

# Land Acquisition Guidelines

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# Land Acquisition Guidelines

## 1. Introduction.

The Bureau of Reclamation is providing the Land Acquisition Guidelines (guidelines) to help regions and area offices implement land acquisition (acquisition) programs appropriate to their projects and resources.

Chapter 6 contains *discretionary* guidance for acquisition methods and procedures. *Mandatory* direction is provided by Reclamation Manual (RM) Directives and Standards (D&S), *Land Acquisition*, LND 06-01.

In addition to providing discretionary guidance, this chapter may reference LND 06-01 and other sources of mandatory direction, such as the Department of the Interior and Bureau of Reclamation Manuals and the Department of Justice (DOJ) Title Standards. The reader should understand that the referenced documents or legal citations (not the guidelines) provide requirements under properly delegated authorities. In general, Chapter 6 provides suggested procedures and processes that satisfy requirements contained in LND 06-01.

Documentation of the acquisition process is vitally important due to the changing composition of Reclamation's realty workforce, and the fact that lands transactions impact the long term operations and management of projects. In addition some transactions become the subject of court cases and documentation of activities can become a vital part of a condemnation action or other cases.

The guidance provided herein and the appendices should be considered as reference materials for LND 06-01. Following the requirements provided by LND 06-01 and the guidance in this chapter will result in acquisition programs that are consistent throughout Reclamation.

## 2. Definitions and Acronyms.

Several of the following definitions (noted by asterisks) are contained in LND 06-01. They are reproduced here for convenience. Also, definitions used solely in these guidelines have been added to those reproduced from LND 06-01. Some acronyms are included, too.

- A. **Acquisition\***. Acquisition means the procurement of land or an interest in land, which may include improvements or appurtenances, by Reclamation from a non-Federal entity by purchase, donation, exchange, or condemnation. Acquisition does not include purchase or lease of real property by another Federal agency, such as the General Services Administration.
- B. **AUSA**. Assistant United States Attorney.

- C. **Condemnation\***. Condemnation is the procedure for exercising the right of eminent domain.
- D. **DOJ**. Department of Justice.
- E. **DT**. Declaration of Taking.
- F. **Eminent domain\***. With consideration for just compensation, eminent domain is the inherent power of the sovereign to take private property for a public purpose.
- G. **LND 05-01**. LND 05-01 is the short reference to one of Reclamation's Directives and Standards. The full citation is Reclamation Manual Directives and Standards, *Real Property Appraisal*, LND 05-01.
- H. **LND 06-01**. LND 06-01 is the short reference to one of Reclamation's Directives and Standards. The full citation is Reclamation Manual Directives and Standards, *Land Acquisition*, LND 06-01.
- I. **Major acquisition\***. An acquisition involving land or interests in land which is determined to be a "major acquisition" in consultation with the RRO because of the complexity or resources needed to complete the acquisition.
- J. **Mineral interest subordination**. Mineral interest subordination is the act or process by which the mineral estates are ranked below the rights of the surface owners or others.
- K. **NEPA**. National Environmental Policy Act of 1969 (Pub. L. 91-190; 83 Stat. 852; 42 U.S.C. 4321), as amended.
- L. **NHPA**. National Historic Preservation Act of 1966 (Pub. L. 89-665; 80 Stat. 915; 16 U.S.C. 470), as amended.
- M. **Office of Valuation Services (OVS)\***. The office within the Department of the Interior that provides appraisal services to Department bureaus.
- N. **Regulations**. Regulations promulgated by the DOJ's Attorney General concerning approval of title to land acquired for and on behalf of the United States. (See Appendix D.)
- O. **RRO**. Regional Realty Officer.
- P. **Secretary**. The Secretary of the Interior, the head of the Department of the Interior.
- Q. **Solicitor**. This refers to any of the offices of the Department of the Interior, Office of the Solicitor, including those at the Department, regional, or field office level responsible for rendering title opinions, providing legal advice to the agency on realty matters, and initiating condemnation actions through DOJ.

- R. **Title Standards.** The Department of Justice Title Standards.
- S. **Uniform Act.** The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646; 84 Stat. 1894; 42 U.S.C. 4601), as amended.
- T. **Water rights.** The term “water rights,” as used in LND 06-01 and these guidelines, means existing rights to use water, either privately-owned, or held by governmental or quasi-governmental entities. In these guidelines, "water rights" does not refer to prospective water rights not recognized or authorized by the appropriate state or other governmental entity.

### 3. Land Acquisition Project Planning.

The purpose of land acquisition planning is to identify key issues, and identify availability of adequate staffing and funding, to ensure effective management and timely completion of the acquisition program. The acquisition plan should also conform to specific authorizing legislation, regulations, court rulings, and LND 06-01.<sup>1</sup> (See Appendix A for the requirements of the “Joint Policies of the Departments of the Interior and of the Army Relative to Reservoir Project Lands,” (43 CFR part 8).) While a formal acquisition plan is not required for simple acquisitions, offices are encouraged to develop some manner of an informal plan to provide continuity and clarity of purpose as even simple acquisitions can take many months to complete and staff changes can occur in the interim.

- A. **Development of Land Acquisition Plan.** The land acquisition plan can take various forms depending on the needs of the situation. For instance, acquisition of a few small parcels would require minimal planning effort and documentation. Acquisition of several hundred separate interests in land as part of a large project would require significantly more planning and coordination with project managers to ensure properties are acquired when and where needed. The following are suggestions for completing the land acquisition plan.

The land acquisition plan should:

- (1) identify the project, the authority to acquire property interests, any restrictions on authority, the internal cost coding process, and the responsible office and official (if condemnation is precluded, the plan should so state);
- (2) identify personnel authorized to negotiate on behalf of the United States (see Paragraph 4.B.(7) of LND 06-01);
- (3) identify parcels to be acquired within the scope, or “footprint” of the project, and the anticipated method of acquisition, such as withdrawal, exchange, or interagency agreement;

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<sup>1</sup> Under Section 4.B.(4) of LND 06-01, the Regional Realty Officer must review and approve acquisition plans.

- (4) identify the interests to be acquired for each parcel, including any mineral rights, water rights, airspace, viewshed, or other interests, and provide estimates of cost and acreages to be acquired;
- (5) identify the general order of acquisition, and funding requirements and availability, in consultation with the project manager;
- (6) provide a draft schedule for the commencement and completion of NEPA and NHPA compliance, cultural resource review,<sup>2</sup> environmental site assessments, surveys, contract preparation, title evidence, appraisals or waiver valuations, the Department's Solicitor review, negotiations, court filings, development of a relocation plan if the relocation of persons or property is required, and other key steps in the acquisition process (see flow chart in Appendix B);
- (7) identify staff resources available and needed, roles for contract consultants, and other specifics on staffing and contract services;
- (8) provide specific internal guidance for processing and recording realty documents and responsibilities for reconciling realty documents with financial journal entries and entering data in the automated land inventory;
- (9) outline internal communication and coordination processes among the land acquisition staff, engineers, project manager, budget staff, environmental staff, consultants, and others with roles in the overall project;
- (10) identify the appropriate level of public involvement; and
- (11) identify relocation assistance that may be required, and develop a relocation plan as needed.

## **B. Landowner Relations.**

- (1) It is vital that Reclamation establish a fair, open, and equitable land acquisition program that emphasizes negotiating satisfactory agreements with the landowners. A proactive and effective communication program is essential to reduce landowner conflicts. Prior to the initial contact for acquisition negotiations, affected landowners may already have gained some knowledge of the project and the potential need for their property from the project planning and environmental review processes. Reclamation should make a reasonable effort to inform owners and occupants in the project area as to the scope of the project and the probable timeframes associated with the project. This will normally occur within 6 months after Congress has authorized and funded a completely new project requiring significant land acquisition. Publications, public meetings, or personal contacts may be used to accomplish this as deemed appropriate for the situation. See Reclamation's 2001 *Public Involvement*

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<sup>2</sup> See RM D&S, *Cultural Resource Management (CRM)*, LND 02-01.

*Manual*, published by the Technical Service Center for guidance in conducting public meetings.

- (2) Reclamation should consult the Uniform Act<sup>3</sup> and 49 CFR part 24 (the Uniform Act's implementing regulations) for guidance in advising owners and occupants of property required for project purposes of the anticipated acquisition schedule, applicable policies, procedures, landowner and occupant rights, and other pertinent matters. Personal contacts are encouraged at the earliest stages of a project in order to establish good working relations with owners as part of the negotiation process.
- (3) Non-realty staff (e.g. engineers, construction, environmental staff, surveyors, etc.) who might contact landowners are cautioned to coordinate with appropriate realty staff on the scope of acceptable discussions. Results of such discussions may inadvertently create unrealistic landowner expectations and impact negotiations and contract terms. Under Paragraph 4.B.(7) of LND 06-01, generally only trained realty staff has the authority to negotiate landowner contracts.

### C. **Records and Reports.**

- (1) **Realty and Finance Coordination.** Prior to the initiation of any land acquisition process, the RRO should establish communications with the responsible finance officer to ensure real estate actions, documents, and financial journal entries are consistent with established land and finance reconciliation procedures. Identification of appropriate finance ledger codes early in the acquisition process, e.g. hard costs, soft costs, reimbursable expenses, etc., will facilitate records reconciliation for annual financial statements, project close outs, repayment close outs, etc.
- (2) **Land Records.** See RM D&S, *Real Property Management Records*, LND 09-01, for requirements concerning Land Records. Under LND 09-01, a record of all interests in land under Reclamation's jurisdiction, regardless of acquisition method, must be entered and maintained in the appropriate automated land inventory, and reconciled in the project financial records.

For projects located near or within existing projects, due diligence is necessary to ensure that interests in land acquired are recorded for the correct project.

- (3) **Acquisition Summary Records.**
  - (a) For larger projects, it is recommended to establish acquisition summaries. When linear projects are divided into segments or reaches, summaries should be organized accordingly for convenience and manageability. If maintained, they provide an immediate status of acquisitions. After closure of the project, they provide a valuable, informal record to augment official records if it is necessary to research acquisitions or provide audit information.

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<sup>3</sup> The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (See Section 2, Definitions and Acronyms.)

- (b) Acquisition summaries generally include the landowner data, contract or control number, legal description, purchase price, appraisal request date, appraisal date and appraised value, actual payment amount, date of acquisition, dates of title opinion requests and approvals, payment date, and any notes that realty staff consider pertinent.
- (4) **Land Costs and Non-Land Expenses.** In the negotiation, appraisal, and record-keeping processes, it is important to clearly differentiate and document specific costs for:
  - (a) land and interests in land;
  - (b) personal property;
  - (c) improvements; and
  - (d) payments for items such as damage to crops.
- (5) **Annual Uniform Relocation Assistance and Real Property Acquisition Report.** At a minimum, sufficient real property and relocation assistance records should be kept (see Appendix C) and completed annually, as specified in 49 CFR part 24. This is in addition to reporting and reconciliation of records required for compliance with the Chief Financial Officers Act of 1990, referred to as the CFO Act, to adjust lands included in annual asset reporting or other required reports.

#### 4. Determination of Program Needs.

- A. **Time Requirements for Land Acquisitions.** The minimum lead time, prior to construction activities, needed to plan, schedule, and implement a land acquisition program for significant projects is dependent upon variable factors. Such factors may include the need for appraisals, the number of parcels, level and skill of staff, willingness of seller, etc. Consultation and coordination with regional office realty staff is recommended as early as possible to ensure that sufficient real property interests are acquired prior to the start of construction so as to not constrain timelines.

Land acquisition activities will influence the time frame. It will be necessary to comply with NHPA and NEPA requirements, conduct environmental site assessments, secure necessary rights-of-entry, and obtain title clearance from the Solicitor. Valuation of the interests to be acquired may be derived from an appraisal or waiver valuation, which has different requirements.<sup>4</sup> If displaced persons or businesses will be relocated, the time frame may need to be extended to develop a relocation assistance plan and identify replacement housing. Condemnation proceedings may also delay the acquisition process and impact construction activities depending on the timing and date of taking. If a construction contract

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<sup>4</sup> See LND 05-01.

or other contract is to be awarded, all these activities should be accomplished before contract award.

**B. Minimum Requirements for Issuance of Construction Specifications.** The specifications for a construction contract may be ready for issue before acquisition of all required interests in land and/or before relocation activity, such as obtaining replacement housing is complete. The specifications can still be issued to prospective bidders but they should contain the following information:

- (1) identification of the parcels which have been acquired;
- (2) identification of the parcels not yet acquired;
- (3) the approximate date when acquisition will be completed;
- (4) the availability of relocation properties, as applicable; and
- (5) a notice to prospective bidders that construction shall not commence until property rights are secured.

**C. Identification of Interests in Land That May Need to be Acquired.** Once the land is identified and project needs established, the appropriate interest to be acquired in the lands may be established. In some cases the original interest to be acquired may change as project needs are modified, new needs identified, or when acquisition of a partial interest will leave an uneconomic remnant to the owner.

- (1) **Acquisition Criteria.** Reclamation acquisition of land or interests in land must be consistent with 43 CFR part 8 and specific program requirements. In addition, Reclamation should ensure that acquired land or interests in land will, to the extent appropriate:
  - (a) be available to the public;
  - (b) provide appropriate public access;
  - (c) enhance recreation;
  - (d) promote fish and wildlife habitat;
  - (e) provide fishing access; and
  - (f) facilitate and encourage optimum use and utilization of all land or interests in land acquired.
- (2) **Fee Title.** Fee title in the land should, in most cases, be acquired for:



- (a) All permanent structures including, but not limited to: dams, reservoirs, electrical substations, and power plants.
  - (b) Rights-of-way for main conveyance facilities (fee title rather than by easement). Lesser estates may be acquired if administratively determined to be in the best interest of the United States.
  - (c) Those lands which lie below the maximum flowage line of the reservoir including lands below a selected freeboard where necessary to safeguard against the effects of saturation, wave action, and bank erosion.
  - (d) Lands, and appurtenant buildings, structures, or other improvements needed for the operation and maintenance of the project.
  - (e) Lands needed to meet present and future requirements for fish and wildlife under the Fish and Wildlife Coordination Act (Pub. L. 73-121; 48 Stat. 401; 16 U.S.C. 661), as amended.
  - (f) Lands needed to meet present and future public requirements for outdoor recreation.
  - (g) Uneconomic remainder of partial acquisition properties, when the landowner concurs. For example, major conveyance facilities will likely leave little or no remaining value to the fee owner, and the remaining interest is subject to becoming an uneconomic remainder. Under the Uniform Relocation Act such interest may still require an acquisition in fee.
- (3) **Less Than Fee Title.** An interest in land (less than fee title) may be acquired unless the acquisition is in conflict with 43 CFR Part 8, 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 basin. Consideration should be given to impacts resulting in potential loss of future public uses and long term management complications associated with these areas.

Easements should typically be acquired for the location of laterals, drains, utilities (such as transmission lines, telephone lines, etc.), and roads, unless the RRO determines that it is more practicable or economical to acquire fee title for a particular facility (such as highways or major aqueducts), or otherwise determined to be in the best interest of the United States.

- (4) **Buildings and Structures.** All buildings, structures, or other improvements located on land which will be adversely affected by the project should be acquired and removed, relocated, or 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, should be apportioned between the landowner and the tenant.

- (5) **Flood and High Flow Operations Considerations.** The following items should be considered during the planning stage when the land or interests in land to be acquired for a proposed project may be impacted by flood and/or operational high flow activities:

(a) **Upstream of existing or proposed impoundment structures.**

- (i) Lands from the reservoir bottom to the top of the impoundment structure, or those lands that would be inundated if filled to the projected design capacity, whichever is greater (as nearly as can be determined), should be acquired in fee. The associated mineral rights should be acquired or subordinated, as necessary.
- (ii) On lands between the 100- and 500-year flood levels (as nearly as can be determined), flood easements may be acquired by restricting or prohibiting human habitation, as appropriate. No mineral subordination or acquisition need be undertaken unless the location or topography dictates such a need (Refer to Section 6.F. of this chapter) While other types of land use generally should be allowed to continue after the acquisition of flood easements, the flood easements should include appropriate “hold harmless” language to minimize potential tort claims that may arise.
- (iii) Generally, lands above the 500-year flood level should not have any interest acquired for flood operation purposes.
- (iv) Consistent with established practice, acquisition of land for reservoir inundation normally includes acquisition of a setback, such as 300 feet from the design high water mark of the reservoir pool to provide for operational needs and public safety. However such a setback should also consider other factors such as blocking out, as addressed in 43 CFR part 8, or geologic issues, such as landslide prone areas, or areas subject to significant erosion.

(b) **Downstream of existing or proposed impoundment structures.**

- (i) Unless specifically identified during the project planning process, or directed by the Commissioner, courts, or legislation, there should generally be no downstream acquisitions to accommodate flood operations criteria.
- (ii) The need to acquire downstream interests in land should be reassessed whenever an existing project impoundment structure’s operating

procedures are changed and operational high flow release capacities are increased, even though the flood release levels may not change.

- (iii) When an existing project impoundment structure's operating procedures are changed and high flow release capacities are decreased, previously acquired downstream flood easements should not be relinquished without an adequate administrative determination and recovery of any capital investment where appropriate.

- (6) **Designation of Lands.** Designation of land or interests in land being considered for acquisition may be established through the use of boundaries outlining the project footprint. These boundaries may be established through Reclamation's planning process, legislation, or court order. For example, boundary lines may delineate a location with different elevations both upstream and downstream associated with developing a new reservoir or raising an existing impoundment structure; or the lines may delineate agricultural lands with poor drainage associated with a land retirement program. Any maps, tables, or plans that are distributed identifying areas of acquisition interest should be labeled "Preliminary - Subject to Revision" when appropriate.

- D. **Acquisition with Subordination of Mineral Rights.** Under 43 CFR section 8.5, mineral and oil and gas rights will not be acquired except where one or more of the following apply: development thereof would interfere with project purposes; acquisition of mineral rights would prevent undesirable split estate issues; or, mineral acquisition would not result in significant additional acquisition costs. Mineral rights not acquired should be subordinated to the rights of the United States to regulate their development in a manner that will not interfere with the primary purposes of the project, including public access. (See Section 6.F. of this chapter for additional information on mineral subordination.)

## 5. Ownership and Title Determinations.

Under 40 U.S.C. 3111(a), "[p]ublic money may not be expended to purchase land or any interest in land unless the Attorney General gives prior written approval of the sufficiency of the title to the land for the purpose for which the Federal Government is acquiring the property." This means that, under the cited statute, before acquiring any land or land interest, a title opinion must be obtained. Limited authority to render these opinions has been delegated to the Solicitor, subject to Order No. 440-70 of the Attorney General, dated October 2, 1970, entitled "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" (the Regulations).<sup>5</sup>

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<sup>5</sup> See Appendix D.

- A. **Title Evidence, Department of Justice Title Standards.** The Title Standards may be obtained from realty specialists in the regional offices, or at the current DOJ website. Any exceptions to the Title Standards should be requested by the Solicitor and granted by DOJ in writing. The Title Standards contain mandatory and discretionary guidance on various aspects of the title process, including:
- (1) who is responsible for furnishing evidence of title;
  - (2) what types of title evidence are acceptable;
  - (3) who can prepare title evidence;
  - (4) limitations on the delegation from the Attorney General;
  - (5) abstracts of title;
  - (6) supplemental and supporting title evidence;
  - (7) title insurance policies and certificates of title;
  - (8) final title evidence;
  - (9) title evidence in condemnation cases;
  - (10) deeds to the United States;
  - (11) Special Title Standards for Texas; and
  - (12) various forms.
- B. **Payment for Title Evidence.** Under 40 U.S.C. 3111(c), title evidence for property to be acquired should be paid for by the United States, except where otherwise authorized by law or provided by contract.
- C. **Submission of Title Evidence.** Under the Title Standards, title evidence, including documents listed as exceptions, should be submitted with the acquisition documents when requesting title opinions as required by the Solicitor.
- D. **Exceptions to Title Standards, Guidelines, and Instructions.** The Title Standards allow exceptions to the requirements for title evidence and conveyances to the United States obtained by Reclamation as follows:
- (1) **Maps in Lieu of Plats.** Where the land or interests in land being acquired cannot be described in terms of standard legal subdivisions, a map showing appropriate survey data and the boundaries of the land to be acquired should be included in the title assembly.

- (2) **Deeds.** In rare instances, and only when authorized by the Solicitor, quitclaim deeds or deeds of special warranty may be used when the title is otherwise satisfactory and when it is impracticable to obtain a general warranty deed.
- (3) **Payment of Taxes, Assessments, and Other Liens.**
  - (a) Under the Regulations, "prior to or at the time of acquisition of the title to the property, except as to certain easements," as set out in the Regulations, all liens (i.e.: taxes, assessments, mortgages, deeds of trust, vendor's liens, etc.) against the title must be fully paid and satisfied or adequate provision made therefore. (See Appendix D for more details.)
  - (b) **Exceptions When Acquiring Easements.** The Regulations allow closing easement purchases subject to:
    - (i) The current taxes, if they are not due and payable, without any provision for the payment of those taxes if the purchase price of the easement is not in excess of 50 percent of the reasonable value of the entire contiguous property of the seller (if over this percentage, and the current taxes are not payable, funds should be withheld from the purchase price to pay the current taxes when they are due, in compliance with the Regulations).
    - (ii) Other liens (i.e. mortgages, deeds of trust, vendor's liens, etc.) where the property is not encumbered in excess of 50 percent of its reasonable value and the considerations being paid for the easement do not represent sums in excess of 10 percent of the value of the tract (if over these percentages, these liens should be released or subordinated to the easement being acquired).

Under the above conditions the Title Standards allow for the Solicitor to approve the title subject to the lien prior to acquisition of the title. To request the Solicitor to include such approval as part of the preliminary title opinion, a "Request for Waiver of Liens in Acquisition of Easement by Direct Purchase" form (see Appendix E) may be used to address those qualifying liens.

- (4) **Purchase of Low-Value Easements and Mineral Subordinations.** If an easement or a mineral subordination is being acquired and title is determined by the Solicitor to be free from objections within the limitations set forth in (a), (b), and (c) below, Reclamation may complete the purchase. In reviewing the title data in such cases, the Solicitor may:
  - (a) Accept, in lieu of the requirements of the Title Standards, title evidence satisfactory to the reviewing Solicitor where Reclamation determines the cost of otherwise required title evidence is disproportionate to the purchase price involved in the transaction. (Note that local conditions may vary, depending on the opinions of the Solicitor.)

- (b) Waive the requirement for 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 your Solicitor for detailed information.)
  - (c) Waive the requirement for the elimination of the interests of persons not having full legal rights to the land, owners who are legally incapacitated, or owners who cannot be located.
- (5) **Last Owner Searches.** A last owner search shows the owner under the last deed of record and encumbrances against the title. For such a report, the abstracter or title company assumes no liability and the report is prepared without regard to the period of search. (Refer to the Title Standards for details.) These reports may be accepted as satisfactory title evidence as to the estates identified below:
- (a) Easements to be acquired for a consideration of \$5,000 or less, provided such easements will not be the exclusive access to a property, and provided they are not being acquired with the intention of building or installing significant permanent improvements on them. Significant permanent improvements include paved roads, levees, canals and major pipelines, or power lines.
  - (b) Temporary use or term takings in condemnation proceedings involving the payment of an estimated rental of \$12,000 or less per year.
  - (c) Exercise of 1890 Act reservations and other rights previously reserved to the United States, as no acquisition is taking place.
- (6) **Unpatented Lands on Which Final Certificate is Issued.** Under the Title Standards, when the Bureau of Land Management (BLM) has issued a final certificate for unpatented land, the title processor (e.g., Reclamation) should treat the unpatented property as though patented and apply the general regulations relating to the purchase of real property.
- E. **Preliminary Title Opinion.** The request for a preliminary title opinion (PTO) is the first step in obtaining approval of title from the Solicitor for land or interests in land being acquired by Reclamation. The request for a PTO is submitted to the Solicitor primarily for the purpose of obtaining an opinion as to the validity of the title evidence. In addition, the PTO includes legal review and comment on or approval of the contract(s) proposed for execution between Reclamation and the contract party or parties, and review of other supporting documentation. Under Paragraph 4.B.(5) of LND 06-01, unless otherwise authorized in writing by the RRO, all offices will submit requests for PTOs to the Solicitor through the RRO. (There may be variations between requirements for preliminary and final title opinions depending on your local Solicitor's interpretations. Regional offices should verify preliminary and final title opinion requirements with the appropriate Solicitor.)

