

# RECLAMATION

*Managing Water in the West*

Finding of No Significant Impact  
Final Environmental Assessment  
Pioneer Irrigation District  
Proposed Title Transfer  
Boise Project, Idaho



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

December 2007

U.S. DEPARTMENT OF THE INTERIOR

The mission of the Department of the Interior is to protect and provide access to our Nation's natural and cultural heritage and honor our trust responsibilities to Indian tribes and our commitments to island communities.

MISSION OF THE BUREAU OF RECLAMATION

The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

# **FINDING OF NO SIGNIFICANT IMPACT**

## **Pioneer Irrigation District Proposed Title Transfer Boise Project, Idaho**

**U.S. Department of the Interior  
Bureau of Reclamation  
Snake River Area Office**

**PN FONSI 07-07**

### **Introduction**

The Bureau of Reclamation (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 Action, the alternatives considered, the scoping process, Reclamation's consultation and coordination activities, and Reclamation's finding. The Final Environmental Assessment (EA) fully documents the analyses.

### **Background**

Where appropriate, Reclamation works with project beneficiaries and other stakeholders to transfer ownership of certain Federal irrigation facilities to non-Federal entities that request a transfer and are capable of managing the facilities, and where the Federal investment in the facilities has been repaid.

Pioneer Irrigation District (PID), established in 1901, diverts water from the Boise River into a system of laterals and canals for delivery to lands in Canyon County, Idaho. PID constructed the majority of the water conveyance system. Pursuant to contracts beginning in 1913 between Reclamation and PID, Reclamation constructed drainage system facility improvements (conveyance channels) within PID's service area. The United States holds title to these drainage facilities, including the associated land interests. These facilities represent approximately 35 percent of the total drainage system currently operated and maintained by PID.

At the request of PID, Reclamation analyzed the effects of transferring to the District, the United States' title, rights, and interests to these drainage facilities within PID's service area that were constructed and are owned by Reclamation. Through transfer of title, Reclamation

would be divested of any responsibility for the operation, maintenance, management, regulation of, and liability for the subject facilities. The primary result of the title transfer would be elimination of duplicative administrative actions performed by Reclamation and the District relative to the operation and maintenance (O&M) of the facilities. PID has fully met its repayment obligation to the United States Treasury for the costs associated with the construction of the drainage facilities.

In August 2007, Reclamation issued a Draft EA to document the analysis of the potential effects of title transfer on the human environment.

## **Purpose and Need**

Reclamation's purpose and need for the proposed title transfer is to reduce or eliminate costs associated with administering the project facilities that could be efficiently and effectively managed by non-Federal entities and which are not of national importance. This action would allow Reclamation to use its resources more effectively in other areas of water resource management and allow PID to be more efficient in its O&M of the transferred facilities.

The facilities and land interests included in this proposal are limited to those federally-owned facilities which are operated and maintained by PID and lie within the District's boundary (approximately 35 percent of the total drainage system currently operated and maintained by PID). At present, even though PID has paid in full its repayment obligations for the federally-owned portion of the drainage system, title remains with the United States.

## **Alternatives Considered**

The EA addressed two alternatives: Alternative A – No Action; and Alternative B – Proposed Action, Title Transfer. NEPA regulations require the action agency to consider a No Action alternative for comparative analysis purposes.

### **Alternative A – No Action**

Under the No Action alternative, the United States (Reclamation) would retain its interests in the conveyance channels and PID would continue to operate and maintain these channels as part of its irrigation and drainage systems. Reclamation would continue to involve PID for review of and concurrence with any requests by individuals, organizations, or other government entities to modify, encroach upon, or use Reclamation's conveyances.

### **Alternative B – Proposed Action, Title Transfer**

Under the Proposed Action, the Secretary of the Interior would convey to PID all interest in and right/title to Reclamation's drainage facilities and associated land interests within the District's

service area. These facilities are all operated and maintained by PID and represent approximately 35 percent of the total drainage system currently operated and maintained by PID. These facilities consist of drainage conveyance channels and associated rights-of-way, easements, and fee title lands. No other land areas are involved. No water rights, storage rights, water distribution/management agreements, or facilities of other entities would be affected.

### **The Preferred Alternative**

Reclamation intends to proceed with further activities toward the transfer of title as described in Alternative B. This alternative would eliminate administrative costs associated with Reclamation's administration of the existing federally-owned facilities that lie within PID's boundary. This alternative is consistent with the Federal government's initiative to work better and cost less. The proposed transfer would require development of terms and conditions for a transfer, along with subsequent legislation by Congress to authorize Reclamation to complete a title transfer in accordance with defined terms and conditions.

## **Environmental Commitments**

As part of the EA, 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 where such resources exist. 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 all conveyance facilities (drainage channels) that are currently owned by Reclamation. 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 ownership 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 one National Register-eligible property (i.e., the drainage system). Reclamation and the State Historic Preservation Office (SHPO) have agreed that Reclamation would mitigate the adverse effect to the PID drainage system by documenting the significance of the PID drainage system to the development of agriculture in the Treasure Valley. The documentation would be presented as a separate historic narrative and include historic records, modern and historic photographs, and drawings. This mitigation would be stipulated in a Memorandum of Agreement (MOA) to be signed by the SHPO, Reclamation, and PID, prior to implementation of the Proposed

Action. The stipulated mitigation could be completed prior to, or following the proposed transfer, in accordance with the MOA.

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

## **Consultation and Coordination**

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

### **National Historic Preservation Act of 1966**

The National Historic Preservation Act of 1966 (NHPA), requires that prior to authorizing an undertaking, Federal agencies must take into account the effect of the undertaking on any properties eligible for or listed on the National Register of Historic Places. Federal regulations entitled Protection of Historic Properties (36 CFR 800) defines the process for implementing requirements of the NHPA, including consultation with the appropriate State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation.

Continuing consultation and coordination has been conducted with the SHPO pursuant to requirement of the NHPA. The SHPO reviewed and concurred with the scope of work for addressing cultural resources (Section 3.6), and would be party to a negotiated MOA governing treatment and/or protection of any resources eligible for nomination to the National Register of Historic Places.

### **Endangered Species Act**

The Endangered Species Act (ESA) 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 March 2, 2007, Reclamation sent letters to the 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. In March 2007, Reclamation received an email from USFWS containing an updated species list covering the project area. Additionally, Reclamation received a letter dated March 12, 2007 from NOAA Fisheries concluding that no ESA-listed species under their jurisdiction occur within the watersheds of the project area. Reclamation concludes that title transfer will have no effect on any threatened and endangered species.

### **Tribal Coordination and Consultation**

The NEPA scoping letter referenced above was sent to involved Indian Tribes in order to determine if the tribes have issues or concerns related to the proposed title transfer. No

indication has been received from the tribes that such issues or concerns exist, and no further consultation is deemed warranted.

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

Pursuant to NEPA requirements, as part of EA preparation, Reclamation sent a "scoping letter" (dated February 27, 2007) requesting comments, concerns and identification of issues related to Proposed Action. The letter was sent to potentially affected and concerned agencies, organizations, individuals, and Tribes. Appendix C contains a copy of the scoping letter and the mailing list.

Thirteen written responses to the scoping letter were received during a 30-day comment period; a listing of the entities and individuals who provided comments is provided below.

- Ada County Highway District (ACHD)
- Ada County Parks and Waterways
- Canyon County Parks, Recreation and Waterways
- City of Boise, Public Works Department
- City of Caldwell, Office of City Engineer and Public Works Director
- City of Caldwell, Mayor
- City of Nampa, Public Works Department
- F.A.C.T.S. (Foundation for Ada/Canyon Trail Systems)
- Hamilton, Michaelson & Hilty, LLP
- James Budolfson
- Idaho Water Users Association
- Idaho Department of Parks and Recreation
- Spectrum Environmental, Inc.

Comment correspondence is summarized in a table and included in Appendix C. The main issues mentioned, which are addressed in the EA, were:

- Transfer of the subject facilities to a different public entity (addressed in Section 2.4)
- Use of facility corridors (easements, rights-of-way, etc.) for public pathways (addressed in Section 3.1),
- Status of other use agreements (e.g. city utility easements) associated with facility segments (addressed in Section 3.1), and

- Use of drains for urban stormwater runoff (addressed in Section 3.2).

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

The Draft EA was mailed to approximately 110 Federal, State, local agencies, elected officials, Indian tribes, irrigation districts, and interest groups for a 30-day comment period. During the preparation of the Final EA, Reclamation focused on the respondent's issues and questions from initial scoping to determine if there were any significant effects.

Reclamation received letters supporting the proposed action from the City of Eagle, the Idaho Waters Users Association, and Moffatt Thomas representing Pioneer Irrigation District. Comments letters noting specific concerns were received from Ada County Development Services; City of Nampa Public Works Department; Andy Tiller; Hamilton, Michaelson, and Hilty representing the City of Caldwell; and Perkins Coie representing Ada County Highway District. The Final EA includes the specific comments and Reclamation's associated responses in Appendix F. Several common concerns were addressed in the comment letters. These concerns are summarized in the subsections below, along with Reclamation's general response to each concern.

### **Concern 1 – Environmental Protection Agencies' (EPA) Statement on Stormwater Runoff**

The September 14, 2007 letter from Perkins Coie, on behalf of the ACHD, included a July 20, 2007 letter from the EPA regarding irrigation return flows and stormwater runoff (Appendix F). Reclamation acknowledges that EPA's letter provides clarification of issues associated with a long-standing legal or regulatory concern that Reclamation and affected irrigation districts have had regarding the introduction of stormwater runoff to single-purpose irrigation drains. The EPA statement is applicable to the current situation, where some of the drains within the PID boundaries are federally owned, and a post-transfer situation, where the full drainage system would be owned by PID. The EPA position does not affect the existing requirement for discharges to federally-owned drainage facilities within the PID boundaries to be authorized under a permit from Reclamation and approved by the irrigation district (see Reclamation's *Regional Policy on the Discharge of Stormwater Drainage*, Appendix B). Reclamation has identified five authorized stormwater discharges to Reclamation facilities within the PID boundaries; these authorized discharges would not be affected by the proposed title transfer. PID has indicated that following a potential transfer, the District would review and make decisions on future requests for stormwater discharge permits analogous to their current role in approving permit applications for Reclamation's authorization of any non-agricultural discharges to canals or drains.

## **Concern 2 – Urban Runoff: Volume/Timing and Water Quality Issues**

The Draft EA summarized positions taken by PID regarding the District's concerns about managing urban stormwater volumes in the drainage system facilities and the regulatory status of irrigation return flows and/or stormwater runoff. As noted above, legal and regulatory concerns are clarified by EPA's July 20, 2007 guidance letter. The information included in the Draft EA was intended to disclose and clarify the District's interest in approaching Reclamation about a potential title transfer. Reclamation's purpose for considering a potential title transfer is reflected in its title transfer framework (Appendix A) which is to reduce costs and responsibility for project facilities that can be efficiently and effectively managed by non-Federal entities and that are not of national importance. While the proposed title transfer would address Reclamation's purpose and need and satisfy PID's intent for seeking title transfer, it would not resolve current disagreements between PID and other entities regarding urban runoff volume and timing and urban runoff water quality. Reclamation has revised the Final EA to reflect the differing positions of other entities regarding urban runoff volume and timing and urban runoff water quality.

## **Concern 3 – Reclamation's Framework for the Transfer of Title**

Several comment letters referenced Reclamation's Framework for the Transfer of Title and questioned whether the proposed transfer to PID would meet criteria in the Framework. Specific criteria that were referenced in the comments involve:

- The Federal Treasury, and thereby the taxpayer's financial interest, must be protected (criterion #1). In this case, PID has met its repayment obligation and the Federal Treasury will therefore be protected.
- There must be compliance with all applicable State and Federal laws (criterion #2). Reclamation fully intends to comply with all State and Federal laws during any potential title transfer. Specific Federal legislation would be required to authorize Reclamation to transfer title. Regarding issues relating to PID's approach to permitting stormwater discharges, Reclamation's understanding is that if a transfer is authorized, the District would review and make decisions on future requests for stormwater discharge permits analogous to their current role in approving permit applications for Reclamation's authorization of any non-agricultural discharges to canals or drains. This understanding is reflected in the Final EA.
- The public aspects of the project must be protected (criterion #6). Public aspects referenced in the Framework for the Transfer of Title involve authorized non-reimbursable uses, i.e., authorized uses for which the United States is not reimbursed under a repayment contract or similar agreement. These uses generally include recreation, fish and wildlife enhancement, and/or flood control where authorized for specific Reclamation projects. The federally-owned drains of the PID drainage system were authorized under the Reclamation Act of 1902 for irrigation-related purposes and

predominantly involve easements (rather than fee title ownership) obtained for those irrigation purposes. The authorized uses for the federally-owned drains of the PID drainage system do not include additional public aspects as referenced above (i.e., nonreimbursable recreation, fish and wildlife enhancement, or flood control purposes). As a result, the proposed title transfer is consistent with Reclamation's application of the Framework for the Transfer of Title relative to public aspects of the project.

Comment letters also noted the Framework's general guidance that a project would remain in Federal ownership if substantive objections by a project beneficiary cannot be resolved. Reclamation recognizes that other entities are interested in, and have expressed concerns about, management of stormwater runoff in a potential post-transfer scenario. These concerns are relevant to Reclamation's Framework for the Transfer of Title rather than to the NEPA analysis, and it is premature in the title transfer process to determine that such concerns cannot be resolved. The terms and conditions for a transfer, along with any related transfer legislation, may address and resolve current objections.

#### **Concern 4 – Economic Issues**

Economic issues referenced in comments received by Reclamation include potential costs to taxpayers for drainage infrastructure that may be needed if urban stormwater could not be discharged to PID drains. Reclamation has identified five authorized stormwater discharges to Reclamation facilities within the PID boundaries; these authorized discharges would not be affected by the proposed title transfer. PID has indicated that following a potential transfer, the District would review and make decisions on future requests for stormwater discharge permits analogous to their current role in approving permit applications for Reclamation's authorization of any non-agricultural discharges to canals or drains. Reclamation understands that PID's current policy is to not allow or accept stormwater from non-agricultural sources in its facilities. While PID's policy may affect third-party costs for accommodating stormwater runoff, Reclamation believes that the proposed title transfer would not change PID's current policy and would not result in significant economic impacts to current or future authorized discharges.

One comment letter referenced potential economic costs for urban members of PID if a transfer resulted in additional liabilities for these members without corresponding urban runoff benefits. The relevant drainage facilities are transferred facilities, meaning that PID is currently responsible for O&M issues. As a result, liability is effectively with PID in the current situation and would also be with the District following the proposed title transfer. One effect of title transfer would be that Reclamation would no longer be involved in any questions regarding liabilities that may be incurred by PID for transferred portions of the drainage system, thereby eliminating the potential for Reclamation to incur costs related to such involvement (see Section 2.3 of the EA). As analyzed in the EA, title transfer would not affect PID's current stormwater runoff policies or the District's O&M of the overall drainage system.

## **Concern 5 – General Information Not Included in the Draft EA Analysis**

Some comments on the Draft EA included references to additional information not directly referenced or incorporated in Reclamation's NEPA analysis.

As noted above, the EPA's July 20, 2007 letter was attached to one comment letter and was referenced in another letter. It is included in this Final EA (Appendix F).

The September 14, 2007 letter from Hamilton, Michaelson & Hilty, LLP, on behalf of the City of Caldwell, references an analysis of stormwater runoff from agricultural areas and from urban areas that was completed by the City. This information was subsequently provided by Hamilton, Michaelson & Hilty, LLP, in an October 3, 2007 letter. Reclamation has added language to the Final EA to reference this analysis.

One of the comment letters references: (a) the potential for perennial flow in most or all of the drains, (b) observations that some fishing occurs in the drains, and (c) an Idaho Department of Environmental Quality (DEQ) study that includes Mason Creek. Reclamation contacted PID about drain flows. Reclamation has further evaluated each of these issues as noted in Appendix F. Reclamation has added language to the Final EA, as appropriate, to address these issues.

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

Reclamation received comments from the aforementioned entities and where appropriate, the Final EA was revised to reflect their concerns.

The Bald eagle was delisted and subsequently removed from the threatened and endangered species list in July 2007 (72 FR 37346). Therefore, the analysis covering this species has been deleted from the Final EA.

Reclamation also updated the distribution list and added Appendix F to present the comments received on the Draft EA and Reclamation's responses to those comments.

In addition, the Draft EA included a draft version of Reclamation's *Regional Policy on the Discharge of Stormwater Drainage (Water Quality)*. The finalized version is included as Appendix B to the Final EA.

Where appropriate the FONSI and Final EA reflect clarification and/or revisions regarding specific comments related to stormwater and urban runoff, the public aspects of the project, and the economic issues associated with the proposed title transfer. Additionally, Reclamation incorporated editorial revisions to clarify aspects of the document and to address additional information.

## Finding

Reclamation's EA for the proposed title transfer shows that the Proposed Action will have no significant effect on the human environment. Reclamation therefore concludes that preparation of an Environmental Impact Statement is not required, and that this FONSI satisfies the requirements of NEPA.

### Recommended:

Celestino P. Tafoya

Celestino Tafoya  
Deputy Area Manager  
Boise, Idaho

December 10, 2007

Date

### Approved:

James H. Gregg

Mr. Jerrold Gregg  
Snake River Area Manager  
Boise, Idaho

12/10/2007

Date

# RECLAMATION

*Managing Water in the West*

Finding of No Significant Impact  
Final Environmental Assessment  
Pioneer Irrigation District  
Proposed Title Transfer  
Boise Project, Idaho



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

**December 2007**

U.S. DEPARTMENT OF THE INTERIOR

The mission of the Department of the Interior is to protect and provide access to our Nation's natural and cultural heritage and honor our trust responsibilities to Indian tribes and our commitments to island communities.

MISSION OF THE BUREAU OF RECLAMATION

The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

## Acronyms and Abbreviations

ACHP	Advisory Council on Historic Preservation
ACHD	Ada County Highway District
AOI	Area of impact
CDC	Conservation Data Center
CWA	Clean Water Act
District	Pioneer Irrigation District
EA	Environmental Assessment
EPA	Environmental Protection Agency
ESA	Endangered Species Act
FONSI	Finding of No Significant Impact
IDEQ	Idaho Department of Environmental Quality
IDFG	Idaho Department of Fish and Game
ITA	Indian Trust Asset
MOA	Memorandum of Agreement
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act of 1966
NMID	Nampa & Meridian Irrigation District
NOAA Fisheries	National Oceanic and Atmospheric Administration Fisheries
NPDES	National Pollution Discharge Elimination System
O&M	Operation and maintenance
PID	Pioneer Irrigation District
Reclamation	Bureau of Reclamation
SHPO	State Historic Preservation Office
T&E	Threatened and Endangered
USFWS	U.S. Fish and Wildlife Service



# TABLE OF CONTENTS

---

	Page
<b>Acronyms and Abbreviations</b>	
<b>Table of Contents .....</b>	<b>i</b>
<b>Chapter 1 Introduction .....</b>	<b>1</b>
1.1 Background .....	1
1.2 Purpose and Need for Action .....	5
1.3 Scope of the Proposed Transfer .....	6
1.3.1 Project and Facilities Description .....	6
1.3.2 Reclamation Interests to be Transferred .....	8
1.4 Regulatory Compliance.....	8
1.4.1 National Environmental Policy Act.....	8
1.4.2 Endangered Species Act .....	8
1.4.3 National Historic Preservation Act.....	9
1.4.4 Executive Order 13007: Indian Sacred Sites .....	9
1.4.5 Executive Order 12898: Environmental Justice .....	9
1.5 Similar or Related Actions .....	9
<b>Chapter 2 Description of the Alternatives .....</b>	<b>11</b>
2.1 Alternative A – No Action .....	11
2.2 Alternative B – Proposed Action, Title Transfer .....	11
2.2.1 Facilities and Land Interests .....	11
2.2.2 Costs.....	12
2.3 Limitations and Liabilities .....	12
2.4 Alternatives Considered but Eliminated from Further Study .....	12
<b>Chapter 3 Affected Environment and Environmental Consequences .....</b>	<b>15</b>
3.1 Land Use .....	15
3.1.1 Affected Environment.....	15
Facility Realignment, Reconstruction, or Encroachment .....	16
Recreation Trail Uses.....	17
3.1.2 Environmental Consequences.....	17
Alternative A – No Action.....	17

## TABLE OF CONTENTS (continued)

---

	Alternative B – Proposed Action, Title Transfer.....	17
3.2	Hydrology and Water Quality.....	18
3.2.1	Affected Environment.....	18
	Urban Runoff Volume and Timing.....	18
	Urban Runoff Water Quality.....	19
3.2.2	Environmental Consequences.....	20
	Alternative A – No Action.....	20
	Alternative B – Proposed Action, Title Transfer.....	20
3.3	Biological Resources.....	21
3.3.1	Vegetation.....	22
	Affected Environment.....	22
	Environmental Consequences.....	23
3.3.2	Fish and Wildlife.....	24
	Affected Environment.....	24
	Environmental Consequences.....	25
3.4	Threatened and Endangered Species.....	25
3.4.1	Affected Environment.....	25
	Gray Wolf.....	26
	Idaho Springsnail.....	26
3.4.2	Environmental Consequences.....	26
	Alternative A – No Action.....	26
	Alternative B – Proposed Action, Title Transfer.....	26
3.5	Special Status Species.....	27
3.5.1	Affected Environment.....	27
	Woodhouse’s Toad.....	28
	Northern Leopard Frog.....	28
	Western Ground Snake.....	28
	Piute Ground Squirrel.....	28
	Speckled Dace.....	29
	Slickspot Peppergrass.....	29
	Cusick’s False Yarrow.....	29
	American Wood Sage.....	29
3.5.2	Environmental Consequences.....	30

## TABLE OF CONTENTS (continued)

---

	Alternative A – No Action.....	30
	Alternative B – Proposed Action, Title Transfer.....	30
3.6	Cultural Resources .....	30
3.6.1	Affected Environment.....	31
3.6.2	Environmental Consequences.....	32
	Alternative A – No Action.....	33
	Alternative B – Proposed Action, Title Transfer.....	33
3.6.3	Mitigation Measures .....	33
3.7	Indian Sacred Sites.....	33
3.7.1	Affected Environment.....	34
3.7.2	Environmental Consequences.....	34
	Alternative A—No Action.....	34
	Alternative B—Proposed Action, Title Transfer.....	34
3.7.3	Mitigation Measures .....	34
3.8	Indian Trust Assets.....	35
3.8.1	Affected Environment.....	35
3.8.2	Environmental Consequences.....	35
	Alternative A—No Action.....	35
	Alternative B—Proposed Action, Title Transfer.....	36
3.9	Hazardous Materials and Waste.....	36
3.10	Cumulative Impacts of the Proposed Alternative .....	36
3.10.1	Biological Resources .....	36
	Alternative A – No Action.....	36
	Alternative B – Proposed Action, Title Transfer.....	37
3.10.2	Past and Current Title Transfer Projects.....	37
3.10.3	Potential Future Title Transfer Projects.....	38
<b>Chapter 4</b>	<b>Consultation and Coordination.....</b>	<b>39</b>
4.1	Agency Consultation.....	39
4.1.1	Endangered Species Act .....	39
4.1.2	National Historic Preservation Act.....	39
4.2	Consultation and Coordination with Tribal Governments .....	40
4.3	Public Involvement .....	40

# TABLE OF CONTENTS (continued)

---

References .....	43
Distribution List .....	47

## Appendices

Appendix A.	Reclamation’s Framework for the Transfer of Title
Appendix B.	Reclamation’s Regional Policy on the Discharge of Stormwater Drainage (Water Quality)
Appendix C.	Scoping Letters and Responses
Appendix D.	PID Urban Stormwater Management Policy
Appendix E.	ESA-related Correspondence
Appendix F.	Public Comment Letters and Response

## List of Tables

Table 1.	Proposed PID title transfer facilities .....	7
Table 2.	Common vegetation communities found within the proposed action area.....	22
Table 3.	Common bird species found in the proposed action area .....	24
Table 4	State-listed species of concern.....	27

## List of Figures

Figure 1.	Proposed title transfer Pioneer Irrigation District.....	3
-----------	--	---

# Chapter 1 INTRODUCTION

---

Where appropriate, the U.S. Bureau of Reclamation (Reclamation) works with project beneficiaries and other stakeholders to transfer ownership of certain Federal irrigation facilities to non-Federal entities that request a transfer and are capable of managing the facilities, and where the Federal investment in the facilities has been repaid.

Pioneer Irrigation District (PID or District) has requested transfer to the District of all rights, title, and interest in the drainage facilities within PID's service area which were constructed, and are owned, by the United States. These facilities represent approximately 35 percent of the total drainage system currently operated and maintained by PID. On November 27, 2006, Reclamation and PID entered into a Memorandum of Agreement (MOA) to document the areas of responsibility and cooperative efforts necessary for pursuing the title transfer process.

Reclamation's goal in considering PID's request for title transfer is to reduce or eliminate its administrative costs associated with the operation and maintenance (O&M) of the facilities. While Reclamation provides oversight, PID operates, maintains, manages, and administers the facilities proposed for title transfer, and has done so since the facilities were originally constructed. Reclamation involves PID for review and concurrence with any actions affecting the facilities or related land interests. The proposed title transfer presents opportunities for enhancing efficiencies for both Reclamation and PID.

Reclamation has determined that the title transfer would not interfere with PID's capability to continue to operate and maintain the relevant facilities, and that PID has fully met its repayment obligation to the United States Treasury for the costs associated with construction of these facilities, including acquisition of associated land interests. The proposed transfer also would not interfere with O&M for the remaining Federal portions of the Boise Project.

Pursuant to requirements of the National Environmental Policy Act (NEPA), this environmental assessment (EA) documents Reclamation's analysis of the environmental effects of transferring title for the subject facilities and associated land interests to PID as proposed.

## 1.1 Background

PID, established in 1901, is an irrigation district organized and existing under the laws of the State of Idaho. The boundaries of PID are shown on Figure 1.

PID diverts water from the Boise River into a system of canals and laterals for delivery to lands in Canyon County, Idaho, including the Cities of Caldwell and Nampa. PID manages return flows from irrigated lands through a system of drainage channels. PID constructed the majority of the water conveyance system and currently owns approximately 65 percent of the total drainage system.

Pursuant to contracts beginning in 1913 between Reclamation and PID, Reclamation constructed drainage system facility improvements (conveyance channels) within PID's service area. This work included utilizing existing land interests and obtaining necessary land interests (primarily easements and/or rights-of-way, with limited instances of fee title) for construction, operation, and maintenance of the facilities.

The facilities constructed by Reclamation on behalf of PID (the proposed title transfer facilities) are shown on Figure 1. The United States holds title to these drainage facilities, including the associated land interests. These facilities represent approximately 35 percent of the total drainage system operated and maintained by PID. The District has operated and maintained the facilities constructed by Reclamation, as an integral part of its system, since the facilities were first completed. This relationship between PID and Reclamation has been governed by a series of contracts.

In 1995, as part of the Federal Government's National Performance Review and with the goal of increasing the efficiency and cost-effectiveness of government, Reclamation established a national program to transfer title of facilities that had national importance and which could more efficiently and effectively be managed by non-Federal entities.

