

# Reclamation Manual

## Directives and Standards

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**Subject:** Land Acquisition

**Purpose:** To establish directives and standards for land and appurtenant water rights acquisition for Reclamation.

**Authority:** A full list of relevant authorities is included as appendix A at the end of these Reclamation directives and standards for land and water rights acquisition. The following are principal authorities:

- The Reclamation Act of 1902 (32 Stat. 388) and Acts amendatory thereof and supplemental thereto.
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the Uniform Relocation Act Amendments of 1987 (42 U.S.C. 4601).

**Contact:** Chief Realty Officer; Lands, Recreation, and Cultural Resources Office; D-5300

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The attached appendices will help the user access information within this directive:

- Appendix A contains "Relevant Authorities"
- Appendix B contains the "Table of Contents"
- Appendix C contains the "Land Acquisition Process"

Other appendices are included within this directive but are not listed above.

1. **Acquisition Methods.** The acquisition of real property interests can be summarized by acquisition method. Acquisition by purchase, condemnation and other methods discussed in these directives and standards may require supplemental guidance.

A. **Acquisition by Purchase.** Land can be acquired by direct purchase when authorized. In Reclamation, the basic real estate acquisition authority is the Reclamation Act of 1902 (32 Stat. 388):

"Where in carrying out the provisions of this act it becomes necessary to acquire any rights or property, the Secretary of the Interior is hereby authorized to acquire the same for the United States by purchase or by condemnation under judicial process, and to pay from the Reclamation fund the sums which may be needed for that purpose...." (32 Stat. 389; 43 U.S.C. 421)

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- B. **Acquisition by Condemnation.** When a mutually satisfactory negotiated settlement cannot be reached, real property may be acquired through the use of eminent domain authorities (condemnation). The office responsible for the acquisition of land or interests in land should ascertain what authority they have to condemn before any offers to purchase are made or issuing notices of the intent to acquire land by condemnation. Reclamation officials must rely on Department of the Interior's Solicitor's Office and representatives from the Department of Justice (Assistant United States Attorneys or others) for acquisition by condemnation. Management of property acquired through condemnation cannot begin until title is vested in the United States. (Refer to paragraph 8.)
- C. **Acquisition by Withdrawal.** Jurisdiction over public real property may be secured by withdrawal actions. Withdrawals establish agency jurisdiction and withhold public domain lands from operation of some or all of the public land laws (such as grazing and mineral entry). Procedures for acquisition by withdrawal are defined by laws and regulation, including the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714) and 43 CFR Part 2300. (Refer to Reclamation Manual, *Land Withdrawals, Withdrawal Reviews, and Withdrawal Revocations*, LND 03-01.)
- D. **Acquisition by Donation.** Real property can be acquired by donation, however, donations cannot always be accepted. Undesirable liabilities associated with real property ownership could include trespass, maintenance and management responsibility, contamination cleanup costs, or other similar liabilities. Procedures and policies for acceptance of donations of real property interests may differ depending on Solicitor's Office requirements (such as the need for appraisal reports, contracts, title evidence, and similar subjects). Typically, when donations are made, those making donations waive rights to an appraisal and subsequent compensation. (Refer to paragraph 9A.)
- E. **Acquisition by Exercise of Reserved Rights "1890 Act Acquisition."** The Act of August 30, 1890, (26 Stat. 391), and some other authorizations provide that the United States has certain rights-of-way reserved for irrigation and other works. The rights are typically reserved in the original patent from the United States. Procedures are defined for payment and relocation assistance when reserved rights are exercised. (Refer to paragraph 9B.)
- F. **Acquisition by Exchange.** An exchange transfers title for two parcels and can be viewed as a combination acquisition and disposal action. A variety of legislative authorities can be identified for Reclamation use. For instance, exchanges related to relocation of facilities (roads, utility lines, etc.) typically use the authority of Section 14 of the Reclamation Project Act of August 4, 1939, (53 Stat. 1187). Other agencies, such as the Bureau of Land Management (BLM) and the General Services Administration (GSA) in particular, can accomplish exchanges for Reclamation using

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other legislative authorities [the Federal Land Exchange Facilitation Act (Public Law 100-409), the Federal Property and Administrative Services Act of 1949, as amended, etc.]. BLM exchanges must be based on prior land use planning. (Refer to paragraphs 9C through 9G.)

- G. **Acquisition by Transfer.** Federal agencies can transfer jurisdiction over real property to other Federal agencies. Transfers are typically governed by provisions of the Federal Property and Administrative Services Act of 1949, as amended, among other directives and standards. Other specialized legislation may be enacted to provide authority for transfer of Federal lands. In a transfer it is typically required that both the receiving and granting agencies have signature transfer form(s) that document transfer of management responsibility, adjustment in real property inventory records, and adjustment in financial records. (Refer to paragraph 9H.)
- H. **Other Acquisition Methods.** There are other methods of acquiring land rights but some acquisition procedures are not commonly used. For instance, reservations of rights-of-way may be made through water rights applications, water users' association stock subscription contracts, State legislation, Section 24 of the Federal Power Act of June 10, 1920, (41 Stat. 1063); and Act of September 2, 1964, (78 Stat. 808). Project water subscriptions may also grant the United States rights-of-way for canals, laterals, etc. Native American land acquisition procedures and mineral rights acquisitions sometimes employ unique methods. (Refer to paragraphs 9I and 9J.)
- I. **Water Rights Acquisitions.** Reclamation may acquire existing water rights, for specified purposes, storage and/or natural flow water. Acquisition methods may include permanent purchase, leasing, rental agreements, or other acceptable methods. (Refer to paragraph 10A.)

## 2. General Information.

- A. **Responsibility and Authority.** Regional Directors are responsible for all land and water rights acquisition programs under their direction. Regional Directors will acquire all lands or interests therein (including water rights) for any project or feature by using the services of qualified realty staff personnel. This does not preclude using consultants or contractors, or other qualified persons, where needed.

Regional Directors will designate a Regional Realty Officer who will be responsible for the review and approval of land and water rights acquisition documents prior to their submission to the Solicitor's Office, the Chief Realty Officer, or the Department of Justice (DOJ) Regional Realty Officer will coordinate requests for land and water rights acquisition assistance, provide program oversight, and serve as a technical liaison to area and/or field office staff, Regional Directors, and others on land, realty, and water

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rights matters. Sensitive, unusual, and complex real estate matters will be discussed and/or reviewed with the Chief Realty Officer. All settlements and condemnation actions which exceed the authority of the Regional Director as described in these directives, require approval by the Chief Realty Officer.

**B. Chief Realty Officer, Commissioners' Office - Duties and Responsibilities.**

The following is a summary of Reclamation's Chief Realty Officer, Commissioners' Office - duties and responsibilities:

- (1) **Assistance.** Questions regarding revisions, updates, and interpretations on land and water rights acquisition policy, directives and standards, and guidance, should be addressed, to the Chief Realty Officer. (Refer to paragraph 2A.)
- (2) **Responsibility and Authority for Land and Water Rights Acquisition Programs.** Documents may be submitted to the Chief Realty Officer on sensitive, unusual, and complex real estate matters for resolution or recommendations for follow up action. All settlements and condemnation actions which exceed the authority of the Regional Director require approval by the Chief Realty Officer. (Refer to paragraph 2B.)
- (3) **Approval of Acquisition Above the Appraised Value.** Approval of the Chief Realty Officer is required when the contract is at specified percents more than the appraised value. [Refer to paragraphs 7G(1) and (2).]
- (4) **Forms for Acquisition Transactions.** Standard forms are available from the Chief Realty Officer. (Refer to paragraph 7H.)
- (5) **Relocation/Acquisition Brochures.** Brochures conveying information prescribed by these regulations are available from the Chief Realty Officer or from publications specialists within Reclamation. Copies developed by regional or project offices will be reviewed by the Chief Realty Officer prior to use. [Refer to paragraph 7H(2).]
- (6) **Condemnation Information.** Copies of requests for condemnation actions should be sent to the Chief Realty Officer for information and/or review. [Refer to paragraph 8C(2)(a).]
- (7) **Condemnation Settlement Approvals.** Where the settlement exceeds the deposit for the settlement amounts and percents shown below approval of the Chief Realty Officer will be required. (Refer to paragraph 8D.)

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- (8) **Unique Relocation Assistance Problems.** Consult Reclamation's Chief Realty Officer if special circumstances are involved. (Refer to paragraph 11C.)

C. **Acquisition Planning and Programming.** When acquisition of lands or interest therein is required for construction or location of Reclamation features or facilities, an acquisition plan will be developed. The purpose of the plan is to ensure effective management of the acquisition program. The written land acquisition plan must conform to the requirements of 43 CFR Part 8 or to specific authorizing legislation, and to other land acquisition policies, directives, and standards. The land acquisition plan will be coordinated, as appropriate, with other planning, relocation assistance, and public participation activities.

- (1) **Land Acquisition Plan.** The land acquisition plan can take various forms and formats, depending on the land management techniques adopted by the responsible offices and the needs of the specific land acquisition program. For instance, acquisition of a single tract would require minimal planning effort and documentation. Acquisition of several hundred separate real property interests as part of a large project would require significantly more documentation. Alternative land acquisition plan formats could vary from formal documents with appropriate signatures to relatively informal typewritten listings, scheduling charts, and/or penciled markup sheets. Whatever format is adopted, at a minimum, the land acquisition plan should:
- (a) Identify the project, the authority to acquire rights and any restrictions on authority to acquire rights, the cost authorization, and the responsible office and official. If there is no condemnation authority, the plan should so state.
  - (b) Identify the parcels to be acquired within the ultimate scope of the project.
  - (c) Identify the interests to be acquired for each parcel.
  - (d) Identify the general order of acquisition priority.
  - (e) Identify estimated funding requirements.
  - (f) Provide a schedule for the commencement and completion of appraisals and negotiations and other key steps in the acquisition process, and include a multi-year schedule when appropriate.
- (2) **Reviews and Revisions.** The land acquisition plan will be reviewed periodically and revised as often as appropriate to reflect management needs and construction schedules.

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(3) **Plan Approval.** Land acquisition plans should be approved as specified by Regional Directors or designees.

D. **Relocation Assistance Planning.** During preconstruction planning and prior to initiation of negotiations for the acquisition of any real property, a determination must be made whether the acquisition will result in the displacement of persons from their dwellings, businesses, or farm operations. Prior to the commencement of acquisition activities (including development of property descriptions, title examinations, appraisal, negotiations, etc.) which will cause such displacement, a relocation plan will be developed that complies with 49 CFR Part 24.

E. **Landowner Relations.** Reclamation will establish a fair and equitable program for the acquisition of property interests that emphasizes negotiating a satisfactory agreement with owners.

In a timely fashion, Reclamation will advise owners and occupants of lands required for project purposes of the probable time such lands will be acquired and the policies, procedures, landowner and occupant rights, and other matters of interest to the owners and occupants. Public meetings (for large projects with many landowners), personal contacts, and information pamphlets may be used for this purpose.

F. **Information to Landowners.** Reclamation will be sensitive to landowner needs and will ensure that each and every owner is fully informed of his or her rights by providing pamphlets and other literature at the time the landowner is notified that his or her lands or water rights may be acquired. These rights will be restated and explained at the time of the initiation of negotiations with the landowner.

(1) **Advising Landowners.** Within 6 months after Congress has authorized and funded a project, the Regional Director, Area Manager, or designee will make a reasonable effort to advise owners and occupants in the project area as to the scope of the project and the probable time when lands or water rights will be acquired. Where appropriate, public meetings or personal contacts may be used to accomplish this.

(2) **Information Pamphlets and Brochures.** Reclamation should distribute general information on land and water rights acquisition methods and procedures to owners and occupants of lands in the vicinity of a taking area. When appropriate, additional information concerning basic project data for specific features may be furnished, such as purpose, size, cost, completion schedules, and repayment obligations. Information on entitlement to relocation assistance should be included in pamphlets or brochures.