To obtain a PTO, unless the responsible Solicitor requests other or additional information, the following information should be submitted to the Solicitor:

- (1) Reference to the statutory authority under which the lands or interests in land are being acquired and other relevant statutory authorities when appropriate.
- (2) 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, together with copies of all instruments listed as exceptions. Under the Title Standards, DOJ requires that all title insurance policies be submitted on approved American Land Title Association forms.
- (3) Adequate legal description together with an attached map showing the exact location of the lands or interests in land being acquired.
- (4) When title evidence consists of an abstract of title, all available information with reference to mortgages or other claims of ownership should 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 should be submitted. Otherwise, proof should accompany the papers showing the owner died intestate and showing the names, ages, and marital status of his/her heirs at law, and whether all debts and estate taxes have been paid and satisfied.
- (5) The taking of title subject to easements, minerals, or other outstanding rights should be accompanied by evidence of an administrative determination approved by the officer responsible for the real estate program stating the exercise of such easements or outstanding rights will not adversely interfere with the United States' proposed use of the property being acquired. Evidence of such administrative determination may consist of any or all of the following:
  - (a) Copy of an official memorandum signed by an authorized officer addressing each exception to title which is to be waived or determined acceptable.
  - (b) Copy of the acquisition 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 exercise of the reserved rights.
  - (c) 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.
- (6) Copies of the acquisition contract executed by the landowner and draft of the proposed deed, if applicable. Also, when available, disclaimers, affidavits, completed 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. When applicable, corporate resolutions authorizing the sale,

conveyance, and authority for an individual to sign documents representing the corporation should be included.

- (7) Copies of (or reference to) required supporting documents such as a completed Environmental Site Assessment, NEPA compliance documents, etc.

F. **Final Title Opinion.** When Reclamation acquires land or interests in land, the request for a final title opinion is the second and last step in obtaining the Solicitor's approval of title.

- (1) **Submission to the Solicitor.** The request for a final title opinion should be submitted to the Solicitor for the purpose of showing the purchase of land or interests in land has been completed and all requirements of the preliminary title opinion have been met, including title insurance showing title vested in the name of the United States.
- (2) **Documents to Submit.** Unless the responsible Solicitor requests additional information, a request to the Solicitor to issue a final title opinion should be accompanied by all of the following:
  - (a) A copy of the executed and recorded deed, grant of easement, or other instrument of conveyance and a copy of the recorded purchase contract, if applicable.
  - (b) The final certificate of title, title insurance policy, or abstract of title continued to a date and time even with or subsequent to the recordation of the conveyance to the United States.
  - (c) An executed Certificate of Inspection and Possession meeting the timeframe, and in the form, set forth in the Title Standards.
  - (d) A copy of the preliminary title opinion package including curative data obtained to meet all title objections.
  - (e) A receipt or copy of a closing statement, executed by the United States and the vendors, showing the distribution of funds.
  - (f) A copy of, or reference to, the completed (or updated) environmental site assessments.

G. **Payment Prior to Final Title Opinion.** Upon assurance that all objections to title have been or will be adequately satisfied, and after approval of the preliminary title opinion by the Solicitor, payment to the contract party(ies) should be made prior to the request for a final title opinion. Each acquisition office should verify requirements with the appropriate Solicitor before making payment prior to receiving a final title opinion.



## 6. Land Acquisition Methods and Authorities.

- A. **Acquisition by Purchase or Condemnation.**<sup>6</sup> Reclamation's basic land acquisition authority is Section 7 of 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 (Secretary) 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."

This authority may be supplemented or limited by legislation for specific projects. For example, an authority enacted to acquire lands and interest in lands only through a willing seller program would exclude the application of condemnation discussed in Section 10 of this chapter. The office responsible for the acquisition of land or interests in land should ascertain what authority they have at the initial planning level and all acquisition staff should be aware of the authority.

- B. **Acquisition by Donation.** Land or interests in land can be acquired by donation; however, donations cannot always be accepted. Reasons for not accepting a donation could include: trespass issues, maintenance and management responsibility not related to project needs, unacceptable liens or encumbrances on title, contamination cleanup costs, or other similar liabilities. Generally procedures and requirements for acquisition by donation are identical to those used for acquisition by purchase, but there are some exceptions which may be applied. (See Section 9.D. of this chapter)
- C. **Acquisition by Exchange.** An exchange transfers title of two separate parcels and should be viewed as a combination acquisition and disposal action. Reclamation may exchange land or interests in land only when circumstances meet the requirements of an existing authority. All exchanges of land should follow applicable land acquisition and disposal procedures. Since the conveyance out of the United States ownership is actually part of the consideration for the acquisition of the property involved, not all disposal requirements apply. There would, for example, be no need to screen properties under Title V of the Stewart B. McKinney Homeless Assistance Act, as amended (42 U.S.C. 11301).

### (1) Exchanges Made by the Bureau of Land Management for Reclamation.

- (a) **Interagency Agreements (IA).** The existing 1982 IA between Reclamation and BLM authorizes BLM to assist Reclamation in the exchange of lands. (See Appendix F.) The IA provides that BLM will, when requested, process exchanges under its authorities when Reclamation does not have authority under Section 14 of the Reclamation Project Act of August 4, 1939 (Pub. L. 76-260; 53 Stat. 1187; 43 U.S.C. 389), as amended, or other direct authority to make such exchange.
- (b) **Supplemental Agreements.** Reclamation and BLM should enter into supplemental agreements for each exchange. Supplemental agreements will

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<sup>6</sup> Refer to Sections 9 and 10 of this chapter for purchase and condemnation procedures.

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

- (2) **Exchange of Acquired Surplus Land.** Upon approval of the appropriate Solicitor, the Federal Property and Administrative Services Act of 1949 (FPASA) (Pub. L. 81-152; 63 Stat.377; 40 U.S.C. 471), as amended, may be used to exchange Federal surplus real property for non-Federal real property. A regulation affecting such exchanges is 41 CFR section 102-75.1095, wherein the Secretary is authorized to dispose of certain properties by means most advantageous to the United States for real property and related personal property with a value of \$50,000 or less.
- (3) **Other Exchanges.** The following are specialized types of exchanges.
  - (a) **Exchanges or Amendments of Farm Units.** The Farm Unit Exchange Act (Pub. L. 83-258; 67 Stat. 566; 43 U.S.C. 451), as amended, provides that qualified applicants, whose lands are determined to be insufficient to support a family under a land classification, may exchange certain unpatented farm units or private lands on a Federal irrigation project for farm units available on the same or any other project. The farm units may be amended by adding contiguous or noncontiguous land on the same project.
  - (b) **Federal Water Project Recreation Act Exchanges.** Section 7b of the Federal Water Project Recreation Act (Pub. L. 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."
  - (c) **Exchanges under the National Historic Preservation Act.** Section III of the NHPA (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."
  - (d) **Exchanges for Relocation of Facilities.** Exchanges of land or interests in land may be accomplished on a case-by-case basis to achieve land acquisition objectives regarding project-related relocations. Section 14 of the Reclamation Project Act of August 4, 1939,<sup>7</sup> authorizes the Secretary to exchange Government properties "in connection with the construction or operation and

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<sup>7</sup> Previously cited in Section 6.C.(1)(a).

maintenance of any project." Reclamation has used its authority under the 1939 Act for the following three types of facility relocations:

- (i) relocation of existing facilities such as railroads, highways, telephone and telegraph lines, power lines, project facilities, etc. to assist construction of a Reclamation project;
- (ii) relocation of existing Reclamation project facilities for project purposes; and
- (iii) relocation of another entity's facilities to benefit both the other entity and Reclamation's project purposes. When the relocation benefits an entity the 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:
  - (aa) upgraded replacement of Reclamation facilities;
  - (bb) correcting insufficient rights-of-way problems;
  - (cc) extinguishing nuisance hazards;
  - (dd) increasing safety and reducing potential liability;
  - (ee) reducing operation and/or maintenance costs;
  - (ff) resolving disputes over title interest or rights-of-way;
  - (gg) increasing facilities protection;
  - (hh) actions resulting in water conservation measures;
  - (ii) modifications resulting from water delivery requirements; or
  - (jj) other actions resulting in a benefit to the general public.

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. Should it appear that Reclamation's real estate holdings might be diminished in value as a direct result of a land exchange, or a consideration was paid for the original land interest, it may be necessary to perform a land appraisal or waiver valuation, to determine the relative values and if another party owes the United States monetary compensation. Should Reclamation need more lands than

originally encumbered, the United States should provide additional compensation, unless the additional interest is donated.

- D. **Acquisition by Transfer.** Under certain conditions, Federal agencies can transfer jurisdiction over land or interests in land to other Federal agencies. Transfers are typically governed by provisions of the FPASA, as amended. 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 land inventory records, and adjustment in financial records. Departmental agencies transfer jurisdiction over land to other Departmental agencies using a property voucher. The General Services Administration must be involved if the proposed transfer involves agencies outside the Department, and the transfer generally requires approval of the Office of Management and Budget (OMB).
- E. **Acquisition of Fish and Wildlife Properties.** Under the authority of the Fish and Wildlife Coordination Act,<sup>8</sup> 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 wildlife resources receive equal consideration with other project objectives. Reclamation should determine the methods by which it will accomplish the required land acquisition without restrictions or limitations on its land acquisition authorities by the FWS.
- F. **Acquisition with Subordination of Mineral Interests.** Mineral rights should be acquired when the location and removal of any mineral has the potential for causing adverse effects on any of the intended or potential uses of the lands acquired, such as dam sites. In lieu of acquisition, mineral interests, including leasehold estates, may be subordinated.
- (1) **Overall Objective.** Reclamation's overall objective in acquisition or subordination of mineral interests is to ensure that:
    - (a) Reclamation has the degree of control over mineral exploration and development necessary to protect project facilities and purposes; and
    - (b) mineral owners are adequately compensated.
  - (2) **When Acquisition with Subordination is Required.** In acquisition with subordination of mineral interests, the requirements of 43 CFR part 8 must be followed. Interference with project purposes, under 43 CFR section 8.5, is interpreted to include impacts on operation and maintenance requirements because of the geology of the area.
  - (3) **Appraisal and Title Documents.** Appraisal and title documents should identify all restrictions on surface occupancy. This will allow valuation estimates to be prepared for any mineral rights that are excluded and/or any special limiting conditions that are imposed. Title documents should show outstanding ownerships to the degree necessary to determine title of mineral rights acquired is vested in the United States

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<sup>8</sup> Previously cited in Section 4.C.(2)(e).

and/or that mineral rights have been subordinated. In condemnation actions, where mineral interests are to be acquired, title documents should identify all owners and potential holders of outstanding interests and included in the parties named. (See Section 10 of this chapter for details on condemnation procedures.)

- G. Acquisition of Possessory Rights in Mining Claims on Public Lands.** Where unpatented mining claims on withdrawn lands within project acquisition boundaries have been found to be valid, such claims should be appraised and acquired. Where there has been no finding of validity, or where such a claim was filed with notice of a Reclamation withdrawal, no payment for such claims should be made. The validity of the claim should be determined under the terms of the IA between BLM and Reclamation (see Appendix F) before such claims or claimant's interests (including improvements) are acquired by negotiation or condemnation. These validity determinations should be sought promptly to minimize delays.

Possessory mining claims may also be quitclaimed to the United States without a 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.

- H. Native American Land Acquisition.** Contact should be made with officials of the Bureau of Indian Affairs (BIA) and/or Tribal Government concerning regulations and procedures to be followed in obtaining needed interests in land for Reclamation's use.

- (1) The rules and procedures governing lands held in trust for a tribe or its members are found in 25 CFR parts 150 through 179. Rights-of-way over Indian lands are addressed in 25 CFR part 169. Tribes exercising the right of self-determination may have additional requirements.
- (2) Records for trust lands are maintained by the BIA. The various land titles and records offices and other BIA offices with title service responsibility are identified in 25 CFR 150.4 and 150.5. A Certified Title Status Report (TSR) is the BIA equivalent to an abstract and will be provided upon request from the local BIA superintendent's office. Informational TSRs (usually sufficient to begin identifying landowners) are generally available from the local BIA realty office.

**I. 44 LD 513.**

- (1) This is an historical public lands records notation process. The legal concept is that whenever Congress appropriates funds to construct facilities on Federal lands, the United States retains the right to maintain and use the improvement even if the land is passed out of Federal ownership. In Volume 44, page 513 of the Land Decisions (44 LD 513) of the Department of the Interior in 1916, a process was established to allow the General Land Office (later BLM) to note the official records that Federal improvements (typically but not always linear facilities) were present and not available for transfer to private ownership.

- (2) Generally, legal opinions and decisions have held that the improvement was protected for the benefit of the United States by patent exception. The private owner did not obtain ownership of the improvement. The United States retained only the improvement and right to operate and maintain the improvement as long as needed by the United States. Essentially a license was retained to accommodate the improvement. These 44 LD 513 rights excepted in patents have generally been determined to be non-transferable to third parties, and it has also been generally held that the United States' interest exists even if the 44 LD 513 notations were inadvertently omitted from the land records, patents, or later deeds.
- J. **1890 Act “Ditches and Canals” Reservation.** The Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945) (1890 Act), states “[i]n all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this act, west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent described, a right of way thereon for ditches or canals constructed by the authority of the United States.” These rights are typically reserved explicitly in the original patent from the United States, but it should be noted that later chain-of-title of private deeds may have omitted the explicit reservation; however, later omission does not invalidate the reservation. In certain situations, the 1890 Act may be invoked for needed facilities beyond a strict definition of “ditches and canals,” subject to Solicitor guidance. 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. Generally, 1890 rights can be verified by checking BLM Master Title plats.
- (1) **1890 Act Exercise.** Only the United States may exercise the 1890 rights. A managing entity (such as a water district) cannot exercise 1890 Act reserved easements. The United States cannot pass the authority to exercise the 1890 Act to a transferee by title transfer of the project unless such authority is granted by Congress under specific authorizing legislation. Existing rights which have been exercised by the United States could be included in a title transfer.
  - (2) **Payment for Reserved Right-of-Way.** The Act of September 2, 1964 (Pub. L. 88-561; 78 Stat. 808) directs the Secretary to pay just compensation for private land utilized under the 1890 Act, or any state statute, which would include severance damages occasioned by the exercise of such right-of-way provided the construction commenced after January 1, 1961. Policies and procedures for appraising and utilizing such lands are generally the same as for lands not reserved under the 1890 Act, except that possession of the right-of-way should be obtained through use of a confirmation deed or through issuance of Form 7-263, Right-Of-Way Notice (see Appendix G) or other approved format. The most supportable effective date for determination of compensation is the date the owner is notified and public notice is recorded (which would ideally be the same day).
  - (3) **Eligibility for Relocation Assistance.** Persons displaced as a result of the exercise of rights reserved under the 1890 Act are eligible, if otherwise qualified, for relocation

assistance payments and services. (See Section 12 of this chapter for additional relocation information.)

- K. **State Legislative Grants.** Many states in the west have passed legislative grants of blanket rights-of-way to the United States similar to the 1890 Act reservation in their intent and administration. In some states, these involve truly "blanket" rights." In some cases, these depend upon action of individual counties, or specific acts of "acceptance" by the United States. In others, they may involve a reserved right for road and utility easements on section lines or section subdivision lines. Because of the variance and ongoing changes in these grants, the state attorney general or state land administrator in the subject state may be contacted for specific information.<sup>9</sup> Compensation is now required when exercising these rights (see Section 6.J.2. above).
- L. **Public Road and Utility Rights-of-Way Prior to the Federal Land Policy and Management Act of 1976.** Prior to the passage of the Federal Land Policy and Management Act of 1976 (Pub. L. 95-579; 90 Stat. 2743; 43 U.S.C. 1701, et seq.), regulations of the BLM and the United States Department of Agriculture Forest Service provided generally that state and local governments could allow certain third parties, such as irrigation districts and utilities, to locate facilities within granted state and local road rights-of-way on Federal lands without specific authorization from the Federal agencies. This practice is no longer allowed, but facilities constructed by irrigation districts associated with Reclamation projects may be found to have been constructed under this undocumented authority. This can become confusing if realty staff is unaware of this past practice and/or the lands involved were subsequently patented. Linear facilities may be erroneously assumed to have been constructed in trespass, or only covered by prescription, when in fact, thorough investigation and attention to chronology may verify that the accepted practices of the time were followed, and additional rights are actually held by the United States or the particular irrigation district.
- M. **Reservations and Other Methods.** There are other methods of securing interests in land, but some procedures are less commonly used. For instance, reservations of rights-of-way have been made through disposal instruments, water rights applications, water users' association stock subscription contracts, and Section 24 of the Federal Water Power Act of 1920 (41 Stat. 1063), as amended. Project water subscriptions may also grant the United States rights-of-way for canals, laterals, etc. Mineral rights acquisitions and Native American land acquisition procedures sometimes employ unique methods (refer to Sections 5.F.-H. of this Chapter). Non-Federal government entities may successfully press recognition of rights for roads and associated facilities under Revised Statute (R.S.) 2477; the possible assertion of R.S. 2477 rights should be discussed with the Solicitor.
- N. **Prescription.** It is contrary to law for the United States to intentionally acquire land through adverse possession or prescription. However, there are many situations where Reclamation facilities may be found on private lands with only a prescriptive right. This can occur for a variety of unintentional reasons, including survey errors, legal description

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<sup>9</sup> See explanatory note 6, under Section 8 of the 1902 Reclamation Act, in Volume I of *Federal Reclamation and Related Laws Annotated*.

errors, meandering of streams, lost records, oversights, etc. In these situations, the United States generally assumes the position of any other entity under applicable state law. Thorough discussions should be undertaken with the Solicitor in cases where modification to such facilities is planned. Generally, most state laws hold that prescription only provides for ongoing use and necessary maintenance, and changes or improvements in facility configuration could be held to have overburdened the prescriptive right. Such actions could result in unwanted inverse condemnation lawsuits and other consequences. Where facilities exist under prescription, consideration should be given to securing appropriate interests in land or interests in land through adjudication or acquisition, particularly if facility upgrades or modifications are planned.

- O. **Use of Organizations and Non-profits for Land Acquisitions.** By memorandum dated January 9, 2001, Reclamation adopted the Department's "Guidelines for Transactions Between Nonprofit Conservation Organizations and Federal Agencies" (published in the Federal Register on August 10, 1983) and the August 28, 1995, Departmental Memorandum clarifying that Federal Register notice. (See Appendix H.)

## 7. Valuation Issues

Additional guidance with respect to valuation issues and the acquisition of land or interests in land is listed below.

- A. **Negotiation and Waiver Valuations.** The same person may both establish value by a waiver valuation, when appropriate, and negotiate an acquisition where consistent with the regulations found in 49 CFR section 24.102, basic acquisition policies for the Uniform Act. These activities should be combined when such activities would expedite the acquisition process and reduce costs associated with the acquisition of low value properties. (See Paragraph 13 of LND 05-01 for additional direction related to waiver valuations.)
- B. **Release of Appraisal Reports.** Reclamation's practice has been that appraisals prepared for its use are not released. An early release can seriously compromise the position of the United States in negotiations or litigation. However, in some transactions not involving the potential for condemnation, the release of the appraisal, if requested, accompanied by a clear explanation of Federal appraisal standards, can promote an atmosphere of openness and disclosure, and may be an appropriate and productive negotiating tool. (See Paragraph 8 of LND 06-01 for the criteria for release of an appraisal.)
- C. **Deviations from Approved Appraisal Amount – Administrative Settlements.** Occasions arise when it is in the interest of the United States to consider an acquisition above market value, as established by an approved appraisal. Such deviations may be used to address situations such as: changes in the market which do not justify a reappraisal of the property; a reasonable counter offer; unforeseen elements which need to be addressed; or other relevant factors. When there is a potential for payment over the appraised amount this should be discussed with the appropriate area office and RRO. In keeping with LND 06-01, a written justification for an acquisition above market value is required when recommending



approval from the RRO and a decision by the regional director. See Section 9.G.(4) of this chapter for more detailed guidance on the content of the written justification.

When a stipulated settlement above market value is contemplated, its impact on other negotiations for the same project should be considered. As a result, every effort should be made to secure purchases at the amount of the approved appraisal, before entertaining a settlement.

- D. **Donation Exception.** Typically federal law does not allow an agency to make offers that are below the approved appraisal amount, but the prohibition on offers below the appraised amount does not preclude the acceptance of donations. If, as part of the initial contacts made during the acquisition process, it is determined that a property owner is willing to donate their land or interests in land, such an offer may be accepted, but this in and of itself does not release Reclamation from its obligation to appraise the property.
- E. **Waiver of Obligation to Appraise.** It may be determined during early acquisition contacts that a property owner is willing to waive their right to an appraisal. In accordance with 49 CFR section 24.102 and section 24.108, Reclamation's obligation to appraise may be waived. Section 24.102 allows for the waiver of appraisal to allow the use of the waiver valuation format for values of \$10,000 or less. Also, the \$10,000 threshold may be raised up to \$25,000 if Reclamation first offers, and the owner declines, an appraisal. Section 24.108 allows the waiver of the obligation to appraise after the property owner has been fully informed of their right to receive just compensation for their property. Any agreement to such waiver by the owner should be obtained prior to commencing the valuation process. (See Paragraph 13 of LND 05-01.)
- F. **Retained Rights.** Retained rights of use could include life estates, reserved rights, or rights of use for a period of time, which are often identified during negotiations and made part of the agreement to transfer title to the United States. Retention of such rights may be identified early in the project or acquisition process. Whenever possible and appropriate, requests to establish market value of the property to be acquired or of rights to be retained should be made at the time of the appraisal request. Consideration related to retained rights, as determined by appraisal, should be made a written part of the purchase contract, together with the written terms and conditions of use. Retained rights are not "private exclusive recreational or residential use" as defined in 43 CFR section 429.2.

Whenever possible, retained rights should not be perpetual in nature and should be as specific as possible in the use allowed. They should be structured, for instance, as life estates, as appurtenant uses for adjacent property that terminate when use changes, or as uses which sunset after a fixed period of time, all of which would influence valuation. While timing is not necessarily clear, except in the case of a specific sunset date, a reasonable time frame can be anticipated for valuation purposes.

For example, the acquisition of lands in fee for a project allows continued grazing by the owner for his adjacent ranch. Over time the ranch is subdivided and converted to

recreational housing mixed with permanent housing. The grazing is no longer needed to support the single operator ranch, and the reserved right for grazing should terminate.

- G. **Salvage Rights.** If the owner of a real property is permitted to retain a part of the real property within the area of acquisition, through negotiation, for removal from the project site, the amount to be offered for the interest in the real property should not be less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value of the retained real property. Whenever possible and appropriate, requests for salvage values should be made at the time of the appraisal request. When salvage is negotiated, the determined value of salvage should be made a written part of the land purchase contract and the amount deducted from just compensation for rights acquired.
- H. **Distribution of Just Compensation.** Adjustments in the distribution of the just compensation could include deductions for tax settlements, lien settlement releases, leasehold or occupancy settlements, or other distributions made during closing.
- (1) **Taxes and Liens.** Reclamation should 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 lien holder 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 adjustments and should be signed by the landowners as an acknowledgment of their agreement as to distribution of the funds among them.

While not required, it is often most efficient to manage these actions through the civilian escrow account processes.

- I. **Relocation Assistance Benefits.** Entitlement to relocation assistance benefits is in addition to any just compensation received for the property being acquired. Negotiation of relocation assistance benefits is not allowed under 49 CFR part 24 . 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 Section 12.F. of this chapter.)

## 8. Environmental Site Assessments.

To ensure environmental due diligence, the Departmental Manual, *Real Property Pre-Acquisition Environmental Site Assessments*, 602 DM 2 specifies that Environmental Site Assessments will be performed prior to any acquisition of real property. The materials in this section for environmental site assessments follow the requirements of 602 DM 2.

Reclamation realty staff should coordinate with the appropriate Reclamation environmental staff to complete environmental site assessments.

- A. **Background.** Under 602 DM 2, it is Department policy to minimize liability of the Department and its bureaus by acquiring only real property that is not contaminated unless directed by Congress, court mandate, or as determined by the Secretary. Under section 6.A. of 602 DM 2, "all bureau pre-acquisition environmental site assessments shall adapt ASTM-Standards on Environmental Site Assessments for Commercial Real Estate in effect at that time." The current standards, ASTM E 1527-05, include "all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice" as defined at 42 U.S.C. 9601(35)(B)."
- B. **Time Limits.** In Accordance with 602 DM 2 section 6.B., pre-acquisition Environmental Site Assessments should be completed within 12 months prior to the date the purchase contract is signed on behalf of the United States. Under this section, a "bureau director" may consider exceptions to this time limit for land located in adverse climatic or geographical areas.<sup>10</sup>
- C. **Acquisition after Completion of the Environmental Site Assessment.**
- (1) Following the completion of the appropriate inquiry, land 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 (e.g., cleanup will be performed by responsible party prior to acquisition);
    - (c) the pre-acquisition proposal, including any liability risk associated with the acquisition, is determined to benefit the United States and is approved in accordance with specified delegations of authority; or
    - (d) the acquisition is mandated by the Congress, courts, or by the Secretary.
  - (2) Whenever possible, the identification of the potentially responsible parties or other liable entities should be included in the contract or other legally enforceable instrument.
- D. **Precautionary Measures.** Under 602 DM 2, "before any contaminated real property is acquired," [Reclamation] shall":
- (1) **Determine Potential Liability.** Ascertain the nature and extent of any potential liability resulting from hazardous substances or other environmental problems associated with such property.

