

Reclamation Manual

Directives and Standards

Subject:	Technology Transfer Agreements
Purpose:	To establish Bureau of Reclamation responsibilities and requirements for implementing the Department of the Interior Policies and Procedures for Technology Transfer (761 DM 1), which authorizes Reclamation to participate in research partnerships with the private sector and other non-Federal entities. This Directive and Standard (D&S) establishes and clarifies processes for Reclamation to enter such joint venture research partnerships. The benefits of this D&S are to facilitate effective partnerships that can leverage shared capabilities and costs, and more effectively develop and move technologies to Reclamation stakeholders, the broader water management community, and the American public. In addition, Reclamation and the non-Federal entity can efficiently and cost-effectively generate user-ready solutions that can improve the economic, environmental, and social well-being of the United States.
Authority:	The Stevenson Wydler Technology Innovation Act of 1980; The Federal Technology Transfer Act of 1986, as amended (15 U.S.C. §3701 et seq.); Executive Order 12591, <i>Facilitating Access to Science and Technology</i> ; Department of the Interior, 761 DM 1, <i>Research and Development Technology Transfer Policy and Procedures</i> (761 DM 1) Department of the Interior, 207 DM 8, <i>Limited Delegations on Technology Transfer</i> (207 DM 8)
Approving Official:	Science Advisor, 86-69000
Contact:	Research and Development Office, 86-69100

1. Introduction.

- A. Federal technology transfer legislation authorizes Reclamation to participate in collaborative research partnerships with non-Federal entities (15 U.S.C. §3701(10), §3710a (a)). A ‘non-Federal entity’ is any entity, party, or partner that is not part of the Federal Government, which may include private sector, industrial organizations, state and local agencies, universities, non-profit organizations, or individuals other than Federal employees (15 U.S.C. §3710a (a)(1), 761 DM 1.4. D).
- B. When Reclamation’s capabilities and pursuit of new and improved solutions align with non-Federal entities’ interests, Reclamation is authorized to combine its expertise, facilities, and other resources with non-Federal entities to develop new efficient, effective, and user-ready solutions (15 U.S.C. §3701(3)).
- C. Reclamation is authorized to protect, manage, and/or license intellectual property developed on its own or in partnership with non-Federal entities, as appropriate (15 U.S.C. § 3710a (a)(1)(2), §3710c).

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- D. This D&S provides Reclamation specific implementation of requirements in 761 DM 1, and is structured to be read in conjunction with 761 DM 1.
2. **Applicability.** See 761 DM 1, 1.2 Scope. In addition, the following applies.
- A. In accordance with 761 DM 1, 1.2.A, this D&S applies to Reclamation offices and employees engaged in the performance of research, development, engineering, or other scientific and technical investigations, including offices whose resources or facilities may be used by others to conduct research, development, engineering, or other scientific and technical investigations. Reclamation offices and employees engaged in such activities can utilize these authorities and use their specific appropriations to fund Reclamation's labor or non-labor contributions to technology transfer agreements but no funds will be provided to the partner under the technology transfer agreements (15 U.S.C. § 3710a). Formally delegated representatives in accordance with Paragraph 4.R.(3) of the Reclamation Manual, [*Delegations of Authority*](#) can only execute technology transfer agreements.
- B. This D&S does not apply to procurement contracts, grants, or cooperative agreements that are governed by 31 U.S.C. §§ 6303, 6304, and 6305.
- C. This D&S does not apply to agreements authorized by the Sundry Civil Expenses Appropriations Act for 1922 (Pub. L. 66-389; 41 Stat. 1316; 43 U.S.C. § 395), also referred to as the Contributed Funds Act.
3. **Principles, Criteria, and Requirements.**
- A. **Principles.** See 761 DM 1, 1.6.B Principles. In addition, the following applies:
- (1) When Reclamation engages in research that requires partnering with non-Federal entities to accelerate the lab-to-market process, Reclamation shall pursue partnerships with non-Federal entities at the earliest stage of the research process. Having non-Federal entities join Reclamation early in the research process in areas where non-Federal entities play a significant role in developing, manufacturing, and supplying the end-product will help speed up the process in generating user-ready solutions.
 - (2) Where Federal technology transfer legislation (15 U.S.C. § 3701 et seq.) provides discretion, Reclamation will exercise that discretion on a case-by-case basis and in a manner that will:
 - (a) accelerate the transfer of technologies into usable solutions; and
 - (b) maximize benefits and efficiencies to Reclamation, its customers and stakeholders, the American public, and the national economy.

