

# Reclamation Manual

## Directives and Standards

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**Subject:** Land Disposal

**Purpose:** Prescribes the procedures, methods, and criteria for disposing of Reclamation lands excluding title transfer of project facilities under specific authorizing legislation.

**Authority:** A list of relevant authorities is included in paragraph 10 of these directives and standards.

**Contact:** Land, Recreation, and Cultural Resources Office, D-5300

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1. **Land Disposal Policy.** Reclamation will dispose of or relinquish lands or land interests no longer needed for Reclamation purposes. Reclamation will retain only those lands required for present and identifiable future project or program purposes. This may include lands needed for construction of facilities, operation and maintenance, flood control, recreation, fish and wildlife, protection and security of project facilities and the environment, and other project purposes. It is important to note that, even if a project need still exists, if the need can be better met through reservation of a lesser interest in the property, land or land interests can be recommended for disposal subject to a subordination of minerals as required by 43 CFR § 8. (See 410 DM 114-47, *Interior's Property Management Directives (IPMD)* and Reclamation's Supplement to the IPMD; Subpart 114S-47 *Utilization and Disposal of Real Property*.)
2. **Responsibility for Land Disposal.**
  - A. **Regional Directors.** Regional Directors or their delegates are responsible for disposal of all lands or interests in lands no longer needed for project purposes.
  - B. **Regional Realty Program Managers/Officers.** Regional Realty Program Managers/Officers shall provide program oversight and serve as technical liaisons to area office staff, the Regional Director, and others on disposal matters. Sensitive, unusual, and complex real estate matters should be discussed with the Chief Realty Officer for resolution and/or recommendations for follow-up action. Disposals must also be coordinated with Regional Property staff.
  - C. **Disposal Agencies.** The General Services Administration (GSA) or the Bureau of Land Management (BLM) may be used as Reclamation's disposal agency.
3. **Definitions.**
  - A. **Disposal.** All methods of transferring ownership or jurisdiction of Reclamation land to any other party, private or governmental. These include transfers, withdrawal

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revocations, sales, reconveyances, exchanges, etc. It does not include transfers for management purposes where Reclamation retains ultimate jurisdiction such as when operation and maintenance management is transferred to irrigation districts, State and local parks, and/or fish and wildlife agencies.

- B. **Real Property.** Any interest in land, together with the improvements, structures, and fixtures located thereon.
- C. **Competitive Sales (also referred to as Public Sales).** Sales of real property where the property is publicly advertised for sale, bids are received, and the property is sold to the highest bidder.
- D. **Noncompetitive Sales (also referred to as Direct Sales).** Sales of real property negotiated directly between the buyer and Reclamation without competition.
- E. **Unneeded Real Property.** Real property that is no longer needed for the authorized project or program purposes for which it was acquired or withdrawn or for any other related project purposes.
- F. **Excess Real Property.** Any real property for with the Department of the Interior has no foreseeable need, but which has not been determined to be surplus to the requirement of all Federal agencies.
- G. **Surplus Real Property.** Any real property not required by any Federal agency.
- H. **Conveyance.** Transfer of an interest in property by deed, mortgage, or lease.
- I. **Quitclaim Deed.** Legal instrument whereby the grantor transfers the rights in a property to the grantee without a warranty of title or interest.
- J. **Relinquishment.** Notification to BLM by a Federal agency, such as Reclamation, holding withdrawn lands that public lands withdrawn or reserved for its use are no longer needed, or that withholding or segregation of land from settlement, sale, location, or entry is no longer required.
  - (1) A relinquishment is only a notification to BLM that the withdrawal is no longer needed. It is not until a revocation is completed that the lands are no longer under Reclamation's jurisdiction.
- K. **Withdrawal Revocation.** The actual cancellation of a withdrawal by BLM, but does not necessarily open the land to settlement, sale, location, or entry under some or all of the general land laws.

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- L. **Reclamation Project Land.** Land or interests in land owned by the United States and under the jurisdiction of Reclamation which have been withdrawn from public lands, acquired, or donated to Reclamation for project purposes.
- M. **Withdrawal.** A segregation of an area of public land from settlement, sale, location, or entry under some or all of the general land laws to:
- (1) Limit activity under those laws in order to maintain other public values in the area,
  - (2) Reserve the area for a particular project purpose or program, or
  - (3) Transfer jurisdiction of the area from one Federal agency to another.
- N. **Public Lands.** As defined in the Federal Land Policy Management Act of 1976 (FLPMA), public lands include only those Federal lands administered by BLM (with the exception of lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts, and Eskimos). Once public lands are withdrawn from BLM by Reclamation, those lands should then be referred to as Reclamation withdrawn project lands. (See RM, *Land Withdrawals, Withdrawal Reviews, and Withdrawal Revocation*, LND 03-01; and the *Bureau of Reclamation Land Withdrawal Handbook*.)
4. **General Disposal Requirements and Considerations.** To determine whether or not land should be retained, managers should use, to the fullest extent possible, the same criteria used for acquiring or withdrawing new lands. (See RM, *Land Acquisition*, LND 06-01; and *Land Withdrawals, Withdrawal Reviews, and Withdrawal Revocations*, LND 03-01.) Disposal of land by Reclamation, except as noted, requires the following actions:
- A. **Administrative Determination that Real Property is No Longer Needed.** An administrative determination is required that demonstrates that the real property is no longer needed for project purposes, or that disposal with reservation of a lesser interest would be sufficient. In some instances, specific authorities exist that provide for exceptions to this requirement.
- B. **Notification of Congress.** If an administrative decision is made to dispose of acquired lands that were initially purchased for authorized projects but are not needed for undeveloped or incomplete projects, Reclamation will notify Congress of its intent to do so. (See Audit Report No. 99-I-133, *Identification of Unneeded Acquired Lands, Bureau of Reclamation*.)