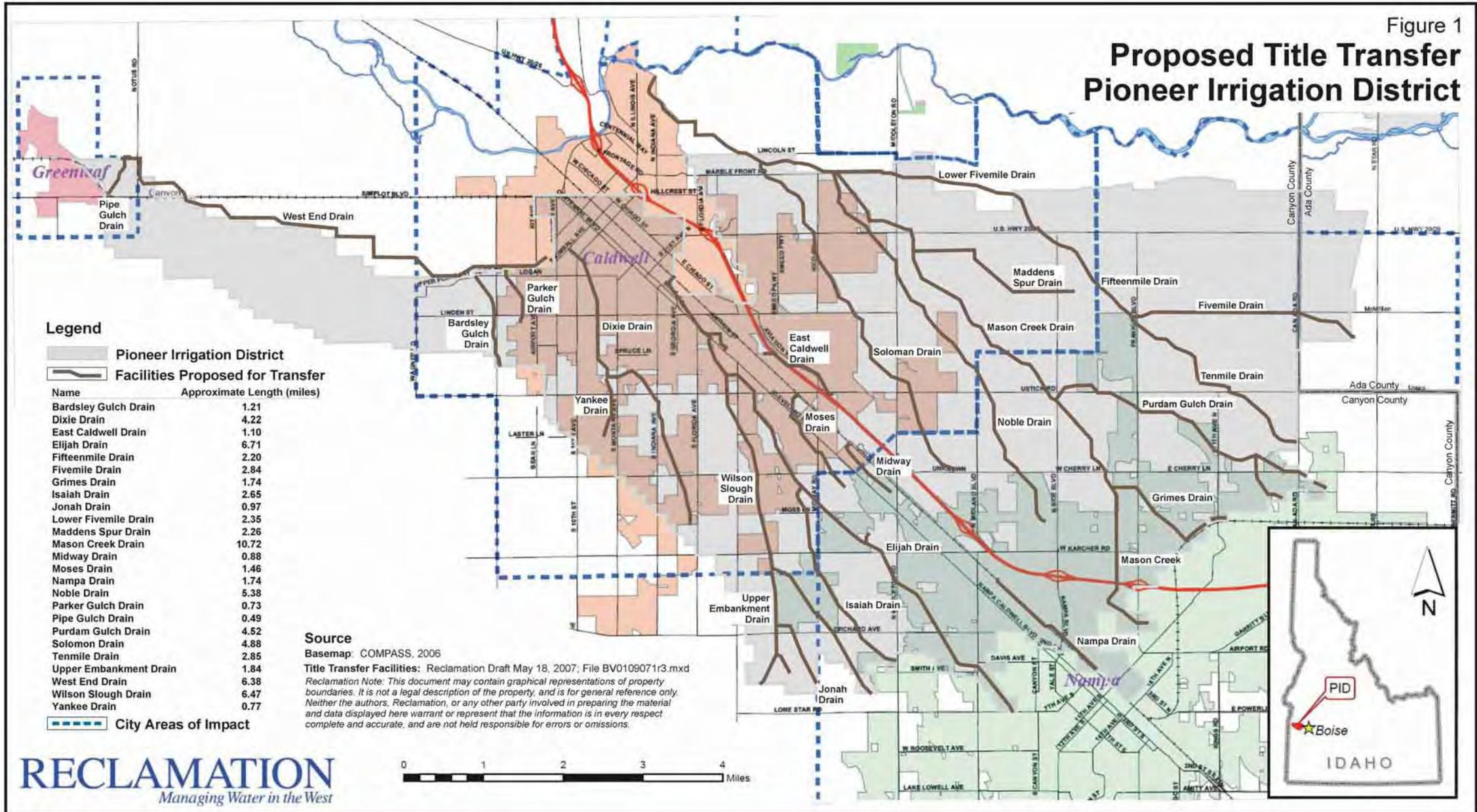
Reclamation's "Framework for the Transfer of Title" (Appendix A) outlines the criteria that must be met prior to implementing any transfer of title action. These criteria are:

1. The Federal Treasury and thereby the taxpayers' financial interests must be protected.
2. There must be compliance with all Federal and State laws.
3. Interstate compacts and agreements must be protected.
4. The Secretary of Interior's Native American trusts responsibilities must be met
5. Treaty obligations and international agreements must be fulfilled.
6. The public aspects of the projects must be protected.

Reclamation's intent is to transfer title directly to non-Federal entities that are competent to manage the facilities and are willing and able to fulfill legal obligations associated with taking ownership of those facilities. Reclamation believes that PID meets these requirements and is a viable candidate for title transfer.

Figure 1

# Proposed Title Transfer Pioneer Irrigation District





## 1.2 Purpose and Need for Action

At the request of PID, Reclamation is considering a proposal to transfer title for certain Federal drains and associated real property interests to PID. The facilities and land interests included in this proposal are limited to those federally-owned facilities which are operated and maintained by PID and lie within the District's boundary (approximately 35 percent of the total drainage system currently operated and maintained by PID). At present, even though PID has paid in full its repayment obligations for the federally-owned portion of the drainage system, title remains with the United States.

Reclamation's purpose and need for the proposed title transfer is to reduce or eliminate costs associated with administering the project facilities that could be efficiently and effectively managed by non-Federal entities and which are not of national importance.

PID's purpose and need is to reduce or eliminate costs associated with Reclamation's oversight and coordination and to fully consolidate its authority to manage the drainage facilities.

PID operates and maintains the subject Federal facilities as part of its larger, integrated irrigation water conveyance system, and is responsible for decisions regarding facility use or modification consistent with the contracts beginning in 1913 between Reclamation and PID. In this case, increasingly frequent third-party requests for modification to or encroachment on these Federal facilities require separate review by both Reclamation and PID. Prior to granting a request, Reclamation involves PID for review and approval per Regional policy. The administrative process associated with joint Reclamation/PID review and approval presents an opportunity for streamlining and improving efficiencies for both Reclamation and PID, as well as for the applicants.

Overall, the proposed title transfer would address the defined purpose and need by consolidating all responsibilities for the drainage system with one entity, thereby reducing Reclamation's administration for facilities that PID has operated and maintained since they were constructed or improved in the early 1900s. The proposed transfer is consistent with the criteria outlined in Reclamation's "Framework for the Transfer of Title" (Appendix A).

## 1.3 Scope of the Proposed Transfer

### 1.3.1 Project and Facilities Description

The Reclamation facilities proposed for title transfer to PID are illustrated on Figure 1 and listed on Table 1. These facilities are comprised of 25 water conveyance channel segments totaling approximately 77 miles in length. All are drainage channels designed, sized, and constructed to manage high groundwater levels, irrigation return flows, and stormwater runoff from agricultural fields.

Land interests associated with the title transfer facilities are primarily easements or rights-of-way reserved in the initial patents or acquired by Reclamation from underlying landowners as part of the development process, prior to construction.<sup>1</sup> The purposes of and rights granted by the easements and rights-of-way are centered on construction, operation, and maintenance of PID's agricultural irrigation/drainage water management system.

These easements and rights-of-way are defined as narrow strips of land within which the drainage channel is constructed and include sufficient room on one or both sides of the channel to provide access for operations and maintenance (e.g., monitoring and adjusting waterflows, removing sediment and debris, lining and refurbishing ditches and performing other maintenance activities with appropriate personnel and equipment).

With one exception, all facilities proposed for title transfer are within Canyon County, Idaho. The exception is a stretch of the Fivemile Drain less than one mile in length located in Ada County in the northeastern portion of the PID.

No land parcels or facilities outside of the drainage channel corridors listed on Table 1 are involved in the proposed PID title transfer. No water rights or water storage facilities/capacities would be transferred or affected by the Proposed Action.

---

<sup>1</sup> In a limited number of cases, Reclamation obtained fee title to lands within which the channels are constructed, operated, and maintained.

**Table 1. Proposed PID title transfer facilities**

<b>Conveyance</b>	<b>Approximate Length (miles)</b>
Bardsley Gulch Drain	1.21
Dixie Drain	4.22
East Caldwell Drain	1.70
Elijah Drain	6.71
Fifteenmile Drain	2.20
Fivemile Drain	2.84
Grimes Drain	1.74
Isaiah Drain	2.65
Jonah Drain	0.97
Lower Fivemile Drain	2.35
Maddens Spur Drain	2.26
Mason Creek Drain	10.72
Midway Drain	0.88
Moses Drain	1.46
Nampa Drain	1.61
Noble Drain	5.38
Parker Gulch Drain	0.73
Pipe Gulch Drain	0.49
Purdam Gulch Drain	4.52
Solomon Drain	4.88
Tenmile Drain	2.85
Upper Embankment Drain	1.84
West End Drain	6.38
Wilson Slough Drain	6.47
Yankee Drain	0.77
<b>Total</b>	<b>77.36</b>

### **1.3.2 Reclamation Interests to be Transferred**

The proposed title transfer would completely divest Reclamation of any interest in the subject facilities. All responsibility for the ownership, operation, maintenance, management, regulation, and liability for the facilities would be completely with PID.

Ownership of the facilities would be transferred to PID including associated land interests (primarily easements and rights-of-way). Related to easements and rights-of-way, the purposes of and rights granted under the original agreements would remain unchanged. Any other third party legal rights or agreements related to the facilities, involving individuals or entities other than Reclamation and PID, would also be transferred and remain unchanged, including (but not limited to) five authorized stormwater discharges that have been identified.

## **1.4 Regulatory Compliance**

Various laws and Executive Orders apply to the Proposed Action. The legal and regulatory environment within which the Federal activity would be conducted depends on which alternative is implemented. A summary of major laws and Executive Orders follows.

### **1.4.1 National Environmental Policy Act**

Under the NEPA, Reclamation is responsible for determining if the Proposed Action might have significant effects to the environment. If Reclamation, based upon the analysis presented in the EA, determines that effects would not be significant, a Finding of No Significant Impact (FONSI) would be completed to fulfill the NEPA compliance. If potentially significant effects are identified, Reclamation must consider these, including potential for avoidance or mitigation in issuing its Record of Decision (ROD). This EA reports Reclamation's analysis pursuant to NEPA requirements.

### **1.4.2 Endangered Species Act**

The Endangered Species Act (ESA) 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. As part of the ESA's Section 7 process, an agency must request a list of species from the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NOAA Fisheries) that identifies threatened and endangered species within or near the action area. The agency then must evaluate impacts to those species. If the action may impact any listed species, the agency must consult with USFWS or NOAA Fisheries. Section 3.4 presents analysis of and conclusions regarding potential for impact to listed species.

### **1.4.3 National Historic Preservation Act**

The National Historic Preservation Act of 1966 (NHPA), requires that prior to authorizing an undertaking, Federal agencies must take into account the effect of the undertaking on any properties eligible for or listed on the National Register of Historic Places. Federal regulations entitled Protection of Historic Properties (36 CFR 800) defines the process for implementing requirements of the NHPA, including consultation with the appropriate State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP). Section 3.6 presents analysis and conclusions relevant to NHPA requirements.

### **1.4.4 Executive Order 13007: Indian Sacred Sites**

Executive Order 13007, dated May 24, 1996, instructs Federal agencies to promote accommodation of, access to, and protection of the physical integrity of American Indian sacred sites. A “sacred site” is a specific, discrete, narrowly delineated location on Federal land. An Indian tribe or an Indian individual determined to be an appropriately authoritative representative of an Indian religion must identify a site as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion. However, this is provided that the tribe or authoritative representative has informed the agency of the existence of such a site. Analysis related to this requirement is presented in Section 3.7.

### **1.4.5 Executive Order 12898: Environmental Justice**

Executive Order 12898, dated February 11, 1994, instructs Federal agencies, to the greatest extent practicable and permitted by law, make achieving environmental justice part of its mission by addressing, as appropriate, disproportionately high and adverse human health or environmental effects on minority populations and low income populations. Environmental justice means the fair treatment of people of all races, income, and cultures with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment implies that no person or group of people should shoulder a disproportionate share of negative environmental impacts resulting from the execution of environmental programs. No environmental justice issues are associated with the proposed title transfer.

## **1.5 Similar or Related Actions**

In 2001, a comparable title transfer was completed in the Nampa & Meridian Irrigation District (NMID) immediately east of PID. In this transfer, NMID received title to all Reclamation distribution, conveyance, and drainage facilities, and associated land interests.

## 1.5 Similar or Related Actions

---

Three other transfer of title actions have occurred or are in process within Reclamation's Snake River Area Office administrative boundaries. These actions involve Reclamation facilities within the Burley Irrigation District, the Fremont-Madison Irrigation District, and the American Falls Reservoir District No. 2 (Section 3.10).

## **Chapter 2 DESCRIPTION OF THE ALTERNATIVES**

---

This EA addresses two alternatives: Alternative A – No Action and Alternative B – Proposed Action, Title Transfer. As required by NEPA, the No Action alternative (i.e., the future without the Proposed Action) forms the basis for analyzing the effects of the Proposed Action.

Another alternative considered, but eliminated from detailed consideration, is transfer of the subject facilities to a different local jurisdiction, specifically one or more of the local municipalities. Discussion of the reasons why this alternative was not considered is provided in Section 2.4, below.

### **2.1 Alternative A – No Action**

Under the No Action alternative, the United States (Reclamation) would retain its interests in the conveyance channels and PID would continue to operate and maintain these channels as part of its irrigation and drainage systems. Reclamation would continue to involve PID for review of and concurrence with any requests by individuals, organizations, or other government entities to modify, encroach, or use Reclamation's conveyances.

### **2.2 Alternative B – Proposed Action, Title Transfer**

If the proposed transfer of title occurs, the purposes of the facilities (i.e., either irrigation or agricultural drainage) would remain the same. The District would continue to operate and maintain the facilities as part of its integrated system in a manner consistent with past and current practices. The title transfer would not alter the purpose, management, or use of the facilities.

#### **2.2.1 Facilities and Land Interests**

The Proposed Action is a transfer by Reclamation to PID of all interest in and right/title to Reclamation's drainage facilities and associated land interests within PID's service area. The subject facilities are illustrated on Figure 1 and listed (with approximate length) on Table 1.

These facilities are operated and maintained by PID and lie generally within the PID boundary. These facilities consist of drainage conveyance channels and associated rights-of-way, easements, and fee title lands. No other land areas are involved. No water rights, storage rights, water distribution/management agreements, or facilities of other entities would be affected.

Reclamation does not currently have the authority to transfer title of these facilities and lands. Specific legislation would need to be passed by Congress. If the decision is made to proceed with the title transfer, Reclamation understands that PID would work with their Congressional delegation to draft legislation with provisions that are consistent with Reclamation's 1995 Framework for Title Transfer (USBR 1995) and, where appropriate, environmental commitments made by Reclamation through the NEPA process.

### **2.2.2 Costs**

PID has met its repayment obligation to the United States for construction of the segments and has borne the cost of operating and maintaining the facilities since they were constructed. Specific to the proposed title transfer, PID entered into a MOA (November 27, 2006) with Reclamation which provides for sharing all necessary and reasonable costs of complying with NEPA. Outside of hazardous materials surveys, costs not associated with the NEPA process would generally be paid by PID. Subsequent to the title transfer, if authorized, PID would bear all costs of continuing O&M of the facilities.

## **2.3 Limitations and Liabilities**

It is Reclamation's intent that effective on the transfer of title to PID, the U.S. Government would no longer be held liable for damages of any kind arising out of any act, omission, or occurrence relating to the title transfer segments. Nothing in this alternative would increase the liability of the U.S. Government beyond that currently provided in the Federal Tort Claims Act (28 U.S.C. 2671 et seq.).

## **2.4 Alternatives Considered but Eliminated from Further Study**

NEPA requires Reclamation to consider alternatives developed through public scoping. However, only those alternatives that are reasonable and meet the purpose and need of the Proposed Action must be analyzed.

Some comments received during scoping (Appendix C), suggested that Reclamation's interests in the federally-owned drainage system segments should be transferred to an entity or entities other than PID (specifically, local municipalities). The intent of this suggestion was that one or more of those entities might utilize the segments for recreational pathways or for urban stormwater runoff.

Reclamation's framework for title transfer indicates that non-Federal governmental entities may be considered as beneficiaries for the purposes of title transfer. In this case, the majority of the drainage system is currently owned, operated, and maintained by PID. The proposed transfer of the remaining portion of the drainage system to PID would consolidate ownership with one entity that has demonstrated its ability to effectively operate and maintain the relevant facilities since the early 1900s. In addition, PID has fully met its repayment obligation to the U.S. Treasury for costs associated with construction of the facilities proposed for transfer.

Title transfer to an entity other than PID would result in PID owning a majority of the drainage system and a second entity owning a minority of the system. This situation could:

- Increase rather than decrease the degree of coordination required for system operations, since the two separate entities involved would need to operate outside of the established relationships between Reclamation and PID;
- Shift, rather than eliminate, the need for duplicative administrative actions for events such as crossing permit review and approval; and
- Add uncertainty about procedures, effectiveness, and legal relationships for O&M of the drainage system compared to the District's established O&M since the early 1900s.

For these reasons, Reclamation believes that the proposed transfer of title to PID makes more sense than a possible transfer to another entity. However, Reclamation recognizes that other entities are interested in, and have expressed concerns about, management of stormwater runoff in a potential post-transfer scenario. These concerns are relevant to Reclamation's Framework for the Transfer of Title rather than to the NEPA analysis, and it is premature in the title transfer process to determine that such concerns cannot be resolved. The terms and conditions for a transfer, along with any related title transfer legislation, may address and resolve the expressed concerns.



## Chapter 3 AFFECTED ENVIRONMENT AND ENVIRONMENTAL CONSEQUENCES

---

The scope of this EA is defined by the Proposed Action, as compared with the No Action alternative. Analysis is focused on identifying and evaluating potential environmental impacts resulting specifically from the proposed transfer of Reclamation's interests in the subject drainage conveyances. No other Federal interests are involved (e.g., reservoirs, water rights, water storage rights, river diversion facilities, storage, and irrigation system operations).

NEPA requires analysis only of resource categories or issues in which there is or could be potential for adverse impact from a Proposed Action. Therefore, the resources analyzed in this EA include:

- Land use
- Hydrology and water quality
- Biological resources (vegetation, wildlife, birds, mammals, reptiles, amphibians, fish)
- Threatened and endangered species
- Special status species
- Cultural resources
- Indian sacred sites
- Indian trust assets
- Hazardous materials and waste

This chapter also describes cumulative impacts of the alternatives.

### 3.1 Land Use

#### 3.1.1 Affected Environment

Jurisdiction over land use and development within the PID is held predominantly by Canyon County and the Cities of Caldwell and Nampa.

As shown on Figure 1, most PID lands and proposed title transfer facilities lie within Canyon County, and also within either the corporate boundary or designated Area of Impact (AOI—

growth boundary) of Caldwell and Nampa. The only exceptions to this are the West End Drain, which lies mostly in Canyon County west of the Caldwell AOI, with less than one mile in the City of Greenleaf's AOI; the Jonah Drain, Upper Embankment Drain and a portion of the Wilson Slough Drain which are in Canyon County south of the Caldwell, and west of the Nampa, AOI; and less than one mile section of the Fivemile Drains that lies in Ada County (but is not included within any City AOI).

The overall area in which PID lies has been experiencing relatively intense development pressure, with large portions of the District (particularly those within Caldwell and Nampa jurisdiction) being converted from agricultural to urban/suburban uses. As of 2004, an estimated 50 percent of District lands had undergone this conversion (Koberg 2007). With this development have come increasing requests by local jurisdictions and/or developers to use or modify some of the conveyance facilities. Of particular concern are requests to:

- Realign or reconstruct conveyance channels and/or encroach upon associated land interests
- Use channel corridors for recreation trails, and
- Conduct urban stormwater runoff from developments and roadways to drainage facilities.

The first two of these concerns are addressed below; urban stormwater issues are discussed in Section 3.2. In all cases involving the drainage facilities proposed for title transfer, Reclamation reviews requests for modification or third-party use of its facilities jointly with PID, and prior to granting a request, requires review by and concurrence from PID. As noted in Chapter 1, this is because PID is responsible and liable for O&M of the irrigation delivery and drainage systems, including those portions owned by Reclamation. Discussions below are therefore focused on PID policy, procedure, and decision criteria related to facility modification and use requests.

#### **Facility Realignment, Reconstruction, or Encroachment**

PID considers all requests to physically modify conveyance systems and/or encroach within the fee title, easement, or right-of-way strips of land used by PID for access, operation, and maintenance. Examples of facility modification include temporary or permanent realignment or reconstruction as part of project development; encroachments include such uses as utility line placements and fencing.

PID determines if the proposed modifications or uses would interfere with the District's O&M activities, increase maintenance or repair requirements, or create unacceptable safety or liability risks. Where an easement or right-of-way granted to PID or Reclamation is involved, the licensee/permittee must also obtain the permission of the underlying fee title owner.

---

## Recreation Trail Uses

PID considers all requests for construction of pathways along its drains. Recreational pathways raise unique concerns about the risks inherent in public activity, particularly by children, close to irrigation or drainage ditches.

PID determines if pathways would unreasonably interfere with the District's O&M activities, increase maintenance or repair requirements, or create unacceptable safety or liability risks. As noted above, where an easement or right-of-way granted to PID or Reclamation is involved, the licensee must also obtain the permission of the underlying fee title owner.

### 3.1.2 Environmental Consequences

#### Alternative A – No Action

Under the No Action alternative, Reclamation would retain the property interests in its segments. PID would continue to manage, operate, and maintain these segments for their intended irrigation drainage/conveyance purposes, as parts of the integrated PID conveyance system. PID and Reclamation would each continue to separately review requests for approval of construction, encroachment, or third-party use affecting the title transfer segments. Reclamation would continue to require PID concurrence prior to granting such requests, and PID indicates that the District's criteria for approval would remain centered on preventing interference with the District's O&M activities, increases in maintenance and repair costs, or unacceptable safety or liability risks. This alternative would perpetuate the duplication of administrative tasks resulting from separate review and decision-making by both Reclamation and PID.

#### Alternative B – Proposed Action, Title Transfer

Under the Proposed Action, Reclamation's interest in the conveyances would be transferred to PID. Reclamation would no longer be involved in reviewing or deciding upon requests for modification or third-party use of the subject facilities.

The effect of this change would be elimination of the duplication inherent in joint review and approval of modification or use requests by both Reclamation and PID. PID indicates that current policies and processes would continue such that the Proposed Action would have no effect upon the use and development of land within the District's boundaries.

PID would continue to manage, operate, and maintain the title transfer segments for their intended irrigation drainage and conveyance purposes. The District would have ultimate approval authority related to requests for facility modification or third-party use, and the criteria by which the District determines whether to approve or deny such requests would remain unchanged.

## 3.2 Hydrology and Water Quality

### 3.2.1 Affected Environment

An important concern raised during the scoping process and public review of the Draft EA for this NEPA analysis is the desire by local highway and land use jurisdictions (i.e., ACHD, Cities of Boise, Caldwell, and Nampa) to continue current discharges of urban stormwater runoff to the conveyance facilities and use of the conveyances for additional urban runoff discharges as development proceeds.

As noted previously, the area in which PID lies is experiencing high pressure for urban growth and development. In 2004, roughly half of the land in the PID had already been converted from agricultural to urban or suburban uses. This trend is expected to continue, with most land within PID's boundary eventually becoming urbanized. Of particular relevance are the Comprehensive Plans of Caldwell and Nampa. Both plans anticipate conversion of all lands within the City AOIs (see Figure 1) to urban/suburban uses.<sup>1</sup>

Local highway districts, cities, and counties manage urban stormwater drainage in accordance with State and Federal Clean Water Act (CWA) requirements, and, given the rapid rate of urbanization, are seeking efficient and cost-effective means to meet this responsibility (Caldwell 2006; ACHD 2007). This has resulted in consideration of the existing conveyance system as at least part of the solution for meeting urban stormwater management challenges. Reclamation has identified five currently authorized stormwater discharges to the federally-owned portion of the PID drainage system.

PID indicates that two significant issues have caused the District to adopt a position of not allowing new urban stormwater discharges into its system and moving to rectify instances of existing, unauthorized discharges. These issues are centered on (1) the volume and timing of urban runoff, and (2) urban runoff water quality. Related specifically to the facilities proposed for title transfer, Reclamation's *Regional Policy on the Discharge of Stormwater Drainage (Water Quality)*" (USBR 1992) (Final policy letter in Appendix B) recognizes both of these issues and requires irrigation districts (e.g., PID) to approve any proposals to discharge urban runoff into Reclamation facilities. The five existing authorized stormwater discharges have been permitted in accordance with this policy.

---

<sup>1</sup> The City of Caldwell Comprehensive Plan is currently being revised. The existing plan shows agricultural uses in the outer areas of the AOI. The expectation for the revised plan is that all land in the City's AOI will be designated for urban/suburban uses (Billingsley 2007).

---

## Urban Runoff Volume and Timing

The drainage system was designed and constructed to manage high groundwater levels and surface drainage from agricultural lands. Specific to the facilities proposed for title transfer, the contract of February 27, 1913 between PID and the Federal Government specifies that the purpose of the drains to be constructed by the Federal Government is to drain away seepage water. Facilities were designed to manage “pre-development” flows from these lands. Per State law (Idaho Code section 42-1204), PID is responsible for maintaining the system and managing flows in a manner that prevents damage to adjacent properties from flooding or other failures of system facilities.

Reclamation’s *Regional Policy on the Discharge of Stormwater Drainage (Water Quality)* (USBR 1992) notes that runoff volume from impervious surfaces in urban areas is greater than runoff from agricultural areas, and states that Reclamation needs to manage and monitor entering flows relative to drain capacity or face potential increased liability for flood damage. Even though local highway districts, cities, and counties generally require new developments to retain runoff volumes in excess of “predevelopment” flows onsite, large storm events can result in runoff volumes in excess of planned onsite retention facilities. PID’s legal position is that the District’s liability for damage caused by flooding would be increased if PID conveyance channels were being used to manage stormwater runoff from such developments. Other entities disagree with PID’s position on this issue, and the City of Caldwell indicates that they have completed a study concluding that the City’s existing stormwater policy reduces peak discharges of stormwater over what would be anticipated from an undeveloped agricultural field (Appendix F).

## Urban Runoff Water Quality

The Federal CWA regulates discharges of water (i.e., from pipes or other “point source” outlets) to “waters of the United States” (e.g., streams or wetlands) if those discharges contain material or chemical compounds exceeding defined threshold levels. The regulated materials or chemical compounds and their respective threshold levels are defined by the Environmental Protection Agency (EPA) and State water quality standards. The primary mechanism for EPA regulation and oversight is the National Pollution Discharge Elimination System (NPDES) permit. It is through the NPDES permitting process that requirements for water treatment are set.

Irrigation activities, including irrigation return flows and stormwater discharges from agricultural lands, are exempt from the definition of a point source, and from the requirement to operate under an NPDES permit. PID operates under this exemption.

PID has expressed the concern that because a NPDES permit is required for municipal (urban) stormwater discharges, if PID permits urban stormwater discharges into its system, the agricultural exemption could be lost and the District would incur the expense and liability

associated with obtaining a NPDES permit and meeting associated water treatment requirements (Appendix F). Other entities disagree with PID's position on this issue, and a July 20, 2007 letter from the EPA provides additional information regarding irrigation return flows and stormwater runoff relative to regulatory requirements (Appendix F).

### **3.2.2 Environmental Consequences**

#### **Alternative A – No Action**

Under the No Action alternative, Reclamation would retain its interests in the facilities. PID would continue to manage, operate, and maintain these facilities for their intended irrigation drainage or conveyance purposes, as part of the integrated PID conveyance system, and according to their legal and contractual responsibility. Pursuant to Pacific Northwest Region policy, Reclamation would continue to require PID approval of any proposal to discharge urban runoff into these facilities and would work with PID to identify and address instances of existing, unauthorized discharges. Reclamation would continue to be available to participate in multi-jurisdictional planning efforts to explore alternative approaches to urban runoff discharges. Unless changed through multi-jurisdiction negotiation and definition of mutually acceptable alternative approaches, PID indicates that the District's current position of not allowing unauthorized urban runoff discharges to its system would remain in force. The five identified stormwater discharges currently authorized would also remain unchanged.

#### **Alternative B – Proposed Action, Title Transfer**

Under the Proposed Action, Reclamation's interest in the conveyances would be transferred to PID. Reclamation would no longer be involved in potential planning efforts in considering or deciding upon proposals to discharge urban stormwater runoff into the subject facilities.

Given Reclamation's current policy regarding discharge of stormwater drainage (i.e., requiring irrigation district approval), the primary effect of this change would be elimination of any duplication in the joint review and approval of requests by both Reclamation and PID.

It is anticipated that the Proposed Action would not affect urban stormwater management within PID's boundaries. PID would retain authority over any stormwater discharges to its system and would continue to manage, operate, and maintain the title transfer segments for their intended irrigation drainage or conveyance purposes. As with the No Action alternative, PID indicates that the District's current position of not allowing unauthorized urban runoff discharges to its system would remain in force until a mutually acceptable alternative management approach can be defined and agreed upon with involved jurisdictions. The five stormwater discharges currently authorized would also remain unchanged.

---

### 3.3 Biological Resources

PID boundaries encompass approximately 35,200 acres with diverse land uses and numerous plant and animal species. However, the proposed title transfer segments (drainage channels and associated easements and rights-of-way) represent a minor fraction of the total area, and provide relatively uniform and limited habitat for plant and animal species.

The title transfer facilities are single channels with identified access-ways. They are generally found near agricultural, residential, commercial, or open range. All of the drains have perennial flows with the exception of the Bardsley Gulch Drain, Parker Gulch Drain, Solomon Drain, and the Yankee Drain; all other conditions are similar. PID uses the access-ways to inspect, operate, maintain, and repair these drainage ditches. Irrigation levels vary annually based on local and regional precipitation and snow pack levels, and vary seasonally based on availability of natural flow water and Reclamation reservoir water storage. The irrigation season is typically between April 1st and October 15th.

PID conducts periodic vegetation management along the channel corridors and mechanical removal of plants, sediments, and debris to maintain sufficient flow within the drains. Debris from drain maintenance is piled along the easements and leveled by heavy equipment. In rare instances when debris cannot be stored onsite, PID hauls it to another location (Zirschky 2007).

Portions of the title transfer segments have been surrounded by urban developments. Where this occurs, segments and associated easements have generally been altered (e.g., channel lining, fencing, landscaping) to cooperate with the requirements of cities, counties, utilities, or other landowners. Mason Creek Drain has also been modified, but to a smaller degree than other highly-maintained drains.

Information was collected on plant and animal species that occur within or adjacent to the PID boundaries in order to identify species that might be impacted by the Proposed Action. Based on the amount of area and total number of species present, only dominant well-known plant and wildlife species are discussed in this section. Federally-threatened, endangered, and State species of concern are addressed in Sections 3.4 and 3.5. Relevant information has been obtained through literature reviews, interviews with PID staff, consultation with local, State and Federal agencies, and prior experience with the habitat characteristics of the affected area. This information was used to assess the potential, or probability of occurrence of key species within the action area, taking into consideration historic, current, and proposed management practices and adjacent development.

