

## WITHDRAWALS

1. **Introduction.** Until the enactment of the Federal Land Policy and Management Act of 1976 (FLPMA), withdrawal of public land for Reclamation's authorized project purposes was made pursuant to the authority of the Reclamation Act of June 17, 1902. A withdrawal is now made, modified, extended, or revoked in accordance with section 204 of FLPMA, unless otherwise specifically legislated.

These discretionary guidelines contain suggested procedures and formats for Reclamation's use when submitting withdrawal requests, reviewing existing withdrawals, and requesting modification to or revocation of existing withdrawals. The general implementing regulations and procedures are outlined in 43 CFR parts 2310 and 2370. Additional direction is found in the Department of Interior Departmental Manual (DM), *Land Withdrawal Program*, Part 603, Chapter 1 (603 DM 1); Reclamation Manual (RM) Directive and Standard (D&S), *Land Withdrawals, Withdrawal Management, and Withdrawal Revocations*, LND 03-01; and the *Interagency Agreement Between the Bureau of Reclamation and the Bureau of Land Management of March 25, 1983* (Interagency Agreement) (Appendix A, LND 03-01). The Bureau of Land Management's (BLM) Manual 2355, *Withdrawal Review* (Exhibit 1), provides basic guidelines for conducting withdrawal reviews as required in section 204 of FLPMA.

2. **Identification of a Needed Withdrawal.** The need for a withdrawal may be identified as part of a land acquisition plan (see RM D&S, *Land Acquisition*, LND 06-01) or other planning document as early in the planning stages of a project as possible. Withdrawal is used as a method of reserving public land for authorized project purposes and covers no more land than is needed to construct, operate, and maintain the project and to protect both natural and cultural resources. Withdrawal of public land may be utilized when Reclamation identifies the following project needs:

- A. Administrative and/or management jurisdiction is required;
- B. Protection for facilities and project uses against nondiscretionary entries is required; or
- C. Any or all administrative and/or management jurisdiction may be transferred to a third party.

The following are examples of actions that may require withdrawal (see LND 03-01, Paragraph 5) to reserve an area of public land for a particular project purpose, to transfer jurisdiction of surface management, and/or close the land to mineral location:

- A. Land is necessary for permanent structures such as dams, reservoirs, large capacity or lined canals, laterals or drains, and power plants;
- B. Critical watershed land on which nondiscretionary mineral location would likely result in the degradation of water quality;
- C. Land is needed for project operation, maintenance, and dam safety;
- D. There are present and future mitigation requirements and/or recreation needs;
- E. Sedimentation and/or wave action may occur on the identified land; or
- F. Road, highway, railroad, or utility relocation is required as a result of project construction or operations.

When jurisdiction and protection afforded by a withdrawal are not necessary, a request to BLM for right-of-way as authorized by section 507 of FLPMA should be considered. Possible examples of such opportunities include the following:

- A. Construction of project works and facilities such as smaller, unlined laterals, drains, and pipelines;
- B. Access is needed to project works and facilities;
- C. Construction of transmission lines, telephone lines, or roads is required; and
- D. Additional area is required for operation and maintenance buffers or for floodplain management.

**3. Withdrawal Petition and Application Process.** As stated above, the need for a withdrawal should be identified as early in the planning stages of a project as possible. Early identification allows for sufficient time to assemble the required information, prepare, and submit a petition and application to BLM. The general procedures and basic steps to follow for making a new withdrawal are found at 43 CFR part 2310, 603 DM 1, and in the Interagency Agreement. However, the following steps are recommended as part of Reclamation's process prior to submitting petitions and/or applications for withdrawals:

- A. Identification of lands to be withdrawn, preferably as part of a land acquisition plan or other planning document;
- B. Pre-petition consultation with the appropriate State and local BLM office in advance of the filing of the petition and/or application if necessary;
- C. Completion of environmental analysis as required by the National Environmental Policy Act (NEPA) of 1969 (Public Law 91-190,

42 U.S.C. 4321-4347) as amended, as well as cultural review, and any other regulatory compliance as appropriate;

- D. Completion of environmental site assessments; and
- E. Concurrence by any Federal department or agency, such as the United States Department of Agriculture Forest Service (FS) or United States Department of the Interior Fish and Wildlife Service, which may wholly or partially administer the lands under a pre-existing withdrawal.