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- C. **Environmental, Cultural Resources, and Hazardous Materials Compliance.** Disposals require compliance with environmental, cultural resources, and hazardous materials laws, regulations, and policies. These include, but are not limited to the National Environmental Policy Act (NEPA), Executive Order 11988 *Floodplain Management*; Executive Order 11990 *Protection of Wetlands*; the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, and the various other cultural resources acts and executive orders which are in effect at the time of the disposal.
- D. **Housing and Urban Development (HUD) Screening.** A screening through HUD is required under Title V of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. § 11411) to determine if the property is suitable for use by the homeless [except for disposals under Subsection Q of the Fact Finders Act of December 5, 1924, or Section 3b(2) of Public Law 89-72 or other specific authorizing legislation]. This process is initiated by completing the HUD checklist and transmitting it to the Office of Property and Office Services, D-7911.
- E. **Screening for Use by Reclamation or Other Federal Agencies.** Except for disposals under Section 3b(2) of Public Law 89-72, either: (1) Screening is required to determine if the property is needed by Reclamation or any other Federal agency; or (2) If valued under \$15,000, an administrative determination is to be made by the office responsible for the property that it is not required for the needs and responsibilities of Federal agencies. Available real property shall be reported to the regional office at least 150 days or more in advance of the date the property will become available for disposal. The regional office shall determine, normally by circularization, whether available real property is needed within Reclamation, the Department, or the Federal Government. [See Supplement to Federal Property Management Regulations 114S-47.203-70(c), (d), and (e).]
- F. **Noncompetitive Sales Justification.** When the character or condition of the property or unusual circumstances make it impractical to advertise publicly for competitive bids, an administrative determination justifying disposal by other than competitive sale should be completed by the office responsible for the property. For negotiated noncompetitive sales to public bodies, a determination must be made that a public benefit will result from the negotiated sale which would not be realized from a competitive sale disposal, and an Excess Profits Covenant for Negotiated Sales to Public Bodies shall be included in the offer to purchase and in the conveyance document. A sample excess profits covenant is illustrated in 41 CFR § 101-47.4908.
- G. **Appraisals.** Lands to be sold or exchanged shall be appraised in accordance with RM, *Real Estate Appraisal*, LND 05-01.

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- H. **Disposition of Receipts.** Refer to RM, *Crediting of Incidental Revenues*, PEC 03-01, to determine how revenues generated from the sale of acquired and withdrawn lands shall be credited, and to *Use of the Collection Information Form (CIF) for Incidental Revenues*, PEC 03-01, for information on how to complete a CIF.
- I. **Newspaper Publication.** Publication is recommended for all public sales of Reclamation lands and required for lands sold under the authority of the Act of February 2, 1911, *Sale of Surplus Acquired Lands*. Publication may be made in a weekly, semiweekly, or daily newspaper. Where a weekly newspaper of general circulation is closest to the land, publication in five consecutive issues of such newspaper should suffice. Publication may also be made in the *Commerce Business Daily*.
- J. **Regional Coordination.** Realty staff must coordinate all disposals with regional finance, realty, and property offices. Regional Realty Program Managers/Officers should ensure that a written record of all disposal transactions forwarded to the finance and property offices is accurately maintained.
- K. **Adjustment of Data in Reclamation's Centralized Database Inventory.** Disposals must be input in Reclamation's centralized database so that an accurate inventory of real property assets is maintained.
5. **Disposal of Withdrawn Public Land.**
- A. **Relinquishment of Withdrawn Land to BLM.** When Reclamation determines it no longer needs certain withdrawn public or national forest lands, the usual procedure to dispose of these lands is to relinquish the withdrawal to BLM. Once the withdrawal is revoked, the lands are then returned to the public domain or to national forest status. If national forest lands are involved, all activities should also be coordinated with the U.S. Forest Service. Guidance on the procedures to follow for relinquishing withdrawals is contained in RM, *Land Withdrawals, Withdrawal Reviews, and Withdrawal Revocation*, LND 03-01; and the *Bureau of Reclamation Land Withdrawal Handbook*.
- B. **Special Conditions Which Authorize Sale of Withdrawn Land by Reclamation.** Special conditions under which Reclamation has authority to sell withdrawn land are described in the following paragraphs.
- (1) **Authority Specific to Columbia Basin Project.** Section 4 of the Columbia Basin Project Act of March 10, 1943 (57 Stat. 14; 16 U.S.C. § 835), provides for sale of acquired or withdrawn public land for the purpose of assisting in the permanent settlement of farm families or protecting project land and facilitating

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project development. This authority is specific to Columbia Basin Project development lands.

