

**Appendix A, Evaluation of Proposed Title Transfer of Three Provo  
River Project Facilities**

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## **Evaluation of Proposed Title Transfer of Three Provo River Project Facilities**

In 1995, the Bureau of Reclamation established a framework to evaluate proposed title transfers. That process requires consideration of six major criteria that were established to evaluate individual proposals. This document analyzes the proposed transfer of three Provo River Project (PRP) facilities: the Provo Reservoir Canal (PRC), Salt Lake Aqueduct (SLA), and a 3.79-acre parcel in Pleasant Grove, Utah against the six criteria. The title transfer applicants are the Provo River Water Users Association (PRWUA), and the Metropolitan Water District of Salt Lake and Sandy (MWDSL).

### **1. The Federal Treasury, and thereby the taxpayer's financial interest, must be protected.**

In order to protect the Federal Treasury and the taxpayer's financial interest, the value of all future revenue associated with ownership of the canal must be paid to the United States upon transfer of the proposed facilities. Therefore, the water users would be required to pay at the time of transfer the net present value of the remaining repayment obligations attributable to construction of the transferred facilities, and the net present value of all anticipated future revenue streams associated with the facilities to be transferred.

Certain non-reimbursable activities of Reclamation related to the administration and inspection of the three facilities either would no longer be performed, or if performed by Reclamation, would require reimbursement from the water users. If title were transferred, future revenue streams from the issuance of permits, license agreements, and other land use fees, and other miscellaneous revenues would no longer be credited to Reclamation, but rather to the water users. In order to capture the value of this future revenue to the federal treasury, the water users would be required to pay at the time of transfer the net present value of the remaining repayment obligations attributable to construction of the transferred facilities, and the net present value of all anticipated future revenue streams associated with the facilities to be transferred. This amount is expected to be approximately \$1.6 million for the PRC and the SLA facilities. A more detailed description of the process used for determining these values is in exhibit 21 of the Title Transfer Agreement.

Costs associated with preparation of National Environmental Policy Act (NEPA) documents, and other environmental compliance in relation to the request to title transfer will initially be paid completely by PRWUA and MWDSL. If title transfer were to proceed, one-half of the costs would be credited against the obligations of the water users outlined in the paragraphs above.

Reclamation concludes that the proposed transfer of the three Provo River Project facilities adequately protects the Federal Treasury and taxpayer's financial interest.

## **2. There must be compliance with all applicable State and Federal laws.**

The transfer of title would not violate any state or Federal laws. Title transfer would comply with the Title Transfer Framework, the Provo River Project Transfer Act (H.R. 3391, S.1876), the Timpanogos Interagency Land Exchange Act (P.L. 107-329), the Endangered Species Act (16 U.S.C. 1532 et seq), and the National Historic Preservation Act (36 CFR 800).

A bill entitled the Provo River Project Transfer Act (H.R. 3391, S.1876) is currently before the U.S. Senate and House of Representatives. As introduced, H.R 3391/S. 1876 directs the Secretary of the Interior to convey certain lands and facilities of the Provo River Project to non-Federal ownership.

The Timpanogos Interagency Land Exchange Act (P.L. 107-329) authorized the acquisition of land and construction of an interagency administrative and visitor facility by the National Park Service, and the USDA Forest Service. The private property proposed to be acquired for the administrative and visitor facility is bisected by a strip of land owned in fee title by the United States and administered under the jurisdiction of the Bureau of Reclamation for the SLA. The surface area of this strip will be transferred to the Forest Service, while the SLA and an easement interest will be transferred to MWDSLs.

In compliance with the Endangered Species Act (16 U.S.C. 1532 et seq), Reclamation must consult with the Fish and Wildlife Service regarding the proposed title transfer if it determines that the proposed action might affect threatened or endangered species. Reclamation's preliminary finding is that the proposed title transfer may affect, but is not likely to adversely affect the June sucker. The proposed title transfer would not affect any other threatened or endangered species.

The National Historic Preservation Act (36 CFR 800) requires that Federal agencies take into account the effects of their actions on significant cultural resources. Title transfer of the PRC and SLA would be considered adverse effects, for which mitigation would be performed as required by the Utah State Historic Preservation Office (SHPO).

Transfer of facilities would not affect water rights. All water rights would continue to be held as they are presently. Reclamation would retain ownership of all PRP water rights after the title transfer. PRWUA and MWDSLs will provide to Reclamation the necessary easements to meter and monitor project water use in order to maintain the Project Water Rights with the Utah State Engineer's office.

Title transfer would comply with all applicable state laws.

Management of the facilities under Federal ownership would be required to continue to comply with all Utah State laws, and all Federal laws including the Endangered Species Act, National Environmental Policy Act, and the National Historic Preservation Act.

