

# **FINDING OF NO SIGNIFICANT IMPACT**

## **Fremont-Madison Irrigation District Proposed Title Transfer Minidoka Project, Idaho-Wyoming and Teton Basin Project, Idaho**

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

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### **Introduction**

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

### **Background**

In 2003, the Congress passed the Fremont-Madison Conveyance Act (Public Law 108-85). This Act requires the Secretary of the Interior to transfer all right, title, and interest of the United States in Cross Cut Diversion Dam, Cross Cut Canal, a water right permit, and appurtenant acquired land and easements of the Minidoka and Teton Basin Projects to the Fremont-Madison Irrigation District (FMID). FMID currently operates and maintains Project facilities to provide irrigation water to approximately 285,000 acres within the District boundaries. The Conveyance Act requires the Secretary to either transfer title before September 13, 2004, or submit a report to Congress explaining the reasons that conveyance has not been completed and stating a date it will be completed. In May 2004, Reclamation issued a draft environmental assessment to document the analysis of the potential effects of title transfer on the human environment.

## **Purpose and Need**

The purpose of title transfer is to implement the Conveyance Act, which requires the Secretary to transfer ownership of certain Reclamation facilities to FMID. Congress has recognized that FMID has effectively operated, maintained, and managed the District's water resources and facilities since inception in the 1930s. FMID has also satisfied the construction obligations for the diversion dam and canal.

Reclamation's title transfer initiative implements the National Performance Review goal of a Federal government that works better and costs less. This action will allow FMID to be more efficient in its operation and maintenance of the transferred facilities consistent with its legal and fiduciary responsibilities.

## **Alternatives Considered**

The environmental assessment addressed two alternatives: the No Action alternative and the Proposed Action of title transfer as described in the Fremont-Madison Conveyance Act. NEPA regulations require the action agency to consider a No Action alternative for comparative analysis purposes.

### **Alternative A – No Action**

In this alternative, Reclamation would not transfer title as described in the Fremont-Madison Conveyance Act. The United States would retain ownership of the Cross Cut Diversion Dam, Cross Cut Canal, and appurtenant acquired land and easements. Reclamation would take the necessary actions under Idaho State law to prove beneficial use for the five drilled Teton Exchange Wells, and the United States would relinquish the undeveloped portion of the permit to the Idaho Water Resource Board. To continue to receive exchange water from the five drilled wells, FMID would exercise its option to renew its current water service contract or convert to a repayment contract. Other aspects of Reclamation's relationship with FMID would continue as they have occurred in the past.

### **Alternative B – Title Transfer**

In this alternative, Reclamation would implement the provisions of the Fremont-Madison Conveyance Act by transferring to FMID all right, title, and interest of the United States in and to the canals, laterals, drains, and other components of the water distribution system. The Cross Cut Diversion Dam, the Cross Cut Canal, and the Teton Exchange Wells are the main facilities included in the transfer.

The Teton Exchange Wells include five drilled wells, appurtenant equipment, acquired land, easements, rights-of-way, and State of Idaho water right permit #22-7022. If a license is issued on water right permit #22-7022, the subsequent water right would have the priority date of April 23, 1969. Though only five exchange wells have been developed, the original permit anticipated up to 45 wells. Upon Reclamation signing a quit claim deed, FMID would remit payment to fully discharge its repayment obligation for the Teton Exchange Well and associated facilities.

## **The Preferred Alternative**

Reclamation intends to transfer title transfer as described in Alternative B. This alternative would fully comply with the Fremont-Madison Conveyance Act and would allow FMID to operate more independently and efficiently in its operation and maintenance of the facilities. It is also consistent with the Federal government's initiative to work better and cost less.