- (2) **Lands Withdrawn for Townsites.** In the development of some Reclamation irrigation projects, lands were withdrawn for townsites and lots were sold under the authority of the Acts of April 16, 1906 (34 Stat. 116; 43 U.S.C. § 561), and June 27, 1906, *the Farm Units, Town Sites and Desert-lands Entries* (34 Stat.520; 43 U.S.C. §§ 561 and 568). Reclamation's authorized officials are still authorized to sell remaining townsite lots. Land cannot be withdrawn for additional townsites as the withdrawal provisions of these acts were repealed by FLPMA (Public Law 94-579; 90 Stat. 2743).
- (3) **Unimproved Withdrawn Lands.** Unimproved withdrawn lands can be sold under two authorities: The Acts of May 16, 1930, Sale of Unproductive Public Land (46 Stat. 367 and 368; 43 U.S.C. § 424); and the Act of March 31, 1950, Disposal of Small Tracts (64 Stat. 39; 43 U.S.C. § 375). Both of these Acts are limited to purchasers that qualify as a "resident farm owner" or "entryman" as defined in the regulations found at 43 CFR § 402.2(b). (See 43 CFR § 402 for detailed guidance on disposing of this type of land.)
- (4) **Lands Improved at Expense of Reclamation Fund.** Withdrawn lands improved at the expense of the Reclamation Fund, but no longer needed for Reclamation purposes can be sold under the Act of May 20, 1920, Sale of Surplus Improved Public Lands (41 Stat. 605; 43 U.S.C. § 375). The process to use in selling these lands is laid out in RM, Subpart 114S-47.3, *Surplus Real Property Disposal*, which is a supplement to the Interior Property Management Directives (IPMD). Applicability is limited to withdrawn lands which the Secretary of the Interior, with the concurrence of the Administrator (of GSA), determines are not suitable for return to the public domain for disposition under the general public land laws because such lands are substantially changed in character by improvements or otherwise. "Improvements" referred to in these Acts are: (a) Reclamation or Reclamation approved improvements, and (b) not intended to include trespass improvements. Otherwise, it would be an incentive for trespass which was not intended by Congress.
- (5) **Noncompetitive Sale of Withdrawn Land - Section 203 of FLPMA.**
  - (a) The Secretary of the Interior is authorized to sell public lands where, as a result of land use planning required under Section 202 of FLPMA, the Secretary of the Interior determines the sale of a tract of public land meets one or more of the following disposal criteria:

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- (i) Such tract because of its location or other characteristics is difficult and uneconomical to manage as part of the public lands and is not suitable for management by another Federal department or agency.
  - (ii) Such tract was acquired for a specific purpose, and the tract is no longer required for that or any other Federal purpose.
  - (iii) Disposal of such tract will serve important public objectives including, but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership.
- (b) The Office of the Solicitor, Division of Energy and Resources, has determined that the Secretary of the Interior's Section 203 sales authority, which is delegated to the Director of BLM, can also be delegated to other Department, bureau, and office heads.
- (c) The Departmental Manual (DM) authorizes the Commissioner of Reclamation to exercise the authority vested in the Secretary of the Interior by ". . . section 203 of FLPMA, 43 U.S.C. § 1713 . . ." [255 DM 1.1A(15)]. An additional revision to 255 DM 1.4A specifies that a cooperative agreement under Section 307 of FLPMA, 43 U.S.C. § 1737, must be executed with BLM before the delegated Section 203 sales authority can be exercised.
- (d) The current interagency agreement between BLM and Reclamation addresses Section 203 sales authority as follows:
- (i) When Reclamation requests relinquishment of withdrawn lands, it may recommend the sale of those lands to a specific entity or sale on the open market. If BLM determines that the lands are appropriate for sale under provisions of Section 203 of FLPMA § 1713 or any other authority, BLM will, within legal constraints, honor Reclamation's recommendation.
  - (ii) In accordance with DM delegation, at the request of Reclamation, Reclamation and BLM may enter into a supplemental agreement at the field level providing that Reclamation perform a specific land sale under provisions of Section 203 of FLPMA. Such a supplemental agreement may additionally provide that Reclamation perform

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requisite land use planning prior to the land sale, subject to BLM approval of Reclamation-prepared plans.

- (e) Regulations in 43 CFR § 2710 implement the sale authority of FLPMA and shall be followed.

- C. **Issuance of Final Certificate and Patent.** When withdrawn lands are sold, a copy of the contract for sale should be forwarded immediately upon execution to the appropriate State Office of BLM; and upon full payment of the purchase price, the State Office of BLM will issue a final certificate and patent. Department policy requires that public lands be sold and patented to citizens of the United States only. Certain disposal authorities, including Section 14 of the Reclamation Project Act of 1939 (53 Stat. 1196 and 1197; 43 U.S.C. 3 §§ 75a and 387), provide for disposal of withdrawn land by the Secretary of the Interior without regard to provisions of law governing the patenting of public lands. This has been interpreted to mean that, when these authorities are used, withdrawn lands may be disposed of by quitclaim deed.
6. **Disposal of Acquired Lands.** When Reclamation determines it no longer needs acquired lands, disposal can be accomplished through GSA under the authority of the June 30, 1949 Federal Property and Administrative Services Act (FPASA), as amended (63 Stat. 377), or by Reclamation as authorized and described below.
- A. **Disposal by GSA Under Authority of FPASA.** Acquired lands Reclamation determines it no longer needs can be reported to GSA who will dispose of these lands under the authority of FPASA, as amended.
    - (1) **Disposal by Reclamation as Delegated by GSA under FPASA.** GSA has delegated limited disposal authority to Reclamation under the FPASA. The procedures found in 41 CFR §101-47.3, *Surplus Real Property Disposal*, RM, Subsections 114S-47.2, *Utilization of Excess Real Property*; and 114S-47.3, *Surplus Real Property Disposal*, shall be followed.
    - (2) **Disposal of Properties Valued Under \$15,000.** Properties valued under \$15,000 can, under FPASA, be disposed of by Reclamation through competitive or noncompetitive sale, in a manner most advantageous to the United States. Sale of properties valued above \$15,000 must be processed through GSA. Reclamation can also request that GSA delegate authority to allow processing a specific sale above the \$15,000 limit.
    - (3) **Disposal of Easements to Owner of Land.** Easements may be disposed of to the owner of the land subject to the easement by Reclamation when no longer

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needed for project purposes in accordance with the provisions of 41 CFR § 101-47.313-1.