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- (3) Reclamation's commitment of resources to the agreement and resources/funds received by the non-Federal partner to conduct work under the agreement shall not create an expectation or perception of Reclamation endorsing and/or purchasing the partner's products and services before, during, or after the term of the agreement.
- (4) Reclamation shall not enter into agreements if it is envisioned that the agreement will facilitate climate change maladaptation, as defined in Reclamation Manual Policy, *Climate Change Adaptation* (CMP P16), Climate Change Policy.

B. Patent Decision Criteria and Licensing of Intellectual Property. See 761 DM 1, 1.6.J Licensing of Intellectual Property. In addition, Reclamation will consider pursuing patent protection for Reclamation-owned or jointly owned inventions when there is substantial evidence that U.S. non-Federal entities will be interested in licensing the invention and that the patent-license approach is the most effective method to get Reclamation inventions commercialized. As such, the Program Manager, Research and Development, will use the following principles when evaluating if patent protection should be pursued:

- (1) A commercial manufactured product is the optimal solution to meet Reclamation's needs, and the needs of other non-Federal users.
- (2) U.S. non-Federal entity will need access to protected intellectual property in order to manage its financial risks associated with the front-end investments it would be required to make. Front-end investments required by U.S. non-Federal entity could include the costs to obtain regulatory approvals, mature the invention, and/or otherwise transform the invention into a manufactured, market-ready product.
- (3) The size of the potential market for the solution is large enough to attract potential license(s).
- (4) U.S. non-Federal entity will commit substantial resources to support patent prosecution and maintenance for subject inventions.

C. Licensing Preference for United States Industry. See 35 U.S.C. §204 and 761 DM 1, 1.6.G Option for a Federal Party to Negotiate Licenses for Government-Owned Subject Property. A small business or nonprofit organization that receives title to a subject invention and no assignee thereof cannot grant exclusive licenses to use or to sell subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced using the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by Reclamation under whose agreement the invention was made upon a showing by the small business firm, nonprofit organization, or assignee that reasonable, but unsuccessful, efforts have been made to grant licenses on similar terms to potential licensees that would be likely to

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manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

D. **Technology Transfer Agreements with Foreign Entities.** See 761 DM 1, 1.6.D Technology Transfer Agreements with Foreign Entities. In accordance with Executive Order 12591, Section 4, the Science Advisor, when negotiating or entering into cooperative research and development agreements and licensing arrangements with foreign entities, shall, in consultation with the United States Trade Representative and Reclamation's Native American and International Affairs Office (only when dealing with foreign governments) give appropriate consideration:

- (1) To whether such foreign entities permit and encourage United States agencies, organizations, or persons to enter into cooperative research and development agreements and licensing arrangements on a comparable basis;
- (2) To whether foreign governments have policies to protect the United States intellectual property rights; and
- (3) Where cooperative research will involve data, technologies, or products subject to national security export controls under the laws of the United States, to whether those foreign governments have adopted adequate measures to prevent the transfer of strategic technology to destinations prohibited under such national security export controls, either through participation in the Coordinating Committee for Multilateral Export Controls or through other international agreements to which the United States and such foreign governments are signatories.

4. **Process.** Reclamation implements technology transfer activities in accordance with 15 U.S.C. § 3710, Executive Order 12591, and 761 DM 1, 1.7.B. Duties are conducted by Reclamation science, technical and engineering professionals (761 DM 1, 1.7.C) and authorized representative of the Commissioner (761 DM 1, 1.7.D) as appropriate.

A. **Establishing Technology Transfer Agreements.** See 761 DM 1, 1.6.A, Technology Transfer Agreements.

- (1) Negotiation and execution of any Cooperative Research and Development Agreement (CRADA), license, and other technology transfer agreements, will be carried out by the Science Advisor, or delegee having the delegated authority, to enter into technology transfer agreements in accordance with laws cited as Authorities in this D&S, 761 DM 1 1.7.D, and paragraph 4.R.(3) of the Reclamation Manual, [Delegations of Authority](#). The Science Advisor will carry out these actions in consultation with Reclamation's Deputy Ethics Counselor and the Office of the Solicitor, as appropriate (761 DM 1, 1.7 D).