## **Environmental Commitments**

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

Alternative B includes the transfer of title to some facilities that are designated or may be eligible for designation as historic properties. Federal law and regulation define "historic properties" to include prehistoric and historic sites, buildings, structures, districts, and objects that are included in or eligible for inclusion in the National Register of Historic Places. When a historic property is in Federal ownership, the agency must seek alternatives that would avoid or minimize adverse effects. Thus, Federal title provides a measure of protection to historic properties, and when title leaves Federal control, the loss of protection constitutes an adverse effect.

A Reclamation-sponsored Class III cultural resources survey identified 23 historic properties. Reclamation and the Idaho State Historic Preservation Officer (SHPO) agreed that Reclamation would mitigate the adverse effect on historic property through submission of site records, a final survey report, and photographs. Reclamation completed these measures on May 5, 2003.

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

## **Consultation and Coordination**

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

### **National Historic Preservation Act**

The National Historic Preservation Act of 1966 (NHPA) (as amended in 1992) requires that Federal agencies consider the effects that their actions have on historic properties. To comply with Section 106 of NHPA, Federal agencies must consult with the SHPO, Native American tribes with a traditional or culturally significant religious interest in the study area, and the interested public to identify and evaluate the significance of historic properties and the project's effect on them. The Federal agency must then mitigate adverse effects the project may cause on significant resources.

In the fall of 2002, Sagebrush Consultants performed a Class III cultural resource survey of the study area. Reclamation then began consultations with the Idaho State Historical Preservation Officer. On April 3, 2003, Reclamation sent a letter to the Advisory Council on Historic Preservation and invited its participation in the consultation with the SHPO. The Advisory Council declined to join the consultation. The Idaho SHPO determined that Reclamation's submission of site records, a final survey report, and photographs meet the requirements for mitigation.

### **Endangered Species Act Section 7 Consultations**

The Endangered Species Act requires all Federal agencies to ensure that their actions do not jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat. On December 6, 2001, Reclamation sent letters to U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NOAA Fisheries) to request current lists of listed and proposed species for the area that may be affected by the transfer of title. Reclamation concludes that title transfer will have no effect on USFWS listed species and may affect but will not likely adversely affect NOAA Fisheries listed species in the Snake and Columbia Rivers. In a letter dated August 31, 2004, NOAA Fisheries concurred with Reclamation's determination (see Appendix G in the Final EA).

### **Drought Management Planning**

The Conveyance Act requires the Secretary, in collaboration with interested stakeholders, to initiate a drought management planning process within 60 days of the Act's passage. The Conveyance Act also requires the Secretary to submit a report to Congress, including a final drought management plan, within 18 months of the Act's passage.

In October 2003, Reclamation, FMID, and several stakeholder organizations initiated discussions regarding the drought management planning process. Since that time, various members of the Henry's Fork Foundation, IDFG, The Nature Conservancy, FMID, Fall River Electric, Reclamation, Trout Unlimited, and others attended several informal meetings. These discussions are ongoing.

### **Tribal Coordination and Consultation**

Reclamation has sought to keep Tribes informed regarding proposed title transfers and specifically the proposed Fremont-Madison Title Transfer. Reclamation has met with and/or corresponded with the Shoshone-Bannock Tribes, the Shoshone-Paiute Tribes of the Duck Valley Reservation, the Northwest Band of the Shoshone Nation, and the Nez Perce Tribe regarding various Reclamation initiatives, including title transfer.

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

Reclamation and FMID have conducted scoping meetings, public information gatherings, and discussions with interest groups since 1996. The information Reclamation gathered from public outreach efforts, talking with stakeholders, meetings with appropriate Native American Tribes, and ongoing contacts with local, State, and Federal agencies helped Reclamation identify those issues to be addressed in the environmental assessment.

In December 2001, Reclamation sent out a scoping letter to a mailing list of interested parties. Reclamation received written comments from twenty interested individuals and groups. During the preparation of this environmental assessment, Reclamation focused on the respondents' issues and questions to, in part, determine if there were any significant effects. The subsections below highlight the respondents' primary themes and summarize Reclamation's findings from the environmental assessment.