One of two methods, the petition process and the simultaneous process, may be used when filing for a withdrawal, as described below.

With the petition process a petition is submitted initially followed by a subsequent application. The petition requests the Secretary of the Interior (Secretary) to grant permission for Reclamation to file an application for the withdrawal with the appropriate State office of BLM. The minimum information required for submittal of a petition is found at 43 CFR 2310.1-3. As a result of pre-petition consultation with BLM, any additional information, studies, analyses, and reports should have been identified. When permission has been granted, the appropriate Reclamation regional office may submit the application with all necessary supporting information to the appropriate BLM office.

If utilizing the simultaneous process, the petition and application for a withdrawal, which includes all necessary supporting information as found at 43 CFR 2310.1-2, may be filed at the same time by the appropriate Reclamation regional office with the appropriate State office of BLM. Again, any additional information, studies, or analyses, and reports should have been identified by BLM as a part of the pre-petition or application process.

Upon approval and acceptance of the petition and application by the Secretary, a *Federal Register* notice of the proposed withdrawal will be filed by BLM. The *Federal Register* notice will segregate the lands from settlement, sale, location, or entry under the public land laws, including the mining laws, for up to 2 years from the date of publication of the notice unless terminated sooner by reason of denial of the request or cancellation of the request. During this time, BLM will consider the application and will publish in the *Federal Register* an order which actually makes the withdrawal when accepted.

Generally, upon acceptance of an application by BLM, Reclamation will be required to compensate the holder of any existing land use authorizations of record that are terminated or revoked for any associated improvements or grazing rights (43 CFR 2310.3-5). However, BLM and FS use authorizations may provide for the removal of improvements at no cost to the United States if the land is needed for a Federal project.

A withdrawal amendment may be used to add land to or delete land from a petition or withdrawal application. An amendment will not extend the 2-year segregation. Therefore, an amendment should not be used for a large, significant acreage that could more reasonably be considered as an additional withdrawal.

Emergency withdrawal requests may be submitted and subsequently granted when extraordinary measures need to be taken to protect against the loss of significant natural resources or resource values (43 CFR 2310.5(a)). The segregation of lands as a result of an emergency withdrawal remains in effect for the term of the emergency, but no longer than a maximum of 3 years. If a longer term withdrawal is required, an application for withdrawal should be submitted to BLM in a timely manner.

#### 4. Withdrawal Management.

**A. Withdrawal Reviews.** All Reclamation project lands, including both acquired and withdrawn, are reviewed at a minimum of every 5 years as scheduled by each Region and as directed in RM D&S, *Identification of Unneeded Lands*, LND 08-03 (see also Chapter 1, Section 4, of this Handbook). Withdrawal reviews may be accomplished more frequently, however, if a need arises for modification to or extension of an existing withdrawal or if BLM notifies Reclamation that an existing withdrawal is set to expire. Such notification by BLM should be received approximately 2 years prior to the expiration date. Coordination with the appropriate BLM office in developing justification for retention is advisable when there is a continued need for these withdrawn lands as identified through the review process.

The recommended standards, methods and procedures for conducting project land reviews are covered in Chapter 1 of this Handbook and will not be repeated in depth in this chapter. In addition, BLM Manual 2355 outlines the general review process required by FLPMA and 603 DM 1. Those procedures consist of the following three phases:

- (1) Inventory of all withdrawals by BLM which are then verified by the withdrawing agency or department;
- (2) Joint review of the withdrawals by BLM and Reclamation, and FS when applicable, to determine those that need to be retained in total, modified, or revoked; and
- (3) Development of a withdrawal review report that justifies the decision made as a result of the review process.

Reclamation withdrawals may be located on FS land. In those cases, a copy of the withdrawal review information is forwarded to the FS (see LND 03-01,

Paragraph 8). It is then the responsibility of the FS to provide any comments on the review to BLM (see Exhibit 1).

The recommendation to retain, modify, or relinquish a withdrawal will be the end product of the withdrawal review process. It is suggested that regional directors establish internal procedures within the regions to ensure that all parties with interests in withdrawals in the region have adequate opportunity to participate in deciding what should be done with existing withdrawals. Once the regional director reaches a decision, the resulting decision will be recommended to BLM in the withdrawal review report.

