.

Title 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 the degree of coordination required for system operations, since the two separate entities involved would need to operate outside of the established relationships between Reclamation and PID;
- Shift, rather than eliminate, the need for duplicative administrative actions for events such as crossing permit review and approval; and
- Add uncertainty about procedures, effectiveness, and legal relationships for O&M of the drainage system compared to the District's established O&M since the early 1900s.

For these reasons, Reclamation believes that the proposed transfer of title to PID makes more sense than a possible transfer to another entity. However, Reclamation recognizes that other entities are interested in, and have expressed concerns about, management of stormwater runoff in a potential post-transfer scenario. 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. The terms and conditions for a transfer, along with any related title transfer legislation, may address and resolve the expressed concerns.



## Chapter 3 AFFECTED ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES

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The scope of this EA is defined by the Proposed Action, as compared with the No Action alternative. Analysis is focused on identifying and evaluating potential environmental impacts resulting specifically from the proposed transfer of Reclamation's interests in the subject drainage conveyances. No other Federal interests are involved (e.g., reservoirs, water rights, water storage rights, river diversion facilities, storage, and irrigation system operations).

NEPA requires analysis only of resource categories or issues in which there is or could be potential for adverse impact from a Proposed Action. Therefore, the resources analyzed in this EA include:

- Land use
- Hydrology and water quality
- Biological resources (vegetation, wildlife, birds, mammals, reptiles, amphibians, fish)
- Threatened and endangered species
- Special status species
- Cultural resources
- Indian sacred sites
- Indian trust assets
- Hazardous materials and waste

This chapter also describes cumulative impacts of the alternatives.

### 3.1 Land Use

#### 3.1.1 Affected Environment

Jurisdiction over land use and development within the PID is held predominantly by Canyon County and the Cities of Caldwell and Nampa.

As shown on Figure 1, most PID lands and proposed title transfer facilities lie within Canyon County, and also within either the corporate boundary or designated Area of Impact (AOI—

growth boundary) of Caldwell and Nampa. The only exceptions to this are the West End Drain, which lies mostly in Canyon County west of the Caldwell AOI, with less than one mile in the City of Greenleaf's AOI; the Jonah Drain, Upper Embankment Drain and a portion of the Wilson Slough Drain which are in Canyon County south of the Caldwell, and west of the Nampa, AOI; and less than one mile section of the Fivemile Drains that lies in Ada County (but is not included within any City AOI).

The overall area in which PID lies has been experiencing relatively intense development pressure, with large portions of the District (particularly those within Caldwell and Nampa jurisdiction) being converted from agricultural to urban/suburban uses. As of 2004, an estimated 50 percent of District lands had undergone this conversion (Koberg 2007). With this development have come increasing requests by local jurisdictions and/or developers to use or modify some of the conveyance facilities. Of particular concern are requests to:

- Realign or reconstruct conveyance channels and/or encroach upon associated land interests
- Use channel corridors for recreation trails, and
- Conduct urban stormwater runoff from developments and roadways to drainage facilities.

The first two of these concerns are addressed below; urban stormwater issues are discussed in Section 3.2. In all cases involving the drainage facilities proposed for title transfer, Reclamation reviews requests for modification or third-party use of its facilities jointly with PID, and prior to granting a request, requires review by and concurrence from PID. As noted in Chapter 1, this is because PID is responsible and liable for O&M of the irrigation delivery and drainage systems, including those portions owned by Reclamation. Discussions below are therefore focused on PID policy, procedure, and decision criteria related to facility modification and use requests.

#### **Facility Realignment, Reconstruction, or Encroachment**

PID considers all requests to physically modify conveyance systems and/or encroach within the fee title, easement, or right-of-way strips of land used by PID for access, operation, and maintenance. Examples of facility modification include temporary or permanent realignment or reconstruction as part of project development; encroachments include such uses as utility line placements and fencing.

PID determines if the proposed modifications or uses would interfere with the District's O&M activities, increase maintenance or repair requirements, or create unacceptable safety or liability risks. Where an easement or right-of-way granted to PID or Reclamation is involved, the licensee/permittee must also obtain the permission of the underlying fee title owner.

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## Recreation Trail Uses

PID considers all requests for construction of pathways along its drains. Recreational pathways raise unique concerns about the risks inherent in public activity, particularly by children, close to irrigation or drainage ditches.

PID determines if pathways would unreasonably interfere with the District's O&M activities, increase maintenance or repair requirements, or create unacceptable safety or liability risks. As noted above, where an easement or right-of-way granted to PID or Reclamation is involved, the licensee must also obtain the permission of the underlying fee title owner.

### 3.1.2 Environmental Consequences

#### Alternative A – No Action

Under the No Action alternative, Reclamation would retain the property interests in its segments. PID would continue to manage, operate, and maintain these segments for their intended irrigation drainage/conveyance purposes, as parts of the integrated PID conveyance system. PID and Reclamation would each continue to separately review requests for approval of construction, encroachment, or third-party use affecting the title transfer segments. Reclamation would continue to require PID concurrence prior to granting such requests, and PID indicates that the District's criteria for approval would remain centered on preventing interference with the District's O&M activities, increases in maintenance and repair costs, or unacceptable safety or liability risks. This alternative would perpetuate the duplication of administrative tasks resulting from separate review and decision-making by both Reclamation and PID.

#### Alternative B – Proposed Action, Title Transfer

Under the Proposed Action, Reclamation's interest in the conveyances would be transferred to PID. Reclamation would no longer be involved in reviewing or deciding upon requests for modification or third-party use of the subject facilities.

The effect of this change would be elimination of the duplication inherent in joint review and approval of modification or use requests by both Reclamation and PID. PID indicates 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.

PID would continue to manage, operate, and maintain the title transfer segments for their intended irrigation drainage and conveyance purposes. The District would have ultimate approval authority related to requests for facility modification or third-party use, and the criteria by which the District determines whether to approve or deny such requests would remain unchanged.

## 3.2 Hydrology and Water Quality

### 3.2.1 Affected Environment

An important concern raised during the scoping process and public review of the Draft EA for this NEPA analysis is the desire by local highway and land use jurisdictions (i.e., ACHD, Cities of Boise, Caldwell, and Nampa) to continue current discharges of urban stormwater runoff to the conveyance facilities and use of the conveyances for additional urban runoff discharges as development proceeds.

