



IN REPLY
REFER TO:

United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Regional Office
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Sacramento, California 95825-1898

Record of Decision

Humboldt Project Conveyance Final Environmental Impact Statement

March 2006

Recommended:

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Date: 3/16/06

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I. Introduction

This document is the Record of Decision (ROD) of the Department of the Interior, Bureau of Reclamation (Reclamation), Mid-Pacific Region for the Humboldt Project Conveyance Final Environmental Impact Statement (FEIS). The FEIS, dated September 2005, was developed in compliance with the National Environmental Policy Act (NEPA).

II. Decision

Reclamation's decision is to proceed with the Proposed Action/Preferred Alternative (also referred to as Proposed Action). The Proposed Action/Preferred Alternative, as identified in the FEIS, is as follows:

The Proposed Action/Preferred Alternative would transfer approximately 83,530 acres of federal lands associated with the Humboldt Project (Project) to the Pershing County Water Conservation District (PCWCD), the State of Nevada (State), Pershing County, and Lander County. PCWCD would receive all Project water rights for storage and diversion. Timing of participation in the title transfer by the various entities is contingent upon available funding. As such, transfer of the various components of the Project may occur in phases at different times.

The additional title transfer actions outlined in Section VIII of this document, entitled "Environmental Commitments," must be completed prior to title transfer and are expected to take a number of years to complete. The primary Environmental Commitment actions are compliance with Section 106 of the National Historic Preservation Act (NHPA) and completion of numerous real estate transactions. Title transfer may occur for any one of the components of the Project at such time as the Environmental Commitment actions for that component are completed.

The components of the title transfer consist of three separate geographical areas/sets of facilities. The number of acres for each component of the transfer is still being refined. In completing the real estate transactions required under Section VIII of this document, the exact figures for each component and the total figure for the entire transfer will be determined. The following is a description of the major features associated with each of the three components:

Humboldt Sink

The Proposed Action/Preferred Alternative would transfer Reclamation withdrawn lands within the Humboldt Sink area to the State (31,660 acres) and Pershing County (990 acres).

Rye Patch Dam and Reservoir

The Proposed Action/Preferred Alternative would transfer to PCWCD all acquired lands in the Rye Patch Reservoir area (12,340 acres) and all withdrawn lands below the reservoir high water mark. All water rights held in the name of the United States would be transferred to PCWCD. All withdrawn lands above the reservoir high water mark would be transferred

to the State. The total amount of withdrawn land to be received by PCWCD and the State is approximately 8,460 acres.

Battle Mountain Community Pasture

The Proposed Action/Preferred Alternative would transfer acquired lands within the Battle Mountain Community Pasture (Community Pasture) from Reclamation to PCWCD (22,500 acres), the State (5,850 acres), and Lander County (1,100 acres).

III. Background

In response to the Humboldt Project Conveyance Act, Title VIII of Public Law 107-282, Reclamation prepared an Environmental Impact Statement (EIS) to evaluate the potential impacts of the proposed Humboldt Project Conveyance. That Act directs the Secretary of the Interior (Secretary) to convey all right, title, and interest in and to the lands and features of the Humboldt Project to PCWCD, the State, Pershing County, and Lander County. PCWCD would receive all Project storage and diversion water rights.

The proposed title transfer is also subject to the terms and conditions set forth in 1) the Memorandum of Agreement between PCWCD and Reclamation dated May 6, 2004; 2) Section 217 of Public Law 108-137, Energy and Water Development Appropriations Act of 2004; 3) the Memorandum of Agreement between PCWCD and Lander County dated January 24, 2000; 4) the Conceptual Agreement between PCWCD and the State of Nevada dated October 18, 2001; and 5) the Letter of Agreement between Pershing County and the State of Nevada dated April 16, 2002. These documents are located in the appendices of the FEIS.