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<sup>10</sup> "Bureau director" includes Reclamation's Commissioner.

- (2) **Weigh Benefits and Total Costs.** Weigh the benefits of the acquisition relative to the total cost, including:
    - (a) fair market value;
    - (b) remediation costs; and
    - (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 for any congressionally mandated acquisition of contaminated property.
- E. **Funding for Cleanup or Remediation.** Under 602 DM 2 the acquiring office will ensure that adequate funds are available for completion of cleanup or remediation of all acquired contaminated real property, prior to acquisition.
- F. **Approvals.** In accordance with 602 DM 2, approval is required for all real property acquisitions that may:
  - (1) require hazardous substance or other environmental cleanup; or
  - (2) result in liability risk, including remediation and other known and reasonably estimated costs associated with the acquisition.
- G. **Levels of Approval.** Under 602 DM 2, the level of approval authority for remediation costs is as follows:

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

- H. **Estimated Cost of Alternatives.** Where applicable, a formal estimate of the cost of remediation alternatives should be included as part of the request for approval. (See 602 DM 2 section 6.D.)
- I. **Record Retention.** Under 602 DM 2 section J, the acquiring office must retain a complete file of all documentation and reports pertaining to pre-acquisition Environmental Site

Assessments. These records should be maintained as part of the permanent land acquisition records.

## 9. Land Acquisition Procedures<sup>11</sup>

### A. General Information.

- (1) Acquisition by purchase must comply with authorities, regulations, and policies. (See Paragraph 5 of LND 06-01 and 602 DM 2.) Particularly important are requirements for title evidence, valuation, and Environmental Site Assessments. There should be a reasonable effort to acquire land or interests in land expeditiously by negotiation.
- (2) Whenever a land interest to be acquired is owned by a Member of or Delegate to Congress, the Solicitor and the Assistant United States Attorney (AUSA) should 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. The Solicitor and the AUSA will determine if the acquisition can be a negotiated agreement or whether it will be necessary to initiate a condemnation action.

B. **Negotiation Standards.** In conformance with the Uniform Act, acquisitions of land or interests in land must be no less than the value established by an approved appraisal or waiver valuation made in advance of the purchase, except when the property is donated and the right to an appraisal is waived.

- (1) **Negotiations.** It is preferable that negotiations for land acquisition be conducted by one individual. If supporting expertise is needed, the negotiator may be assisted by other qualified specialists. Any deviations from an acquisition plan should be approved before commitments are made. Any commitments made by the negotiator, on behalf of the United States and Reclamation, and agreed to by the property owner, should be documented in negotiation records (negotiator's reports, call records, etc.). The documentation should provide management staff with sufficient information to ensure that commitments and promises can be fulfilled. When applicable, the commitments should be included in the land purchase contract.
- (2) **Time Requirements.** Sufficient time should be allowed to fully negotiate purchase contracts, to reach agreement with property owners on just compensation, and to reduce the potential for condemnation actions. If agreement on a contract has not been reached after a reasonable number of property owner contacts, the negotiator should consider submitting, to the person responsible for the acquisition program, a written or verbal estimate of both the time to complete the acquisition and the dollar amount needed to secure property owner agreement. Management should then determine whether to continue or discontinue negotiations, or commence a condemnation action. Generally, negotiations should be completed or re-evaluated within 60 to 90 days after the initial property owner contact.

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<sup>11</sup> Refer to flow chart in Appendix B, "Land Acquisition Process."

- (3) **Reappraising or Updating.** Owner asking prices should not be met by reappraising or updating an appraisal. Reappraising or updating can be expensive and time consuming and may not be justified by the difference in value between the approved value and the property owner's asking price. Administrative settlement, if appropriate, should be considered prior to requesting a reappraisal or update. (Also refer to Section 9.G.(3) of this chapter.)
  - (4) **Condemnation.** When condemnation actions appear necessary, there should be close coordination among Reclamation, the Solicitor, and the AUSA. After a condemnation action is filed, Reclamation should furnish full and complete appraisal and negotiation reports to enable DOJ to determine whether negotiations will be continued in an effort to settle the case and avoid trial. In the case of trial, all representatives of the United States should devote sufficient time to prepare properly for such trial. (See Section 10 of this chapter for additional condemnation information.)
  - (5) **Consistency with Policies, Regulations, and Standards.** Reclamation's land acquisition procedures must be consistent with the Uniform Act and with implementing rules and regulations found in 49 CFR part 24, the Title Standards, 43 CFR part 8, Joint Policies of the Departments of the Interior and of the Army Relative to Reservoir Project Lands, and LND 06-01.
- C. **Obligation of Funds.** The appropriate Reclamation Finance Office (Finance) should be advised of the estimated value to obligate the necessary funds.
- (1) **Availability of Funding.** Availability of funding should be determined prior to initiation of negotiations.
  - (2) **Acceptance of Contracts.** No land purchase contracts should be accepted until the office maintaining the primary accounts has verified the availability of funds based on the potential administrative obligation.
  - (3) **Funding Obligation Documents.** If an acquisition action will continue into a new fiscal year, an obligation document should be executed. A land purchase contract signed by both Reclamation and the property owner is considered an acceptable obligation document. As this document is not an integral part of Reclamation's automated accounting system, the realty specialist should expeditiously notify Finance so they can input the obligation into the Federal financial accounting system.
- D. **Procedures Applicable to Donations.** In addition to procedures for land acquisition listed in this section above, below are listed procedures that are specifically applicable to land acquisition by donation:
- (1) In accordance with 49 CFR part 24.108, a property owner may donate their property or any part thereof, any interest therein, or any compensation to be paid. However, Reclamation is still responsible for an appraisal unless the obligation is released. Such

a release should be in writing and the following statement should be included in all donation conveyance documents when the obligation to appraise is released and all compensation is waived:

The [Grantor] hereby releases the United States, of its obligation to appraise the rights herein granted, and hereby waives all right to just compensation to which the [Grantor] may be entitled.

- (2) When desired by the donor and/or deemed necessary by the regional director, provisions to compensate landowners for severance damages to remainder properties and/or crop damages may be incorporated into the contract. Under LND 05-01, if severance damages are included in the contract an appraisal cannot be waived.
- (3) For many donations, the transaction can be completed with one instrument (e.g., donation deed or contract and grant of donation easement).
- (4) The ability of the landowner to recover donated property at no cost, if not utilized for project purposes, should be an incentive to the landowner for granting a donation. Under Subsection Q of the Fact Finders' Act of December 5, 1924 (43 Stat. 704), land which has been donated and conveyed to the United States for project purposes, but is not utilized for project purposes, may be reconveyed without charge to the donating grantor, or to the heirs, successors, or assigns of such grantor. (See RM D&S, *Land Disposal*, LND 08-02, for additional information.)

E. **Forms for Acquisition.** Standardized forms, formats, and procedures are used when they exist and are appropriate to the situation or when prescribed by regulation or policy. Many existing forms are referenced in corresponding sections of these guidelines and attached as appendices.<sup>12</sup> Forms recommended by DOJ should be used as appropriate, such as the Certificate of Inspection and Possession, Disclaimer (of tenants and other interests), and closing statement. Although consistency among regions is a goal, project needs will differ. It is, however, important that processes and documentation for each project be thorough and consistent for that project, meeting all statutory, regulatory, and financial integrity requirements. Deviations in process or documentation among different offices working on a given project should be avoided.

- (1) **Local Formats.** Formats addressing repetitive actions for which existing forms are not available or adequate may be developed at regional and area offices and approved by the regional director after review by the Solicitor. OMB and Paperwork Reduction Act requirements for forms used to collect public information must be followed, when applicable.
- (2) **Relocation/Acquisition Information.** Brochures or other materials conveying information prescribed by LND 06-01, statutes, or regulations may be available from

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<sup>12</sup> The land purchase contract (Form 7-276) is included as Appendix I. Report on Negotiations (Form 7-2524) is included as Appendix J. Other standardized forms are the Phase I Survey Checklists for Contaminants (Appendices K and L of this chapter).

various agencies or other sources, or may be developed by regional or area offices. If developed locally, they should be reviewed by the RRO, Public Affairs Officer, and the Solicitor if appropriate, prior to use. (See Section 12 of this chapter for additional relocation information.)

- (3) **Negotiator's Reports.** Whenever owners or their representatives are contacted by Reclamation personnel or others representing Reclamation concerning the acquisition of land or interests in land for Reclamation programs, a written report should be prepared by the individual(s) making the contact. Use of an approved report format is recommended (e.g., Form 7-2524, dated 6/96 - see Appendix J).
  - (a) Negotiator's reports should be complete and cover pertinent aspects of the negotiation discussion. A report should be prepared for each contact with the owner(s), tenant(s) (if any), attorneys, or others representing parties to the transaction. The report should include the date, time, and method of contact.
  - (b) Negotiator's reports should be prepared and signed by the negotiator at the time of negotiations.
  - (c) Each report of negotiations should also include such elements as the following:
    - (i) topics discussed;
    - (ii) any specific information provided to the owners;
    - (iii) any specific questions asked and responses;
    - (iv) listing of any documents requested by the contact or provided to the contact;
    - (v) information about comparable sales that may have been provided;
    - (vii) promised delivery dates for information, especially when the negotiator makes the promise; and
    - (viii) follow-up notes when promised deliveries are made.
- (4) **Land Purchase Contract Form.** Form 7-276, Land Purchase Contract (see Appendix I) or other format approved by the responsible RRO should be used in initiating fee acquisition of private lands by Reclamation personnel. Special contract and grant forms for the acquisition of permanent or temporary easements may be used when appropriate and after review by the RRO, including consultation with the Solicitor when appropriate.
  - (a) All land acquisition contracts should contain the following provisions without modification, to protect the United States:



- (i) The [Grantor] warrants that the [Grantor] has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. 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] for the purpose of securing business with others than the United States.
  - (ii) 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 real property land acquisition contracts that contain provisions that involve expenditure of funds beyond the current fiscal year should contain the following provision without modification:

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 purchase contract should include legal descriptions prepared in written format by a registered land surveyor or other qualified person and include an engineering survey, map, or plat in sufficient detail identifying the land or interests in land to be acquired. All legal descriptions should:
  - (i) be certified for accuracy;
  - (ii) include an endorsement to that effect; and
  - (iii) meet requirements of the state or local government for recording purposes.

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

- (a) Unless rights are specifically waived by contract provisions, a 90-day written notice should be given and payment tendered for the acquired property before all owners and/or tenants are 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 is the fair rental value for the property, considering such facts as short-term occupancy and restrictive use.

- (b) The purchase contract normally provides for the 90-day notice and payment prior to date of possession as provided in the above paragraph; however, alternative language 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.). (See Appendix M.)
- (6) **Deeds and Grants.** The deed of conveyance or other granting document must comply with the requirements set out in the current version of the Title Standards unless otherwise approved in advance by the Solicitor.
- (7) **Closing Forms.** Unless alternatives are approved by the appropriate Solicitor, Certificates of Inspection and Possession, Disclaimers, and Closing Statements must comply with requirements set out in the current version of the Title Standards.<sup>13</sup> It has become common practice, especially in the western United States, to use private title or escrow companies to facilitate closing of real estate transactions. Because use of these firms is normal in non-Federal transactions, their use may in some cases foster comfort on the part of landowners because of their existing familiarity. Forms and formats employed by these entities, including sale contract forms, may potentially be used, after review by the RRO, so long as all information required for the Federal transaction is included, and, including consultation with the Solicitor when appropriate. This is also the case when involving third-party non-governmental entities in transactions. Generally, language committing the United States to hold others harmless or to indemnification is not acceptable.
- F. **Initial Offer Letter.** Negotiations are normally initiated with the delivery of the initial written offer of just compensation to the owner or the owner's designated representative. A suggested form to use is shown in Appendix N. This letter may include a brochure describing acquisition procedures and entitlement to relocation assistance. (See Section 12 of this chapter for additional relocation information.)
- (1) **Summary Statement Contents.** When negotiations begin, the owner or the owner's designated representative should 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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<sup>13</sup> See Chapter 10 of the Title Standards for examples of these forms.

takings. Where appropriate, the just compensation for the land or interests in land acquired and for damages to remaining land should be separately stated.

- (d) A statement that Reclamation's offer and 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 land or interests in land 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.
- (f) If the acquisition authority is limited to "willing seller only," or if it is otherwise known that the property will not be acquired if an agreement cannot be reached, it is required that the owner of the property shall be so informed in writing as part of the initial offer letter. The following statement is suggested: "The property will not be acquired should negotiations fail to result in an agreement."

- (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 land and a person moves after that notice but before delivery of the initial written offer for acquisition. While tenants on such properties may be eligible for relocation benefits, the property owners are not so entitled. (See Section 12 of this chapter for additional relocation information.)

G. **Acquisitions above Approved Appraisal Amounts.**<sup>14</sup> Occasions arise when it may be reasonable, prudent, and in the best interest of the United States to consider an acquisition above the approved appraised amount. Neither the Uniform Act nor 49 CFR part 24 allows an agency to make offers that are below the approved amount. This does not preclude, however, the acceptance of donations.

- (1) **Timing of Negotiated Settlements.** Acquisitions involving negotiated settlements above the appraised amount should be delayed until 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 consider in determining whether to acquire above the appraised amount include:
  - (a) error or defect in the valuation document, 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), market data not considered in the appraisal, or evidence of reasonable differences of opinion among appraisers;

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<sup>14</sup> See LND 06-01, Paragraph 7.

- (b) anticipated litigation expenses and liability for payment of property owner's attorney and trial costs if they are the "prevailing party" under the Equal Access to Justice Act (Pub. L. 99-80; 5 U.S.C. 504 and 28 U.S.C. 2412);
  - (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 United States in court proceedings and/or increased litigation expenses;
  - (d) concerns over future price escalation;
  - (e) cost of reappraisal, if necessary; and
  - (f) other factors that are relevant to each particular case.
- (3) **Justification by Owner Demand.** The desire of the owner(s) for more money is not, by itself, sufficient justification for settlement above appraised values.
- (4) **Approval of Acquisitions Exceeding the Approved Appraised Amount.** Under Paragraph 4.A.2 of LND 06-01, acquisition of land above the appraisal amount must be in the best interest of the United States.

In all transactions exceeding the approved appraised amount, a supporting memorandum or determination should be signed by the head of the acquiring office. It should include an estimate of the potential impact on project accomplishment and remaining negotiations; copies of the approved appraisal report, negotiator's reports, and the purchase contract signed by the property owner. This supporting memorandum or determination should be provided to the responsible official (regional director or other official with written delegated authority) to approve the over-appraisal acquisition.

In applying the authority to exceed the approved appraised amount, issues of fairness to other owners and fiscal responsibility should be carefully weighed by the responsible official.

**H. Land Acquisition Payment Procedure.** Every effort should be made by all concerned to make prompt payment to the seller. Payment is required before displacement of persons, except as otherwise provided by contract terms. Closings may be completed using either a contract closing (escrow) agent or qualified Reclamation personnel. Every effort should be made to have closings completed within 30 days from the date funds are received by the closing official.

- (1) **Payment Procedures.** Under 31 U.S.C. 3325(d), Federal agencies are required to include a Taxpayer Identification Number (TIN) when submitting vendor payment requests (vouchers) to the Department of the Treasury. The TIN must be provided regardless of the dollar amount or business category (individual, sole proprietor, partnership, corporation, non-profit organization, etc.). Requests for payment which lack the TIN should be delayed until the TIN is provided by the vendor, and interest

should not be paid on payments delayed because the vendor failed to provide the TIN. Additionally, the Debt Collection Improvement Act of 1996 (Pub. L. 104-134; 101 Stat. 1321; 31 U.S.C. 3720B-3720D) requires all Federal payments be made by an electronic fund transfer utilizing an Automated Clearing House (ACH) form. Under certain circumstances, as determined by a Reclamation Finance Officer, a paper check may be issued. The vendor may be paid only after:<sup>15</sup>

- (a) Written approval has been received from the Solicitor as to the sufficiency of title to the land for the purposes for which the property is being acquired. 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.
  - (b) Records have been rechecked to a date and time even with or 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 United States in keeping with the preliminary title opinion.
- (2) **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.
- (a) **Taxes and Liens.** Taxes or other liens which became a lien prior to the acquisition of title by the United States may be distributed at closing.
  - (b) **Closing Statements.** A closing statement should be used to document purchase price adjustments and should be signed by the landowners as an acknowledgment of their agreement to the distribution of the funds. (See Appendix O – Example of Closing Statement (Settlement Statement (HUD-1)).)

## I. Requirements for Legal Review.<sup>16</sup>

- (1) **Regional Director Determination.** Under LND 06-01, regional directors or their designees 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 are to be reviewed as specified in the Title Standards.)
- (2) **Exceptions.** Normally, documents involved in acquisition of land or interests in land receive legal review, with the possible exception of documents executed on approved forms or previously approved formats, provided there are no unusual factors in such transactions. For example, if a land purchase contract, easement contract, right-of-entry permit (that might be required for site suitability investigations or to enter private

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<sup>15</sup> Subsections (a) and (b) detail requirements derived from the "Regulations." See Section 5 of this chapter and Appendix D.

<sup>16</sup> See Paragraph 4.A.3 of LND 06-01 for regional director responsibility.

lands to explore for materials), document to effect payment for crop damage, or 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 should receive Solicitor review.

- J. **Retention of Use.** When conditions permit, and when so provided in the purchase contract, the property owner may be allowed to use the property for a period of time once the land is transferred to the United States. Depending upon the nature of the use, life estate, reservation, or use authorization, a rental fee may be established, or a corresponding reduction may be made from the purchase price. These retained rights are not “private exclusive recreational or residential use” as defined in 43 CFR section 429.2.

The compensation in the purchase contract should reflect the full compensation for the interests acquired with consideration for any life estate or reservation. Whenever possible and applicable, such consideration should be made in the original appraisal assignment. If such consideration is identified during negotiations, it will likely require an update of the appraisal or appraisal assignment if the value was originally established by waiver valuation.

All retentions of use should sunset if the United States owns the underlying fee interest in the land. In the case of a life estate, there is a built-in, although unpredictable, termination. For reservations or other interests, the interest can be sunsetted in an identifiable time or with use changes. For example, grazing rights may be reserved for an adjacent land owner for his remaining ranch operations, and these rights might sunset when the adjacent lands are subdivided for recreational or residential development.

K. **Removal of Improvements.**

- (1) **Reductions from Appraised Value.** In accordance with Paragraph 11.A.(11) of LND 05-01, improvements the property owner might wish to retain shall be considered prior to, and their salvage value established as part of, the appraisal. The purchase contract should clearly specify the improvements to be retained by the property owner. The corresponding salvage value will be deducted from the purchase price.
- (2) **Definite Time.** The contract should specify a definite time during which the removal of improvements identified in the contract must be completed after the United States has taken possession of the property.
- (3) **Bond.** The recipient of the salvage rights may be required to post a bond in the amount of the salvage value and the estimated cost of site clean-up to the satisfaction of Reclamation, or the estimated cost to remove the salvage and associated clean-up, whichever is higher. The bond should be posted at the time of contract execution or some other agreed upon time prior to beginning the salvage operation.

(4) **Removal of Debris.**

- (a) The contract should include language regarding removal, reuse, recycling, or salvage related to structural demolition and liability for such salvage rights similar to the following:

“The [Grantor] is responsible for removing and reusing, recycling, or salvaging all materials associated with the demolition of the buildings, pavement, vegetation, utilities, and any other site improvements that are to be removed. All debris resulting from the salvaging, including damaged trees and shrubs, will be removed from the premises and properly disposed of at the [Grantor’s] expense and liability. No waste vegetative or non-vegetative material such as trees, shrubs, brush, tires, waste wood, or buildings will be burned by the (Grantor) on the property after transfer to the United States. All hazards will be removed or eliminated to the satisfaction of Reclamation.”

- (b) The contract should make the recipient of the salvage rights wholly liable for any accidents or damages on the premises or resulting from their activities during the authorized salvage period. The contract should include language similar to the following:

“[Grantor] hereby agrees to indemnify, save and hold harmless the United States, its officers, employees, agents and assigns, for and from any and all liability and claims for loss of or damage to any of the above described items to be removed, or for the death of or injury to [Grantor], or their agents, employees, contractors, lessees, or others, any of the same which may arise out of or be attributable to [Grantor’s] removal of said items, whether or not the same shall be occasioned by the negligence or lack of diligence of [Grantor], or their agents, employees, contractors, lessees, or others.”

L. **Recordation of Contract and Deed.**

- (1) **Contract.** Normally, the executed contract should be recorded for any transaction where a deed is not prepared and an interest in the property is transferred (e.g., contract or grant of easement). Recordation of the contract would be particularly important if the contract contains provisions that may survive or extend beyond the deed (provisions for fencing; conducting surveys; bridge ownership, construction, and maintenance; etc.); transferring language; or clauses that may affect third parties (such as reservations for access easements or similar issues). Further, recordation of the contract provides public notice of the pending transfer of title.
- (2) **Deed.** The deed should be recorded.
- (3) **Consistency Between Contract and Deed.** All references to the consideration, terms, and conditions of conveyance should be consistent between the contract and deed.

## 10. Land Condemnation Procedures.

### A. Acquisition by Condemnation.

- (1) The United States Constitution does not explicitly grant the power of eminent domain; rather, the Supreme Court has found it inherent in the sovereign and implied in the wording of the Fifth Amendment of the United States Constitution. A portion of that amendment provides: ". . . nor shall private property be taken for public use, without just compensation." The Fifth Amendment both assumes and limits exercise of the power of eminent domain (*Kohl v. United States*, 91 U.S. 367, 371-72 (1875)). Fifth Amendment limitations on the exercise of eminent domain include the requirements that just compensation be paid and that the condemnation must be for a public use.
- (2) Before notices of the intent to acquire by condemnation are issued, a determination should be made that the authority to condemn is available. If the acquisition authorization states "willing seller only," condemnation cannot be used. Where eminent domain authorities do exist, when a mutually satisfactory negotiated settlement cannot be reached, land may be acquired by condemnation. Reclamation officials must rely on the Solicitor and DOJ for acquisition by condemnation, since condemnation requires filing in court. Management of property acquired through condemnation cannot begin before a Declaration of Taking is issued. (See Title Standards for more information relative to Declaration of Taking the passage of title.)
- (3) Exercise of eminent domain may occur in one of the following three ways:
  - (a) DOJ files a civil condemnation case in Federal court at the request of a Federal agency. There are two methods by which this can be accomplished:
    - (i) In a "complaint only" case under 40 U.S.C. 3113, a complaint is filed requesting valuation of the land interest the United States wishes to acquire. However, the United States does not acquire that interest upon filing of the case. The determination of value instead serves to give the United States an option to purchase the land for the adjudicated value. If the price is greater than the acquiring agency is willing to pay, the case may be dismissed subject to the limitations of Fed. R. Civ. P. 71A(i). Because acquisition does not occur upon filing of a complaint only case, the United States does not take possession, and the date of valuation is delayed until that amount is determined by the court. See *Kirby Forest Industries, Inc. v. United States*, 467 U.S. 1 (1984). Title transfers to the United States on the date the amount of the award is deposited into the registry of the court.
    - (ii) When the acquiring Federal agency needs immediate possession, the Federal agency may present DOJ with a Declaration of Taking (DT) under 40 U.S.C. 3114. Filing the DT and depositing estimated just compensation with the complaint immediately transfers title of the condemned property to



the United States. The estimated just compensation is an amount equal to or exceeding the appraised value. The date of valuation is the date the DT and deposit are filed. The court decides what just compensation is. The United States incurs an obligation to pay any adjudicated deficiency in its deposit. NOTE: Currently, per the Departmental Manual delegations, only the Assistant Secretary for Water and Science (ASWS) and the Solicitor are authorized to sign DTs. The Commissioner currently may request such delegation from the ASWS on a case by case basis. The Solicitor has redelegated the authority to the Regional Solicitors.

- (b) Congress holds authority to declare property acquired through a legislative taking. The legislation effecting the taking will frequently specify the court(s) which will have jurisdiction to hear the matter. It is then up to either the former landowner or the United States to institute a civil suit requesting a determination of the just compensation owed.
- (c) Landowners who believe their property rights have been taken by regulations or actions of the United States without just compensation may bring suit under the Tucker Act, (28 U.S.C. 1491) claiming an inverse condemnation.