Management of the PRP facilities transferred out of Federal ownership would continue to be required to comply with all Utah State laws, certain sections of the Endangered Species Act, but not NEPA or the National Historic Preservation Act. Under non-Federal ownership, aqueduct and canal capacities could be expanded without Federal involvement. Impacts associated with such construction would be subject to Federal/state/local laws, but would not have the same level of public review and involvement associated with NEPA and NHPA compliance.

Reclamation concludes that the proposed transfer of the three Provo River Project facilities complies with all state and Federal laws.

### **3. Interstate compacts and agreements must be protected.**

No interstate compacts or agreements have been identified that may be affected by transfer of the three PRP facilities.

### **4. The Secretary of the Interior's Native American Trust Responsibilities must be met.**

Reclamation has consulted with the Paiute Indian Tribe of Utah in Cedar City, Utah, the Northwest Band of the Shoshone in Brigham City, Utah, and the Northern Ute Tribe in Fort Duchesne, Utah.

No Indian trust assets have been identified. The transfer of the three PRP facilities would have no effect on Indian trust assets.

### **5. Treaty obligations and international agreements must be fulfilled.**

No treaties or international agreements have been identified that might be affected by transfer of the three PRP facilities.

### **6. The public aspects of the project must be protected.**

Public aspects of the project include water delivery and conveyance systems, the enclosure of the PRC, recreation, third party rights of use, and public involvement.

#### *Water Delivery*

If title were transferred, there are no changes anticipated which could affect current deliveries to PRP water users. The MWDSLs would continue to deliver its PRP water through the aqueduct according to its obligations to its subscribers. The PRWUA would continue to make deliveries to its subscribers through the PRC as it does at present. Other Reclamation water delivery systems and facilities lie in close proximity to the facilities proposed for transfer. For a sizeable length of its alignment, the PRC lies near key Central Utah Project (CUP) facilities, including the Jordan Aqueduct. Lack of access to the PRC rights-of-way would make operation and maintenance of those CUP

facilities difficult. Provisions for accessing CUP facilities in close proximity to the PRC would be provided for by contract number 04-WC-40-8950 between Reclamation and PRWUA and MWDSL. Additionally, operation, maintenance, and future enclosure of the PRC would be difficult without access to the CUP rights-of-way. Provisions for accessing the PRC in close proximity to the CUP facilities will be provided for by contract number 04-WC-40-8950 between Reclamation and PRWUA.

### *Provo Reservoir Canal Enclosure*

A stated reason by PRWUA for seeking title to the PRC is to facilitate PRC enclosure, which has been determined to be in the public interest for reasons of safety, security, water quality, and water conservation. PRWUA has obtained estimates of the cost of enclosure from an independent consulting firm, Bowen and Collins. The cost of enclosure is estimated to be approximately \$115 million. This amount is tied to the Construction Cost Index and will increase in accord with that Index until implementation of the enclosure project occurs.

PRWUA and MWDSL are seeking title to the three PRP facilities in part because of issues related to financing the PRC enclosure as well as future anticipated improvements to the SLA. PRWUA can significantly decrease the costs of financing the PRC enclosure by using tax-exempt bonding. However, facilities in federal ownership or private ownership are not eligible under IRS tax rules to receive such financing. Therefore, after title transfer from Reclamation to PRWUA, PRWUA would then transfer ownership of that portion of the canal capacity, which is currently held by public entities, to a Joint Public Agency in order to obtain this tax-exempt bonding capability. PRWUA estimates that they will save approximately \$26 million by being able to finance the PRC enclosure project with tax-exempt bonding. These savings would be passed on to PRWUA's shareholders in the form of lower capital cost assessments. The CUWCD would also be able to obtain lower financing costs in the same manner for its participation in the canal enclosure project. If canal enclosure proceeds, this represents a positive financial benefit to PRWUA shareholders that would result from title transfer.

The beneficiaries of the PRP water transported through the PRC include irrigators and those using water for municipal and industrial uses. Title transfer would significantly lower the costs of the PRC enclosure project. These savings would be passed on to PRWUA's shareholders in the form of lower capital cost assessments.

### *Recreation*

Recreational opportunities have been provided by the Provo River Project, but traditionally have been limited to use of Deer Creek Reservoir, and a few areas along the SLA.

Crossing of fee title lands administered by Reclamation for the SLA to access National Forest lands for recreational purposes is allowed. The scope of the existing easements and Federal reserved rights-of-way over private land is not broad enough to allow uses

for general public recreation. There are some locations where, through coordination with Reclamation and the underlying private landowner, agreements have been reached to allow crossings to National Forest lands. A short section of trail on the SLA at McKinley Drive in Lindon has been approved by Reclamation, but the trail section has not yet been constructed.

Article 8 of the Title Transfer Agreement expressly requires that all existing legal access to National Forest lands and other recreational areas be maintained as they presently exist. Thus, there are no impacts to this aspect of recreation under the proposed title transfer.