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G. **Uniformity of Procedures and Forms.** Standard forms will be used when they exist. Examples of required forms, which are included as appendices and are referenced in paragraph 7, "Land Purchase Acquisition Procedures," include the standard land purchase contract, Phase I survey checklist for contaminants, and report of negotiations. Forms recommended by DOJ will also be used when appropriate, such as the Certificate of Inspection and Possession, Disclaimer (of tenants and other interests), and closing statement.

H. **Records and Reports.**

(1) **Land Acquisition Control Records.** A record of all interests in property acquired for project use, either by purchase, exchange, condemnation, donation, or other methods, will be entered and maintained in the appropriate real property records system. (Refer to Real Property Resource Management Records for details.) Particular attention must be given to land record data entry for that real property defined for payment under the Payment in Lieu of Taxes Act (90 Stat. 2662, as amended).

(2) **Annual Uniform Relocation Assistance and Real Property Acquisition Report.** At a minimum, sufficient real property and relocation assistance records will be kept that the subject report (appendix D) can be completed annually, as specified in 49 CFR Part 24. (Refer to paragraph 7H.)

3. **Determination of Program Needs.**

A. **Time Requirements.** A 9-month minimum lead time is required to allow sufficient time to develop a realistic schedule for land and water rights acquisition and to comply with requirements for acquisition and relocation assistance planning to ensure availability of sufficient replacement housing. The initial request for acquisition of land or water rights should be submitted with appropriate maps, legal descriptions and tract maps and other necessary information provided to a realty officer. All real property requirements should be identified and described in detail at least 9-months prior to: (1) The need for land title to be vested in the United States, and (2) Construction specifications being issued.

In the event there are a considerable number of properties to be purchased, condemned, or may involve relocations of families or businesses the 9-month advance notice may not be sufficient time in which to accomplish the real estate program.

B. **National Environmental Policy Act (NEPA) Compliance.** Reclamation must comply with NEPA requirements including preparation of Environmental Assessments (EA), Environmental Impact Statements (EIS), and/or Findings of No Significant Impact

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(FONSI) documentation, as appropriate. There must be confirmation of NEPA compliance before any construction activities may begin on the land or interests acquired.

- C. **Minimum Requirements for Issuance of Specifications.** If all required land or water rights and/or replacement housing is not available at the time specifications are ready to be issued, they may still be issued providing they contain the following pertinent information concerning the status of land and land rights or water rights acquisition: (1) Identification of the parcels which have been acquired; (2) Identification of the parcels not acquired; (3) The approximate date when acquisition will be completed; and (4) The status of availability of replacement housing.
- D. **Guide Acquisition Lines.** Designation of interests in real property planned to be acquired may be established through the use of "guide acquisition lines," "guide contour lines," or "take lines." These are lines established through Reclamation's planning process that delineate the various lands and/or land estates to be acquired at different elevations both upstream (pool, etc.) and downstream (flood, etc.). (The term "guide acquisition line" is sometimes used in reference to safety of dams criteria.) Any maps or plans distributed should be labeled "Preliminary - Subject to Revision" when appropriate.
- E. **Reservoir Project Lands - Joint Policy.** Reservoir project land acquisition policy for the Departments of the Interior and Army is published in the Code of Federal Regulations (43 CFR Part 8).
- F. **Estates to be Acquired.** Reclamation will acquire estates in real property that are consistent with 43 CFR Part 8 (appendix E) and specific program requirements. In addition, Reclamation will provide that its water and land areas will, to the extent appropriate:
- (1) be available to the public;
  - (2) provide appropriate public access;
  - (3) enhance recreation;
  - (4) promote fish and wildlife habitats;
  - (5) provide fishing access if so desired; and
  - (6) facilitate and encourage optimum use and utilization of all lands acquired.
- (a) **Fee Simple.** Fee simple title will usually be acquired for dams, reservoirs, main conveyance canals, electrical substations and powerplants. Fee simple title should also be acquired for:

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- (i) Uneconomic remainder properties, provided the landowner concurs.
  - (ii) Those lands which will be covered by any sediment delta that is expected to form as the result of aggregation of the stream channel at the upper end of the reservoir. This determination will be based on the probable sediment inflow for a period at least equal to the project repayment period.
  - (iii) Those lands that are necessary for mitigation of project construction activities.
- (b) **Less Than Fee Simple Title.** Less-than-fee-simple title may be acquired unless to do so is in conflict with 43 CFR Part 8, or will likely result in actions incompatible with project features or purposes, or would not result in any substantial monetary savings over a long period of time. The realty staff should carefully examine the risks and economic benefits associated with purchase of interests less than fee simple title in connection with any reservoir or flood detention basins. Consideration should be given to the impacts to potential loss of future public uses and long term management complications associated with these acquisitions.
- (c) **Easements.** Easements will typically be acquired for the location of such works and facilities as laterals, drains, transmission lines, telephone lines, road rights-of-way (but excluding the location of project facilities for dams, canals, powerplants, and similar structures of a permanent nature) unless the Regional Realty Officer determines that it is more practicable or economical to acquire a fee title for a particular facility (such as highways or major aqueducts) or that it is otherwise determined to be in the best interest of the Government.
- (d) **Easements in Lieu of Fee Simple Title.** Easements in lieu of fee simple title may be acquired if lands meet all the criteria specified in 43 CFR Part 8 and, if it can be identified, the anticipated agency responsible for management determines that an easement is satisfactory to meet its needs for the land. Easements for angler access for fishing could be an example.
- (e) **Canal Rights-of-Way.** Usually, right of way for main canal conveyance facilities will be acquired in fee simple title rather than by easement. A main canal conveyance facility and the need to limit other uses by the underlying fee interest owner will typically precludes other use of the

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land on result in the effective purchase price very near the full fee value of the land. Lesser estates may be acquired if it administratively determined to be in the best interests of the Government.

- (f) **Interests in Buildings and Other Improvements.** All buildings, structures, or other improvements located on lands being acquired which will be adversely affected by the project should be acquired and removed, relocated or allowed to be salvaged by the owner of the improvements. If a tenant owns the buildings, structures, or improvements and has the right or obligation to remove them at the expiration of the term of occupancy, the total just compensation for the real property, including the tenant's property, will be apportioned between the landowner and the tenant. (Refer to paragraph 7L.)

- G. **Acquisition of Fish and Wildlife Properties.** Under the authority of the Fish and Wildlife Coordination Act, Reclamation is required to consult with the Fish and Wildlife Service (FWS) during the planning of new projects and for modifications to existing projects so that wildlife resources receive equal consideration with other project objectives. By statutory provision the consideration of fish and wildlife values and the mitigation for any damage to those values must proceed concurrent with or before construction. Reports and recommendations from the FWS and the head of the State wildlife resource agency may be provided to Reclamation detailing: (1) impacts to wildlife resources, (2) means to mitigate or compensate adverse impacts, and (3) enhancement measures.

Reclamation will be responsible for and retain all of its real estate acquisition authority in connection with accomplishing the required mitigation acquisitions. The FWS should identify those lands or interests in lands that are required for mitigation requirements. Reclamation will determine the methods by which it will accomplish the required real estate acquisition without restrictions or limitations on its real estate acquisition authorities by the FWS.

- H. **Acquisition and Subordination of Mineral Interests.** Mineral rights will be acquired for the location of dams, reservoirs, permanent buildings, recreation areas, and other permanent facilities. Mineral rights will be acquired when the location and removal of any mineral would have a potential for causing adverse effects on any of the intended or potential uses of the lands acquired. In lieu of acquisition, mineral interests, including leasehold estates, may be subordinated. (Mineral interest subordination is the act or process by which the mineral estates are ranked below the rights of the surface owners or others.)

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- (1) **Overall Objective.** Reclamation's overall objective in acquisition and/or subordination of mineral interests is to ensure that: (a) Reclamation obtains the degree of control it needs over mineral exploration and development through subordination, and (b) mineral owners are adequately compensated for the restrictions placed on them through subordination.
  - (2) **When Required.** In acquisition and subordination of mineral interests, the requirements of 43 CFR Part 8 will be followed. Interference with project purposes, as referred to in 43 CFR 8.5 on mineral rights, will be interpreted to include impacts on operation and maintenance requirements because of the geology of the area.
  - (3) **Appraisal and Title Reports.** Appraisal and title reports will identify all restrictions on surface occupancy. This identification will permit valuation estimates to be prepared for any mineral rights that are excluded and/or any special limiting conditions that are imposed. Title reports should show outstanding ownerships to the degree possible sufficient for certification that title of mineral rights acquired is vested in the United States and/or that mineral rights have been subordinated to other rights held by the United States. In condemnation assemblies, where mineral interests are acquired, all owners and potential holders of outstanding interests should be identified so that they can be included in condemnation assemblies, if required.
- I. **Conditions Applying to Mineral Operations.** The following conditions will apply to mineral operations on United States lands acquired for Reclamation projects where minerals are owned by the United States or are subordinated to the rights of the United States.
- (1) **Surface Occupancy.**
    - (a) There will be no surface occupancy within a minimum distance of 1,000 horizontal feet from the toe or abutment of any dam, water impoundment structure, or any other permanent structure; except that greater minimum distance may be dictated by the geological conditions specific to an area.
    - (b) There will be no surface occupancy within the maximum water surface elevation of a reservoir as established by the project data specifications.
    - (c) There will be no surface occupancy within 300 horizontal feet of any developed recreational areas or undeveloped recreational areas receiving concentrated public use.

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- (d) There will be no surface occupancy or other use within the right-of-way of any canal, tunnel, aqueduct, pipeline, lateral, or drain.
  - (e) There will be no surface occupancy in critical habitat for species listed as threatened or endangered under Federal law. Access to other wildlife areas may also be restricted during certain times of the year, as specified by the Regional Director.
- (2) **Wells.** There will be no well drilled within 660 feet of a river, channel, permanent stream, tributary, or marsh site.
- (3) **Modifications of Conditions.** Upon appropriate written justification exemption or modification to any of the above conditions may be approved by Reclamation's Regional Directors.
- J. **Flood Hazard Evaluation.** In compliance with Executive Order 11988, requests to the Regional Director for approval to acquire or exchange lands or rights-of-way must be accompanied by a statement on flood hazards, including justification for anticipated construction of facilities and proposed land use within the floodplain. This requirement does not apply if such information, in accord with Executive Order 11988, was included in the project feasibility report.
- K. **Estates to be Acquired: Flood Operation Considerations.** The following will be followed in establishing guide acquisition lines or acquisition boundaries for various estates to be acquired, to the extent determined locally reasonable under the particular circumstances by the Regional Director.
- (1) **Upstream Acquisitions.**
    - (a) Lands from the reservoir bottom to the top of the base, or 100-year flood, as nearly as can be determined, will be acquired in fee, and minerals acquired or subordinated as necessary.
    - (b) On lands between the 100- and 500-year flood level, as nearly as can be determined, flood easements will be acquired restricting all human habitation. No mineral subordination or acquisition need be undertaken unless the lands location or topography would dictate such a need. (Refer to paragraph 3J.)
    - (c) Lands above the 500-year flood level should not have any interest acquired for flood operation purposes.

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- (2) **Downstream Acquisitions.** There should be no downstream acquisitions under flood operations criteria unless specifically directed by Reclamation's planning processes, the Commissioner, or by Congressional directive.

L. **Land Designation and/or Legal Descriptions.** Consideration of the various estates to be acquired should lead to designation of the lands and/or land interests required for Reclamation purposes and preparation of a legal descriptions and tract maps.