- (4) **Disposal for Special Purposes.** The special purposes covered include: power transmission lines; public airports; historic preservation; educational and public health purposes; shrines, memorials, and religious purposes; housing and related facilities; public parks or recreation areas; displaced persons; and correctional facilities. (See 41 CFR § 101-47.308-1 and RM, Subpart 114S-47.308-1, *Power Transmission Lines and Other Installed Power Facilities* for procedures to be followed in disposals for special purposes under the FPASA.)

### B. Disposal by Reclamation Under Authority of Specific Legislation.

- (1) **Special Project Acts (e.g., Columbia Basin Project Act, Gila Project Act, Riverton Reauthorization Act).** Special acts, such as the Columbia Basin Project Act of March 10, 1943 (57 Stat. 14), the Gila Project Act of July 30, 1947 (61 Stat. 628), and the Riverton Reauthorization Act of 1970 (84 Stat. 861) provide authority in the case of those projects to sell, exchange, or otherwise dispose of public and acquired lands to actual project settlers when in furtherance of development of the project. In the Colorado River Basin Salinity Control Act of June 24, 1974 (88 Stat. 266), there is authority to dispose of the acquired lands and interests therein on terms and conditions meeting the objectives of the Act.
- (2) **Disposal of Land to Prior Owners (Federal Water Project Recreation Act).** Section 3b(2) of the Federal Water Project Recreation Act, Public Law 89-72 (79 Stat. 214, 16 U.S.C. § 4601-14), provides for the purchase of land for recreation and fish and wildlife purposes. If an administering agency is not found within 10 years after acquiring the land, Reclamation may sell the land back to its immediate prior owner or his/her immediate heirs at its appraised fair market value.
- (3) **Disposal of Lands and Improvements (Act of February 2, 1911).** Lands and improvements acquired under the Reclamation Act of 1902, and acts amendatory thereof or supplementary thereto, that are no longer needed can be sold by Reclamation under the authority of the Act of February 2, 1911, Sale of Surplus Acquired Lands, Chapter 32, 36 Stat. 895. Disposal must be through competitive sale at not less than its appraised value.
- (a) **Relation of the Act of February 2, 1911, to the FPASA, as amended, and GSA.** An April 7, 1983, opinion of the Associate Solicitor for Energy and Resources concerning Reclamation's authority to sell acquired lands no longer needed for program purposes concluded ". . . that the

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Act of February 2, 1911, was not impliedly repealed by the FPASA. Reclamation surplus acquired lands may be disposed of in accordance with the requirements and procedures of the 1911 Act." Reclamation has also been informed by the Solicitor's office that Reclamation may sell lands under the authority of the Act of February 2, 1911, without first making application to GSA in accordance with 41 CFR § 101-47.301-3.

- (b) **Relation of Act to Other Laws.** According to IPMD 114-47.301-3, numerous special laws authorize the Secretary of the Interior to dispose of real property no longer needed for program purposes. Many of these laws predate the FPASA, as amended. Where such special law provides that disposal will be made to the general public, as opposed to a specific named individual, firm, or organization, disposal shall be subject to the utilization and disposal provision of IPMD 114-47.
- (c) **Disposition of Receipts.** Section 3 of the Act of February 2, 1911, provides that money derived from the sale of lands under this Act shall be covered into the Reclamation Fund and, less administrative expenses, would be applied as a credit to the project for which such lands had been acquired. If the project's repayment obligation has been met, the money would be applied as a statutory credit to the project and available upon appropriation for future construction. (See RM, *Crediting of Incidental Revenues*, PEC 03-01, for more information.)
- (d) **Federal Register and Sales Procedures for Disposal under this Authority.** Although disposal under the Act of February 2, 1911, is to the general public, use of the disposal authority under the Act would differ from Departmental procedures specified in the IPMD. Accordingly, Reclamation must prepare a Federal Register Notice explaining its variance from Departmental regulations and its intent to sell the property. Reclamation land sale procedures in 43 CFR § 402 do not address the Act of February 2, 1911; therefore, the Federal Register Notice must also describe sales procedures. These procedures are as follows:
  - (i) In accordance with the Act of February 2, 1911, the property should be ". . . appraised by three disinterested persons." The property need not be appraised three separate times; review appraisers qualify as "disinterested persons." When the land has been appraised, proceed with a notice of realty action.
  - (ii) The notice of realty action should be published in the Federal Register at least 60 days prior to the sale. Concurrently, it should

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be sent to interested parties including: (aa) The Governor of the State within which the land is located; (bb) The United States congressional delegation; (cc) The head of the governing body of any political subdivision having zoning or land use regulatory responsibilities in the geographical area within which the land is located; (dd) The head of any political subdivision having administration or public services responsibility in the geographic area within which the land is located; and (ee) Other known interested parties of record, for example, adjoining landowners and current or past land users.