The Project, located in north-central Nevada, is a Reclamation storage project. Authorized in 1933, the Project includes federal lands that were withdrawn from the public domain and dedicated to the Project (withdrawn lands), and lands that were purchased by the federal government for dedication to the Project (acquired lands). The Project includes three primary components: the Humboldt Sink, Rye Patch Dam and Reservoir, and the Community Pasture.

The Humboldt Sink is located in Pershing and Churchill counties and is approximately 10 miles south of the City of Lovelock. The Rye Patch Dam and Reservoir, also in Pershing County, are located on the Humboldt River approximately 22 miles upstream of Lovelock. The Community Pasture is located in Lander County near the unincorporated town of Battle Mountain.

IV. Alternatives Analyzed in EIS

Two alternatives were analyzed in the EIS: the Proposed Action/Preferred Alternative and the No Action Alternative.

A. Proposed Action/Preferred Alternative

The Proposed Action/Preferred Alternative would transfer approximately 83,530 acres of federal lands associated with the Project to PCWCD, the State, Pershing County, and Lander County. Timing of participation in the title transfer by the various entities is contingent upon available funding. As such, transfer of the various components of the Project may occur at different times.

The federal lands and facilities to be transferred in the three major geographic areas are described as follows:

Humboldt Sink

The Proposed Action/Preferred Alternative would transfer Reclamation withdrawn lands within the Humboldt Sink to the State and Pershing County. In accordance with the Humboldt Project Conveyance Act and related agreements, the State would receive title to approximately 31,660 acres of land within the Humboldt Sink. The Nevada Department of Wildlife (NDOW) would continue to operate and maintain these lands as part of the Humboldt Wildlife Management Area. Pershing County would receive approximately 990 acres of land adjacent to Derby Airfield for future airport expansion.

Rye Patch Dam and Reservoir

The Proposed Action/Preferred Alternative would transfer all acquired lands in the Rye Patch Reservoir area to PCWCD. All withdrawn lands below the reservoir high water mark would transfer to PCWCD. All withdrawn lands above the reservoir high water mark would transfer to the State. The Nevada Division of State Parks (State Parks) would continue to operate and maintain the recreation facilities at the Rye Patch State Recreation Area.

PCWCD would maintain a minimum operational pool of 3,000 acre-feet in Rye Patch Reservoir to sustain the fishery. To maintain this minimum pool, PCWCD would reduce or cease all releases when the reservoir reaches a minimum of 3,000 acre-feet of storage.

PCWCD would be responsible for updates to the Standing Operating Procedure Emergency Action Plan, as required by the State's Safety of Dams Program.

Battle Mountain Community Pasture

The Proposed Action/Preferred Alternative would transfer acquired lands within the Community Pasture from Reclamation to PCWCD, the State, and Lander County. PCWCD would receive title to approximately 22,500 acres within the Community Pasture which PCWCD would continue to manage for grazing purposes.

The State would receive title to approximately 5,850 acres of land in the Community Pasture for purposes of developing a wetland. PCWCD would continue to graze livestock on the land transferred to the State until such time as development of a wetland begins. Wetland development would depend on the acquisition of water rights by NDOW or other entities.

The State would assume responsibility for operation and maintenance of Slaven Diversion Dam near the east end of the Community Pasture. After title to the facility is transferred to the State and before it is needed for diversion of water to the wetland, PCWCD would continue to operate and maintain the dam and appurtenant structures.

Lander County would receive title to four parcels in the Battle Mountain area totaling approximately 1,100 acres. Proposed uses for these lands include development of the industrial area adjacent to the sewage treatment plant, expansion of the Livestock Events Center, development of a new day-use recreation area and parking lot, and provision of an access easement along the Humboldt River. The access easement would be subject to certain restrictions, including maintenance of the easement area in its natural state and limitation to day use and foot traffic only.

With respect to the liability of the United States after the transfer occurs, Section 807 of the Humboldt Project Conveyance Act states:

Effective on the date of the conveyance required by Section 803, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the Humboldt Project, except for damages caused by acts of negligence committed by the United States or by its employees or agents prior to the date of conveyance. Nothing in this section shall be considered to increase the liability of the United States beyond that currently provided in Chapter 171 of Title 28, United States Code, popularly known as the Federal Tort Claims Act.