As noted previously, the area in which PID lies is experiencing high pressure for urban growth and development. In 2004, roughly half of the land in the PID had already been converted from agricultural to urban or suburban uses. This trend is expected to continue, with most land within PID's boundary eventually becoming urbanized. Of particular relevance are the Comprehensive Plans of Caldwell and Nampa. Both plans anticipate conversion of all lands within the City AOIs (see Figure 1) to urban/suburban uses.<sup>1</sup>

Local highway districts, cities, and counties manage urban stormwater drainage in accordance with State and Federal Clean Water Act (CWA) requirements, and, given the rapid rate of urbanization, are seeking efficient and cost-effective means to meet this responsibility (Caldwell 2006; ACHD 2007). This has resulted in consideration of the existing conveyance system as at least part of the solution for meeting urban stormwater management challenges. Reclamation has identified five currently authorized stormwater discharges to the federally-owned portion of the PID drainage system.

PID indicates that two significant issues have caused the District to adopt a position of not allowing new urban stormwater discharges into its system and moving to rectify instances of existing, unauthorized discharges. These issues are centered on (1) the volume and timing of urban runoff, and (2) urban runoff water quality. Related specifically to the facilities proposed for title transfer, Reclamation's *Regional Policy on the Discharge of Stormwater Drainage (Water Quality)*" (USBR 1992) (Final policy letter in Appendix B) recognizes both of these issues and requires irrigation districts (e.g., PID) to approve any proposals to discharge urban runoff into Reclamation facilities. The five existing authorized stormwater discharges have been permitted in accordance with this policy.

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<sup>1</sup> The City of Caldwell Comprehensive Plan is currently being revised. The existing plan shows agricultural uses in the outer areas of the AOI. The expectation for the revised plan is that all land in the City's AOI will be designated for urban/suburban uses (Billingsley 2007).

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## Urban Runoff Volume and Timing

The drainage system was designed and constructed to manage high groundwater levels and surface drainage from agricultural lands. Specific to the facilities proposed for title transfer, the contract of February 27, 1913 between PID and the Federal Government specifies that the purpose of the drains to be constructed by the Federal Government is to drain away seepage water. Facilities were designed to manage “pre-development” flows from these lands. Per State law (Idaho Code section 42-1204), PID is responsible for maintaining the system and managing flows in a manner that prevents damage to adjacent properties from flooding or other failures of system facilities.

Reclamation’s *Regional Policy on the Discharge of Stormwater Drainage (Water Quality)* (USBR 1992) notes that runoff volume from impervious surfaces in urban areas is greater than runoff from agricultural areas, and states that Reclamation needs to manage and monitor entering flows relative to drain capacity or face potential increased liability for flood damage. Even though local highway districts, cities, and counties generally require new developments to retain runoff volumes in excess of “predevelopment” flows onsite, large storm events can result in runoff volumes in excess of planned onsite retention facilities. PID’s legal position is that the District’s liability for damage caused by flooding would be increased if PID conveyance channels were being used to manage stormwater runoff from such developments. Other entities disagree with PID’s position on this issue, and the City of Caldwell indicates that they have completed a study concluding that the City’s existing stormwater policy reduces peak discharges of stormwater over what would be anticipated from an undeveloped agricultural field (Appendix F).

## Urban Runoff Water Quality

The Federal CWA regulates discharges of water (i.e., from pipes or other “point source” outlets) to “waters of the United States” (e.g., streams or wetlands) if those discharges contain material or chemical compounds exceeding defined threshold levels. The regulated materials or chemical compounds and their respective threshold levels are defined by the Environmental Protection Agency (EPA) and State water quality standards. The primary mechanism for EPA regulation and oversight is the National Pollution Discharge Elimination System (NPDES) permit. It is through the NPDES permitting process that requirements for water treatment are set.

Irrigation activities, including irrigation return flows and stormwater discharges from agricultural lands, are exempt from the definition of a point source, and from the requirement to operate under an NPDES permit. PID operates under this exemption.

PID has expressed the concern that because a NPDES permit is required for municipal (urban) stormwater discharges, if PID permits urban stormwater 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 (Appendix F). Other entities disagree with PID's position on this issue, and a July 20, 2007 letter from the EPA provides additional information regarding irrigation return flows and stormwater runoff relative to regulatory requirements (Appendix F).

### **3.2.2 Environmental Consequences**

#### **Alternative A – No Action**

Under the No Action alternative, Reclamation would retain its interests in the facilities. PID would continue to manage, operate, and maintain these facilities for their intended irrigation drainage or conveyance purposes, as part of the integrated PID conveyance system, and according to their legal and contractual responsibility. Pursuant to Pacific Northwest Region policy, Reclamation would continue to require PID approval of any proposal to discharge urban runoff into these facilities and would work with PID to identify and address instances of existing, unauthorized discharges. Reclamation would continue to be available to participate in multi-jurisdictional planning efforts to explore alternative approaches to urban runoff discharges. Unless changed through multi-jurisdiction negotiation and definition of mutually acceptable alternative approaches, PID indicates that the District's current position of not allowing unauthorized urban runoff discharges to its system would remain in force. The five identified stormwater discharges currently authorized would also remain unchanged.

#### **Alternative B – Proposed Action, Title Transfer**

Under the Proposed Action, Reclamation's interest in the conveyances would be transferred to PID. Reclamation would no longer be involved in potential planning efforts in considering or deciding upon proposals to discharge urban stormwater runoff into the subject facilities.

Given Reclamation's current policy regarding discharge of stormwater drainage (i.e., requiring irrigation district approval), the primary effect of this change would be elimination of any duplication in the joint review and approval of requests by both Reclamation and PID.

It is anticipated that the Proposed Action would not affect urban stormwater management within PID's boundaries. PID would retain authority over any stormwater discharges to its system and would continue to manage, operate, and maintain the title transfer segments for their intended irrigation drainage or conveyance purposes. As with the No Action alternative, PID indicates that the District's current position of not allowing unauthorized urban runoff discharges to its system would remain in force until a mutually acceptable alternative management approach can be defined and agreed upon with involved jurisdictions. The five stormwater discharges currently authorized would also remain unchanged.