**B. Preliminary Procedure.** As soon as it appears that an acquisition by condemnation may be necessary, there should be informal discussions with the Solicitor, and possibly an AUSA in the Federal district where the land is located. Consultation should focus on carefully defining the extent of the property interest needed by Reclamation, and what property interests, if any, may be safely excluded and left with the affected landowner. 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 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 with Reclamation 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 to be used as a witness in the litigation and every effort should be made to work through the OVS to secure an appraiser acceptable to the AUSA.

**(1) Appraisals.**

- (a) Realty staff and managers should become familiar with the appraisal standards found in the *Uniform Appraisal Standards for Federal Land Acquisition*, also known as the “Yellow Book” or “UASFLA.”
- (b) Consideration may be given to obtaining a second appraisal before or after condemnation proceedings are started. Factors affecting consideration include:
  - (i) weakness in earlier appraisals discovered during negotiations;

- (ii) evidence of legitimate differences of opinion of value discovered during negotiations;
  - (iii) need for having certified appraisers to serve as trial witnesses;
  - (iv) changes in the market conditions that may result in more current sales; and
  - (v) other factors affecting the potential ability of the United States to defend its opinion of fair market value.
- (2) **Final Offers.** Under Paragraph 9.A. of LND 06-01, the final offer to purchase the landowner's property will advise that if the final offer is rejected, a condemnation action will be filed with the Federal district court where the land is located as soon as final DOJ approval for the condemnation is obtained. Also under Paragraph 9.A. of LND 06-01, the final offer will advise (if the Declaration of Taking Act provisions are to be used) that the amount to be initially deposited with the court for the taking will be the amount determined by the agency's approved appraisal of the fair market value of the property rights to be acquired (not the amount offered as a negotiated settlement in the purchase offer). (See 40 U.S.C. 3114(a)(5).)

C. **Preparation of Condemnation Package.** After a final offer from Reclamation is rejected, condemnation can be initiated by a letter from Reclamation to the Solicitor coordinated through the RRO with a copy to the Director, Policy and Administration. A minimum of 6 weeks may be required to complete the necessary action by the Department and DOJ once a complete condemnation package is received by the Solicitor. The package should include the following:

- (1) Unless determined to be unnecessary by the Solicitor, a transmittal letter from the Regional Director to the Solicitor including:
  - (a) request for filing the condemnation action (complaint);
  - (b) request for immediate possession, if desired;
  - (c) identification of project, owners, tract number, etc.;
  - (d) description of the estate to be taken;
  - (e) 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;
  - (f) citation of the general and specific legislative authorities authorizing the legal action to be taken (which would include the current appropriation act);
  - (g) citation of the agency fund from which award of judgment is to be made (this cannot be the DOJ settlement or judgment fund);

- (h) statement regarding the basis for the estimate of just compensation and a statement of any damages to the remainder of a partial taking acquisition;
  - (i) statement confirming issuance of the voucher or electronic transfer of funds;
  - (j) statement confirming compliance with NEPA;
  - (k) statement confirming compliance with NHPA;
  - (l) statement of Environmental Site Assessment results;
  - (m) statement confirming compliance with the Uniform Act (49 CFR part 24);
  - (n) statement requesting action by the appropriate AUSA;
  - (o) list of the enclosures;
  - (p) in cases valued at more than \$500,000, or the first condemnation for a project involving multiple acquisitions, a narrative statement that includes the: total acreage of lands required; date upon which the first lands were acquired; percentage of the project land acquired to date; estimated cost of lands required for the project; and legislative history of the project; and
  - (q) if required by the Solicitor, a statement to the effect that any pre-acquisition conditions imposed by authorizing acts or other acts have been met.
- (2) If requested by the Solicitor, a separate letter to the Attorney General's Office prepared by Reclamation, on the Solicitor's letterhead, including the following:
- (a) name of the project;
  - (b) name of purported owner. If more than one owner, use lead name, and et al. (and others), et ux. (and wife), or et vir. (and husband);
  - (c) citations of the general and specific legislative authorities authorizing the legal action to be taken (which includes the current appropriation act);
  - (d) the estate to be acquired, with added comment that it is more particularly set forth and described in Schedule B and illustrated with a map in Schedule C (schedules are identified in Section 10.C.(4) below);
  - (e) citation of the agency fund from which the award of judgment is to be made (this cannot be the DOJ settlement or judgment fund);
  - (f) statement as to why it is necessary to initiate condemnation proceedings;

- (g) recommendation that the AUSA be authorized to file suit;
  - (h) names and addresses of Reclamation staff who may be able to furnish additional information and assistance to the AUSA; and
  - (i) statement that all correspondence regarding the case should be addressed to the Solicitor.
- (3) The proposed Complaint in Condemnation, including confirmation that funds have been ordered for deposit in the Federal district court.
- (4) The DT and Schedules. Content of the Schedules may vary between regions, but should usually include the following:
- (a) **Schedule A.** Identification of the authority for the taking, public uses to which the land being acquired will be used, and appropriation for funding.
  - (b) **Schedule B.** Estimated just compensation and precise description of the estate to be taken (including mention by way of "subject to" language any elements not to be taken which will be left with the landowner or other third parties), acreage size, and legal description identifying the property to be acquired (preferably also including mention of any county tax parcel numbers fully or partially included in the property).
  - (c) **Schedule C.** A plat map or maps of the tract(s) to be taken.
  - (d) **Schedule D.** Names and current addresses for the owner(s) of record and other potential holders of outstanding interests in the property to be acquired (including county taxing officials and "unknown owners"). These are the persons and entities that will be named as additional defendants in the court action and served with process.
- (5) The appraisal report(s), including any review appraiser's comments. At the earliest stage of trial preparation, the Solicitor and the AUSA should be advised of all previous appraisals made of the subject property (including any provided by any landowner) 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 are then the responsibility of DOJ and the AUSA assigned to handle these condemnations. All of Reclamation's representatives should provide full cooperation to the AUSA for such assistance as may be requested. Reclamation should coordinate with the OVS regarding requests for appraisal information.

- (6) 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 and to the Attorney General's Office, summary statements of negotiations may be used in lieu of this requirement.
- (7) Title Policy, Certificates of Title, Abstracts, or other acceptable title evidence in accordance with the Title Standards, including both:
  - (a) all recorded documents evidencing recent property transfers within at least the last 10 years, including especially the transfer to the most current owner, even if older than 10 years; and
  - (b) all documents described in the exceptions listed in the title evidence. Copies of recorded documents should be provided to the Solicitor and AUSA involved in the condemnation.
- (8) Preliminary title opinion from the reviewing Solicitor, administrative waivers of title (if any), other pertinent documents, and/or a statement of efforts made to cure defects. If acceptable to the Solicitor and to the AUSA, a summary statement may be substituted, with the case file made available after the action is filed.
- (9) Certificate of Inspection and Possession (CIP) as provided in the Title Standards. Be aware that the completion of a CIP may not be available in a timely manner if the owner refuses to grant entry to the property.

#### **D. Updates after Court Action is Filed.**

- (1) **Title.** Once the condemnation court action has been filed as part of a DT proceeding, Reclamation should request that the AUSA obtain a certified copy of the filed DT to be recorded with or as part of a notice of lis pendens (pending lawsuit) in the county records. The title evidence should then be updated through the date of recording to verify any new property interests of record which need to be added to the court action as additional defendants.
- (2) **Valuation.** A new appraisal or updated appraisal may be required by the AUSA.

#### **E. Condemnation Settlement Approvals.** Under LND 06-01, regional directors are the approving authority for Reclamation in the settlement of any parcels in condemnation.

When a proposed condemnation settlement is submitted to the regional director for decision, the request should be in writing and include a recommendation by the RRO to accept or reject the proposed settlement, the civil number of the condemnation action, the judicial

district, the defendant's name, and the tract number. The RRO should simultaneously advise the AUSA and the Solicitor that a recommendation has been submitted to the regional director. The RRO should also advise the Solicitor when a settlement proposal is accepted or rejected.

- F. **Submission of Factual Report.** When a regional director does not concur with DOJ regarding a proposed settlement, a complete factual report should be prepared to provide a basis for discussions, as appropriate, between the regional director and DOJ.
- G. **Order for Possession.** Deposit of compensation does not in itself entitle the United States to the occupancy of the property. An order giving the United States possession can be obtained from the court. 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 DT. Upon the filing of the DT and the deposit of estimated just compensation with the court, Reclamation staff should ask DOJ to request an order of possession from the court. (Note: Refer to the Uniform Act to identify entitlement to relocation benefits and timelines.)
- H. **Stipulation for Exclusion.** The Act of October 21, 1942 (56 Stat. 797), provides “[t]hat in any condemnation proceeding 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, or any interest therein, that may have been, or may be, taken by or on behalf of the United States by declaration of taking or otherwise.” This provision for revestment of property taken requires prior approval by the head of the Land Acquisition Section at DOJ.<sup>17</sup> It applies in those cases where:
- (1) 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; and
  - (2) when the landowner wishes to remove from the subject property certain part(s) of the property taken, whether buildings, trees, crops, or fixtures attached to the realty, which are not needed by the United States.
- I. **Recording Judgment.** Once a final judgment is rendered in the court action, Reclamation should ensure a certified copy of the judgment is recorded in the county records, as recommended by Section 7.e. of the Title Standards. It is also recommended that a Satisfaction of Judgment be recorded to show payment of any judgment deficiency with appropriate interest as required by 40 U.S.C. 3116.

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<sup>17</sup> See delegation discussion in footnote 1, page 4, of the Title Standards.

## 11. Water Rights Acquisition.

Under LND-06-01,<sup>18</sup> Reclamation may acquire existing water rights, for specified purposes, storage and/or natural flow water.

- A. **General.** When water rights are acquired, they should be put to beneficial use, or placed in an appropriate water bank, as soon as feasible to avoid forfeiting or abandoning the rights under state law.
- (1) **Beneficial Use.** Reclamation should acquire water rights in a manner that allows for beneficial use of the water under state law. The availability of water for Federal purposes may be determined by state law and may differ from project to project.
  - (2) **Fee Land.** Title to fee land may be acquired to obtain water rights and/or water rights priorities.
  - (3) **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. Water rights forms, documents, and instruments should be reviewed by the Solicitor for legal sufficiency.
  - (4) **Exhibit of Area to be Acquired.** Prior to the acquisition of water rights, an exhibit showing the area of beneficial use of the water rights to be acquired should be prepared. The exhibit should be in sufficient detail that individual tracts and/or ownerships can be identified and clearly show points of diversion.
  - (5) **Right to an Appraisal.** Under the Uniform Act (49 CFR 24.101-102), all contracts for the purchase or lease of water rights, where the lease term, including option(s) for extension, is 50 years or more, shall be based upon an approved appraisal completed in advance of the offer. The only exceptions are acquisitions by donation, acquisitions when the appraisal is waived, and acquisitions that meet the criteria for a waiver valuation.
  - (6) **Verification of Ownership.** Before a water rights purchase or lease is attempted, ownership of a water right should be verified using procedures of the state in which that water right is located. The verification should determine, to the extent possible, the ownership, validity, priority date, diversion period, historic diversion rate, place and nature of use, historic use, and therefore, the amount of water available to be acquired. In addition, the adjudication of any claim should be reviewed for status and decisions. This information is critical in determining the value of the water right.
- B. **Purchase of Water Rights.** Water rights may be acquired either appurtenant to, or severed from, the land. Reclamation staff should ensure that the acquisition of water rights is consistent with the Uniform Act, 49 CFR part 24, and DOJ published procedures.

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<sup>18</sup> See footnote 1, page 1 of LND 06-01.

C. **Title Evidence and Title Standards.** Title evidence acceptable to the Solicitor should be used to determine ownership. The Title Standards apply to all acquisitions except for leases having a term of 30 years or less, and interests in land acquired in connection with a federal loan program. Requests for title opinions for the purchase of water rights should be prepared as required by the Solicitor.

- (1) **Preliminary Water Rights Title Opinions.** Requests for preliminary title opinions should be submitted to the Solicitor through the RRO (with the assistance of the Regional Water Rights Officer, if such a position exists in that region) and include the following:
  - (a) one copy of the purchase contract signed by the owner(s);
  - (b) copies of title evidence (commitment, certificate, abstract, or memorandum report) and all relevant documents referenced therein; and
  - (c) copies of any curative material or other relevant documentation obtained (i.e., copies of all instruments vesting or encumbering the rights to be acquired).
- (2) **Final Water Rights Title Opinions.** Final title opinions should be obtained from the Solicitor after the acquisition has been consummated and final title evidence obtained. The following should be included in the title assembly submitted for final title opinion:
  - (a) copy of the preliminary title opinion;
  - (b) copy of the recorded instrument of conveyance;
  - (c) copy of the final title evidence as required by the Solicitor;
  - (d) copy of each curative document; and
  - (e) receipt or closing statement executed by the vendor.
- (3) **When Title Evidence and Title Standards Are Not Applicable.** When Reclamation purchases water rights not appurtenant to land, the normal land acquisition title evidence and standards may not apply; however, Reclamation should ensure that the seller warrants the title to be free and clear of claims, liens, or any other encumbrances. Also, the seller should provide the United States a bond acceptable to the Solicitor in the amount of the purchase price or other acceptable assurance. The bond/assurance should be valid from the date of closing and cover the regulatory time frame for the appeal of the transfer plus one year, or until the resolution of any counter claim to the water right filed during the regulatory time frame, whichever is later. In all instances, the Solicitor must be fully informed and satisfied with the proposed documentation prior to execution of the contract and closing.



- D. **Payment for Water Rights.** Before any payment is made, all title objections and requirements described in a Solicitor's preliminary title opinion should be satisfied.
- E. **Recording Water Rights Documents.** Executed permanent water purchase contracts should be recorded and/or notification should be given to the state office responsible for water right transfer, adjudication, and assignment of priorities.

## 12. Relocation Assistance.

Because of the complex nature of the relocation assistance program and the comprehensive requirements set out in the Uniform Act<sup>19</sup> and 49 CFR part 24, it would be inappropriate to attempt to summarize them within these guidelines. The regulations are available on the internet at the United States Department of Transportation, Federal Highway Administration (FHWA) website and must be fully implemented whenever dealing with land acquisition. It is crucial that offices undertaking transactions involving land acquisition utilize staff or contractors that are fully trained and qualified regarding the regulatory requirements of this program.

- A. **Purpose.** The Uniform Act and its implementing regulations, 49 CFR part 24, provide for uniform and equitable treatment of individuals, families, businesses, farms, and nonprofit organizations displaced as a result of Federal and federally-assisted programs and projects. They set definitions, standards for applicability, and requirements regarding: notices; valuation and appraisals; establishment and offer of just compensation; negotiations; reimbursement for expenses; acceptance of donations; relocation planning, advisory services and assistance; eviction; claims processing; and dealing with aliens not lawfully present in the United States. Additionally, they establish a process to provide: comparable replacement housing for displaced persons; payments for actual reasonable out-of-pocket expenses associated with the transaction, and for moving household goods and other personal property; benefits for persons displaced from mobile homes; and, in the event a comparable replacement dwelling is not available, a mechanism for replacement housing of last resort. The purposes of the Uniform Act and its implementing regulations are twofold:
  - (1) To ensure that owners of land to be acquired for Federal and Federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs.
  - (2) To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole.
- B. **Legal Authority, Regulatory Requirements, Policy, and Guidelines.** Legal authority, regulatory requirements and policy for relocation assistance are:

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<sup>19</sup> [See Section 12 of this chapter, Definitions and Acronyms.](#)

- (1) The Uniform Act;<sup>20</sup> and
- (2) 49 CFR part 24 - Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs. Note that 49 CFR part 24 is the regulatory authority for Departmental agencies. FHWA, the lead Federal agency for regulations and policies that implement the Uniform Act, has a website with additional information.

C. **Program Coverage and Scope.** The cited authorities apply to all land acquisition programs of Reclamation, including financially assisted programs of state and local agencies, or others, using funds made available through Reclamation in any aspect of a project. The acquisition requirements set out in 49 CFR part 24, subpart B, are applicable to all such acquisitions, including less-than-fee title, except for:

- (1) acquisition by leasing where the lease term, including option(s) for extension, is less than 50 years; and
- (2) temporary easements or permits needed solely to perform work intended exclusively for the benefit of the property owner, which work may not be done if agreement cannot be reached.

D. **Relocation Planning.** During the early stages of project development, Reclamation should consider the impacts associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations and develop a plan to minimize the project's adverse impacts on them. The planning study, which precedes any agency action that will cause displacement, should include an evaluation of available program resources to complete the relocation(s) in a timely and orderly manner. Typically, planning surveys include:

- (1) identification of affected properties and how they will be affected;
- (2) identification of occupancy status (tenant or owner of 90 or 180 days) of displaced persons occupying properties affected;
- (3) quantification of the impact of the project on the market;
- (4) estimate of number of comparable replacement dwellings needed and available;
- (5) estimate of number of businesses/farms, etc. to be displaced;
- (6) identification of suitable replacement sites;
- (7) identification of special relocation advisory services needed; and
- (8) estimate of time, staff, and budget requirements.

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<sup>20</sup> See Section 2.R. of this chapter.

E. **General Information Notice.** Brochures and other literature may be included when the landowner is notified their land may be acquired. The FHWA is a good source for these printed materials. Project-specific brochures may be used but, if developed locally, should be reviewed by the RRO and Public Affairs Officer prior to use. At a minimum, the information provided should cover the following points:

- (1) explanation of the project and acquisition procedures; and
- (2) whether or not condemnation is authorized, and, if condemnation is authorized for the project, a statement that Reclamation avoids condemnation action if possible, while still meeting project requirements.

The following is a link to the FHWA website where notices are discussed:

<http://www.fhwa.dot.gov/realestate/lpaguide/ch7.htm>

F. **Expenses Incidental to the Transfer of Title.**

- (1) **Relocation Assistance Benefits.** Entitlement to relocation assistance benefits is in addition to any just compensation received for the property being acquired. Relocation assistance monetary benefits are not negotiable and should be claimed on Department of the Interior claim forms. The Department's forms DI 381, or DI 382, and accompanying schedules are available to be used for claims for reimbursement of expenses incurred by property owners, tenants, or other displaced persons under the Uniform Act. Links to these forms should be available on the webpages of the Department's Office of Acquisition and Property Management.

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. Under 49 CFR section 24.106, relocation assistance benefits are available as follows (direct quote, including numbering):<sup>21</sup>

- "(a) The owner of real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:
- (1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property;
  - (2) Penalty costs and other charges for the prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

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<sup>21</sup> Quoted for convenience from the implementing regulations, 49 CFR section 24.106. Numbering convention from the CFR is preserved although it varies from the outline style used in these guidelines.

- (3) The pro rata 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.
    - (b) Whenever feasible, the Agency shall pay these costs directly to the billing agent so that the owner will not have to pay such costs and then seek reimbursement from the Agency."
  - (2) **Additional Benefits.** Under the Uniform Act and 49 CFR part 24, relocation assistance benefits may include payment for:
    - (a) The recordation of documentary evidence related to meeting closing requirements.
    - (b) Reimbursement of incidental expenses and certain closing costs.
    - (c) 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.
- G. **Appeals.** Under 49 CFR part 24, whenever a decision is rendered by Reclamation on relocation assistance claims, all claimants have a right to appeal the decision. To ensure due process, the claimants should be advised in writing of their appeal rights. This notice may be provided in a brochure if appeal rights and procedures are adequately described. Under 49 CFR section 24.5, receipt by the claimant of the brochure or other information on rights to appeal must be documented.
- (1) **Procedures.** Appeal procedures follow the regulations in 49 CFR part 24. Other procedures relevant to appeals from relocation assistance decisions are outlined in 43 CFR subpart 4.G. Under 43 CFR section 4.704, authority to hear and decide appeals from Bureau of Reclamation relocation assistance decisions is vested in the following:

Director, Office of Hearings and Appeals  
Department of the Interior  
801 North Quincy Street  
Arlington VA 22203
  - (2) **Filing Deadlines.** Reclamation's decision is 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. Under 43 CFR part 4, the claimant must provide the Commissioner 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.** A decision of the Office of Hearings and Appeals is final and conclusive (43 CFR section 4.1).

### 13. Appendices

The attached appendices provide additional information or tools for acquisition.

Appendix A - 43 CFR part 8, Joint Policies of the Departments of the Interior and of the Army Relative to Reservoir Project Lands

Appendix B - Land Acquisition Process Flow Chart

Appendix C - Uniform Relocation Assistance and Real Property Acquisition Statistical Report Form

Appendix D - Order No. 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*

Appendix E - Request for Waiver of Tax Lien in Acquisition of Easement by Direct Purchase

Appendix F - December 1982 Interagency Agreement Between Reclamation and BLM

Appendix G - Right-of-Way Notice (form 7-263)

Appendix H – January 9, 2001, memorandum transmitting "Guidelines for Transactions between Nonprofit Conservation Organizations and Federal Agencies"

Appendix I - Land Purchase Contract (form 7-276)

Appendix J - Report on Negotiations (form 7-2524)

Appendix K - Low-Intensity Rural, Residential, Crop/Agricultural, etc., Real Property Questionnaire Checklist, Phase I

Appendix L - High-Intensity Use Industrial, Commercial, Feedlots, Etc., Real Property Questionnaire Checklist, Phase I

Appendix M - Articles Relating to 90-Day Notice Requirement

Appendix N – Acquisition Summary Statement

Appendix O - Example of Closing Statement (Settlement Statement (HUD-1))



# Land Acquisition Guidelines

## Appendix A

Office of the Secretary, Interior

§ 8.3

### § 8.0 Acquisition of lands for reservoir projects.

In so far as permitted by law, it is the policy of the Departments of the Interior and of the Army to acquire, as a part of reservoir project construction, adequate interest in lands necessary for the realization of optimum values for all purposes including additional land areas to assure full realization of optimum present and future outdoor recreational and fish and wildlife potentials of each reservoir.

### § 8.1 Lands for reservoir construction and operation.

The fee title will be acquired to the following:

(a) Lands necessary for permanent structures.

(b) Lands below the maximum flowage line of the reservoir including lands below a selected freeboard where necessary to safeguard against the effects of saturation, wave action, and bank erosion and the permit induced surcharge operation.

(c) Lands needed to provide for public access to the maximum flowage line as described in paragraph (b) of this section, or for operation and maintenance of the project.

### § 8.2 Additional lands for correlative purposes.

The fee title will be acquired for the following:

(a) Such lands as are needed to meet present and future requirements for fish and wildlife as determined pursuant to the Fish and Wildlife Coordination Act.

(b) Such lands as are needed to meet present and future public requirements for outdoor recreation, as may be authorized by Congress.

### § 8.3 Easements.

Easements in lieu of fee title may be taken only for lands that meet all of the following conditions:

(a) Lands lying above the storage pool.

(b) Lands in remote portions of the project area.

## PART 8—JOINT POLICIES OF THE DEPARTMENTS OF THE INTERIOR AND OF THE ARMY RELATIVE TO RESERVOIR PROJECT LANDS

- Sec.
- 8.0 Acquisition of lands for reservoir projects.
- 8.1 Lands for reservoir construction and operation.
- 8.2 Additional lands for correlative purposes.
- 8.3 Easements.
- 8.4 Blocking out.
- 8.5 Mineral rights.
- 8.6 Buildings.

AUTHORITY: Sec. 7, 32 Stat. 389, sec. 14, 53 Stat. 1197; 43 U.S.C. 421, 389.

SOURCE: 31 FR 9108, July 2, 1966, unless otherwise noted.

#### **§ 8.4**

(c) Lands determined to be of no substantial value for protection or enhancement of fish and wildlife resources, or for public outdoor recreation.

(d) It is to the financial advantage of the Government to take easements in lieu of fee title.

#### **§ 8.4 Blocking out.**

Blocking out will be accomplished in accordance with sound real estate practices, for example, on minor sectional subdivision lines; and normally land will not be acquired to avoid severance damage if the owner will waive such damage.

