

# Reclamation Manual

## Directives and Standards

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<b>Subject:</b>	Technology Transfer Agreements
<b>Purpose:</b>	To establish Bureau of Reclamation responsibilities and requirements for implementing the Department of the Interior Policies and Procedures for Technology Transfer (761 DM 1), which authorizes Reclamation to participate in research partnerships with the private sector and other non-Federal entities. This Directive and Standard (D&S) establishes and clarifies processes for Reclamation to enter into such joint venture research partnerships. The benefits of this D&S are to facilitate effective partnerships that can leverage shared capabilities and costs, and more effectively develop and move technologies to Reclamation stakeholders, the broader water management community, and the American public. In addition, Reclamation and the non-Federal entity can efficiently and cost-effectively generate user ready solutions that can improve the economic, environmental and social well-being of the United States.
<b>Authority:</b>	The Stevenson Wydler Technology Innovation Act of 1980; The Federal Technology Transfer Act of 1986, as amended (15 U.S.C. § 3701 et seq.); Executive Order 12591, <i>Facilitating Access to Science and Technology</i> ; Department of the Interior, 761 DM 1, <i>Research and Development Technology Transfer Policy and Procedures</i> ( <a href="#">761 DM 1</a> ) Department of the Interior, 207 DM 8, <i>Limited Delegations on Technology Transfer</i> ( <a href="#">207 DM 8</a> )
<b>Approving Official:</b>	Science Advisor, 09-10000
<b>Contact:</b>	Research and Development Office, 08-10000

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### 1. Introduction.

- A. Federal technology transfer legislation authorizes Reclamation to participate in collaborative research partnerships with non-Federal entities.
- B. When Reclamation's capabilities and pursuit of new and improved solutions align with non-Federal entities' interests, Reclamation is authorized to combine its expertise, facilities, and other resources with non-Federal entities to develop new efficient, effective, and user ready solutions.
- C. Reclamation is authorized to protect, manage, and/or license intellectual property developed on its own or in partnership with non-Federal entities, as appropriate.
- D. This D&S provides Reclamation specific implementation of requirements in 761 DM 1, and is structured to be read in tandem with 761 DM 1.

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2. **Applicability.**
  - A. See 761 DM 1, 1.2 for scope applicable to this D&S. In addition, the following applies.
  - B. In accordance with 761 DM 1, 1.2 A, this D&S applies to Reclamation offices and employees engaged in the performance of research, development, engineering, or other technical investigations, including offices whose resources or facilities may be used by others to conduct research, development, engineering, or other scientific and technical investigations. Reclamation offices and employees engaged in such activities can utilize these authorities and use their specific appropriations to fund Reclamation's labor or non-labor contributions to technology transfer agreements but no funds will be provided to the non-Federal partner under the technology transfer agreements. However, technology transfer agreements can only be executed by formally delegated representatives in accordance with Paragraph 6.R.(3) of the Reclamation Manual, [Delegations of Authority](#).
3. **Definitions.** See 761 DM 1, 1.4 for definitions applicable to this D&S. In addition, the following applies:
  - A. **Federal Laboratory.** In accordance with 761 DM 1, 1.4 C., Reclamation and its facilities owned and operated by Reclamation including, but not limited to dams, power plants, reservoirs, canals, and waterways are defined collectively as a Federal laboratory.
  - B. **Intellectual Property.** Intellectual property is the legally recognized right to protect products of the human intellect from unauthorized use by others. Intellectual property is generally comprised of four categories: patent, copyright, trademark and trade secrets.
  - C. **Invention.** An invention is any art or process (way of doing or making things), machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States (U.S.).
  - D. **Patent.** A patent for an invention is the grant of a property right to the inventor, issued by the U.S. Patent and Trademark Office. The right conferred by the patent grant is to exclude others from making, using, offering for sale, selling or importing the invention for a limited period of time.
4. **Responsibilities.** The specific responsibilities assigned to the Heads of Bureaus or Offices by 761 DM 1, 1.7 are re-assigned to the responsible Reclamation Leadership Team Member or Reclamation offices. In addition to 761 DM 1, there are other responsibilities assigned to specific Reclamation offices as appropriate.