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### 3.3 Biological Resources

PID boundaries encompass approximately 35,200 acres with diverse land uses and numerous plant and animal species. However, the proposed title transfer segments (drainage channels and associated easements and rights-of-way) represent a minor fraction of the total area, and provide relatively uniform and limited habitat for plant and animal species.

The title transfer facilities are single channels with identified access-ways. They are generally found near agricultural, residential, commercial, or open range. All of the drains have perennial flows with the exception of the Bardsley Gulch Drain, Parker Gulch Drain, Solomon Drain, and the Yankee Drain; all other conditions are similar. PID uses the access-ways to inspect, operate, maintain, and repair these drainage ditches. Irrigation levels vary annually based on local and regional precipitation and snow pack levels, and vary seasonally based on availability of natural flow water and Reclamation reservoir water storage. The irrigation season is typically between April 1st and October 15th.

PID conducts periodic vegetation management along the channel corridors and mechanical removal of plants, sediments, and debris to maintain sufficient flow within the drains. Debris from drain maintenance is piled along the easements and leveled by heavy equipment. In rare instances when debris cannot be stored onsite, PID hauls it to another location (Zirschky 2007).

Portions of the title transfer segments have been surrounded by urban developments. Where this occurs, segments and associated easements have generally been altered (e.g., channel lining, fencing, landscaping) to cooperate with the requirements of cities, counties, utilities, or other landowners. Mason Creek Drain has also been modified, but to a smaller degree than other highly-maintained drains.

Information was collected on plant and animal species that occur within or adjacent to the PID boundaries in order to identify species that might be impacted by the Proposed Action. Based on the amount of area and total number of species present, only dominant well-known plant and wildlife species are discussed in this section. Federally-threatened, endangered, and State species of concern are addressed in Sections 3.4 and 3.5. Relevant information has been obtained through literature reviews, interviews with PID staff, consultation with local, State and Federal agencies, and prior experience with the habitat characteristics of the affected area. This information was used to assess the potential, or probability of occurrence of key species within the action area, taking into consideration historic, current, and proposed management practices and adjacent development.

### 3.3.1 Vegetation

#### Affected Environment

Vegetative communities within the PID service area include both native and non-native/introduced species. Vegetation along the title transfer segments is largely in the latter category due to historic construction, operation, maintenance, and management activities.

Introduced plant species within the PID are generally either non-native invasive species or Idaho-listed noxious weeds. These species have been historically introduced to the area and spread through contaminated crop seed, domestic livestock, landscaping and horticulture, recreation activities, and other human uses. While invasive species pose a significant threat to local ecosystems, there are no regulatory actions associated with them. In contrast, noxious weeds are non-native plants that have been designated “noxious” by State law because of their potential harm to the Idaho economy. While there have been no comprehensive noxious weeds inventories conducted for the entire area, a general list of Idaho-designated noxious weed species can be found at

<http://www.agri.idaho.gov/Categories/PlantsInsects/NoxiousWeeds/watchlist.php>.

Table 2 below lists the species likely to be found within or immediately adjacent to the proposed title transfer facilities. This is a general list of the dominant species, and not a complete inventory of the area.

**Table 2. Common vegetation communities found within the proposed action area**

<b>Communities</b>	<b>General Species Likely to be Present (Common Name)</b>
Agricultural	Sugar beets, wheat, barley, potatoes, corn, dry beans, alfalfa hay, pasture grasses, and others.
Residential	Locust, oak, pine, maple, elm, Kentucky bluegrass, rye, fescue (lawn mix), as well as other species, generally non-native, associated with residential lawns and landscaping.
Riparian species	Willow species, cottonwoods, Russian olive, various sedge, rush, and grass species, cat tails, and other native, invasive, and noxious weed species associated with riparian areas in southwest Idaho.
Open range species	Big Sagebrush (Great Basin, Wyoming), gray and green rabbit brush, blue bunch wheatgrass, Great Basin wild rye, squirrel tail, Sanburg's bluegrass, six-week fescue, and other native range species associated with southwest Idaho.
Invasive Species	Cheatgrass, medusahead wild rye, Reed canary grass, foxtail barley, witch grass, verbena, kochia, Russian thistle, bur butter-cup, halogeton, various mustard species, and others.
Noxious weeds	Purple loosestrife, Eurasian watermilfoil, Rush skeleton weed, white top, Canada thistle, field bind weed, puncture vine, Russian and Spotted knapweed, and others.

PID's vegetation management requirements and methods along the District's conveyance system vary depending on the purpose and destination of the waterway. Only mechanical and biological control measures are used for the drains (including the title transfer facilities); chemical controls are prohibited (Zirschky 2007). Mechanical controls are generally restricted to mowing, but hand thinning and other mechanical measures can be implemented as well. Biological control measures are currently limited to the management of purple loosestrife (*Lythrum salicaria*). The two agents currently used to control the purple loosestrife are varieties of the *Galerucella californiensis* and *Galerucella pusilla*, or more commonly, the Golden and Black Margined Loosestrife beetles.

Invasive and noxious weed control is the primary vegetation-related management concern. All landowners and managers are required by the State of Idaho to control noxious weeds on their property per Idaho Statutes, specifically Title 22 (Agriculture and Horticulture), Chapter 24 (Noxious Weeds). The primary terrestrial invasive and noxious weed species of concern within the affected area include, but are not limited to: puncture vine or goathead (*Tribulus terrestris*); white top (*Lepidium draba*, previously known as *Cardaria draba*); and Canada thistle (*Cirsium arvense*) (Zirschky 2007). Aquatic vegetation of concern includes, but is not limited to: Eurasian Watermilfoil (*Myriophyllum spicatum*); algae; and other emergent, submerged, and floating aquatic plants.

## **Environmental Consequences**

### ***Alternative A – No Action***

Under the No Action Alternative, there would be no change in habitat conditions along the subject drainage facilities. Current vegetation management activities and treatment methods would continue as part of PID's normal O&M.

### ***Alternative B – Proposed Action, Title Transfer***

Effects on vegetation under the Proposed Action would be the same as those described above for No Action. PID's management, operation, and maintenance of the title transfer facilities would remain unchanged after transfer of title, thus avoiding adverse impacts and providing the same potential for long-term beneficial impacts. Reclamation concludes that the Proposed Action would have no effect on vegetation.