Use of fee title and withdrawn lands, easements, and Federal reserved rights-of-way along the PRC for recreation purposes is prohibited. With respect to the development of possible recreational opportunities along the PRC if the canal is enclosed, both PRWUA and Reclamation have expressed a willingness to support such development. PRC enclosure would increase the likelihood of a recreational trail along the PRC corridor. The new owner would work with interested individuals and groups in the development of any trail. Responsibility for construction and maintenance of the trail has not been determined.

If title were transferred, the enclosed PRC would be owned by PRWUA and/or a Joint Public Agency representing the public entities that have capacity rights in the PRC. In considering requests for permission to develop and operate trails and other recreational assets in the PRC corridor, PRWUA or the joint public agency would consider such requests in light of its responsibilities to its shareholders/members. This responsibility would require that any permission to develop trails or other recreational assets would not interfere with delivery of PRP water to its shareholders.

Title transfer facilitates enclosure of the PRC, which increases the feasibility of a trail. The enclosure significantly reduces existing issues of safety, liability, water quality, operation, and maintenance needed to allow non-motorized public trail use. Trail uses on fee title lands, however, would be subject to permission by the MWDSLs, the PRWUA and/or a new joint public management entity, rather than Reclamation.

PRWUA would continue to plan and negotiate with representatives of Utah County and interested municipalities to identify opportunities for a recreation trail and related facilities along the PRC on terms which are fair and equitable and which do not interfere with the use, operation, or maintenance of the canal. At such time as an agreement has been reached on fair and equitable terms, and all other water quality, safety and security features and procedures deemed necessary by PRWUA have been completed, and arrangements are in place suitable to PRWUA for operation and maintenance of the PRC and any recreation features and improvements, PRWUA shall allow access for recreational use of the PRC.

Title transfer would have no direct effect on recreational opportunities. Authorized recreation access to National Forest lands across the SLA will be maintained. Current

recreational use along the PRC is not authorized, however after enclosure, the canal corridor is a potential new recreation opportunity.

### *Third Party Rights of Use*

Currently, there are many existing agreements that allow various third party crossings and encroachments of the SLA and PRC easements and fee title properties. Examples of these are landscaping, roads, utility crossing, sport courts, and trails. To request an agreement, an applicant contacts the PRWUA or the MWDSLS to request an application. Once the applicant submits the request, the PRWUA or MWDSLS reviews the application to ensure the requested encroachment will not hinder operation and maintenance requirements of the SLA or the PRC. Once the PRWUA and MWDSLS have completed their review, each agency submits the application to Reclamation for review and approval. Once Reclamation approves the request, including compliance with NEPA and other environmental and cultural resource laws, an agreement is prepared based on the request in the application. The process of issuing third party rights of use is governed by 43 CFR 429, and Section 10 of the Reclamation Project Act of 1939.

Article 7 of the Title Transfer agreement expressly provides that all existing easements, rights-of-way and other licensed uses related to the facilities be transferred as they exist at the time of transfer. Therefore, there will be no impacts to such existing rights and uses under title transfer. If title were transferred, approval of any future requests would be evaluated, approved or rejected at the discretion of PRWUA, MWDSLS and/or the joint public managing entity.

While it is impossible to predict exactly what policies would be used by the water users to evaluate these requests, it is reasonable to assume that a very similar process to the one currently used would be. This assumption is based on a number of reasons. First, the water user's primary interests will be the same, i.e., the efficient operation of the facility for water delivery purposes. Secondly, boards of both PRWUA and MWDSLS are made up primarily (PRWUA) or completely (MWDSLS) of representatives from public entities, and are therefore subject to public input from the entities that would presumably be involved in making such requests for rights-of-way, easements, etc. Additionally, once the SLA and PRC are under non-Federal ownership, municipal entities through which the canal and aqueduct corridors pass have condemnation authority that could be used after title transfer to obtain rights to such use when necessary.

If title transfer were to occur, the new owners would be obligated to honor all existing agreements. Responsibility to issue new agreements, and reissue agreements as existing ones expire, would transfer to the new owners. It is likely that the same criteria currently used to evaluate requests for rights of use would continue to be used. It is possible, however, that the application process or fees charged could change. The PRWUA has an adopted resolution in place to process third party rights of use

agreements at cost. PRWUA has indicated that its policy to process such agreements at cost will continue.

### *Public Involvement*

Future activities along the SLA, PRC, and Pleasant Grove Property would no longer be subject to NEPA and NHPA regulations. Though the actions must comply with applicable local, state, and Federal laws, there would be less public involvement for activities or projects that require NEPA compliance under Federal ownership. If the public had serious concerns regarding the management of the facilities, however, they could still communicate these concerns to either PRWUA, the new Joint Public Agency, or MWDSL.

### *Conclusion*

Reclamation concludes that transfer of title would not have significant impact to the public aspects of the project, including water delivery and conveyance systems, the PRC enclosure project, recreation, third party rights of use, and public involvement.

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