- (1) **Land Surveys.** Necessary land surveys by a registered land surveyor for the delineation of all lands and land interests required for a project should be expedited so that boundaries of land under Reclamation's jurisdiction can be obvious to Reclamation's management and to the public. The property boundaries should be monumented while construction funding is still available.
- (2) **Early Designation.** Particular attention must be given to the early designation of sufficient lands for all authorized and planned project purposes, including early designation of mitigation lands, habitat improvement areas and recreational areas, in order to avoid additional land-purchase negotiations with the same owners.
- (3) **Accurate Descriptions.** Accurate descriptions of lands and interests in lands to be acquired will be prepared. The form of description will be such as to identify the land definitely and be sufficient to enable a competent surveyor or engineer to reconstruct or retrace the land description on the ground. All land descriptions will be checked and certified together with an endorsement to that effect will be placed thereon. A survey plat or tract map of the acquisition should also be prepared under the same standards as the description.

#### 4. **Ownership and Title Determinations.**

A. **Title Evidence Requirements.** Title evidence must be obtained prior to any acquisition of lands or interests in land or interests in water rights. Special guidelines and instructions to Federal agencies issued by DOJ govern the preparation of title evidence in land acquisitions (land purchases, donations, exchanges, and condemnations) by the United States. Title evidence must conform to the 1992 Revised DOJ Title Standards, which include *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States*, 1970; and *A Procedural Guide for the Acquisition of Real Property by Government Agencies*, 1972. The standards and guidelines of DOJ must be complied with, although certain exceptions to these requirements for title evidence have been granted, in writing, from time to time. The provisions concerning title evidence in the following paragraphs are based upon DOJ guidelines and instructions and upon the duly authorized exceptions thereto.

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- (1) **Approved Abstracters and Title Companies.** DOJ has compiled lists of all approved abstracters and title companies to furnish title evidence. In any instance where a title company is approved to furnish title service in a particular county of a State, that company may furnish title evidence within any county in the State in which it is doing business.
  - (2) **Submission of Title Evidence.** All title evidence must be submitted with the acquisition documents with each transaction for preliminary title opinions preparation by the Solicitors Office .
- B. Title Evidence Types.** Title evidence can consist of title insurance, abstracts of title, Torrens Certificates, or Memorandum of Ownership and Encumbrance. Evidence of title of property to be acquired is to be furnished by the Government at its expense, except where otherwise authorized by law or provided by contract (e.g., 40 U.S.C. 255, as amended).
- (1) **Title Insurance Form.** Title insurance should be on the American Land Title Association (ALTA) form identified as "ALTA U. S. Policy - 9/28/91."
  - (2) **Abstracts.** Abstracts may be prepared and/or reviewed by the Solicitor's Office or designee.
  - (3) **Memorandum of Ownership and Encumbrance.** A "Memorandum of Ownership and Encumbrance" (an "O&E report") is a last owner search showing the owner under the last deed of record and encumbrances against the title. For an O&E report the abstracter or title company assumes no liability and the O&E report is prepared without regard to the period of search. O&E reports will be acceptable for temporary easements, 1890 Act "acquisitions," and stock and water right applications (if appreciable sums can be saved for very low value acquisitions) subject to the following conditions:
    - (a) The consideration for the acquisition will not exceed \$100. (Note that the \$100 limit is imposed by DOJ and that DOJ is considering raising this limit.)
    - (b) The period of search will include the entire period of the present ownership and will show how the present owner acquired title.
    - (c) The O&E report must be furnished by a title company or agent on the list of title companies or agents approved by DOJ.
    - (d) If the present title is based on inheritance or a will, an abstract of deed to the present owner's predecessor in title is required. In addition, an abstract of the

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administration of the estate or a copy of the will and an abstract of the essential portions of the probate proceedings must be furnished. (Refer to *DOJ Standards for the Preparation of Title Evidence in Land Acquisitions by the United States* for details.)

C. **Exceptions to Standards, Guidelines, and Instructions.** All title evidence and deeds to the United States obtained by Reclamation must be in substantial compliance with the *DOJ Standards for the Preparation of Title Evidence in Land Acquisitions*, except as follows:

- (1) **Maps in Lieu of Plats.** The requirements for supplying plats as part of the title evidence may be met as follows: Where the land being acquired cannot be described in terms of standard legal subdivisions, one copy of a map showing, with appropriate survey data, the boundaries of lands or land interests proposed to be acquired will be included in the title assembly.
- (2) **Corporate Vendor.** The power of a corporate vendor to convey should be shown by setting forth in the vendor's resolution authorizing the sale and conveyance the portions of the corporation's charter or other records relied on by the vendor as establishing its authority.
- (3) **Deeds.** When authorized by the Solicitor's Office, quitclaim deeds or deeds of special warranty may be used in those instances where the title is otherwise satisfactory and where it is impracticable to obtain a general warranty deed.
- (4) **Payment of Taxes When Acquiring Easements.** If the consideration to be paid for all easements is more than 50 percent of Reclamation's appraised value of the entire contiguous property of the vendor and the current taxes are not due and payable, funds will be withheld from the purchase price to pay the current taxes when they are due. In such instances, the Solicitor's final title opinion should report the title to be subject to the lien for the payment of the taxes when due.
  - (a) **Current Taxes.** It is not necessary to require payment of current taxes which are a lien and payable, but which are not delinquent, under any of the following conditions:
    - ! All or a substantial portion of the consideration must be paid to mortgage holders.
    - ! The consideration to be paid is insufficient to pay the current taxes.

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- ! The consideration to be paid is less than 50 percent of Reclamation's appraised value of the entire contiguous property of the vendor.
- (b) **Delinquent Taxes.** It is necessary to pay or to provide for payment of only the current year's taxes or any payable installments thereof which are delinquent on the date the conveyance of the easement is filed for record. For this purpose, unpaid taxes are considered delinquent on the date when interest or penalties begin to accrue. Any recommendation for waiver of current taxes must include a statement of the date upon which such taxes become delinquent, as shown in appendix F.
- (c) **Outstanding Encumbrances on Easements.** Title will be approved by the appropriate Solicitor's office subject to outstanding encumbrances, such as mortgages, deeds of trust, and vendor's liens, where: (1) the properties are not encumbered in excess of 50 percent of their reasonable value and (2) the considerations being paid for the easements do not represent sums in excess of 10 percent of the value of the tract. The attached exhibit shows the format to be used in requesting waiver of such liens.
- (5) **Purchase of Low-Value Easements and Mineral Subordinations.** If an easement or a mineral subordination is being acquired and the title is determined by the Solicitor to be free from objections within the limitations set forth in paragraphs (a), (b), and (c) below, Reclamation may consummate the purchase. In reviewing the title data in such cases, the Solicitor's staff:
- (a) May accept, in lieu of the requirements of the Regulations of DOJ, title evidence satisfactory to the reviewing Solicitor where Reclamation determines that the cost of otherwise required title evidence is disproportionate to the purchase price involved in the transaction. (Please note that local conditions may vary, depending on the opinions of the Solicitor.)
- (b) May not require the release of mortgages, judgments, and other liens where release of such liens cannot be obtained without undue delay or difficulty. Whenever practicable, however, release of these liens should be obtained and filed for record. (Contact the Solicitor for detailed information.)
- (c) May not require the elimination of the interests of persons not having full legal rights or capacity to the land *sui juris* (of their own right) and of missing owners.

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(6) **Unpatented Lands on Which Final Certificate is Issued.** In the purchase of rights to land where final proof has been submitted and final certificate issued but the land is not yet patented, it will be the practice of Reclamation to treat such lands as though patented, and the general regulations relating to the purchase of land will apply.

D. **Preliminary Title Opinion.** The request for a Preliminary Title Opinion is the first step in obtaining approval of title from the Solicitor for lands being acquired by Reclamation for project purposes. The request for a Preliminary Title Opinion is submitted to the Solicitor for the purpose of obtaining legal review and approval of the contract(s) which are proposed for execution between Reclamation and the contract party or parties. Unless otherwise authorized all offices will submit requests for preliminary title opinions to the Regional Realty Officer. (Note that there may be variations between requirements for preliminary and final title opinions depending on Solicitor's Office interpretations. Each acquisition office should verify preliminary and final title opinion requirements with the appropriate Solicitor's Office.)

- (1) **Necessary Information.** To obtain a Preliminary Title Opinion, the following information will be submitted to the Solicitor:
- (a) Reference to the statutory authority under which the lands are being acquired and other relevant statutory authorities when appropriate.
  - (b) Certificate of title, title insurance policy, abstract of title, or a title report preliminary to the issuance of a certificate of title or title insurance policy. Note: All title insurance policies must be submitted on an ALTA form as required by DOJ.
  - (c) Adequate legal description together with an attached map showing the exact location of the lands being acquired.
  - (d) When the title evidence consists of an abstract of title, all available information with reference to mortgages or other claims of ownership must be shown. If the record owner of the property is deceased and complete probate proceedings are not disclosed by the abstract, certified copies of the will and probate proceedings must be submitted. Otherwise, proof must accompany the papers showing that the owner died intestate and showing the names, age, and marital status of his/her heirs at law, and whether all debts and estate taxes have been paid and satisfied.
  - (e) The taking of title subject to easements, minerals, or other outstanding rights must be accompanied by evidence of an Administrative Determination

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approved by the officer responsible for the real estate program stating that the exercising of such easements or outstanding rights will not adversely interfere with the Government's proposed use of the property being acquired.

Evidence of such Administrative Determination may consist of any or all of the following:

- ! Copy of an official memorandum of record addressing each exception to title which is to be waived and signed by an authorized officer.
- ! Copy of the land purchase contract if it contains provisions for purchase of the land subject to outstanding easements and rights in third parties, together with an assessment of potential impacts resulting from third-party exercising of the reserved rights.
- ! A blanket waiver for an entire project, where it has been determined that the acquisitions for the entire project will be made subject to such outstanding rights. In such cases, one waiver of record for that project is sufficient.

- (f) Copies of the executed land purchase contract and draft of the proposed deed. Also, when available, disclaimers, affidavits, completed contaminant survey form, curative data obtained to satisfy title objections or to prove vendor's titles, and copies of powers of attorney if the conveyance to the United States is to be executed by an attorney in fact.
- (g) Copies of supporting documents such as a completed contaminant survey form, NEPA compliance documents, etc.

E. **Final Title Opinion.** The request for a Final Title Opinion is the second and last step in obtaining approval of title from the Solicitor for lands being acquired by Reclamation for project purposes.

- (1) **Submission to the Solicitor.** The request for a Final Title Opinion is submitted to the Solicitor for the purpose of showing that the purchase of the lands has been completed, that compliance with all requirements of the Preliminary Title Opinion have been met, and that title to the lands purchased is vested in the name of the United States of America.
- (2) **Required Documents.** A request to the Solicitor to issue a Final Title Opinion must be accompanied by the following:

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- (a) A copy of the executed and recorded deed, grant of easement, or other instrument of conveyance and a copy of the (recorded) land purchase contract, if applicable.
  - (b) The final certificate of title, title insurance policy, or the abstract of title continued to a date subsequent to the recordation of the deed to the United States.
  - (c) An executed Certificate of Inspection and Possession in the form set forth in DOJ Regulations.
  - (d) Copy of the Preliminary Title Opinion packages including curative data obtained to meet all title objections.
  - (e) Receipt or copy of the closing statement executed by the Government's vendors for the purchase price.
  - (f) Copy of the completed (updated) contaminant survey form.
- F. **Payment Prior to Final Title Opinion.** Upon assurance that all objections to title have or will be adequately satisfied, and after approval of the Preliminary Title Opinion by the Solicitor, payment to the contract party(s) may be made prior to the request for a Final Title Opinion. Note, however, that this process must be approved by the respective Solicitor's Office - not all Regional or Field Solicitor's Offices will approve the procedure. Each acquisition office will verify requirements with the appropriate Solicitor's Office before making payment prior to receiving a final title opinion.
5. **Valuation Issues.**
- A. **General Information.** Procedures to be followed in valuation of land and land rights are specified in Reclamation Manual, *Real Estate Appraisal*, LND 05-01. Additional directives with respect to valuation issues and the acquisition of real property interests are listed below.
  - B. **Administrative Adjustments in the Offer.** Conditions may conceivably arise where, in the judgment of the Realty Officer in consultation with others as appropriate, including the Chief Realty Officer, there is support for making the official, written offer of just compensation to the owner(s) at an amount higher than that in the approved appraisal report. Adjustments, if any, should be documented in writing and should fully describe the reasons for any changes.