### 3.3.1 Vegetation

#### Affected Environment

Vegetative communities within the PID service area include both native and non-native/introduced species. Vegetation along the title transfer segments is largely in the latter category due to historic construction, operation, maintenance, and management activities.

Introduced plant species within the PID are generally either non-native invasive species or Idaho-listed noxious weeds. These species have been historically introduced to the area and spread through contaminated crop seed, domestic livestock, landscaping and horticulture, recreation activities, and other human uses. While invasive species pose a significant threat to local ecosystems, there are no regulatory actions associated with them. In contrast, noxious weeds are non-native plants that have been designated “noxious” by State law because of their potential harm to the Idaho economy. While there have been no comprehensive noxious weeds inventories conducted for the entire area, a general list of Idaho-designated noxious weed species can be found at

<http://www.agri.idaho.gov/Categories/PlantsInsects/NoxiousWeeds/watchlist.php>.

Table 2 below lists the species likely to be found within or immediately adjacent to the proposed title transfer facilities. This is a general list of the dominant species, and not a complete inventory of the area.

**Table 2. Common vegetation communities found within the proposed action area**

Communities	General Species Likely to be Present (Common Name)
Agricultural	Sugar beets, wheat, barley, potatoes, corn, dry beans, alfalfa hay, pasture grasses, and others.
Residential	Locust, oak, pine, maple, elm, Kentucky bluegrass, rye, fescue (lawn mix), as well as other species, generally non-native, associated with residential lawns and landscaping.
Riparian species	Willow species, cottonwoods, Russian olive, various sedge, rush, and grass species, cat tails, and other native, invasive, and noxious weed species associated with riparian areas in southwest Idaho.
Open range species	Big Sagebrush (Great Basin, Wyoming), gray and green rabbit brush, blue bunch wheatgrass, Great Basin wild rye, squirrel tail, Sanburg's bluegrass, six-week fescue, and other native range species associated with southwest Idaho.
Invasive Species	Cheatgrass, medusahead wild rye, Reed canary grass, foxtail barley, witch grass, verbena, kochia, Russian thistle, bur butter-cup, halogeton, various mustard species, and others.
Noxious weeds	Purple loosestrife, Eurasian watermilfoil, Rush skeleton weed, white top, Canada thistle, field bind weed, puncture vine, Russian and Spotted knapweed, and others.

PID's vegetation management requirements and methods along the District's conveyance system vary depending on the purpose and destination of the waterway. Only mechanical and biological control measures are used for the drains (including the title transfer facilities); chemical controls are prohibited (Zirschky 2007). Mechanical controls are generally restricted to mowing, but hand thinning and other mechanical measures can be implemented as well. Biological control measures are currently limited to the management of purple loosestrife (*Lythrum salicaria*). The two agents currently used to control the purple loosestrife are varieties of the *Galerucella californiensis* and *Galerucella pusilla*, or more commonly, the Golden and Black Margined Loosestrife beetles.

Invasive and noxious weed control is the primary vegetation-related management concern. All landowners and managers are required by the State of Idaho to control noxious weeds on their property per Idaho Statutes, specifically Title 22 (Agriculture and Horticulture), Chapter 24 (Noxious Weeds). The primary terrestrial invasive and noxious weed species of concern within the affected area include, but are not limited to: puncture vine or goathead (*Tribulus terrestris*); white top (*Lepidium draba*, previously known as *Cardaria draba*); and Canada thistle (*Cirsium arvense*) (Zirschky 2007). Aquatic vegetation of concern includes, but is not limited to: Eurasian Watermilfoil (*Myriophyllum spicatum*); algae; and other emergent, submerged, and floating aquatic plants.

## **Environmental Consequences**

### ***Alternative A – No Action***

Under the No Action Alternative, there would be no change in habitat conditions along the subject drainage facilities. Current vegetation management activities and treatment methods would continue as part of PID's normal O&M.

### ***Alternative B – Proposed Action, Title Transfer***

Effects on vegetation under the Proposed Action would be the same as those described above for No Action. PID's management, operation, and maintenance of the title transfer facilities would remain unchanged after transfer of title, thus avoiding adverse impacts and providing the same potential for long-term beneficial impacts. Reclamation concludes that the Proposed Action would have no effect on vegetation.

### 3.3.2 Fish and Wildlife

#### Affected Environment

##### *Fish*

No fish species have been observed in the drainage segments proposed for transfer. Species in some of the larger canal segments could include rainbow trout, minnows such as the red-sided shiner and long-nosed dace, sculpins, and other general fish species found in local seasonal tributaries. Overall, the seasonal nature of irrigation generally prevents establishment of a permanent fisheries in water delivery and drainage system.

##### *Birds*

Several species of waterfowl, shore birds, upland game birds, raptors, and passerines have been observed within the area surrounding the title transfer facilities. Typical species are listed in Table 3.

**Table 3. Common bird species found in the proposed action area**

<b>Classification</b>	<b>General Species Likely to be Present (Common Name)</b>
Waterfowl	Canada goose, mallard, chukar, grey partridge, blue winged teal, western grebe, and others.
Shore Birds	Blue heron, curlew, killdeer, California gull, and avocet.
Upland Game Birds	Ring-necked pheasant, mourning dove, and California quail (habitat generally limited in urban areas).
Raptors	Northern harrier, Swainson's hawk, red tailed hawk, ferruginous hawk, prairie falcon, bald eagle, and American kestrel.
Passerines	Red winged blackbird, western meadowlark, American robin, horned lark, starlings, European and barn swallows, crows, ravens, magpie, and others.

##### *Mammals*

Mammals potentially occurring in the affected area are limited due to the amount of development on surrounding lands. Small mammals include the western harvest mouse, pocket gopher, deer mouse, kangaroo rat, voles, Piute ground squirrel, and other rodents. Larger species potentially found in the area include striped skunk, coyote, red fox, badger, raccoon, and occasionally mule deer.

### ***Reptiles and Amphibians***

Reptile and amphibian species potentially occurring in the affected area include the Pacific tree frog, boreal toad, spadefoot toad, western toad, racer, gopher snake, garter snake, rattlesnakes, whiptail and leopard lizards, fence lizards, horned lizards, side-blotched lizards, tiger salamander, and others. The diversity and abundance of reptiles and amphibians is expected to be moderate due to the developed nature of the surrounding habitat and the seasonal nature of the irrigation system use.

### **Environmental Consequences**

#### ***Alternative A – No Action***

Under the No Action Alternative, there would be no change in habitat conditions along the subject drainage facilities. Current management activities would continue as part of PID's normal O&M.

#### ***Alternative B – Proposed Action, Title Transfer***

Effects on wildlife under the Proposed Action would be the same as those described above for No Action. PID's management, operation, and maintenance of the title transfer facilities would remain unchanged after transfer of title, thus avoiding adverse impacts and providing the same potential for long-term beneficial impacts. Reclamation concludes that the Proposed Action would have no effect on fish and wildlife.

## **3.4 Threatened and Endangered Species**

This section discusses the potential occurrence of and impact to federally-designated threatened and endangered species associated with the affected area. Information regarding species potentially occurring in the Canyon County area was obtained through correspondence with the USFWS and NOAA Fisheries and review of the Idaho Conservation Data Center's (CDC) conservation database.

Probability of occurrence and potential for impacts to these species was assessed based on literature reviews, discussions with PID staff; consultation with local, State, and Federal agencies, professional knowledge, and the habitat characteristics of the affected environment (see Section 3.3). No formal field investigations were conducted.

### **3.4.1 Affected Environment**

Two species protected under the ESA, are identified as occurring/potentially occurring within or near the title transfer area: gray wolf (*Canis lupus*), and the Idaho springsnail (*Pyrgulopsis*

### 3.4 Threatened and Endangered Species

---

*idahoensis*). Each of these is discussed below, relative to likelihood of occurrence in the proposed action area.

#### **Gray Wolf**

Habitat for these wide-ranging mammals must include three primary components: (1) secluded denning and rendezvous sites to raise pups, (2) a sufficient, year-round prey base of ungulates and beaver, and (3) sufficient land area that is not subject to disturbance from humans. Wolves prefer habitat with low road density, limited human populations, and low potential for human interactions (IDFG 2005). Gray wolf territories are generally large, sometimes encompassing up to 100 to 260-square miles. No pack activity, nor the occurrence of any individuals, has been recorded in or near the title transfer area. Therefore, based on the type and condition of habitat, proximity to human development, and lack of historic use by the species, it is unlikely that gray wolves would inhabit the area.

#### **Idaho Springsnail**

The Idaho springsnail is a small aquatic snail with a conical shell that has been federally-protected under the ESA since 1992. Presently its distribution is limited to the flowing waters of the Snake River, more specifically occurring at sites near C.J. Strike Reservoir upstream to Bancroft Springs (Pacific Bio 2007). Occurrence of this specie in the proposed action area is highly unlikely given the seasonal nature of flow in the irrigation ditches and the relative absence of known habitat requirements.

### **3.4.2 Environmental Consequences**

#### **Alternative A – No Action**

Based on the location of the affected area and the amount, type, and condition of habitat present, it is unlikely that any federally-designated threatened or endangered species are present.

Under the No Action Alternative, there would be no change in habitat conditions along the subject drainage facilities. Current vegetation management activities and treatment methods would continue as part of PID's normal O&M.

#### **Alternative B – Proposed Action, Title Transfer**

Potential effects on current federally-listed or endangered species under the Proposed Action would be the same as those described above for No Action. PID's management, operation, and maintenance of the title transfer facilities would remain unchanged after transfer of title, thus avoiding adverse impacts and providing the same potential for long-term beneficial impacts. Reclamation concludes that the Proposed Action would have no effect on threatened and endangered species.

## 3.5 Special Status Species

### 3.5.1 Affected Environment

Eight state-listed species of concern (five animals and three plants) are noted by the CDC as potentially occurring in the study area. These are shown on Table 4.

With the exception of the Western ground snake, these species are all ranked S2 according to the CDC's Special Status Species Ranking System.<sup>2</sup> The S2 rank is defined as "imperiled because of rarity or because of other factors demonstrably making it vulnerable to extinction (typically 6 – 20 occurrences)." The Western ground snake is ranked S3, "vulnerable (typically 21 – 100 occurrences)."

**Table 4. State listed species of concern**

Common Name	Scientific Name	Plant/Animal
Woodhouse's Toad	<i>Bufo woodhousii</i>	Amphibian Animal
Northern Leopard Frog	<i>Rana pipians</i>	Amphibian Animal
Western Ground Snake	<i>Sonora semiannulata</i>	Reptilian Animal
Piute Ground Squirrel	<i>Spermophilus mollis artemisae</i>	Vertebrate Animal
Speckled Dace	<i>Rhinichthys osculus</i>	Vertebrate Animal
Slickspot Peppergrass <sup>3</sup>	<i>Lepidium papilliferum</i>	Vascular Plant
Cusick's False Yarrow	<i>Chaenactis cusickii</i>	Vascular Plant
American Wood Sage	<i>Teucrium canadense var. occidentale</i>	Vascular Plant

<sup>2</sup> Ranks represent a prioritization scheme used by the CDC to determine the conservation status of a species. Ranks refer to species status within Idaho. They are based primarily on the number of known occurrences, but other factors such as habitat quality, estimated population size and trend, range of distribution, and threats to species or habitat are also considered. The ranking scale is from S5 (demonstrably widespread, abundant and secure) to S1 (critically imperiled; especially vulnerable to extinction).

<sup>3</sup> Slickspot Peppergrass was also proposed to the USFWS to be listed as Threatened. The proposed listing was denied, but this decision is currently in litigation.

#### **Woodhouse's Toad**

The Woodhouse's Toad is a riparian dependent species. Toads aestivate during the summer months, becoming active only during wet weather (Leonard et al. 1993). During the breeding season the toads are highly visible in and around ephemeral breeding ponds and streams, but outside the breeding season they are very difficult to observe (Nussbaum, Brodie, and Storm 1983). A terrestrial lifestyle and limited dependency on water compared to other amphibian species makes it possible for Woodhouse Toads to exist around seasonal sources of water, and irrigation waterways can provide seasonal water supplies for reproduction activities. Although the title transfer area and facilities have little pristine habitat, it is possible that isolated populations of this animal could be present.

#### **Northern Leopard Frog**

Although widespread throughout North America, Idaho populations have been declining for years but have been reported in the Snake River and its tributaries (IDFG 2005). The frog is restricted to habitats with permanent water sources, needed in every life stage, and prefers still bodies of water such as ponds, marshes, or slow moving sections of streams and rivers. Given this requirement, Mason Creek is the only title transfer segment that could potentially support small isolated populations (i.e., all others carry water only seasonally). However, based on water quality associated with local agriculture and development, it is unlikely that Northern leopard frogs are present.

#### **Western Ground Snake**

The Western Ground Snake is listed as an unprotected non-game species with an S3 ranking. The snake is small with varying patterns ranging from orange and black stripes to pale gray color, and has little or no dorsal striping. It is restricted in Idaho to the southwestern corner along the Snake River and its surrounding drainages, with arid conditions and loose or sandy soils. It is found in rocky areas to low desert shrub areas (Diller and Wallace 1981). Given the historic and continuing level of disturbance in the title transfer area (i.e., development, agriculture, and grazing activities), there remains little habitat for Western Ground Snakes. Small numbers of the specie may occur associated with isolated pockets of rocky outcrops.

#### **Piute Ground Squirrel**

The Piute Ground Squirrel occurs in Idaho north of the Snake River from Bliss to Dubois (Yensen 2003). The Piute Ground Squirrel lives in areas of native shrubs, primarily sagebrush and winterfat. Much of their former range has been removed due to agricultural conversion, habitat degradation associated with recreation, livestock, and wildfire (Yensen 2003). Little, if any, suitable habitat remains in the title transfer area and it is unlikely that Piute Ground Squirrels are present in or near the title transfer segments.

### **Speckled Dace**

The Speckled dace is a small minnow fish found in North America, west of the Rocky Mountains. Its southern Idaho distribution is limited to the Snake River and its tributaries and drainages. The dace can survive in a number of different habitats, but prefers shallow, cool, and slow moving waters. The ephemeral nature of the affected area's waterways (including the title transfer segments) makes it unlikely that sustainable populations of the Speckled dace occur.

### **Slickspot Peppergrass**

Slickspot peppergrass is generally restricted to microhabitats known as slickspots, also referred to as mini-playas, or nitric sites. These low spots in the landscape appear sporadically throughout the sagebrush-steppe community, collecting water as shallow basins. They range in size from about one to twelve square meters, and are high in both clay and salts (Fisher et al. 1996), with properties more hydric than the surrounding arid soils. In the title transfer area (and specifically along the title transfer segments), the level of development, agriculture, and livestock grazing has significantly altered the landscape, and historic slickspots that may have occurred have likely been degraded to such an extent that it is unlikely any Slickspot peppergrass individuals or dormant seeds are present.

### **Cusick's False Yarrow**

Cusick's false yarrow has been a concern in Idaho and Oregon for many years. It is restricted in distribution to clay outcrops in Malheur County, Oregon, and adjacent counties of Owyhee and Canyon in Idaho (Moseley 1994a). Only nine occurrences have been documented in the state of Idaho. Two locations in Owyhee County, the lowlands and higher elevation sights in the Succor Creek and Squaw Creek drainages, and one historic location in Canyon County are the only areas in Idaho where this species has been observed. The Canyon County occurrence is known to be extirpated (Moseley 1994a) and it is unlikely that additional occurrences are present within the title transfer area.

### **American Wood Sage**

The American Wood Sage is widespread throughout the United States and Canada, but is limited in its Idaho distribution to only four counties, Ada, Canyon, Owyhee, and Washington. It is found growing along streambanks and moist bottomlands. Based on the type of habitat and overall condition generally associated with the title transfer segments, and the historic and current use/treatment of these corridors, it is unlikely that American Wood Sage would be present. However, isolated populations could persist in protected areas with limited human use.

### **3.5.2 Environmental Consequences**

#### **Alternative A – No Action**

Several state-identified species of concern could utilize or occur in the affected area, but are not dependent on the habitat or location.

Under the No Action alternative, there would be no change in habitat conditions along the subject drainage facilities. PID would continue to manage, operate, and maintain the subject drainage facilities for their intended irrigation drainage/conveyance purposes.

#### **Alternative B – Proposed Action, Title Transfer**

Potential effects on current state-listed species of special concern (if present) under the Proposed Action would be the same as those described above for No Action. PID's management, operation, and maintenance of the title transfer facilities would remain unchanged after transfer of title, thus avoiding adverse impacts and providing the same potential for long term beneficial impacts. Reclamation concludes that the Proposed Action would have no effect on current state-listed species of special concern.

## **3.6 Cultural Resources**

Cultural resources consist of prehistoric and historic districts, sites, structures, artifacts, or any other physical evidence of human activity considered important to a culture, subculture, or community for scientific, traditional, religious, or other reasons. Cultural resources can be divided into three major categories: archaeological resources (prehistoric and historic), architectural resources, and traditional cultural resources.

Archaeological resources are locations where human activity measurably altered the earth or left deposits of physical remains (e.g., stone flakes, arrowheads, or bottles). Archaeological resources may be either prehistoric or historic and can include campsites, roads, fences, trails, dumps, battlegrounds, mines, and a variety of other features.

Architectural resources include standing buildings, dams, canals, bridges, and other structures of historic or aesthetic significance.

Traditional cultural resources can include archaeological resources, buildings, neighborhoods, prominent topographic features, habitats, plants, animals, and minerals that Native Americans and other groups consider essential for the continuance of traditional cultures.

Only significant cultural resources, whether known or unknown, warrant consideration with regard to adverse impacts from a proposed action. To be considered significant, these resources must meet one or more criteria as defined in 36 CFR 60.4 for inclusion in the

National Register of Historic Places (National Register). These criteria include association with an important event, association with a famous person, embodiment of the characteristics of an important period in history, or the ability to contribute to scientific research. Resources must also possess integrity (i.e., its important historic features must be present and recognizable). Resources eligible to the National Register are known as historic properties.

Resources generally must be more than 50 years old to be considered for protection under existing cultural resource laws. However, more recent structures, such as Cold War era military buildings or designs by influential architects, may warrant protection if they are considered to have exceptional significance.

Several Federal laws and regulations have been established to manage cultural resources, including the National Historic Preservation Act (NHPA) (1966) as amended, the Archaeological and Historic Resources Preservation Act (1974), the American Indian Religious Freedom Act (1978), the Archaeological Resources Protection Act (1979), and the Native American Graves Protection and Repatriation Act (1990). In addition, coordination with federally-recognized Native American tribes must occur in accordance with Executive Order 13084, Consultation and Coordination with Indian Tribal Governments.

Because the proposed transfer of title is considered a Federal “undertaking,” Reclamation must consider the potential effects of the proposed transfer on cultural resources that are included in or eligible for inclusion in the National Register. Pursuant to Section 106 of the NHPA and 36 CFR 800, Reclamation is conducting consultation with the Idaho State Historic Preservation Officer (SHPO). As required under the NHPA, Section 106, Reclamation identified historic properties within the area of potential effects (or the affected environment under NEPA), applied the National Register criteria (36 CFR 63) to properties that have not been previously evaluated for National Register eligibility, and determined whether the proposed transfer would adversely affect such properties.

### **3.6.1 Affected Environment**

The affected environment includes the geographic area or areas within which the proposed transfer may directly or indirectly cause changes in the character or use of historic properties, if such properties exist. The drainage system and lands within 100 feet of the drains are considered to be the affected environment for the project. As part of the identification process, a records search and intensive archaeological survey of 20 percent (20 miles) of the affected environment was conducted. Prior to conducting the survey, aerial photographs of the affected environment were examined to identify any structures in the area that would be examined as part of the survey.

The records search identified six previously recorded historic cultural resources within the affected environment. These resources include canals, bridges, railroad spurs, and a segment of the Oregon Trail. The Notus Canal, the A-Drain, and the segment of the Oregon Trail are

considered to be eligible to the National Register, two bridges are not eligible, and the railroad spur is unevaluated.

The results of the 20 linear mile survey of drainage ditches in the PID indicated that all of the lands were highly disturbed. Many of the drains were located in residential subdivisions or along urban streets. Most were paralleled on at least one side by a dirt access/maintenance road. The drains were typically U-shaped to V-shaped in cross section and varied from 5 to 20 feet deep and 10 to 25 feet wide. Most of the drains had corrugated metal or PVC pipe running into them to drain the adjacent fields or developments. Where the drains passed under paved streets or field access roads, they typically flowed through corrugated metal or concrete pipes. Concrete riprap was common around the culverts. Some concrete box culverts were present at the larger road crossings.

The intensive survey yielded three possible historic cultural resources – a small bridge, a basalt riprap feature, and an isolated find (a glass bottle). None of these newly identified resources are considered eligible for the National Register. Based on the results of the records search and the intensive survey of 20 miles of ditches it is likely that the remaining 57 miles of ditches are similarly disturbed and also would not contain significant prehistoric or historic resources. For detailed information concerning the records search, survey methodology, and results, refer to PID Title Transfer, Canyon County, Idaho Final, Archaeological Survey Report (TEC 2007).

As part of the survey, the drainage system was recorded and evaluated. The drainage system is considered eligible to the National Register as a part of the larger PID irrigation system under Criterion C for its association with the development of agriculture in the Treasure Valley. Although some features associated with the drains have been replaced over the years, the system is in essentially the same location as it was when it was built in the early 1910s and retains historic integrity. Reclamation's enhancement of the drainage systems through construction of the drain segments proposed for transfer contributed to the agricultural development of the Treasure Valley as part of the Boise Project. Reclamation's construction of these segments for PID is also indicative of Reclamation's historic role in assisting in the further development of existing non-Federal irrigation systems (as opposed to the construction of dams or entire irrigation systems).

### **3.6.2 Environmental Consequences**

A proposed action or alternative affects a significant cultural resource when it alters the property's characteristics, including relevant features of the environment or use that qualify it as significant under National Register criteria. Impacts may be the result of transferring it out of Federal ownership, physically altering, damaging, or destroying all or part of a resource, or altering characteristics of the surrounding environment that contribute to the importance of the resource. In addition to affecting National Register-listed or eligible resources, a proposed

action or alternative could affect traditional cultural properties that are protected under a number of other Federal laws.

### **Alternative A – No Action**

Under the No Action alternative, Reclamation would retain its interests in its conveyance channels and PID would continue to operate and maintain these channels as part of its irrigation and drainage systems. There would be no title transfer, and therefore no impact to any National Register-eligible resources.

### **Alternative B – Proposed Action, Title Transfer**

Under the Proposed Action, Reclamation would transfer to PID all conveyance facilities (drainage channels) that are currently owned by Reclamation. The title transfer has the potential to adversely affect one National Register-eligible property (i.e., the drainage system). Under 36 CFR 800, transfer of property out of Federal ownership without adequate conditions to ensure its long-term preservation, is considered to be an adverse effect to a National Register-eligible property.

The six previously recorded sites that intersect or are located in the affected environment are not included in the title transfer and their uses would not change; therefore, the proposed transfer would have no adverse effect on these six sites.

### **3.6.3 Mitigation Measures**

Reclamation and the SHPO have agreed that adverse effects to the PID drainage system can be mitigated by documenting the significance of the PID drainage system to the development of agriculture in the Treasure Valley. The documentation would be presented as a separate historic narrative and include historic records, modern and historic photographs and drawings. This mitigation would be stipulated in a MOA to be signed by the SHPO, Reclamation, and PID, prior to implementation of the Proposed Action. The stipulated mitigation could be completed prior to or following the transfer, in accordance with the MOA.

## **3.7 Indian Sacred Sites**

Federal responsibility for Indian sacred sites is defined in Executive Order 13007 and identifies Indian sacred sites as specific, discrete, narrowly delineated locations on Federal land identified by Indian tribes or knowledgeable practitioners as sacred by virtue of their religious significance to, or ceremonial use by, an Indian religion. Executive Order 13007 grants tribal access to sacred sites on Federal land.

### **3.7.1 Affected Environment**

Involved Indian tribes, including the Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho, the Shoshone-Paiute Tribes of the Duck Valley Reservation, and the Nez Perce Tribe were informed of the proposed title transfer through the NEPA scoping process (see Section 4.1). No information indicating issues related to Indian sacred sites was offered by the Tribes.

Reclamation is not aware of any Indian sacred sites on these lands or within the easements or rights-of-way on which the majority of the facilities are located. Due to the extent of disturbance and present usage of the facility corridors and character of surrounding land uses, Reclamation believes it is very unlikely that Indian sacred sites would be present. The facility corridors are narrow, physically altered over time, and surrounded by farm fields and either urban or suburban development. The existing landscape bears no resemblance to that present before the Boise Valley was settled. The conditions of privacy and natural landscape integrity normally required for Indian religious purposes are no longer present.

### **3.7.2 Environmental Consequences**

#### **Alternative A—No Action**

Under the No Action alternative, there would be no title transfer. Therefore, there would be no effect upon Indian sacred sites, if such were present.

#### **Alternative B—Proposed Action, Title Transfer**

No Indian sacred sites have been identified on title transfer lands. Therefore, the Proposed Action would have no effect.

## **3.8 Indian Trust Assets**

Indian Trust Assets (ITAs) are legal interests in property held in trust by the United States (with the Secretary of the Interior acting as trustee) for Indian tribes or Indian individuals. Examples of ITAs are lands, minerals, hunting and fishing rights, and water rights. In many cases, ITAs are on-reservation; however they may also be found off-reservation.

The United States has an Indian trust responsibility to protect and maintain rights reserved by or granted to Indian tribes or Indian individuals by treaties, statutes, and executive orders. These rights are sometimes further interpreted through court decisions and regulations. This trust responsibility requires that officials from Federal agencies, including Reclamation, take all actions reasonably necessary to protect ITAs when administering programs under their control.

The Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho, a federally-recognized tribe, have trust assets both on and off their Reservation. In the Treaty of Fort Bridger (1868), Article 4 states, "...they (the Shoshone and the Bannock) shall have the right to hunt on the unoccupied lands of the United States." This has been further interpreted to mean federally-owned lands. Reclamation (for The United States) must protect the hunting rights of the Shoshone-Bannock Tribes on lands it holds in fee title.

Two other federally-recognized Tribes, the Shoshone-Paiute Tribes of the Duck Valley Reservation and the Burns Paiute Tribe of Burns Paiute Indian Colony of Oregon have cultural and religious interests in the Boise Valley. These off-reservation interests are not considered to be ITAs.

### **3.8.1 Affected Environment**

The Shoshone-Bannock Tribes, the Shoshone-Paiute Tribes, and the Nez Perce Tribes were notified of the Proposed Action through the NEPA scoping process (see Section 4.1). The Tribes have not identified ITAs in the area that could be affected by the Proposed Action.

Overall, the amount of land involved in the proposed title transfer that is held by Reclamation is extremely small and comprised of discontinuous, narrow corridors. This land base does not support a significant habitat for fisheries or wildlife and therefore does not represent ITA values.

### **3.8.2 Environmental Consequences**

#### **Alternative A—No Action**

The No Action alternative would have no effect on ITAs.

#### **Alternative B—Proposed Action, Title Transfer**

Given that ITAs are not present on title transfer lands, the Proposed Action would have no effect on Tribal ITA interests.

## **3.9 Hazardous Materials and Waste**

In May 2007, a Hazardous Materials and Wastes Survey of the relevant lands to be transferred was completed in accordance with Reclamation policy. No issues of concern were identified on Reclamation fee lands and no environmental consequences related to hazardous materials are anticipated under the title transfer scenario.

## 3.10 Cumulative Impacts of the Proposed Alternative

NEPA requires cumulative effects analysis of a proposed action to assess its incremental effects (impacts) when viewed in conjunction with the effects of past, current, and reasonably foreseeable future projects.

In this case, the principal incremental effect from the Proposed Action would be to cultural resources (see Section 3.6). This effect would be mitigated by documenting the significance of the PID drainage system to the development of agriculture in the Treasure Valley. Within the region, other similar title transfer actions that have occurred or are in the process include:

- The Nampa & Meridian Irrigation District (NMID-Boise Project) has received title to distribution, conveyance, and drainage facilities, and rights-of-way.
- The Burley Irrigation District (Minidoka Project) received title to all district facilities, lands, rights-of-way, and natural flow water rights on February 24, 2000. Transferred facilities included pumping plants, canals, drains, laterals, roads, pumps, checks, headgates, transformers, pumping plant substations, and buildings. Also transferred were other improvements, appurtenances to the land, and those used for the delivery of water from the headworks (but not the headworks themselves) of the Southside Canal at the Minidoka Dam.
- The Fremont-Madison Irrigation District requested transfer of certain facilities including the Cross Cut Diversion Dam and Canal, all related conveyance facilities, the Teton Exchange Wells, and State of Idaho Water Right 22-7022. This transfer was completed on September 10, 2004, in accordance with Public Law 108-8.
- The American Falls Reservoir District #2 requested transfer of the Milner-Gooding Canal and associated land interests and facilities, lands associated with Dog Creek Dam and Reservoir, lands associated with an airport beacon near the city of Gooding, and lands adjacent to a National Park Service Monument near Eden, Idaho. Transfer legislation was introduced in Congress, but no legislation has been enacted as of July 2007.