B. No Action Alternative

Under the No Action Alternative, the title transfer would not occur and the lands, water rights and improvements associated with the Project would continue to be held by the United States under the existing contracts with PCWCD. Certain lands would continue to be operated by PCWCD, NDOW, and State Parks according to the purposes for which the Project was authorized and subject to applicable agreements and contracts.

Humboldt Sink

Under the No Action Alternative, federal lands within the Humboldt Sink would continue to be managed by NDOW for the operation and maintenance of the Humboldt Wildlife Management Area under a contract between the United States and NDOW. The proposed transfer of lands to Pershing County in the Humboldt Sink area would not occur. However,

the existing lease between Pershing County and the Bureau of Land Management for Derby Field would remain in effect.

Rye Patch Dam and Reservoir

Under the No Action Alternative, Project lands at Rye Patch Dam and Reservoir would not transfer to PCWCD and the State. The dam and reservoir operations and associated lands would continue to be managed by PCWCD, according to the purposes for which the Project was authorized. NDOW would continue to manage the fishery at the reservoir. State Parks would continue to manage land currently under State management pursuant to applicable agreements among Reclamation, PCWCD, and the State.

Reclamation would continue to perform regularly scheduled facility inspections of Rye Patch Dam. In addition, Reclamation would continue to review and update the Standing Operating Procedures and the Emergency Action Plan for the dam in compliance with Reclamation's Safety of Dams Program.

Battle Mountain Community Pasture

Project lands within the Community Pasture would continue to be managed by PCWCD for grazing purposes. The proposed transfer of lands within the Community Pasture to PCWCD, the State, and Lander County would not occur. The State would not receive Project lands for wetlands development. Lander County would not receive title to the four parcels totaling approximately 1,100 acres.

V. Basis of Decision

The alternatives were evaluated on the basis of: 1) how well each meets the purpose and need for the Proposed Action as set forth in the EIS; 2) the impacts of each on the human environment; 3) compliance with the terms of Humboldt Project Conveyance Act; and 4) how well each meets the criteria in Reclamation's title transfer framework (*Framework for the Transfer of Title: Bureau of Reclamation Projects*, August 7, 1995 (Title Transfer Framework)).

The purpose and need for the Proposed Action is as follows:

The purpose of this action is to transfer the Project from federal ownership to the PCWCD, the State, Lander County and Pershing County. The action is needed to comply with Title VIII of Public Law 107-282, which directs the Secretary to transfer title of the Humboldt Project to the above named entities.

The Proposed Action meets the stated purpose and need. The No Action Alternative, which by definition does not involve a transfer of the Project from federal ownership, does not meet that purpose and need. The Proposed Action is the environmentally preferred alternative for the FEIS.

The Proposed Action has no impacts on Indian trust assets; it likewise has no impacts on Environmental Justice issues in the Project area. The Proposed Action complies with all applicable provisions of the Humboldt Project Conveyance Act. The No Action Alternative, involving no transfer of any land or facilities, does not satisfy the terms of the Humboldt Project Conveyance Act.

The Proposed Action also satisfies the criteria set forth in the Title Transfer Framework, which are designed to assure the public interest is protected when such transfers of Reclamation Projects are proposed.

Reclamation has complied with the requirements of Section 7 of the Endangered Species Act (ESA). The U.S. Fish and Wildlife Service provided concurrence with Reclamation's determination of no effect, but is not likely to adversely affect bald eagles. However, various other federal actions must be completed prior to consummation of any component of the Proposed Action. Those actions are set forth in Section VIII below, entitled "Environmental Commitments". The primary Environmental Commitment actions are compliance with Section 106 of the NHPA and completion of numerous real estate transactions.