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- (2) Development of agreements will be led by Reclamation's Program Manager, Research and Development, under oversight of the Science Advisor, including agreements with foreign persons, industrial organizations, or other non-government foreign entities, in consultation with the U.S. Trade Representative, and the appropriate International Affairs Office (761 DM 1, 1.6 D). For requirements on government rights to subject inventions made under the agreement, see 761 DM 1, 1.6 F to H. In addition, Reclamation shall ensure that the non-Federal partner has the option to choose an exclusive license to a subject invention made under a CRADA that is consistent with the requirements of 15 U.S.C. §3710a, Cooperative Research and Development Agreements. The public posting or Federal Register notice does not apply to such exclusive licenses consistent with the requirements of 35 U.S.C §209(e). For requirements on the exchange of resources and funds under Technology Transfer Agreements, see 35 U.S.C. § 209 and 761 DM 1, 1.6 E.
- (3) Other technology transfer agreement activities that are conducted or sponsored within in a Reclamation directorate or office will be coordinated with the Reclamation Leadership Team member overseeing that directorate or office and with the Program Manager, Research and Development.
- (4) To facilitate agreement development opportunities, Reclamation's Program Manager, Research and Development, will publicize open interest announcements for non-Federal partners in the general areas of research that are of interest to Reclamation, as appropriate and with understanding that formal competition is not required for technology transfer agreements under the authorities of this D&S.

B. Identifying, Protecting, and Managing Controlled Unclassified Information.

- (1) Identification and protection of controlled unclassified information (CUI), including scientific, business, or financial propriety information or background intellectual property that is privileged under the meaning of 5 U.S.C. § 552(b)(4) and/or 35 U.S.C. § 205, 18 U.S.C. § 1905, 761 DM 1, 1.7 B (9) and [SLE 02-01](#) *Identifying and Safeguarding Controlled Unclassified Information*, is overseen by Reclamation Leadership Team members, carried out by Reclamation science, technical and engineering professionals, and implemented in coordination with the Program Manager, Research and Development.
 - (a) Protection mechanisms for Reclamation intellectual property include reporting inventions, non-disclosure agreements, material transfer agreements, and CRADAs. Science, technical, and engineering professionals who develop inventions (inventors) shall apply these mechanisms as appropriate on a timely basis per 761 DM 1, 1.7.B.(9), coordinating with their Reclamation Leadership Team member and the Program Manager, Research and Development. This includes not publicly disclosing an invention or proprietary information in a publication, presentation, or other

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means prior to filing a U.S. patent application at the U.S. Patent and Trademark Office unless authorized to do so. “Public disclosures” include, but are not limited to publishing in scientific journals, trade journals, or newspapers articles; publishing abstracts of funded grant proposals; abstracts distributed or oral presentations at professional society meetings; master’s theses, Ph.D. dissertations, and open thesis defenses; and public distribution, without restriction, of materials or prototypes that embody the subject invention; as well as interpretive summaries, internet information, and/or manuscripts distributed upon request.

- (b) If a non-disclosure agreement is part of or amended to a technology transfer agreement, inventors will ensure that the delegated Reclamation representative signs the non-disclosure agreement in accordance with 4.R.(3), Reclamation Manual, [Delegations of Authority](#). Though Reclamation employees may not be required to sign non-disclosure agreements, such employees exchanging controlled unclassified information will protect such information in accordance with [SLE 02-01](#). Employees shall be bound and personally liable for wrongful disclosure of CUI in accordance with the Agreement and 18 U.S.C. § 1905, and 5 U.S.C. § 552(b)(4) and/or 35 U.S.C. § 205. Inventors will understand that the Federal government makes it a crime for any inventors to knowingly disclose the trade secrets of a private party (see 18 U.S.C. § 1905, paragraph 5.F).
- (2) Management of CUI includes protecting, marking, and handling in accordance with 5 U.S.C. § 552(b)(4) and/or 35 U.S.C. § 205, and 18 U.S.C. § 1905, 761 DM 1 1.6.I Management of Confidential Information, and [SLE 02-01](#),
- (3) Reclamation employees shall limit the receipt, transfer, or exchange of CUI with a non-federal entity to that which is necessary to fulfill the scope of the technology transfer agreement and under agreement terms that are mutually agreed by both parties prior to exchange of such information. In addition:
 - (a) All information exchanges will be consistent with applicable statutes and regulations.
 - (b) Any reasonable safeguards required to protect the information shall be mutually agreed to by both parties in the technology transfer agreement, or a non-disclosure agreement amended to the technology transfer agreement prior to exchange of such information. A non-disclosure agreement will be used to protect and prevent CUI from being publicly disclosed or disclosed outside a lawful government purpose. Agreements will not exceed statutory Federal trade secret protection which the Federal government makes it a crime for any Federal employee to knowingly disclose the trade secrets of a private party (18 U.S.C. § 1905).