Examples of withdrawal review reports and associated documents can be found in Exhibit 2 to this chapter.

- B. Withdrawal Modification or Extension.** Modification to or extension of withdrawals only pertains to existing withdrawals and may be found to be required as a result of a withdrawal review or identified project needs. A modification is used to change the jurisdiction, degree, or extent of an existing withdrawal, but may not be used to change the use or purpose of a withdrawal. A new withdrawal would be required to make those types of changes. For withdrawals with a specified duration, an extension may be used to renew or extend that duration. Applications for modification or extension have the same submittal requirements as requests for new withdrawals (see 43 CFR 2310.3-2 and Section 3 of this Chapter).

Reclamation has responsibility to assemble the information needed for a withdrawal review report for submittal to BLM in order to justify the modification or extension of an existing withdrawal (see LND 03-01, Paragraph 6). BLM Manual 2355 outlines the specific requirements for the report. Briefly, that information includes the following:

- (1) Total withdrawn acreage and legal description of land to be retained in whole or part;
- (2) Copy of original withdrawal order and any amending orders;
- (3) General description of the geographical location and physical features of the withdrawal;
- (4) Expected length of time the withdrawn lands will be needed;
- (5) Purpose or purposes for which the lands were withdrawn and are still needed;
- (6) Statement explaining why a right-of-way, interagency agreement, permit, or lease in lieu of a withdrawal would not be sufficient;

- (7) Statement explaining why, when applicable, the segregation from operation of the mining laws is necessary to protect project facilities and related resources; and
- (8) Any appropriate and applicable NEPA compliance.

- 5. Withdrawal Revocations.** A notice of intention to relinquish (notice) informs BLM that the lands withdrawn and/or reserved for project purposes are no longer needed by Reclamation; or that the segregation of land from settlement, sale, location, or entry is no longer required and revocation of the withdrawal is appropriate. This notice does not, however, terminate the withdrawal or relieve Reclamation of the management responsibility for those lands until the revocation process is completed by BLM (see 43 CFR part 2370).

When, as a result of a review of withdrawn lands, an administrative determination is made and lands are identified as unneeded for Reclamation project purposes or a lesser interest in those lands is appropriate, a notice is sent to the appropriate BLM office (see LND 03-01, Paragraph 7). Any managing partners that may have an interest in the lands to be recommended for revocation, should be consulted and documentation of their response retained with the corresponding case file prior to submittal of the request to BLM.

Reclamation should carefully evaluate prior to initiating a notice whether a reservation for right-of-way for any current or future project plans may be necessary. For example, a right-of-way reservation might be needed for continued ingress or egress to project lands or facilities or for an additional security or safety zone adjacent to or near a constructed facility. Such a request should be clearly described, justified, and submitted at the same time as the relinquishment request.

BLM does not have a set format for submitting a notice. They do, however, suggest certain information regarding the land status and condition of the land be submitted in the notice in order for BLM to act on the request. That requested information is listed at 43 CFR 2372.1. As a result of the completion of the land review process described in the preceding section of these guidelines, that information should be readily available for inclusion in the notice.

Generally, unless withdrawn lands are considered to be contaminated (see 602 DM 2) and or the character of the land has changed substantially, the processing of a revocation order by BLM is not a question of whether, but when it will be completed. It is to Reclamation's benefit to have the revocation completed in as timely a manner as possible by BLM. As noted above, Reclamation assumes management accountability and responsibility for the withdrawn land which impacts staffs and budgets. (See Appendix A of LND 03-01, Section 5, for an exception as to when and why BLM may assume administrative responsibilities other than after revocation.)

Although not considered revocations, there are additional disposal methods for withdrawn land that may be appropriate in limited situations. These methods include specific authorities that allow for the sale of withdrawn land as listed in detail in RM D&S, *Land Disposal*, LND 08-02. Also, section 203 of FLPMA authorizes the noncompetitive sale of withdrawn land by the Secretary when the land meets certain criteria developed as a result of appropriate land use planning. The Secretary may delegate that sale authority to the Commissioner. The specific requirements for the use of this method of disposal are also found in LND 08-02.

6. **Examples of Documents.** Exhibit 2 of this guideline includes copies from the regions that include current examples of documents that may be filed with BLM when requesting an action relating to a withdrawal.