- (iii) In addition to publication in the Federal Register, the notice of realty action should be published in a newspaper of general circulation in the general vicinity of the land being offered for sale. To provide adequate public advertising, the notice of realty action should be printed in the newspaper at least 60 days prior to the sale, and reprinted periodically thereafter, as appropriate, but at least once a week. The notice of realty action should also be posted upon the land being offered for sale.
- (iv) The notice of realty action should include the authority under which the sale is being conducted; location and description of the land; the method of sale; requirements for a certificate of independent price determination; eligibility requirements for bidders; and the terms, covenants, conditions, and reservations which are to be included in the conveyance document.
- (v) The date, time, place, and manner for submitting bids should be specified in the notice of realty action. The amount of earnest money to accompany bids and the terms of payment of the remainder of the full bid price by the successful bidder are left to the Regional Director's discretion, and should be tailored to the nature of the sale property. Regional Directors may solicit only sealed bids, open the sale to only oral bids, or invite both sealed and oral bids in a public auction forum.
- (vi) To promote full and open competition, a certificate of independent price determination must accompany each sealed bid. If oral bids will be received, the notice of realty action should also include a statement specifying that, as a condition of award, the successful bidder will be required to sign a certificate to the effect that ". . . the bid was arrived at by the bidder or offeror independently and was tendered without collusion with any other bidder or offeror."

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Requirements for these noncollusive bid provisions are given in IPMD 114.47.304-51.

- (vii) If, during the sealed bid procedure, two or more envelopes containing valid bids of the same amount are received, the Regional Director may either cancel the sale and reschedule at a later date, or hold a drawing immediately following the opening of the bids to determine which is to be considered the highest bid.
- (viii) Bids may be made by a principal or duly qualified agent. Land sold under 1911 Act authority should be conveyed only to: (aa) Citizens of the United States 18 years of age or older; (bb) Corporations subject to the law of any State or of the United States; (cc) States, State instrumentalities, or political subdivisions authorized to hold property; or (dd) Entities legally capable of conveying and holding lands or interests therein under the laws of the State within which the lands to be conveyed are located.
- (ix) No conveyances should be made to Federal employees or their dependents who might reasonably be expected to have information with regard to the property or its uses which is not readily available to members of the public, or who participated in the decision to dispose of the property, or in the sale itself.
- (x) Prior to consummation of the sale, the Regional Director may refuse to accept any offer or may withdraw the property from sale if it is determined that the sale is not in the public interest. Until the acceptance of the offer to purchase and payment of the purchase price, a bidder has no contractual rights against the United States and no action taken shall create any contractual or other obligation of the United States. When payment of the purchase price is received, the Regional Director may convey all right, title, and interest of the United States of, in, and to the property to the purchaser, subject to all reservations, limitations, and conditions that are considered necessary. The property should be conveyed by quitclaim deed or deed without warranty in conformity with local law and practice.
- (xi) In addition to reservations, limitations, and conditions determined necessary, the deed should contain: (aa) A reservation to the United States of any mineral interests in the land held by the United States; (bb) A reservation for canal and ditches under authority of the Canal Act of August 30, 1890; and (cc) A reservation of

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rights-of-way and easements of record. The Act of February 2, 1911, specifically limits the amount of land that can be sold to any one person to 160 acres. When appropriate, the conveyance should further be conditioned to ensure that the purchaser is in and will remain in compliance with the Reclamation Reform Act of 1982.

- (4) **Disposal of Land Valued at \$300 or Less (Section 11 of the Act August 4, 1939).** When the appraised value of surplus acquired land does not exceed \$300, Regional Directors may sell the land publicly or privately without compliance with the Acts of February 2, 1911, and May 20, 1920, as to notice, publication, and mode of sale (53 Stat. 1197; 43 U.S.C. § 375a).
  - (5) **Disposal of Donated Land No Longer Needed (Subsection Q of the Fact Finders Act).** Subsection Q of the Fact Finders Act of December 5, 1924, provides that land which has been donated and conveyed to the United States for project purposes, but is no longer needed for project purposes, may be reconveyed without charge to the donating grantor or to the heirs, successors, or assigns of such grantor.
  - (6) **Disposal Authorized by Deeds with Reversionary Language.** Some older deeds to the United States contain reversionary language that at times can be used in reconveying property. The Department of Justice allows acquisitions involving reversionary language in only very limited situations. When it is desired to accept the title to lands subject to any rights of reversion, the opinion of the Attorney General must be requested through the Solicitor's office.
7. **Exchanges of Land.** Exchanges of lands can be accomplished as authorized and described below.
- A. **Exchanges Authorized by Reclamation Project Act of August 4, 1939.** Section 14 of the Reclamation Project Act of August 4, 1939 (53 Stat. 1187), provides authority for exchanging Reclamation lands for privately owned lands in connection with the relocation of highways, roadways, railroads, telephone, telegraph or electric transmission lines, or any properties whatsoever, the relocation of which is necessitated by construction, operation, or maintenance of any Reclamation project. Common uses of this authority are described below.
    - (1) **Severance Damage or Disruption of Public Service.** This is a commonly used authority for making exchanges to relocate physical improvements such as roads, railroads, power lines, and farms where the existing site is needed for Reclamation project purposes and where the discontinuance of the function would cause substantial severance damage or disrupt a public service.

