

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 into 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
Contact:	Research and Development Office (08-10000)

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, party, or partner ('non-Federal entity') is any entity 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 for scope applicable to this D&S. 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 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 non-Federal partner under the technology transfer agreements (15 U.S.C. § 3710a). Formally delegated representatives in accordance with Paragraph 6.R.(3) of the Reclamation Manual, *Delegations of Authority* can only execute technology transfer agreements.
3. **Definitions.** See 761 DM 1, 1.4 for definitions applicable to this D&S. In addition, the following applies:
- A. **Confidential Business Information.** This means scientific, business, or financial proprietary information or background intellectual property from a non-Federal entity that include trade secrets or commercial, financial or proprietary information that is privileged or proprietary under the meaning of 5 U.S.C. § 552(b)(4) and/or 35 U.S.C. § 205, provided that such information is not generally known or available from other sources without obligation concerning its confidentiality; has not been made available by the owners to others without obligation concerning its confidentiality; and is not already available to the government without obligation concerning its confidentiality.
- 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](#)).
- 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, § 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

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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 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 of time (Art. I, Section 8 of the Constitution).
4. **Responsibilities.** The specific responsibilities assigned to the Heads of Bureaus or Offices by 761 DM 1, 1.7 are re-assigned to the responsible Reclamation Leadership Team Member, Reclamation offices or employees. In addition to 761 DM 1, there are other responsibilities assigned to specific Reclamation offices and employees as appropriate.
- A. **Commissioner.** The Commissioner is responsible for implementing the technology transfer activities within Reclamation in accordance with 15 U.S.C. § 3710, Executive Order 12591, and 761 DM 1, 1.7 B.
 - B. **Science Advisor.** The Science Advisor is responsible for:
 - (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));
 - (2) negotiating and executing any Cooperative Research and Development Agreements (CRADAs), licenses, and other technology transfer agreements, in consultation with Reclamation’s Deputy Ethics Counselor and the Office of the Solicitor, as appropriate (761 DM 1, 1.7 D);
 - (3) coordinating and submitting annual technology transfer reports as required by 15 U.S.C. § 3710(f) (761 DM 1, 1.7 B (1));
 - (4) submitting to the Solicitor through the Associate Solicitor for General Law, any requests to contract with outside legal counsel for legal work associated with

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technology transfer activities that cannot be supported by the Department's Office of the Solicitor, the Division of General Law in accordance with 456 DM 1 (761 DM 1, 1.7 D (2)); and

- (5) having the delegated authority to enter into technology transfer agreements in accordance with laws cited as Authorities in this D&S, Paragraph 6.R.(3) of the Reclamation Manual, [Delegations of Authority](#).

C. Program Manager, Research and Development. The Program Manager, Research and Development is responsible for:

- (1) cooperating with the Department to prepare reports as required by 15 U.S.C. § 3710(f)(1), and per Office Management and Budget Circular A-11 (761 DM 1, 1.7 B (1));
- (2) coordinating with members of the Reclamation Leadership Team to ensure that scientists, engineers, and other personnel who may be involved in technology transfer, have education and training in technology transfer, including the management of sensitive information and confidential business information (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 (5), and [SLE 02-01](#));
- (3) developing and updating websites with links to examples of best practices pertaining to technology transfer, including templates for different technology transfer agreements, and other relevant information, [Technology Transfer Website](#) (761 DM 1, 1.7 B (6));
- (4) implementing appropriate outreach activities, including, but 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 (761 DM 1, 1.7 B (8));
- (5) publicizing 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;
- (6) coordinating with Reclamation Leadership Team members to identify and protect sensitive information and confidential business information (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](#));

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- (7) developing technology transfer 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);
- (8) providing the functions of the Office of Research and Technology Application (ORTA) as required by 15 U.S.C. § 3710(b);
- (9) developing and maintaining technology transfer guidance on the implementation of this D&S (761 DM 1, 1.7 B (3)); and
- (10) managing license revenues on patents owned or co-owned by Reclamation and accounting protocols established by the Mission Support Organization in accordance with 15 U.S.C. § 3710c.

