

## **DRAFT RECLAMATION MANUAL RELEASE**

**Comments on this draft release must be submitted to [gtaylor@usbr.gov](mailto:gtaylor@usbr.gov) by October 10, 2012.**

### **Background and Purpose of the Following Draft Reclamation Manual (RM) Directive and Standard (D&S), *Land Acquisition* (LND 06-01)**

The goal of preparing this revision to the D&S and providing stakeholders with the opportunity to comment on it in draft form is to enhance common understanding of how and why Reclamation acquires land (other than withdrawn land) required for authorized project purposes.

When required to meet the objectives of one of its authorized projects, Reclamation acquires land. 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. This revision to the RM is intended to update Reclamation's processes that it will follow when acquiring land or an interest in land.

The RM is used to clarify program responsibility and authority and to document Reclamation-wide methods of doing business. All requirements in the RM are mandatory.

See the following pages for the draft D&S.

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**Reclamation Manual**

Directives and Standards

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**Subject:** Land Acquisition

**Purpose:** This Directive and Standard (D&S) provides direction for the acquisition of land and interests in land by the Bureau of Reclamation and the management of those acquisitions in compliance with existing law and Department of the Interior requirements. This D&S benefits Reclamation by ensuring program consistency among Reclamation's regional and area offices.

**Authority:** The following are principal authorities: The Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), and acts amendatory thereof and supplementary thereto; and Declaration of Taking Act of 1931 (46 Stat. 11421; 40 USC 3114), and acts amendatory thereof and supplementary thereto. A full list of other authorities is included in Appendix A.

**Approving Official:** Director, Policy and Administration

**Contact:** Land Resources Division, 84-53000

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1. **Introduction.** Reclamation acquires land and/or interests in land<sup>1</sup> for project purposes by purchase, donation, exchange, patent reservations, transfer, and condemnation. The acquisition of land and/or interests in land will be accomplished by Reclamation realty staff, consultants, or contractors under Reclamation supervision. Reclamation also obtains jurisdiction over lands of the United States for project purposes by withdrawal from the public domain (see Reclamation Manual D&S, *Land Withdrawals, Withdrawal Reviews, and Withdrawal Revocations*, LND 03-01).
2. **Applicability.** This D&S applies to Reclamation staff with responsibility for land acquisitions for Reclamation project purposes.
3. **Definitions.** The following definitions are for purposes of this D&S:
  - 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.

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<sup>1</sup>"Land" in this D&S includes land and interests in land. The interests in land that may be acquired include mineral interests, water rights, easements, leases, and/or other interests up to full fee title.

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- B. **Condemnation.** Condemnation is the procedure for exercising the right of eminent domain.
  - C. **Eminent Domain.** With consideration for just compensation, eminent domain is the inherent power of the sovereign to take private property for a public purpose.
  - D. **Major Acquisition.** An acquisition involving land or interests in land which is determined to be a "major acquisition" in consultation with the regional realty officer (RRO), because of the complexity or resources needed to complete the acquisition.
  - E. **Office of Valuation Services (OVS).** The office within the Department that provides appraisal services to Department bureaus.
4. **Responsibilities.**
- A. **Regional Directors.** Responsibilities of regional directors, or their designees, include the following:
    - (1) acquire land and interests in land needed to construct or manage any Reclamation project, program, or feature by using the services of realty staff, consultants, or contractors;
    - (2) consider approving acquisitions of land or interests in land when the purchase price exceeds the appraised amount and the transaction is advantageous to the United States;
    - (3) determine and prescribe the extent of legal review for documents relating to the acquisition of land, other than review of title documents which are reviewed as prescribed by Department of Justice (DOJ) standards;
    - (4) ensure that all pre-acquisition site assessments are completed in accordance with Departmental Manual, *Real Property Pre-Acquisition Environmental Site Assessments*, Series 34, [602 DM 2](#);
    - (5) acquire land or interests in land via condemnation settlement; and
    - (6) designate a RRO to oversee the technical aspects of a region's acquisition program, as described in this D&S.