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- (2) **Water Conservation.** This authority is also used for making exchanges to relocate canals, laterals, and drains for the purpose of water conservation, efficiency of O&M, or other Reclamation project purposes. When such an exchange is requested by a private party(ies) and the relocation will result in a benefit to the requestor, they will be required to reimburse Reclamation for all administrative costs, including appraisal costs, if needed, prior to the United States releasing title to the existing property.
  - (3) **Limitations.** This Act has been generally interpreted as not providing Reclamation with authority to exchange unimproved lands for resource management or land tenure adjustment purposes.
- B. Exchanges Made by BLM for Reclamation.** The Interagency Agreement, which was signed on March 25, 1983, between Reclamation and BLM provides for BLM to assist in the exchange of land withdrawn or acquired by Reclamation where Reclamation does not have direct authority to make such an exchange. Guidance can be found in the *Bureau of Reclamation Land Withdrawal Handbook*.
- (1) **Supplemental Field Level Agreement.** A supplemental agreement, under Section 7 of the Interagency Agreement is needed at the field level for each exchange.
  - (2) **Procedures for Exchange of Acquired Lands.** Pursuant to the Interagency Agreement, when Reclamation land to be exchanged is acquired land, the following procedures apply:
    - (a) Reclamation will prepare a public notice for signature by the Secretary of the Interior or his designee and for publication in the Federal Register, which transfers the jurisdiction of the acquired land to BLM, specifically to effect the exchange.
    - (b) Simultaneously with the transfer of jurisdiction over the land to BLM, BLM will publish a notice of realty action as prescribed in 43 CFR §§ 2200.1 and 2200.2, for the proposed exchange segregating the lands involved from operation of the public land laws including the mineral laws. The exchange will be consummated by BLM within 2 years.
    - (c) Reclamation will be responsible for all land appraisals and preparation of legal description and transfer documents.
    - (d) Lands received by BLM in any such exchange will be transferred to Reclamation's jurisdiction in a mutually agreed to form utilizing a right-of-way or withdrawal.

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- C. **Exchange of Surplus Real Property for Non-Federal Real Property Authorized by FPASA.** The FPASA authorizes the exchange of Federal surplus real property for non-Federal real property.
- (1) **Regulations Governing Exchange.** Regulations governing such exchanges are included in 41 CFR § 101-47.3, IPMD 114-47.3, and RM, Subpart 114S-47.3 *Surplus Real Property Disposal*.
  - (2) **Limitations.** Reclamation has been delegated authority under the FPASA to exchange lands valued less than \$15,000. If the property is valued over \$15,000, Reclamation must rely on GSA to process the exchange.
    - (a) When using GSA to process exchanges, Reclamation is required to report the property as unneeded. Once the property is unneeded, the exchange transaction is under the control of GSA. GSA has a lengthy process in disposing of property. If GSA is unable to reach an exchange agreement, the lands are still reported as unneeded. If Reclamation then wants to retain the lands, it will be necessary to re-justify why the lands are needed.
- D. **Exchanges or Amendments of Farm Units Authorized by Act of August 13, 1953.** The Act of August 13, 1953 (67 Stat. 566), provides for the exchange or amendment of certain unpatented farm units or private lands on a Federal irrigation project, for farm units available on the same or any other such project.
- E. **Exchanges Under the Federal Water Project Recreation Act - Public Law 89-72.** Section 7b of Public Law 89-72 (79 Stat. 216; 16 U.S.C. § 4601-18) states that Reclamation, through the Secretary of the Interior, is authorized to enter into agreements with Federal agencies or State or local public bodies for the administration of project land and water areas; and the operation, maintenance, and replacement of facilities; and to transfer project lands or facilities to Federal agencies, or State or local public bodies by lease agreement or exchange upon such terms and conditions as will best promote the development and operation of such lands or facilities in the public interest for recreation and fish and wildlife enhancement purposes. This authority authorizes exchanges only with other governmental entities.
- F. **Exchanges Under the National Historic Preservation Act (NHPA).** Section III of the NHPA (16 U.S.C. § 470h-3a) states that notwithstanding any other provisions of law, any Federal agency may, after consultation with the Advisory Council on Historic Preservation, lease a historic property owned by the agency to any person or organization, or exchange any property owned by the agency for comparable historic property, if the agency head determines that the lease or exchange will adequately ensure the preservation of the historic property.

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- G. **Exchanges of Lands Within the National Wildlife Refuge System.** Authority for exchanges of lands within the National Wildlife Refuge system is provided by the Act of October 15, 1966 - Public Law 89-669 [16 U.S.C. § 668d(b)(3)]. This authorizes the Secretary of the Interior to acquire lands or interests therein by exchange for acquired lands or public lands, or for interests in acquired or public lands, under his jurisdiction which he finds to be suitable for disposition, or for the right to remove, in accordance with such terms and conditions as he may prescribe, products from the acquired or public lands within the system.
- H. **Special Projects Acts Authorizing Exchanges.** Special project acts provide authority in the case of those projects to exchange public and acquired lands.
- (1) **Columbia Basin Project Act of March 10, 1943.** Section 4 of the Columbia Basin Project Act provides for making exchanges for the purpose of assisting in the permanent settlement of farm families, protecting project land and facilitating project development. This authority is specific to Columbia Basin Project development lands.
  - (2) **Gila Project Act of July 30, 1947.** Section 3 of the Gila Project Act (61 Stat. 629; 43 U.S.C. § 613b) provides authority to sell, exchange, or otherwise dispose of the public lands within the project, the lands acquired under the Act, and improvements on such lands for specific purposes.
  - (3) **Colorado River Storage Project Act of April 11, 1956.** Section 8 of the Colorado River Storage Project Act (70 Stat. 110; 43 U.S.C. § 620g) provides for disposal of lands to Federal, State, and local governmental agencies by lease, transfer, exchange, or conveyance as will best promote their development and operation in the public interest. This authority is specific to Colorado River Storage Project development lands.
  - (4) **Extension of Boise and Payette National Forests Act of July 17, 1959.** Section 5 of the Extension of Boise and Payette National Forests Act of July 17, 1959 (Public Law 86-92, 73 Stat. 218), as amended by Public Law 106-493 on November 9, 2000, provides only for exchanging land that was acquired for Cascade Reservoir (Idaho) and which has been determined to be excess to the needs of the project for non-Federal land of not less than approximately equal value.
  - (5) **Acquisition of Farm Lands, Seedskaadee Project Act of August 28, 1958.** Section 2 the August 28, 1958 Act (Public Law 85-797; 72 Stat. 963), provides authority to sell, exchange, lease, or otherwise dispose of public and acquired lands and any improvements thereon, to establish townsites, and to dedicate