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- (4) Exchanging Federal government CUI within Reclamation or other Executive Branch agencies is not considered public disclosure and therefore does not require a non-disclosure agreement. However, Reclamation employees shall disclose such information only on a need-to-know basis. Reclamation employees shall inform other Executive Branch agency employees receiving the CUI information to not disclose such information to other parties.

C. Ethics.

- (1) Ethics counseling and services related to technology transfer activities (e.g., potential conflicts of interest arising from Reclamation negotiating CRADAs or license agreements) shall be provided by Reclamation's Deputy Ethics Counselor in accordance with 761 DM 1 1.6 C, Ethics Conflict of Interest, 761 DM1 1.7.F Ethics Official, and Reclamation Manual Policy, *Ethics Program* (ETH P01).
- (2) Inventors shall prevent conflict of interest issues and adhere to applicable ethics laws and regulations in accordance with 761 DM 1, 1.6 C and ETH P01.

D. Revenue Collection, Distribution, and Administration. The Program Manager, Research and Development is responsible for:

- (1) Collection and distribution of revenues from technology transfer agreements and patent-license agreements shall be carried out using accounting protocols established by Reclamation's Director or the Mission Support Organization, in accordance with 15 U.S.C. § 3710c and in coordination with the Program Manager, Research and Development. Protocols address:
 - (a) receiving and managing funds provided by non-Federal partners through technology transfer agreements.
 - (b) paying costs associated with filing, prosecuting, and maintaining patents.
 - (c) receiving, distributing, and managing license revenues.
- (2) Administration of patent-license revenue will be carried out by the Program Manager, Research and Development in accordance with 15 U.S.C. § 3710c, 761 DM 1, 1.6 K, Distribution of License Income. In addition, the following applies:
 - (a) patent-license revenue will be expended for activities authorized by 15 U.S.C §3710c, Distribution of Royalties Received by Federal agencies, that best meet the research and technology transfer needs and priorities of Reclamation.
 - (b) Reclamation employee(s) that are listed as inventor(s) on patents associated with patent-license agreements and have assigned their rights to the U.S.

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Federal government shall receive the following portion of annual patent-license revenue for each year that a license is active: 100 percent of revenue up to \$2,000 plus 30 percent of additional revenue exceeding \$2,000.

5. Program Management.

A. Policies, Requirements, and Procedures.

- (1) Developing and implementing technology transfer policies, requirements, and procedures consistent with laws cited as Authorities in this D&S (761 DM 1, 1.7.B (2 and 3)) is overseen by the Science Advisor and administered by the Program Manager, Research and Development.
- (2) Ensuring technology transfer efforts are included, where appropriate, in job descriptions, employee promotion policies, and performance evaluations of scientists, engineers, and other technical personnel will be carried out by the Commissioner per 761 DM 1, 1.7.B (7).

B. Reporting.

- (1) Developing and submitting annual technology transfer reports as required by 15 U.S.C. § 3710(f)(1) and Office Management and Budget Circular A-11 will be overseen by the Science Advisor per 761 DM 1 1.7.B (1) and conducted by the Program Manager, Research and Development, in coordination with Department technology transfer officials, as appropriate.

C. Training.

- (1) Ensuring that science, technical, and engineering professionals involved in technology transfer activities have education and training in technology transfer processes, including identification, protection, and management of CUI per 5 U.S.C. § 552(b)(4) and/or 35 U.S.C. § 205, 18 U.S.C. § 1905, 761 DM 1, and [SLE 02-01](#) shall be led by the Science Advisor per 761 DM 1, 1.7.B (5) and paragraph 4.C.3 of the Reclamation Manual, [Delegations of Authority](#), in coordination with the Reclamation Leadership Team and the Program Manager, Research and Development, who will make available education and training resources.
- (2) Developing and updating Reclamation's technology transfer [website](#) with links to best practice examples pertaining to technology transfer, including templates for different technology transfer agreements, and other relevant information will be administered by the Program Manager, Research and Development per 761 DM 1, 1.7 B (6).