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- B. Regional Realty Officers (RROs).** RROs are responsible for technical review and approval of acquisition documents, procedures, and processes. RRO responsibilities include the following:
- (1) provide technical program oversight, and serve as a technical support and liaison to office staff, the regional director, and others, for real property matters, including the acquisition of land and/or interests in land and appraisal matters;<sup>2</sup>
  - (2) coordinate requests for assistance in acquiring land and/or interests in land;
  - (3) review and coordinate all requests for acquisitions to be accomplished through agreements with other entities;
  - (4) review and approve acquisition plans prepared by regional and area office staff and, when necessary, waive development of acquisition plans for non-major acquisitions;
  - (5) review and approve requests for preliminary and final title opinions to the Department's Office of the Solicitor (Solicitor), unless the RRO formally redesignates this responsibility; and
  - (6) review, approve, and recommend for regional director decision all requests for condemnation action, including all acquisition documents involving condemnation, prior to submission to the Solicitor or DOJ.
- 5. Application of Other Authorities, Policies, and Standards.** When acquiring lands and interests in lands, Reclamation must consider and apply other authorities, as applicable, to acquisitions, including the following:
- A.** Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 USC 4601), as amended (the Uniform Act); and Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs (49 CFR part 24). These authorities provide the basis for acquisition and relocation policy of the United States.
  - B.** Joint Policies of the Departments of the Interior and of the Army Relative to Reservoir Project Lands (43 CFR part 8), which provides the basis for acquisition policy in regard to lands and/or interests in lands acquired for reservoir projects.

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<sup>2</sup>See RM D&S, *Real Property Appraisal*, LND 05-01.

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- C. Current DOJ Title Standards, which provide standards for acquiring title to land or interests in land.
  - D. Federal regulations and procedures for acquiring interests in Native American land needed for Reclamation's use. Reclamation will contact Bureau of Indian Affairs officials and/or the appropriate tribal government(s) for appropriate regulations and procedures to follow and will adhere to current policies regarding protection of trust assets.
6. **Acquisition Project Planning.** When major acquisitions are required for project construction, location, or relocation of Reclamation features or facilities, or environmental program accomplishment, a written acquisition plan will be developed. This acquisition plan will conform to the requirements of 43 CFR part 8, the Uniform Act, and/or to specific authorizing legislation, regulations, court rulings, and the Reclamation Manual. The office preparing the acquisition plan will coordinate, as appropriate, with other planning, relocation assistance, and public participation activities. Development of acquisition plans will include consultation with the OVS.
- A. **Plan Approval.** Regional and area offices will consult with their respective RRO during the preparation of acquisition plans. The final plan must be approved by the project manager and the RRO.
  - B. **Reviews and Revisions.** Acquisition plans will provide for periodic review and updates to reflect changing project or management needs and schedules.
  - C. **National Environmental Policy Act (NEPA), Endangered Species Act (ESA), Fish and Wildlife Coordination Act (FWCA), and National Historic Preservation Act (NHPA) Compliance.** Reclamation acquisition plans will provide for compliance with NEPA, ESA, FWCA, NHPA, and other requirements, as applicable, prior to any acquisition and before construction activity begins.
  - D. **Flood and High Flow Operations Considerations.** Acquisition plans will include as acquisition considerations the 100-year and 500-year flood levels upstream of existing or proposed impoundment structures. The acquisition plan will not include downstream acquisitions for flood operations unless the plan identifies special considerations such as directives from the Department, Commissioner, U.S. courts, or the Congress.
7. **Acquisitions Above Approved Appraisal Amounts.** Every effort shall be made to secure purchases at the amount of the approved appraisal before considering amounts above the approved appraisal.

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- A. For all transactions exceeding the approved appraised amount, a supporting memorandum or determination shall be signed by the head of the acquiring office. It will include an estimate of the potential impact on project accomplishment and future negotiations, copies of the approved appraisal report, negotiator's reports, and the purchase contract signed by the property owner. This supporting memorandum or determination shall be provided through the RRO to the regional director or their designee with written delegated authority to approve the above-appraisal acquisition.
  - B. In applying the authority to exceed the approved appraised amount, the regional director will carefully weigh issues of fairness to other affected land owners, cost/benefit, and fiscal responsibility.
8. **Release of Appraisals.** Reclamation staff shall follow the criteria listed below before releasing any appraisal report. No appraisal shall be released by Reclamation staff without the written approval of the RRO.
- A. **Appraisals Subject to Condemnation or other Litigation.** Reclamation's practice is that appraisals prepared for its acquisitions will not be released. No release shall take place without the prior written consent of the Solicitor or, as needed, DOJ.<sup>3</sup> This is especially true where there is a potential for litigation of any type. An early release can seriously compromise the position of the United States in acquisition negotiations or litigation.
  - B. **Appraisals for Acquisitions by Donation, Exchange, Third Parties, or Willing Seller.** In some transactions, the release of the appraisal can promote an atmosphere of openness and disclosure, and may be an appropriate and productive negotiating tool. Reclamation staff will give special consideration to transactions which involve a request for release or, an anticipated need for release, of the appraisal. For appraisal requests to OVS, the following must be considered:
    - (1) Reclamation must identify and disclose to the appraiser any potential recipient of the appraisal for consideration as an intended user of the report; and
    - (2) if the appraisal is to be made available to the general public, Reclamation must disclose to the appraiser how this will be accomplished.