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- A. **Commissioner.** The Commissioner is responsible for implementing the technology transfer activities within Reclamation in accordance with 15 U.S.C. § 3710 (761 DM 1, 1.7 B).
- B. **Science Advisor.** The Science Advisor is responsible for:
- (1) developing and implementing technology transfer policies, requirements, and procedures consistent with laws and this D&S (761 DM 1, 1.7 B (2 and 3));
  - (2) negotiating and executing any Cooperative Research and Development Agreements (CRADAs), licenses, and other technology transfer agreements, in consultation with Reclamation's ethics official and the Office of the Solicitor, as appropriate (761 DM 1, 1.7 D);
  - (3) coordinating and submitting annual technology transfer reports as required by 15 U.S.C. § 3710(f) (761 DM 1, 1.7 A (1)); and
  - (4) submitting to the Solicitor through the Associate Solicitor for General Law, any requests to contract with outside legal counsel for legal work associated with technology transfer activities that cannot be supported by the Department's Office of the Solicitor, the Division of General Law in accordance with 456 DM 1 (761 DM 1, 1.7 D (2)).
- C. **Program Manager, Research and Development.** The Program Manager, Research and Development is responsible for:
- (1) cooperating with the Department to prepare reports as required by 15 U.S.C. § 3710(f)(1), and per Office Management and Budget Circular A-11 (761 DM 1, 1.7 B (1));
  - (2) coordinating with members of the Reclamation Leadership Team to ensure that scientists, engineers, and other personnel who may be involved in technology transfer, have education and training in technology transfer, including the management of confidential information (761 DM 1, 1.7 B (5));
  - (3) developing and updating Web sites with links to examples of best practices pertaining to technology transfer, including templates for different technology transfer agreements, and other relevant information, [Technology Transfer Web site](#) (761 DM 1, 1.7 B (6));
  - (4) implementing appropriate outreach activities, including, but not limited to, the professional exchange of information in technical publications, collaborating with local and regional partnerships, and intermediaries affiliated with state and local governments, using consultants and contractors, and using innovative communication technologies (761 DM 1, 1.7 B (8));

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- (5) publicizing open interest announcements for non-Federal partners in the general areas of research that are of interest to Reclamation, as appropriate and with understanding that formal competition is not required for technology transfer agreements under the authorities of this D&S;
- (6) coordinating with Reclamation Leadership Team members to identify and protect sensitive and confidential information (761 DM 1, 1.7 B (9));
- (7) entering into technology transfer agreements with foreign persons, industrial organizations, or other non-government foreign entities, in consultation with the U.S. Trade Representative, and the appropriate International Affairs Office (761 DM 1, 1.6 D);
- (8) providing the functions of the Office of Research and Technology Application (ORTA) as required by 15 U.S.C. § 3710(b);
- (9) developing and maintaining technology transfer guidance on the implementation of this D&S (761 DM 1, 1.7 B(3)); and
- (10) managing license revenues on patents owned or co-owned by Reclamation in accordance with 15 U.S.C. § 3710c and accounting protocols established by the Management Services Office.

**D. Reclamation Leadership Team.** The members of the Reclamation Leadership Team are responsible for:

- (1) giving high priority to and encouraging technology transfer activities, including providing incentives for technology transfer accomplishments (761 DM 1, 1.7 B (7));
- (2) ensuring technology transfer efforts are included, where appropriate, in job descriptions, employee promotion policies, and performance evaluations of scientists, engineers, and other technical personnel (761 DM 1, 1.7 B (4));
- (3) ensuring scientists, engineers, and other personnel who are involved in technology transfer, have education and training in technology transfer, including the management of confidential information (761 DM 1, 1.7 B (5));
- (4) coordinating with the Program Manager, Research and Development, on technology transfer activities conducted or sponsored within their organizations; and
- (5) identifying and protecting sensitive or confidential information (761 DM 1, 1.7 B (9)).

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- E. **Deputy Ethics Counselor.** The Deputy Ethics Counselor is responsible for:
- (1) In accordance with 15 U.S.C. § 3710a(c), reviewing standards of conduct for Reclamation's employees for resolving potential conflicts of interest to make sure that the standards adequately address situations that are likely to arise through the use of the Authority under 15 U.S.C. § 3710a(a) to enter CRADAs and to negotiate licensing agreements. Such review may include, but may not be limited, to cases where current or former employees or their partners negotiate licenses or assignments of titles to inventions or negotiate CRADAs with Federal agencies and or non-Federal entities (761 DM 1, 1.7 F (1)).
  - (2) Providing ethics advice and counsel in response to requests from Reclamation Leadership Team members and Reclamation offices in accordance with Reclamation Manual Policy, *Ethics Program* ([ETH P01](#)) (761 DM 1, 1.7 F (1)).
- F. **Director, Management Services Office.** The Director, Management Services Office will coordinate with the Program Manager, Research and Development Office for establishing accounting procedures on:
- (1) receiving and managing funds provided by non-Federal partners through technology transfer agreements;
  - (2) costs associated with filing, prosecuting, and maintaining patents; and
  - (3) receiving, distributing, and managing license revenues.
- G. **Inventors or Science, Technical, and Engineering Employees.** Inventors, also referred to as science, technical, and engineering employees are responsible for:
- (1) Identifying and facilitating technology transfer opportunities, as appropriate, consistent with mission responsibilities (761 DM 1, 1.7 C).
  - (2) Becoming familiar with the technology transfer process including the management of confidential information through attending authorized technology transfer training, and other means (761 DM 1, 1.7 B 5).
  - (3) Preventing conflict of interest issues and adhering to applicable ethics laws and regulations in accordance with 761 DM 1, 1.6 C and [ETH P01](#).
  - (4) Protecting Reclamation intellectual property, as appropriate, through reporting inventions, confidentiality agreements, material transfer agreements, and CRADAs on a timely basis (761 DM 1, 1.7 B 9).
  - (5) Coordinating with the Reclamation Leadership Team members specific to his or her organization to identify and protect sensitive or confidential information including not disclosing an invention or confidential information in a publication,