### 3.3.2 Fish and Wildlife

#### Affected Environment

##### *Fish*

No fish species have been observed in the drainage segments proposed for transfer. Species in some of the larger canal segments could include rainbow trout, minnows such as the red-sided shiner and long-nosed dace, sculpins, and other general fish species found in local seasonal tributaries. Overall, the seasonal nature of irrigation generally prevents establishment of a permanent fisheries in water delivery and drainage system.

##### *Birds*

Several species of waterfowl, shore birds, upland game birds, raptors, and passerines have been observed within the area surrounding the title transfer facilities. Typical species are listed in Table 3.

**Table 3. Common bird species found in the proposed action area**

<b>Classification</b>	<b>General Species Likely to be Present (Common Name)</b>
Waterfowl	Canada goose, mallard, chukar, grey partridge, blue winged teal, western grebe, and others.
Shore Birds	Blue heron, curlew, killdeer, California gull, and avocet.
Upland Game Birds	Ring-necked pheasant, mourning dove, and California quail (habitat generally limited in urban areas).
Raptors	Northern harrier, Swainson's hawk, red tailed hawk, ferruginous hawk, prairie falcon, bald eagle, and American kestrel.
Passerines	Red winged blackbird, western meadowlark, American robin, horned lark, starlings, European and barn swallows, crows, ravens, magpie, and others.

##### *Mammals*

Mammals potentially occurring in the affected area are limited due to the amount of development on surrounding lands. Small mammals include the western harvest mouse, pocket gopher, deer mouse, kangaroo rat, voles, Piute ground squirrel, and other rodents. Larger species potentially found in the area include striped skunk, coyote, red fox, badger, raccoon, and occasionally mule deer.

### ***Reptiles and Amphibians***

Reptile and amphibian species potentially occurring in the affected area include the Pacific tree frog, boreal toad, spadefoot toad, western toad, racer, gopher snake, garter snake, rattlesnakes, whiptail and leopard lizards, fence lizards, horned lizards, side-blotched lizards, tiger salamander, and others. The diversity and abundance of reptiles and amphibians is expected to be moderate due to the developed nature of the surrounding habitat and the seasonal nature of the irrigation system use.

### **Environmental Consequences**

#### ***Alternative A – No Action***

Under the No Action Alternative, there would be no change in habitat conditions along the subject drainage facilities. Current management activities would continue as part of PID's normal O&M.

#### ***Alternative B – Proposed Action, Title Transfer***

Effects on wildlife under the Proposed Action would be the same as those described above for No Action. PID's management, operation, and maintenance of the title transfer facilities would remain unchanged after transfer of title, thus avoiding adverse impacts and providing the same potential for long-term beneficial impacts. Reclamation concludes that the Proposed Action would have no effect on fish and wildlife.

## **3.4 Threatened and Endangered Species**

This section discusses the potential occurrence of and impact to federally-designated threatened and endangered species associated with the affected area. Information regarding species potentially occurring in the Canyon County area was obtained through correspondence with the USFWS and NOAA Fisheries and review of the Idaho Conservation Data Center's (CDC) conservation database.

Probability of occurrence and potential for impacts to these species was assessed based on literature reviews, discussions with PID staff; consultation with local, State, and Federal agencies, professional knowledge, and the habitat characteristics of the affected environment (see Section 3.3). No formal field investigations were conducted.

### **3.4.1 Affected Environment**

Two species protected under the ESA, are identified as occurring/potentially occurring within or near the title transfer area: gray wolf (*Canis lupus*), and the Idaho springsnail (*Pyrgulopsis*

### 3.4 Threatened and Endangered Species

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*idahoensis*). Each of these is discussed below, relative to likelihood of occurrence in the proposed action area.

#### **Gray Wolf**

Habitat for these wide-ranging mammals must include three primary components: (1) secluded denning and rendezvous sites to raise pups, (2) a sufficient, year-round prey base of ungulates and beaver, and (3) sufficient land area that is not subject to disturbance from humans. Wolves prefer habitat with low road density, limited human populations, and low potential for human interactions (IDFG 2005). Gray wolf territories are generally large, sometimes encompassing up to 100 to 260-square miles. No pack activity, nor the occurrence of any individuals, has been recorded in or near the title transfer area. Therefore, based on the type and condition of habitat, proximity to human development, and lack of historic use by the species, it is unlikely that gray wolves would inhabit the area.

#### **Idaho Springsnail**

The Idaho springsnail is a small aquatic snail with a conical shell that has been federally-protected under the ESA since 1992. Presently its distribution is limited to the flowing waters of the Snake River, more specifically occurring at sites near C.J. Strike Reservoir upstream to Bancroft Springs (Pacific Bio 2007). Occurrence of this specie in the proposed action area is highly unlikely given the seasonal nature of flow in the irrigation ditches and the relative absence of known habitat requirements.

### **3.4.2 Environmental Consequences**

#### **Alternative A – No Action**

Based on the location of the affected area and the amount, type, and condition of habitat present, it is unlikely that any federally-designated threatened or endangered species are present.

Under the No Action Alternative, there would be no change in habitat conditions along the subject drainage facilities. Current vegetation management activities and treatment methods would continue as part of PID's normal O&M.

#### **Alternative B – Proposed Action, Title Transfer**

Potential effects on current federally-listed or endangered species under the Proposed Action would be the same as those described above for No Action. PID's management, operation, and maintenance of the title transfer facilities would remain unchanged after transfer of title, thus avoiding adverse impacts and providing the same potential for long-term beneficial impacts. Reclamation concludes that the Proposed Action would have no effect on threatened and endangered species.

## 3.5 Special Status Species

### 3.5.1 Affected Environment

Eight state-listed species of concern (five animals and three plants) are noted by the CDC as potentially occurring in the study area. These are shown on Table 4.

With the exception of the Western ground snake, these species are all ranked S2 according to the CDC's Special Status Species Ranking System.<sup>2</sup> The S2 rank is defined as "imperiled because of rarity or because of other factors demonstrably making it vulnerable to extinction (typically 6 – 20 occurrences)." The Western ground snake is ranked S3, "vulnerable (typically 21 – 100 occurrences)."