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- C. **Negotiated or Stipulated Settlements.** With appropriate justification, actual acquisition amounts above the appraised value are acceptable. Every effort should be made to secure purchases at the amount of the approved appraisal, before entertaining amounts above the approved appraisal. (Refer to paragraphs 7F and 7G.)
- D. **Negotiation and Appraisal of Low Value Acquisitions.** No appraiser will be the negotiator for the acquisition of land or water rights property which that person has appraised, except the same person may both appraise and negotiate an acquisition where the value of the acquisition is \$2,500 or less.
- E. **Waiver of Appraisal.** An appraisal is not required if: (1) the owner is donating the property and waives (through an article in the conveyance document) the right to have the property appraised (see discussion for donation conveyances), or (2) Reclamation determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at \$2,500 or less, based on a review of available data by an appraiser.
- F. **Valuation of Retained Rights of Use.** Retained rights of use could include life estates or rights of use for a period of time that are identified during negotiations and made part of the agreement to transfer title to the United States. The consideration for retained rights should be determined as a fair market rental and should be made a written part of the purchase contract, together with the written terms and conditions of use.
- G. **Salvage Rights.** Where retention of possession (salvage) is negotiated, the determined value of salvage will be made a written part of the land purchase contract.
- H. **Distribution of the Purchase Price.** Adjustments in the distribution of the proceeds could include deductions for tax settlements, lien settlement releases, leasehold or occupancy settlements, or other distributions made during closing.
- (1) **Taxes and Liens.** Reclamation will adjust the amount distributed to extinguish tax or other liens which became a lien prior to the acquisition of title by the United States. Such payments to the taxing authority or lienholder may be made in advance of payment of the balance to the seller. The seller may be entitled to reimbursement for certain expenses incidental to the transfer of title.
  - (2) **Closing Forms.** A closing form should be used to document purchase price adjustments and should be signed by the landowners as an acknowledgment of their agreement as to distribution of the funds among them.

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### I. Expenses Incidental to the Transfer of Title.

- (1) **Relocation Assistance Benefits.** Relocation assistance benefits are available for the payment of the following [reprinted for convenience from the implementing regulations (49 CFR Part 24)]:
  - (a) Recording fees, transfer taxes, documentary stamps (if used), evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and
  - (b) Penalty costs and other charges for the prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and
  - (c) The prorata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is the earlier.
- (2) **Additional Benefits.** These regulations have been interpreted to include:
  - (a) Payment for the recordation of documentary evidence related to meeting closing requirements.
  - (b) Reimbursement for tax liens imposed because exempted uses will not be continued after title passes to the United States; or because the Federal Government is exempt from ad valorem real property taxes.

- J. **Relocation Assistance Benefits.** Entitlement to relocation assistance benefits is in addition to any just compensation received for the property being acquired. Relocation assistance benefits are not negotiable. Separate, distinct programs are involved in the payment of just compensation and entitlement to and determination of amounts of assistance available to those persons displaced as a result of acquisition. (Refer to paragraph 11.)

### 6. Environmental Site Surveys.

- A. **Background.** The policy of the Department of the Interior (Interior) is defined in the Departmental Manual, *Real Property Pre-Acquisition Environmental Site Assessments*, 602 DM 2. To minimize the potential liability of the Department and its bureaus, it is Departmental policy to avoid acquiring real property that is contaminated with

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hazardous substances unless directed to do otherwise by the Congress, court mandate, or by the Secretary or designee.

B. **Precautionary Measures.** Pursuant to the Departmental Manual (602 DM 2) before any real property is acquired, the acquiring office will:

- (1) **Potential Liability.** Ascertain the nature and extent of any potential liability resulting from hazardous substances or other environmental problems associated with such property.
- (2) **Weigh Benefits and Costs.** Weigh the benefits of the acquisition relative to the total cost, including:
  - (a) Fair market value.
  - (b) Remediation costs.
  - (c) Any known or reasonably estimated monetary damages that could be associated with the acquisition.
- (3) **Inform Congressional Committees.** Inform the appropriate Congressional committees of the total cost, as specified in paragraph G(3) for any Congressionally mandated acquisition of contaminated property.

C. **Environmental Site Surveys.** To comply the Departmental Manual, two levels of environmental site surveys are specified for Reclamation.

- (1) **Phase I Site Survey.** The Real Property Questionnaire Checklist was developed to meet the requirements mandated by 602 DM 2. Either one of two types of survey checklists (appendices F and G) is to be used, depending on the intensity of land use of the property to be acquired. The two checklists are:
  - ! Low-intensity (Rural, Residential, Crop/Agricultural, etc.) Real Property Questionnaire Checklist (appendix F)
  - ! High-Intensity (Industrial, Commercial, Feedlots, etc.) Real Property Questionnaire Checklist (appendix G)
- (2) **Phase II Site Survey.** The Phase II Site Survey is used when either of the Level I Site Survey Real Property Questionnaire Checklists identifies potential liability resulting from hazardous substances or other environmental problems. No specific format is specified for a Level II Site Survey, but the Questionnaire Checklist must

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be complete in terms of technical accuracy and comprehensiveness. The Level II site survey must be sufficient to determine the potential for hazardous substances, the extent of liability for hazardous substances or injury (estimate of remediation cost), and the need for environmental remediation. This includes, but is not limited to, a determination of the absence or presence of hazardous substances or conditions that indicate an existing or past release or a material threat of a release on the real property into the air, soil, sediment, groundwater, surface water, or any substances located on the real property.

- D. **Qualifications of Personnel.** Preparation of the appropriate Questionnaire Checklist must be conducted or supervised by a qualified individual. Each Regional Director or designee may determine qualification requirements.
- E. **Time Limits.** Pre-acquisition environmental site assessments must be completed within 12 months prior to the date of the acquisition of real property. Exceptions to this time limit will be considered for real property located in adverse climatic or geographical areas. All exceptions must be supported by documentation and approved by the Regional Director or designee.
- F. **Acquisition After Completion of the Survey.**
- (1) **Necessary Condition.** Following the preparation of the appropriate Questionnaire Checklist or Phase II Site Survey, real property may be acquired, provided one of the following conditions is met:
    - (a) No evidence of hazardous substances or other environmental liability is found.
    - (b) If there is such evidence, the acquisition will result in insignificant or no increased cost to the United States.
    - (c) The pre-acquisition proposal, including any liability risk associated with the acquisition, is determined to benefit the bureau and is approved in accordance with specified delegations of authority.
    - (d) The acquisition is mandated by the Congress, courts, or by the Secretary.
  - (2) **Identification of Contributions.** Whenever possible, the identification of the contributions to the management of the liability by potentially responsible parties or other liable entities should be included in the contract or other legally enforceable instrument.

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G. **Approvals.** In accordance with the Departmental Manual, approval is required for all real property acquisitions that:

- (1) may require hazardous substance or other environmental cleanup; or
- (2) that may result in liability risk, including remediation and other known and reasonably estimated costs associated with the acquisition.
- (3) **Approvals for Remediation Costs.** Environmental Site Surveys approvals for remediation costs (not acquisition costs, which are separate from and in addition to these limits) are as follows:

Approval authority	Remediation cost estimates
Assistant Secretary - Policy, Management and Budget	greater than \$500,000
Commissioner of Reclamation	\$500,000 to \$250,000
Regional Directors or designees	less than \$250,000

- (4) **Estimated Cost of Alternatives.** Where applicable, a formal estimate of the cost of alternatives should be included as part of the request for approval.

### 7. Land Purchase Acquisition Procedures.

A. **General Information.** Reclamation will exercise every reasonable effort to acquire lands, interests in lands, and water rights required for project works without resorting to judicial determinations. Where a mutually satisfactory settlement cannot be achieved at the appraised value, an attempt will be made to negotiate a settlement satisfactory to both parties.

Acquisition by purchase must comply with other authorities, regulations, and policies. Particularly important are requirements for title evidence, an appraisal approved by a qualified review appraiser to establish just compensation for the interest to be acquired, and environmental site surveys to determine whether or not contaminants are present. Negotiations must be initiated at a price not less than the approved appraisal for the market value of the property, and there must be a reasonable effort to acquire real property expeditiously by negotiation. There will be no coercive actions taken to compel an agreement on price.

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Whenever a property interest is owned by a Member of or Delegate of Congress that must be acquired, either in part or whole, it is suggested that the Field Solicitor and the Assistant United States Attorney be contacted prior to initiation of any offers to purchase. Pursuant to 18 U.S.C. 431 and 432 Members of Congress are prohibited from contracting with the United States. In concert with the Field Solicitors Office and the Assistant United States Attorney a decision needs to be made as to entering into a negotiated agreement or if it will be necessary to initiate a condemnation to acquire the required interest.

- B. Negotiation Standards.** All contracts for the acquisition of realty interests will be based upon an approved appraisal made in advance of the purchase, except when waivers are permitted (donations, as an example).
- (1) **Negotiations.** Negotiations for acquisition of realty interests will be conducted by a single individual or, if supporting expertise is needed, by a single designated team leader. For instance, the Regional Realty Officer or responsible realty specialist may find it advisable for a relocation assistance specialist and/or land management specialist to accompany the negotiator on the initial contact with the landowner to ensure that the aspects of relocation and after-sale leasing are fully and accurately explained to the landowner.
  - (2) **Coordination.** There must be close coordination between the negotiator and the responsible area office official(s). Any deviations from the acquisition plan will be approved before commitments are made. Any commitments made by the negotiator and agreed to by the landowner will be documented in the land purchase agreement. Negotiation records (negotiator's reports, call reports, etc.) will provide management staff with sufficient information to ensure that commitments and promises can be fulfilled.
  - (3) **Time Requirements.** Sufficient time should be allowed to fully negotiate purchase contracts, to reach agreement with landowners on just compensation, and to avoid condemnation actions. If no contract has been signed after three landowner contacts, the negotiator will consider submitting to the person responsible for acquisition a written or verbal estimate of both the time required to complete the acquisition and the estimated dollar amount needed to secure landowner agreement to a contract for purchase. It should then be determined whether to continue negotiations, discontinue negotiations, or commence a condemnation action. As a general guideline, negotiations should be completed or re-evaluated within 60 to 90 days after the initial landowner contact.
  - (4) **Reappraising.** Asking prices will not be met by reappraising. Reappraising is expensive and time consuming. Administrative adjustments to value, if potentially appropriate, should be considered prior to requesting a reappraisal.

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- (5) **Condemnation.** When condemnation actions appear necessary, there must be close coordination between the regional office, the Reclamation office conducting negotiations, the Solicitor's Office, and the appropriate representative of DOJ. After the condemnation action is filed, Reclamation should furnish full and complete appraisal and negotiation reports to enable DOJ to determine whether negotiations should be continued in an effort to settle the case and avoid trial. In the case of trial, sufficient time should be devoted by all representatives of the United States to prepare properly for such trial.
  - (6) **Consistency with Policies, Regulations, and Standards.** Reclamation's land acquisition procedures will be consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and with implementing rules and regulations found in 49 CFR Part 24 and DOJ standards.
- C. **Encumbrance of Funds.** The appropriate Reclamation Finance Office must be given notice of the appraised value to encumber the necessary funds.
- (1) **Acceptance of Contracts.** No contracts will be accepted until the office maintaining the primary accounts has prevalidated the availability of funds based on the potential administrative encumbrance.
  - (2) **Availability of Funding.** Availability of funding should be determined prior to initiation of negotiations.
- D. **Initial Offer Letter.** Negotiations are initiated with the delivery of the initial written offer of just compensation to the owner or the owners designated representative. (A suggested form letter to use is shown in appendix H. This letter is usually accompanied with a brochure describing acquisition procedures and entitlement to relocation assistance.)
- (1) **Summary Statement Contents.** When negotiations begin, the owner or the owner's designated representative must be provided with a written summary statement that contains at least the following information:
    - (a) Identification of the property and the estate or interest to be acquired.
    - (b) Identification of the buildings, structures, and other improvements considered to be part of the real property to be acquired.
    - (c) A statement of the amount established as just compensation. The statement should explain the basis for the determination of just compensation for partial

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takings. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property will be separately stated.