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portions of said lands for public purposes, to the extent, in the manner, and on terms that are in keeping with sound project development.

- I. **Exchanges for Properties within National Wild and Scenic Rivers System.** Section 6d of The Act of October 2, 1968 - Public Law 90-542 (Wild and Scenic Rivers Act), authorizes the Secretary of the Interior to accept title to property within authorized boundaries of any Federally administered component of the National Wildlife and Scenic Rivers System. In exchange, the Secretary of the Interior is authorized to convey any Federally owned property under his/her jurisdiction within the State in which the component lies and which he/she classifies as suitable for exchange or other disposal.
  - J. **Exchange Values.** A written appraisal to determine the value of lands to be exchanged is required as stated in RM, *Real Estate Appraisal*, LND 05-01. As appropriate, administrative adjustments of value may be made in some circumstances after considering offsetting project benefits and documented accordingly or as consistent with the provisions of specific project legislation.
  - K. **Conditions of Exchange.** United States land or interests in land to be exchanged will be conveyed by quitclaim deed only after all conditions of the Land Exchange Agreement or Relocation Agreement have been satisfied and title to the new land or interests in land has been accepted by the United States in accordance with RM, *Land Acquisition*, LND 06-01.
8. **Disposal of Other Resources and Reservations.**
- A. **Timber Not Needed for Construction Purposes.** Merchantable timber in a site authorized for construction may be sold if not required for construction purposes. The Forest Service should be requested to make an appraisal and suggestions for the disposal of timber at a reservoir site within the boundaries of a national forest. However, the sale may, at the discretion of the Regional Director, be conducted either by Reclamation or the Forest Service. In other cases, BLM will dispose of merchantable timber in accordance with the provisions of 586 DM 1. Net receipts from timber sales shall be deposited in the Reclamation Fund in accordance with the Act of July 19, 1919 [Sundry Civil Appropriations Act (41 Stat. 163)], or other special fund as authorized. (See RM, *Crediting of Incidental Revenues*, PEC 03-01, to determine how revenues generated from the sale of timber shall be credited; and *Use of the Collection Information Form (CIF) for Incidental Revenues*, PEC 03-02, for information on how to complete a CIF.)
  - B. **Oil and Gas Reservations.** Regional Directors are responsible for clearance of land sales with BLM that involve oil and gas reservations.

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### C. Sand, Gravel, and Other Minerals and Building Materials.

- (1) **Authority to Permit Removal With or Without Competitive Bidding.** Section 10 of the Reclamation Project Act of 1939 (53 Stat. 1187) gives the Secretary of the Interior in his/her discretion, broad authority to permit the removal of sand, gravel, and other minerals and building materials, with or without competitive bidding, from lands or interest in lands withdrawn or acquired and being administered under the Federal reclamation laws in connection with the construction or operation and maintenance of any project. The Act also authorizes the Secretary of the Interior to permit the removal of such sand, gravel, and other minerals and building materials without charge, if for use by a public agency in the construction of public roads or streets within any project or in its immediate vicinity. (See RM, *Use Authorizations*, LND 08-01.)
  - (a) This authority has been delegated to Regional Directors who should use their own judgment as to when such sales should be made with or without competitive bidding and ensure, in such cases, that the file appropriately documents the rationale therefore. In no case, however, should these materials be sold to private parties for less than fair market value. If bodies of water are involved in removal of such materials, other authorizations, including Section 404 of the Clean Water Act permits, may be required. (See RM, *Crediting of Incidental Revenues*, PEC 03-01, for information regarding disposition of such revenues.)
  - (b) Before permitting such removal, consideration should be given to potential future project needs.
- (2) **Restoration of Area.** All permits issued for the purpose of allowing the removal of sand, gravel, and other minerals and building materials shall contain adequate provisions for requiring the permittee to restore the surface of the area to acceptable standards. Adequate bonding of operations removing sand, gravel, and building materials is recommended to ensure that adequate funds will be available to Reclamation to restore or rehabilitate the disturbed lands in the event of default by the operator. Depending on the anticipated restoration, it may be appropriate for the permittee to submit a Reclamation Plan identifying how the area will be restored or reclaimed. The permit would then be issued requiring full compliance with the approved Plan as a condition of the permit.