These title transfers, like the proposed PID title transfer, have resulted in or would result in an adverse effect due to loss of protection of Federal law. These adverse effects have been or would be similarly mitigated through historic or other documentation as agreed to by Reclamation and the SHPO.

No other incremental or cumulative environmental effects are expected to occur as a result of the Proposed Action. Urban growth is expected to continue in the area, regardless of the Proposed Action. Accordingly, land use conversion from agricultural to urban/suburban uses would be expected to continue and additional needs for development-specific stormwater management facilities would be expected. As described in Sections 3.1 and 3.2, it is anticipated that the Proposed Action would not affect land use or current stormwater

management policies within PID's boundaries. PID indicates that the District's current position of not allowing unauthorized urban runoff discharges to its system would remain in force both prior to and following a transfer, until a mutually acceptable alternative management approach can be defined and agreed upon with involved jurisdictions; the five identified stormwater discharges currently authorized would also remain unchanged. Because the Proposed Action would not result in a change to current land use or stormwater discharge issues, no cumulative effects are anticipated relative to impacts from other actions.

Regardless of the Proposed Action, the potential value of the subject drainage facilities for a variety of resources and uses is likely to increase over time, particularly because of continued urban development in the area.

Despite the level of disturbance and active management, conditions along these conveyance channels do provide cover, nesting, forage, migration, and other values/uses for wildlife and open space value for humans. As urban development continues to displace habitat and reduce open space in the surrounding area, the conveyance corridors would likely increase substantially in importance. Thus, the continued O&M of these facilities would likely result in increasing benefits for plant and wildlife species, and for people living in the area.

The Proposed Action does not involve issues affecting, or affected by, large-scale environmental variation such as climate change. Accordingly, large-scale environmental variation has not been further addressed.

### 3.10 Cumulative Impacts of the Proposed Alternative

---

## Chapter 4 CONSULTATION AND COORDINATION

---

### 4.1 Agency Consultation

#### 4.1.1 Endangered Species Act

The Endangered Species Act (ESA) 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.

Pursuant to Section 7 of the ESA, Reclamation requested relevant species lists from the USFWS and the NOAA Fisheries on March 2, 2007. In March 2007, Reclamation received an email from USFWS containing an updated species list covering the project area. Additionally, Reclamation received a letter dated March 12, 2007 from NOAA Fisheries concluding that no ESA-listed species under their jurisdiction occur within the watersheds of the project area. Appendix E contains relevant correspondence. Reclamation concludes that the Proposed Action would have no effect on USFWS and NOAA Fisheries listed species.

#### 4.1.2 National Historic Preservation Act

The NHPA of 1966, requires that prior to authorizing an undertaking, Federal agencies must take into account the effect of the undertaking on any properties eligible for or listed on the National Register of Historic Places. Federal regulations entitled Protection of Historic Properties (36 CFR 800) defines the process for implementing requirements of the NHPA, including consultation with the appropriate SHPO and the ACHP.

Continuing consultation and coordination has been conducted with the SHPO pursuant to requirement of the NHPA. The SHPO reviewed and concurred with the scope of work for addressing cultural resources (Section 3.6), and would be party to a negotiated MOA governing treatment and/or protection of any resources eligible for nomination to the National Register of Historic Places.

## 4.2 Consultation and Coordination with Tribal Governments

The NEPA scoping letter referenced above was sent to both inform and involve Indian Tribes in order to determine if the tribes have issues or concerns related to the proposed title transfer. No indication has been received from the tribes that such issues or concerns exist, and no further consultation is deemed warranted.

## 4.3 Public Involvement

Pursuant to NEPA requirements, as part of EA preparation, Reclamation sent a "scoping letter" (dated February 27, 2007) requesting comments, concerns, and identification of issues related to Proposed Action. The letter was sent to potentially affected and concerned agencies, organizations, individuals, and Tribes. Appendix C contains a copy of the scoping letter and the mailing list.

Twelve written responses to the scoping letter were received during a 30-day comment period; a listing of the entities and individuals who provided comments is provided below.

- Ada County Highway District (ACHD)
- Ada County Parks and Waterways
- Canyon County Parks, Recreation and Waterways
- City of Boise, Public Works Department
- City of Caldwell, Office of City Engineer and Public Works Director
- City of Caldwell, Mayor
- City of Nampa, Public Works Department
- F.A.C.T.S. (Foundation for Ada/Canyon Trail Systems)
- Hamilton, Michaelson & Hilty, LLP
- James Budolfson
- Idaho Water Users Association
- Idaho Department of Parks and Recreation
- Spectrum Environmental, Inc.

Copies of the comment correspondence are included as Appendix C. The main issues that were raised and addressed in the EA consisted of:

- Transfer of the subject facilities to a different public entity (addressed in Section 2.4)

- Use of facility corridors (easements, rights-of-way, etc.) for public pathways (addressed in Section 3.1),
- Status of other use agreements (e.g. city utility easements) associated with facility segments (addressed in Section 3.1), and
- Use of drains for urban stormwater runoff (addressed in Section 3.2).

On August 10, 2007, Reclamation distributed the Draft EA for a 30-day public review. Reclamation posted the Draft EA on the Pacific Northwest Region's website. Reclamation received eight comment letters. Appendix F contains these comments and Reclamation's response, where appropriate.

In December 2007, Reclamation distributed the Final EA, letters notifying the recipient of the Final EA's availability, and press releases to the offices, organizations, individuals, and media outlets identified on the following distribution list.



## REFERENCES

---

Parenthetical Reference	Bibliographic Citation
72 FR 37346	Federal Register. 2007. U.S. Fish and Wildlife Service Final Rule: Endangered and Threatened Wildlife and Plants; Removing the Bald Eagle in the Lower 48 States from the List of Endangered and Threatened Wildlife. July 9, 2007, Vol. 72, No. 130, pp. 37346-
ACHD 2007	ACHD (Ada County Highway District). 2007. District website at <a href="http://www.achd.ada.id.us/Departments/TechServices/Drainage.aspx">http://www.achd.ada.id.us/Departments/TechServices/Drainage.aspx</a>
Atwood 2000	Atwood, Duane. 2000. Field Guide to the Special Status Plants of the Bureau of Land Management Lower Snake River District. A Bureau of Land Management Challenge Cost Share Project. American Wood Sage, pg. 2.
Billingsley 2007	Billingsley, Brian. 2007. City of Caldwell Director of Planning. Personal Communication. May 6, 2007.
Caldwell 2006	Caldwell, City of, Engineering Department. 2006. Caldwell Municipal Stormwater Management Manual.
Callihan and Miller 1994	Callihan, R. H. and T. W. Miller. 1994. Idaho's Noxious Weeds. Ag. Comm. Center, University of Idaho, Moscow, ID. 75 pp.
Campbell 2006	Campbell, Scott. 2006. <i>Legal Liability Exposure for Acceptance of Urban Storm Water Drainage</i> . Moffatt Thomas Barrett Rock & Fields, Chtd. Boise, Idaho
Diller and Wallace 1981	Diller, L. V. and R. L. Wallace. 1981. Additional distribution and abundance of three species of snakes in southwestern Idaho. <i>Great Basin Nature</i> . 41:154-15
Fisher et al. 1996	Fisher, H.L., L. Eslick, and M. Seyfried. 1996. Edaphic factors that characterize the distribution of <i>Lepidium papilliferum</i> . Technical Bulletin No. 96-6, Bureau of Land Management. Boise, Idaho. 27 pp.

**Parenthetical Reference****Bibliographic Citation**

- Hughes 1999 Hughes, J. M. 1999. Yellow-billed Cuckoo (*Coccyzus americanus*). In *The Birds of North America*, No. 418 (A. Poole and F. Gill, eds.). The Birds of North America, Inc. Philadelphia, PA. 28 p.
- IAMFS 2007 Idaho Chapter of the American Fisheries Society. "Fishes of Idaho" 2007. 16 May 2007. <[www.idahoafs.org](http://www.idahoafs.org)>
- IDFG 2005 Idaho Department of Fish and Game. 2005. Idaho Comprehensive Wildlife Conservation Strategy. Idaho Conservation Data Center, Idaho Department of Fish and Game, Boise, Idaho. <http://fishandgame.idaho.gov/cms/tech/CDC/cwcs.cfm>
- Kelleher 2006 Kelleher, Naida E., PID Secretary/Treasurer. 2006. [No Title: Letter stating PID Board of Directors decision regarding acceptance of urban stormwater drainage into the PID system]. Caldwell, Idaho.
- Koberg 2007 Koberg, Scott. 2007. Water Quality Resource Conservationist, Idaho Association of Soil Conservation Districts. Personal communication. May 16, 2007.
- Lawrence 2007 Lawrence, Dylan. 2007. Moffatt Thomas Barrett Rock & Fields, Chtd. Boise, Idaho. Personal communication. July 3, 2007.
- Leonard et al. 1993 Leonard, W.P., H.A. Brown, L.L.C. Jones, K.R. McAllister, and R.M. Storm. 1993. *Amphibians of Washington and Oregon*. Seattle Audubon Society. 168 pp.
- Moseley 1994a Moseley, R.K. 1994a. The Status and Distribution of Cusick's False Yarrow (*Chaenactis cusickii*) in Idaho. Idaho Department of Fish and Game, Conservation Data Center. Boise, Idaho. 17 pp.
- Moseley 1994b Moseley, R.K. 1994. *Report on the Conservation Status of *Lepidium papilliferum**. Idaho Department of Fish and Game, Conservation Data Center. Boise, Idaho. 35 pp. + appendices.
- Nampa 2004 Nampa, City of. 2004. City of Nampa Comprehensive Plan. Nampa, Idaho.
- Nussbaum et al. 1983 Nussbaum, R.A., E.D. Brodie, Jr., and R.M. Storm. 1983.

**Parenthetical Reference****Bibliographic Citation**

- Amphibians and Reptiles of the Pacific Northwest*. The University Press of Idaho, Moscow, Idaho. 332 pp.
- Pacific Bio 2007 Pacific Biodiversity Network. 2007. "Endangered species information network." 2/13/07. 08 May 2007. <www.pacificbio.org>.
- USBR 1992 U.S. Department of the Interior. Bureau of Reclamation, Pacific Northwest Region. 1992. Regional Policy on the Discharge of Stormwater Drainage (Water Quality) Letter – August 12, 1992. Boise, Idaho.
- USBR 1995 U.S. Department of the Interior. Bureau of Reclamation. 1995. *Framework for the Transfer of Title, Bureau of Reclamation Projects*. Washington D.C.
- Scott 2007 Scott, Jeff. 2007. PID Superintendent. Personal communication. May 29, 2007.
- TEC 2007 TEC, Inc. 2007. PID Title Transfer, Canyon County, Idaho Draft Final, Archaeological Survey Report. Boise, Idaho.
- USFWS 2001 U.S. Department of the Interior. Fish and Wildlife Service. 2001. 12-month finding for a petition to list the Yellow-billed Cuckoo (*Coccyzus americanus*) in the western continental United States. Federal Register 66(143):38611–38626
- Zirschky 2007 Zirschky, Mark. 2007. PID Assistant Superintendent. Personal communication. May 11 and 17, 2007.
- Yensen and Sherman 2003 Yensen, E. and P.W. Sherman. 2003. *Ground-Dwelling Squirrels of the Pacific Northwest*. US Fish and Wildlife Service, Bureau of Land Management. April 2003.



# EA DISTRIBUTION LIST

---

## Members of Congress

Honorable Larry E. Craig  
United States Senate  
520 Hart Senate Office Building  
Washington, DC 20510

Honorable Larry E. Craig  
United States Senator  
225 North 9th Street, Suite 530  
Boise, ID 83702

Honorable Mike Crapo  
United States Senate  
239 Dirksen Senate Office Building  
Washington, DC 20510-1204

Honorable Mike Crapo  
United States Senator  
251 E. Front Street, Suite 205  
Boise, ID 83702

Honorable Mike Simpson  
House of Representatives  
1339 Longworth House Office Building  
Washington, DC 20515-1202

Honorable Mike Simpson  
House of Representatives  
802 W. Bannock, Suite 600  
Boise, ID 83702-5820

Honorable Bill Sali  
House of Representatives  
1339 Longworth House Office Building  
Washington, DC 20515-1202

Honorable Bill Sali

House of Representatives  
802 W. Bannock, Suite 600  
Boise, ID 83702-5820

## Tribal Interests

Burns Paiute Tribe  
Honorable Wanda Johnson, Madam Chair  
HC-71, 100 Pasigo Street  
Burns, OR 97720

Shoshone Bannock Tribes  
Honorable Alonzo Coby  
P.O. Box 306 Pima Drive  
Fort Hall, ID 83203

Nez Perce Tribes  
Honorable Samuel N. Penney  
House 23 Agency Rd  
Lapwai, ID 83540

Shoshone Paiute Tribes  
Honorable Kyle Prior  
P.O. Box 219  
Owyhee, NV 89832

## Federal Agencies

U.S. Bureau of Land Management  
Boise District  
Mr. Jerry Taylor, District Manager  
3948 Development Avenue  
Boise, ID 83705

U.S. Bureau of Reclamation  
Pacific Northwest Regional Office  
Mr. J. William McDonald  
Regional Director  
1150 N. Curtis Road, Suite 100

Boise, ID 83706  
U.S. Bureau of Reclamation  
Snake River Area Office West

Mr. Jerrold D. Gregg, Area Manager  
230 Collins Road  
Boise, ID 83702

U.S. Environmental Protection Agency  
Idaho Operations Office  
Mr. James Wernitz, Director  
1435 Orchard  
Boise, ID 83706

U.S. Fish and Wildlife Service  
Snake River Fish and Wildlife Office  
Mr. Jeff Foss, Supervisor  
1387 S. Vinnell Way, Room 368  
Boise, ID 83709

U.S. Fish and Wildlife Service  
Deer Flat National Wildlife Refuge  
Ms. Elaine Johnson, Manager  
13751 Upper Embankment Road  
Nampa, ID 83686

National Marine Fisheries Service  
Mr. Bob Lohn, Regional Administrator  
7600 Sand Point Way NE  
BIN C15700, Bldg. 1  
Seattle, WA 98115-0070

National Marine Fisheries Service  
Idaho State Habitat Office  
Mr. David Mabe, Habitat Director  
10095 W. Emerald Street  
Boise, ID 83704-8901

**State Agencies/Governments**

Honorable C.L. "Butch" Otter  
Office of the Governor  
Attn: Ruth Bartlett  
700 W. Jefferson  
Boise, ID 83720-0034

Office of the Governor  
Mr. Jim Yost, Senior Assistant

Natural Resources  
700 W. Jefferson  
Boise, ID 83720-0034

Idaho Department of Agriculture  
Celia R. Gould, Director  
2270 Old Penitentiary Road  
Boise, ID 83712

Idaho Department of Fish & Game  
Terry Mansfield, Deputy Director  
P.O. Box 25  
Boise, ID 83712

Idaho Department of Fish & Game  
Southwest Region  
Mr. Scott Reinecker, Regional Supervisor  
3101 S Powerline Road  
Nampa, ID 83686

Idaho Department of Fish & Game  
Nampa Fish Hatchery  
3806 S. Powerline Road  
Nampa, ID 83686

Idaho Department of Environmental Quality  
Ms. Toni Hardesty, Director  
1410 N. Hilton  
Boise, ID 83706

Idaho Department of Health & Welfare  
Central District Health Department  
Russell A. Duke, Director  
707 North Armstrong Place  
Boise, ID 83704-0825

Idaho Department of Health & Welfare  
Mr. Randy Woods, Regional Director  
3402 Franklin Road  
Caldwell, ID 83605-6932

Idaho Department of Health & Welfare  
Ms. Heather Wheeler, Regional Director  
1720 Westgate Drive, Suite A  
Boise, ID 83704

Idaho Department of Lands  
Mr. George Bacon, Acting Director  
P.O. Box 83720  
Boise, ID 83720

150 N Capitol Blvd  
Boise, ID 83702

Idaho Department of Lands  
Mr. Steve Douglas  
Southern Operations Chief  
P.O. Box 83720  
Boise, ID 83720

Honorable Garret Nancolas  
Mayor, City of Caldwell  
621 Cleveland Boulevard  
Caldwell, ID 83605

Idaho Department of Water Resources  
Mr. Dave Tuthill, Director  
P.O. Box 83720  
Boise, ID 83720-0098

Honorable John Evans  
Mayor, Garden City  
6015 Glenwood Street  
Garden City, ID 83714

Idaho Parks & Recreation Department  
Mr. Robert L. Meinen, Director  
Attn: Jan Johns  
P.O. Box 83720  
Boise, ID 83720-0065

Honorable Tammy de Weerd  
Mayor, City of Meridian  
33 East Idaho Avenue  
Meridian, ID 83642

Idaho State Historic Preservation Office  
State Archaeologist,  
Attn: Mr. Ken Reid  
210 Main Street  
Boise, ID 83702

Honorable Tom Dale  
Mayor, City of Nampa  
411 3rd Street South  
Nampa, ID 83651

Idaho Transportation Department  
Mr. Dwight Bower, Director  
P.O. Box 7129  
Boise, ID 83707-1129

Honorable Nancy C. Merrill  
Mayor, City of Eagle  
P.O. Box 1520  
Eagle, ID 83616

Idaho Water Resource Board  
Mr. Jerry R. Rigby, Chairman  
P.O. Box 83720  
Boise, ID 83720-0098

Ada County Commissioners  
200 West Front Street  
Boise, ID 83702

State of Idaho  
Water District 63  
Mr. Lee Sisco, Watermaster  
6616 Overland Road  
Boise, ID 83709

Ada County Highway District  
William J. Schweitzer, Director  
3775 Adams Street  
Garden City, ID 83714

Ada County Parks and Waterways  
4049 S. Eckert Road  
Boise, ID 83716

Ada County Planning and Zoning  
200 West Front Street  
Boise, ID 83702

### **Local Agencies/Governments**

Honorable David H. Bieter  
Mayor, City of Boise

Boise Department of Public Works  
Mr. Charles R. Mickelson, Director  
P.O. Box 500  
Boise, ID 83701-0500

Boise Parks and Recreation Department  
1104 Royal Boulevard  
Boise, ID 83702

Caldwell Parks and Recreation  
618 Irving  
Caldwell, ID 83605

Canyon County Commissioners  
1115 Albany  
Caldwell, ID 83605

Canyon County Commissioner  
LBRWQP Advisory Group  
1115 Albany  
Caldwell, ID 83605

Canyon County Parks & Waterways  
1115 Albany  
Caldwell, ID 83605

Canyon County Planning & Zoning  
Commission  
1115 Albany  
Caldwell, ID 83605

Canyon County Soil & Conservation  
District  
Attn: Mr. Jim Truesdell  
2208 E. Chicago, Suite A  
Caldwell, ID 83605

Nampa Parks and Recreation  
131 Constitution Way  
Nampa, ID 83686

**Irrigation Districts/Water Users**

Black Canyon Irrigation District  
Mr. Dennis Heaps, Manager  
P.O. Box 226  
Notus, ID 83656

Boise-Kuna Irrigation District  
P.O. Box 330  
Kuna, ID 83634

Boise Project Board of Control  
Mr. Paul Deveau, Manager  
2465 Overland Road  
Boise, ID 83716

Caldwell Irrigation Lateral District  
1616 E. Chicago Street  
Caldwell, ID 83605

Flood Control District 10  
1115 Albany Street  
Caldwell, ID 83605

Flood Control District 11  
1115 Albany Street  
Caldwell, ID 83605

Nampa and Meridian Irrigation District  
Mr. Daren Coon, Secretary/Treasurer  
1503 1st Street South  
Nampa, ID 83651-4395

Settlers Irrigation District  
Mr. Nathan Draper, Manager  
1910 N. Garden Street  
Boise, ID 83706

Pioneer Irrigation District  
Mr. Jeff Scott, Manager  
P.O. Box 426  
Caldwell, ID 83606-0426

New York Irrigation District  
6616 W Overland Rd  
Boise, ID 83709

Wilder Irrigation District  
Diane Paulsen, Secretary/Treasurer  
P.O. Box 416  
Caldwell, ID 83606

Big Bend Irrigation District  
747 Red Top Road  
Adrian OR 97901

**Private Organizations/Individuals**

Cable One  
8400 Westpark Street  
Boise, ID 83704

Cable One  
Steve Williams  
2101 E Karcher Road  
Nampa, ID 83707

Intermountain Gas Company  
Bryce Ostler  
555 S. Cole Road  
PO Box 7608  
Boise, ID 83707

Qwest Corporation  
1315 W. Amity  
Boise, ID 83705

Mr. John Petrovsky  
JPA – John Petrovsky Associates  
4831 Willow Creek Road  
Eagle, ID 83616

Qwest Corporation  
3110 Commercial Way  
Caldwell, ID 83605

Idaho Water Users Association  
Mr. Norm Semanko, Executive Director  
1010 W. Jefferson Street Suite 101  
Boise, ID 83702

United Water Idaho  
Mr. Scott Rhead  
8248 W Victory Road  
Boise, ID 83719-0420

Mr. Al Barker  
Barker, Rosholt & Simpson  
P.O. Box 2139  
Boise, ID 83701

Mr. Scott Campbell  
Moffatt Thomas Barrett Rock & Fields  
P.O. Box 829

Boise, ID 83701

Erika Malmen  
Perkins Coie  
251 E. Front St. Suite 400  
Boise, ID. 83702

Mr. Dan Steenson  
Ringert Clark Chartered Lawyers  
P.O. Box 2773  
Boise, ID 83701

Mr. Jerry Kiser  
Stopello & Kiser  
620 W. Hays  
Boise, ID 83702

CH2M Hill  
LBRWQP Advisory/Technical Groups  
322 E. Front Street, Ste 200  
Boise, ID 83707

Food Producers of Idaho  
Mr. Rick Waitley, Executive Director  
55 SW 5th Avenue, Suite 100  
Meridian, ID 83642

Golden Eagle Audubon Society  
P.O. Box 8261  
Boise, ID 83707

Idaho Association of Commerce and  
Industry  
P.O. Box 389  
Boise, ID 83701-0389

Idaho Conservation League  
P.O. Box 844  
Boise, ID 83701

Idaho Council of Industry and the  
Environment  
500 West Washington  
Boise, ID 83702

Idaho Dairyman's Association  
139 River Vista Place #102  
Twin Falls, ID 83301

Idaho Farm Bureau Federation  
500 West Washington  
Boise, ID 83702

Idaho Outdoor Association  
P.O. Box 15943  
Boise, ID 83715

Idaho Outfitters and Guides Assn, Inc  
711 N. 5<sup>th</sup> Street  
Boise, ID 83702

Idaho Power Company  
P.O. Box 70  
Boise, ID 83707

Idaho Rivers United  
P.O. Box 633  
Boise, ID 83702

Idaho Sugar Beet Growers Association  
802 West Bannock  
Boise, ID 83702

Idaho Wildlife Federation  
P.O. Box 6426  
Boise, ID 83707

Land and Water Fund of the Rockies  
Idaho Office  
Attn: Mr. Laird Lucas  
P.O. Box 1612  
Boise, ID 83701

Potato Growers of Idaho  
P.O. Box 949  
Blackfoot, ID 83221

Mr. Dave Gordon  
Ridge to River Trails  
1104 Royal Blvd  
Boise, ID 83706-2840

The Nature Conservancy  
Idaho Chapter  
1109 Main  
Boise, ID 83702

Trout Unlimited  
1020 W. Main St., # 440  
Boise, ID 83702

Western Land Exchange Project  
Attn: Beth Fries, Program Coordinator  
P.O. Box 95545  
Seattle, WA 98145-2545

### **Libraries**

Ada Community Library  
10664 West Victory Road  
Boise, Idaho 83709

Boise Public Library  
715 S Capitol Blvd,  
Boise, ID 83702

Caldwell Public Library  
1010 Dearborn  
Caldwell, Idaho 83605

Eagle Public Library  
100 N Stierman Way  
Eagle, Idaho 83616

Meridian Library District  
1326 West Cherry Lane  
Meridian, Idaho 83642

Nampa Public Library  
101 Eleventh Avenue South  
Nampa, ID 83651

Parma Library  
P.O. Box 309  
Parma, ID 83660-5725

**Media**

Idaho Statesman  
P.O. Box 40  
Boise, ID 83705-1800

Idaho Press Tribune  
P.O. Box 9399  
Nampa, ID 83652



# **APPENDICES**



## **Appendix A Reclamation's Framework for the Transfer of Title**



**FRAMEWORK  
FOR THE  
TRANSFER OF TITLE  
BUREAU OF RECLAMATION PROJECTS  
AUGUST 7, 1995**

\*\*\*\*\*

**The criteria and guidance outlined in this document applies to "uncomplicated" projects. "Uncomplicated" projects are generally defined in the Scope of Application section following. This guidance is intended to initiate the Bureau of Reclamation's title transfer process.**

**This guidance does not apply to the more complicated projects, e.g., large multi-purpose projects where there is no consensus among the project beneficiaries concerning the transfer, where more than one competent beneficiary has expressed an interest in acquiring title, or where the institutional and legal concerns cannot be readily resolved.**

\*\*\*\*\*

**BACKGROUND:** The Reclamation program was founded in 1902. Its original mission was one of civil works construction to develop the water resources of the arid Western United States to promote the settlement and economic development of that region. The results of that work are well known in the hundreds of projects that were developed to store and deliver water. That substantial infrastructure made Reclamation the largest wholesale supplier of water in the United States, the sixth largest electric power generator, and the manager of 45 percent of the surface water in the Western United States. Many of these projects were constructed at a time when there were no local communities and utilities. Today much of the West is settled and is, in some respects, the most urbanized region of the country. Reclamation owns and operates public utility facilities which, if located in other parts of the country, would likely be owned, operated, and funded by publicly regulated private corporations or local government agencies. While it has been Reclamation's policy for decades to transfer operation and maintenance of projects to local entities where and when appropriate, interest in the actual transfer of title (with its attendant responsibilities) is now growing.

## **PURPOSE**

As part of the second phase of the National Performance Review (REGO II), Reclamation is undertaking a program to transfer title of facilities that could be efficiently and effectively managed by non-Federal entities and that are not identified as having national importance. This effort is a recognition of Reclamation's commitment to a Federal Government that works better and costs less. The transfer of title will divest Reclamation of the responsibility for the operation, maintenance, management, regulation of, and liability for the project. The transfer of title to a project will, in effect, sever Reclamation's ties with that project.<sup>1</sup>

## **SCOPE OF APPLICATION OF FRAMEWORK**

It is the intent of Reclamation to transfer title and responsibility for certain projects or facilities, when and where appropriate, to qualifying non-Federal interests. Uncomplicated projects are projects or facilities where there are no competing interests, the facilities are not hydrologically integrated with other projects, the financial arrangements are relatively simple and easily defined, and the legal and institutional concerns<sup>2</sup> associated with a transfer can be readily addressed. In other words, after meeting the requirements set forth in the Criteria section below, projects will be selected for title transfer on the basis of the transfer being achievable and able to move forward quickly.

For purposes of this document and the transfer of title to the projects, the terms "beneficiary" and "stakeholder" are defined as follows: (a) **beneficiary** refers to (i) contractors and others who receive direct benefits under the authorized purposes for that project and (ii) non-Federal governmental entities in the project area; (b) **stakeholder** is a broader term and includes the beneficiaries, as well as those individuals, organizations, or other entities which receive indirect benefits from the project or may be particularly affected by any change from the status quo.

## **CRITERIA FOR TITLE TRANSFER**

Following are the six major criteria that must be met before any project is transferred:

- 1) The Federal Treasury, and thereby the taxpayer's financial interest, must be protected
- 2) There must be compliance with all applicable State and Federal laws
- 3) Interstate compacts and agreements must be protected
- 4) The Secretary's Native American trust responsibilities must be met
- 5) Treaty obligations and international agreements must be fulfilled
- 6) The public aspects of the project must be protected

---

<sup>1</sup> Note: Reclamation recognizes that the complete severance of the relationship between Reclamation and the transferee may not be possible in all instances.

<sup>2</sup> Such concerns include, but are not limited to, unresolved Native American claims, endangered species considerations, international or interstate issues, absence of consensus among beneficiaries, significant disagreements raised by the stakeholders, a need to prepare an Environmental Impact Statement, and substantive objections from other governmental entities.

## **GENERAL GUIDANCE FOR DETERMINING PROJECTS ELIGIBLE FOR TRANSFER**

Reclamation Area offices will review projects nominated by an interested transferee and will pursue negotiations regarding those projects where the issues associated with transfer are relatively easy to resolve. This could include projects with multiple purposes and numerous stakeholders, but only if it is clear that outstanding issues are resolved and that there is consensus among the stakeholders.

Reclamation will not initiate negotiations on those projects where title transfer will involve a protracted process to ensure that the six criteria listed above are met.

Generally, Reclamation will not pursue transfer of powerhouses and generating facilities where power is marketed by the Power Marketing Administrations or where such power is used for purposes not directly associated with project purposes.

## **GENERAL GUIDANCE APPLYING TO TRANSFERS**

All transfers will be voluntary.