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presentation, or other means prior to filing a U.S. patent application at the U.S. Patent and Trademark Office unless authorized to do so. "Publication" includes publishing in scientific journals, trade journals, newspapers articles, abstracts distributed at professional society meetings, interpretive summaries, Internet information, and/or manuscripts distributed upon request (761 DM 1, 1.7 B 9 and Reclamation Manual D&S, *Identifying and Safeguarding FOR OFFICIAL USE ONLY (FOUO) Information* ([SLE 02-01](#)).

- (6) Ensuring all sensitive and confidential information will be protected, marked, and handled in accordance with [SLE 02-01](#). Inventors will ensure the delegated representatives in accordance with Paragraph 6.R.(3) of the Reclamation Manual, *Delegations of Authority*, will sign the confidentiality agreement, if such agreement is part of or amended to a technology transfer agreement. Inventors will understand they are bound by 18 U.S.C. § 1905, Disclosure of Confidential Information Generally, not to disclose confidential information that is disclosed to them in the conduct of their official duties and that the Federal government makes it a crime for any inventors to knowingly disclose the trade secrets of a private party (see Paragraph 5.F.).

### 5. Principles and Requirements.

A. **Technology Transfer Agreements.** See 761 DM 1, 1.6 A, Technology Transfer Agreements.

B. **Principles.** See 761 DM 1, 1.6 B, Principles. In addition, the following applies:

- (1) When Reclamation engages in research that requires partnering with non-Federal entities to accelerate the lab-to-market process, Reclamation shall pursue partnerships with non-Federal entities at the earliest stage of the research process. Having non-Federal entities join Reclamation early in the research process in areas where non-Federal entities play a significant role in developing, manufacturing, and supplying the end product will help speed up the process in generating user ready solutions.
- (2) Where Federal technology transfer legislation provides discretion, Reclamation's Program Manager, Research and Development will exercise that discretion in the manner that will:
  - (a) accelerate the transfer of technologies into usable solutions; and
  - (b) maximize benefits and efficiencies to Reclamation, its customers and stakeholders, the American public, and the national economy on a case by case basis.
- (3) Reclamation's commitment of resources to the agreement and resources/funds received by the non-Federal partner to conduct work under the agreement shall not

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create an expectation or perception of Reclamation endorsing and or purchasing the partner's products and services before, during, or after the term of the agreement.

- (4) Reclamation shall not enter into agreements if it is envisioned that the agreement will facilitate climate change maladaptation, as defined in Reclamation Manual Policy, *Climate Change Adaptation* ([CMP P16](#)).
- C. **Ethics and Conflict of Interest.** See 761 DM 1, 1.6 C, Ethics Conflict of Interest and [ETH P01](#).
- D. **Technology Transfer Agreements with Foreign Entities.** See 761 DM 1, 1.7 D, Technology Transfer Agreements with Foreign Entities. In addition, the following applies:
- (1) Reclamation will enter into technology transfer agreements with foreign entities in accordance with Executive Order 12591, Section 4.
  - (2) Reclamation will only consider a technology transfer agreement or license with a foreign entity if it is unable, after reasonable efforts, to locate an interested or suitable U.S. entity for the specific technology.
- E. **Exchange of Resources and Funds under Technology Transfer Agreements.** See 761 DM 1, 1.6 E, Exchange of Resources and Funds under Technology Transfer Agreements.
- F. **Management of Confidential Information.** See 761 DM 1, 1.6 I, Management of Confidential Information.
- (1) **Safeguarding Sensitive or Confidential Information.** All sensitive and confidential information will be protected, marked, and handled in accordance with [SLE 02-01](#).
  - (2) **Exchanging Sensitive or Confidential Information with a Non-Federal Entity.** If confidential information is received, transferred, or exchanged outside of Reclamation, Reclamation employees shall limit the exchange of confidential information to that which is necessary to fulfill the scope of the technology transfer agreement and shall be mutually agreed by both parties prior to exchange of such information.
    - (a) All information exchanges will be consistent with applicable statutes and regulations.
    - (b) Reclamation employees will exchange confidential information on a need-to-know basis for that which is necessary to fulfill the scope of the technology transfer agreement. Such information and any reasonable safeguards required to protect the information shall be mutually agreed to by both parties in the

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technology transfer agreement, or by confidentiality agreement or a non-disclosure agreement amended to the technology transfer agreement prior to exchange of such information. A confidentiality agreement will be used to protect and prevent confidential information from public disclosure.