VI. Resources Evaluated

The primary resources that were evaluated for impacts on environmental and other resources are listed below. Table EX-1 in the FEIS summarizes the impacts of the two alternatives.

1. Land Resources and Use
2. Surface Water, Groundwater, Water Use, Water Quality and Water Rights
3. Geologic Resources
4. Soil Resources
5. Biological Resources
6. Hazardous Materials and Dam Safety
7. Recreation
8. Socioeconomic
9. Environmental Justice
10. Cultural Resources

Evaluation of the resources listed as items 1-9 resulted in a determination of no significant adverse effects on those resources due to either the Proposed Action or the No Action Alternative. However, the Proposed Action results in an adverse impact on the Cultural Resources in the Project area. Under the regulations implementing Section 106 of the NHPA, a transfer of property out of federal ownership constitutes an adverse effect on historic properties unless there are adequate and legally enforceable restrictions in place to ensure long-term preservation. Those restrictions are not yet in place for the land to be transferred under the Proposed Action. Reclamation's plan for compliance with Section 106 is described in part A of Section VIII, entitled "Environmental Commitments." As indicated above, completion of the title transfer is contingent on implementation of the Environmental Commitments.

VII. Summary of Scoping and DEIS Comments

All comments submitted at scoping meetings or on the Draft EIS were responded to individually in the FEIS. Only two comment letters, both supportive, were received on the FEIS. The following are the primary public issues identified on the proposed title transfer:

- Environmental impacts including: potential development of the transferred land; loss of protection under federal environmental laws, primarily NHPA and ESA; and loss of federal natural resources enhancement opportunities, primarily grazing reduction and wetland development.

All of these impacts are a consequence of carrying out the transfer as directed by the Humboldt Project Conveyance Act.

- Inability to identify, evaluate and protect the high number of important archaeological sites due to large size (83,350 acres) of the transfer.

Compliance with the NHPA, as described in Section VIII below, will address this concern.

- Preparation of the EIS by a contractor to PCWCD; concerns over adequacy of the NEPA analysis.

Reclamation exercised considerable oversight over the NEPA process. That oversight included participation in development of the public involvement process and review and approval of the draft and final EIS.

- Exclusion of the Lovelock Paiute Tribe as a title transfer recipient and land ownership issues for the Battle Mountain Band of Te-Moak Shoshone Tribe.

The conveyance statute identifies the transfer recipients, which do not include the Lovelock Paiute Tribe or the Battle Mountain Band of Te-Moak Shoshone Tribe. Congress has directed that the rights, title and interest which are held by the federal government in the Humboldt Project be transferred to the specified entities in Public Law 107-282.

- No boundary surveys, title searches, cadastral surveys, appraisal or other real estate transactions have been completed.

All required real estate transactions will be completed prior to the transfer and are listed under section VIII of this ROD as Environmental Commitments.

VIII. Environmental Commitments

A. NHPA: Section 106 Compliance

Due to the large size of the land to be transferred and the significance and complexity of its cultural resources, compliance with Section 106 of NHPA has not yet been completed. Title transfer may occur for any one of the components at such time as Section 106 compliance and the other Environmental Commitments for that component are completed.

In consultation with the Nevada State Historic Preservation Office (SHPO), Reclamation has developed an inventory strategy for those portions of the Humboldt Project Conveyance being transferred to PCWCD, Lander County, and Pershing County. Implementation of this inventory plan meets the requirements for Inventory of Historic Properties in 36 CFR Part 800.4. Once the inventory is complete, the evaluation of identified cultural resources will be conducted in consultation with the SHPO and consulting parties, pursuant to 36 CFR Part 63. Reclamation will assess effects to historic properties and comply with 36 CFR Part 800 regulations prior to the transfer of lands identified above.

The transfer of portions of the Humboldt Project Conveyance to the State will follow a similar process as described above and will occur at the time the State decides to proceed with the transfer. An inventory plan to identify historic properties will be developed in consultation with SHPO and any other consulting parties. Reclamation will assess effects to historic properties and comply with 36 CFR Part 800 regulations prior to the transfer of lands to the State of Nevada.