**Table 4. State listed species of concern**

Common Name	Scientific Name	Plant/Animal
Woodhouse's Toad	<i>Bufo woodhousii</i>	Amphibian Animal
Northern Leopard Frog	<i>Rana pipians</i>	Amphibian Animal
Western Ground Snake	<i>Sonora semiannulata</i>	Reptilian Animal
Piute Ground Squirrel	<i>Spermophilus mollis artemisae</i>	Vertebrate Animal
Speckled Dace	<i>Rhinichthys osculus</i>	Vertebrate Animal
Slickspot Peppergrass <sup>3</sup>	<i>Lepidium papilliferum</i>	Vascular Plant
Cusick's False Yarrow	<i>Chaenactis cusickii</i>	Vascular Plant
American Wood Sage	<i>Teucrium canadense var. occidentale</i>	Vascular Plant

<sup>2</sup> Ranks represent a prioritization scheme used by the CDC to determine the conservation status of a species. Ranks refer to species status within Idaho. They are based primarily on the number of known occurrences, but other factors such as habitat quality, estimated population size and trend, range of distribution, and threats to species or habitat are also considered. The ranking scale is from S5 (demonstrably widespread, abundant and secure) to S1 (critically imperiled; especially vulnerable to extinction).

<sup>3</sup> Slickspot Peppergrass was also proposed to the USFWS to be listed as Threatened. The proposed listing was denied, but this decision is currently in litigation.

#### **Woodhouse's Toad**

The Woodhouse's Toad is a riparian dependent species. Toads aestivate during the summer months, becoming active only during wet weather (Leonard et al. 1993). During the breeding season the toads are highly visible in and around ephemeral breeding ponds and streams, but outside the breeding season they are very difficult to observe (Nussbaum, Brodie, and Storm 1983). A terrestrial lifestyle and limited dependency on water compared to other amphibian species makes it possible for Woodhouse Toads to exist around seasonal sources of water, and irrigation waterways can provide seasonal water supplies for reproduction activities. Although the title transfer area and facilities have little pristine habitat, it is possible that isolated populations of this animal could be present.

#### **Northern Leopard Frog**

Although widespread throughout North America, Idaho populations have been declining for years but have been reported in the Snake River and its tributaries (IDFG 2005). The frog is restricted to habitats with permanent water sources, needed in every life stage, and prefers still bodies of water such as ponds, marshes, or slow moving sections of streams and rivers. Given this requirement, Mason Creek is the only title transfer segment that could potentially support small isolated populations (i.e., all others carry water only seasonally). However, based on water quality associated with local agriculture and development, it is unlikely that Northern leopard frogs are present.

#### **Western Ground Snake**

The Western Ground Snake is listed as an unprotected non-game species with an S3 ranking. The snake is small with varying patterns ranging from orange and black stripes to pale gray color, and has little or no dorsal striping. It is restricted in Idaho to the southwestern corner along the Snake River and its surrounding drainages, with arid conditions and loose or sandy soils. It is found in rocky areas to low desert shrub areas (Diller and Wallace 1981). Given the historic and continuing level of disturbance in the title transfer area (i.e., development, agriculture, and grazing activities), there remains little habitat for Western Ground Snakes. Small numbers of the specie may occur associated with isolated pockets of rocky outcrops.

#### **Piute Ground Squirrel**

The Piute Ground Squirrel occurs in Idaho north of the Snake River from Bliss to Dubois (Yensen 2003). The Piute Ground Squirrel lives in areas of native shrubs, primarily sagebrush and winterfat. Much of their former range has been removed due to agricultural conversion, habitat degradation associated with recreation, livestock, and wildfire (Yensen 2003). Little, if any, suitable habitat remains in the title transfer area and it is unlikely that Piute Ground Squirrels are present in or near the title transfer segments.



### **Speckled Dace**

The Speckled dace is a small minnow fish found in North America, west of the Rocky Mountains. Its southern Idaho distribution is limited to the Snake River and its tributaries and drainages. The dace can survive in a number of different habitats, but prefers shallow, cool, and slow moving waters. The ephemeral nature of the affected area's waterways (including the title transfer segments) makes it unlikely that sustainable populations of the Speckled dace occur.

### **Slickspot Peppergrass**

Slickspot peppergrass is generally restricted to microhabitats known as slickspots, also referred to as mini-playas, or nitric sites. These low spots in the landscape appear sporadically throughout the sagebrush-steppe community, collecting water as shallow basins. They range in size from about one to twelve square meters, and are high in both clay and salts (Fisher et al. 1996), with properties more hydric than the surrounding arid soils. In the title transfer area (and specifically along the title transfer segments), the level of development, agriculture, and livestock grazing has significantly altered the landscape, and historic slickspots that may have occurred have likely been degraded to such an extent that it is unlikely any Slickspot peppergrass individuals or dormant seeds are present.

### **Cusick's False Yarrow**

Cusick's false yarrow has been a concern in Idaho and Oregon for many years. It is restricted in distribution to clay outcrops in Malheur County, Oregon, and adjacent counties of Owyhee and Canyon in Idaho (Moseley 1994a). Only nine occurrences have been documented in the state of Idaho. Two locations in Owyhee County, the lowlands and higher elevation sights in the Succor Creek and Squaw Creek drainages, and one historic location in Canyon County are the only areas in Idaho where this species has been observed. The Canyon County occurrence is known to be extirpated (Moseley 1994a) and it is unlikely that additional occurrences are present within the title transfer area.

### **American Wood Sage**

The American Wood Sage is widespread throughout the United States and Canada, but is limited in its Idaho distribution to only four counties, Ada, Canyon, Owyhee, and Washington. It is found growing along streambanks and moist bottomlands. Based on the type of habitat and overall condition generally associated with the title transfer segments, and the historic and current use/treatment of these corridors, it is unlikely that American Wood Sage would be present. However, isolated populations could persist in protected areas with limited human use.

### **3.5.2 Environmental Consequences**

#### **Alternative A – No Action**

Several state-identified species of concern could utilize or occur in the affected area, but are not dependent on the habitat or location.

Under the No Action alternative, there would be no change in habitat conditions along the subject drainage facilities. PID would continue to manage, operate, and maintain the subject drainage facilities for their intended irrigation drainage/conveyance purposes.