#### **§ 8.5 Mineral rights.**

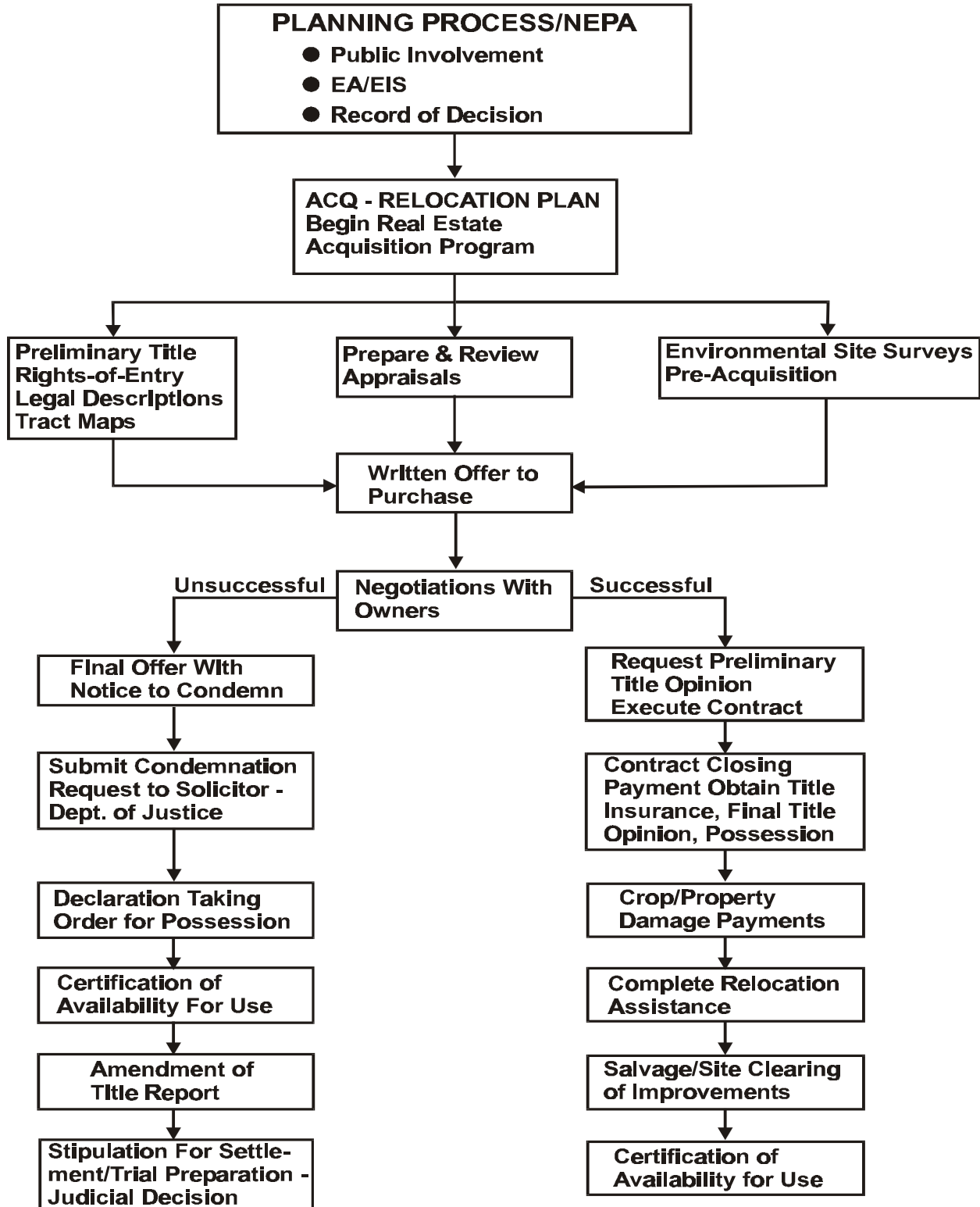
Mineral, oil and gas rights will not be acquired except where the development thereof would interfere with project purposes, but mineral rights not acquired will be subordinated to the Government's right to regulate their development in a manner that will not interfere with the primary purposes of the project, including public access.

#### **§ 8.6 Buildings.**

Buildings for human occupancy as well as other structures which would interfere with the operation of the project for any project purpose will be prohibited on reservoir project lands.



# Land Acquisition Process





# Land Acquisition Guidelines Appendix C

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION STATISTICAL REPORT FORM	FEDERAL FISCAL YEAR ENDING SEPT. 30, 19__	Form Approved OMB No: _____ Exp. Date: _____ Attachment - Appendix B		
REPORTING AGENCY _____ CITY/COUNTY/STATE _____ FEDERAL FUNDING AGENCY _____				
The burden for this report is estimated to average _____ hours per response, including reviewing instructions, searching data sources, gathering/maintaining data, and completing/reviewing the report. Send comments to: Federal Highway Administration, Office of Right-of-Way, Washington, D.C. 20590 and to: Office of Management and Budget, Paperwork Reduction Project (2105-0508), Washington, D.C. 20503.				
<b>PART A. PERSONS DISPLACED BY ACTIVITIES SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR</b>				
ITEM	TOTAL(A)	OWNERS (B)	TENANTS(C)	
1. HOUSEHOLDS (FAMILIES & INDIVIDUALS)				
2. BUSINESSES & NONPROFIT ORGANIZATIONS				
3. FARMS				
<b>PART B. RELOCATION PAYMENTS &amp; EXPENSES UNDER THE UNIFORM ACT DURING THE FISCAL YEAR</b>				
ITEM	ACTUAL EXPENSES-SEC. 202(A)	SCHEDULE PAYMENT/DISLOCATION ALLOWANCE-SEC. 202(B)	NO. OF DISPLACEMENTS	AMOUNT(B)
4. PAYMENTS FOR MOVING HOUSEHOLDS				
5. PAYMENTS FOR MOVING HOUSEHOLDS				
6. PAYMENTS FOR MOVING BUSINESSES/FARMS/MPO				
7. PAYMENTS FOR MOVING BUSINESSES/FARMS/MPO				
7A. NO. OF CLAIMS AND AMOUNT ON LINE 6 ATTRIBUTABLE TO REESTABLISHMENT EXPENSES				
8. REPLACEMENT HOUSING PAYMENTS FOR 180-DAY HOMEOWNERS-SEC. 203(A)				
9. NO. OF CLAIMS AND AMOUNT ON LINE 8 ATTRIBUTABLE TO INCREASED MORTGAGE INTEREST COSTS				
10. RENTAL ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC. 204(1)				
11. DOWNPAYMENT ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC. 204(2)				
12A. HOUSING ASSISTANCE AS LAST RESORT-SEC. 206(A)				
12B. HOUSING ASSISTANCE AS LAST RESORT-SEC. 206(A)				
13. RELOCATION ADVISORY SERVICES COSTS-SEC. 205				
14. TOTAL (SUM OF LINES 4(B) THROUGH 13(B)), EXCLUDING LINES 7A AND 9				
15. RELOCATION GRIEVANCES FILED DURING THE FISCAL YEAR IN CONNECTION WITH PROJECT/PROGRAM				
<b>PART C. REAL PROPERTY ACQUISITION SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR</b>				
ITEM	NO. OF PARCELS (A)	COMPENSATION(B)		
16. TOTAL PARCELS ACQUIRED				
17. TOTAL PARCELS ACQUIRED BY CONDEMNATION INCLUDED ON LINE 16 WHERE PRICE DISAGREEMENT WAS INVOLVED				



Land Acquisition Guidelines  
Appendix D

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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

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AMENDMENT NO. 2

Pursuant to the above-mentioned Act, the regulations heretofore issued by the Assistant Attorney General in charge of the Environment and Natural Resources Division (formerly the Land and Natural Resources Division), under Order No. 1 440-70 of the Attorney General dated October 2, 1970 (35 F.R. 16084; 28 C.F.R. sec. 0.66), for the purpose of establishing standards governing the approval of the title to lands to be acquired for Federal public purposes, are hereby amended by adding a new section numbered nine (9), as follows:

9. EXCEPTIONS TO THE FOREGOING REGULATIONS

Exceptions to the foregoing regulations may be made only by the Assistant Attorney General, Environment and Natural Resources Division, in individual instances when warranted in the interests of the United States.

Issued this 20th day of August, 1990.



Richard B. Stewart  
Assistant Attorney General  
Environment and Natural Resources Division

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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

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AMENDMENT NO. 1

Pursuant to the above-mentioned Act, the regulations heretofore issued by the Assistant Attorney General in charge of the Land and Natural Resources Division under Order No. 1 440-70 of the Attorney General dated October 2, 1970 (35 F.R. 16084; 28 C.F.R. sec. 0.66), for the purpose of establishing standards governing the approval of the title to lands to be acquired for Federal public purposes, are hereby amended by adding at the end of section 5(f) thereof the sentence: "Exceptions to the foregoing restrictions and requirements may be made only by the Attorney General, in individual instances when warranted in the interests of the United States."

Issued this 22d day of July, 1974.

Wallace H. Johnson  
Assistant Attorney General  
Land and Natural Resources Division

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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

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Pursuant to the above-mentioned Act, the following regulations are hereby issued by Assistant Attorney General Shiro Kashiwa under Order No. 440-70 of the Attorney General, dated October 2, 1970, for the purpose of establishing standards governing the approval of the title to lands to be acquired for Federal public purposes.

1. APPROVAL OF TITLE PRIOR TO THE PAYMENT  
OF THE PURCHASE PRICE

(a) When agencies acquire land without obtaining the title opinion of the Attorney General pursuant to delegations of authority from the Attorney General, the title evidence must be examined by competent attorneys and the title must be approved in compliance with provisions of the above-mentioned statute. Also, all title objections relating to outstanding rights, liens or claims which, if not eliminated, might possibly defeat or adversely affect the Government's title or cause losses to the United States, must be eliminated prior to the payment of the purchase price for the land.

(b) If the vendor is unable to convey all of the lands or interests provided for under the terms of the option or contract agreement, a proportionate reduction must be made in the agreed purchase price or the department or [the] agency must determine that it was intended to acquire the property or interest described in the deed for the consideration stated in the option or contract.

2. TITLE EVIDENCE

(a) The title evidence to the lands must be promptly obtained in reasonable compliance with the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" issued by this Department, hereinafter referred to as the "Standards," which publication is incorporated herein by this reference. The title evidence must cover and properly describe all lands and interests which are to be acquired. The usual conditions of title policies which provide for the subrogation of the rights of the insured and for the right of title companies to

defend suits against the insured are not applicable to the Federal Government and have been deleted from the approved form of policy. Other provisions of the prescribed form are more advantageous to the Government than the provisions of the usual forms of policies.

(b) Before contracting for the preparation of title evidence, the agency must determine, if the contractor is an attorney who is to prepare abstracts of title, that he is qualified and authorized to prepare abstracts; that his reputation in the community is satisfactory and that he has complied with any statutory or other requirements. If certificates of title or policies of title insurance are to be issued the agency must determine that the admitted assets of the corporation, after deducting existing liabilities secured and unsecured and excluding any trust and escrow funds, are sufficient to permit the company to assume the required risk under the certificate or policy, and that the corporation is authorized to issue these forms of title evidence in the jurisdiction in which the lands are located.

(c) Also preliminary and final certificates of title and insurance binders and policies must, except as to easements to be acquired for nominal or very small considerations, set out the risk assumed which must be in an amount not less than the liability required in the "Standards." Occasionally title companies will issue such evidence which includes statements that no monetary liability is assumed by the company or the certificates or policies may contain provisions which may prevent a recovery from the title company in the event of a title loss. Such statements or provisions are not acceptable. Also, certificates of title and title insurance policies which limit the liability of the title companies by providing that the ~~liability of the title companies by providing that the United States is required, as co-insurer or otherwise to assume any portion of the liability,~~ are not acceptable.

### 3. CONVEYANCES BY CORPORATIONS

(a) When the Government's vendor is a corporation and the title evidence consists of a certificate of title or an abstract of title the interested department or agency must, in addition to the requirements set out in the "Standards," obtain proof of the validity of the corporate existence and the corporation's authority to convey the land. This is not required when the title evidence consists of satisfactory title insurance policies since this type of title evidence is not limited to a search of the public records.

### 4. AUTHORITY TO ACQUIRE LANDS

(a) Before an agency of the Government may acquire real property it is essential that the Congress has authorized such acquisition, either specifically or by clear inference. Of



course any interest may be acquired in real property which may be authorized by the Congress, however, it is very seldom that a particular interest is authorized by legislation.

(b) Any deficiency in the agency's statutory authority to acquire lands or any lack of appropriations to pay for the property must be remedied before processing further. These legal principles should be kept in mind when look for defects:

(1) No land shall be purchased by the United States except under a law authorizing such purchase. R.S. § 3736, 41 U.S.C. sec. 14.

(2) Authority to purchase land on account of the United States need not be conferred by express provision of statute but may be implied. 40 Op.A.G. 69-70.

(3) The authorization of a Federal program and an appropriation to pay for it is an implied authority to acquire the property necessary to carry out the program. United States v. Kennedy, 278 F.2d 121 (C.A. 9, 1960).

(4) The proposed acquisition must comply with any conditions precedent set up by the authorizing statute. Maiatico v. United States, 302 F.2d 880 (C.A. D.C. 1962). E.g., it may require that land shall be acquired only within a specified area. See sec. 8(a), Act of September 9, 1959, 73 Stat. 479, 481, repealed by sec. 1, Act of June 8, 1962, 76 Stat. 92; Act of September 28, 1962, 76 Stat. 650. Or the consent of the state legislature may be required. E.G., see 16 U.S.C. sec. 516. Or the former owners may not be deprived of the use and occupancy of the property without their consent for a set prior of 25 years. See sec. 4(a)(1), Act of August 7, 1961, 75 Stat. 284, 288.

(c) If defects in the agency's authority to acquire are found, or if the extent of that authority is so unclear as to raise serious doubts, the simplest solution may be a clarifying statute or explicit authorization in the appropriation act.

##### 5. CHARACTER OF TITLE WHICH MAY BE APPROVED

(a) The agency must determine that the proposed interest in property is in accord with the authorizing legislation and that each interest is sufficient for the purposes for which the property is being acquired -- also that the purchase price is commensurate with such interest.

(b) Frequently vendors desire to convey lands to the Government by deeds which contain provisions for the reversion of the title when the property ceases to be used for a specified purpose. Also there may be restrictive covenants or agreements in conveyances to prior owners under which the title might revert to the grantors in such deeds upon the use of the property for an

unauthorized purpose or for other reasons. When permanent type improvements or improvements of substantial value are to be erected on lands, a defeasible title to such lands is not acceptable and must not be approved, unless the estate is clearly authorized by the Congress.

(c) Other covenants and conditions in the deeds to the United States or in prior deeds may limit the use of the property in a manner which may prevent the sale and disposition of the property under laws relating to the disposition of surplus property so as to prevent the recovery of a substantial portion of the Government's investment in the property. Titles are not acceptable which are subject to such covenants and conditions in the absence of clear authorizing legislation.

(d) Restrictive covenants related solely and strictly to racial and religious use and occupancy, regardless of provisions for the reversion of the title, may be ignored and no action need be taken to eliminate such covenants since the courts have held that such covenants are not enforceable. If the instrument containing the covenant provides for other covenants as to the use or conveyance of the lands, any legal rights to enforce such additional covenant must be eliminated.

(e) When the fee title to land is donated to the United States for the purpose of erecting thereon certain specified permanent improvements or facilities, the fee title may be accepted subject to the reservation of a right of reverter to the grantor in the event construction of such improvements or facilities is not commenced on or before a date specified in the conveyance. The right of reverter must terminate immediately upon the expenditure of funds appropriated for the construction of such improvements or facilities.

(f) A defeasible fee title to land may be acquired by purchase or donation when no permanent improvements are to be erected thereon, provided that the statute authorizing the acquisition in question does not preclude acquisition of title to the interest which the agency intends to acquire, the interest intended to be acquired is sufficient to permit the use of the land contemplated, and the consideration for the land has been determined with reference to the value of the limited interest that is acquired. In the event it is decided at some future time to erect permanent improvements on such land, the provision for defeasance must be eliminated.

(g) When it is desired to accept the title to lands, subject to any rights of reversion, the opinion of the Attorney General must be requested and full supporting facts containing a reference to any authorizing authority must be submitted for consideration.

(h) While titles to property need not be marketable, as determined by local laws, such titles must be safe from attack

and sufficient to protect the Federal investment in the property. Federal departments and agencies must exercise sound legal judgment in determining the validity of titles to lands and, in case of doubt of such validity, the Attorney General must be requested to render his title opinion pursuant to the above-mentioned Act prior to the payment of the purchase price.

#### 6. TAXES AND ASSESSMENTS AND OTHER LIENS

(a) Prior to or at the time of the acquisition of the title to the property, except as to certain easements as hereinafter set out, all liens against the title must be fully paid and satisfied or adequate provision should be made therefor. This is also true of assessments in improvement districts which are liens and payable in future installments. When the current or future taxes are liens on property at the time of acquisition and are not payable at that time, except as to certain easement acquisitions hereinafter set out, at least 20 percent in excess of previous years taxes must be withheld to permit the payment of the taxes, when they are due. If there has been a reassessment of the property or improvements have been made since the assessment for the previous year, sufficient additional funds must be withheld to pay the increases taxes. When states or municipalities have adopted proration statutes which authorize the cancellation of the portion of the year's taxes for the period beginning with the conveyance to the United States, the funds to be withheld may accordingly be reduced.

(b) Although United States v. Alabama, 313 U.S. 274 (1941), holds that the purchase by the United States after the lien date fixed by statute does not invalidate the lien, it cannot be enforced against the United States. If the land were sold by the Government, the tax lien may be enforced. Moreover, the Federal Government should assist the local governments in the collection of taxes which are liens on property at the time of acquisition.

(c) It is realized that the withholding of funds to pay taxes, which are liens but not due and payable at the time of the acquisition of easements, and the later payment of the taxes and accounting to the vendors for the funds represent a burden. However, in those instances in which a sum representing the greater portion of the total value of the property is paid for an easement, provision must be made for the payment of all taxes constituting liens against the land.

(d) A uniform and reasonable procedure must be followed which will reduce the burden and adequately protect the Government's interest. Therefore, in the closing of the direct purchase of easements, the titles may be approved subject to the lien of the current taxes, if they are not due and payable, without any provision for the payment of such taxes if the purchase price of the easement is not in excess of 50 percent of

the reasonable value of the entire contiguous property of the vendor as determined by the appraisal obtained by the acquiring agency.

(e) If the consideration to be paid for an easement is more than 50 percent of the appraised value of the tract and the current taxes are not payable, funds must be withheld from the purchase price to pay the current taxes when they are due.

(f) Large mortgage companies frequently make charges of approximately \$50.00 or more as service fees to issue partial releases or subordination agreements for easements. In order to meet this problem the title to easements may be approved subject to outstanding encumbrances, such as mortgages, deeds of trust and vendors' liens, where the properties are not encumbered in excess of 50 percent of their reasonable value and the considerations being paid for the easement do not represent sums in excess of 10 percent of the value of the tract. The 10 percent may appear to be conservative; however, it must be anticipated that changes in market conditions may greatly affect real estate values.

(g) It is not intended strictly to limit the approval of titles to easements subject to infirmities to those easements to be acquired for the minor considerations indicated above; however, the agency undertaking to approve the title should bear in mind that as to easements to be acquired for large considerations there is frequently a greater possibility that some of the infirmities might jeopardize the Government's interests.

(h) In other words, the title to an easement costing \$150.00 might be approved subject to a possible outstanding lien or minor interest due to the savings in the time and expense necessary to eliminate such interest, whereas in acquiring an easement for the payment of \$10,000.00 or more, the approval of the title subject to the lien or interest would probably not be justified.

#### 7. DEED TO THE UNITED STATES

(a) The deed to the United States must be prepared in compliance with the "Standards."

#### 8. FINAL TITLE PROCEDURE AND EVIDENCE

(a) Prior to consummation of purchases and the payment of the agreed considerations to property owners the following action should be taken:

(1) The abstractor or title company should be required to examine the records covering the period since the date of the last certification to determine that no adverse

change in title has occurred. If such change has occurred, the necessary action must be taken to eliminate any possible claims.

(2) A representative of the acquiring agency must make an inspection of the premises to ascertain whether any persons are holding in whole or in part adversely to the United States or its vendors, whether there are any adverse encroachments on the site and whether any material has been furnished or work performed under which mechanics' or materialmens' liens may be asserted. If any persons other than the Government's vendors are in possession of any portion of the property, disclaimers must be executed by such persons and delivered to the representative of the agency. Also, releases must be obtained if the inspection indicates that recent work has been performed under which such claims might be asserted. Forms of certificate and inspection and disclaimer are contained in the above-mentioned "Standards."

(3) The representative of the agency must prepare a closing statement covering in detail all charges to be eliminated by payment of money to be deducted from the purchase money check, including all taxes and assessments constituting liens against the property except as to certain easements as set out in 6(d) above (in the absence of an authorized purchase contract providing otherwise, the payment of such taxes, assessments, stamp or transfer taxes must be entirely borne by the vendor), regardless of whether the amount of taxes and assessments have been determined (see 6(a) above); outstanding judgments, both State and Federal; mortgages, or deeds of trust; amounts reserved under any bonds for title affecting the acquired land; and all liens, statutory or otherwise.

(4) After the recordation of the deed to the United States and all instruments releasing liens or encumbrances, the title evidence must be continued to the date of the closing and the recordation of such deed and instruments, and, if the preliminary title evidence consists of a certificate of title or title insurance binder, final certificates of title or title policies, in proper form, must be obtained showing that valid title is vested in the United States.

Issued this 2nd day of October 1970.

Shiro Kashiwa  
Assistant Attorney General  
Land and Natural Resources Division



Land Acquisition Guidelines  
Appendix E

REQUEST FOR WAIVER OF TAX LIEN IN ACQUISITION OF  
EASEMENT BY DIRECT PURCHASE

It is requested that the following type of lien be waived under the provisions of paragraph 4(c)(4)(b).

A. Lien of taxes for the current year 19\_\_\_\_, for the reason that:

(Check one)

1. It is necessary to pay all or a substantial portion of the purchase price to the holder of a mortgage, deed of trust, or vendor's lien in order to obtain a release or subordination thereof.
2. The amount of the purchase price is insufficient to pay the lien of the current year's taxes.
3. The purchase price of the easement does not exceed 50 percent of the reasonable value of the fee.

(a) The reasonable value of the fee is \$\_\_\_\_\_.

(b) The purchase price of the easement is \$\_\_\_\_\_.

(c) (1) The taxes are payable in installments which become delinquent on the following dates:

1st installment delinquent date \_\_\_\_\_.

2d installment delinquent date \_\_\_\_\_.

3d installment delinquent date \_\_\_\_\_.

or

(2) Taxes are not payable in installments and do not become delinquent for the current year until \_\_\_\_\_.

(mortgage) (page \_\_\_\_ of the abstract)

B. Lien of (deed of trust) shown at (item \_\_\_\_ of the certificate or policy)  
(vendor's lien)

1. The present amount of the lien is \$ \_\_\_\_\_.

2. The reasonable value of the fee is \$ \_\_\_\_\_.

3. The purchase price of the easement is \$ \_\_\_\_\_.





Land Acquisition Guidelines  
Appendix F

INTERAGENCY AGREEMENT

BETWEEN

THE BUREAU OF RECLAMATION

AND

THE BUREAU OF LAND MANAGEMENT

December 1982

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Section 1. Purpose: This agreement sets forth the basic principles of the Bureau of Reclamation (Reclamation) and the Bureau of Land Management (BLM) for coordinating land use planning, land resource management, land conveyance and exchange, and cooperative services. It brings coordinated efforts into compliance with recent laws and policies. Reclamation will, when requested, provide expertise in the area of water resources conservation, development and management, to be utilized by BLM in preparing its resource management plans. BLM will, when requested, provide expertise in the areas of land resource, forest, range, oil, gas, and mineral management, to be utilized by Reclamation when preparing its land management plans, and in managing Reclamation administered acquired or withdrawn public lands.

This agreement supersedes the March 8, 1972, agreement. All agreements made supplemental to the 1972 agreement will be reviewed within 5 years, and those that are inconsistent with this agreement will be revised to conform in accordance with section 6 of this agreement or will be cancelled.

Section 2. Authority to Enter into an Agreement: Through delegation of authority from the Secretary of the Interior to the Director of BLM and to the Commissioner of Reclamation, agreements may be executed between Reclamation and BLM to provide for mutually beneficial land and water use planning and management activities. Statutory authority for such agreements includes: section 307, Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1737; Economy Act, 31 U.S.C. 686; and the Reclamation Act of 1902, 43 U.S.C. Chapter 12, as amended and supplemented.

Section 3. Exchange of Services: Either Reclamation or BLM may request services of and perform services for the other, consistent with law, Executive Orders, the Code of Federal Regulations (CFR), each Bureau's instructions, and this agreement.