Reclamation's intent is to transfer projects to current project beneficiaries, including non-Federal governmental entities, or to entities approved by the current beneficiaries.

All transfers must have the consent of other project beneficiaries. If another beneficiary raises substantive objections which cannot be resolved, the project will remain in Federal ownership.

Reclamation will comply with National Environmental Policy Act and other applicable laws in all transfers.<sup>3</sup>

All transfers must ensure the United States' Native American trust responsibilities are satisfied. In addition, outstanding Native American claims that are directly pending before the Department and that would be directly affected by the proposed transfer will be resolved prior to transfer.

Reclamation officials will meet with representatives from all interested Federal and State agencies to consider their concerns early in the transfer process.

Potential transferees must be competent to manage the project and be willing and able to fulfill all legal obligations associated with taking ownership of that project, including compliance with Federal, State, and tribal laws that apply to facilities in private ownership and assumption of full liability for all matters associated with ownership and operation of the transferred facilities.

---

<sup>3</sup> Reclamation is proceeding to develop a new Categorical Exclusion (CE) for those title transfers which would not significantly impact the environment and thus could be categorically excluded from a detailed NEPA review. Generally, Reclamation would anticipate such a CE would apply on projects involving transfer of title of Reclamation projects or facilities, in whole or in part, to entities who would operate and maintain the facilities or manage the lands so that there would be no significant changes in operation and maintenance or in land and water use in the reasonably foreseeable future. It is Reclamation's expectation that a CE would apply to a relatively small number of projects, i.e. some of the small single-purpose projects where no change in use is anticipated after the transfer.

Potential transferees must be able to demonstrate the technical capability to maintain project safety on a permanent basis and an ability to meet financial obligations associated with the project.

In general, it is Reclamation's expectation that, upon the transfer of title to a project, its jurisdiction over that project will be divested. Reclamation further recognizes that in some cases the complete divestiture of jurisdiction may not be attainable because the transferee still receives water supplied from a Reclamation facility, or only a portion of the project was transferred and the rest of the project remains in Federal ownership, or there are other extenuating circumstances. The degree to which the Reclamation Reform Act of 1982 will apply following transfer will be negotiated on a case-by-case basis.

The financial interests of the Government and general taxpayers will be protected. Transferees must agree to fair and equitable terms based upon the factual circumstances associated with each project. (See attachment which describes the valuation of projects.) Transferees will be expected to pay upfront the estimated transaction costs, such as costs associated with compliance with the National Environmental Policy Act, real estate boundary surveys, and so forth. Reclamation will not provide new loans to finance transfers.

No transferred Federal asset will be considered for federal assistance for project operation, maintenance, and replacement or capital construction purposes following completion of the transfer.

Prior to the initiation of detailed discussions on title transfer, Reclamation and the potential transferees will execute an agreement covering the responsibilities of all parties during the negotiations.

A base value will be determined for each project as it becomes the subject of serious negotiations for transfer. (See attached guidance on valuation.) The negotiated price for the project may deviate up or down from the base value. It will be necessary for Reclamation and the interested non-Federal entity to document how the factual circumstances and equitable treatment considerations justify such adjustments. In addition, Reclamation may consider future uses on the transferred lands and waters in establishing a price.

Potentially affected State, local, and tribal governments, appropriate Federal agencies, and the public will be notified of the initiation of discussions to transfer title and will have (1) the opportunity to voice their views and suggest options for remedying any problems and (2) full access to relevant information, including proposals, analyses, and reports related to the proposed transfer. The title transfer process will be carried out in an open and public manner.

Once Reclamation has negotiated an agreement with a transferee, Reclamation will seek legislation specifically authorizing the negotiated terms of the transfer of each project or feature.

**ATTACHMENT**

**V ALUATION POLICY AND FRAMEWORK FOR THE SALE AND TRANSFER  
OF PROJECT FACILITIES AND RELATED ASSETS,  
BUREAU OF RECLAMATION**

\*\*\*\*\*

**The criteria and guidance outlined in this document applies to "uncomplicated" projects. "Uncomplicated" projects are generally defined in the "Framework for the Transfer of Title."**

**This valuation policy does not apply to the more complicated projects (e.g., large multi-purpose projects where there is no consensus among the project beneficiaries concerning the transfer, where more than one competent beneficiary has expressed an interest in acquiring title, or where the institutional and legal concerns cannot be readily resolved.)**

\*\*\*\*\*

When transfer negotiations are initiated, the Bureau of Reclamation will estimate the base value for Federal facilities and related assets proposed for transfer. Prior to initiating negotiations, there must be an agreement between the Bureau of Reclamation and the potential transferees concerning the sharing of costs to complete the transaction.

Accelerated contract payout, early payment, or prepayment are different transactions from sale of the facility (transfer of title). Such transactions will not be construed as "contracts for sale of property."

The base value of a facility proposed for transfer is defined as the value of the assets being transferred (including facilities, lands, and other related assets) as if they were under continued Federal control. More specifically, this valuation assumes that the new owner would (1) receive all remaining revenues due the Federal Government for repayment of the capital costs of facilities being transferred, as well as for existing operation and maintenance deficits; (2) receive all other Federal revenues from the assets (e.g., leases for grazing, commercial purposes, etc.); (3) be responsible for funding operation and maintenance of all aspects of the projects; and, accordingly, receive all future O&M payments, and (4) bear all liability associated with ownership and operation of the transferred facility.

Since each project, storage facility, canal, diversion, and conveyance structure is different, it is essential that negotiations and the assessment of value be handled on a case-by-case basis to account for the unique characteristics and conditions associated with each. For example, if assets not needed for operating project facilities can be sold separately, standard appraisal techniques might be used.

The base value for the facilities proposed for transfer is to be based on the present value of all future Federal revenue streams for the assets being transferred. Reclamation will only transfer logical elements of projects. In those situations in which only certain project features are being transferred, it will be necessary to prorate the future revenue streams. When irrigation facilities are transferred, the present worth of the corresponding share of aid-to-irrigation payments will be included as part of the base value of the irrigation facilities. The present worth of these

payments may be paid either directly by the transferee or through agreements with project hydropower beneficiaries.

### **Computation Methodology**

Base value. Base value will be calculated as the present worth of the United States' anticipated revenue streams including (1) water revenues, including revenues from existing water service and repayment contracts and their renewals, any operation and maintenance deficits owed to the Federal Government that are outstanding as of the date of the transfer (but excluding future payment for O&M and other direct reimbursements), and projected full-cost pricing revenues; (2) revenues from any additional or modified water delivery contracts expected to be implemented because of additional or changed demand (e.g., municipal and industrial use instead of irrigation use); (3) revenues from water transfers; (4) revenues from the sale of preference and commercial power, including revenues received as "aid to irrigation;" and (5) all revenues from miscellaneous sources such as lease of facilities, lease of lands, and miscellaneous fees and charges.

These revenues will be discounted to present worth using Treasury yield rates current at the time of the transaction. The rates will be determined using maturities comparable to the duration of the revenue stream, such as the remaining repayment period (e.g., 15-year rates for a 15-year remaining repayment period). For periods over 30 years, the 30-year rate will be used. These rates will be established Reclamation-wide from information supplied by the Department of the Treasury in accordance with OMB Circular A-129. In those cases where the purchaser is an entity that has access to tax-free financing, an amount equal to the income taxes foregone would be added to the present worth in accordance with OMB Circular A-129.

In some cases, where projected Federal revenues clearly do not reflect the residual values of the asset(s), other standard appraisal techniques may be used.

Adjustments to base value. Adjustments to base value would be based on the reasonable expectation that conditions will be altered in the foreseeable future after title is transferred compared with the conditions prior to the transaction. Such altered conditions might include operational changes, new end-uses of water or project assets, or changes in the obligations and responsibilities from those specified above. Adjustments from the base value may be either upward or downward. For example, if the terms and conditions did not require the new owners to maintain public recreation, the lost recreation benefits would be added to the purchase price. On the other hand, if terms and conditions were negotiated that increased public uses of water at the expense of contract deliveries, this could lower the transfer price. Other adjustment to base value may be warranted to reflect the residual value of project assets. However, it is anticipated that there will be few, if any, adjustments to base value for the projects or facilities addressed by this guidance.

### **Review and Approval**

Reclamation will employ the services of an independent financial advisor(s) to ensure the reasonableness and accuracy of the analyses pertaining to project valuation.

While there is no specific set of prior conditions to which each negotiated transaction must adhere, the terms and conditions agreed upon must pass the test of public scrutiny, administrative review (including OMB and Treasury review under Circular A-129), and Congressional action.

## **Appendix B Regional Policy on the Discharge of Stormwater Drainage (Water Quality)**





IN REPLY REFER TO:

PN-427\PN-154

# United States Department of the Interior



BUREAU OF RECLAMATION  
Pacific Northwest Region  
Federal Building & U.S. Courthouse  
Box 043-550 West Fort Street  
Boise, Idaho 83724-0043

August 12, 1992

REGIONAL POLICY LETTER No. RES-3.20-400/150-1

## Memorandum

To: All PN Region Operating Offices  
PN-150, PN-200, PN-400, PN-700

From: <sup>ACTING</sup> Regional Director, Boise ID

Subject: Regional Policy on the Discharge of Stormwater Drainage (Water Quality)

**Purpose:** This directive is to establish a policy and procedure for: (1) evaluating and permitting stormwater discharges into Bureau of Reclamation (Reclamation) facilities; and, (2) complying with National Pollution Discharge Elimination System (NPDES) requirements in connection with Reclamation projects.

**Effective Date:** Immediately upon issuance.

**Expiration Date:** This directive will remain in effect until canceled or superseded.

**Background:** New Environmental Protection Agency (EPA) regulations (40 CFR Parts 122, 123, and 124) and rapid urbanization within our project areas have created the need for a policy and related guidance on the management of storm water runoff. As urbanization envelopes areas previously used as agricultural irrigation and drainage systems, Reclamation is confronted with existing and potential urban/industrial discharge water polluting its system. Runoff from impervious surfaces in urban areas is greater than runoff from agricultural areas. Reclamation needs to manage and monitor entering flows, or face demands for increased drain capacity and maintenance costs or expect periodic canal breaks and/or overflows and increased liability for flood damage. Another potential problem is that EPA may require Reclamation to obtain NPDES permits and monitor discharge into waters of the United States at a substantial cost.

**Policy:** It is the policy of the Region to work with all generators of stormwater drainage and/or discharge and to evaluate all storm drain proposals to ensure compliance with Reclamation's needs, project purposes and to protect Reclamation's facilities and the environment.

**Authorities:** Title 43 CFR 429, Reclamation Instructions 215.4

**Procedures:**

1. **Proactive planning:** Where urbanization of an irrigation/drainage system is occurring, Reclamation offices shall coordinate with local government and irrigation districts where applicable to develop a comprehensive drainage plan in coordination with local government and Irrigation Districts where applicable, considering impacts from on-project, off-project and future developments. In addition to quantifying the present capacity of USBR facilities, such a plan identifies future facility needs while there is lead time to plan and fund them, develops a necessary consensus between the public and private sectors on storm water policy, and provides a forum for pro-active management of urban growth.

Reclamation offices shall be fully involved in planning and zoning, comprehensive planning, and subdivision regulations and review. These local governmental procedures provide excellent tools to head off storm water problems and protect Reclamation facilities and rights-of-way.

2. **Permits to discharge stormwater drainage to Reclamation facilities:** All non-agricultural discharges to a canal or drain must be authorized under a permit from Reclamation and approved by the Irrigation District. Considerations in granting these permits are capacity of the system, future operation and maintenance requirements and costs, design life of the facility, present and future regulatory implications, and the applicant's proposed implementation of water quality and quantity controls.

a. **Application for Permit:**

(1) All requests will be handled in accordance with Reclamation rules and regulations, as amended and supplemented, including 43 CFR 429.

(2) Proponents must apply to Reclamation for a discharge permit. A field solicitor's opinion concerning the responsibility of Reclamation to issue all outgrants for its lands and facilities requires that Reclamation review and issue all permits. A permit from Reclamation will not allow the use of lands over which Reclamation holds only an easement but will only allow use of Reclamation facilities. All other permits required by underlying landowners and regulatory agencies will be the responsibility of the requester. Proof of such permits shall be provided to Reclamation upon request at any time the permit is in force and during the permitting process. The affected Irrigation District must be contacted for comments and concurrence with the request and, in compliance with specific repayment contracts, the Irrigation District may assess fees for review of permit applications, inspection of facilities, and for operation and maintenance costs. These fees will be collected by the Irrigation District as permitted by state statutes.

(3) The application need not take a particular form but must include enough information to allow Reclamation to determine the effect of the proposed action on our facilities and the environment. As a minimum the application must:

(a) Identify the organization that will be financially responsible for water quality, quantity, and maintenance of all permit requirements.

(b) Include plans sufficient to determine the immediate and long term effect on Reclamation's facilities of the requested permit.

(c) Include any other information deemed necessary by Reclamation to conduct a complete evaluation of the request and its impacts to Reclamation's facilities.

(4) The initial request must include a \$200.00 deposit to cover administrative costs. A minimum of \$50.00 will be retained by Reclamation whether or not a permit is issued.

(5) All costs incurred by Reclamation in permit issuance will be recovered. A detailed cost accounting of these costs will be maintained in accordance with 43 CFR 429.

b. Fees:

(1) A use fee will be charged equal to the value of the rights being conveyed to the requestor, taking into consideration such factors as construction costs and the extended value that allowing the requestor to utilize the facility adds to their land uses. Another major factor to consider in determining the use fee is that agricultural discharges are not currently monitored according to the Clean Water Act (CWA) and NPDES. Therefore, there is little or no administrative expense at this time. On the other hand it is highly probable that monitoring of storm water discharges as well as other discharges will eventually be required in accordance with CWA and NPDES. In which case, the administrative cost could be substantial and must somehow be recouped.

(2) In addition to the use fee there may be a yearly operation and maintenance fee and a fee to cover the cost of monitoring the use of Reclamation's facility. There may also be fees for the cost of permitting by other agencies which will need to be added to the overall cost of Reclamation's permit. All of these fees shall be subject to periodic review, but in no instance will the reviews be more than 5 years apart.

c. **Requirements to be included in a discharge permit:**

(1) **Water quantity:**

(a) No permit shall be issued that might contribute to exceeding the original designed capacity of the facility. Reclamation drains were designed for specific flows. Runoff from urban/industrial developed areas has greater volume and higher peak flows than predevelopment (agricultural) runoff. Appropriate retention and/or detention shall be required of permitted flows to ensure the continued integrity of the facility. As a general requirement, post-development (urban/industrial) flows shall not exceed pre-development (agricultural) flows.

(b) Detention, retention, and water quantity requirements need to be developed with local government input. Design requirements shall be technically sound and meet regulatory requirements.

(2) **Water quality:**

(a) Sections 301 and 402 of CWA require industrial dischargers to apply Best Available Technology (BAT), Best Available Pollutant Control Technology (BCT), and where necessary, water quality based controls. Storm water systems must reduce pollutant discharge to the maximum extent practicable, and where necessary, employ water quality controls.

(b) Discharges under USBR permit must meet these requirements. Reclamation applicants must provide sufficient information for experienced in-house or out-service reviewers to determine if the applicant has applied BAT, BCT, and water quality controls.

(c) Although BAT and BCT are vaguely worded, the regulatory and engineering communities have specific understandings of appropriate designs. Over time, BAT, BCT, etc., will change to ever more sophisticated and effective designs. Permitting offices must stay current with these changes.

(d) All permits shall require permittee compliance with all present and future water quality standards.

d. **Blanket Discharge Permits:** Consider issuing Master Storm Water Discharge Permits to cities, counties, or other responsible entities. Similar to Master Crossing Agreements, these could allow simplified authorizations for discharges constructed to particular criteria.

3. **NPDES Permit:** Pursuant to Section 405 of CWA, the EPA requires certain industry types and operators of municipal storm water management systems to apply for an NPDES permit to discharge to waters of the United States. It is Reclamation's position that those to whom we grant privileges to--not Reclamation--are required to obtain NPDES or other present or future permits resultant from their individual or cumulative activities. This situation may change in that the EPA Administrator is authorized by NPDES to designate Reclamation or an irrigation district as a storm water system operator. In anticipation of this event, require BAT/BCT treatment of permitted discharges to Reclamation facilities and have grantees acknowledge that any NPDES or other permits are their responsibility.

4. **Environmental Compliance:** Prior to issuance of permits for discharge of stormwater or other discharges into Reclamation facilities, Reclamation will prepare appropriate documentation for compliance with the National Environmental Policy Act (NEPA), the Fish and Wildlife Coordination Act, the Endangered Species Act, and all other Federal, State, and local laws governing environmental compliance.

On many projects in the Pacific Northwest Region urbanization and industrialization have significantly altered the source and quantity of stormwater discharge to project facilities. Much of this discharge is unauthorized, and in many cases there has been no environmental impact analysis of the changes.

For actions involving significant changes in stormwater sources and quantity and where significant changes are anticipated to continue, Reclamation will need to analyze cumulative impacts on a project level, comparing the original purposes, design, and operation of the project facilities with the proposed and/or anticipated changes.

5. **Unauthorized Use:** Currently there are a number of stormwater drain connections to Reclamation facilities. In many instances these connections were made without the consent or knowledge of Reclamation. It is the policy of the Pacific Northwest Region to actively pursue, and bring into compliance, all non-authorized connections to Reclamation facilities. Reclamation has authority to deal with unauthorized use. The U.S. Supreme Court decision in *Camfield v. U.S.* 167 U.S. 518. 524 (1886) held that "The Government has, with respect to its own lands, the rights of an ordinary proprietor, to maintain possession and to prosecute unauthorized uses, thereby establishing Federal rights over lands equivalent to rights of the private sector."

One method to accomplish compliance of unauthorized uses could be to offer existing users the opportunity to receive a permit without penalty but still require the permittee to comply with all stipulations outlined in the normal permitting process. This method should only be offered to unauthorized users for a specific short period of time before more formal resolution methods, which may include penalties, is instituted.

This region will generally utilize state laws to resolve any and all unauthorized uses of Reclamation facilities. To facilitate this the responsible officer needs to complete the following steps:

a. Identify the unauthorized use through monitoring of facilities. A helpful method of monitoring is to have close contact with planning agencies in the project area. Another tool is to have facility maps digitized into a Geographic Information System (GIS) (information may be available from local agencies) and utilize GIS in tracking permits and connections.

b. Notify the party using the Project facility without a permit. This can be done in person or over the telephone but notification will only be supportable upon the delivery of a registered letter with a return receipt requested. This documented notification will be needed in case of litigation.

c. Document cases where compliance is not voluntary by the unauthorized user. Documentation should include as a minimum the following:

- (1) Case situation; what, when, where, who and why
- (2) The type of case; is it an intentional or unintentional violation
- (3) Photographs and/or videos
- (4) Assessment of the seriousness of the case
- (5) Discussion of available options and recommendations for resolving the violation
- (6) Summary of any discussions with unauthorized user
- (7) Enter case information into LAPS when appropriate
- (8) Document followup actions, such as telephone conversations, correspondence, contracts, research findings, etc.

d. The Field Solicitor shall be consulted when the violator is uncooperative. Such contact shall be made at the earliest possible time so that guidance in the resolution of the case can be given. This will help to lessen the amount of duplication on steps needing to be taken for resolution.

6. NPDES Permits Required for Reclamation Projects: The new EPA rules require NPDES permits for construction sites which have surface disturbance of greater than 5 acres. For these type of projects, the contractor shall be required to obtain the permit from EPA or the state regulatory agency. PN-150 shall review and approve all permit applications before being submitted to EPA or the state.

*Felix H. Cook, Sr.*

## **Appendix C Scoping Letters and Responses**





## United States Department of the Interior

BUREAU OF RECLAMATION  
Snake River Area Office  
230 Collins Road  
Boise, Idaho 83702-4520

FEB 27 2007



SRA-6121  
ENV-1.00

Subject: Scoping of Issues for Proposed Transfer of Title for Bureau of Reclamation Drainage Facilities to the Pioneer Irrigation District, Boise Project, Idaho

Dear Interested Party:

At the request of the Pioneer Irrigation District (PID), the Bureau of Reclamation is considering a proposal to transfer title for certain Federal drains and associated real property interests to PID. The facilities and land interests included in this proposal are limited to those Reclamation-owned facilities which are operated and maintained by PID and which lie within the PID boundary. Reclamation and PID have identified you as a party with a potential interest in the proposed transfer. A more detailed description of the proposed title transfer is included in the enclosed information.

PID is interested in pursuing title transfer in order to streamline operations and maintenance procedures and to enhance their management of the drainage system used to handle agricultural return flows. Although the District has fully paid off its repayment obligations for the Federally-owned portion of the drainage system, title remains with the United States. The proposed title transfer would reduce Reclamation's administrative, oversight, and liability burden for facilities that PID has operated and maintained since they were constructed or improved in the early 1900s. The proposed title transfer is consistent with Reclamation's commitment to a federal government that works better and costs less.

The National Environmental Policy Act (NEPA) requires Reclamation to evaluate the environmental impacts resulting from this action. In order to meet the requirements of NEPA and to help determine if transfer of these facilities are in the best interest of the public, Reclamation is asking for your assistance in identifying issues and concerns you may have about the proposed title transfer.

We invite you to send your written comments on this proposal to the Bureau of Reclamation, Snake River Area Office, Attention: Gretchen Fitzgerald, 230 Collins Road, Boise, Idaho 83702-4520 by March 21, 2007. If you have any questions concerning the proposal or the NEPA process, contact Gretchen Fitzgerald at 208-383-2231.

Sincerely,

Jerrold D. Gregg  
Area Manager

Enclosures





# United States Department of the Interior



BUREAU OF RECLAMATION  
Snake River Area Office  
230 Collins Road  
Boise, Idaho 83702-4520

SRA-6121  
ENV-1.00

FEB 7 8 7:07

Honorable Alonzo Coby, Chairman  
Fort Hall Business Council  
Shoshone-Bannock Tribes  
P.O. Box 306  
Fort Hall, ID 83203-0306

Subject: Scoping of Issues for Proposed Transfer of Title for Bureau of Reclamation Drainage Facilities to the Pioneer Irrigation District, Boise Project, Idaho

Dear Mr. Chairman:

At the request of the Pioneer Irrigation District (PID), the Bureau of Reclamation is considering a proposal to transfer title for certain Federal drains and associated real property interests to PID. The facilities and land interests included in this proposal are limited to those Reclamation-owned facilities which are operated and maintained by PID and which lie within the PID boundary. Reclamation and PID have identified the Tribes as a party with a potential interest in the proposed transfer. A more detailed description of the proposed title transfer is included in the enclosed information.

PID is interested in pursuing title transfer in order to streamline operations and maintenance procedures and to enhance their management of the drainage system used to handle agricultural return flows. Although the District has fully paid off its repayment obligations for the Federally-owned portion of the drainage system, title remains with the United States. The proposed title transfer would reduce Reclamation's administrative, oversight, and liability burden for facilities that PID has operated and maintained since they were constructed or improved in the early 1900s. The proposed title transfer is consistent with Reclamation's commitment to a federal government that works better and costs less.

The National Environmental Policy Act (NEPA) requires Reclamation to evaluate the environmental impacts resulting from this action. In order to meet the requirements of NEPA and to help determine if transfer of these facilities are in the best interest of the public, Reclamation is asking for the Tribes' assistance in identifying issues and concerns you may have about the proposed title transfer.

We invite you to send your written comments on this proposal to the Bureau of Reclamation, Snake River Area Office, Attention: Gretchen Fitzgerald, 230 Collins Road, Boise, Idaho 83702-4520 by March 21, 2007. If you have any questions concerning the proposal or the NEPA process, contact Gretchen Fitzgerald at 208-383-2231.

Sincerely,

ACTING FOR

Jerrold D. Gregg  
Area Manager

Enclosures

cc: See next page.

cc: Carolyn Boyer Smith  
Shoshone-Bannock Tribes - HETO  
P.O. Box 306  
Fort Hall, ID 83203-0306

Jo'Etta Buckhouse  
Shoshone-Bannock Tribes - HETO  
P.O. Box 306  
Fort Hall, ID 83203-0306  
(w/encls to each above)



SRA-6121  
ENV-1.00

## United States Department of the Interior

BUREAU OF RECLAMATION  
Snake River Area Office  
230 Collins Road  
Boise, Idaho 83702-4520



Honorable Kyle Prior, Chairman  
Shoshone - Paiute Tribal Council  
P.O. Box 219  
Owyhee, NV 89832

Subject: Scoping of Issues for Proposed Transfer of Title for Bureau of Reclamation Drainage Facilities to the Pioneer Irrigation District, Boise Project, Idaho

Dear Mr. Chairman:

At the request of the Pioneer Irrigation District (PID), the Bureau of Reclamation is considering a proposal to transfer title for certain Federal drains and associated real property interests to PID. The facilities and land interests included in this proposal are limited to those Reclamation-owned facilities which are operated and maintained by PID and which lie within the PID boundary. Reclamation and PID have identified the Tribes as a party with a potential interest in the proposed transfer. A more detailed description of the proposed title transfer is included in the enclosed information.

PID is interested in pursuing title transfer in order to streamline operations and maintenance procedures and to enhance their management of the drainage system used to handle agricultural return flows. Although the District has fully paid off its repayment obligations for the Federally-owned portion of the drainage system, title remains with the United States. The proposed title transfer would reduce Reclamation's administrative, oversight, and liability burden for facilities that PID has operated and maintained since they were constructed or improved in the early 1900s. The proposed title transfer is consistent with Reclamation's commitment to a federal government that works better and costs less.

The National Environmental Policy Act (NEPA) requires Reclamation to evaluate the environmental impacts resulting from this action. In order to meet the requirements of NEPA and to help determine if transfer of these facilities are in the best interest of the public, Reclamation is asking for the Tribes' assistance in identifying issues and concerns you may have about the proposed title transfer.

We invite you to send your written comments on this proposal to the Bureau of Reclamation, Snake River Area Office, Attention: Gretchen Fitzgerald, 230 Collins Road, Boise, Idaho 83702-4520 by March 21, 2007. If you have any questions concerning the proposal or the NEPA process, contact Gretchen Fitzgerald at 208-383-2231.

Sincerely,

Jerrold D. Gregg  
Area Manager

ACTING FOR

Enclosures

cc: See next page.

cc: Lisa Jim, Acting CEO  
Shoshone-Paiute Tribes  
P.O. Box 219  
Owyhee, NV 89832

Ted Howard, Cultural Resources  
Shoshone-Paiute Tribes  
P.O. Box 219  
Owyhee, NV 89832  
(w/encls to each above)



SRA-6121  
ENV-1.00

## United States Department of the Interior

BUREAU OF RECLAMATION  
Snake River Area Office  
230 Collins Road  
Boise, Idaho 83702-4520



FEB 28 2007

Honorable Rebecca Miles, Chairman  
Nez Perce Tribal Executive Committee  
P.O. Box 305  
Lapwai, ID 83540-0305

Subject: Scoping of Issues for Proposed Transfer of Title for Bureau of Reclamation Drainage Facilities to the Pioneer Irrigation District, Boise Project, Idaho

Dear Madame Chairman:

At the request of the Pioneer Irrigation District (PID), the Bureau of Reclamation is considering a proposal to transfer title for certain Federal drains and associated real property interests to PID. The facilities and land interests included in this proposal are limited to those Reclamation-owned facilities which are operated and maintained by PID and which lie within the PID boundary. Reclamation and PID have identified the Tribe as a party with a potential interest in the proposed transfer. A more detailed description of the proposed title transfer is included in the enclosed information.

PID is interested in pursuing title transfer in order to streamline operations and maintenance procedures and to enhance their management of the drainage system used to handle agricultural return flows. Although the District has fully paid off its repayment obligations for the Federally-owned portion of the drainage system, title remains with the United States. The proposed title transfer would reduce Reclamation's administrative, oversight, and liability burden for facilities that PID has operated and maintained since they were constructed or improved in the early 1900s. The proposed title transfer is consistent with Reclamation's commitment to a federal government that works better and costs less.

The National Environmental Policy Act (NEPA) requires Reclamation to evaluate the environmental impacts resulting from this action. In order to meet the requirements of NEPA and to help determine if transfer of these facilities are in the best interest of the public, Reclamation is asking for the Tribe's assistance in identifying issues and concerns you may have about the proposed title transfer.

We invite you to send your written comments on this proposal to the Bureau of Reclamation, Snake River Area Office, Attention: Gretchen Fitzgerald, 230 Collins Road, Boise, Idaho 83702-4520 by March 21, 2007. If you have any questions concerning the proposal or the NEPA process, contact Gretchen Fitzgerald at 208-383-2231.