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<sup>3</sup>See DOJ Title Standards.

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- C. **Freedom of Information and Privacy Acts.**<sup>1</sup> Under these acts, Reclamation must protect proprietary, financial, or other private information contained in an appraisal. This protection must be considered and appropriately applied in the release of any appraisal.
9. **Condemnation Procedures.** When a satisfactory negotiated settlement cannot be reached, Reclamation officials will rely upon the Solicitor and the DOJ to seek acquisition via eminent domain authorities (condemnation).
- A. **Final Offers.** As soon as final DOJ approval for the condemnation is obtained, 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. If the Declaration of Taking Act provisions are used, the final offer will advise that the amount to be initially deposited with the court will be the amount determined in the agency's approved appraisal of the fair market value of the property rights to be acquired. (See 40 USC 3114(a)(5), which requires that the declaration of taking include the estimated just compensation for the land taken.)
- B. **Preparation of Condemnation Package.** If a landowner rejects Reclamation's final offer, Reclamation will initiate condemnation with a letter to the Solicitor from the regional director, accompanied by a condemnation package.<sup>2</sup> Such requests for condemnation proceedings will be coordinated through the RRO.

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<sup>1</sup>Freedom of Information Act (Pub. L. 104-231; 110 Stat. 3048; 5 USC 552; as amended) and Privacy Act (Pub. L. 93-579; 88 Stat. 1896; 5 USC 552a; as amended).

<sup>2</sup> See Land Acquisition Guidelines for details of what to include in a condemnation package.

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### Other Authorities

1. **Statutes.**

- A. Act of 1888 (25 Stat. 357; 40 USC 257);
- B. Rights-of-Ways Reserved to the United States for Canals and Ditches, Act of August 30, 1890 (26 Stat. 391; 43 USC 945);
- C. The Reclamation Act of 1902 (ch. 1093, 32 Stat. 388; 43 USC 391, et seq.), as amended and supplemented;
- D. Federal Water Power Act of 1920 (41 Stat. 1063), as amended;
- E. Fact Finders' Act of 1924 (43 Stat. 703-704), as amended;
- F. Declaration of Taking Act of 1931 (46 Stat. 11421; 40 USC 3114);
- G. Fish and Wildlife Coordination Act of 1934 (48 Stat. 401; 16 USC 661-667e), as amended;
- H. Reclamation Project Act of 1939, Section 14 (53 Stat. 1187; 43 USC 389);
- I. Federal Property and Administrative Services Act of 1949 (63 Stat. 377; 41 USC 101);
- J. Compensation for Canal Rights-Of-Way Act of September 2, 1964 (78 Stat. 808; 43 USC 945a);
- K. Federal Water Project Recreation Act of 1965 (79 Stat. 213, 16 USC 4601-12 - 4601-21), as amended;
- L. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 USC 4601), as amended;
- M. Endangered Species Act of 1973 (87 Stat. 884; 16 USC 1531-1544), as amended;
- N. Federal Land Policy and Management Act of 1976 (90 Stat. 2743; 43 USC 1701);
- O. Reclamation Safety of Dams Act of 1978 (92 Stat. 2471; 43 USC 506), as amended;  
and

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P. Uniform Relocation Act Amendments of 1987 (101 Stat. 246-256; 42 USC 4601).

**2. Regulations.**

A. Joint Policies of the Departments of the Interior and of the Army Relative to Reservoir Project Lands (43 CFR part 8);

B. Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs (49 CFR Part 24); and

C. Land Withdrawals (43 CFR Part 2300).

**3. Other.**

A. Federal Property Management Regulation 102-75.260 (exchanges); and

B. Departmental Manual, *Real Property Pre-Acquisition Environmental Site Assessments* (602 DM 2).