### **Water Rights and Hydrology Issues**

Several respondents asked about the effect additional wells may have on other surface and groundwater rights, including Tribal water rights. Reclamation's hydrologic analysis demonstrated that depletions to the Snake River at Lewisville do occur as a result of FMID exchange well pumping, and that these depletions are proportional to the exchange well pumping rates. If FMID were to drill additional exchange wells and increase groundwater pumping, there would be affects on irrigation users with prior rights to natural flows or storage in American Falls Reservoir.

The FMID transfer agreement includes the transfer of water right permits for 45 wells, although at this time the permits for 40 of these wells remain undeveloped. The transfer of these undeveloped permits by themselves does not affect downstream holders of natural flow or storage rights in American Falls Reservoir. In addition, should FMID choose to develop additional wells, it could be expected that a call would be made by the injured parties (possibly including Reclamation) seeking mitigation for injury. The mitigation would thereby have the effect of preventing or eliminating any significant impacts of additional well development. This is consistent with a March 15, 2002, Memorandum of Agreement between FMID, the Twin Falls Canal Company, and the North Side Canal Company, Ltd., wherein FMID agreed to limit additional well expansion to five to eight wells, which, along with the existing five wells, would provide the District with up to 80,000 acre-feet of water during the irrigation season in low water years. Further, FMID agreed to develop an IDWR-approved plan that mitigates any injury to other irrigation water users that is caused by the operation of the additional wells.

## **Water Use Issues**

Some respondents were concerned about the loss of representation in water use issues. Reclamation notes that Idaho statutes and Idaho Department of Water Resources (IDWR) rules would continue to govern water uses and the future development of additional wells. The State and other potentially affected water rights holders would retain their representation in water issues through the development process that requires an assessment of impacts and the development (if necessary) of mitigation plans.

Another respondent asked about the use of well water for fish and wildlife benefits. Reclamation's analysis shows that though the water right does not permit well water use specifically and primarily for fish and wildlife benefits, well pumping during low-water periods would increase or sustain habitat in areas directly affected by the supplemental flows such as Cartier Slough.

## **Public Access**

Some respondents were concerned that the transfer of title to the Cross Cut Diversion Dam would limit public access. Reclamation determined that public access to the two unimproved boat ramps for recreation would not change.

## **Hydroelectric Plant at Cross Cut Diversion Dam**

Reclamation determined that because the hydroelectric plant could be constructed regardless of ownership of the diversion, and because the project would require FERC licensing for construction and operation, title transfer would have no effect on the possibility of a hydroelectric plant at Cross Cut Diversion Dam.

## **Economic Valuation and Compensation**

Some respondents were interested in the economic value of the facilities proposed for transfer. FMID has already repaid its obligation to the government for the Cross Cut Diversion Dam and the Cross Cut Canal. FMID is still repaying its obligation for the Teton Exchange Wells, and upon Reclamation signing a quit claim deed, FMID would remit a payment of \$250,961 to fully discharge its repayment obligation for the Teton Exchange Wells and associated facilities.

## **Unauthorized Project Water Use**

The Conveyance Act increases the acreage within the District eligible to receive water from the Minidoka Project and the Teton Basin Project to reflect the over 285,000 acres of land that currently receive project water within the District. Reclamation determined that there are no other acres that receive or will receive additional water if title is transferred.

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

Reclamation received comments from the Idaho Water Users Association, the Idaho Department of Environmental Quality, and the Greater Yellowstone Coalition. The Final EA includes the public comments in Appendix I.

Reclamation also received a letter of concurrence from NOAA Fisheries (Appendix G in the Final EA contains this letter). Because Reclamation determined there were no effects to threatened or endangered plants or animals listed by USFWS, Reclamation does not need USFWS concurrence.

The Idaho Water Users Association's comment letter expressed full support for title transfer. In its letter, the Idaho Department of Environmental Quality notes they did not identify any water quality issues associated with the environmental assessment. The Greater Yellowstone Coalition letter did comment on several issues. These next several subsections present the Greater Yellowstone Coalition comments and Reclamation's responses to each comment.