Section 4. Reimbursement for Services Rendered: The cost of work performed shall be reimbursable providing such work is not normally performed by the Bureau doing the work, or adequate funding for such work is not provided to that Bureau through the normal appropriation process. The requesting Bureau will transfer funds to the other Bureau to cover the estimated cost of work to be performed. The requesting Bureau will furnish a detailed estimate of the work to be performed. The transfer of funds from one Bureau to the other will be accomplished by the State Director, BLM, and the Regional Director, Reclamation, by means of a journal voucher and effected on the SF-224 by the billed agency in accordance with a specific executed agreement supplemental to this agreement. Except under emergency conditions, no work will be performed which cannot be reimbursed from funds available in the current fiscal year's appropriation. Prior to entering into any supplemental agreements that would require the transfer of funds from BLM to Reclamation, an Economy Act Determination must be prepared and approved by BLM.

Where either Reclamation or BLM has agreed to furnish reimbursable service to the other, the agency requesting the service will supply the other with estimates of the cost of such service, the work to be undertaken, work schedules, and budgetary information necessary for the agency receiving the service request to prepare and support its budget requests for the work involved. Either bureau will assist the other as requested in supporting budget presentations for reimbursable work. Such budgetary information will be provided, whenever possible, 18 months prior to the budget year plus one.

Section 5. Management of Reclamation Withdrawn and Acquired Lands:

A. Reclamation withdrawn and acquired lands on which there are authorized for construction or constructed Reclamation projects.

Reclamation has full management jurisdiction until the withdrawal is revoked or modified, and over acquired lands until the administration is transferred to another Federal or non-Federal agency by agreement or law.

At the request of Reclamation, the responsibility for management of Reclamation withdrawn and acquired lands actively in use for project purposes may be transferred to BLM through the execution of a supplemental agreement. In exercising its management responsibility, BLM will regularly coordinate with Reclamation and undertake only those management activities which would not preclude or adversely affect use of the land for Reclamation project purposes.

B. Reclamation withdrawn lands on which there are no authorized for construction or constructed Reclamation projects.

On Reclamation lands which are not within the boundaries of national forests or under another agency administration and there are no authorized for construction or constructed Reclamation projects, BLM has full administrative responsibility.

In exercising its statutory responsibilities on Reclamation land (such as those relating to the U.S. mining and mineral leasing laws, rights-of-way, and cadastral surveys other than farm-unit surveys, and the Recreation and Public Purposes Act, FLPMA, etc.), BLM, in consultation with Reclamation, shall develop special stipulations, consistent with statutory authority, and terms and conditions, as may be determined necessary by Reclamation, to protect the Reclamation withdrawn and acquired land for Reclamation purposes.

Rights-of-way grants issued for lands to be occupied by Reclamation for project purposes in lieu of a withdrawal will contain a provision for a future agreement specifying management responsibilities.

Section 6. Specific Services Applicable to this Agreement:

A. Withdrawals. All withdrawals will be made, modified, extended, or revoked in accordance with section 204 of FLPMA, and implementing rules and regulations, 43 CFR Part 2300, unless otherwise directed by specific statutes.

Reclamation will file a petition and application for a withdrawal as a method of reserving public lands for project uses when Reclamation: (1) requires administrative and/or management jurisdiction; (2) requires protection for its facilities and project uses against nondiscretionary entries; or (3) intends to transfer administrative and/or management jurisdiction to a third party. Reclamation will apply for a right-of-way for all other uses. In either case, the application will cover no more land than is needed to construct, operate, maintain, and protect Reclamation project uses and will restrict use and entry only to the minimum necessary to protect project interests. When possible, an application will be submitted well in advance of need for the land. Blocking out will be accomplished in accordance with sound real estate and land management practices whenever possible and practical.

A withdrawal to reserve an area for a particular public purpose and/or transfer jurisdiction over surface management and close the lands to nondiscretionary mineral entry and disposal will usually be required for: (1) lands necessary for permanent structures such as dams, reservoirs, large capacity or lined canals, laterals or drains, and power-plants; (2) critical watershed lands on which nondiscretionary mineral entry would likely result in the degradation of water quality; and (3) lands needed for project operation, maintenance and dam safety.

A withdrawal only granting the transfer of surface management jurisdiction and/or reserving the land for a particular public purpose will usually be required for: (1) lands needed to meet present and future fish and wildlife requirements pursuant to the Fish and Wildlife Coordination Act and/or for outdoor recreation as may be authorized by Congress; (2) lands on which sedimentation and/or wave action may occur; and (3) lands necessary for the relocation of roads, railroads, highways and utilities required as a result of project construction or operations.

Rights-of-way will be used where the jurisdiction and protection afforded by a withdrawal is not necessary. Possible examples could include: (1) lands necessary for project works and facilities such as smaller, unlined laterals, drains, pipelines; (2) transmission lines, telephone lines, and roads; (3) lands necessary for operation and maintenance buffers; (4) lands required for scenic areas, open space, greenbelts, etc.; and (5) lands needed for floodplain management.

Within 2 years, or when possible, less, from receipt of a perfected petition or application for a withdrawal or 1 year or less from the

receipt of a perfected right-of-way request, BLM will complete the withdrawal or right-of-way grant process. If the occupancy and use of the land are mandated by law prior to these time limits, or a substantial financial savings will result, BLM and Reclamation will facilitate an accelerated schedule, including an emergency withdrawal or other methods of authorizing Reclamation's entry onto such land.

B. Withdrawal Review. Under the provisions of sections 204(f) and 204(1) of FLPMA, BLM is required to review, near the date of expiration, all withdrawals having a definite expiration date, or in the case of withdrawals made prior to October 1976 having no definite expiration date, the mandated review will be completed prior to October 1991. Reclamation and BLM have established schedules for the review of all Reclamation withdrawn lands by 1991.

Reclamation will propose to convert withdrawals, where appropriate, to rights-of-way in accordance with Section 6.A. herein. The withdrawal will be retained where a right-of-way does not provide Reclamation with: (1) the necessary administrative and/or management jurisdiction to perform all current, planned, and known future project uses; (2) sufficient protection for its facilities and project uses against nondiscretionary entries; or (3) the ability to readily transfer administrative or management jurisdiction to a third party, or to maintain such third party jurisdiction. In any event, the reservation of public land by either a withdrawal or right-of-way shall cover no more land than is needed to permit Reclamation the freedom of use and discretionary action necessary to meet all of its stated and implied statutory requirements to construct, operate, maintain, and protect all Reclamation project uses, and will restrict use and entry only to the minimum degree necessary to protect project interests.

Rejustification of withdrawals will be made according to the guidelines contained in the BLM Manual Part 2355.3.

In addition to the scheduled review of Reclamation's withdrawals, Reclamation will review, according to schedules mutually agreed to at the field level, all of its pending withdrawal applications to determine if Reclamation's purposes could be served as well by a right-of-way. If a right-of-way will serve as well, Reclamation will request the withdrawal application be terminated and replaced with a right-of-way application, or if the withdrawal of lands is still needed, Reclamation will act to perfect the withdrawal application. Reclamation will provide BLM a yearly inventory update of its withdrawn and acquired lands. This updated report will be provided to BLM by November 15 of each year to coincide with Public Land Statistics requirements.

C. Land Sales. When Reclamation requests relinquishment of withdrawn lands, it may recommend sale of those lands to a specific entity or sale on the open market. If BLM determines that the lands are appropriate

for sale under provisions of section 203 of FLPMA or any other authority, BLM will, within legal constraints, honor Reclamation's recommendation.

In accordance with Departmental Manual delegation, at the request of Reclamation, Reclamation and BLM may enter into a supplemental agreement at the field level providing that Reclamation perform a specific land sale under provisions of section 203 of FLPMA. Such a supplemental agreement may additionally provide that Reclamation perform requisite land use planning prior to land sale, subject to BLM approval of Reclamation prepared plans.

D. Exchanges. 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. A supplemental agreement under section 7 of this agreement will be entered into at the field level for each exchange. When Reclamation land to be exchanged is acquired land, Reclamation will prepare a public notice for signature of the Secretary of the Interior and for publication in the Federal Register, which transfers the jurisdiction of the acquired land to BLM, specifically to effect the exchange. Simultaneously with the transfer of jurisdiction over the land to BLM, BLM will publish a notice of realty action as prescribed in 43 CFR 2200.1 and 2200.2 for the proposed exchange segregating the lands involved from operation of the public land laws including the mineral laws. The exchange will be consummated by BLM within 2 years. Reclamation will be responsible for all land appraisals and preparation of legal description and transfer documents. Lands received by BLM in any such exchange will be transferred to Reclamation's jurisdiction in a mutually agreed to form utilizing a right-of-way or withdrawal.

E. Reservation of Rights-of-way. When Reclamation proposes to relinquish a withdrawal, or to otherwise dispose of withdrawn land under Reclamation's direct jurisdiction and management on which Reclamation needs or anticipates a need for a right-of-way, Reclamation will, when available, provide to BLM field reports, drawings, and descriptions of any rights-of-way reserved across this land under subsection 4-P of the Factfinders Act of 1924 (43 U.S.C. 417). When mineral entry is requested on Reclamation's withdrawn land, an opening may be granted under the Act of April 23, 1932 (43 U.S.C. 154), and necessary rights-of-way may be reserved, with any conditions or terms of use necessary to protect Reclamation's interests in the land or which have resulted from interagency consultation. Rights-of-way not meeting the criteria of the above laws will be reserved under section 507 of FLPMA.

F. Granting Rights-of-way. Reclamation will, within its discretion, authority, and rules (section 10 of the Act of August 4, 1939, 43 U.S.C. 387 and section 28 of the Mineral Leasing Act of 1920, as amended), be

responsible for reviewing requests and granting rights-of-way across its withdrawn and acquired land and facilities (see section 5.A.). Reclamation will furnish BLM's respective State Director with a copy of all grants on withdrawn lands, including maps, which it issues, to be recorded on BLM's Master Title Plats.

When land under this or any other agreement is managed by a third party, Reclamation will coordinate with that party before issuing rights-of-way that would interfere with the activities of the managing party. On all rights-of-way for which Reclamation lacks authority to make a grant, BLM will issue the grant on all withdrawn or acquired lands, after consultation with Reclamation. Such consultation shall include: (1) questions of whether grant should or should not be granted; (2) modification of location of grant from the location applied for; and (3) terms and conditions and stipulations of the grant.

G. Making of Planning Studies and Engineering Investigation on Public Lands. Under the provisions of section 307(a) or other legal authority, Reclamation may enter onto the public lands to make studies and investigations necessary for project purposes, as required or authorized by Congress. Such studies and investigations will be fully coordinated with the BLM to ensure minimum disruption of ongoing programs.

H. Mineral and Geothermal Leases. Except for those minerals and conditions meeting the provisions of section 10 of the Reclamation Projects Act of 1939 (43 U.S.C. 387), leases for mineral, and geothermal resources on all land acquired or withdrawn by Reclamation will be issued by BLM. Applicants for mineral and geothermal leases on such land should be directed to file their applications with BLM's State offices. BLM will, in all issues involving mineral, and geothermal leases on or under Reclamation lands, request that Reclamation determine whether leasing is permissible and if so to provide any stipulations required to protect the interest of the United States. Reclamation will respond to this request for mineral leasing clearance within 60 days when adequate records are readily available. When adequate records are not available, Reclamation will provide an interim progress report within 30 days. BLM will not issue permits, leases, or licenses on acquired or withdrawn lands under Reclamation's management without Reclamation's consent and concurrence on all conditions and stipulations. Reclamation's recommendations on withdrawn lands under BLM management responsibility are advisory only insofar as Reclamation planned or current project uses are not adversely affected.

I. Cadastral Survey. BLM will conduct, on a reimbursable basis, cadastral surveys, resurveys, and investigations on existing and future projects in accordance with: (1) jointly agreed to schedule, provided that Reclamation will notify BLM of needs in sufficient time for it to incorporate the work into its authorized work programs; and (2) Reclamation provides the funds. If BLM is unable to accomplish a cadastral survey within Reclamation's time limits, BLM will perform the work on a



reimbursable basis by contract, or in lieu of private sector contractors, may contract with Reclamation to conduct the surveys with qualified Reclamation surveyors, according to BLM standards and procedures. The assigned Reclamation surveyors must conduct the field work and the survey plats and field notes are to be certified by a Reclamation GS-1373 Surveyor on the Surveyor's Certificate. The survey plat and field notes will be reviewed and, if adequate, be officially accepted by the appropriate BLM State office. The Reclamation cadastral surveyors will be in accordance with 43 CFR 9185.3-1(c).

BLM public land survey corner monuments, which may be destroyed or rendered useless by reason of Reclamation project construction activities, will be referenced and removed and then replaced, if possible, by Reclamation. The monuments will be at least equivalent to those existing prior to project construction.

J. Fire Protection During Project Construction. On lands described in section 5.A., Reclamation is responsible for fire protection. This responsibility may, at Reclamation discretion, be contracted out to other agencies. If Reclamation elects to contract with BLM, then prior to BLM accepting fire protection responsibility over Reclamation lands, Reclamation and BLM will cooperatively develop a mutually acceptable fire plan. Prior to commencing project construction, Reclamation will coordinate with BLM and will formulate fire prevention and control plans and programs, and will provide for fire protection. During project construction, Reclamation will take reasonable precautions and ensure all contractors take precautions to prevent and suppress forest and range fires. When a fire starts on land of either party and spreads to the lands of the other party, the administrator of the land at the point of ignition is responsible for rehabilitating the land of the other party to the degree necessary that previous management objectives can be carried out. This includes, but is not limited to, construction of temporary erosion structures, seeding, reforestation, restoration of improvements, and fencing.

K. Forestry. Forest/woodland resources present on Reclamation acquired or withdrawn lands, as described in section 5.A., are the responsibility of Reclamation, and when such lands are not located within or adjacent to National Forest lands, they may be managed by BLM in accordance with supplemental agreements entered into between BLM State Directors and Reclamation Regional Directors.

Prudent forest management actions will be conducted on these lands to the maximum extent consistent with future use of the land for Reclamation project purposes. When BLM is managing the forest or woodland resources, BLM foresters will coordinate with Reclamation personnel in developing and executing needed management actions.

Sales will be the preferred method of disposing of wood products. All revenues shall be deposited into a treasury account as directed by Reclamation in accordance with applicable statutes.

L. Grazing and/or Beekeeping. On lands under the jurisdiction of Reclamation not located within or adjacent to a National Forest on which grazing and/or beekeeping is compatible with Reclamation's current or planned use of any land area, BLM may, at Reclamation's request, manage grazing and/or beekeeping on those lands, subject to a supplemental agreement made in accordance with this general agreement and under such provisions as Reclamation may deem necessary. On Reclamation withdrawn or acquired land where the management under supplemental agreement is with BLM, all grazing and/or beekeeping leases or permits issued by BLM shall be issued for BLM's normal permit or lease period, but shall include such special stipulations as determined necessary for Reclamation to protect the land or facilities for Reclamation project purposes. When Reclamation determines that within 2 years its needs and uses will no longer be compatible with grazing and/or beekeeping, Reclamation will so notify BLM enabling it to notify the lessees and permittees and terminate the leases and/or permits in accordance with section 402 of FLPMA. Under emergency conditions leases and permits may be terminated with shorter notice.

Grazing and/or beekeeping fees collected by BLM from Reclamation land managed by BLM shall be deposited into a treasury account as directed by Reclamation in accordance with applicable statutes. BLM will furnish, concurrent with the deposit by BLM, a copy of the certificate of deposit showing the date of deposit, fund symbol, amount, and Reclamation project number. When authorized by Reclamation, revenues or fees collected may remain with BLM to serve as Reclamation's reimbursement for work performed.

M. Mining Claims. Where the construction of a Reclamation water resource project requires the clearance of title to public land encumbered by unpatented mining claims, BLM will conduct, on a reimbursable basis, the examination of all unpatented mining claims. If construction is imminent, the agencies will work together to expedite clearance. The validity investigations of mining claims will, whenever possible, be in accordance with jointly agreed to schedules, wherever construction contractual schedules are not the driving force, and time will permit. Whenever possible, Reclamation will notify BLM of its needs in sufficient time for BLM to incorporate the work into its work program. Reclamation will notify BLM at least 30 months before the beginning of the fiscal year in which the work is needed; except when Reclamation finds it cannot give this lengthy notice with respect to clearance of a small area, such as a damsite, pumping plant, substation or radio communication site, then Reclamation and BLM will negotiate a suitable schedule sufficient to protect Reclamation's facilities.

As soon as Reclamation identifies a need for clearance of title work, Reclamation will supply BLM with a statement of the work it needs done, including necessary maps and other pertinent information. BLM will supply Reclamation with estimates of cost, manpower, time required, and other information. The State Director and the Regional Director will make necessary arrangements for incorporating the work into BLM's program.

Upon completion of the validity examination, BLM will notify Reclamation of the findings and recommendations. Where BLM believes mining claims are not supported by discovery, BLM will initiate a contest action and will report to Reclamation on the results of such actions.

N. Recreation. When the management of Reclamation withdrawn or acquired land not located within or adjacent to a National Forest is with Reclamation in accordance with section 5 of this agreement, unless otherwise authorized by Congress, Reclamation's recreation planning, development, and management will be in accordance with Public Law 89-72 (79 Stat. 213). Reclamation will encourage non-Federal public bodies to manage recreation associated with Reclamation's land and water areas. When a non-Federal recreation manager cannot be found, Reclamation will discuss with BLM the option of BLM managing recreation on Reclamation project lands. Supplemental agreements will, if necessary, be utilized to determine the management responsibility and funding reimbursement. The two agencies will assure coordination and cooperation to promote compatibility of recreation development and operation (including compatible recreation fee structure) on adjacent Reclamation/BLM lands. When Reclamation plans recreation development on project lands, it will consider recreation use and recreation potential of BLM administered lands that are adjacent to Reclamation project lands. When BLM plans recreation development on lands adjacent to Reclamation project lands, it will consider recreation use, recreation potential, and previously developed Reclamation recreation plans for authorized or constructed Reclamation projects. If BLM prepares plans or management actions that could alter recreation potential of a Reclamation project that is not yet constructed, BLM will consult with Reclamation.

O. Fish and Wildlife Mitigation and Enhancement. Each agency will coordinate with the other when its plans and activities involve fish and wildlife resources and values related to lands administered by the other. Where water-related projects of either agency involve meeting the requirement of the Fish and Wildlife Coordination Act (FWCA), the agency initiating the action will ensure that the coordination and other requirements of the FWCA are met. Plans for the management of wildlife resources on lands of interest/concern to both agencies shall be developed jointly with the State under authority of the Sikes Act (16 U.S.C. 670 a-f). Management of the lands will be specified in a habitat management plan (HMP) developed for the area. The HMP will become part of Reclamation's land resources management plan for the area. Where a supplemental agreement executed for the specific Reclamation project provides for BLM's implementation of the approved mitigation plans, Reclamation will transfer the funds necessary to enable BLM to carry out its agreed to efforts. State funding and participation will be as specified in supplemental agreements between the agencies cooperating on the specific project, and in accordance with BLM's existing memorandum of understanding with the concerned State wildlife agency. Cooperative programs of both agencies shall be implemented by the State Director and the Regional Director in accordance with the management plan for the project. BLM will be

responsible for funding such projects on its lands or on Reclamation lands where no Reclamation project is planned, and on which withdrawals have not been revoked. Reclamation will provide funding for wildlife management related plans/activities/projects on the withdrawn public lands whenever such plans/activities/projects are for the purpose of mitigating the impacts of Reclamation projects.

P. Environmental Impact Analyses and Statements. All actions taken pursuant to this agreement concerning environmental matters will conform to the requirements of the Council on Environmental Quality regulations, 40 CFR Parts 1500-1508, 516 DM-1-7, the Bureau of Reclamation National Environmental Policy Act (NEPA) Handbook, and BLM Guidebooks 1791 and 1792. The agency (BLM or Reclamation) initiating the action which requires NEPA compliance will be the lead agency.

Where BLM or Reclamation proposes an action in an area where both Bureaus have responsibility or interest, the two Bureaus will cooperate in the preparation of the appropriate environmental analysis and, where necessary, the lead agency as defined above will prepare the categorical exclusion checklist, environmental assessment, FONSI, or EIS.

Cultural resource protection and management matters will conform to applicable sections of 36 CFR 60, 63, and 800; Reclamation Instructions Part 376.11 and BLM Manuals 8100, 8110, and 8111.

Q. Planning Program. If either agency proposes to prepare a plan or undertake a study involving lands administered by or affecting the interests of the other agency, the agency proposing to conduct the study will provide notice to the affected agency at the time when it is proposed. The agencies shall fully coordinate their plans and studies allowing ample time for budget considerations. When appropriate, the planning agency's plans may be adopted by the other agency as an amendment to its own land use or resource management planning document. Provisions of 43 CFR 1600 and other appropriate authority will be utilized in revising, amending, or preparing planning or study documents.

Inconsistencies between the plans of the two agencies will be addressed as prescribed by the planning authority of each agency. Differences unresolved through negotiation will be referred to the Assistant Secretary - Land and Water Resources for action as deemed appropriate.

In the preparation of all planning documents, BLM will serve where practicable and legal as the primary supplemental source of expertise for various areas of multiple use land management when so requested by Reclamation. Reclamation will serve where practicable and as requested by BLM as the primary source of expertise in the planning, management, and development of water resources. This does not replace or supplement earlier agreements which either agency has with third parties.

R. Engineering and Technical Services. BLM State Directors may, at any time, request Reclamation Regional Directors for service in connection with the planning, investigation, design, inspection, construction, repair, or rehabilitation of engineering works, including activities under emergency conditions. There is one exception to this procedure. In accordance with DM 753 1.3c, requests for services related to dam safety will be initiated by BLM's Dam Safety Officer, Denver Services Center, or Chief, Division of Engineering, Washington, and submitted to the Reclamation Dam Safety Officer, Engineering and Research Center, Denver, or to the Commissioner, Washington. Requests may be for inspection, site investigations, and other exploratory work necessary to provide projects of a reconnaissance grade, or feasibility grade, with sufficient technical details and costs estimates to support BLM's budget requests.

Requests for engineering services will be made by letter from the State Director to that Regional Director responsible for the area in which BLM's works needing services are located. To the extent practical, such requests shall be made 18 months prior to the budget year plus one, or as early as possible to permit coordination with Reclamation work programs. The requests shall specify the following:

- a. Job requirements;
- b. Nature of the work to be done;
- c. Extent of engineering and other services to be performed;
- d. Schedules to be met; and
- e. Budgetary information.

Where construction work which will cost over \$1,000,000 and will extend over more than one fiscal year includes the issuance of invitations to bids and specifications for construction is to be undertaken by Reclamation for BLM, a separate supplemental agreement covering such work, and the record of its financing, shall be executed between the State Director of BLM and the Regional Director of Reclamation. Reimbursement shall be made promptly upon receipt of information or a detailed statement of cost. Such budgetary information will be supplied, whenever possible, 18 months prior to the budget year plus one. The indirect costs charged for work performed by Reclamation or BLM shall include supportable overhead costs associated with work performed under this agreement and based on the guidelines established in part 346, DM 3.4 of the Departmental Manual. These costs shall not be calculated by using arbitrary factors.

S. Wild and Free-Roaming Horses and Burros. When wild and free-roaming horses or burros inhabit areas crossing administrative boundaries between BLM and Reclamation, their management and protection will be the responsibility of BLM, under its regulations. Upon request from Reclamation, BLM will cooperate in the removal, and relocation or disposal, of such animals from Reclamation lands (see section 5.A.).

T. Salinity Control on Public Land. Each agency will coordinate with the other when its plans and activities involve salinity control efforts in the Colorado River Basin which relate to or affect the other's management responsibilities or the lands administered by the other. Coordination at the field administrative/technical level will be accomplished through Federal interagency Salinity Control Coordinating Committee, and supplemental agreements as needed, by the appropriate State Directors and Regional Directors.

U. Computer Service. Whenever either agency has computer programming, time, or other service, which would be of use to the other agency, and such service is requested, the agency having the desirable program, time, or other service, will, within its time and personnel constraints, provide, on a reimbursable basis, the program, time, or service to the requesting agency. Whenever computer stored information of either agency is compatible with the other agency's computer, and would be of use to the other agency, arrangements will be made for automatic, compatible transfer of such information.

V. Discrepancies in Policy. Where agency differences in policy exist, as described in policy documents and papers of the BLM or Reclamation, the policy of the agency having primary jurisdiction over the lands will prevail.

W. Hydrometeorological Data Collection. Requirements for the collection of hydrometeorological data on BLM lands, including wilderness areas, or wilderness study areas, will be determined mutually in order to establish correlation networks with gages outside such areas to enhance scientific study, or weather modification, to improve water supply forecasting, and for public safety in flood forecasting and flood control operations. Agreement for installation of hydrometeorological data collection devices will be accomplished through the BLM consultation and permit process. Hydromet stations may be placed and maintained within primitive areas, wilderness areas, or wilderness study areas administered by BLM only where approved by BLM, and will be placed and maintained in a manner prescribed by BLM.