- (d) A statement that Reclamation's determination of just compensation is not less than its approved appraisal of the property.
  - (e) A statement that any decrease or increase in the fair market value of real property being acquired prior to the date of valuation **caused by the public improvement or project** has been disregarded in making the determination of just compensation for the property.
- (2) **Relocation Assistance Information.** Note that official presentation of relocation assistance information can also begin if there is a written notice of intent to acquire real property and a person moves after that notice but before delivery of the initial written offer for acquisition. (Refer to 49 CFR Part 24 for additional details.)

### E. Release of Appraisal Reports.

- (1) **Opinions and Policies.** Different legal opinions and policies exist on release of appraisal reports, approved or not approved, during negotiations. Denial of requests for appraisal releases in response to Freedom of Information Act (FOIA) requests have been both sustained and rejected. Typical rejections have been based on an inter-agency memorandum exemption No. 5. Withholding confidential commercial information as a "deliberative privilege" may be grounds for denial of an appraisal release. Reclamation's policy is to NOT RELEASE appraisal reports, pending completion of negotiations or condemnation. However, there is some discretion in releasing portions of the appraisal such as the comparable sales data used to establish the valuation. The appraisers analysis of the sales should not be released. Once a transaction is completed however, the appraisal and most of the file may be subject to release pursuant to a FOIA request. It is recommended there be some consultation with the appropriate Solicitor's Office and/or Assistant United States Attorney from DOJ before release of any portions of the appraisal.
- (2) **Forwarding to Regional Realty Officer.** All requests for release of appraisal reports or portions thereof will be forwarded to the regional realty officer for approval or denial.

- F. **Acquisitions Above Appraised Values.** In every instance, whenever the negotiated amount exceeds the approved appraisal and/or amount established as just compensation, a thorough and complete written justification setting forth the rationale for settling above the fair market value will be included in the tract files for the acquisition.

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- (1) **Scheduling Negotiated Settlements.** Negotiated settlements above the appraised value should be scheduled near the end of the acquisition program, construction schedules permitting, to avoid a general upward trend in acquisition costs.
- (2) **Factors to Consider.** Factors to be considered in determining whether to acquire at more than the appraised value could include:
  - (a) Error or defect in the appraisal, modified market conditions (including time escalation), change in the character of the property (including such things as accretion/avulsion of land or addition/destruction of improvements), or evidence of reasonable differences of opinion among appraisers.
  - (b) Increased litigation expenses and liability for payment of landowners attorney and trial costs if they are the “prevailing party” under the Equal Access to Justice Act, Public Law 99-80.
  - (c) Trial risk, previous settlements, or court awards for tracts in the same area, particularly circumstances or equities that would be to the disadvantage of the Government in court proceedings and/or increased litigation expenses.
  - (d) Desire to limit future price escalation while waiting for precedent events.
  - (e) Cost of reappraisal.
  - (f) Any other factors that are relevant to each particular case.
- (3) **Justification.** The desire of the owner(s) for more money is not, by itself, sufficient justification for settlement above appraised values.

### G. Approval of Acquisition Above the Appraised Value.

- (1) **Contract More Than Appraised Value.** The Regional Directors or designees may acquire land or interests in land when the contract is more than the appraised value. The approval of the Chief Realty Officer will be required for those contracts that exceed the appraisal by the amounts shown:

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Appraisal amount	Authorized percent over appraisal
Less than \$100,000	No approval required
\$100,000 to \$500,000	15%
Over \$500,000	10%

- (2) **Request for Approval by the Chief Realty Officer.** Information provided in support of the request for approval will include: the recommendation of the Regional Director or designee, along with a written explanation of the need for an increase, with supporting justification and the potential impact on remaining negotiations; a copy of the appraisal report with the review appraiser's comments attached; copies of the negotiator's reports; and a copy of the signed land purchase contract.

H. **Forms for Acquisition Transactions.** Standard forms will be used when they exist. Forms prescribed for Bureau-wide use are available from the Chief Realty Officer.

- (1) **Regional Forms.** Variations from standard forms may be approved by the Regional Director or designee, with appropriate legal review, to suit local customs or legal requirements peculiar to a State or an area. Forms may also be developed at regional and area offices and approved by the Regional Director or designee, after review by the Solicitor's Office, for those repetitive transactions which are not common to other regions and projects.
- (2) **Relocation/Acquisition Brochure.** Brochures conveying information prescribed by these directives are available from the Chief Realty Officer or from publications specialists within Reclamation. Copies developed by regional or area offices should be reviewed by the Chief Realty Officer prior to use. Special project brochures may be used but, at a minimum, the information provided will cover the following points:
- (a) Factors taken into consideration in appraisals.
  - (b) Desire of Reclamation to avoid condemnation action.
  - (c) Right of landowner to reject Reclamation's offer and have just compensation determined by Federal court proceedings.

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- (d) The relocation assistance available under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended; and 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs.
  - (e) General land acquisition and relocation assistance procedures and other appropriate information that may be necessary for the program.
- (3) **Negotiator's Reports.** Whenever owners or owner's representatives are contacted by Reclamation personnel or others representing Reclamation concerning the acquisition of land or land rights for Reclamation programs, a written report will be prepared by the individual(s) making the contact, using an approved report form. (See the appendix I.)
- (a) Negotiator's reports should be complete and cover pertinent aspects of the negotiations. A report should be prepared for each contact with the owner(s), tenant(s) (if any), attorneys, or others representing parties to the transaction.
  - (b) Negotiator's reports should be prepared and signed by the negotiator at the time of negotiations.
  - (c) Each report of negotiations should include specific information provided to the owners, information about comparable sales they may have provided. The negotiator should maintain copies in the official tract folder of any items that were given to the owners or their representatives. This information may be especially important in case the negotiations are unsuccessful and litigation is necessary. The file should document all relocation assistance and advisory services rendered including information on comparable replacement dwellings or rental properties.
- (4) **Land Purchase Contract Form.** Form 7-276, Land Purchase Contract (appendix J) or a similar contract form approved by the appropriate Solicitor's Office, will be used in initiating fee acquisition of private lands. Special contract and grant forms for the acquisition of permanent or temporary easements may be used when appropriate and approved by the Solicitors Office.
- (a) All acquisition purchase contracts must contain the following articles:
    - ! The Grantor (Vendor) warrants that the Grantor (Vendor) has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee.

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Breach of this warranty will give the United States the right to annul this contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Grantor (Vendor) for the purpose of securing business with others than the United States.

! No member of or Delegate to Congress will be admitted to any share or part of this contract, or to any benefit that may arise here from, but this restriction will not be construed to extend to this contract if made with a corporation or company for its general benefit.

- (b) All acquisition contracts that contain articles that involve expenditure of funds beyond the current fiscal year (crop damages for example) must contain the following article:

Where the operations of this contract extend beyond the current fiscal year, it is understood that the contract is made contingent upon Congress making the necessary appropriation for expenditures thereunder after such current year has expired. In case such appropriation as may be necessary to carry out this contract is not made, the Grantor hereby releases the United States from all liability due to the failure of Congress to make such appropriation.

- (c) The land purchase contract (or file) should include a plat or map showing existing, reserved, or proposed easements, rights-of-way, etc. There should also be a description of identifiable third-party interests in the rights acquired.

(5) **Waiver of 90-Day Notice to Vacate.**

- (a) Unless rights are specifically waived by contract provisions, a 90-day written notice will be given and payment will be made for the acquired property before all owners and/or tenants will be required to surrender possession. This does not apply to vacant and unused property, easements, or small portions of large properties when such acquisitions do not cause displacement of persons. If possession is permitted after acquisition is complete, the appropriate rental charge for this occupancy will be the fair rental value for the property, considering such facts as short-term occupancy and restrictive use.

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- (b) The specified Land Purchase Contract provides for the 90-day notice and payment prior to date of possession as provided in the above paragraph; however, appendix K depicts two suggested articles which may be used when the vendor agrees to waive the 90-day notice and payment provision or when these requirements do not apply (vacant and unused property, etc.).
- (6) **Deeds.** The deed of conveyance to the United States will be prepared in compliance with the requirements set out in *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States* prepared by the Land and Natural Resources Division of DOJ.
  - (a) Ordinarily, when the grantor is not acting in a representative capacity, a warranty deed is required. This does not apply to donation deeds or to deeds correcting clouds on titles, nor does it apply to those cases where the taking of some other form of conveyance has been authorized in advance.
  - (b) The deed will run to the United States of America, its agents, or assigns. The deed should conform to local statutory requirements as well as adhere to the standards for title evidence published by DOJ and any revisions authorized the Office of the Solicitor. There will be inserted at the end of the first paragraph the words: "In pursuance of the provisions of the Act of June 17, 1902, (32 Stat. 388), and acts amendatory thereof or supplementary thereto." When appropriate, other statutory authorities may be cited.
  - (c) The deed will be signed and acknowledged by the person or persons having title thereto and being legally qualified to convey the same.
- (7) **Closing Forms.** Unless alternatives are approved by the appropriate Solicitor's Office, Certificates of Inspection and Possession, Disclaimers, and Closing Statements will comply with requirements set out in *A Procedural Guide for the Acquisition of Real Property by Governmental Agencies* prepared by the Land and Natural Resources Division of DOJ.
- I. **Land Purchase Payment Procedure.** Every effort will be made by all concerned to make prompt payment of the purchase money to the entity from whom the real property is being acquired. Payment is required before displacement of persons, except as otherwise provided by contract terms. Provision should be made for payments for authorized expenses connected with the purchase of land, such as taxes, recording, etc. Closings may be completed using either a contract closing agent or Reclamation personnel in regional or area offices. Every effort should be made to have closings completed within 30 days from the date the check is received by the closing official.

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- (1) **Closing Procedures.** Closing procedures and title standards will conform to published requirements of DOJ, using suggested forms where appropriate.
- (2) **Payment Procedures.** Finance offices are under instructions (Treasury Financial Manual Bulletin No. 95-10) to not process checks without a Taxpayer Identification Number (TIN). Further, new procedures are being implemented that provide for electronic fund transfers, in contrast with traditional procedures that involve physical delivery of a Treasury check. Adjustments may be required for closings to meet changing requirements and/or to be given exceptions, when supportable.
  - (a) The vendor may be paid after:
    - ! All objections to the title and requirements contained in the preliminary title opinion have been eliminated, and instruments releasing all liens or encumbrances on the property and the executed deed to the United States have been recorded.
    - ! Records have been rechecked to a date subsequent to the recordation of the deed to the United States, and the continuation evidence showing recorded title to the property has vested in the United States of America, subject only to those exceptions which have been administratively determined to be acceptable to the Government.
    - ! Written approval has been received from the reviewing Solicitor as to the sufficiency of title to the land for the purposes for which the property is being acquired by the United States, unless prior approval has been received from the appropriate Solicitor's Office to make payment prior to receipt of a final title opinion.
  - (b) Whenever possible, funds will be delivered using an electronic fund transfer.

