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### Divestment of Federal Water Projects

A. Jack Garner

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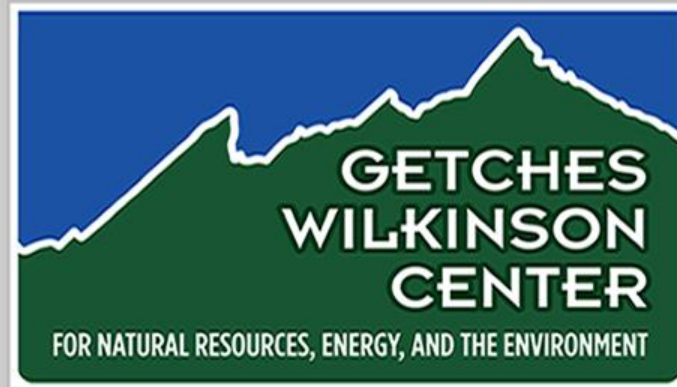
Garner, A. Jack, "Divestment of Federal Water Projects" (1997). *Dams: Water and Power in the New West (Summer Conference, June 2-4)*.

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Law Ctr., Univ. of Colo. Sch. of Law, 1997).

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**DIVESTMENT OF FEDERAL WATER PROJECTS**

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Bureau of Reclamation**

**DAMS: Water and Power in the New West**

**June 2-4, 1997**

**Natural Resources Law Center  
University of Colorado, Boulder  
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## Summary:

The divestment of Federal water projects is not a new concept for the Bureau of Reclamation. Transferring of facility operations and maintenance in a continuing exploration of management improving possibilities is a practice Reclamation has maintained since its inception.

However, with the implementation of government reinvention, what used to be procedure for the Bureau of Reclamation has taken on new meaning. Inspired by the National Performance Review, Reclamation has been able to introduce a Title Transfer process designed to protect the environment and the people associated with Federal water facilities.

The hope of Reclamation is that through the Framework for Title Transfer, more facilities can be transferred through a fair, and less time consuming process.

## I. Introduction: History of the Bureau of Reclamation

When the Bureau of Reclamation program was founded in 1902, it was designed to bring water to the arid West. Water was furnished to individual "entrymen" on projects. The long-term stability of farming and the viability of surrounding communities was an open question. Today, by contrast, Reclamation enters into contracts almost exclusively with well-established districts and municipalities; in either case, the entrymen, district or municipality takes over the payments of the project in question. As we near the turn of the century, many of these projects are near the end of their repayment periods.

Today I will focus on the history and on-going development of the Title Transfer process as it has evolved within the Bureau of Reclamation system. I will also update you on our progress, significant issues and current ideas regarding federal facility Title Transfer. Today, out of 191 Reclamation projects involving 592 water districts, approximately 50 districts and municipalities

municipalities have indicated interest in Title Transfer.

As we move into the next century, there are a number of forces at work in the Federal government to help the system prepare for the future. The budget for federal projects and programs is shrinking; the Administration's policy is now one of downsizing the government and decentralizing decision-making. This, in effect, brings decision making, in certain cases, back to the local level.

Reclamation is responding to these forces in a number of ways: it has significantly downsized its workforce; it has moved forcefully into the role as a water management agency; it is actively looking for opportunities to meet the challenges posed by a shrinking budget and workforce; and it is adapting to the devolution of government to local levels.

In Vice President Gore's recent update to the National Performance Review (NPR), Reclamation was recognized for cutting headquarters "by 75 percent" and putting "much of what remained on a fee-for-service basis," (Gore, 29). While Title Transfer is not a fee-for-service basis, it does have direct ties to the NPR.

## II. National Performance Review (NPR)

### A. Definition

1. The NPR is the federal government's way of streamlining government to be more efficient and effective.
2. President Clinton calls it a "reinvention of government" to make the Federal system "work better but cost less" (Ibid: Presidential Foreword).
3. First initiated in 1995, the NPR is updated periodically.

### B. NPR and Title Transfer

1. Federal Agencies are urged to "reduce operating costs" through "spin offs or

privatized functions." According to the Vice President, "This gets the private sector competing for a range of assets or activities that the government no longer needs to own or perform," (Ibid: 40).

2. Reclamation capable of following Vice President's suggestion because a category of projects for Reclamation are single purpose, service a relatively limited number of users, and/or have already transferred Operations and Maintenance (O&M) activities. Consequently, they are candidates for Title Transfer.

3. Constantly changing demographics of West were already affecting Reclamation.

a. rapid population growth

b. increasing water and land rights issues

4. In order to respond accordingly, Reclamation developed an agency wide policy on Title Transfers. The result was the Title Transfer Framework Document of 1995 (*Title Transfer*, 1995).

### III. Framework

#### A. Establishing Framework

1. The development of the Framework Document was an agency-wide effort.

Underlying premises of devolution which include:

a. The lead roles are given to locally-based staff who have considerable flexibility to negotiate agreements which take into account unique characteristics of the project

b. The Framework was largely developed in a bottoms-up manner, rather than a dictate from Washington.

#### B. Related Issues

1. Before a framework could be established, research into the possibilities and options available to Reclamation for transfer of title re-evaluation was required.