#### **Alternative B – Proposed Action, Title Transfer**

Potential effects on current state-listed species of special concern (if present) under the Proposed Action would be the same as those described above for No Action. PID's management, operation, and maintenance of the title transfer facilities would remain unchanged after transfer of title, thus avoiding adverse impacts and providing the same potential for long term beneficial impacts. Reclamation concludes that the Proposed Action would have no effect on current state-listed species of special concern.

## **3.6 Cultural Resources**

Cultural resources consist of prehistoric and historic districts, sites, structures, artifacts, or any other physical evidence of human activity considered important to a culture, subculture, or community for scientific, traditional, religious, or other reasons. Cultural resources can be divided into three major categories: archaeological resources (prehistoric and historic), architectural resources, and traditional cultural resources.

Archaeological resources are locations where human activity measurably altered the earth or left deposits of physical remains (e.g., stone flakes, arrowheads, or bottles). Archaeological resources may be either prehistoric or historic and can include campsites, roads, fences, trails, dumps, battlegrounds, mines, and a variety of other features.

Architectural resources include standing buildings, dams, canals, bridges, and other structures of historic or aesthetic significance.

Traditional cultural resources can include archaeological resources, buildings, neighborhoods, prominent topographic features, habitats, plants, animals, and minerals that Native Americans and other groups consider essential for the continuance of traditional cultures.

Only significant cultural resources, whether known or unknown, warrant consideration with regard to adverse impacts from a proposed action. To be considered significant, these resources must meet one or more criteria as defined in 36 CFR 60.4 for inclusion in the

National Register of Historic Places (National Register). These criteria include association with an important event, association with a famous person, embodiment of the characteristics of an important period in history, or the ability to contribute to scientific research. Resources must also possess integrity (i.e., its important historic features must be present and recognizable). Resources eligible to the National Register are known as historic properties.

Resources generally must be more than 50 years old to be considered for protection under existing cultural resource laws. However, more recent structures, such as Cold War era military buildings or designs by influential architects, may warrant protection if they are considered to have exceptional significance.

Several Federal laws and regulations have been established to manage cultural resources, including the National Historic Preservation Act (NHPA) (1966) as amended, the Archaeological and Historic Resources Preservation Act (1974), the American Indian Religious Freedom Act (1978), the Archaeological Resources Protection Act (1979), and the Native American Graves Protection and Repatriation Act (1990). In addition, coordination with federally-recognized Native American tribes must occur in accordance with Executive Order 13084, Consultation and Coordination with Indian Tribal Governments.

Because the proposed transfer of title is considered a Federal “undertaking,” Reclamation must consider the potential effects of the proposed transfer on cultural resources that are included in or eligible for inclusion in the National Register. Pursuant to Section 106 of the NHPA and 36 CFR 800, Reclamation is conducting consultation with the Idaho State Historic Preservation Officer (SHPO). As required under the NHPA, Section 106, Reclamation identified historic properties within the area of potential effects (or the affected environment under NEPA), applied the National Register criteria (36 CFR 63) to properties that have not been previously evaluated for National Register eligibility, and determined whether the proposed transfer would adversely affect such properties.

### **3.6.1 Affected Environment**

The affected environment includes the geographic area or areas within which the proposed transfer may directly or indirectly cause changes in the character or use of historic properties, if such properties exist. The drainage system and lands within 100 feet of the drains are considered to be the affected environment for the project. As part of the identification process, a records search and intensive archaeological survey of 20 percent (20 miles) of the affected environment was conducted. Prior to conducting the survey, aerial photographs of the affected environment were examined to identify any structures in the area that would be examined as part of the survey.

The records search identified six previously recorded historic cultural resources within the affected environment. These resources include canals, bridges, railroad spurs, and a segment of the Oregon Trail. The Notus Canal, the A-Drain, and the segment of the Oregon Trail are

considered to be eligible to the National Register, two bridges are not eligible, and the railroad spur is unevaluated.

The results of the 20 linear mile survey of drainage ditches in the PID indicated that all of the lands were highly disturbed. Many of the drains were located in residential subdivisions or along urban streets. Most were paralleled on at least one side by a dirt access/maintenance road. The drains were typically U-shaped to V-shaped in cross section and varied from 5 to 20 feet deep and 10 to 25 feet wide. Most of the drains had corrugated metal or PVC pipe running into them to drain the adjacent fields or developments. Where the drains passed under paved streets or field access roads, they typically flowed through corrugated metal or concrete pipes. Concrete riprap was common around the culverts. Some concrete box culverts were present at the larger road crossings.

The intensive survey yielded three possible historic cultural resources – a small bridge, a basalt riprap feature, and an isolated find (a glass bottle). None of these newly identified resources are considered eligible for the National Register. Based on the results of the records search and the intensive survey of 20 miles of ditches it is likely that the remaining 57 miles of ditches are similarly disturbed and also would not contain significant prehistoric or historic resources. For detailed information concerning the records search, survey methodology, and results, refer to PID Title Transfer, Canyon County, Idaho Final, Archaeological Survey Report (TEC 2007).

As part of the survey, the drainage system was recorded and evaluated. The drainage system is considered eligible to the National Register as a part of the larger PID irrigation system under Criterion C for its association with the development of agriculture in the Treasure Valley. Although some features associated with the drains have been replaced over the years, the system is in essentially the same location as it was when it was built in the early 1910s and retains historic integrity. Reclamation's enhancement of the drainage systems through construction of the drain segments proposed for transfer contributed to the agricultural development of the Treasure Valley as part of the Boise Project. Reclamation's construction of these segments for PID is also indicative of Reclamation's historic role in assisting in the further development of existing non-Federal irrigation systems (as opposed to the construction of dams or entire irrigation systems).

### **3.6.2 Environmental Consequences**

A proposed action or alternative affects a significant cultural resource when it alters the property's characteristics, including relevant features of the environment or use that qualify it as significant under National Register criteria. Impacts may be the result of transferring it out of Federal ownership, physically altering, damaging, or destroying all or part of a resource, or altering characteristics of the surrounding environment that contribute to the importance of the resource. In addition to affecting National Register-listed or eligible resources, a proposed

action or alternative could affect traditional cultural properties that are protected under a number of other Federal laws.

### **Alternative A – No Action**

Under the No Action alternative, Reclamation would retain its interests in its conveyance channels and PID would continue to operate and maintain these channels as part of its irrigation and drainage systems. There would be no title transfer, and therefore no impact to any National Register-eligible resources.