D. **Reclamation Leadership Team.** The members of the Reclamation Leadership Team are responsible for:

- (1) giving high priority to and encouraging technology transfer activities, including providing incentives for technology transfer accomplishments (761 DM 1, 1.7 B (7));
- (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 (761 DM 1, 1.7 B (4));
- (3) ensuring scientists, engineers, and other personnel who are involved in technology transfer, have education and training in technology transfer, including the management of sensitive information and confidential business information (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 (5) and [SLE 02-01](#));
- (4) coordinating with the Program Manager, Research and Development, on technology transfer activities conducted or sponsored within their organizations; and
- (5) identifying and protecting controlled unclassified information and confidential business information 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](#)).

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- E. **Deputy Ethics Counselor.** The Deputy Ethics Counselor is responsible for:
- (1) In accordance with 15 U.S.C. § 3710a(c), reviewing standards of conduct for Reclamation's employees for resolving potential conflicts of interest to make sure that the standards adequately address situations that are likely to arise through the use of the Authority under 15 U.S.C. § 3710a(a) to enter CRADAs and to negotiate licensing agreements. Such review may include, but may not be limited, to cases where current or former employees or their partners negotiate licenses or assignments of titles to inventions or negotiate CRADAs with Federal agencies and or non-Federal entities (761 DM 1, 1.7 F (1)); and
 - (2) Providing ethics advice and counsel in response to requests from Reclamation Leadership Team members and Reclamation offices in accordance with Reclamation Manual Policy, *Ethics Program* (ETH P01) (761 DM 1, 1.7 F (1)).
- F. **Director, Mission Support Organization.** The Director, Mission Support Organization will coordinate with the Program Manager, Research and Development Office to establish accounting procedures on:
- (1) receiving and managing funds provided by non-Federal partners through technology transfer agreements;
 - (2) costs associated with filing, prosecuting, and maintaining patents; and
 - (3) receiving, distributing, and managing license revenues.
- G. **Inventors or Science, Technical, and Engineering Employees.** Inventors, also referred to as science, technical, and engineering employees are responsible for:
- (1) identifying and facilitating technology transfer opportunities, as appropriate, consistent with mission responsibilities (761 DM 1, 1.7 C).
 - (2) becoming familiar with the technology transfer process including the management of sensitive information through attending authorized technology transfer training and other means (761 DM 1, 1.7 B 5).
 - (3) preventing conflict of interest issues and adhering to applicable ethics laws and regulations in accordance with 761 DM 1, 1.6 C and Reclamation Manual Policy, *Ethics Program* (ETH P01).
 - (4) protecting Reclamation intellectual property, as appropriate, through reporting inventions, non-disclosure agreements, material transfer agreements, and CRADAs on a timely basis (761 DM 1, 1.7 B 9).
 - (5) coordinating with the Reclamation Leadership Team members specific to his or her organization to identify and protect controlled unclassified information and

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confidential business information including not disclosing an invention or proprietary information in a publication, presentation, or other means prior to filing a U.S. patent application at the U.S. Patent and Trademark Office unless authorized to do so. "Publication" includes publishing in scientific journals, trade journals, newspapers articles, abstracts distributed at professional society meetings, interpretive summaries, Internet information, and/or manuscripts distributed upon request (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](#)).

- (6) ensuring all controlled unclassified information is protected, marked, and handled in accordance with *Identifying and Safeguarding Controlled Unclassified Information*, [SLE 02-01](#).
- (7) ensuring the delegated representatives in accordance with Paragraph 6.R.(3) of the Reclamation Manual, [Delegations of Authority](#), will sign the non-disclosure agreement, if such agreement is part of or amended to a technology transfer agreement. Inventors will understand they are bound by 18 U.S.C. § 1905, Disclosure of Confidential Information Generally, not to disclose proprietary information that is disclosed to them in the conduct of their official duties and that the Federal government makes it a crime for any inventors to knowingly disclose the trade secrets of a private party (see Paragraph 5.F. of this D&S).

5. Principles and Requirements.

- A. **Technology Transfer Agreements.** See 761 DM 1, 1.6 A, Technology Transfer Agreements.
- B. **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's Program Manager, Research and Development will exercise that discretion in the 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 on a case-by-case basis.