Sincerely,

ACTING FOR

Jerrold D. Gregg  
Area Manager

Enclosures

cc: See next page.

cc: Vera Sonneck  
Nez Perce Tribe  
P.O. Box 365  
Lapwai, ID 83540-0305

Josiah Pinkham  
Nez Perce Tribe  
P.O. Box 365  
Lapwai, ID 83540-0305  
(w/encls to each above)

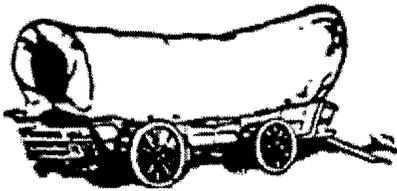
## Response List to PID Comments

Agency/Organization	Concerns
Idaho State Parks & Recreation (Jeff Cook)	Rights-of-way and easements/pathway construction remain Reclamation
Ada County (John Caywood)	Pathways-convey to cities and counties
Hamilton, Michaelson & Hilty (Mark Hilty/Naida Kelleher)	Cities right to discharge run-off into historical waterways
Canyon County Parks, Rec. & Waterways (Tom Bicak)	Pathways
Foundation Ada/Canyon Trail Systems (Judy Peavey)	Limited success recreation use of canal bank – Opposed
ACHD (Steven Price/ Ericka Malmen-Perkins Coie)	Stormwater run-off, taxpayer interests, public aspects
Public Works – City of Nampa (Michael Fuss)	Pathways, utility easements and urban drainage
Public Works – City of Boise (Charles Mikelson)	Document requirements, drainage, transfer to local units of government
Spectrum Environmental Inc. (Rick Wells)	No reasonable steward of the drains, obstacle to use and development
Jim Budolfson	What PID has repaid U.S. for cost of facilities? Provide pathways.
Public Works – City of Caldwell (Gordon Law)	No objection, contingent on retention of drainage interests
Idaho Water Users Association (Norman Semanko)	Strongly supports transfer



## **Appendix D PID Urban Stormwater Management Policy**





# Pioneer Irrigation District

---

JEFF SCOTT  
Superintendent

P.O. BOX 426 • CALDWELL, IDAHO 83606  
(208) 459-3617

MARK ZIRSCHKY  
Asst. Superintendent

NAIDA KELLEHER  
Secretary-Treasurer

April 10, 2006

Pioneer Irrigation District is in receipt of a letter from the District's Attorney, Scott Campbell, outlining the legal reasons why Pioneer should not accept urban storm water drainage into water conveyance facilities owned or operated by Pioneer.

My Board of Directors has asked that I forward a copy of this letter to the developers and other interested personnel in our area in hopes of helping you understand the legal reasons why Pioneer must take the stand of *not* accepting storm water drainage into our system.

The District understands this does not meet with the requirements the City of Caldwell is placing upon you. However, at this time, it is the consensus of the Board of Directors of Pioneer Irrigation to enforce the District's policy of not accepting storm water from sources other than agricultural sources to enter Pioneer's facilities.

The District's Superintendent and Engineer have both been advised to not sign off on or accept any plans or documents which show urban storm water drainage into Pioneer's facilities.

Sincerely,

Naida E. Kelleher  
Secretary/Treasurer

# Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Boise  
Idaho Falls  
Pocatello  
Twin Falls

Eugene C. Thomas  
John W. Barrett  
R. B. Rock  
Richard C. Fields  
John S. Simko  
John C. Ward  
D. James Manning  
Gary T. Dance  
Larry C. Hunter  
Randall A. Peterman  
Mark S. Prusynski  
Stephen R. Thomas  
Glenna M. Christensen  
Gerald T. Husch  
Scott L. Campbell  
Robert B. Burns

Michael E. Thomas  
Patricia M. Olsson  
Bradley J. Williams  
Lee Radford  
Michael O. Roe  
David S. Jensen  
James L. Martin  
C. Clayton Gill  
David P. Gardner  
John O. Fitzgerald, II  
Julian E. Gabiola  
Angela Schaefer Kaufmann  
Michael W. McGreaham  
Paul D. McFarlane  
Kimberly D. Evans Ross  
Jon A. Stenquist

Tyler J. Henderson  
Jason G. Murray  
Mark C. Peterson  
Andrew J. Waldera  
Tyler J. Anderson  
Joel A. Flake, Jr.  
Russell G. Metcalf  
  
Robert E. Bakes, *of counsel*  
David P. Gardner  
Morgan W. Richards, *of counsel*  
  
*Willis C. Moffatt, 1907-1980*  
*Kirk R. Helvie, 1956-2003*

US Bank Plaza Building  
101 S Capitol Blvd 10th Fl  
PO Box 829  
Boise Idaho 83701 0829

March 10, 2006

208 345 2000  
800 422 2889  
208 385 5384 Fax  
www.moffatt.com

Board of Directors  
Pioneer Irrigation District  
P.O. Box 426  
Caldwell, ID 83606

**Re: Legal Liability Exposure for Acceptance of Urban Storm Water Drainage**  
MTBR&F File No. 18946.108

Gentlemen:

I am providing this correspondence in response to your recent request that I provide you with a letter discussing the legal liability risks of accepting urban storm water drainage into water conveyance facilities owned or operated and maintained by Pioneer Irrigation District ("Pioneer"). I will divide the discussion of the liability issues into two parts: 1) state law issues and 2) federal law issues.

## 1. State Law Liability Issues

Pioneer is an irrigation district, organized under the Idaho statutes permitting the creation of such entities. Idaho Code §§ 43-101 through 43-119. As an irrigation district, Pioneer's actions are restricted by the authorities conferred by Idaho statutes and as those statutes are interpreted by the Idaho appellate courts.

One of the basic statutory requirements for irrigation districts is the prevention of damage to other property owners from water escaping from the ditches owned by them. Idaho Code section 42-1204 provides:

The owners . . . of ditches, canals, works . . . using . . . the same to convey the waters of any stream . . . whether the said ditches, canals, works . . . be upon the lands owned or claimed by them, or upon other lands, must carefully keep and maintain the same . . . in good repair and condition so as not to damage or in any way injure the property or premises of others . . . .

Also, Idaho Code section 42-1203 requires that the owner of

any irrigating ditch, canal or conduit shall carefully keep and maintain the embankments thereof in good repair . . . and shall not at any time permit a greater quantity of water to be turned into said ditch, canal or conduit than the banks thereof will easily contain or than can be used for beneficial or useful purposes; it being the meaning of this section to prevent the wasting and useless discharge and running away of water.

In addition to these statutory requirements, the Idaho Supreme Court has affirmed liability decisions against irrigation districts and canal companies for damages to adjoining property owners from flooding or seepage from canals or ditches owned by the irrigation entity. *Albrethson v. Carey Valley Reservoir Co.*, 67 Idaho 529, 186 P.2d 853 (1947); *Johnson v. Burley Irrigation Dist.*, 78 Idaho 392, 304 P.2d 912 (1956); *Harris v. Preston-Whitney Irrigation Co.*, 92 Idaho 398, 443 P.2d 482 (1968); *Brizendine v. Nampa Meridian Irrigation Dist.*, 97 Idaho 580, 548 P.2d 80 (1976).

In addition to these legal duties and restrictions upon irrigation districts, the history involving the construction of the extensive, interconnected system of canals, lateral ditches, flumes, siphons, drainage/delivery ditches, and pipelines must be considered. All of these facilities were constructed for the purpose of delivery and removal of irrigation water to and from the arid lands within Pioneer's boundaries.

Before the construction of these facilities, none of the lands within Pioneer had a water supply for irrigation use. Some of the original portions of the main canals were constructed in the 1880's and 1890's. Later expansions of the main canals, lateral ditches and construction of the drains occurred in the early part of the 1900's. These facilities were engineered and sized to deliver and remove irrigation water to and from the land. The volume of water which can be safely carried in these facilities has not changed in over 100 years, in the case of some canals, even longer.

It is also important to remember that when the Pioneer canals and ditches were constructed, there were no paved roads, sidewalks, interstate freeways, state highways, parking lots, driveways, major residential subdivisions, large commercial buildings, and other facilities which have resulted in the addition of millions of square feet of impervious surfaces. This is an extremely important concept to understand.

Prior to the construction of all of these impervious surfaces, the farms, ranches, grazing land, and dirt roads could absorb the storm water generated by natural precipitation events. If irrigation water was present in Pioneer's system of canals and ditches, any additional storm

water from a rainfall event which was not absorbed by the relatively undeveloped agricultural land and dirt roads could be handled if it flowed into those same canals and ditches.

Now, because of the original size limitations of the design and construction of Pioneer's facilities, in addition to the huge increases in volumes and velocities of urban storm water caused by the massive increases in impervious surfaces, Pioneer's facilities will not accommodate the water which urban storm water discharges produce. During the several consecutive days of rain in December 2005, overflow of Pioneer canals and ditches occurred in the lower end of the system. (As you are aware, the size and carrying capacity of the canals and ditches diminish from the higher parts of Pioneer to the lower segments.) Obviously, no irrigation water was present in the system when this flooding happened. If these storm events had occurred during the irrigation season, serious flood damage likely would have taken place.

While the water delivery canals and ditches generally get smaller as they extend out from the main canals, the drain ditches typically do not. One might think that the drains could accommodate additional flows as a result. This is faulty reasoning because of one major factor. The drain ditches are interconnected with the water delivery canals and ditches to such an extent that excess water discharged into the drain ditches will cause flooding in the canals and lateral ditches even if the drain itself does not flood.

In addition, there are many drain ditches and canals which cross over each other. One potentially disastrous problem area involves the Five Mile Drain where the Phyllis Canal crosses over it in a concrete flume structure. The Bureau of Reclamation recently conducted a storm water flow projection study involving the Five Mile Creek/Drain Watershed. This study concluded that the flow of the Five Mile Drain at the Phyllis Canal, during 24 hour 50 and 100 year storm events, would range from 1,100 to over 1,500 cubic feet per second after the upstream area of the watershed is fully developed (projected to occur in 10 to 15 years.) During the irrigation season under current conditions, Jeff Scott told me he has seen the Five Mile Drain flow at 100 to 175 cubic feet per second at the Phyllis Canal flume. At the higher flow rate, the daylight between Five Mile Drain water levels and the bottom of the Phyllis Canal flume is less than 12 inches.

If the high flows projected by the Bureau of Reclamation study occur in Five Mile Drain, particularly during the irrigation season when the Phyllis Canal is full of water, the Five Mile Drain flows will overtop the Phyllis Canal flume. In fact, the Bureau projected this in their study and assumed that the Phyllis Canal would act as an additional flow channel for the excess Five Mile Drain flows. The Bureau did not assess the flooding potential downstream in the Pioneer system which would be caused by this overtopping of the Phyllis Canal flume at the Five Mile Drain intersection.

Unfortunately, the Bureau of Reclamation study did not consider the more probable consequence of flows in excess of 1,000 cubic feet per second in the Five Mile Drain at the Phyllis Canal flume: rupture of the flume. At that location, the flume typically carries between 350 and 500 cubic feet per second, depending upon the water demand during the irrigation season. If the flume ruptured because of the excess flows in Five Mile Drain during the irrigation season, between 1,350 and 2,000 cubic feet per second of water would be flowing downstream in the Five Mile Drain. To put this in laymen's terms, 2,000 cubic feet per second is equivalent to a flow rate of 897,660 gallons per minute. Put another way, if a 2,000 cubic feet per second flow rate continued for one hour, it would produce 53,860,000 gallons of water.

Currently, the land area in the vicinity of the Phyllis Canal flume over the Five Mile Drain is largely agricultural. Unfortunately, in the ten to fifteen years until projected full development of the drainage basin, this land will undoubtedly be residential subdivisions. The flood damage to residential property, if this potential scenario occurs, would be astronomical. Pioneer would be bankrupted or the costs would increase assessments to such a degree that it is unlikely that landowners would be able to pay them.

I have described the Five Mile Drain projections in such detail because the Bureau of Reclamation spent considerable time and federal funds to develop the computer model and information to make these projections. These projections are the best that scientific methodology can produce. It is likely that similar scenarios will be played out throughout Pioneer in other locations if urban storm water discharges are accepted into Pioneer facilities. The canals and ditches were simply not built to deal with the volumes and velocities of water which is generated from the impervious surfaces of urbanization.

## **2. Federal Law Liability Issues**

The federal law liability issues, related to urban storm water discharges into Pioneer facilities, are more complex and potentially more costly than the state law issues. I will try to simplify the discussion of these issues to the extent possible.

The primary federal law considerations stem from the Federal Water Pollution Control Act of 1972, as amended, commonly referred to as the Clean Water Act. This federal law regulates water quality in a complex, comprehensive program which involves the U.S. Environmental Protection Agency ("EPA"), the U.S. Army Corps of Engineers ("Corps"), and the Idaho Department of Environmental Quality ("DEQ").

I will not attempt to explain the details of the Clean Water Act in this letter. That would be impossible. Instead, I will focus on the liability implications of acceptance of urban storm water drainage into Pioneer facilities under the Clean Water Act.

First, I must explain a few basic concepts. Under the Clean Water Act, any discharge of water with material or chemical compounds which exceed threshold levels, from a pipe or other defined outlet, into “waters of the United States,” constitutes a “point source” discharge under the Act. Such a point source discharge requires a National Pollution Elimination System Discharge Permit (“NPDES permit”), issued by the EPA, to avoid substantial civil and criminal penalties under the Act. In addition to these penalties, violations of this requirement subject the discharger to civil litigation exposure from “citizen suits” which can be brought by any interested party against the discharger. The citizen suit provision is usually used by environmental activist organizations and can result in the civil penalties I mentioned and large attorney fees awards in favor of the environmental plaintiff. These awards must be paid by the discharger.

Fortunately, irrigation activities, including discharge of irrigation return water into canals and drains which have been declared “waters of the United States” under decisions of the U.S. Court of Appeals for the Ninth Circuit (includes Idaho), is exempted from the definition of “point source.” This is so even though irrigation return water is frequently discharged via pipes and other outlets which would otherwise meet the definition of “point source.” The exemption from the requirement of an NPDES permit is limited to “agricultural stormwater discharges and return flows from irrigated agriculture.” 33 U.S.C. 1362, § 502(14). Additionally, Section 402(l)(1) of the Act states that an NPDES permit shall not be required “for discharges composed entirely of return flows from irrigated agriculture . . .”

In contrast, NPDES permits are required for municipal storm water discharges. 33 U.S.C. 1342, §§ 402(p)(2)(C)&(D). Because of this separate treatment of agricultural storm water and irrigation return flows from municipal storm water discharges, the potential liability risks for Pioneer are huge if it accepts municipal storm water discharges into its facilities.

This is because the exemption from the NPDES permit requirements of the Clean Water Act for all agricultural/irrigation return flows could be lost if Pioneer authorizes the commingling of municipal storm water discharges with the agricultural/irrigation return flows in its facilities. If this exemption is lost, Pioneer would have to comply with the NPDES permit requirements under the Act. Compliance would require construction of multi-million dollar treatment plants, similar to those used by cities for sewage treatment, at every Pioneer drain ditch or canal as it leaves the district or where it intersects with another irrigation district’s canal or drain. Clearly, this financial liability should be avoided if possible.

In addition to the Clean Water Act liability issues, potential liability exists under the Endangered Species Act (“ESA”). A number of groups advocate the construction of fish passage facilities at the Hells Canyon Complex of Idaho Power Company dams on the Snake River. These efforts are part of the Federal Power Act license process for those facilities which is pending before the Federal Energy Regulatory Commission (“FERC”). If fish passage

facilities are ordered at the Hells Canyon Complex dams, eventually salmon and steelhead which are currently ESA listed species will be swimming in the Boise River. This may be good or bad, depending upon your viewpoint and who is paying the bill. Apart from the fish screen and fish ladder/passage costs on irrigation district facilities, the ESA requires heightened compliance with water quality impacts to ESA listed fish. If the water quality of Pioneer facilities is diminished by municipal storm water discharges, the ESA liability exposure in the future would be in addition to any Clean Water Act liabilities.

Obviously, it is not possible to predict the future. The reintroduction of salmon and steelhead into the Snake and Boise Rivers may not occur. If it does, however, the water quality standards for these fish will be much stricter than the current regulatory programs require. Therefore, it would not make sense to accept municipal storm water discharges now, thereby making it even more difficult and expensive to clean up the water from Pioneer's facilities which eventually must discharge into the Boise River.

### 3. Conclusion

I have attempted to explain the liability considerations which Pioneer should consider if it decides to re-evaluate its long-standing policy of refusing to authorize municipal storm water discharges into its facilities. I have discussed the major considerations of the liability risks under Idaho law and the primary liability concerns under federal law, which Pioneer should consider. I realize this letter is much longer than you expected. In reality, it is much shorter than I expected. I could go into much greater detail on a number of the issues and will be glad to do so if you desire.

I hope this letter is helpful to you in your consideration of these issues. Please do not hesitate to contact me if you have questions or desire to discuss these issues in greater detail.

Very truly yours,

  
Scott L. Campbell

SLC/dll



## **Appendix E ESA-related Correspondence**





And T 03 R01, Sections 06, 07  
T 02 R02, Sections 1-23  
T 03 R03, Sections 1-24

We would appreciate receiving the ESA species list at your earliest convenience. Please send your response and any other correspondence related to this NEPA process to the Snake River Area Office – West at the address above, Attn: SRA-6121 (Gretchen Fitzgerald). Please contact Gretchen Fitzgerald at 208-383-2231 if you have any questions during the course of this NEPA review.

Sincerely,

JERROLD D. GREGG

Jerrold D. Gregg  
Area Manager

cc: Mr. John Petrovsky  
JPA – John Petrovsky Associates  
4831 Willow Creek Road  
Eagle, ID 83616



# United States Department of the Interior



BUREAU OF RECLAMATION  
Snake River Area Office  
230 Collins Road  
Boise, Idaho 83702-4520

MAR - 2 2007

SRA-6121  
ENV-1.10

## MEMORANDUM

To: U.S. Fish and Wildlife Service, 1387 South Vinnell Way, Suite 368, Boise, ID 83709  
Attn: Mr. Jeffrey Foss

From: Jerrold D. Gregg  
Area Manager

JERROLD D. GREGG

Subject: Request for List of Threatened and Endangered Species Under the Endangered Species Act-Bureau of Reclamation's Pioneer Irrigation District Transfer Title

The Bureau of Reclamation is considering a proposal for title transfer at the request of the Pioneer Irrigation District (PID). The transfer title would include certain Federal drains and associated real property interests to PID. The facilities and land interests included in this proposal are limited to those Reclamation-owned facilities which are operated and maintained by PID and which lie within the PID boundary.

PID is interested in pursuing title transfer in order to streamline operations and maintenance procedures and to enhance their management of the drainage system used to handle agricultural return flows. Although the District has fully paid off its repayment obligations for the Federally-owned portion of the drainage system, title remains with the United States. The proposed title transfer would reduce Reclamation's administrative, oversight, and liability burden for facilities that PID has operated and maintained since they were constructed or improved in the early 1900s. The proposed title transfer is consistent with Reclamation's commitment to a federal government that works better and costs less.

As part of Reclamation's National Environmental Policy Act (NEPA) compliance procedure, Reclamation is formally requesting information on any listed and/or proposed endangered or threatened species that may be present within the proposed project area, as required under the Federal Endangered Species Act (ESA) of 1973. We request that your ESA Species list cover the townships below:

Canyon County, Idaho T 04 R01, Sections 19,30,31  
T 04 R02, Sections 19-36  
T 04 R03, Sections 19-36  
T 04 R04, Sections 22-24, and 27-36

And T 03 R01, Sections 06, 07  
T 02 R02, Sections 1-23  
T 03 R03, Sections 1-24

We would appreciate receiving the ESA species list at your earliest convenience. Please send your response and any other correspondence related to this NEPA process to the Snake River Area Office – West at the address above, Attn: SRA-6121 (Gretchen Fitzgerald). Please contact Gretchen Fitzgerald at 208-383-2231 if you have any questions during the course of this NEPA review.

cc: Mr. John Petrovsky  
JPA – John Petrovsky Associates  
4831 Willow Creek Road  
Eagle, ID 83616

NOV. 27. 2007 9:58AM

NO. 7585 P. 1

BUREAU OF RECLAMATION  
SNAKE RIVER AREA OFFICE  
BOISE, IDAHO  
RECEIVED



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE

MAR 14 07

Idaho State Habitat Office  
10095 Emerald St.  
Boise, Idaho 83704

1000 *JS*  
1200 *JS*  
6/23

March 12, 2007

MEMORANDUM FOR: Jerrold D. Gregg, Area Manager  
 USDI Bureau of Reclamation  
 Snake River Area Office  
 230 Collins Road  
 Boise, ID 83702-4520

FROM: Bill Lind, National Marine Fisheries Service

SUBJECT: Request for Threatened and Endangered Species List under  
 National Marine Fisheries Service Jurisdiction within the Area of  
 Canyon County

This memorandum responds to your March 02, 2007, letter requesting a species list of Endangered Species Act (ESA) listed threatened and endangered species under the jurisdiction of the National Marine Fisheries Service (NMFS) for the Bureau of Reclamation's Pioneer Irrigation District Transfer Title.

The project areas highlighted in the letter are all located in Canyon County. NMFS considers the Hells Canyon Dam as a longstanding, naturally impassable barrier. Consequently, there are no ESA-listed species under NMFS' jurisdiction occurring within watersheds of Canyon County, Idaho. Similarly, there is no designated critical habitat for any ESA-listed fish species under NMFS jurisdiction in Canyon County.

If you have any questions concerning this memorandum, please contact Bill Lind at (208) 378-5697.

Sincerely,  
*David Mabe*

David Mabe  
Idaho State Director







AGENCY  
CANYON COUNTY, IDAHO  
SPECIES LIST 2007-SL-

LISTED SPECIES	COMMENTS
Gray wolf ( <i>Canis lupus</i> )	XN - Experimental/Non-essential population
Bald eagle ( <i>Haliaeetus leucocephalus</i> )	LT - Wintering/Nesting area
Idaho springsnail ( <i>Pyrgulopsis idahoensis</i> )	LE - Mainstem Snake River only

PROPOSED SPECIES/CRITICAL HABITAT

None

CANDIDATE SPECIES<sup>1</sup>

Yellow-billed cuckoo (*Coccyzus americanus*) C

<sup>1</sup>Candidate species have no protection under the Act, but are included for your early planning consideration. Candidate species could be proposed or listed during the project planning period, and would then be covered under Section 7 of the Act. The Service advises an evaluation of potential effects on candidate species that may occur in the project area.

March 2007



## **Appendix F Public Comment Letters and Response**



**HAMILTON, MICHAELSON & HILTY, LLP**  
 ATTORNEYS AT LAW  
 1303 - 12<sup>th</sup> AVENUE ROAD  
 P.O. BOX 65  
 NAMPA, IDAHO 83653-0065

CARL D. HAMILTON  
 TERRY MICHAELSON  
 MARK HILTY

RON SHEPHERD  
 BRYAN K. WALKER  
 TERI A. KAPTEIN  
 DANIELLE S. LARIMER  
 AARON L. SEABLE  
 ELIZABETH L.S. BOWEN  
 MELISSA MOODY  
 MARK OLSON  
 BRYAN TAYLOR

TELEPHONE  
 (208) 467-4479

FACSIMILE  
 (208) 467-3058

E-MAIL  
 CivilLaw@nampalaw.com

September 14, 2007

U.S. Bureau of Reclamation  
 Snake River Area Office  
 Attn: Gretchen Fitzgerald  
 230 Collins Road  
 Boise, Idaho 83702-4520

*Re: Draft Environmental Assessment for Proposed Transfer of USBR Drainage Facilities to Pioneer Irrigation District*

Dear Ms. Fitzgerald:

I write on behalf of my client, the City of Caldwell, Idaho. The purpose of this letter is to comment on the draft Environmental Assessment (EA) dated August 2007 concerning the proposed transfer of U.S. Bureau of Reclamation (USBR) drainage facilities to Pioneer Irrigation District (PID).

**Current Situation**

According to the map included in the EA at Figure 1, virtually all of the facilities proposed for transfer to PID are located within the city limits or areas of city impact for Caldwell and Nampa. I understand that Nampa will be commenting on the draft EA as well. Caldwell wishes to acknowledge our joint interests in this matter with Nampa and support constructive resolution of Nampa's concerns. The EA documents that the area surrounding the drains is rapidly urbanizing and existing land use plans "anticipate conversion of all lands within the city AOIs (see Figure 1) to urban/suburban uses."

September 14, 2007

Page 2

The EA also documents current, existing and active storm water discharges from urban areas into the subject drains. EA at p.18. This appears to be consistent with the capacity and purpose of the drains, all of which were "designed, sized and constructed to manage instances of high ground water levels, irrigation return flows and storm water runoff from agricultural fields."<sup>1</sup> While many of the lands devoted to agriculture have been and will continue to be converted to urban areas, such conversion obviously does not modify the capacity of the drains. The distinction between urban areas and agricultural fields with respect to storm water runoff and flood risk is addressed in more detail later in this letter.

1-1

While the EA seems to indicate that the transfer will not effect a change regarding urban storm water management policy, this oversimplifies an important distinction between USBR and PID. In Appendix B, the EA sets forth USBR's urban storm water management in the form of the Regional Policy Letter of June, 1992. That document requires "proactive planning" and mandates that USBR "shall coordinate with local governments and irrigation districts where applicable to develop a comprehensive drainage plan..." The policy goes on to describe a permitting process that takes into consideration the thoughtful and logical consequences of urban storm water in USBR drainage facilities. The City of Caldwell has questioned the legal authority under which USBR requires permits for urban storm water runoff. Nonetheless, it has also expressed willingness to work in a cooperative approach with USBR toward "a comprehensive drainage plan" that includes review and issuance of a permit.

1-2

In reality, the entire Policy Letter is rendered moot through provisions requiring PID approval and consent. As PID's storm water management policy clarifies (Appendix D), its approach is much more simplistic: No urban storm water is allowed in USBR or PID drainage facilities under any circumstances. To argue in the EA that the transfer of drainage facilities will not affect a change in policy (See pages 11 and 17) is disingenuous. This change has substantial consequences for the vast majority of project "beneficiaries" and requires further analysis.

1-3

With respect to efficiency, it is not true that PID alone maintains the drainage facilities. The City of Caldwell has the responsibility for maintaining all drainages at road crossings and many other piped drains. The City is also involved in drainage issues with interested third parties who are almost exclusively public and private landowners in the process of developing their property. In short, because conflicts are anticipated to continue or increase with PID ownership of the drainage facilities, and because USBR has taken little or no active management role<sup>2</sup> over the facilities, the EA should reevaluate what efficiencies are to be gained from the proposed transfer.

1-4

As the EA recognizes, there are six criteria that must be considered in evaluating any proposed transfer. The City has concerns that the EA is less an objective assessment of the criteria and

<sup>1</sup> Caldwell is concerned with the phrasing of this statement that would suggest the drains were *not* designed to handle storm water runoff from urban areas. Since the drains have been in place for decades while the land uses around them have changed, logic would dictate that the drains must have been designed to accommodate storm water at certain flow rates without regard to the character of lands where the storm water fell. Without further clarification, the City will assume the drains were designed to handle, and are capable of handling, storm water at flow rates expected from unimproved agricultural lands.

<sup>2</sup> "PID would continue to operate and maintain the facilities as part of its integrated system in a manner consistent with its legal and fiduciary responsibilities. *The title transfer would not alter the purpose, management or use of the facilities.*" EA at 11. (Emphasis added).

September 14, 2007

Page 3

more a cooperative effort with PID to express PID positions and rationale for seeking the title transfer. The City of Caldwell respectfully requests that the EA be reanalyzed and reviewed more objectively in light of the following concerns:

**1. Criterion 1: The Federal Treasury And Thereby The Taxpayers' Financial Interests Must Be Protected.**

1-5

The City is concerned about how the financial interests of our residents are advanced by a transfer of liabilities from the Federal Government to PID. It is clear from the EA that PID will be required to assume all liability associated with the drains. Because the vast majority of property owners assessed by PID are urban residents to whom PID would deny drainage rights, and because assessments will be PID's means of paying any liability associated with the drains, it would seem that the majority of assessment payers assume a liability with no benefit.

Ironically, the same urban residents who would help PID pay liabilities associated with the USBR drains would be required to fund construction of another storm water drainage system for their own use. Costs for right-of-way acquisition and infrastructure construction of a new system would be astronomical. Whether transfer truly works to the financial benefit of the taxpayers in the cities of Caldwell and Nampa must be more closely examined.

**2. Criterion 2: There Must Be Compliance With All Federal And State Laws.**

1-6

While the City has questioned whether USBR has the authority to deny urban residents the right to continue discharge of storm water into existing drains at historic levels, it is clear that PID's policy of prohibiting all urban storm water drainage violates Idaho law.

Initially, whether a property owner possesses land that is agricultural or urban in nature, the Idaho Supreme Court has recognized a right for that landowner to discharge storm water down gradient. Though the property may be modified (e.g. developed for urban use), the right exists unless the property has been altered to increase the flooding risk. See *Smith v. King Creek Grazing Ass'n.*, 105 Idaho 644 (Ct. App. 1983). As will be discussed, urban lands in Caldwell do not increase, but actually decrease, the risk of flooding when compared to unimproved agricultural lands.

Second, the vast majority of the property interests held by USBR and PID are undocumented, prescriptive easements. Certainly, the long history of use affords USBR and PID prescriptive rights. However, a prescriptive easement is limited in scope and does not prohibit the underlying property owner from making *any use* of his property as long as it does not "materially interfere" with the prescriptive easement holder's use of the easement area. The easement area is likewise restricted to only that portion of the underlying property that has been actually used historically. See *Bentel v. Bannock County*, 104 Idaho 130, 133 (1983).