Agreements will not exceed statutory Federal trade secret protection which the Federal government makes it a crime for any Federal employee to knowingly disclose the trade secrets of a private party (18 U.S.C. § 1905, Disclosure of Confidential Information Generally).

- (3) **Exchanging Confidential Information within the Federal Government.** Sharing Federal government confidential information within Reclamation or the Federal government is not considered public disclosure and therefore does not require a confidentiality agreement. However, Reclamation employees shall disclose such information only on a need-to-know basis. Reclamation employees shall inform other Federal government employees receiving the confidential information to not disclose such information to other parties.
- (4) **Reclamation Signature Authority for Confidentiality Agreements.** If a confidentiality agreement is part of or amended to a technology transfer agreement, the delegated representatives in accordance with Paragraph 6.R.(3) of the Reclamation Manual, [\*Delegations of Authority\*](#), will sign the confidentiality agreement.

G. **Licensing of Intellectual Property.** See 761 DM 1, 1.6 J, Licensing of Intellectual Property. In addition, the following applies:

- (1) **Government Rights to a Subject Invention.** See 761 DM 1. 1.6 F to H. In addition, the following applies for subject inventions made under a CRADA. Reclamation shall ensure that the non-Federal partner has the option to choose an exclusive license consistent with the requirements of 15 U.S.C. § 3710a, Cooperative Research and Development Agreements. The public posting or Federal Register notice does not apply to such exclusive licenses consistent with the requirements of 35 U.S.C. § 209(e).
- (2) **Patent Decision Criteria.** Reclamation will consider pursuing patent protection for Reclamation owned or jointly owned inventions when there is substantial evidence that U.S. non-Federal entities will be interested in licensing the invention and that the patent-license approach is the most effective method to get Reclamation inventions commercialized. As such, the Program Manager, Research and Development, will use the following principles when evaluating if patent protection should be pursued:
  - (a) A commercial manufactured product is the optimal solution to meet Reclamation's needs, and the needs of other non-Federal users.



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- (b) U.S. non-Federal entity will need access to protected intellectual property in order to manage its financial risks associated with the front-end investments it would be required to make. Front-end investments required by U.S. non-Federal entity could include the costs to obtain regulatory approvals, mature the invention, and/or otherwise transform the invention into a manufactured, market-ready product.
- (c) The size of the potential market for the solution is large enough to attract potential license(s).
- (d) The non-Federal partner will commit substantial resources to support patent protection for subject inventions.

**H. Distribution of License Income.** See 761 DM 1, 1.6 K, Distribution of License Income. In addition, the following applies:

- (1) License income will be managed by the Program Manager, Research and Development, and expended for activities authorized by 15 U.S.C. § 3710c, Distribution of Royalties Received by Federal agencies, that best meet the research and technology transfer needs and priorities of Reclamation.
- (2) Reclamation employee(s) that are listed as inventor(s) shall receive the first \$2,000 and thereafter 30 percent of the royalties or other payments received each year that the license is active; provided that the employee(s) have assigned their rights to the U.S. Federal government.

**6. Authorities Not Affected by this D&S.**

- A. This D&S does not apply to procurement contracts, grants, or cooperative agreements that are governed by 31 U.S.C. §§ 6303, 6304, and 6305.
- B. This D&S does not apply to agreements authorized by the Sundry Civil Expenses Appropriations Act for 1922 (Pub. L. 66-389; 41 Stat. 1316; 43 U.S.C. § 395), also referred to as the Contributed Funds Act.

## RECLAMATION MANUAL TRANSMITTAL SHEET

Effective Date: \_\_\_\_\_

Release No. \_\_\_\_\_

Ensure all employees needing this information are provided a copy of this release.

### Reclamation Manual Release Number and Subject

### Summary of Changes

NOTE: This Reclamation Manual release applies to all Reclamation employees. When an exclusive bargaining unit exists, changes to this release may be subject to the provisions of collective bargaining agreements.

### Filing instructions

Remove Sheets

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All Reclamation Manual releases are available at <http://www.usbr.gov/recman/>

Filed by: \_\_\_\_\_

Date: \_\_\_\_\_