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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.
- C. **Ethics and Conflict of Interest.** See 761 DM 1, 1.6 C, Ethics Conflict of Interest and Reclamation Manual Policy, *Ethics Program* (ETH P01).
- D. **Preference for United States Industry.** See 35 U.S.C. § 204, Reclamation 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 through the use of 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 funding 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 manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible. Also see 761 DM 1, 1.6. G.
- E. **Technology Transfer Agreements with Foreign Entities.** Reclamation's Science Advisor has the authority to waive the preference for United States industry requirement (35 U.S.C. § 204). 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

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Committee for Multilateral Export Controls or through other international agreements to which the United States and such foreign governments are signatories. See 761 DM 1, 1.6. D. 4: Technology Transfer Agreements with Foreign Entities.

- F. **Exchange of Resources and Funds under Technology Transfer Agreements.** See 35 U.S.C. § 209, 761 DM 1, 1.6 E, Exchange of Resources and Funds under Technology Transfer Agreements.
- G. **Management of Controlled Unclassified Information and Confidential Business Information.** See 18 U.S.C. § 1905, 761 DM 1, 1.6 I, Management of Confidential Information.
- (1) **Safeguarding Controlled Unclassified Information and Confidential Business Information.** All controlled unclassified information and confidential business information will be protected, marked, and handled in accordance with *Identifying and Safeguarding Controlled Unclassified Information*, [SLE 02-01](#), 5 U.S.C. § 552(b)(4) and/or 35 U.S.C. § 205, and 18 U.S.C. § 1905.
 - (2) **Exchanging Controlled Unclassified Information and Confidential Business Information with a Non-Federal Entity.** If sensitive information and confidential business information is received, transferred, or exchanged outside of Reclamation, Reclamation employees shall limit the exchange of such information to that which is necessary to fulfill the scope of the technology transfer agreement and shall be mutually agreed by both parties prior to exchange of such information.
 - (a) All information exchanges will be consistent with applicable statutes and regulations.
 - (b) Any reasonable safeguards required to protect such 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 such information from public disclosure. 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, Disclosure of Confidential Information Generally).
 - (3) **Exchanging Controlled Unclassified Information within the Federal Government.** Sharing Federal government controlled unclassified information 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

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basis. Reclamation employees shall inform other Executive Branch agency employees receiving such information to not disclose such information to other parties.

- (4) **Reclamation Signature Authority for Non-disclosure Agreements.** If a non-disclosure agreement is part of or amended to a technology transfer agreement, the delegated representatives in accordance with Paragraph 6.R.(3) of the Reclamation Manual, [Delegations of Authority](#), will sign the non-disclosure agreement. 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 *Identifying and Safeguarding Controlled Unclassified Information*, [SLE 02-01](#). Employees who need to exchange confidential business information shall be bound and personally liable for wrongful disclosure of sensitive, financial or proprietary information in accordance with the Agreement and 18 U.S.C. §1905, Disclosure of Confidential Information Generally, and 5 U.S.C. § 552(b)(4) and/or 35 U.S.C. § 205.

H. **Licensing of Intellectual Property.** See 761 DM 1, 1.6 J, Licensing of Intellectual Property. In addition, the following applies:

- (1) **Government Rights to a Subject Invention.** See 761 DM 1. 1.6 F to H. In addition, the following applies for subject inventions made under a CRADA. Reclamation shall ensure that the non-Federal partner has the option to choose an exclusive license 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).
- (2) **Patent Decision Criteria.** 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:
 - (a) A commercial manufactured product is the optimal solution to meet Reclamation's needs, and the needs of other non-Federal users.
 - (b) 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.

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- (c) The size of the potential market for the solution is large enough to attract potential license(s).
- (d) The non-Federal partner will commit substantial resources to support patent protection for subject inventions.

I. Distribution of License Income. See 15 U.S.C. § 3710c, 761 DM 1, 1.6 K, Distribution of License Income. In addition, the following applies:

- (1) License income will be managed by the Program Manager, Research and Development, and 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.
- (2) Reclamation employee(s) that are listed as inventor(s) shall receive the first \$2,000 and thereafter 30 percent of the royalties or other payments received each year that the license is active; provided that the employee(s) have assigned their rights to the U.S. Federal government.

6. Authorities Not Affected by this D&S.

- A. 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.
- B. 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.

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: _____