Therefore, the underlying property owner has a right to use the drainage facility on his or her property for the conveyance of storm water as long as such use does not material interfere with the use of the prescriptive easement by USBR or PID. For USBR or PID to restrict a property owner from the free use of his property in the absence of any material interference with the

September 14, 2007

Page 4

historic scope of USBR or PID actual prescriptive use is unlawful. See *Nampa & Meridian Irr. Dist. v. Wash. Fed. Savings*, 135 Idaho 518 (2001). If PID's expressed storm water policy to prohibit all use is implemented, it may subject PID and Caldwell property owners and residents to litigation.

Third, from its own experience, the City understands that PID makes assessments on all lands in its district for the operation of its facilities. However, these assessments do not distinguish between PID's irrigation delivery function and PID's drainage function. Therefore, urban users, including the City itself, are assessed by PID for the funds needed by PID to maintain and operate the drains. For PID to make such assessments and then deny assessment payers access to the use of the drains violates the general principle of irrigation district assessments set out at Idaho Code § 43-701 *et. seq.*

Finally, USBR and PID facilities that were obtained by documented grant likely require USBR and PID to permit current property owners the benefits of the facilities. For example, Quitcalim Deed Instrument No. 71604, recorded in the records of Canyon County, transfers property from the Frosts to the United States of America acting under the provisions of the Reclamation Act for a portion of the West End Drain. The consideration given to the Frosts in that deed includes "the benefits to be derived from the construction of irrigation works in the vicinity of the land described herein." Almost certainly, this deed is not unique and many USBR facilities proposed for transfer were acquired upon the extension of similar consideration. Surely, the "benefits to be derived" include access to USBR drainage facilities in perpetuity. Prior to any transfer of USBR facilities to an entity that has expressed its intent to prohibit urban storm water runoff in those facilities, further legal review in the EA is needed.

**3. Criterion 6: The Public Aspects Of The Projects Must Be Protected.**

In an urbanizing area, the public has significant interest in drainages that crisscross developed properties. While the primary interest discussed thus far is the right to discharge urban storm water, public aspects surrounding the facilities themselves and the proposed transfer include the right or ability of the City or third parties to cross these facilities with roadways and utilities and to construct recreational and transportation pathways along their lengths. Prior to any transfer, these public aspects need to be established and protected in order for any true streamlining or efficiency to be achieved.

1-7

On page 9 of the EA, the writer concludes that "[n]o environmental justice issues are associated with the proposed title transfer." Clearly, PID's storm water management policy discriminates between agricultural landowners and urban landowners. The environmental consequences for the elimination of existing drains, or the inability of current agricultural lands to continue historic drainage after development may result in significant adverse environmental impacts. There is no analysis of how the elimination of drainage rights now or in the future might create standing water, flooding, property damage, require the construction of a new storm water system and/or other issues for urban residents to deal with. In light of such discrimination, the EA should clearly analyze the degree of risk posed not only to USBR and PID, but to urban residents who will be left with serious storm water management problems given PID's express intent to prohibit urban storm water discharge.

1-8

September 14, 2007  
Page 5

The EA describes three alleged problems that arise in connection with urban storm water runoff: flooding, water quality issues, and governmental regulation. By letter dated March 1, 2007, the City advised PID's attorney of a detailed analysis undertaken by the City to evaluate the distinction between storm water runoff from agricultural areas and storm water runoff from urban areas that were developed in a manner consistent with the City's Storm Water Management Policy. That analysis concluded that the impact of the City's existing storm water policy is to reduce peak discharges of storm water over what would be anticipated from an undeveloped agricultural field. While the duration of discharge is longer from an urban storm water system and more total water is drained, the critical peak volume, which is most indicative of flood risk, is *reduced* over the peak volume discharged from undeveloped farm ground. I am happy to make this data available to USBR in a reevaluation of the EA.

1-9

Certainly this data would be much more germane than the obvious but irrelevant observation on page 19 that "impervious surfaces in urban areas [result in] greater runoff than from agricultural areas." The analysis in the EA does not take into consideration the impact of the City's Storm Water Management Policy. In order to have any clear understanding of flood risk from urbanizing areas, the EA must be reevaluated in light of the City's urban construction requirements concerning storm water management. At present, there is no thoughtful or compelling reason to believe that urban land use development in Caldwell will result in increased risk of flooding.

The existing EA does not analyze water quality issues outside the context of the Clean Water Act and NPDES permit requirements. It therefore appears to analyze together concerns regarding water quality and regulation. The EA simply sets forth "PID's position" that PID may lose irrigation return flow exemptions under the Clean Water Act and be required to obtain an NPDES permit. This is contrary to EPA's position on the matter. Obviously, since EPA is the primary enforcement authority in Idaho for Clean Water Act issues, the City would like to see EPA's analysis considered in the EA along with "PID's position."

In a letter dated July 22, 2007 from James A. Hanlon, Director of the Office of Wastewater Management for the EPA, to William J. Switzer of the Ada County Highway District, the EPA opinion is expressed that commingled irrigation return flows and urban storm water runoff do not require an NPDES permit as long as the non-agricultural flows in the drain are allowed by NPDES permit. The City of Caldwell has made application for and anticipates in the near future receiving and MS4 permit from EPA authorizing its urban storm water discharges. In light of the dramatic importance of urban storm water discharge to the City of Caldwell, it respectfully requests that the EA be reevaluated and the true regulatory risk assessed more clearly.

1-10

In light of the numerous and ongoing conflicts between the City and PID, it may well be in the greatest public good to see the drainages transferred to the City of Caldwell. By the express terms of the EA, this consideration was given no detailed analysis. In light of the potential for ongoing inefficiencies and conflicts described herein, it is certainly not clear that USBR's desire to "streamline" processes will be achieved by a transfer to PID, but not to the City of Caldwell.

September 14, 2007

Page 6

A transfer to PID rather than the City does not address what the long-term disposition of the facilities might be. The EA acknowledges that virtually all of the land surrounding the facilities to be transferred will be converted to urban or suburban uses within the foreseeable future. If suburban and urban land uses cannot discharge into the facilities, and agricultural lands do not exist in proximity to the facilities, they will have little or no utility. Further, it is questionable whether a reasonable, legal assessment base for the perpetual maintenance of the drains will exist.

1-11

Certainly, the future of the subject drains will be as features in a wholly urban landscape. As such, it would seem to be the urban entity that should be given serious consideration for the transfer. Contrary to the EA's iteration of "PID's position" on page 13, the City is authorized to operate irrigation and drainage facilities. See Idaho Code § 50-332-333; 50-1801 *et seq.*

### Guidelines and Conclusion

In addition to the criteria set out above, the Framework for the Transfer of Title, Bureau of Reclamation Projects, August 7, 1995 sets forth several guidelines that must be considered in connection with any proposed transfer. Of significance to the City of Caldwell are the following:

All transfers must have the consent of other project and beneficiaries. If another beneficiary raises substantive objections which cannot be resolved, the project will remain in Federal ownership.

1-12

Reclamation officials will meet with representatives from all interested Federal and State agencies to consider their concerns early in the transfer process.

The financial interests of the Government and the general taxpayers will be protected.

At this point, the City of Caldwell does not consent to the transfer of USBR facilities to PID. While the transfer makes sense in theory, there are far too many outstanding issues between the City and PID, including but not limited to urban storm water drainage, that must be resolved before the City will have any level of comfort in PID ownership of USBR facilities. We hope and believe that USBR can facilitate resolution of these issues. If such a resolution can be achieved through this current process of considering the proposed transfer, the City may yet withdraw its objection. However, clearly the majority of the "beneficiaries" of USBR facilities reside in the urbanized areas of Nampa and Caldwell. Pursuant to USBR's own framework, those concerns must be resolved or the facilities will remain in Federal ownership.

The City has little faith in the objectivity of the EA as currently drafted. It relies heavily and repeatedly on "PID's position," but misrepresents the City's. The Response List to PID Comments (Appendix C) characterizes a letter from Gordon N. Law of the City of Caldwell as "no objection." In fact, Mr. Law's letter raises no objection "as long as the transfer is made contingent on lands historically drained by said facilities retaining the right to drain at historical rates in perpetuity." Given the general lack of objectivity that characterizes the EA draft at this

1-13

September 14, 2007

Page 7

time, the City regrettably must doubt that the mischaracterization of Mr. Law's comments was inadvertent.

While there are inaccuracies and incomplete analyses fundamental to the transfer Framework, criteria and guidelines, the City is willing to work constructively with USBR, PID and other beneficiaries and interested parties to resolve its concerns and ultimately support the transfer. The City calls upon USBR to fulfill its "proactive planning" obligation to the public by negotiating and issuing storm water discharge permits, binding on PID in the event of transfer, pursuant USBR's regional policy letter.

1-14

Very truly yours,

HAMILTON MICHAELSON & HILTY, LLP



MARK HILTY  
MH/md



Reclamation's responses to the September 14, 2007 comments from Hamilton, Michaelson, & Hilty, LLP

Comment #	Reclamation's response
1-1, 1-2, & 1-3	<p>The September 14, 2007 letter from Hamilton, Michaelson &amp; Hilty, LLP, on behalf of the City of Caldwell, references an analysis of stormwater runoff from agricultural areas and from urban areas that was completed by the City. This information was subsequently provided by Hamilton, Michaelson &amp; Hilty, LLP, in an October 3, 2007 letter. Reclamation has revised the Final EA to reference this analysis (page 19). Reclamation's understanding is that following a potential transfer, the District would review and make decisions on future requests for stormwater discharge permits analogous to their current role in approving permit applications for Reclamation's authorization of any non-agricultural discharges to canals or drains. PID has indicated that the District would continue to operate and maintain the facilities as part of its integrated system in a manner consistent with past and current practices. Further, PID has indicated that current policies and processes would continue such that the Proposed Action would have no effect upon the use and development of land within the District's boundaries.</p> <p>The relevant drainage facilities are transferred facilities, meaning that PID is currently responsible for all operations and maintenance issues. This situation would not change following a title transfer.</p>
1-4	<p>Reclamation acknowledges that current authorized permittees have a responsibility to maintain drainages at road crossings.</p> <p>With respect to efficiencies, Reclamation's purpose and need for the proposed title transfer is to reduce or eliminate costs associated with administering the project facilities that could be efficiently and effectively managed by non-Federal entities and which are not of national importance. This action would allow Reclamation to use its resources more effectively in other areas of water resource management and allow PID to be more efficient in its O&amp;M of the transferred facilities. The facilities and land interests included in this proposed action are limited to those federally-owned facilities which are currently operated and maintained by PID and lie within the District's boundary. At present, even though PID has paid in full its repayment obligation for the federally-owned portion of the drainage system, title remains with the United States. The proposed transfer would address the defined purpose and need by consolidating all responsibilities for the drainage system with one entity, thereby reducing Reclamation's administrative oversight for facilities that PID has operated and maintained since they were constructed or improved in the early 1900s.</p>
1-5	<p>The majority of the drainage system is currently owned, operated, and maintained by PID. The proposed transfer of the remaining portion of the drainage system to PID would consolidate ownership with one entity that has demonstrated its ability to effectively operate and maintain the relevant facilities since the early 1900s. In addition, PID has fully met its repayment obligation to the U.S. Treasury for costs associated with construction of the facilities proposed for transfer; therefore, the Federal Treasury will be protected.</p> <p>Reclamation has identified five stormwater discharges to Reclamation facilities within the PID boundaries; these authorized discharges would not be affected by the proposed title transfer. Further, PID has indicated that following a potential transfer, the District would review and make decisions on future requests for stormwater discharge permits analogous to their current role in approving permit applications for Reclamation's authorization of any non-agricultural discharges to canals or drains. As a result, Reclamation believes that the proposed title transfer would not result</p>

Reclamation's responses to the September 14, 2007 comments from Hamilton, Michaelson, & Hilty, LLP

Comment #	Reclamation's response
	<p>in significant economic impacts to current or future authorized discharges.</p> <p>One comment letter referenced potential economic costs for urban members of PID if a transfer resulted in additional liabilities for these members without corresponding urban runoff benefits. The relevant drainage facilities are transferred facilities, meaning that PID is currently responsible for operations and maintenance issues. Accordingly, liability is effectively with PID in the current situation and would also be with the District following the proposed title transfer. The main effect of title transfer would be that Reclamation would no longer be involved in any questions regarding liabilities that may be incurred by PID for transferred portions of the drainage system, thereby eliminating the potential for Reclamation to incur costs related to such involvement (see Section 2.3 of the EA). As analyzed in the EA, title transfer would not affect PID's current stormwater runoff policies or the District's O&amp;M of the overall drainage system.</p>
1-6	<p>Reclamation fully intends to comply with all State and Federal laws during any potential title transfer. Specific legislation would be required to direct Reclamation to transfer title. Current disagreements between PID and other entities regarding PID's current approach to permitting stormwater discharges may be resolved or may continue, with or without title transfer. Reclamation's understanding is that following a potential transfer, the District would review and make decisions on future requests for stormwater discharge permits analogous to their current role in approving permit applications for Reclamation's authorization of any non-agricultural discharges to canals or drains. This understanding is reflected in the Final EA.</p>
1-7	<p>For the federally-owned drains of the PID drainage system, the public aspects of the project involve authorized non-reimbursable uses, i.e., authorized uses for which the United States is not reimbursed under a repayment contract or similar agreement. These uses generally include recreation, fish and wildlife enhancement, and/or flood control where authorized for specific Reclamation projects. The federally-owned drains of the PID drainage system were authorized under the Reclamation Act of 1902 for irrigation-related purposes and predominantly involve easements (rather than fee title ownership) obtained for those irrigation purposes. The authorized uses for the federally-owned drains of the PID drainage system do not include additional public aspects as referenced in the Framework for the Transfer of Title (i.e., nonreimbursable recreation, fish and wildlife enhancement, or flood control purposes). As a result, the proposed title transfer is consistent with Reclamation's application of the Framework for the Transfer of Title relative to public aspects of the project.</p>
1-8	<p>The environmental justice analysis assesses impacts to minority populations and low-income populations. Because the administration of authorized discharges to the PID drainage system would not significantly change after a title transfer, no environmental justice issues were identified.</p>
1-9	<p>The City's analysis is referenced in the Final EA in Section 3.2.</p>
1-10	<p>A July 20, 2007 letter from EPA (vs. July 22, as stated in the comment), is included in Appendix F in the Final EA, following the comment letter from Perkins Coie.</p>
1-11	<p>As stated previously, the majority of the drainage system is currently owned, operated, and maintained by PID. The proposed transfer of the remaining portion of the drainage system, which represents approximately 35 percent of the total system, would consolidate ownership with one</p>

Reclamation's responses to the September 14, 2007 comments from Hamilton, Michaelson, & Hilty, LLP

Comment #	Reclamation's response
	<p>entity that has demonstrated its ability to effectively operate and maintain the relevant facilities since the early 1900s. Additionally, PID has fully met its repayment obligation to the U.S. Treasury for costs associated with construction of the facilities proposed for transfer.</p> <p>Tile transfer to an entity other than PID would result in PID owning a majority of the drainage system and a second entity owning a minority of the system. This situation could increase rather than decrease coordination required for system operations; shift, rather than eliminate, the need for duplicative administrative actions (i.e., crossing permit review/approval); and add uncertainty about procedures, effectiveness, and legal relationships for continued O&amp;M of the drainage system.</p>
1-12	<p>These concerns are relevant to Reclamation's Framework for the Transfer of Title rather than to the NEPA analysis, and it is premature in the title transfer process to determine that such concerns cannot be resolved since the terms and conditions of a transfer are yet to be developed. The terms and conditions, along with any related transfer legislation, may address and resolve current objections.</p> <p>PID has met its repayment obligation; therefore, the Federal Treasury and public have been protected as noted for comment 1-5 above.</p>
1-13	The Final EA incorporates changes regarding the relevant comments.
1-14	Reclamation will continue to seek opportunities to participate in potential multi-jurisdictional planning and negotiating processes.



SEP -6 07

September 5, 2007

U.S. Bureau of Reclamation  
Snake River Area Office  
Attn: Gretchen Fitzgerald  
230 Collins Road  
Boise, ID 83702-4520

Re: Draft Environmental Assessment for Proposed Transfer Reclamation Drainage Facilities to the Pioneer Irrigation District

Dear Ms. Fitzgerald;

I wish to comment on the proposed transfer of title from the USBR to the Pioneer Irrigation District (PID).

PID has stated their intent in pursuing title transfer is in order to streamline operations and maintenance procedures and to enhance their management of the drainage system used to handle agricultural return flows. What agricultural return flows exist will be gone in a very few years as urban development continues in Canyon County. Those drains cited for transfer all lay within the city limits or impact areas of Nampa and Caldwell. The continued urban development will still require a means of irrigation transport from the reservoir systems so the need for entities such as PID will continue to be needed but maybe in an altered form. Agriculture will no longer be the primary focus but providing irrigation water to the urban dweller. The USBR and PID need to change their mindset.

The rationale behind PID's thinking regarding storm water and urban runoffs seems flawed. PID's position is that because ... "a NPDES permit is required for municipal (urban) storm water discharges, if PID permits urban storm water discharges into its system, the agricultural exemption could be lost and the District would incur the expense and liability associated with obtaining a NPDES permit and meeting associated water treatment requirements." PID should not be able to unilaterally deny cities and other urban areas storm water runoff ability. PID should be working together with Nampa and Caldwell to develop a partnership agreement for storm water and urban runoffs. PID would not have the US government oversight if title were transferred. The agricultural exemption may be withdrawn if the governing agencies became aware of the loss of agriculture lands in the Canyon County area.

The draft EA states only Mason Creek has a perennial flow. This is not correct most if not all drains have a year round water flow. The water level is lower during the non-

irrigation periods but there is definitely water flow. This water provides habitat for birds, animals, fish and other aquatic life during the winter months.

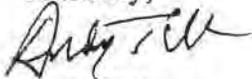
I fished the drains in my younger years and currently see young people fishing these drains – trout is present. So these are fishable waters. How will the transfer affect fishing opportunity? 2-2

The Idaho Department of Environmental Quality (DEQ) and Lower Boise Watershed Council are preparing a revision of the 2001 study of the “Lower Boise River Tributaries for Use Attainability Analyses” (UAA) for submittal to the USEPA. The Lower Boise River watershed is a complex network of natural drainages and manmade storage facilities and irrigation canals/drains. The UAA is being performed primarily on “creeks” but creeks are not the only year round waterways in Canyon County. As I stated above most if not all drains have perennial water flows due to high ground water levels. The drains being proposed to have title transferred in all probability have similar characteristics and are subject to a UAA. Mason Creek is one of those under the UAA study and is proposed for title transfer. 2-3

I do not feel it in the best interest of the citizens of Canyon County to transfer title of the USBR drainage facilities to PID at this time. Canyon County currently is going through tremendous growing pains. When Canyon County is more urbanized and the needs of its citizenry can be better understood a transfer of title may be more appropriate.

Please consider my comments in the final decision of title transfer.

Sincerely,



Andy Tiller  
738 West Kinghorn Drive  
Nampa, ID 83651  
208-465-5075

Reclamation's responses to the September 5, 2007 written comments from Andy Tiller

Comment #	Reclamation's response
2-1	<p>Reclamation contacted PID regarding potential perennial flows in drains other than Mason Creek. All of the drains are reported to have perennial flows with the exception of the Bardsley Gulch Drain, Parker Gulch Drain, Solomon Drain, and the Yankee Drain. The Final EA has been revised to reflect this information.</p>
2-2	<p>Reclamation contacted the Idaho Fish and Game Department (IDFG) regarding potential fishing uses of the PID drainage system. IDFG indicated that while it is possible that some fishing may occur in the canals and drains, an Idaho fishing license would be required for this activity and it is permissible as long as there is no trespassing onto private property. Because PID has indicated that management of the drainage system will not change appreciably following a potential title transfer, the Proposed Action would not affect possible fishing uses.</p>
2-3	<p>The July 2007 Draft Work Plan, <i>Lower Boise River Tributaries Use Attainability Analyses</i>, prepared by the Idaho Department of Environmental Quality (IDEQ) and the Lower Boise Watershed Council, references Mason Creek. However, the document indicates that only one of the lower Boise tributaries (Fifteenmile Creek) is being targeted for further analysis at this time. Because the study is not targeting Mason Creek or other PID drains, and because PID has indicated that management of the drainage system will not change appreciably following a potential title transfer, the Proposed Action would not affect the referenced study or related efforts.</p>





251 East Front Street, Suite 400  
Boise, ID 83702-7310  
PHONE: 208.343.3434  
FAX: 208.343.3232  
www.perkinscoie.com

Erika E. Malmen  
PHONE (208) 387-7504  
FAX (208) 343-3232  
EMAIL: EMalmen@perkinscoie.com

September 14, 2007

VIA FACSIMILE (208-383-2275) AND U.S. MAIL

The Bureau of Reclamation  
Snake River Area Office  
Attn: Gretchen Fitzgerald  
230 Collins Road  
Boise, ID 83702-4520

**Re: Draft Environmental Assessment for Proposed Transfer of Title for Bureau of Reclamation Drainage Facilities to the Pioneer Irrigation District, Boise, Project, Idaho  
Client-Matter No. 58780-0004**

Dear Ms. Fitzgerald:

Thank you for the opportunity to provide comments on the Draft Environmental Assessment ("EA") for the proposed transfer of facilities from the U.S. Bureau of Reclamation ("BOR") to the Pioneer Irrigation District ("PID"). This letter comprises the Ada County Highway District ("ACHD") comments on the EA and incorporates by reference ACHD's initial comments submitted to BOR regarding the proposed transfer on or about March 21, 2007.

As a general matter, the EA is premised on inaccurate factual and legal assumptions. The integrity of the effects analysis in the EA is dependent upon no change in operations, yet the EA acknowledges that there will be changes in operations. For example, ACHD is currently discharging storm water into PID-managed facilities under an existing National Pollutant Discharge and Elimination System ("NPDES") permit. However, PID will not continue to allow current or future storm water discharge into the facilities once transferred. The EA states that "PID indicates that the District's current position of *not allowing urban runoff discharges* to its system would *remain in force*."<sup>1</sup>

3-1

<sup>1</sup> EA at page 20 (emphasis added).

58780-0004/LEGAL13550276.1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DENVER · LOS ANGELES · MENLO PARK  
OLYMPIA · PHOENIX · PORTLAND · SAN FRANCISCO · SEATTLE · SHANGHAI · WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

The changes in operations resulting from transfer will result in significant environmental impacts presently unaccounted for in the EA. For example, if storm water can no longer drain into the facilities at issue, where will it go and what are the potential environmental impacts? What are the environmental impacts of constructing additional drainage facilities? The previous questions are just a few examples of questions that should be, but have not been, addressed in the EA. 3-2

ACHD is troubled that the only legal assertions BOR considers in the EA is that of PID.<sup>2</sup> The EA is replete with the legal assertions of PID, at least one of which is inaccurate, such as PID's assertion that the commingling of storm water and agricultural return flow compromise the exempt status of irrigation return flow.<sup>3</sup> 3-3

As more fully articulated in ACHD's initial comments, criteria numbers one (1), two (2), and six (6) of BOR's "Framework for the Transfer of Title" have not been met or adequately addressed in the EA. The EA's conclusion that PID meets the criteria for transfer is unsupported by the facts. 3-4

In conclusion, ACHD does not believe that the EA addressed the concerns raised by ACHD in its initial comments and asserts that the current NEPA analysis is inadequate. Please contact me with questions or concerns.

Very truly yours,

PERKINS COIE LLP



Erika E. Malmen

EEM:kjg  
Attachment

cc: Client

<sup>2</sup> See, e.g., EA at pages 13, 18, and 19.

<sup>3</sup> The U.S. Environmental Protection Agency's position is that commingling of irrigation return flow and storm water does not automatically revoke the exempt status of irrigation return flow and that commingled flow does not need its own NPDES permit for the commingled discharge. See attachment.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUL 20 2007

OFFICE OF  
WATER

Mr. William J. Schweitzer  
Director  
Ada County Highway District  
3775 Adams Street  
Garden City, Idaho 83714

Dear Mr. Schweitzer:

Thank you for your letter dated January 9, 2006, and subsequent correspondence dated February 21, 2007. You asked us whether the discharge from a conveyance that transports irrigation return flow is subject to National Pollutant Discharge Elimination System (NPDES) permitting requirements if the conveyance also carries stormwater which has been discharged into the conveyance pursuant to an existing NPDES permit.<sup>1</sup> We apologize for the delay in responding to your initial inquiry.

The Clean Water Act (CWA) requires a permit for the "discharge of any pollutant by any person" (CWA § 301(a), USC § 1311(a)). "Discharge of a pollutant" is defined as "any addition of any pollutant to navigable waters from any point source." (CWA § 502(12), 33 U.S.C. § 1362(12)). A point source is defined as "any discernible confined and discrete conveyance, . . . from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff." (CWA § 502(14), 33 U.S.C. § 1362(14), 40 CFR § 122.2).

As you know, irrigation return flows are excluded from regulation under the NPDES program (40 CFR § 122.3(f)). Even though an operator may retain irrigation return flow exemptions for portions of its discharge, the stormwater portions of its discharge may still be subject to NPDES regulation. As defined in section 40 CFR 122.26, stormwater discharges from certain municipal separate storm sewer systems (MS4s), construction sites greater than one acre, certain industries, and other designated sources require an NPDES permit. MS4s are defined at 40 CFR § 122.26(b)(4) and (b)(7).

---

<sup>1</sup> In this letter, the Environmental Protection Agency (EPA or Agency) is not addressing whether the Bureau of Reclamation conveyance and drain facilities in question would be considered part of a municipal separate storm sewer system, waters of the United States, both, or neither.

As noted in the preamble to the NPDES Permit Application Regulations for Storm Water Discharges (Phase I Rule), EPA's longstanding position is that irrigation return flows are exempt from permit coverage and commingling of irrigation return flow and stormwater does not automatically revoke the exempt status of irrigation return flow:

One commenter stated that irrigation flows combined with stormwater discharges should be excluded from consideration in the stormwater program. The Agency would note that irrigation return flows are excluded from regulation under the NPDES program. Section 402(1) states that the Administrator or the State shall not require permits for discharges composed entirely of return flows from irrigated agriculture. The legislative history of the 1977 Clean Water Act, which enacted this language, states that the word "entirely" was intended to limit the exception to only those flows which do not contain additional discharges from activities unrelated to crop production. Congressional Record Vol. 123 (1977), pg. 4360, Senate Report No. 95-370. Accordingly, a stormwater discharge component, from an industrial facility for example, included in such "joint" discharges may be regulated pursuant to an NPDES permit either at the point at which the stormwater flow enters or joins the irrigation return flow, or where the combined flow enters waters of the United States or a municipal separate storm sewer. 55 Fed. Reg. 47990, 47996 (Nov. 16, 1990)

Regulated stormwater may not be discharged into receiving waters without a permit. Additionally, other point source discharges of pollutants to waters of the United States are only permissible pursuant to an NPDES permit. It is the position of the Agency that these point source discharges may be authorized by a permit at the point they discharge to receiving waters or at the point they discharge into a separate conveyance. If an operator of a conveyance is transporting commingled irrigation return flow and a regulated point source discharge, the conveyance operator may need to be authorized to discharge under an NPDES permit if the regulated point source discharge is not already covered under a permit. In other words, if the point source discharge is already subject to an NPDES permit (e.g., an MS4 permit) before it is commingled with the irrigation return flow, the operator of the conveyance transporting that commingled flow does not need its own NPDES permit for the commingled discharge.

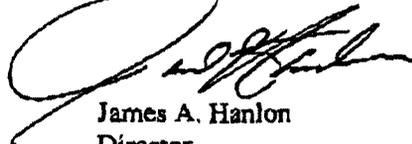
However, if there are any sources of stormwater discharged into the conveyance that require a permit but have not received that permit, then the discharge of the resulting mixture of the stormwater and irrigation return flows could be subject to NPDES permit requirements. The permitting authority may then determine that the operator of the conveyance must seek permit coverage as a permittee or co-permittee. Hence, if the operator of the irrigation conveyance wants to assure that their discharge of commingled stormwater and irrigation return flows will not be subject to NPDES permitting requirements, they must make certain that all regulated stormwater discharged into their conveyance has received appropriate permit coverage. In the facts you describe, if the Ada County Highway District (ACHD) holds an MS4 permit for the stormwater it introduces to the Bureau of Reclamation irrigation canals, the Bureau of Reclamation will not need to obtain an NPDES permit to lawfully discharge the resulting commingled irrigation return flows and stormwater.

Your letter also asked whether "agricultural runoff and irrigation return flows that are also conveyed through these Bureau of Reclamation facilities to waters of the U.S. remain exempt from NPDES permit requirements." The answer is yes. Commingling of agricultural runoff, irrigation return flow and NPDES-permitted stormwater discharges does not revoke the exempt status of irrigation return flow from NPDES program requirements. In other words, the discharge of regulated stormwater authorized by a permit does not affect the status of the irrigation return flow with which it is commingled.