### J. Requirements for Legal Review.

- (1) **Regional Director Determination.** The Regional Director or designee will determine and prescribe the extent to which documents, other than title documents, relating to the acquisition of land or interests in land will receive legal review. (Title documents should be reviewed as specified in DOJ standards.)
- (2) **Exceptions.** Normally, documents involved in acquisition of lands or land interests should receive legal review, with the possible exception of documents executed on approved forms, provided that there are no unusual factors in such

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transactions. For example, if a land purchase contract, an easement contract, a permit to enter or to explore for materials, a document to effect payment for crop or tree damage, or a similar document is an approved form on which the usual type of information has been entered, such document may not need to be submitted for separate legal review prior to or upon execution. At the time the documents are submitted for title opinions, such documents are considered part of the title evidence and will receive the Regional Solicitor's review.

- K. **Retention of Possession.** Where conditions permit, and when so provided in the land purchase contract, the vendor may be allowed to retain possession of the property to a definite date beyond the date when title is transferred to the United States. Suitable reduction must be made from the purchase price and the reduced price recorded in the land-purchase contract to reflect the value of such possession based on the conditions of the retained possession, such as termination by the Government on short notice.
- L. **Removal of Improvements.** If the vendor elects to remove improvements from the lands purchased by the United States, a provision specifying the improvements to be removed will be included in the original contract or in a supplemental contract.
- (1) **Definite Time.** The contract will specify a definite time within which removal must be completed.
  - (2) **Reductions of Appraised Price.** A reduction of the appraised price commensurate with the amount that the United States will realize from the net salvage value of the improvements involved, will be made. The land purchase contract should clearly specify the salvage value of all improvements being retained by the vendor.
  - (3) **Bond.** The recipient of the salvage rights may be required to post a bond in the amount of the salvage value or the estimated cost to remove the salvage, whichever is higher, prior to beginning the salvaging.
  - (4) **Removal of Debris.** The contract should require the recipient of the salvage rights to clean the premises to the satisfaction of Reclamation. All debris resulting from the salvaging, including damaged trees and shrubs, should be removed from the premises. All hazards should be removed or eliminated to the satisfaction of Reclamation. The contract must make the recipient of the salvage wholly liable for any accidents or damages on the premises during the authorized salvage period which are related to the salvaging.

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### M. **Recordation of Contract and Deed.**

- (1) **Deed.** The deed will be recorded.
- (2) **Contract.** The executed land purchase contract should be recorded. Recordation of the contract could be particularly important if the contract contains provisions that may survive or extend beyond the deed (provisions for fencing, conducting surveys, etc.) or if the contract contains clauses that may affect third parties (such as access easements or similar issues). Further, recordation of the contract provides public notice of the pending transfer of title.
- (3) **Consistency Between Contract and Deed.** Consideration, terms, and conditions of conveyance will be consistent between both contract and deed and will contain all agreements reached between parties during negotiation.

8. **Land Condemnation Acquisition Procedures.** The Act of August 1, 1888, (25 Stat. 347, 40 U.S.C. Sec. 257), provides in pertinent part:

"... in every case in which any officer of the Government (is) authorized to procure real estate... he shall be... authorized to acquire the same for the United States by Condemnation... and it shall be the duty of the Attorney General of the United States, upon every application... to cause proceedings to be commenced for condemnation...."

- A. **Preliminary Procedure.** There should be informal discussions with the Assistant United States Attorney (AUSA) regarding the need to acquire any real estate interest by condemnation. If there are several parcels that may require condemnation, there needs to be early contact with the AUSA to coordinate this effort and ensure sufficient lead time for the effort to acquire the property consistent with the timeframes for construction requirements and certification of the availability of the right-of-way. It is advisable to give the AUSA an opportunity to review the property(s) with Reclamation's staff before proceeding with final notices to landowners advising them of our intent to condemn the real estate. The AUSA may have some preference as to the appraiser(s) that will be used as witnesses in the litigation and every effort should be to secure appraisers that are acceptable to the AUSA.

The Interagency Land Acquisition Conference has published a position paper dated April 18, 1995, regarding non-economic highest and best use and estimated market value. Appraisers and realty program managers should be aware of this position paper. Appraisals to be used in connection with condemnations will not be approved by the Department of Justice unless they are based on a economic highest and best use. The so

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called "public interest value" is not a value related to market value and should not be used in appraisals by Reclamation.

(1) **Additional Appraisals.** Consideration may be given to obtaining a second appraisal. Factors affecting consideration include: weakness in Reclamation appraisals discovered during negotiations; evidence of legitimate differences of opinion of value discovered during negotiations; need for having certified appraisers to serve as trial witnesses; changes in the market conditions that may result in more current sales; and similar factors affecting the potential ability of the United States to defend its opinion of fair market value.

(2) **Additional Offers.** If the objective reexamination of the case warrants the procurement of a second appraisal, the final offer should advise that if the final offer is rejected a condemnation action will be filed with the Federal District Court. (This is necessary even if a second appraisal is not obtained.) The letter should advise that within 90 days the action will be filed and only the amount of the agency's approved appraisal (not the amount offered as a negotiated settlement) will be deposited with the Court.

B. **Letter Initiating Condemnation.** After a final purchase acquisition offer from Reclamation is rejected, condemnation may be initiated by a letter from Reclamation's responsible office to the appropriate Solicitor's Office. In requesting a condemnation it should be borne in mind that a minimum of 6 weeks after the request is received by Solicitor's Office, and sometimes longer, may be required to complete the necessary action by Interior and DOJ.

C. **Preparation of Condemnation File Materials.** The proposed transmittal letter from the Regional Director or designated area office to the appropriate Solicitor's Office. Copies of requests for condemnation will be sent to the Chief Realty Officer for information and review.

(1) **Requirements.** Requirements listed in paragraph 8C(2)(b) below, may be modified by the Solicitor's Office and/or by DOJ. Also, during trial proceedings, supplemental transmittals may be required in certain condemnation actions which may not be referred to in the regular letter to the Attorney General and which may not be filed with the court as part of the Complaint and Declaration of Taking.

(2) **Items Transmitted to the Solicitor's Office.** The following items would normally comprise the condemnation assembly being transmitted to the Solicitor's Office.

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- (a) Transmittal memorandum from the Regional Director, designee, or designated area office to the appropriate Solicitor's Office. The transmittal letter should include:
- ! Request for filing the condemnation action (complaint).
  - ! Request for immediate possession if desired (declaration of taking).
  - ! Identification of project, owners, tract number, etc.
  - ! Description of the estate to be taken.
  - ! A plat map.
  - ! Detailed reasons for the condemnation, including the project purpose to be served by the taking and the use(s) Reclamation will make of the land.
  - ! Citation of the general and specific legislative authority authorizing the legal action to be taken (which would include the current appropriation act).
  - ! Citation of the fund from which award of judgment is to be made.
  - ! Statement regarding the basis for the estimate of just compensation and a statement of any damages to the remainder of a partial taking acquisition.
  - ! Statement concerning issuance of the voucher or electronic transfer of funds.
  - ! Statement concerning compliance with the NEPA.
  - ! Statement concerning compliance with the National Historic Preservation Act.
  - ! Statement concerning compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Public Law 91-646), as amended.
  - ! Request for action by the appropriate United States Attorney.
  - ! List of the enclosures.

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- ! Include in all requests to institute any new condemnation proceedings involving the acquisition of lands in a single case valued at more than \$500,000: the total area of lands within the project; the date upon which the first lands for the project were required; the portion of the project land acquired to date; (optionally) the estimated cost of lands for the project; and any other information requested, such as the legislative history of the project.
  
- ! If required by the Solicitor's Office, a statement to the effect that any pre-acquisition conditions imposed by authorizing acts or other acts have been met.
  
- (b) The proposed Complaint in Condemnation, Declaration of Taking, affidavit of the Regional Director or designee, causing funds to be ordered for deposit in the District Court, and Solicitor's letter to the Attorney General's Office should be prepared by the Solicitor's Office or, if requested, prepared by Reclamation for the Solicitor's Office.
  
- (c) The following information should be included in the letter to the Attorney General if the letter is to be prepared by Reclamation for the Solicitor's Office.
  - ! Determination of the need for judicial proceedings.
  - ! Name of the project.
  - ! Name of purported owner (if more than one owner, use lead name, and et al. or et ux.).
  - ! The estate to be taken, with added comment that it is more particularly set forth and described on schedules A, B, and C enclosed.
  - ! Citations of the general and specific legislative authority authorizing the legal action to be taken (which includes the current appropriation act).
  - ! Citation of the fund from which the award of judgment is to be made.
  - ! Statement as to why it is necessary to initiate condemnation proceedings.
  - ! Recommendation that the appropriate United States Attorney be authorized to file suit.

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- ! Names and addresses of those persons in the field who will furnish the necessary information and assistance to the United States Attorney.
  - ! Statement that all correspondence regarding the case should be addressed to the appropriate Solicitor.
- (d) Schedules attached to the Declaration of Taking and content of schedules may vary between regions, but usually will include the following:
- ! **Schedule A.** Including authority for the taking, public uses to which the land being acquired will be used, and appropriation for funding
  - ! **Schedule B.** The estate to be taken, narrative legal description, estimated just compensation, and the owners of record and potential holders of outstanding interests
  - ! **Schedule C.** A plat map or maps of the tract(s) to be taken
- (e) The Appraisal Report with all review appraiser's comments attached. At the earliest stage of trial preparation, the Solicitor, the AUSA should be advised of all previous appraisals and copies thereof supplied, including review appraiser memorandums approving or disapproving the appraisals. A landowner's refusal to allow the property to be inspected may be a reason for initiating condemnation proceedings. In this instance, after the condemnation action has been filed, DOJ will move under discovery procedures for an inspection for appraisal purposes or take other appropriate measures to lay a foundation at trial for the fair market value. Subsequent negotiations or acquisition procedures will then be the responsibility of DOJ and the AUSA assigned to handle these condemnations. All of Reclamation's representatives must provide full cooperation to the United States Attorney's Office for such assistance as may be requested.
- (f) Negotiation reports and all relevant correspondence with the landowner. (Note: where negotiations are conducted with a person other than the record title owner, a statement should be submitted showing the person's authority to act on behalf of the owner, together with evidence thereof if requested.) If acceptable to the Solicitor's Office and to the Attorney General's Office, summary statements of negotiations may be used in lieu of this requirement.
- (g) Title Policy, Certificates of Title, Abstracts, or other acceptable title data.

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(h) Preliminary title opinion from the reviewing Solicitor, relevant administrative waivers of title (if any), other pertinent correspondence (for example: a signed and accepted Offer to Sell where one has been obtained and condemnation is for title or other purposes), and/or a statement of efforts made to cure defects. If acceptable to the Solicitor's Office and to the Attorney General's Office, a summary statement may be substituted, with the case file made available after the action is filed.

- D. Cooperation With DOJ.** After a condemnation action is filed, there will be full and complete cooperation between Interior and Justice Department representatives in all phases of the litigation. All available information must be given to DOJ and free and open discussion of the case between representatives of Reclamation, the Office of the Solicitor, and DOJ with the objective of full disclosure to our legal representatives. Our overall interest is to obtain the most favorable settlement or award.
- E. Condemnation Settlement Approvals.** The Regional Director or designee will be the approving authority for Reclamation in the settlement of any parcel in condemnation except where the settlement exceeds the deposit for the settlement amounts and percents shown below. The approval of the Chief Realty Officer will be required for all settlements in excess of the deposit or fair market value, at or above the percents shown:

Appraisal amount	Authorized percent over appraisal
Less than \$100,000	No approval required
\$100,000 to \$500,000	15%
Over \$500,000	10%

- (1) **Submission of Factual Report.** When a Regional Director or designee does not concur with the United States Attorney regarding a proposed settlement, a complete factual report will be submitted to the Chief Realty Officer, through appropriate channels, to provide a basis for discussions as appropriate.
- (2) **Approval by the Chief Realty Officer.** When the Chief Realty Officer's approval is required, it will include the recommendation of the Regional Director or designee with a written explanation, as appropriate, and will fully identify the condemnation action by civil number, judicial district, defendant, tract number, etc., so that additional information can be secured, if necessary. The Regional Director should simultaneously advise the United States Attorney and the Regional Solicitor that a recommendation has been submitted for approval.