D. Outreach.

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- (1) Prioritizing and encouraging technology transfer activities, including providing incentives for technology transfer accomplishments, shall be conducted by the Commissioner per 761 DM 1, 1.7.B (4), in coordination with the Reclamation Leadership Team.
- (2) Outreach activities will be administered by the Program Manager, Research and Development, per 761 DM 1, 1.7.B (8), where activities include, but are not limited to, the professional exchange of information in technical publications, collaborating with local and regional partnerships, and intermediaries affiliated with state and local governments, using consultants and contractors, and using innovative communication technologies.
- (3) Science, technical, and engineering professionals will identify and facilitate technology transfer opportunities, as appropriate, consistent with mission responsibilities per 761 DM 1, 1.7.C.

E. Legal Services.

- (1) Any requests to contract with outside legal counsel for legal work associated with technology transfer activities that cannot be supported by the Department's Office of the Solicitor, the Division of General Law, shall be submitted from the Science Advisor to the Solicitor through the Associate Solicitor for General Law, in accordance with 456 DM 1 and 761 DM 1, 1.7.D (2).

F. Office of Research and Technology Application.

- (1) Functions of the Office of Research and Technology Application, as required by 15 U.S.C. § 3710(b), will be provided by the Program Manager, Research and Development.

6. Definitions. See 761 DM 1, 1.4. In addition, the following applies:

- B. **Controlled Unclassified information (CUI).** The official term used within the Executive Branch to identify sensitive information the Government creates or possesses, or that an entity creates or possesses for or on behalf of the Government, that a law, regulation, or Government-wide policy requires or permits an agency to handle using safeguarding or dissemination controls (*Identifying and Safeguarding Controlled Unclassified Information*, [SLE 02-01](#)). This encompasses Confidential Information defined in 761 DM 1, 1.4. Technology transfer activities may involve exposure to and handling of CUI that includes, but is not limited to, the following categories maintained by [National Archives](#): Critical Infrastructure, Financial, Intelligence, Legal, Privacy, Procurement and Acquisition, Proprietary Business Information, and Provisional.
- C. **Federal Laboratory.** Federal Laboratory means any laboratory, any federally funded research and development center, or any center established under 15 U.S.C. § 3705,

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§ 3707 that is owned, leased, or otherwise used by a Federal agency and funded by the Federal Government, whether operated by the Government or by a contractor (*see, also*, 15 U.S.C. § 3703). In accordance with 761 DM 1, 1.4 C., Reclamation and its facilities owned and operated by Reclamation including, but not limited to dams, powerplants, reservoirs, canals, and waterways are defined collectively as a “Federal Laboratory.”

- D. **Intellectual Property.** Intellectual property is an intangible asset that includes products of the human intellect, such as, inventions, discoveries, technologies, creations, developments, or other forms of expressing an idea. Intellectual property can be legally protected as a patent, copyright, trademark, and trade secrets.
 - E. **Invention.** An invention is any discovery or new technology (way of doing or making things), machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, that may be protected under title 35 under the patent laws of the United States or any novel variety of plant under the Plant Variety Protection Act (7 U.S.C. § 2321 et seq.).
 - F. **Patent.** A patent is a limited grant from the U.S. Government which allows the owner to exclude others from making, using, offering for sale, selling, or importing the invention for a limited period (Art. I, Section 8 of the Constitution).
 - G. **Subject Invention.** Any invention of the contractor conceived or first actually reduced to practice in the performance of work under an agreement.
7. **Review Period.** The originating office will review this release every 4 years.

RECLAMATION MANUAL TRANSMITTAL SHEET

Effective Date: _____

Release No. _____

Ensure all employees needing this information are provided a copy of this release.

Reclamation Manual Release Number and Subject

Summary of Changes

NOTE: This Reclamation Manual release applies to all Reclamation employees. When an exclusive bargaining unit exists, changes to this release may be subject to the provisions of collective bargaining agreements.

Filing instructions

Remove Sheets

Insert Sheets

All Reclamation Manual releases are available at <http://www.usbr.gov/recman/>

Filed by: _____

Date: _____