### **Alternative B – Proposed Action, Title Transfer**

Under the Proposed Action, Reclamation would transfer to PID all conveyance facilities (drainage channels) that are currently owned by Reclamation. The title transfer has the potential to adversely affect one National Register-eligible property (i.e., the drainage system). Under 36 CFR 800, transfer of property out of Federal ownership without adequate conditions to ensure its long-term preservation, is considered to be an adverse effect to a National Register-eligible property.

The six previously recorded sites that intersect or are located in the affected environment are not included in the title transfer and their uses would not change; therefore, the proposed transfer would have no adverse effect on these six sites.

### **3.6.3 Mitigation Measures**

Reclamation and the SHPO have agreed that adverse effects to the PID drainage system can be mitigated by documenting the significance of the PID drainage system to the development of agriculture in the Treasure Valley. The documentation would be presented as a separate historic narrative and include historic records, modern and historic photographs and drawings. This mitigation would be stipulated in a MOA to be signed by the SHPO, Reclamation, and PID, prior to implementation of the Proposed Action. The stipulated mitigation could be completed prior to or following the transfer, in accordance with the MOA.

## **3.7 Indian Sacred Sites**

Federal responsibility for Indian sacred sites is defined in Executive Order 13007 and identifies Indian sacred sites as specific, discrete, narrowly delineated locations on Federal land identified by Indian tribes or knowledgeable practitioners as sacred by virtue of their religious significance to, or ceremonial use by, an Indian religion. Executive Order 13007 grants tribal access to sacred sites on Federal land.

### **3.7.1 Affected Environment**

Involved Indian tribes, including the Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho, the Shoshone-Paiute Tribes of the Duck Valley Reservation, and the Nez Perce Tribe were informed of the proposed title transfer through the NEPA scoping process (see Section 4.1). No information indicating issues related to Indian sacred sites was offered by the Tribes.

Reclamation is not aware of any Indian sacred sites on these lands or within the easements or rights-of-way on which the majority of the facilities are located. Due to the extent of disturbance and present usage of the facility corridors and character of surrounding land uses, Reclamation believes it is very unlikely that Indian sacred sites would be present. The facility corridors are narrow, physically altered over time, and surrounded by farm fields and either urban or suburban development. The existing landscape bears no resemblance to that present before the Boise Valley was settled. The conditions of privacy and natural landscape integrity normally required for Indian religious purposes are no longer present.

### **3.7.2 Environmental Consequences**

#### **Alternative A—No Action**

Under the No Action alternative, there would be no title transfer. Therefore, there would be no effect upon Indian sacred sites, if such were present.

#### **Alternative B—Proposed Action, Title Transfer**

No Indian sacred sites have been identified on title transfer lands. Therefore, the Proposed Action would have no effect.

## **3.8 Indian Trust Assets**

Indian Trust Assets (ITAs) are legal interests in property held in trust by the United States (with the Secretary of the Interior acting as trustee) for Indian tribes or Indian individuals. Examples of ITAs are lands, minerals, hunting and fishing rights, and water rights. In many cases, ITAs are on-reservation; however they may also be found off-reservation.

The United States has an Indian trust responsibility to protect and maintain rights reserved by or granted to Indian tribes or Indian individuals by treaties, statutes, and executive orders. These rights are sometimes further interpreted through court decisions and regulations. This trust responsibility requires that officials from Federal agencies, including Reclamation, take all actions reasonably necessary to protect ITAs when administering programs under their control.

The Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho, a federally-recognized tribe, have trust assets both on and off their Reservation. In the Treaty of Fort Bridger (1868), Article 4 states, "...they (the Shoshone and the Bannock) shall have the right to hunt on the unoccupied lands of the United States." This has been further interpreted to mean federally-owned lands. Reclamation (for The United States) must protect the hunting rights of the Shoshone-Bannock Tribes on lands it holds in fee title.

Two other federally-recognized Tribes, the Shoshone-Paiute Tribes of the Duck Valley Reservation and the Burns Paiute Tribe of Burns Paiute Indian Colony of Oregon have cultural and religious interests in the Boise Valley. These off-reservation interests are not considered to be ITAs.

### **3.8.1 Affected Environment**

The Shoshone-Bannock Tribes, the Shoshone-Paiute Tribes, and the Nez Perce Tribes were notified of the Proposed Action through the NEPA scoping process (see Section 4.1). The Tribes have not identified ITAs in the area that could be affected by the Proposed Action.

Overall, the amount of land involved in the proposed title transfer that is held by Reclamation is extremely small and comprised of discontinuous, narrow corridors. This land base does not support a significant habitat for fisheries or wildlife and therefore does not represent ITA values.

### **3.8.2 Environmental Consequences**

#### **Alternative A—No Action**

The No Action alternative would have no effect on ITAs.

#### **Alternative B—Proposed Action, Title Transfer**

Given that ITAs are not present on title transfer lands, the Proposed Action would have no effect on Tribal ITA interests.

## **3.9 Hazardous Materials and Waste**

In May 2007, a Hazardous Materials and Wastes Survey of the relevant lands to be transferred was completed in accordance with Reclamation policy. No issues of concern were identified on Reclamation fee lands and no environmental consequences related to hazardous materials are anticipated under the title transfer scenario.

## 3.10 Cumulative Impacts of the Proposed Alternative

NEPA requires cumulative effects analysis of a proposed action to assess its incremental effects (impacts) when viewed in conjunction with the effects of past, current, and reasonably foreseeable future projects.