X. Road Maintenance. When administratively controlled roads extend across boundary lines between BLM and Reclamation lands, then the agency offices are encouraged to develop local supplemental agreements for exchange of maintenance activities. The purpose of this is to improve efficiency by combining similar or like work across administrative boundaries. All maintenance activities should be accomplished in such a manner so as to protect the environment and performed to a standard that places user safety at the forefront.

Y. Other Specific Services. This agreement may be amended or modified at any time, upon mutual concurrence, to cover any service or requirement overlooked, or developing in the post-signing period. Amendments must be initialed by both agency heads or their designees to become effective.

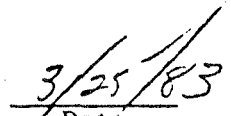
Section 7. Supplemental Agreements: Supplemental agreements may be entered into by a BLM State Director and a Reclamation Regional Director to implement this master agreement. Those supplemental agreement needs identified within this master agreement that directly affect project authorization will be completed during the planning stage for the project.

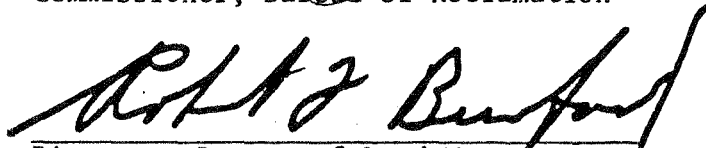
Section 8. Implementation: This agreement is effective upon signature of the heads of both agencies. A copy of this agreement will be distributed by each agency to each State and Regional Director.

Section 9. Renegotiation: This agreement is renegotiable at the option of either party.

Section 10. Termination of Agreement: This agreement may be terminated upon mutual agreement or upon 90 days written notice of either party.

  
Commissioner, Bureau of Reclamation

  
Date

  
Director, Bureau of Land Management

  
Date





Land Acquisition Guidelines  
Appendix G

7-268 (11-64)  
Bureau of Reclamation

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Bureau of Reclamation

**RIGHT-OF-WAY NOTICE** \_\_\_\_\_ Project

Dear

The records indicate that you have an interest in the following described land:

This land is subject to a right-of-way for ditches or canals in accordance with the provisions of the Act of August 30, 1890 (26 Stat. 391). The pertinent portion of that Act is quoted for your convenient reference:

"That in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this Act west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent described a right-of-way thereon for ditches or canals constructed by the authority of the United States."

Project operations have now advanced to the point where it becomes necessary to exercise the reserved right-of-way, and this notice is being sent to all parties having an interest in the above-described lands to inform them that the United States, acting through the Bureau of Reclamation, is about to utilize the reserved right-of-way.

The Act of September 2, 1964 (78 Stat. 808), amending the Act of August 30, 1890, provides authority for the payment of just compensation for the right-of-way, including severance damages. The reserved right-of-way has been appraised as having an estimated current fair market value of \$

In the very near future all persons having an interest in the property described above will be furnished the necessary documents for completion so as to effect payment.

Sincerely yours,



LAND-3.00  
GF

# Land Acquisition Guidelines Appendix H

## United States Department of the Interior



BUREAU OF RECLAMATION  
Commissioner's Office  
PO Box 25007  
Denver Federal Center  
Denver, Colorado 80225-0007

JAN 11 '01

IN RE DL-9300 TO:  
COMEND-8100

1-441

JAN 9 2001

NO.	DATE
3900	pl 1/22

FOLDER ID. 7758-11

### MEMORANDUM

To: Regional Director, PN, MP, LC, UC, GP  
Attention: PN-1000, MP-100, LC-1000, UC-100, GP-1000

From: Margaret W. Sibley  
Director, Office of Policy

Subject: Land Acquisition Activities, Bureau of Reclamation, Office of Inspector General  
Survey Report, W-IN-BOR-004-99-R

In the subject audit, the Office of Inspector General determined that Reclamation did not have a specific policy or guidance for conducting land acquisitions with the assistance of nonprofit organizations and recommended that we issue guidance for this activity. The Department of the Interior does have guidelines published regarding this activity, "Guidelines for Transactions Between Nonprofit Conservation Organizations and Federal Agencies" that were published in the Federal Register August 10, 1983. In addition, the Department issued a memorandum dated August 28, 1995, which provides clarification to the notice published in the Federal Register. A copy of these documents is attached.

At the time the guidelines and clarifications were issued, Reclamation was not subject to the guidelines since we were not utilizing funds appropriated from the Land and Water Conservation Fund for our land acquisition program. The Office of Policy, in conjunction with regional office staff, has reviewed the Department's guidelines and clarifications and found them to be adequate for Reclamation's needs.

In order to maintain a consistent approach regarding utilization of nonprofit organizations in accomplishing aspects of our land acquisition program, Reclamation will, as of this date, adopt the Department's guidelines which are referenced above.

#### Attachments

cc: Commissioner, Attention: W-1000  
Regional Director, PN, MP, LC, UC, GP  
Attention: PN-3900, MP-450, LC-2513, UC-420, GP-2100



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

AUG 28 1995

## Memorandum

To: Director, Bureau of Land Management  
Director, National Park Service  
Director, U.S. Fish and Wildlife Service

From: Bonnie R. Cohen,  
Assistant Secretary, Policy, Management and Budget

Subject: Clarifications to August 10, 1983 Guidelines for Transactions Between  
Nonprofit Organizations and Agencies of the Department of the Interior

These clarifications have been developed in response to the Inspector General's May 1992 Audit Report on land acquisitions conducted with the assistance of nonprofit organizations (Report No. 92-I-833). The guidelines apply to real estate transactions pursuant to letters of intent between nonprofit organizations and the National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, and other agencies of the Department of the Interior utilizing funds appropriated from the Land and Water Conservation Fund.

For purposes of these guidelines, the term "nonprofit organization" shall include, but is not necessarily limited to, nonprofit organizations and other corporations or similar legal entities which acquire lands and interests therein for possible sale to the United States.

### *Introduction*

Because of the lengthy time requirements in the budgeting and appropriation process, Federal agencies are frequently unable to acquire land in response to imminent threats to critical resources or to buy needed resources under favorable terms. With the ability to act quickly in the private market and maintain flexible working relationships, nonprofit organizations can assist and support Federal land acquisition programs. However, the role of nonprofit organizations in acquiring land or interests in land for ultimate Federal acquisition must be clearly and carefully defined in each transaction in conformity with these guidelines.

### *General policy*

Nonprofit organizations serve a very useful role in acquiring lands and interests in land having significant public values. Federal agencies are encouraged to work with such organizations and entities consistent with these guidelines.

## *Guidelines*

1. *No agency relationship.* Nonprofit organizations are not in any manner agents of the Federal Government unless an agency relationship is specifically designated in writing by mutual consent of the parties. Nonprofit organizations are typically private independent groups which freely negotiate real estate actions anywhere and anytime they desire and do so at their own risk. In transactions with the agencies of the Department of the Interior, nonprofit organizations shall not incur any liability or responsibility for payment of any relocation or other benefits under the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (Public Law 91-646).

2. *Applicability to certain properties proposed for conveyance to the United States.* These guidelines do not apply to situations where the history of the transaction clearly demonstrates that the initial acquisition by the nonprofit organization was not made in contemplation of resale. Typically, factors such as the length of time between initial acquisition and proposed resale to the Government, the terms of the initial transaction, and the use of the property in the interim period will be considered. Each case will be determined on its own merits.

3. *Agency acquisition priorities.* Lands or interests in lands acquired from a nonprofit organization or other entity shall be in accord with priorities set by the acquiring Federal agency, consistent with the agency's acquisition authorities, and limited to tracts that the agency has determined need to be acquired. Because of statutory, budgetary and policy considerations associated with any land acquisition transaction, the objectives of the Federal agencies must supersede those of the nonprofit organization.

4. *Areas of acquisition.* Lands or interests in land acquired by Federal agencies from nonprofit organizations must be within the boundaries of authorized areas or otherwise authorized by law.

5. *Letters of intent.* In each case where a nonprofit organization intends to acquire land for subsequent conveyance to a Federal agency and seeks prior assurance from the agency of its interest in and intent to take such a conveyance, the nonprofit may request and the agency may give a letter of intent to acquire. Such a letter of intent should also be used whenever an agency requests the assistance of a nonprofit organization in a proposed acquisition. If given by the Federal agency, the letter of intent to the nonprofit organization shall, at a minimum:

- (a) identify the land or interest in land which the agency desires to acquire;
- (b) state the estimated purchase price or other consideration subject to future appraisal;

(c) state the projected time frame as to when the agency intends to acquire the property; and,

(d) contain a statement indicating that should the agency be unable or decline to purchase the land within the projected time frame or at any time, disposition of the land or interests in land by the nonprofit organization or other entity is without liability to the Federal government.

**6. Access to records and financial information.** The acquiring Federal agency shall have the right to inspect the records of the nonprofit organization to verify the option price and other terms and conditions of any acquisition undertaken pursuant to a letter of intent, including all appraisals made of the property.

The nonprofit organization must be able to document and substantiate all expenses claimed in the transaction. Records shall be made available for inspection upon reasonable prior notice from the authorized representative of the Department.

**7. Prohibitions on interest payments by Federal agencies.** No agency shall pay nonprofit organizations for any interest incurred or foregone by the nonprofit organizations as a result of their participation in land acquisition transactions. (This practice has been discontinued since the Department of the Interior Solicitor's July, 1992 opinion which stated that there was no legal basis for making such payments.)

**8. Acquisitions.** In acquiring property from a nonprofit organization, a bureau of the Department of the Interior may pay either:

a) the fair market value of the property, based upon the bureau-approved appraisal and agreed upon by the acquiring bureau and the nonprofit organization, or such lesser figure at which the nonprofit organization offers to sell the property; or

b) the purchase price paid by the nonprofit organization to acquire the property from a third party, not to exceed the appraised fair market value approved by the acquiring bureau, plus related and associated expenses from a list approved by the Assistant Secretary for Policy, Management and Budget. The expenses shall be those which the Department would have incurred itself in acquiring the concerned property. Payment of a predetermined overhead cost may be approved in special cases subject to the approval of the Secretary.

**9. Requirements for appraisals.** Appraisals of land to be acquired from nonprofit organizations shall be prepared either by the purchasing agency or by an appraiser approved by such agency. Appraisals shall conform with the Uniform Appraisal Standards for Federal Land Acquisitions.

In addition, reviews of appraisals of land to be acquired from nonprofit organizations pursuant to letters of intent shall be no more than six months old in order to reflect current market analysis.

concurrently with the Assistant Secretary for Policy Development and Research, all authority currently delegated to the Assistant Secretary for Policy Development and Research.

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 4, 1983.

John J. Knapp,  
Acting Secretary.  
[FR Dec. 83—21744 Filed 8-9-83: 8:45 am]  
BILLING CODE 4210-01-M

## DEPARTMENT OF THE INTERIOR

### Guidelines for Transactions Between Nonprofit Conservation Organizations and Federal Agencies

AGENCY: Office of the Secretary, Interior.

ACTION. Revision of final guidelines—further opportunity to comment.

**SUMMARY:** The Assistant Secretary for Fish and Wildlife and Parks adopted final guidelines for transactions between nonprofit conservation organizations and Federal agencies that utilize the Land and Water Conservation Fund (LWCF). These guidelines provide broad instructions to the four Federal agencies in their use of nonprofit conservation organizations to assist in securing the natural, cultural, wildlife and recreation values in greatest need of protection. A further revision of these guidelines has now been adopted and further opportunity for comment is being provided.

The guidelines will apply to the National Park Service, Fish and Wildlife Service, and the Bureau of Land Management in the Department of the Interior and the Forest Service in the Department of Agriculture.

**EFFECTIVE DATE:** Comments due by September 9, 1983. Unless modified pursuant to notice in the Federal Register, these guidelines as hereby revised will be effective September 25, 1983.

**FOR FURTHER INFORMATION CONTACT:** William Hartwig, Acting Chairman, LWCF Policy Group, Room 3145, Department of the Interior, Washington, D.C. 20240, 343-4945.

**SUPPLEMENTARY INFORMATION:** The public was initially invited to comment on the proposed guidelines, that appeared in the Federal Register, January 28, 1983 (Vol. 48, No. 20, pages 4055-6). The final guidelines appeared in the Federal Register, April 22, 1983 (Vol. 48, No. 79, pages 17406-7) for 30 days of review and comment. This comment period was extended for 30 additional

days to June 23, 1983, by notification in the Federal Register, June 2, 1983 (Vol. 48, No. 107, page 24795) and is hereafter extended for 30 days of review and comment.

While not determinative, response to the draft guidelines was 31 in favor and 1 opposed. The final guidelines received 38 additional favorable comments and 50 opposed for a total of 69 in favor and 51 opposed.

These letters of opposition focused on two features of the guidelines, the letter of intent and full disclosure. Their general feeling was that these two requirements would limit the nonprofit's ability to conduct business in the free market. There were also two concerns expressed by the Department of Agriculture. First, that notions of due process and equal protection required the application of these guidelines to all corporations, individuals and entities transacting business in the manner addressed herein. Second, that these guidelines may be inconsistent with the requirements of Pub. L. 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (84 Stat. 1894).

It has never been the intention of these guidelines to limit the effectiveness of the nonprofit organization nor their freedom to acquire land in the market place. The purpose of these guidelines is to clarify the relationships between individual nonprofit organizations and LWCF Act agencies in those cases where a nonprofit seeks prior assurance from an agency of its intentions to acquire specific lands or an agency requests the assistance of a nonprofit in accomplishing the agency's land acquisition program. Obviously, these guidelines are not intended to preclude purely private actions. Any private party can buy land within the boundaries of Federal areas without Federal permission or acquiescence. A letter of intent is only required in situations where the agency seeks the assistance of the nonprofit or the nonprofit seeks prior assurance from an agency. Language has, accordingly, been added to the guidelines to clarify the applicability of the letter of intent.

The guidelines have also been modified to address the concerns regarding the full disclosure feature. The government does not wish to compromise the confidentiality that exists between the nonprofit and the landowner by the full disclosure of all negotiation actions or financial arrangements. Full disclosure is only required in cases where the nonprofit does not possess fee title to the desired

property prior to receipt of a firm commitment to purchase the property in question from the nonprofit by a Federal agency. In these cases it is reasonable for the public to know the option price, the sale price and the appraisal data prior to the time that a decision to purchase is made by the Federal agency because the majority of financial risks arising from the transaction are being borne by the Federal agency, not the nonprofit.

Finally, these guidelines have also been modified to address the Department of Agriculture's concern that they apply equally to all similarly situated entities. The reference to nonprofit conservation organizations has been expanded to refer to all who seek to purchase lands within the boundaries of authorized areas in contemplation of resale to a Federal agency and that request prior assurances or a binding Federal commitment of subsequent Federal acquisition. Agriculture's additional concern about the relationship of these guidelines to the requirements of Pub. L. 91-646 does not appear to be substantial. Specialized assurances by those acquiring land for ultimate sale to the United States can clearly be conditioned upon agreement with the requirements of these guidelines if appropriate.

Office of Management and Budget and the General Accounting Office have urged that guidelines be developed. The General Accounting Office's concerns have been expressed in recent reports including *Overview of Federal Land Acquisition and Management Practices* (CED 81-135), which noted that 4.5 percent of the land acquired by the National Park Service, the Fish and Wildlife Service, and the Forest Service during the period 1965-1979 was acquired through the use of nonprofit conservation organizations, and recommended that the Department develop a written policy for dealing with these groups. Such a policy, the report stated, should provide guidance on "when to use nonprofits, what the working relationship should be, and what unique land acquisition procedures might be appropriate."

Congress, as recently as the Explanatory Statement of the Recommendations of the Senate Committee on Appropriations on the Department of the Interior and Related Agencies Appropriation Bill, 1983 (H.R. 7356), indicated its support and interest in improving the "••• cooperation between the land acquiring agencies and the nonprofit organizations that are capable of performing a valuable service in helping acquire properties •••". It



has always been the intent of the guidelines to create an understanding of the benefits and operating procedures of the nonprofit organizations and the Federal agencies and to foster greater cooperation.

This concern has led to several changes to the present rule and opportunity for further public comment. In addition, it has also raised questions concerning the affirmative opportunities available to the Department to assist the nonprofit community with regard to key natural resource areas not intended for Federal acquisition or management. This concern was recently expressed by the Department of the Interior to the Chairman, Committee on Merchant Marine and Fisheries, pursuant to a letter of June 22, 1983, with regard to the Department's views on H.R. 2809 as reported, the "National Fish and Wildlife Foundation Establishment Act," as follows:

In our view, the not-for-profit conservation community does an outstanding job of protecting many important natural resources. We believe that a more productive course of action than H.R. 2809 would be to consider ways in which these organizations can be strengthened. We should encourage private initiative, not displace it. Those not-for-profit organizations that are willing to work for natural resource conservation on the ground are essential. They, rather than a new legislatively created foundation, deserve Administration and Congressional support.

Accordingly, the Department also intends to consider what affirmative steps it might undertake to assist the nonprofit communities efforts to protect identified natural resource areas of national importance at the local level on a permanent basis. While the previous nonprofit guidelines have emphasized the role of the nonprofit in relationship to ultimate Federal acquisition and management, we believe that this long-term protection role of the nonprofits may be the more important issue. The ability of the nonprofits to acquire, protect and manage nationally important natural resource areas over the long term—without direct Federal participation in terms of acquisition and management—is a fundamental issue for the future. Public comment is specifically encouraged on this point.

An example will illustrate the issue. Passage of the Coastal Barrier Resources Act emphasizes an alternative role for the Federal Government for the protection of areas of national importance. A traditional approach to the need for the protection of undeveloped coastal barrier resources could have involved both Federal acquisition and Federal management. But this expensive and

preemptive approach was not adopted. The Coastal Barrier Resources Act alternative has two key components.

(1) The precise identification of undeveloped coastal barriers: (2) reduction of the Federal Government's role, not expansion, by the elimination of countervailing Federal subsidies that encouraged development rather than protection.

While not ensuring protection of undeveloped coastal barriers, the steps should assist others, including the nonprofits, to establish protection of these key areas of national importance. There are two further questions, however. What additional steps can and should the Federal Government take to assist State, local, nonprofit, and private conservation efforts to protect these areas? And, what other areas of national importance, such as wetlands, merit this type of approach?

From the perspective of these nonprofit guidelines, we are concerned primarily with the first issue. Taking an already identified resource as an example, we wish to consider what other actions might be undertaken at the Federal level that would support protection of such an area of national importance, and assist the nonprofit land trust community, but that would not preempt private initiative nor contemplate any form of Federal acquisition or management.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

These guidelines do not in themselves constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (NEPA). NEPA concerns will be addressed at the individual unit levels on a case-by-case basis.

Nonprofit conservation organizations, like other private landowners, make their own decisions regarding the purchase and sale of real property. However, when dealing with resources to be purchased by the Federal agencies using the Land and Water Conservation Fund, some basic principles should be followed.

The Assistant Secretary for Fish and Wildlife and Parks makes notice of the following guidelines.

## Guidelines for Transactions Between Nonprofit Conservation Organizations and Other Entities and Federal Agencies

### Introduction

Because of the lengthy time requirements in the budgeting and appropriation process, Federal agencies are frequently unable to acquire land in response to imminent threats to critical resources or to buy needed resources under favorable terms. With the ability to act quickly in the private market and maintain flexible working relationships with landowners, nonprofit conservation organizations or other corporations, individuals, or entities (hereinafter "other entities") can assist and support the Federal land acquisition program. However, the role of nonprofit organizations and other entities in acquiring land or interests in land for ultimate Federal acquisition should be clearly and carefully defined in each transaction considering the basic principles listed below.

### Basic Principles

Nonprofit conservation organizations and other entities are not in any manner agents of the Federal Government unless specifically designated by mutual consent of the parties. They are typically private independent groups who freely negotiate real estate actions anywhere and anytime they desire and at their own risk. However, in dealing with the Government agencies, because of statutory, budgetary and policy considerations, the objectives of the Federal agencies must be paramount to those of the nonprofit conservation organizations and other entities.

Lands or interests in lands proposed for acquisition through a nonprofit organization or other entity should be in accord with priorities outlined by the agency.

Lands or interests in land acquired from nonprofit organizations or other entities must be within the boundaries of authorized areas, consistent with existing acquisition authorities, and limited to tracts that the agency has determined need to be acquired.

In each case where a nonprofit organization or other entity seeks prior assurance from an agency or an agency requests the assistance of a nonprofit organization the proposal of the agency should be outlined in a letter of intent to the nonprofit organization or other entity. The letter should provide the nonprofit organization or other entity with a minimum of: (1) Land or interest in land needed; (2) the estimated value; (3) the projected time frame as to when the agency intends to acquire the

property from the nonprofit organization or other entity; and (4) a statement indicating that should the agency be unable or decline for policy reasons to purchase the land within the projected time frame, disposition of the land or interests in land by the nonprofit organization or other entity is without liability to the government.

In cases where a nonprofit conservation organization or other entity or a Federal agency has requested and received a letter of intent and the nonprofit conservation organization or other entity has secured an option to buy and does not or will not own title prior to a binding Federal commitment to purchase, the option price, the sale price to the Federal agency and appraisal data must be disclosed before a decision to purchase is made by the Federal agency.

Dated August 3, 1983.

**G. Ray Arnett,**  
*Assistant Secretary for Fish and Wildlife and  
Parks*

[FR Doc. 83—21710 Filed 8-9-83; 8:45 am]

**BILLING CODE 4310-10-M**

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Land Acquisition Guidelines  
Appendix I

7-276 (4-78)  
Bureau of Reclamation

**UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION**

Contract No. \_\_\_\_\_

Project

**LAND PURCHASE CONTRACT**

THIS CONTRACT, made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in pursuance of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, between THE UNITED STATES OF AMERICA, hereinafter styled the United States, acting through such officer as is authorized therefor by the Secretary of the Interior, and

hereinafter styled Vendor,

2. WITNESSETH, That for and in consideration of the mutual agreements herein contained, the parties hereto do covenant and agree as follows:

3. The Vendor shall sell and by good and sufficient deed convey to the United States free of lien or encumbrance, except as otherwise provided herein, the following described real estate situated in the County of \_\_\_\_\_, State of \_\_\_\_\_, to-wit:

# Land Acquisition Guidelines

## Appendix I

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4. The United States shall purchase said property on the terms herein expressed, and on execution and delivery of the deed required by Article 3, and approval by the proper officials of the United States, it shall cause to be paid to the Vendor as full purchase price the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) by United States Treasury warrant or fiscal officer's check.

5. The Vendor shall at his own cost procure and have recorded all assurances of title and affidavits which the Vendor may be advised by the United States are necessary and proper to show in the Vendor complete fee simple unencumbered title to said property subject only to the interests, liens, or encumbrances expressly provided herein. Abstracts or certificates of title or title insurance will be procured by the United States at its expense unless otherwise provided in this contract. The expense of recording this contract and the deed required by Article 3 shall be borne by the United States.

The United States shall reimburse the Vendor in an amount deemed by the United States to be fair and reasonable for the following expenses incurred by the Vendor:

(a) Recording fees, transfer taxes and similar expenses incidental to conveying the real property described herein to the United States.

(b) Penalty cost for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering said real property; and

(c) The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is earlier.

The Vendor agrees to furnish the United States evidence that these items of expenses have been billed to and paid by him, and further agrees that the United States alone shall determine the fairness and reasonableness of the expenses to be paid.

6. In the event that liens or encumbrances other than those expressly provided herein, do exist, the United States may, at its option, remove any and all such outstanding liens and encumbrances by reserving from the purchase price herein set forth the necessary amount and discharge same with the money so reserved, but this provision shall not be construed to authorize the incurrence of any lien or encumbrance as against this contract, nor as an assumption of any lien or encumbrance by the United States.

7. It is agreed that, at its election, the United States may draw its check in payment for the above-described real estate to the order of the title contractor or closing agent, and the Vendor hereby authorizes the said contractor or agent to cash the check and make disbursements out of the proceeds to satisfy and pay any taxes, assessments, and encumbrances which are a lien against the real estate; to purchase any Federal or State documentary revenue stamps; to pay any State and local recording or transfer taxes where required, and any other expenses incident to the closing of title which are properly chargeable to the Vendor; and to remit the balance of the proceeds to Vendor; together with an itemized statement of the payments made on Vendor's behalf.

8. This contract shall become effective to bind the United States to purchase said property immediately on its execution by the contracting officer acting under the authority of the Secretary of the Interior and shall inure to the benefit of and be binding on the heirs, executors, administrators and assigns of the Vendor, and the assigns of the United States.