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- (3) **Notification of DOJ.** As required, the Solicitor will, on his own initiative or upon receipt of a request from the Attorney General, advise DOJ regarding the proposed settlement. The initiating office will provide copies of the Solicitor's letter to the Attorney General to the Commissioner, the Bureau's Chief Realty Officer, and to the Regional Director or designee.
- F. **Order for Possession.** Deposit of compensation by the Government does not itself entitle the Government to the occupancy of the property. An order giving the United States possession must be secured. In addition, a 90-day notice is required when the acquisition will result in the displacement of any person from a dwelling or in the removal of a business or farm. To ensure prompt possession, the notice should be coordinated with the filing of the Declaration of Taking. The United States Attorney should be furnished this information so that he can request an Order of Possession upon the filing of the Declaration of Taking and the deposit of estimated just compensation with the court. A legal opinion should be obtained as to when and under what circumstances Reclamation may take possession of property being condemned.
- G. **Stipulation for Exclusion.** The Act of October 21, 1942, (56 Stat. 797, 40 U.S.C. 258f), provides that "In any condemnation proceedings instituted by or on behalf of the United States, the Attorney General is authorized to stipulate or agree on behalf of the United States to exclude any property or any part thereof, of any interest therein, that may have been or that may be, included in a Declaration of Taking or otherwise." This provision applies in those cases where:
- ! Through inadvertence or otherwise, title has been taken to some portion of or interest in the property not desired by the acquiring agency or subsequently found not to be needed.
  - ! The defendant may desire to remove from the property certain buildings, trees, crops, or fixtures attached to the realty which are not needed by the Government.
- H. **Crop Damage Payments During Condemnation.** Land owners will be treated alike, no matter whether their lands have been acquired by contract purchase or by condemnation. Accordingly, when rights-of-way, easements, or other interest in real property that are being acquired by condemnation, consideration should be given to including appropriate language in the Declaration of Taking to require payments to former owners for crops destroyed during the construction, reconstruction, operation, or maintenance of any project facilities. If used, the language will be similar to the provisions of a contract or grant of easement used for the same project. An alternative procedure would be to compensate the former owners outside the jurisdiction of the court following normal procedures.

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### 9. Other Acquisition Procedures.

- A. **Donations.** In the construction of any project facilities, such as laterals, drains, roads, or any required land interest for Reclamation program needs, Reclamation may accept donations of interests in real property. However, Reclamation may not be willing to accept a donation in all cases. For example, environmental contamination, might prevent acceptance of a donation. As a minimum an environmental site survey will be completed prior to accepting any donation of real property. (Refer to paragraphs 1D and 6C.)
- (1) **Donation Procedures.** Title evidence requirements of DOJ should be followed, but there may be exceptions to requirements for abstracts of title, policy of title insurance, or other forms of title evidence for some low value acquisitions. Required supporting documentation (estimates of value, encumbrances, use to be made of the property, etc.) and forms of donation deeds or grants of easement should be coordinated with the appropriate Solicitor's Office. Provisions to compensate landowners for severance damages to remainder properties and/or crop damages may be incorporated into the conveyance instruments when deemed advisable by the Regional Director, or so desired by the donor.
- (a) With the written permission of the owner, requirements for appraisal reports may be waived in some instances. The following statement should be used in donation conveyance documents:
- The Grantor hereby releases the United States, its successors and assigns, of all obligations to have an appraisal prepared to determine the amount of just compensation for the rights herein granted and hereby waives all right to just compensation to which the Grantor may be entitled.
- (b) If the donation is made with the agreement to pay damages, if any, the language must be revised accordingly since such payment for damages would be considered compensation, even if not full compensation.
- (c) For some low value easements, the deed conveying interests may be sufficient that requirements for a land purchase contract can be waived.
- (d) Typically, when a donation will be accepted, Reclamation can pay for the costs associated with donation deed preparation, notarization, recordation, and similar expenses.

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- (2) **Legal Approval.** If, in the opinion of the reviewing Solicitor further assurances of title are required, these will be obtained. After approval by the legal staff, donation deeds will be accepted and recorded.
  - (3) **Reconveyance of Donated Land.** Subsection Q of the Act of December 5, 1924, (43 Stat. 704), provides that land which has been donated and conveyed to the United States for project purposes, but is no longer needed for project purposes, may be reconveyed without charge to the donating grantor, or to the heirs, successors, or assigns of such grantor. (See FPMR 101-47.3 and FPMR 114S-47.3.)
- B. **1890 Act "Acquisitions."** Under the Act of August 30, 1890, (26 Stat. 391), the United States has certain rights-of-way reserved for irrigation and other works over lands west of the 100th meridian entered after October 2, 1888. Similar reservations for such purposes have sometimes been made with respect to lands in private ownership through water-right applications, water users' association stock subscription contracts, State legislation, and Section 24 of the Federal Power Act of June 10, 1920, (41 Stat. 1063).
- (1) **Authority for 1890 Act Invocation.** A managing entity (such as a water district) cannot invoke the 1890 Act. Invocation of the rights reserved to the United States pursuant to this act, **must be done by the United States.** The United States cannot pass the 1890 Act authority to a transferee after title transfer of the project is complete, unless such authority is granted by Congress under specific authorizing legislation. The 1890 Act applies to land patents issued after August 30, 1890, even if the patent is silent or does not contain the canals and ditches rights-of-way language.
  - (2) **Payment for Reserved Right-of-Way.** The Act of September 2, 1964, (78 Stat. 808), directs the Secretary of the Interior to pay just compensation for private land utilized under the Act of August 30, 1890, which would include severance damages occasioned by the exercise of such right-of-way. Policies and procedures for appraising and acquiring such lands are generally the same as for lands acquired by other means, except that possession of the right-of-way will be obtained through use of Form 7-263, Right-Of-Way Notice (appendix M). The most supportable effective date for determination of compensation is the date the owner is notified and public notice is recorded (which should ideally be the same day).
  - (3) **Eligibility for Relocation Assistance.** Persons displaced as a result of the exercise of rights reserved under the Act of August 30, 1890, are eligible, if otherwise qualified, for relocation assistance payments and services.

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- C. **Exchanges.** All exchanges of real property, including exchanges of land involving Reclamation facilities, will follow land acquisition procedures. Although exchanges involve the disposal of real estate, only NEPA, the National Historic Preservation Act, and environmental site surveys ("HAZMAT" clearances) are required. Other requirements may also apply, depending on the authority used for the exchange. Other disposal procedures need not be followed, as the conveyance out of the United States ownership is actually part of the consideration for the acquisition of the property involved in the exchange. For example, in real property exchanges there would typically be no need to screen properties for use by the homeless, or to circularize the property being considered for exchange.

In exchanges, particular attention will be paid to:

- ! Title evidence and title opinions to verify ownerships
- ! Appraisal for exchange of like value properties
- ! Relocation assistance, if required

- D. **Exchanges for Relocation of Facilities.** Exchanges of land may be accomplished on a case-by-case basis to achieve land acquisition objectives regarding project-related relocations. Section 14 of the Reclamation Act of August 4, 1939, (53 Stat. 1187; 43 U.S.C. § 389), authorizes the Secretary to utilize certain alternatives to achieve necessary relocations by purchase, condemnation, or exchange. There are two types of facility relocations.

- (1) Relocations that are necessitated by the construction of a Reclamation project which requires the relocation of existing railroads; highways; telephone and telegraph lines; power lines; existing project facilities, etc.; or clearly defined activity (e.g., a farming operation) in the path of the proposed project. These type of relocations require an exchange of land interests should the facility or activity be moved from its present rights-of-way.
- (2) The second type of relocation involves exchanges that are the result of third parties requesting the relocation of Reclamation project facilities to accommodate their needs. This type of exchange must demonstrate a proven project benefit to justify the relocation of project facilities and subsequent land exchange. The following actions are considered a benefit to the project:
  - ! Upgraded replacement of Reclamation facilities
  - ! Extinguishment of nuisance hazards
  - ! Increased safety and reduced potential liability

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- ! Reduced operation and/or maintenance costs
- ! Alleviate disputes over title interest or rights-of-way
- ! Increased facilities protection
- ! Modifications resulting from water delivery requirements
- ! Additional rights-of-way acquired to correct insufficient rights-of-way problems

In this type of relocation, Reclamation should be the recipient of equal or greater land interests and the exchanged lands should be in close proximity to each other. Compliance with the above stated criteria will create a method of exchange that will ensure that the lands Reclamation receives are at least equal in value to those lands being conveyed and, thus, potentially eliminate the need for an appraisal of the properties. Every effort should be made to ensure that Reclamation receives equal or greater land interests. Should it appear that Reclamation's real estate holdings might diminish in value as a direct result of a land exchange, it may be necessary to perform a land appraisal to determine what the other party owes Reclamation in monetary compensation. It is important to note that monetary payment of the difference in land values may be construed as a negotiated land sale, and Reclamation does not have authority to negotiate a land sale if the value of the property for sale exceeds \$15,000. Selling of Reclamation lands valued greater than \$15,000 will require a public auction.

### E. Exchanges Made by BLM for Reclamation.

- (1) **Interagency Agreements.** An Interagency Agreement between Reclamation and BLM provides for BLM to assist Reclamation in the exchange of lands. (A 1983 agreement was re-drafted in 1991, but is not yet final.) The agreements provide that, when Reclamation determines that an exchange of Federal land, either withdrawn or acquired by Reclamation for private land, would be in the best interest of the Federal Government, and Reclamation does not have authority under Section 14 of the Act of August 4, 1939, (43 U.S.C. 389), or other direct authority to make such exchange, BLM will, when requested, effect the exchange through its authorities.
- (2) **Supplemental Agreements.** Supplemental agreements will be entered into between Reclamation and BLM for each exchange with procedures appropriate to the interagency agreement in force at that time. Supplemental agreements would

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preferably be between Reclamation's area office and BLM's district office, although delegations may dictate other organizational levels.

- F. **Exchange of Surplus Real Property.** The Federal Property and Administrative Services Act of 1949 authorizes the exchange of Federal surplus real property for non-Federal real property. Regulations governing such exchanges are included in FPMR 101-47.3, IPMR 114-47.3, and FPMR 114S-47.3.
- G. **Other Exchanges.** The following are specialized types of exchanges.
- (1) **Exchanges or Amendments of Farm Units.** The Act of August 13, 1953, (67 Stat. 566), provides that certain classes of qualified applicants whose lands have been determined, pursuant to a land classification, to be insufficient to support a family may exchange certain unpatented farm units or private lands on a Federal irrigation project for farm units available on the same or any other such project, and the farm units may be amended by the addition of contiguous or noncontiguous land on the same project. Regulations governing such exchanges are published in 43 CFR Part 406.
  - (2). **Exchanges Under the Federal Water Project Recreation Act - Public Law 89-72.** Section 7b of Public Law 89-72 (79 Stat. 216; 16 U.S.C. 601-18) states that Reclamation, through the Secretary of the Interior, is authorized to enter into agreements with Federal agencies or State or local public bodies for the administration of project land and water areas and the operation, maintenance, and replacement of facilities and to transfer project lands or facilities to Federal agencies or State or local public bodies by lease agreement or exchange upon such terms and conditions as will best promote the development and operation of such lands or facilities in the public interest for recreation and fish and wildlife enhancement purposes.
  - (3) **Exchanges Under the National Historic Preservation Act.** Section III of the National Historic Preservation Act (16 U.S.C. 470h-3a) states that, notwithstanding any other provisions of law, any Federal agency may, after consultation with the Advisory Council on Historic Preservation, lease a historic property owned by the agency to any person or organization or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will adequately ensure the preservation of the historic property.
- H. **Acquisition by Transfer.** No specific form exists at present for acquisition by transfer. However, whenever Federal agencies transfer jurisdiction over real property the transfer document typically includes signatures from both the agency releasing the property and

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the agency receiving the property that document the transfer of management responsibility, adjustment in real property inventory records, and adjustment in financial records (six signatures total). Transfers are typically governed by provisions of the Federal Property and Administrative Services Act of 1949, as amended, among other directives and standards. Other specialized legislation may be enacted to provide authority for transfer of Federal lands.

