

Reclamation Manual

Directives and Standards

Relevant Authorities

- I. **United States Constitutional Provisions.** Federal Government real estate policy is defined by Constitutional provisions and by Federal statute and case law. To illustrate, the United States Constitution provides:

"... nor shall private property be taken for public use, without just compensation."
(U.S. Const. Amend. V).

- A. **Regulatory Takings.** "Regulatory takings," the acquisition of real property interests using the police power (with no compensation provided), is being increasingly reviewed by the United States Supreme Court and Courts of other jurisdiction. The Constitutional authority is:

"The Congress shall have power to... provide for the common defense and general welfare of the United States..." (U.S. Const. Art. I)

- B. **Judicial and Legislative Reviews.** Judicial and legislative reviews of these Constitutional provisions and other legal authorities have produced a substantial amount of Federal legislation and judicial decisions (including United States Supreme Court decisions) that define, clarify, and/or supplement general real property acquisition authority, procedure, and rights. For Federal acquisition of real property, much of this clarification is described in the publications of DOJ.

- C. **Supplemental Interpretations.** Within Reclamation, supplemental interpretations can also be provided by Interior solicitor's opinions and by the United States attorneys responsible for Federal real property trial proceedings. However, there is potential for differences in interpretations between Federal jurisdictions, between executive agencies performing real property acquisition functions, and even between Federal and State judicial environments.

II. **Legislative Authorities.**

- A. The Act of August 1, 1888, (25 Stat. 347), 40 U.S.C. Sec. 257.
- B. Rights-of-Ways Reserved to the United States for Canals and Ditches, Act of August 30, 1890, (26 Stat. 391).
- C. The Reclamation Act of 1902 (32 Stat. 388) and Acts amendatory thereof and supplemental thereto.

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- D. Federal Power Act of June 10, 1920, (41 Stat. 1063).
- E. Fact Finders' Act of December 5, 1924, (43 Stat. 704).
- F. Reclamation Project Act of August 4, 1939, Section 14 (53 Stat. 1187).
- G. Federal Property and Administrative Services Act of 1949.
- H. Compensation for Canal Rights-Of-Way, Act of September 2, 1964, (78 Stat. 808).
- I. Federal Water Project Recreation Act, Public Law 89-72 (79 Stat. 231) as amended.
- J. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the Uniform Relocation Act Amendments of 1987 (42 U.S.C. 4601).
- K. Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714).
- L. Fish and Wildlife Coordination Act, Public Law 85-624.
- M. The Reclamation Safety of Dams Act of 1978 (92 Stat. 2471).

(Also note: Appropriation Acts and specific project authorizing legislation may contain acquisition and/or disposal authorities.)

III. Regulations.

- A. 43 CFR Part 8, Joint Policies of the Departments of the Interior and of the Army Relative to Reservoir Project Lands.
- B. 41 CFR 114-50, Cross-references 49 CFR Part 24 and makes Interior bureaus (including Reclamation) subject to 49 CFR Part 24.
- C. 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs; Final Rule and Notice.
- D. Departmental Manual, Pre-Acquisition Environmental Site Assessments (602 DM 2).
- E. 43 CFR Part 2300, Withdrawals, General.
- F. FPMR 101-47.3 (exchanges).

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- G. 43 CFR 4.G (on relocation assistance appeal procedures).
- H. March 9, 1992, Memorandum from the Acting Assistant Attorney General, Environment and Natural Resources Division, Subject: "Federal Land Acquisition," and its enclosures:
 - (1) *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States*, 1970 (The Standards);
 - (2) *A Procedural Guide for the Acquisition of Real Property by Governmental Agencies*, 1972 (The Procedural Guide);
 - (3) Order No. 1 440-70 of the Attorney General, dated October 2, 1970, titled, Regulations of the Attorney General promulgated in accordance with the provisions of Public Law 91-393 approved September 1, 1970, 84 Stat. 835, An Act to Amend Section 355 of the Revised Statutes, as amended, Concerning Approval by the Attorney General of the Title to Lands Acquired for and on Behalf of the United States and for Other Purposes; with two amendments (The Regulations);
 - (4) Introduction to the American Land Title Association U.S. Policy - 9/28/91;
 - (5) ALTA U.S. Policy - 9/28/91; and
 - (6) Department of Justice List of Approved Attorneys, Abstracters and Title Companies, with procedural guidelines.

(Note also the December 16, 1995, memorandum from DOJ extending use of the "old" title insurance policy forms *in Texas only* to December 31, 1996.)

IV. Other Relevant Standards.

- A. *Uniform Appraisal Standards for Federal Land Acquisitions*, Interagency Land Acquisition Conference [under the leadership of DOJ (1992)].
- B. July 2, 1982, Memorandum from the Deputy Associate Solicitor - Division of General Law to the Assistant Secretary - Policy, Budget and Administration (Attention Freedom of Information Act (FOIA) Appeals Officer) (on release of appraisal reports).
- C. Memoranda of understanding (including the "1983" and draft 1991 agreement between the BLM and Reclamation).

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- D. DOJ, Environment and Natural Resources Division, Land Acquisition Section, Interagency Land Acquisition Conference Position Paper on Highest and Best Use, April 18, 1995.
- E. Formal delegations of authority for Reclamation.
- F. Other Reclamation policies, directives, standards, and guidance .