In summary, ACHD's stormwater discharge does not need to be authorized under two NPDES permits. If all regulated stormwater is subject to a permit before entering the conveyance, then the Bureau of Reclamation will not be required to obtain permit coverage for its discharge of commingled irrigation return flow and regulated stormwater.

I hope this addresses your request. If you have further questions, please contact Ryan Albert of my staff at (202) 564-0763 or Karyn Wendelowski in the Office of General Counsel at (202) 564-5493.

Sincerely,



James A. Hanlon  
Director  
Office of Wastewater Management



Reclamation's responses to the September 14, 2007 written comments from Perkins Coie

Comment #	Reclamation's response
3-1	<p>Reclamation understands that PID's current position is that unauthorized discharges to the District drainage system will not be allowed, and that this position will remain the same with or without a title transfer. The five currently authorized stormwater discharges would also not be affected by the proposed transfer.</p>
3-2	<p>Your September 14, 2007, letter on behalf of the Ada County Highway District (ACHD) included a July 20, 2007 letter from the U.S. Environmental Protection Agency (EPA) regarding irrigation return flows and stormwater runoff. Reclamation acknowledges that EPA's letter provides clarification of issues associated with a long-standing legal or regulatory concern that Reclamation and affected irrigation districts have had regarding the introduction of stormwater runoff to single-purpose irrigation drains. The EPA statement is applicable to both (a) the current situation, where some of the drains within the PID boundaries are federally owned, and (b) a post-transfer situation, where the full drainage system would be owned by PID. EPA's position does not affect the existing requirement for discharges to federally-owned drainage facilities within the PID boundaries to be authorized under a permit from Reclamation and approved by the irrigation district (see Reclamation's <i>Regional Policy on the Discharge of Stormwater Drainage</i>, Appendix B). Reclamation has identified five stormwater discharges to Reclamation facilities within the PID boundaries; these authorized discharges would not be affected by the proposed title transfer.</p> <p>PID has indicated that following a potential transfer, the District would review and make decisions on future requests for stormwater discharge permits analogous to their current role in approving permit applications for Reclamation's authorization of any non-agricultural discharges to canals or drains. Additionally, following a potential transfer, the District would continue to review and make decisions on future requests for consent to use and/or crossing agreements equal to their current role in approving permit applications for Reclamation's authorization of consent to use and/or crossing agreements.</p>
3-3	<p>The Draft EA summarized positions taken by PID regarding the District's concerns about managing urban stormwater volumes in the drainage system facilities and the regulatory status of irrigation return flows and/or stormwater runoff. As noted above, legal and regulatory concerns are clarified by EPA's July 20, 2007 guidance letter. The information included in the Draft EA was intended to disclose and clarify the District's interest in approaching Reclamation about a potential title transfer. Reclamation's purpose and need for the proposed title transfer is to reduce or eliminate costs associated with administering the project facilities that could be efficiently and effectively managed by non-Federal entities and which are not of national importance. This action would allow Reclamation to use its resources more effectively in other areas of water resource management and allow PID to be more efficient in its O&amp;M of the transferred facilities. While the proposed title transfer would address Reclamation's purpose and need and satisfy PID's intent for seeking title transfer, it would not resolve current disagreements between PID and other entities regarding urban runoff volume and timing and urban runoff water quality. Reclamation has revised the Final EA to reflect the differing positions of other entities regarding urban runoff volume and timing and urban runoff water quality.</p>
3-4	<p><b>Criterion 1</b> – The majority of the drainage system is currently owned, operated, and maintained by PID. The proposed transfer of the remaining portion of the drainage system to PID would consolidate ownership with one entity that has demonstrated its ability to effectively operate and</p>

Reclamation's responses to the September 14, 2007 written comments from Perkins Coie

Comment #	Reclamation's response
	<p>maintain the relevant facilities since the early 1900s. In addition, PID has fully met its repayment obligation to the U.S. Treasury for costs associated with construction of the facilities proposed for transfer; therefore, the Federal Treasury will be protected.</p> <p>One comment letter referenced potential economic costs for urban members of PID if a transfer resulted in additional liabilities for these members without corresponding urban runoff benefits. The relevant drainage facilities are transferred facilities, meaning that PID is currently responsible for all operations and maintenance issues. This situation would not change following a title transfer.</p> <p><b>Criterion 2</b> – Reclamation fully intends to comply with all State and Federal laws during any potential title transfer. Specific legislation would be required to authorize Reclamation to transfer title. Reclamation's understanding is that following a potential transfer, the District would review and make decisions on future requests for stormwater discharge permits analogous to their current role in approving permit applications for Reclamation's authorization of any non-agricultural discharges to canals or drains. This understanding is reflected in the Final EA.</p> <p><b>Criterion 6</b> – For the federally-owned drains of the PID drainage system, the public aspects of the project involve authorized non-reimbursable uses, i.e., authorized uses for which the United States is not reimbursed under a repayment contract or similar agreement. These uses generally include recreation, fish and wildlife enhancement, and/or flood control where authorized for specific Reclamation projects. The federally-owned drains of the PID drainage system were authorized under the Reclamation Act of 1902 for irrigation-related purposes and predominantly involve easements (rather than fee title ownership) obtained for those irrigation purposes. The authorized uses for the federally-owned drains of the PID drainage system do not include additional public aspects as referenced in the Framework for the Transfer of Title (i.e., nonreimbursable recreation, fish and wildlife enhancement, or flood control purposes). As a result, the proposed title transfer is consistent with Reclamation's application of the Framework for the Transfer of Title relative to public aspects of the project.</p>



City of Nampa  
Public Works Department

September 14, 2007

United States Department of the Interior  
Bureau of Reclamation  
Snake River Area Office  
230 Collins Road  
Boise, ID 83702-4520

Attn: Gretchen Fitzgerald

Re: Draft Environmental Assessment for Proposed Transfer of Title for Bureau of Reclamation Drainage Facilities to the Pioneer Irrigation District, Boise Project, Idaho

Dear Ms. Fitzgerald:

The City of Nampa is submitting these comments in response to the Bureau of Reclamation's proposed transfer of nearly 77 miles of water conveyance facilities to Pioneer Irrigation District (PID). While the City of Nampa recognizes that the intent of this proposed transfer is to eliminate the Bureau's role in the ownership of these facilities, we object to the proposed transfer because the Bureau has not provided a complete analysis as to how such a proposed action would meet goals 1 and 6 as stated in the draft environmental assessment (EA). Specifically, this requires a showing and analysis that the transfer will satisfy this:

- 1) The Federal Treasury and thereby the taxpayers' financial interests must be protected, and 4-1
- 6) The public aspects of the project must be protected. 4-2

The proposed agreement does not appear to address either of these requirements except to conclude that there is a belief that these criteria are met with the proposed transfer.

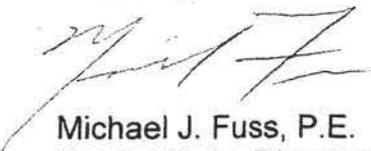
The City's concerns with the proposed transfer to PID focus upon the changing use of the lands through rapid urbanization to which these facilities serve. These concerns of urbanizing uses were originally raised by the City of Boise's Public Works Department in their response to the Scoping of Issues for this transfer in a letter dated April 13, 2007, received by the Bureau. As such, those comments

and concerns are adopted herein. The urbanization of these areas served by this infrastructure causes concern to the local jurisdictions because of PID's well known policy to not accept any future storm water from urbanizing areas and the District's intentions to scale back the facilities current acceptance of historical waters from urbanized landscapes. While the future landscapes of these areas develop, the proposed transfer will be to an agriculture based irrigation district whose demonstrated intentions are to limit the use of such facilities. The urbanization of these areas coupled with PID's policies will create the need for additional infrastructure to be developed, at a direct cost to the taxpayers. The draft EA has failed to address any of these concerns at this time. If these issues of the urbanization of the traditional agricultural uses can be resolved and the future needs of those areas can be rectified with PID's policies, then the City of Nampa would consider withdrawing its present opposition to the proposed transfer.

The draft EA also states that no other entity has the legal qualifications to receive title to the facilities. The City of Nampa manages its own separate municipal irrigation system within the City boundaries, pursuant to Idaho Code § 50-1801 *et seq.* and has the authority to "regulate, control and supervise the distribution of all water used by the inhabitants thereof for irrigation purposes." Idaho Code § 50-1802. While a transfer of such facilities to the City of Nampa may not meet the Bureau's stated goal of consolidating management with a single entity, there is no support for the conclusion that the City is not legally qualified as a recipient of such facilities.

Additionally, the City of Nampa has previously submitted comment on March 21, 2007, regarding its concerns for pathway easements. As such, those comments have remained unaddressed and the City further incorporates those comments herein. The City of Nampa understands that the City of Caldwell is also submitting comments regarding this proposed transfer to PID. As such, the concerns raised by the City of Caldwell are substantially similar as the City of Nampa and such comments by Caldwell are fully supported by Nampa and are adopted herein.

Sincerely,

A handwritten signature in black ink, appearing to read "M. J. Fuss", is written over a horizontal line.

Michael J. Fuss, P.E.  
Public Works Director

CG

cc: Terrence R. White, Attorney, White Peterson  
Robin Finch, City of Boise  
Gordan Law, P.E., City of Caldwell

Reclamation's responses to the September 14, 2007 written comments from the City of Nampa Public Works Dept.

Comment #	Reclamation's response
4-1	Within the framework of the proposed transfer of title for the PID drainage facilities, PID has met its repayment obligation; therefore, the Federal Treasury will be protected.
4-2	<p>For the federally-owned drains of the PID drainage system, the public aspects of the project involve authorized non-reimbursable uses, i.e., authorized uses for which the United States is not reimbursed under a repayment contract or similar agreement. These uses generally include recreation, fish and wildlife enhancement, and/or flood control where authorized for specific Reclamation projects. The federally-owned drains of the PID drainage system were authorized under the Reclamation Act of 1902 for irrigation-related purposes and predominantly involve easements (rather than fee title ownership) obtained for those irrigation purposes. The authorized uses for the federally-owned drains of the PID drainage system do not include additional public aspects as referenced in the Framework for the Transfer of Title (i.e., nonreimbursable recreation, fish and wildlife enhancement, or flood control purposes). As a result, the proposed title transfer is consistent with Reclamation's application of the Framework for the Transfer of Title relative to public aspects of the project.</p>
4-3	<p>PID has indicated that following a potential transfer, the District would review and make decisions on future requests for stormwater discharge permits analogous to their current role in approving permit applications for Reclamation's authorization of any non-agricultural discharges to canals or drains. Additionally, following a potential transfer, the District would continue to review and make decisions on future requests for consent to use and/or crossing agreements equal to their current role in approving permit applications for Reclamation's authorization of consent to use and/or crossing agreements. As a result, Reclamation believes that the proposed title transfer would not result in significant economic impacts to current or future authorized discharges.</p>
4-4	<p>The Final EA has been revised to clarify these issues. Reclamation's purpose and need for the proposed title transfer is to reduce or eliminate costs associated with administering the project facilities that could be efficiently and effectively managed by non-Federal entities and which are not of national importance. This action would allow Reclamation to use its resources more effectively in other areas of water resource management and allow PID to be more efficient in its O&amp;M of the transferred facilities. The majority of the drainage system is currently owned, operated, and maintained by PID. The proposed transfer of the remaining portion of the drainage system, which represents approximately 35 percent of the total system, would consolidate ownership with one entity that has demonstrated its ability to effectively operate and maintain the relevant facilities since the early 1900s. Additionally, PID has fully met its repayment obligation to the U.S. Treasury for costs associated with construction of the facilities proposed for transfer.</p> <p>Tile transfer to an entity other than PID would result in PID owning a majority of the drainage system and a second entity owning a minority of the system. This situation could increase rather decrease coordination required for system operations; shift, rather than eliminate, the need for duplicative administrative actions (i.e., crossing permit review/approval); and add uncertainty about procedures, effectiveness, and legal</p>

	relationships for continued O&M of the drainage system. Transfer of title for federally-owned segments of the drainage system to a non-Federal entity other than PID would not consolidate management with a single entity and could be counterproductive to the goal of enhancing process efficiencies. The proposed title transfer is consistent with the objectives outlined in Reclamation's title transfer program.
4-5	As described in Section 3.1.2 of the Final EA, Reclamation's understanding is that PID would continue current policies and processes such that the Proposed Action would have no effect on the use of land within the District's boundaries. Any existing authorized uses would continue to be honored by the District and would not be affected by the proposed transfer.

ADA COUNTY  
DEVELOPMENT SERVICES

SLAKE RIVER AREA OFFICE  
BOISE, IDAHO  
RECEIVED



PHONE (208) 287-7900  
FAX (208) 287-7909

200 W. FRONT, BOISE, IDAHO 83702-7390 16 07

BUILDING • ENGINEERING • PLANNING • ZONING

August 15, 2007

The Bureau of Reclamation  
Snake River Area Office  
Attn: Gretchen Fitzgerald  
230 Collins Road  
Boise, ID 83702-4520

Re: Draft Environmental Assessment for Proposed Transfer of Title for Bureau of Reclamation Drainage Facilities to the Pioneer Irrigation District, Boise Project, Idaho

Dear Ms. Fitzgerald,

I reviewed the draft EA sent to Ada County for the above referenced subject and have only one comment. Page 16 (3.1.1, Land Use – Affected Environment) states “section of the Fivemile Drain that lies in Ada County (but still within Nampa’s AOI)” – which is not correct, Ada County does not have an Area Of Impact agreement with the City of Nampa. The confusion may stem from the COMPASS map (labeled Figure 1), which does not show the “City Areas of Impact” line type (thick dashed blue line) along the county boundaries (artistic license taken by COMPASS). At present, the four square miles north of Ustick Road and east of Can-Ada Road are not within any City Area Of Impact.

5-1

Sincerely,

*David Wells*  
David Wells, P.E.  
ASSISTANT COUNTY ENGINEER  
Ada County Development Services  
DLW/dw  
File: Engineering correspondence



Reclamation's responses to the August 15, 2007 written comments from Ada County Development Services

Comment #	Reclamation's response
5-1	Thank you for this clarification. The Final EA has been revised.





10008  
1100 CAS  
6100  
BOISE, IDAHO  
RECEIVED

AUG 30 07

Mayor: Nancy C. Merrill

CITY OF EAGLE

P.O. Box 1520  
Eagle, Idaho 83616  
939-6813

Council: Stanley J. Bastian  
Phil Bandy  
Steve Guerber  
Scott Nordstrom

August 28, 2007

Mr. Jerrold Gregg  
United States Department of the Interior  
Bureau of Reclamation  
Snake River Office  
230 Collins Road  
Boise, Idaho 83702

Dear Mr. Gregg

The City of Eagle offers this letter of support to Pioneer Irrigation District's (PID) request to transfer the title, rights, and interests held by the United States in certain drainage facilities constructed by the Bureau of Reclamation (BOR) within the PID's service area.

We understand BOR provides oversight, and the PID operates, maintains, manages, and administers the facilities proposed for the title transfer, and has done so since the facilities were originally constructed. Should the PID's request for transfer be granted, it is our understanding, BOR would continue to request the PID's approval of any actions affecting the facilities or related land interests. This process would present opportunities for enhancing efficiencies for both BOR and the PID.

6-1

During the flooding of 2006 the City of Eagle and the PID worked closely to help mitigate the impacts on homeowners in the City of Eagle. We learned local agencies working with local agencies can solve problems working together for the benefit of the general public.

We support PID's request and look forward to many more years of good working relationships with both the Pioneer Irrigation District and the Bureau of Reclamation.

Sincerely,

Nancy C. Merrill  
Mayor

cc: Eagle City Council  
Allen Newbill Chairman Pioneer Irrigation District  
Pioneer District Board of Directors



Reclamation's responses to the August 30, 2007 comment letter from the City of Eagle

Comment #	Reclamation's response
6-1	For clarification, if the proposed title transfer is authorized, Reclamation would no longer be involved in reviewing or approving actions affecting the facilities or related land interests.



# Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

Boise  
Idaho Falls  
Pocatello  
Twin Falls

Eugene C. Thomas  
John W. Barrett  
R. B. Rock  
Richard C. Fields  
John S. Simko  
John C. Ward  
D. James Manning  
David B. Lincoln  
Gary T. Dance  
Larry C. Hunter  
Randall A. Peterman  
Mark S. Prusynski  
Stephen R. Thomas  
Glenna M. Christensen  
Gerald T. Husch  
Scott L. Campbell  
Robert B. Burns

Michael E. Thomas  
Patricia M. Olsson  
Christine E. Nicholas  
Bradley J. Williams  
Lee Radford  
Michael O. Roe  
David S. Jensen  
James L. Martin  
C. Clayton Gill  
Michael W. McGraham  
David P. Gardner  
Tara Martens  
Julian E. Gabiola  
Kimberly D. Evans Ross  
Jason G. Murray  
Mark C. Peterson  
Paul D. McFarlane

Jon A. Stenquist  
Tyler J. Henderson  
C. Edward Cather III  
Andrew J. Walders  
Tyler J. Anderson  
Dylan B. Lawrence  
Benjamin C. Ritchie  
Rebecca A. Rainey  
Nathan R. Starnes

Robert E. Bakes, *of counsel*

*Willis C. Moffatt, 1907-1980*  
*Kirk R. Helvie, 1956-2003*

US Bank Plaza Building  
101 S Capitol Blvd 10th Fl  
PO Box 829  
Boise Idaho 83701 0829

208 345 2000  
800 422 2889  
208 385 5384 Fax  
www.moffatt.com

September 14, 2007  
via E-mail  
gfitzgerald@pn.usbr.gov  
and U.S. Mail

Gretchen Fitzgerald  
The Bureau of Reclamation  
Snake River Area Office  
230 Collins Road  
Boise, ID 83702-4520

**Re: Written Comments on Draft EA for Proposed Title Transfer to Pioneer Irrigation District**

MTBR&F File No. 18-946.0111

Dear Gretchen:

The purpose of this letter is to provide you with Pioneer Irrigation District's written comments on the Bureau's draft Environmental Assessment ("EA") of August 2007. As you know, the draft EA evaluates the potential impacts of a proposal to transfer the Bureau's interests in federally-owned drains lying within Pioneer's boundaries to Pioneer. For the following reasons that are discussed in the draft EA, Pioneer supports the proposed title transfer.

1. Pioneer fully repaid its obligations to the federal government for the construction of the drains many years ago. In addition, transferring title to Pioneer would relieve the Bureau of the responsibilities and potential liabilities associated with ownership of the drains. Accordingly, title transfer would be protective of the federal treasury and taxpayer interests, which is one of the criteria in the Bureau's title transfer framework document.
2. Pioneer has had sole responsibility for the operation and maintenance of the drains to be transferred since their construction, and Pioneer would continue to operate and maintain the transferred drains as it had prior to title transfer. Accordingly, as the draft EA indicates, title transfer should not adversely impact land use, hydrology and water quality, biological resources, and protected species.
3. The only potential adverse consequence identified by the draft EA with respect to cultural resources would be the transfer of the drains out of federal ownership. However, as the draft EA notes, if the title transfer is approved, then Pioneer, the

Bureau, and the State Historic Preservation Officer would execute a Memorandum of Agreement to mitigate the loss of federal ownership by documenting the significance of Pioneer's drainage system.

7-1

4. Title transfer would streamline the approval process for requests by developers and governmental entities to alter the drainage facilities and easements. Currently, both Pioneer and the Bureau review these types of requests. Title transfer would eliminate this need, vesting sole responsibility for reviewing such proposals with Pioneer -- the entity in the best position to assess the potential effects of the proposed alteration.

I would also like to briefly respond to comments on the title transfer scoping letter that were submitted to the Bureau by various state and local governmental entities and which are summarized in Appendix C of the draft EA. Based upon my reading of those comment letters, the primary concerns expressed were: (1) consideration of title transfer to local governmental entities other than Pioneer; (2) reservation of easements for future pathways along the drains; and (3) ensuring that Pioneer will allow discharges of storm water into the drains. I will briefly address each of these concerns in turn.

As the draft EA explains, the transfer of title to the drains to governmental entities other than Pioneer would not meet the purpose and need of the proposed title transfer. Part of the justification for title transfer is to consolidate ownership and operation of the drains in one entity. Doing so would result in efficiencies, particularly with respect to the review of proposals to alter the drains and their associated easements. By transferring ownership to an entity other than Pioneer, ownership and operation of the drains would still be split between two entities.

7-2

In addition, the drains in question are operated as part of a much larger, integrated delivery and drainage system. In fact, some of the drains carry live irrigation water. Simply put, Pioneer is the only entity with the expertise and legal obligation to operate the drains in connection with the rest of its delivery and drainage system. Transferring title to the drains to another entity would be inconsistent with state law, the contracts between the Bureau and Pioneer, the purpose of the drains, the rights of underlying landowners, and the efficient exercise of Pioneer's operational responsibilities.

The title transfer should not include reservations of easements for public pathways along the drains. Pioneer has allowed paths along its facilities in appropriate circumstances in the past and will continue to consider such proposals in the future. However, pathway proposals must be evaluated on a case-by-case basis. Before accepting such a proposal, Pioneer must ensure that it would not interfere with Pioneer's operation and maintenance activities, increase repair and maintenance requirements, or create unacceptable safety or liability risks. In addition, obtaining such easements would require the approval of the underlying fee title owner, since the Bureau's interests in the drain segments consist primarily of easements and rights-of-way,

7-3

Gretchen Fitzgerald  
September 14, 2007  
Page 3

rather than outright ownership. Simply put, including a blanket reservation of pathway easements in the title transfer would not be appropriate.

While Pioneer understands the concerns expressed over storm water discharges into the drains, those concerns are misplaced in the context of the National Environmental Policy Act (NEPA)—the statute that governs this process. The purpose of NEPA is to analyze the environmental effects of a proposed federal action. As the draft EA explains, it is already the official policy of the Bureau to refer all requests to discharge storm water into the drains to Pioneer. Accordingly, transferring title to Pioneer would not affect the review of those requests. If a party feels that it has been aggrieved by a Pioneer decision on such a request, then it may challenge that decision at that time.

7-4

I would also like to express my agreement with the draft EA's characterization of Pioneer's concerns regarding discharges of urban storm water runoff into its facilities. As the draft EA notes, these drains were constructed almost 100 years ago for the purpose of draining away agricultural "seepage" water. However, urban storm water runoff generally occurs in larger volumes and at faster rates than agricultural seepage due in large part to the impervious surfaces that are associated with urban development. Allowing urban storm water runoff into these drains would simply overwhelm them, exposing adjacent landowners to flood damages and exposing Pioneer to liability for such damages.

Allowing urban storm water discharges into its facilities would also expose Pioneer to liabilities under the Clean Water Act (CWA). The CWA has stringent permitting and treatment requirements for discharges of municipal storm water runoff, but specifically exempts agricultural return flows from those requirements. If Pioneer were to allow discharges of urban storm water runoff into its facilities, then it could lose the benefit of the agricultural return flow exemption. Pioneer would then potentially be required to obtain a CWA discharge permit and implement stringent and costly water treatment. Ultimately, these costs would be passed on to the landowners within Pioneer's district boundaries.

7-5

Thank you for the opportunity to comment on the draft EA.

Very truly yours,

  
Scott L. Campbell

DBL/llw

cc: Board of Directors, Pioneer Irrigation District



Reclamation's responses to the September 14 2007 comments from Moffatt Thomas	
Comment #	Reclamation's response
7-1	The MOA for mitigation would be executed prior to title transfer. While this would mean that mitigation would be formally agreed to prior to transfer, actual mitigation efforts could be completed after transfer of title.
7-2 & 7-3	As indicated in Section 1.3 of the Final EA, ownership of the relevant facilities would be transferred to PID, including associated land interests (primarily easements and rights-of-way). Related to easements and rights-of-way, the purposes of and rights granted under the original agreements would remain unchanged. Any other third party legal rights or agreements related to the facilities, involving individuals or entities other than Reclamation and PID, would also be transferred and remain unchanged.
7-4	Reclamation's <i>Regional Policy on the Discharge of Stormwater Drainage (Water Quality)</i> is provided in Appendix B of the Final EA. This document more fully explains the relevant policy and approach.
7-5	A July 20, 2007 letter from EPA provides additional information regarding irrigation return flows and stormwater runoff relative to regulatory requirements. This letter is included in Appendix F, following the comment letter from Perkins Coie in the Final EA





# Idaho Water Users Association, Inc.

1010 W. Jefferson St., Suite 101 • BOISE, IDAHO 83702

OFFICE - 208-344-6690 • FAX - 208-344-2744

E-MAIL - [iwua@iwua.org](mailto:iwua@iwua.org)

WEBSITE - [www.iwua.org](http://www.iwua.org)

September 11, 2007

BUREAU OF RECLAMATION  
SNAKE RIVER AREA OFFICE  
RECEIVED

SEP 17 07

KEITH ERIKSON  
President  
REX BARRIE  
1st Vice President  
SCOTT BREEDING  
2nd Vice President  
NORMAN M. SEMANKO  
Executive Director &  
General Counsel

#### DIRECTORS

KEITH ERIKSON  
Rexburg - District 1  
LOUIS THIEL  
Idaho Falls - District 2  
STEVE HOWSER  
Aberdeen - District 3  
DAN DARRINGTON  
Burley - District 4  
PHIL BLICK  
Castlefjord - District 5  
BERWYN MUSSMANN  
Eden - District 6  
REX BARRIE  
Homedale - District 7  
LYNN KEETCH  
Montpelier - District 8  
GREG SHENTON  
Dubois - District 9  
MIKE FAULKNER  
Gooding - District 10  
VERNON E. CASE  
Wilder - District 11  
HENRY WEICK  
Boise - District 12  
DENNIS LAMMEY  
Caldwell - District 13  
MARCIA H. HERR  
Boise - District 14  
BARNEY METZ  
Lewiston - District 15  
HAROLD MOHLMAN  
Rupert - District 16  
LYNN CARLOQUIST  
Hazelton - District 17  
DEAN STEVENSON  
Paul - District 18  
SCOTT BREEDING  
Hazelton - At-Large  
BILLY R. THOMPSON  
Rupert - At-Large  
DAVE SHAW  
Boise - Associate  
MARK BRANSOM  
Boise - Associate

#### COMMITTEE CHAIRS

TED DIEHL  
Legislative  
REX BARRIE  
Resolutions  
TERRELL SORENSEN  
Education  
LARRY PENNINGTON  
Water Quality  
VINCE ALBERDI  
Nominating & Awards  
JOHN ANDERSON  
Rural/Urban Affairs

#### NWRA DELEGATES

NORMAN M. SEMANKO  
NWRA Director  
DALE SWENSEN  
NWRA Director  
ROGER D. LING  
Policy Committee

Bureau of Reclamation  
Snake River Area Office  
Attn: Gretchen Fitzgerald  
230 Collins Road  
Boise, ID 83702-4520

Re: Draft EA for Proposed Title Transfer to Pioneer Irrigation District

Dear Ms. Fitzgerald:

These comments regarding the above-referenced draft environmental assessment (EA) are provided by the Idaho Water Users Association (IWUA).

IWUA represents more than 300 irrigation districts, canal companies, ground water districts, water districts, municipalities, public water suppliers, hydropower interests, aquaculture companies, agri-businesses, professional firms and individuals, all dedicated to the wise and efficient development and use of our water resources. IWUA members deliver water to approximately 2.5 million acres of irrigated land. IWUA is affiliated with the National Water Resources Association and the Family Farm Alliance. IWUA is proud to count Pioneer Irrigation District among its members.

IWUA previously commented in favor of the proposed title transfer during the scoping process. We remain strongly in favor of the proposed title transfer to Pioneer Irrigation District and urge the Bureau of Reclamation to adopt Alternative B (Proposed Action, Title Transfer), as set forth in the draft EA. For your convenience, we have enclosed an additional copy of IWUA's resolution, as adopted at its Annual Conference in January, 2007, expressing support for Pioneer's title transfer. As with our previous comments, we request that this letter be included in the administrative record for this action.

Thank you for the opportunity to comment on the draft EA.

Sincerely,

Norman M. Semanko  
Executive Director & General Counsel

Enclosure  
cc: Pioneer Irrigation District

**RESOLUTION NO. 2007-24**  
**PIONEER IRRIGATION DISTRICT TITLE TRANSFER**

WHEREAS, Pioneer Irrigation District ("Pioneer") is involved in a process to obtain the transfer of the legal title of portions of certain physical facilities used by Pioneer, including certain drains and a portion of a canal delivery system, all of which property rights are presently held by the United States Bureau of Reclamation ("Bureau"); and

WHEREAS, Pioneer is also working with the Bureau to complete the administrative process for the title transfer and will be drafting a bill to convey the said facilities to Pioneer for introduction in the Congress of the United States; and

WHEREAS, Pioneer has operated and maintained the said facilities at all times since they were constructed, pursuant to contracts with the Bureau.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association supports Pioneer in its efforts to acquire legal title from the Bureau to the drains and a portion of the canal delivery system.

Reclamation's responses to the September 17, 2007 written comments from the Idaho Water Users Association, Inc.

Comment #	Reclamation's response
8-1	The drainage facilities proposed for title transfer are identified in Table 1 of the Final EA. No canals are specifically involved.