### I. **Acquisition of Possessory Rights in Mining Claims on Public Lands.**

- (a) Where unpatented mining claims on withdrawn lands have been found to be valid, such claims will be appraised and acquired. Where there has been no finding of validity, no payment for such claims can be made. A determination of the validity of the claim must be sought under the terms of the most recent Memorandum of Understanding between BLM and Reclamation before any action can be taken to acquire such claims or claimants interest (including improvements) by negotiation or condemnation. These determinations should be sought promptly, since considerable time may elapse before they are received. Otherwise, construction work may be delayed pending acquisition of the required right-of-way
- (b) Possessory mining claims may be quitclaimed to the United States without such determination as to whether the claim is valid. The United States should disclaim any intention on its part to admit the validity of such claims.

### J. **Native American or Indian Land Acquisition.** 25 CFR Parts 150 through 179 contain the rules, laws, and procedures governing lands held in trust for a tribe or its members. Part 169 covers Rights of Way over Indian Lands. However, appropriate contact must be made with officials of the Bureau of Indian Affairs (BIA) and Tribal Government concerning regulations and procedures to be followed in filing for application, contracting for purchase, and conveyance of the desired real property interests for Reclamation's use. Tribes exercising the rights of Self Determination may have stricter or additional regulations from the referenced Federal standards.

- (1) **Ownership.** There are various types of ownership within the boundaries of any Reservation as described below. There also are fee (tribal or individual ownership) and Government-owned properties. "Government-owned land" means land owned by the United States and under the jurisdiction of the Secretary which was acquired or set aside for the use and benefit of the United States. The "bundle of rights" theory extends to reservation lands, and portions of the bundle, such as mineral rights, may be severed from the surface ownership.

There are two basic categories of trust lands: tribal land and individual owned land (allotted). Trust title is held by the United States, acting through the BIA for

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either a tribe or one or more individual Indians (allotted). Individual Indian landowners are generally referred to as allottees.

“Individual owned land” means land or any interest therein held in trust by the United States for the benefit of one or more individual Indians and land or any interest therein held by individual Indians subject to Federal restriction against alienation or encumbrance.

“Tribal land” means any land or any interest therein, title to which is held by the United States in trust for a tribe or title to which is held by any tribe subject to Federal restrictions against alienation or encumbrance, and includes such land reserved for administrative purposes.

- (2) **Certified Title Status Report.** Records for Trust lands are maintained by the BIA. 25 CFR 150.4 and 150.5 identify the various Land Titles and Records Offices and other Bureau offices with title service responsibility. A Certified Title Status Report (TSR) is the BIA equivalent to an abstract and will be provided upon request. Requests for certified TSRs must be submitted through the local BIA Superintendent's office to appropriate land title and records office. However, informational TSRs are generally available from the local agency BIA Realty office, these are usually sufficient to begin identifying landowners.
- (3) **Terms of Grant.** Under the provisions of 25 CFR Part 169, the Superintendent is authorized, under certain circumstances, to grant rights-of-way for railroads; telephone and telegraph lines; public roads and highways; public sanitary and storm sewer lines, including sewage disposal and treatment plants; water control and use projects, including dams, reservoirs, flowage easements, ditches and canals; oil, gas, and public utility water pipelines, including pumping stations and appurtenant facilities; electric power projects, including generating plants, switch yards, and electric transmission and distribution lines, poles, towers, and appurtenant facilities; and service roads and trails essential to any of the aforesaid facilities; without limitation as to term of years. Rights-of-way for all other purposes must be for a period not to exceed 50 years.
- (4) **Cultural Resource Survey.** Under 43 CFR 7.A, the Office of the Secretary of the Interior (along with others) is charged with the protection of any material remains of human life or activities which are at least 100 years old and which are of archeological interest. Adequate steps must be taken to ensure that the Indian Trust Asset responsibility of the Secretary of the Interior has been met and that all requirements of the Native American Graves and Repatriation Act, the Archeological Resources Protection Act of 1979, National Environmental Policy

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Act, the American Indian Religious Freedom Act, and National Historic Preservation Act are met.

- (5) **Environmental Site Survey.** As with other land interests acquired by Reclamation, an Environmental Site Survey must be conducted on Indian Lands.

### 10. Appurtenant Water Rights Acquisition.

- A. **General.** The term “water rights acquisition” as used in this manual, means acquisition of existing privately-owned water rights, as opposed to obtaining new water rights, or a new water right authorization.

Water rights acquisitions will use appraisal methods to determine fair market value and title abstracts to determine ownerships. Water rights will be acquired and used for beneficial use as soon as feasible to avoid forfeiture or abandonment of the rights under State law.

- (1) **Beneficial Use.** Water rights will be acquired in a manner that will ensure water is used beneficially according to State law. The continued availability of flowing water for Federal purposes (including for the benefit of fish and wildlife) may be determined by State law and differs from project to project.
- (2) **Fee Simple Title.** Fee simple title to appurtenant land, free of encumbrances or restrictions of any unmanageable character, may be acquired in order to obtain water rights and/or water rights priorities.
- (3) **Land Acquisition Policy, Directives and Standards, and Guidance Must be Followed.** When water rights are to be acquired using eminent domain authorities or through the regular land acquisition process, the policy, directives and standards, and guidance for land acquisition must be followed.
- (4) **Special Forms.** Special water rights purchase contract and grant forms for the acquisition of water rights may be used when appropriate and approved by the Solicitor's Office. (Water rights forms, documents, and instruments should be reviewed by the Solicitor's Office for legal sufficiency.)
- (5) **Drawing of Area to be Acquired.** Prior to the acquisition of water rights, a drawing showing the area of the appurtenant water rights to be acquired should be prepared to designate the land, land rights, and water rights being acquired. The area shown should be in sufficient detail that individual tracts and/or ownerships can be identified. Drawings and maps should clearly show points of diversion.

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- (6) **Right to an Appraisal.** All contracts for the purchase or lease of water rights will be based upon an approved appraisal or made in advance of the offer, with the exception that, for an acquisition by donation or for a nominal value, the Grantor may waive the appraisal.
- (7) **Verification of Ownership.** Before a water rights purchase or lease is attempted, ownership will be verified using procedures of the state in which that water right resides. A review of the water right documents should be conducted by qualified Reclamation employees. This is necessary in order to verify to the extent possible, the ownership, priority date, diversion rate, place and nature of use, historic availability, and therefore, the amount of water available for the new use. This information is critical in the determining the value of the water right. Refer to paragraph 10C below for the title process to follow regarding purchase of appurtenant water rights.
- B. **Permanent Acquisition of Appurtenant Water Rights.** Acquisition of permanent appurtenant water rights (water rights that have been applied to property for a beneficial use, and are thus appurtenant to land), will be consistent with the Uniform Relocation Assistance and Land Acquisition Policies Act, as amended; with implementing regulations (49 CFR Part 24); and with DOJ publications.
- C. **Title Evidence and Title Standards.** Title evidence acceptable to the Solicitor will be used to determine ownerships. Requests for title opinions for the purchase of **permanent** appurtenant water rights will be prepared as required by the appropriate Solicitor's Office.
- (1) **Preliminary Water Rights Title Opinions.** Preliminary title opinions for water rights acquisitions will be obtained from the Solicitor's Office. Unless otherwise authorized, all offices will submit requests for preliminary title opinion to the Regional Realty Officer. Preliminary title opinion requests should include the following:
- ! Original and one copy of the purchase contract
  - ! Original of title evidence (commitment, certificate, abstract, or memorandum report)
  - ! Original and one copy of any curative material or other relevant documentation that has been obtained (i.e., copies of all instruments vesting or encumbering the rights to be acquired)

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- (2) **Payment for Water Rights.** Before any payment is made, all title objections described in the Solicitor's preliminary title opinion must have been met.
- (3) **Final Water Rights Title Opinions.** Final title opinions will be obtained from the Solicitor's Office after the acquisition has been consummated and final title evidence obtained. The following will be included in the title assembly submitted for final title opinion:
  - ! Original preliminary title evidence (commitment, certificate, abstract, or memorandum report)
  - ! Original and one copy of the recorded instrument of conveyance
  - ! Original and one copy of the final title evidence (policy, certificate, abstract, or memorandum report)
  - ! Original of each curative document
  - ! Receipt or closing statement executed by the vendor

- D. **Recordation of Water Rights Documents.** Executed water purchase contracts will be recorded and/or notification given to: (1) the county recorders office; and (2) the appropriate State office responsible for adjudication of water rights and assignment of water rights priorities (typically the office of the state engineer).

### 11. Relocation Assistance Benefits Program.

- A. **Legal Authority, Regulatory Requirements, and Policy Guidelines.** Legal authority, regulatory requirements, and policy for relocation assistance are:
  - ! Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970, as amended (Public Law 91-646 or 84 Stat. 1894, and Public Law 100-17 or 101 Stat. 246-256, or 42 U.S.C. 4601).
  - ! 49 CFR Part 24 - Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs; Final Rule and Notice (published in the Federal Register, Thursday, March 2, 1989). (Note that the Departmental Manual references 49 CFR Part 24 as the regulatory authority for Interior agencies.)

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- B. **Program Coverage and Scope.** The cited authorities apply to all programs of Reclamation, including financially assisted programs using funds made available through Reclamation.
- C. **Unique Relocation Assistance Problems.** A more elaborate relocation plan than is specified in the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970, as amended, and 49 CFR Part 24 - Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs may be required in instances where acquisition of real property for a program or project will result in the displacement of a substantial number of persons in an urban area, particularly where low or moderate income persons are involved. Reclamation's Chief Realty Officer will be consulted if special circumstances are involved.
- D. **Claim Forms to be Used.** Claims for reimbursement of expenses incurred by property owners or tenants under the cited authorities may use either the Department of the Interior forms DI 380, 381, and 382 and accompanying schedules.
- E. **Determination of Claims.** Any claims made under the Act, implementing rules and regulations, or this Reclamation Manual will be determined on the basis of the laws, rules, regulations, policies, directives, standards, and guidance in effect when the claims were filed.
- F. **Appeals.** Whenever a decision is rendered by Reclamation on relocation assistance claims, all claimants will be advised in writing of their right to appeal the decision. This notice may be provided in a brochure if appeal rights and procedures are adequately described. Receipt by the claimant of the brochure or other information on rights to appeal must be documented if a relocation assistance claim is denied.

(1) **Procedures.**

- (a) Appeal procedures will be in accordance with the regulations in 49 CFR Part 24. Other procedures relevant to appeals from relocation assistance decisions are outlined in 43 CFR 4.G.
- (b) Responsibility to hear and decide appeals from Bureau of Reclamation relocation assistance decisions is delegated to the following:

Director  
Office of Hearings and Appeals  
Department of the Interior  
4015 Wilson Boulevard, Room 1108  
Arlington VA 22203

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- (2) **Filing Deadlines.** Reclamation's decision (by the Regional Director, Area Manager, or designee) will be final and conclusive, unless the claimant mails a written appeal to the Office of Hearings and Appeals within 60 days of receiving written notification of the determination on the claim, as specified in 49 CFR Part 24. The claimant will provide the Commissioner of Reclamation a copy of the notice of appeal as filed with the Office of Hearings and Appeals. Failure to provide such copy will not invalidate the claimant's appeal.
- (3) **Final Determination.** The decision of the Office of Hearings and Appeals will be final and conclusive.