### **Comment 1**

“NEPA requires the consideration of a reasonable range of alternatives when evaluating a proposed project. The Title Transfer Draft EA presents just two alternatives, the No Action alternative and the Proposed Alternative of title transfer as described in the

Fremont-Madison Conveyance Act. The consideration of just two alternatives is not in compliance with NEPA, and is therefore unacceptable.”

## **Response**

The Council on Environmental Quality regulations for implementing NEPA require that alternatives be considered where they are unresolved conflicts concerning alternative uses of available resources. In this case, the proposed Federal action implements the provisions of the Conveyance Act. Alternatives (other than the required No Action alternative) that would not implement the Conveyance Act were eliminated during the scoping process as unreasonable.

## **Comment 2**

“For example, one reasonable alternative would be the transfer of the Cross-cut Canal, but not the wells, or vice versa. Another reasonable alternative would be Cross-cut Canal, but only two or three wells.”

## **Response**

Reclamation recognizes there are numerous conceivable alternatives that include title transfer for various combinations of facilities. However, the Conveyance Act requires that all identified facilities be transferred. Our analysis indicates that transferring ownership of the requested facilities will not create a physical impact to the environment, violate treaty rights, unduly affect economically disadvantaged populations, or adversely disrupt the local or regional economies. Therefore, considering alternative combinations of wells, canal, or diversion facilities is not needed for the purpose of understanding the impacts caused by the implementation of the project.

## **Comment 3**

“The crux of the problem is that in the case of this proposal the NEPA process has come after the transfer was completed, likely negating any reason to look at a reasonable range of alternatives.

“With the presentation of just two alternatives, it seems that this EA is merely a paper exercise. As we have pointed out for several years the NEPA process should have come before the completion of the title transfer. At this point, public input means little more than fulfilling a requirement of the Act and does nothing to affect the ultimate decision, nor provide the public with the full disclosure of the impacts until after the fact.”

## **Response**

The Secretary has not yet transferred title for the requested facilities. Section 6 of the Conveyance Act says, “Prior to conveyance the Secretary shall complete all environmental reviews and analyses as set forth in the Memorandum of Agreement referenced in section 3(a).” Section 3(a) specifically refers to transfer analysis and documentation.

The Conveyance Act requires the Secretary to transfer the described facilities. Before Reclamation can take action to implement this law, it first must complete the NEPA process. This environmental assessment precedes the transfer of title; the transfer of title is contingent on either a finding of no significant impact or a full environmental impact statement and record of decision.

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

Reclamation made some revisions to Section 3.2 (Hydrology), Section 3.3 (Power Generation), and Section 3.12 (Endangered Species). The two tables in the Power Generation section (Tables 4 and 5) were moved into the Hydrology section’s Alternative B Environmental Consequences. Four additional paragraphs in this section more clearly describe the modeled flow reductions at the Lewisville and Milner gages on the Snake River. Two additional paragraphs in the Endangered Species section’s Alternative B Environmental Consequences show more clearly how these modeled flow reductions may affect but are not likely to adversely affect listed anadromous fish in the lower Snake and Columbia Rivers.

Reclamation also updated the distribution list, updated Appendix G to include the NOAA Fisheries letter of concurrence, and added Appendix I to present the comments received on the draft environmental assessment and Reclamation’s responses to those comments.

There were no other substantive changes made to the Draft EA in the development of the Final EA. Reclamation did incorporate editorial revisions to clarify aspects of the document and to ensure accuracy.

## **Finding**

Reclamation’s environmental assessment for the proposed title transfer shows that the proposed action will have no significant effect on the human environment. Reclamation therefore concludes that preparing an environmental impact statement is not required.

**Approved**

  
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Mr. Jerrold D. Gregg  
Snake River Area Manager

  
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Date