- D. **Earth, Stone, and Timber on Public Lands for Irrigation Works.** The Act of February 8, 1905, Use of Earth, Stone and Timber on Public Lands for Irrigation Works, 33 Stat. 706, 43 U.S.C. § 420, authorizes the Secretary of the Interior, under rules and regulations to be prescribed by him/her, to use and to permit the use of earth,

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stone, and timber from the public lands of the United States as may be required in the construction of irrigation and other project works under the Federal reclamation laws. The Secretary of Agriculture is also authorized to permit the use of earth, stone, and timber from the national forests of the United States for the same purpose, under rules and regulations prescribed by him/her. (See RM, *Use Authorizations*, LND 08-01.)

- E. **Water Rights.** Disposal of water rights should be coordinated with the regional water rights expert and the Regional Realty Program Manager/Officer who will serve as technical liaisons to area and/or field office staff, Regional Directors, Solicitor, and others on real property disposal matters. Sensitive, unusual, and complex real estate matters involving water rights will be discussed and/or reviewed with the Chief Realty Officer in the Office of Policy.

### 9. Authorities.

- A. **Major Laws.** There is a variety of authorities and regulations that must be complied with in the disposal of lands. It should be noted that appropriation acts and specific project authorizing legislation exist that contain acquisition and/or disposal authorities and not all are listed. The following include, but are not limited to, the major laws and regulations relevant to the disposal of land by Reclamation:
- (1) Use of Earth, Stone, and Timber from Public Lands and Forests, February 8, 1905, (33 Stat. 706; 43 U.S.C. § 420).
  - (2) Town Sites and Power Development, April 16, 1906 (34 Stat. 116; 43 U.S.C. § 561).
  - (3) Farm Units, Town Sites, and Desert-Land Entries, June 27, 1906 (34 Stat. 520; 43 U.S.C. §§ 561 and 568).
  - (4) Sale of Surplus Acquired Lands, February 2, 1911 (36 Stat. 895; 43 U.S.C. § 374).
  - (5) Sale of Surplus Improved Public Lands, May 20, 1920 (41 Stat. 605 and 606; 43 U.S.C. § 375).
  - (6) Fact Finders Act, December 5, 1924 - Subsection Q (43 Stat. 704; 43 U.S.C. § 376).
  - (7) Sale of Unproductive Public Land, May 16, 1930 (46 Stat. 367 and 368; 43 U.S.C. § 424).

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- (8) Reclamation Project Act of 1939, August 4, 1939 - Sections 10 and 11 (53 Stat. 1196 and 1197; 43 U.S.C. 3 §§ 75a and 387).
- (9) Columbia Basin Project Act, March 10, 1943 (57 Stat. 14; 16 U.S.C. § 835).
- (10) Gila Project, July 30, 1947 (61 Stat. 629; 43 U.S.C. § 613b).
- (11) Federal Property and Administrative Services Act of 1949, June 30, 1949, as amended (63 Stat. 377).
- (12) Disposal of Small Tracts, March 31, 1950 (64 Stat. 39; 43 U.S.C. § 375).
- (13) Farm Unit Exchange Act, August 13, 1953 (67 Stat. 566; 43 U.S.C. § 451).
- (14) Colorado River Storage Project, April 11, 1956 (70 Stat. 110; 43 U.S.C. § 620g).
- (15) Acquisition of Farm Lands, Seedskafee Project, August 28, 1958, Public Law 85-797 (72 Stat. 963).
- (16) Federal Water Project Recreation Act, July 9, 1965, Public Law 89-72 (79 Stat. 214; 16 U.S.C. § 460*l*-14) and (Stat. 216; 16 U.S.C. § 460*l*-18).
- (17) National Historic Preservation Act, October 15, 1966, Public Law 89-665 (80 Stat. 915; 16 U.S.C. § 470*h*-3).
- (18) Native American Graves Protection and Repatriation Act, November 16, 1990, Public Law 101-601 (25 U.S.C. § 3001).
- (19) Colorado River Basin Project Act, September 30, 1968, Public Law 90-537 (82 Stat. 885; 43 U.S.C. § 1501).
- (20) Riverton Extension Unit Reauthorized, September 25, 1970, Public Law 91-409 (84 Stat. 861).
- (21) Colorado River Basin Salinity Control Act, June 24, 1974, Public Law 93-320 (88 Stat. 266).
- (22) Federal Land Policy Management Act of 1976, October 21, 1976, Public Law 94-579 (90 Stat. 2743).

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- B. **Regulations.** In addition to the aforementioned authorities, the following regulations influence the application of Reclamation's land disposal authorizations:
- (1) *Federal Property Management Regulations.* The Federal Property Management Regulations are Government-wide property regulations issued by the GSA and published in the Code of Federal Regulations (CFR) under Title 41, Subtitle C, Chapter 101. The remaining chapters of Subtitle C are reserved for individual Government agencies to issue their own implementing and supplementing property management regulations. The section of 41 CFR § 101 that deals with the disposal of real property appears as 41 CFR § 101-47, *Utilization and Disposal of Real Property*.
  - (2) *Interior's Property Management Directives 410 DM 114-47.* The Interior Property Management Regulations, a supplement to the FPMR, were removed from regulatory status and designated as directives, with the exception of a section dealing with Government-Furnished Quarters.
  - (3) Reclamation's Supplement to the IPMD. Reclamation has further supplemented the IPMD in the RM. The section dealing with the disposal of real property is RM, Subpart 114S-47 *Utilization and Disposal of Real Property*.
  - (4) *Joint Policies of the Departments of the Interior and of the Army Relative to Reservoir Project Lands* (43 CFR § 8).
  - (5) *Sale of Lands in Federal Reclamation Projects* (43 CFR § 402).