Senate Bill 81 (SB 81), a new cultural resources statute, was enacted in the 2005 session of the Nevada legislature. SB 81 authorizes the Office of Historic Preservation of the Nevada Department of Cultural Affairs to enter into agreements with state agencies or political subdivisions regarding the preservation of historic or prehistoric sites. The SHPO is developing regulations to implement SB 81. Once these regulations are developed, Reclamation will evaluate whether SB 81 could assist in compliance with the regulations in 36 CFR 800.

B. Real Estate Transactions

Prior to conveyance of any of the Project lands, Reclamation will ensure the completion of any necessary boundary surveys, title searches, cadastral surveys, appraisals, maps and other real estate transactions needed for the conveyance. All costs will be paid by the receiving entities. Receiving entities may implement the real estate transactions, but their implementation must be approved by Reclamation.

C. Hazardous Materials Compliance

A Phase I Environmental Site Assessment was completed for the EIS. Prior to conveyance, Reclamation will reevaluate that assessment to ensure conditions have not changed. A Level I contaminant survey will be performed by Reclamation prior to conveyance of any portions of the Project.

D. Dam Safety

Upon transfer of title of the Rye Patch Dam to the PCWCD, Reclamation will no longer have the responsibility for activities related to its Safety of Dams Program. The dam safety regulatory responsibility would formally transfer to the State, and the responsibilities associated with dam ownership would transfer to PCWCD. PCWCD is required to obtain a dam permit from Nevada Department of Water Resources. Liability for the structure and its operation would become the sole responsibility of PCWCD.

Prior to title transfer, Reclamation will meet with the State Engineer's Office and PCWCD to help facilitate an effective transfer of the responsibilities. Copies of all documents related to dam safety necessary for PCWCD and the State to assume their roles as owners and regulators of the facility would be made available before title transfer. Reclamation will meet with the parties preceding title transfer to provide a final summary of any existing dam safety issues and recommendations.

E. Documents Transfer

Reclamation will provide copies, if requested, of drawings and non-privileged legal documents in Reclamation's possession that are associated with the lands, third-party agreements, rights-of-way, and facilities to be included in this title transfer.

IX. Comments Received on the Final EIS

Following the filing of the FEIS in October 2005, two comment letters were received on the FEIS: one from the U.S. Environmental Protection Agency (EPA) and one from the SHPO.

The EPA FEIS comment letter stated that the FEIS addresses the issues EPA identified in its DEIS comments.

The SHPO noted in its letter that Reclamation must either develop a Programmatic Agreement under the NHPA prior to completion of the ROD and include the agreement with the ROD or reference in the ROD the standard procedures for Section 106 compliance found in 36 CFR 800. The standard procedures from 36 CFR 800 referred to by SHPO are referenced in this ROD under Section VIII, entitled "Environmental Commitments."

SECTION 106 COMPLIANCE

Under the Section 106 regulations of the National Historic Preservation Act, a transfer of property out of federal ownership constitutes an adverse effect on historic properties, unless there are adequate and legally enforceable restrictions in place to ensure long-term preservation of these properties. The section of the Record of Decision for the Humboldt Project Conveyance entitled "Environmental Commitments" outlines the actions that must be undertaken to comply with the Section 106 regulations. Reclamation has commenced carrying out those actions.

Reclamation has developed an inventory strategy for the portions of the conveyance being transferred to each of the entities, except the State of Nevada. An inventory strategy will need to be developed for the lands the State will receive when the State is ready to proceed. Inventory of the lands to be transferred must be followed by evaluation of identified historic properties, in consultation with the State Historic Preservation Officer and consulting parties. Reclamation will then assess the effects of the transfer on historic properties and implement mitigation, as warranted, prior to the transfer. Contingent upon the requirements for resolution of the adverse effects, it is estimated that the Section 106 process will be completed for the title transfer within seven years.