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Appendix I

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9. Notwithstanding earlier delivery of the deed as herein provided, vendor may retain possession of said property until the ninetieth day following the date of this contract or until the ninetieth day following the date the Vendor has received written notice to vacate whichever is earlier; provided, however, that in any event Vendor may retain possession of said property until payment to Vendor of the consideration. Vendor may harvest and retain the crops thereon until \_\_\_\_\_; provided, further, that after execution of this contract the United States may enter upon said property for the purpose of surveying for the construction of works of the United States. For the purposes of this Article 9, payment of consideration to the Vendor shall be deemed to have been made upon the mailing of the warrant or fiscal officer's check to vendor at his last known address.

10. If the Secretary of the Interior determines that the title should be acquired by the United States by judicial procedure, either to procure a safe title or to obtain title more quickly or for any other reason, then the award to be made for the interest acquired in said lands in said proceedings shall be the same amount as the purchase price herein provided.

11. The Vendor warrants that the Vendor has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the United States the right to annul the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business with others than the United States.

12. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.

THE UNITED STATES OF AMERICA

Witnesses:

By \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Vendor

Address \_\_\_\_\_

\_\_\_\_\_

Vendor

Address \_\_\_\_\_

\_\_\_\_\_

Vendor

Land Acquisition Guidelines  
Appendix I

ACKNOWLEDGMENT OF VENDOR

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally appeared before me \_\_\_\_\_ to me known to be the individual, or individuals, described in and who executed the within and foregoing instrument, and acknowledged that \_\_\_\_\_ signed the same as free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)

\_\_\_\_\_  
Notary Public in and for the  
State of \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_



# Land Acquisition Guidelines

## Appendix J

7-2524 (6-96) Bureau of Reclamation	<b>REPORT ON NEGOTIATIONS</b>	1. PROJECT <hr/> 2. FEATURE						
3. NAME AND ADDRESS OF OWNER/REPRESENTATIVE	4. PARCEL TRACT OR UNIT NUMBER	5. NAME AND ADDRESS OF TENANT (if any)						
6. TELEPHONE	7. ESTIMATED JUST. COMP.	8. TELEPHONE						
<b>INTEREST BEING NEGOTIATED/ACQUIRED</b>								
9. TYPE OF PROPERTY <input type="checkbox"/> RESIDENTIAL <input type="checkbox"/> AGRICULTURAL <input type="checkbox"/> COMMERCIAL <input type="checkbox"/> OTHER	10. NUMBER OF ACRES <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">TO BE ACQD.</td> <td style="width: 33%;">REMAINDER</td> <td style="width: 33%;">TOTAL</td> </tr> <tr> <td style="height: 20px;"></td> <td></td> <td></td> </tr> </table>	TO BE ACQD.	REMAINDER	TOTAL				11. INTEREST <input type="checkbox"/> TITLE IN FEE <input type="checkbox"/> PERMANENT EASEMENT <input type="checkbox"/> OTHER <input type="checkbox"/> TEMPORARY EASEMENT
TO BE ACQD.	REMAINDER	TOTAL						
<b>PERSONAL CONTACTS WITH OWNERS</b>								
<b>1</b> a. LOCATION	b. TIME	c. DATE						
RESULTS								
SIGNATURE OF NEGOTIATOR ⇒								
<b>2</b> a. LOCATION	b. TIME	c. DATE						
RESULTS								
SIGNATURE OF NEGOTIATOR ⇒								

USE SUPPLEMENTAL PAGES AS NEEDED





# Land Acquisition Guidelines Appendix K

## Low-Intensity Rural, Residential, Crop/Agricultural, etc. Real Property Questionnaire Checklist Phase I

INSTRUCTIONS: Circle for each question. Explain briefly on back if a "yes" or "unknown" are circled. Indicate whether a phase II assessment will be recommended. Attach a legal description of the real estate property covered by this survey.

A. Background Information.

Region \_\_\_\_\_

Project \_\_\_\_\_

Property ID \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

Owner(s) \_\_\_\_\_

Date of survey \_\_\_\_\_

Question	Owner/and or Occupant			Observed during visual inspection		
	Yes	No	Unk	Yes	No	Unk
1. Currently or in the past has the <i>property</i> or any <i>adjoining property</i> being or been used for an industrial use such as: gasoline station, motor repair facility, junkyard or landfill, or recycling facility?	Yes	No	Unk	Yes	No	Unk
2. Are there currently, or to the best of your knowledge have there been previously, any damaged or discarded vehicle batteries, or pesticides, paints, or other chemicals (disregard petroleum products) in individual containers of greater than 25 gal in volume or 100 gal in the aggregate, stored on or used on the <i>property</i> or at the facility?	Yes	No	Unk	Yes	No	Unk
3. Are there currently, or to the best of your knowledge have there been previously, any <i>drums</i> (typically 55 gal or sacks of chemicals materials stored on the <i>property</i> or at the facility?	Yes	No	Unk	Yes	No	Unk
4. Has <i>fill material</i> been brought onto the property that originated from a hazardous material contaminated site?	Yes	No	Unk	Yes	No	Unk
5. Are there currently, or to the best of your knowledge have there been previously, any <i>pits, ponds, or lagoons</i> located on the <i>property</i> associated with waste treatment or waste disposal?	Yes	No	Unk	Yes	No	Unk
6. Is there currently, or to the best of your knowledge has there been previously, any significantly stained soils on the <i>property</i> ?	Yes	No	Unk	Yes	No	Unk
7. Are there currently, or to the best of your knowledge have there been previously, any leaking storage tanks (above or underground) located on the <i>property</i> ?	Yes	No	Unk	Yes	No	Unk
8. If the <i>property</i> is served by a private well or non-public water system, have contaminants been identified in the well or system that exceed guidelines applicable to the water system?	Yes	No	Unk	Yes	No	Unk
9. To the best of your knowledge, have any <i>hazardous substances or petroleum products</i> , unidentified waste materials, tires, automotive or industrial batteries or any other waste materials been dumped above grade, buried and/or burned on the <i>property</i> ?	Yes	No	Unk			
10. To the best of your knowledge, has any part of the area been used as a spray operation base: air strip, equipment parking area?	Yes	No	Unk			
11. Is there currently, or to the best of your knowledge has there been structures containing asbestos located on the property and/or has any asbestos been buried on the property?	Yes	No	Unk	Yes	No	Unk
12. Is there evidence of chemical contamination e.g., vegetation different from surrounding for no apparent reason, bare ground, sterile water bodies etc?	Yes	No	Unk	Yes	No	Unk
13. Is there a transformer, capacitor, or any hydraulic equipment for which there is documentation indicating the presence of PCBs?	Yes	No	Unk	Yes	No	Unk

Unk = "unknown" or "no response."

# Land Acquisition Guidelines

## Appendix K

### Public Records/Historical Sources Inquiry

14. Do any of the following Federal government record systems list the property or any property within the circumference of the area noted below:	Yes	No
National Priorities List--within 1.0 mile (1.6 Km)?	Yes	No
CERCLIS List--within 1.5 mile (0.8 Km)?	Yes	No
RCRA TSD Facilities--within 1.0 mile (1.6 Km)?	Yes	No
15. Do any of the following state record systems list the property or any property within the circumference of the area noted below:	Yes	No
List maintained by state environmental agency of hazardous waste sites identified for investigation or remediation that is the state agency equivalent to NPL--within approximately 1.0 mile (1.6 Km)?	Yes	No
List maintained by state environmental agency of sites identified for investigation or remediation that is the state equivalent to CERCLIS--within 0.5 mile (0.8 Km)?	Yes	No
Leaking Underground Storage Tank (LUST) List--within 0.5 mile (0.8 Km)?	Yes	No
Solid Waste/Landfill Facilities--within 0.5 mile (0.8 Km)?	Yes	No

**Certification (CHECK ONE).**

I hereby certify that to the best of my knowledge no contaminants are present on this real estate, and there are no obvious signs of any effects of contamination.

On the basis of the information collected to complete this form, it is possible to reasonably conclude that there is a potential for contaminants, or the effects of contaminants, to be present on that real estate. Phase II assessment will be performed.

**Examiner**

Examiner represents that to the best of his/or her's knowledge the above statements and facts are true and correct.

Signed \_\_\_\_\_ Print Name \_\_\_\_\_

Date \_\_\_\_\_ Title \_\_\_\_\_

**Approving Official**

I concur with the above certification

Signed \_\_\_\_\_ Print Name \_\_\_\_\_

Date \_\_\_\_\_ Title \_\_\_\_\_

**Additional information**

Question # \_\_\_ Comment:

Question # \_\_\_ Comment:

Question # \_\_\_ Comment:

Unk = "unknown" or "no response."

# Land Acquisition Guidelines

## Appendix L

### High-Intensity Use Industrial, Commercial, Feedlots Etc. Real Property Questionnaire Checklist Phase I

(Criteria more restrictive than Low-intensity are underlined)

INSTRUCTIONS: Circle for each question. Explain briefly on back if a "yes" or "unknown" are circled. Indicate whether a phase II assessment will be recommended. Attach a legal description of the real estate property covered by this survey.

**A. Background Information.**

Region \_\_\_\_\_

Project \_\_\_\_\_

Property ID \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

Owner(s) \_\_\_\_\_

Date of survey \_\_\_\_\_

Question	Owner/and or Occupant			Observed During Visual Inspection		
	Yes	No	Unk	Yes	No	Unk
1. Is the <u>property</u> or to the best of your knowledge, has the <u>property</u> or any <u>adjoining property</u> used for an <u>industrial use</u> ?	Yes	No	Unk	Yes	No	Unk
2. Is or to the best of your knowledge has the <u>property</u> or any <u>adjoining property</u> used as a gasoline station, motor repair facility, <u>commercial printing facility</u> , <u>dry cleaners</u> , <u>photo developing laboratory</u> , <u>junkyard or landfill</u> , or as a <u>waste treatment, storage, disposal, processing</u> , or recycling facility?	Yes	No	Unk	Yes	No	Unk
3. Are there currently, or to the best of your knowledge have there been previously, any damaged or discarded automotive or industrial batteries, or pesticides, paints, or other chemicals in individual containers of greater than <u>5 gal</u> in volume or <u>50 gal</u> in the aggregate, stored on or used at the <u>property</u> or at the facility?	Yes	No	Unk	Yes	No	Unk
4. Are there currently, or to the best of your knowledge have there been previously, any industrial <u>drums</u> (typically 55 gal or sacks of chemicals located on the property or at the facility)?	Yes	No	Unk	Yes	No	Unk
5. Has <u>fill material</u> been brought onto the property that originated from a <u>contaminated site</u> ?	Yes	No	Unk	Yes	No	Unk
6. Are there currently, or to the best of your knowledge have there been previously, any <u>pits, ponds, or lagoons</u> located on the <u>property</u> in connection with waste treatment or waste disposal?	Yes	No	Unk	Yes	No	Unk
7. Is there currently, or to the best of your knowledge has there been previously, any significantly stained soil and/or <u>dead vegetation</u> on the <u>property</u> ?	Yes	No	Unk	Yes	No	Unk
8. Are there currently, or to the best of your knowledge have there been previously, any leaking storage tanks (above or underground) located on the <u>property</u> ?	Yes	No	Unk	Yes	No	Unk
9. <u>Are there currently, or to the best of your knowledge have there been previously, any vent pipes, fill pipes, or access ways indicating a fill pipe protruding from the ground on the property or adjacent to any structure located on the property?</u>	Yes	No	Unk	Yes	No	Unk
10. <u>Are there currently, or to the best of your knowledge have there been previously, any flooring, drains, or walls located within the facility that are stained by substances other than water or are emitting chemical type foul odors?</u>	Yes	No	Unk	Yes	No	Unk
11. If the <u>property</u> is served by a private well or non-public water system, have contaminants been identified in the well or system that exceed guidelines applicable to the water system?	Yes	No	Unk	Yes	No	Unk
12. <u>Does the owner or occupant of the property have any knowledge of governmental notification relating to past or recurrent violations of environmental laws with respect to the property or any facility located on the property?</u>	Yes	No	Unk			
13. <u>Does the owner or occupant of the property have any knowledge of any environmental site assessment of the property or facility that indicated the presence of hazardous substances or petroleum products on, or contamination of, the property or recommended further assessment of the property?</u>	Yes	No	Unk			
14. <u>Does the property discharge waste water on or adjacent to the property other than storm water into a sanitary sewer system?</u>	Yes	No	Unk	Yes	No	Unk
15. To the best of your knowledge, have any <u>hazardous substances or petroleum products</u> , unidentified waste materials, tires, automotive or industrial batteries or any other waste materials been dumped above grade, buried and/or burned on the <u>property</u> ?	Yes	No	Unk	Yes	No	Unk
16. Is there a transformer, capacitor, or any hydraulic equipment for which there are any records indicating the presence of PCBs?	Yes	No	Unk	Yes	No	Unk

Unk = "unknown" or "no response."

# Land Acquisition Guidelines

## Appendix L

### Public Records/Historical Sources Inquiry

17. Do any of the following Federal government record systems list the property or any property within the circumference of the area noted below:	Yes	No
National Priorities List--within 1.0 mile (1.6 Km)?	Yes	No
CERCLIS List--within 1.5 mile (0.8 Km)?	Yes	No
RCRA TSD Facilities--within 1.0 mile (1.6 Km)?	Yes	No
18. Do any of the following state record systems list the property or any property within the circumference of the area noted below:	Yes	No
List maintained by state environmental agency of hazardous waste sites identified for investigation or remediation that is the state agency equivalent to NPL--within approximately 1.0 mile (1.6 Km)?	Yes	No
List maintained by state environmental agency of sites identified for investigation or remediation that is the state equivalent to CERCLIS--within 0.5 mile (0.8 Km)?	Yes	No
Leaking Underground Storage Tank (LUST) List--within 0.5 mile (0.8 Km)?	Yes	No
Solid Waste/Landfill Facilities--within 0.5 mile (0.8 Km)?	Yes	No
19. Based upon a review of fire insurance maps or consultation with the local fire department serving the property, are any buildings or other improvements on the property or on an adjoining property identified as having been used for an industrial use or uses likely to lead to contamination of the property?	Yes	No

**Certification (CHECK ONE).**

- I hereby certify that to the best of my knowledge no contaminants are present on this real estate, and there are no obvious signs of any effects of contamination.
- Phase II assessment will be performed. On the basis of the information collected to complete this form, it is possible to reasonably conclude that there is a potential for contaminants, or the effects of contaminants, to be present on that real estate.

**Examiner**

Examiner represents that to the best of his/or her's knowledge the above statements and facts are true and correct.

Signed \_\_\_\_\_ Print Name \_\_\_\_\_

Date \_\_\_\_\_ Title \_\_\_\_\_

**Approving Official**

I concur with the above certification

Signed \_\_\_\_\_ Print Name \_\_\_\_\_

Date \_\_\_\_\_ Title \_\_\_\_\_

**Additional information**

Question # \_\_\_\_ Comment:

Question # \_\_\_\_ Comment:

Unk = "unknown" or "no response."

Land Acquisition Guidelines  
Appendix M

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ARTICLES RELATING TO 90-DAY NOTICE REQUIREMENT

*For use when landowners agree to waive the requirements of 90 days' written notice and payment of the contract consideration prior to date of possession as provided by*

*Paragraph 8.E.(5)(b):*

8 . After execution of this contract by the United States shall at all times have unrestricted access to said property to survey for and construct Reclamation works, telephone and electrical transmission lines, and other structures and appliances incident to said Reclamation works, free of any claim for damage or compensation on the part of the Vendor. Vendor hereby waives the statutory requirement providing 90 days' notice to move from the described property, and waives the statutory requirement for payment of consideration as a condition precedent to the United States' taking possession. The Vendor may retain possession of said property until \_\_\_\_\_, notwithstanding earlier delivery of the deed as herein provided and may harvest and retain the crops thereon until

*For use when acquisition involves vacant and unused property, easements, or small portions of large properties when such acquisitions do not cause displacement of persons as provided in Paragraph 8.E.(5)(b):*

8. After execution of this contract by the United States, the proper officers and agents of the United States shall at all times have unrestricted access to said property to survey for and construct Reclamation works, telephone and electrical transmission lines, and other structures and appliances incident to said Reclamation works, free of any claim for damage or compensation on the part of the Vendor. The Vendor may retain possession of said property until \_\_\_\_\_, notwithstanding earlier delivery of the deed as herein provided and may harvest and retain the crops thereon until

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Land Acquisition Guidelines  
Appendix N

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**Acquisition Summary Statement**

Dear \_\_\_\_\_:

In accordance with Section 301(3) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894), we are furnishing the following information concerning the Bureau of Reclamation proposed acquisition of certain interests in land from you.

In connection with the \_\_\_\_\_ Project, we proposed to acquire in fee simple title the following described land:

An appraisal of your property has been made by a qualified professional appraiser according to the rules and procedures governing Federal acquisition of land. (**Full Takings use:** "As required by Federal law, any effect on value the \_\_\_\_\_ Project might have on your property being acquired was disregarded.") (**Partial Takings use:** "As required by Federal law, the effect \_\_\_\_\_ Project has on the "before" value of your property has been excluded. The effect of the \_\_\_\_\_ Project on the "after" value of your remainder property has been considered.") The buildings, structures, and improvements found on your property were all considered in this appraisal. Enclosed is a list of the items considered as a part of the real property. The just compensation for your property has been determined by the Bureau of Reclamation to be \$\_\_\_\_\_ which amount is not less than the approved appraisal. Of this amount, \$\_\_\_\_\_ was considered as severance damage to the remainder.

This statement supplements our current negotiations for your property. Your cooperation in this transaction would be appreciated.

Sincerely,

Regional Director

Enclosures (1) List of real property items.

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# Land Acquisition Guidelines

## Appendix O

OMB Approval No. 2502-0265



### A. Settlement Statement (HUD-1)

**B. Type of Loan**

1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> RHS	3. <input type="checkbox"/> Conv. Unins.	6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.				
<p><b>C. Note:</b> This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.</p>					
D. Name & Address of Borrower:			E. Name & Address of Seller:		F. Name & Address of Lender:
G. Property Location:			H. Settlement Agent:		I. Settlement Date:
			Place of Settlement:		

**J. Summary of Borrower's Transaction**

100. Gross Amount Due from Borrower	
101. Contract sales price	
102. Personal property	
103. Settlement charges to borrower (line 1400)	
104.	
105.	
Adjustment for items paid by seller in advance	
106. City/town taxes to	
107. County taxes to	
108. Assessments to	
109.	
110.	
111.	
112.	
120. Gross Amount Due from Borrower	
200. Amount Paid by or in Behalf of Borrower	
201. Deposit or earnest money	
202. Principal amount of new loan(s)	
203. Existing loan(s) taken subject to	
204.	
205.	
206.	
207.	
208.	
209.	
Adjustments for items unpaid by seller	
210. City/town taxes to	
211. County taxes to	
212. Assessments to	
213.	
214.	
215.	
216.	
217.	
218.	
219.	
220. Total Paid by/for Borrower	
300. Cash at Settlement from/to Borrower	
301. Gross amount due from borrower (line 120)	
302. Less amounts paid by/for borrower (line 220)	( )
303. Cash <input type="checkbox"/> From <input type="checkbox"/> To Borrower	

**K. Summary of Seller's Transaction**

400. Gross Amount Due to Seller	
401. Contract sales price	
402. Personal property	
403.	
404.	
405.	
Adjustment for items paid by seller in advance	
406. City/town taxes to	
407. County taxes to	
408. Assessments to	
409.	
410.	
411.	
412.	
420. Gross Amount Due to Seller	
500. Reductions In Amount Due to seller	
501. Excess deposit (see instructions)	
502. Settlement charges to seller (line 1400)	
503. Existing loan(s) taken subject to	
504. Payoff of first mortgage loan	
505. Payoff of second mortgage loan	
506.	
507.	
508.	
509.	
Adjustments for items unpaid by seller	
510. City/town taxes to	
511. County taxes to	
512. Assessments to	
513.	
514.	
515.	
516.	
517.	
518.	
519.	
520. Total Reduction Amount Due Seller	
600. Cash at Settlement to/from Seller	
601. Gross amount due to seller (line 420)	
602. Less reductions in amounts due seller (line 520)	( )
603. Cash <input type="checkbox"/> To <input type="checkbox"/> From Seller	

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

L. Settlement Charges

700. Total Real Estate Broker Fees		Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
Division of commission (line 700) as follows :			
701. \$	to		
702. \$	to		
703. Commission paid at settlement			
704.			
800. Items Payable in Connection with Loan			
801. Our origination charge	\$	(from GFE #1)	
802. Your credit or charge (points) for the specific interest rate chosen	\$	(from GFE #2)	
803. Your adjusted origination charges		(from GFE #A)	
804. Appraisal fee to		(from GFE #3)	
805. Credit report to		(from GFE #3)	
806. Tax service to		(from GFE #3)	
807. Flood certification to		(from GFE #3)	
808.			
809.			
810.			
811.			
900. Items Required by Lender to be Paid in Advance			
901. Daily interest charges from	to	@ \$ /day	(from GFE #10)
902. Mortgage insurance premium for	months to		(from GFE #3)
903. Homeowner's insurance for	years to		(from GFE #11)
904.			
1000. Reserves Deposited with Lender			
1001. Initial deposit for your escrow account			(from GFE #9)
1002. Homeowner's insurance	months @ \$	per month \$	
1003. Mortgage insurance	months @ \$	per month \$	
1004. Property Taxes	months @ \$	per month \$	
1005.	months @ \$	per month \$	
1006.	months @ \$	per month \$	
1007. Aggregate Adjustment		-\$	
1100. Title Charges			
1101. Title services and lender's title insurance			(from GFE #4)
1102. Settlement or closing fee	\$		
1103. Owner's title insurance			(from GFE #5)
1104. Lender's title insurance	\$		
1105. Lender's title policy limit \$			
1106. Owner's title policy limit \$			
1107. Agent's portion of the total title insurance premium to	\$		
1108. Underwriter's portion of the total title insurance premium to	\$		
1109.			
1110.			
1111.			
1200. Government Recording and Transfer Charges			
1201. Government recording charges			(from GFE #7)
1202. Deed \$	Mortgage \$	Release \$	
1203. Transfer taxes			(from GFE #8)
1204. City/County tax/stamps	Deed \$	Mortgage \$	
1205. State tax/stamps	Deed \$	Mortgage \$	
1206.			
1300. Additional Settlement Charges			
1301. Required services that you can shop for			(from GFE #6)
1302.	\$		
1303.	\$		
1304.			
1305.			
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)			

Comparison of Good Faith Estimate (GFE) and HUD-1 Charges		Good Faith Estimate	HUD-1
<b>Charges That Cannot Increase</b>	<b>HUD-1 Line Number</b>		
Our origination charge	# 801		
Your credit or charge (points) for the specific interest rate chosen	# 802		
Your adjusted origination charges	# 803		
Transfer taxes	# 1203		

Charges That In Total Cannot Increase More Than 10%		Good Faith Estimate	HUD-1
Government recording charges	# 1201		
	#		
	#		
	#		
	#		
	#		
	#		
	#		
	#		
	#		
	#		
<b>Total</b>			
<b>Increase between GFE and HUD-1 Charges</b>		\$	or %

Charges That Can Change		Good Faith Estimate	HUD-1
Initial deposit for your escrow account	# 1001		
Daily interest charges \$ /day	# 901		
Homeowner's insurance	# 903		
	#		
	#		
	#		

**Loan Terms**

Your initial loan amount is	\$
Your loan term is	years
Your initial interest rate is	%
Your initial monthly amount owed for principal, interest, and any mortgage insurance is	\$ includes <input type="checkbox"/> Principal <input type="checkbox"/> Interest <input type="checkbox"/> Mortgage Insurance
Can your interest rate rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, it can rise to a maximum of % . The first change will be on and can change again every after . Every change date, your interest rate can increase or decrease by % . Over the life of the loan, your interest rate is guaranteed to never be <b>lower</b> than % or <b>higher</b> than % .
Even if you make payments on time, can your loan balance rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, it can rise to a maximum of \$
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	<input type="checkbox"/> No <input type="checkbox"/> Yes, the first increase can be on and the monthly amount owed can rise to \$ . The maximum it can ever rise to is \$ .
Does your loan have a prepayment penalty?	<input type="checkbox"/> No <input type="checkbox"/> Yes, your maximum prepayment penalty is \$
Does your loan have a balloon payment?	<input type="checkbox"/> No <input type="checkbox"/> Yes, you have a balloon payment of \$ due in years on .
Total monthly amount owed including escrow account payments	<input type="checkbox"/> You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself. <input type="checkbox"/> You have an additional monthly escrow payment of \$ that results in a total initial monthly amount owed of \$ . This includes principal, interest, any mortgage insurance and any items checked below: <input type="checkbox"/> Property taxes <input type="checkbox"/> Homeowner's insurance <input type="checkbox"/> Flood insurance <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

**Note:** If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.