In this case, the principal incremental effect from the Proposed Action would be to cultural resources (see Section 3.6). This effect would be mitigated by documenting the significance of the PID drainage system to the development of agriculture in the Treasure Valley. Within the region, other similar title transfer actions that have occurred or are in the process include:

- The Nampa & Meridian Irrigation District (NMID-Boise Project) has received title to distribution, conveyance, and drainage facilities, and rights-of-way.
- The Burley Irrigation District (Minidoka Project) received title to all district facilities, lands, rights-of-way, and natural flow water rights on February 24, 2000. Transferred facilities included pumping plants, canals, drains, laterals, roads, pumps, checks, headgates, transformers, pumping plant substations, and buildings. Also transferred were other improvements, appurtenances to the land, and those used for the delivery of water from the headworks (but not the headworks themselves) of the Southside Canal at the Minidoka Dam.
- The Fremont-Madison Irrigation District requested transfer of certain facilities including the Cross Cut Diversion Dam and Canal, all related conveyance facilities, the Teton Exchange Wells, and State of Idaho Water Right 22-7022. This transfer was completed on September 10, 2004, in accordance with Public Law 108-8.
- The American Falls Reservoir District #2 requested transfer of the Milner-Gooding Canal and associated land interests and facilities, lands associated with Dog Creek Dam and Reservoir, lands associated with an airport beacon near the city of Gooding, and lands adjacent to a National Park Service Monument near Eden, Idaho. Transfer legislation was introduced in Congress, but no legislation has been enacted as of July 2007.

These title transfers, like the proposed PID title transfer, have resulted in or would result in an adverse effect due to loss of protection of Federal law. These adverse effects have been or would be similarly mitigated through historic or other documentation as agreed to by Reclamation and the SHPO.

No other incremental or cumulative environmental effects are expected to occur as a result of the Proposed Action. Urban growth is expected to continue in the area, regardless of the Proposed Action. Accordingly, land use conversion from agricultural to urban/suburban uses would be expected to continue and additional needs for development-specific stormwater management facilities would be expected. As described in Sections 3.1 and 3.2, it is anticipated that the Proposed Action would not affect land use or current stormwater



management policies within PID's boundaries. PID indicates that the District's current position of not allowing unauthorized urban runoff discharges to its system would remain in force both prior to and following a transfer, until a mutually acceptable alternative management approach can be defined and agreed upon with involved jurisdictions; the five identified stormwater discharges currently authorized would also remain unchanged. Because the Proposed Action would not result in a change to current land use or stormwater discharge issues, no cumulative effects are anticipated relative to impacts from other actions.

Regardless of the Proposed Action, the potential value of the subject drainage facilities for a variety of resources and uses is likely to increase over time, particularly because of continued urban development in the area.

Despite the level of disturbance and active management, conditions along these conveyance channels do provide cover, nesting, forage, migration, and other values/uses for wildlife and open space value for humans. As urban development continues to displace habitat and reduce open space in the surrounding area, the conveyance corridors would likely increase substantially in importance. Thus, the continued O&M of these facilities would likely result in increasing benefits for plant and wildlife species, and for people living in the area.

The Proposed Action does not involve issues affecting, or affected by, large-scale environmental variation such as climate change. Accordingly, large-scale environmental variation has not been further addressed.

### 3.10 Cumulative Impacts of the Proposed Alternative

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## Chapter 4 CONSULTATION AND COORDINATION

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### 4.1 Agency Consultation

#### 4.1.1 Endangered Species Act

The Endangered Species Act (ESA) requires all Federal agencies to ensure that their actions do not jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat.

Pursuant to Section 7 of the ESA, Reclamation requested relevant species lists from the USFWS and the NOAA Fisheries on March 2, 2007. In March 2007, Reclamation received an email from USFWS containing an updated species list covering the project area. Additionally, Reclamation received a letter dated March 12, 2007 from NOAA Fisheries concluding that no ESA-listed species under their jurisdiction occur within the watersheds of the project area. Appendix E contains relevant correspondence. Reclamation concludes that the Proposed Action would have no effect on USFWS and NOAA Fisheries listed species.

#### 4.1.2 National Historic Preservation Act

The NHPA of 1966, requires that prior to authorizing an undertaking, Federal agencies must take into account the effect of the undertaking on any properties eligible for or listed on the National Register of Historic Places. Federal regulations entitled Protection of Historic Properties (36 CFR 800) defines the process for implementing requirements of the NHPA, including consultation with the appropriate SHPO and the ACHP.

Continuing consultation and coordination has been conducted with the SHPO pursuant to requirement of the NHPA. The SHPO reviewed and concurred with the scope of work for addressing cultural resources (Section 3.6), and would be party to a negotiated MOA governing treatment and/or protection of any resources eligible for nomination to the National Register of Historic Places.

## 4.2 Consultation and Coordination with Tribal Governments

The NEPA scoping letter referenced above was sent to both inform and involve Indian Tribes in order to determine if the tribes have issues or concerns related to the proposed title transfer. No indication has been received from the tribes that such issues or concerns exist, and no further consultation is deemed warranted.

## 4.3 Public Involvement

Pursuant to NEPA requirements, as part of EA preparation, Reclamation sent a "scoping letter" (dated February 27, 2007) requesting comments, concerns, and identification of issues related to Proposed Action. The letter was sent to potentially affected and concerned agencies, organizations, individuals, and Tribes. Appendix C contains a copy of the scoping letter and the mailing list.

Twelve written responses to the scoping letter were received during a 30-day comment period; a listing of the entities and individuals who provided comments is provided below.

- Ada County Highway District (ACHD)
- Ada County Parks and Waterways
- Canyon County Parks, Recreation and Waterways
- City of Boise, Public Works Department
- City of Caldwell, Office of City Engineer and Public Works Director
- City of Caldwell, Mayor
- City of Nampa, Public Works Department
- F.A.C.T.S. (Foundation for Ada/Canyon Trail Systems)
- Hamilton, Michaelson & Hilty, LLP
- James Budolfson
- Idaho Water Users Association
- Idaho Department of Parks and Recreation
- Spectrum Environmental, Inc.

Copies of the comment correspondence are included as Appendix C. The main issues that were raised and addressed in the EA consisted of:

- Transfer of the subject facilities to a different public entity (addressed in Section 2.4)

- Use of facility corridors (easements, rights-of-way, etc.) for public pathways (addressed in Section 3.1),
- Status of other use agreements (e.g. city utility easements) associated with facility segments (addressed in Section 3.1), and
- Use of drains for urban stormwater runoff (addressed in Section 3.2).

On August 10, 2007, Reclamation distributed the Draft EA for a 30-day public review. Reclamation posted the Draft EA on the Pacific Northwest Region's website. Reclamation received eight comment letters. Appendix F contains these comments and Reclamation's response, where appropriate.

In December 2007, Reclamation distributed the Final EA, letters notifying the recipient of the Final EA's availability, and press releases to the offices, organizations, individuals, and media outlets identified on the following distribution list.



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