2. Eight separate "issue teams" were organized to investigate issues closely associated with Title Transfer (Ibid):

- a. Asset Evaluation
- b. Contracts
- c. Real Property
- d. Compliance
- e. Native Americans
- f. Power
- g. Human Resources
- h. Outreach

### C. Recommendations of Teams

1. Each team provided a draft analysis of their findings in June 1995 followed shortly by the executive summaries with their recommendations.
2. From these recommendations, a criterion for developing Framework of '95 (*Framework*, August 7, 1995) was gleaned.
3. Guidance initially intended to apply to uncomplicated projects, however, what we have learned by our limited experience is that there are no uncomplicated projects, just less complicated ones.
4. Objective is to focus on projects or facilities where there are few or no competing interests, the facilities are not hydrological integrated with other projects, the financial arrangements are relatively simple and easily defined, and the legal and institutional concerns associated with transfer can be readily addressed (*Framework: 2*, 1995).
5. Reclamation is developing guidance for considering transfer of more complicated projects. Right now, it is our policy to only do the "less complicated" ones until such guidance is more developed and all elements of such a transfer thoroughly understood
6. Regardless of whatever additional guidance we put together on multi-purpose projects, the six criteria listed here will always have to be met:



**D. Criteria (Ibid: 3):**

1. Taxpayers financial interest protected.
2. Compliance with all state and federal laws (including NEPA)
3. Interstate compacts/interests protected.
4. Meet Native American trust responsibilities
5. Fulfill treaty obligations
6. Protect public aspects

**E. Also instructed by the Framework.**

1. Reclamation Area offices review projects nominated by an interested transferee and pursue negotiations regarding those projects where the issues associated with transfer are relatively easy to resolve.
2. With the criteria in mind, reasoning for any transfer of facilities should be based on achieving a greater operational efficiency and/or effectiveness for the facility as well as relieving the Federal Government of responsibility and liability that can be appropriately addressed as well, if not better, by nonfederal entities (Ibid).
3. The determination to transfer should include consideration of economic and environmental consequences and the overall public good. The Framework helps ensure the overall process.

**F. Valuation Policy**

1. One of the more prominent concerns with multi-purpose facility transfers is cost.
2. On occasion, NEPA compliance and other obligations incur expenses against the total value of the facility.
3. Valuation Policy attachment to the Framework Document to help offset cost and expedite the transfer process. When compliance and other costs impede the transfer, Reclamation can consider cost-sharing arrangements which would adjust the valuation with the potential transferee (discussed later).

## G. How Valuation Policy works.

1. When transfer negotiations are initiated, Reclamation estimates the base value for Federal facilities and related assets proposed for transfer.
2. Prior to initiating negotiations, there must also be an agreement between Reclamation and the potential transferee(s) concerning the sharing of costs required to make transfer complete.
  - a. The base value of a facility proposed for transfer is defined as the value of the assets being transferred (including facilities, lands, and other related assets) as if they were under continued Federal control.
  - b. Valuation assumes new owner will
    1. receive all remaining revenues due the Federal Government for repayment of the capital costs of facilities transferred;
    2. receive all other Federal revenues from the assets (e.g. leases for grazing, commercial purposes, etc.);
    3. fund O&M of all projects, accordingly receiving all O&M payments;
    4. bear all liability associated with ownership and operation of the facility. (*Framework: Valuation Attachment: 1, 1995*).
3. Valuation questions are not the only point of contingency associated with the Framework. There are various issues within the Framework which need to be addressed with each individual transfer.

## H. Issues within framework

*1. Flexibility:* Obviously, there are constraints within the Framework as it sets a stricture for Federal procedure. Because of this, Reclamation is very clear in the Framework Document to illustrate the flexibility of the document and its "one size does not fit all" attitude. Since each project, storage facility, canal, diversion, and conveyance structure is different, it is essential that negotiations and the assessment of value be handled on a case-by-case basis to account for the unique

characteristics and conditions associated with each (*Framework: Valuation Attachment: 1, 1995*).

2. *Voluntary program*: It is also important to keep in mind that while Title Transfer is part of a Federal government initiative, it cannot be initiated without interest and consent of the potential transferee(s). Reclamation encourages interested parties to make inquiry. Reclamation is willing to spend sufficient time to explain the program to a prospective transferee and answer their concerns as they evaluate the potential.

3. *Initiative*: Consequentially, initiative also rests with the transferee(s). Reclamation will not bear burden of transfer; transferee(s) participation is crucial to the negotiation process so that all stakeholders and benefits of the facility are represented.

4. *Public Law*: As Reclamation is not authorized federally to transfer as a private entity, Reclamation is also not authorized to make any payments associated with the transfer, compliance or other related obligations unless otherwise provided by provisos of a cost-share agreement. And that must be negotiated. After all negotiations are completed and all terms are set, all transfers must be reviewed by Congress upon whose approval a Public Law is ratified. The Public Law finalizes and legalizes the transfer in question and the related payment policies.

I. *Issues Outside the Framework*: The Framework was also designed to resolve certain issues up front. For example:

1. *NEPA*--the National Environmental Protection Act must be included in each transfer. The Administration has committed itself to implementation of title transfer in accordance with all appropriate environmental laws including NEPA and the Endangered Species Act and cultural resources. In the months following negotiations with interested transferees and after numerous impasses over payment of NEPA costs, Reclamation has been working towards a policy of cost-sharing NEPA compliance for projects serving additional public uses, such as wildlife,

recreation, or flood control. Problems arise when legislation exempts transfers from NEPA or, in the opinion of the Administration, does not sufficiently protect the public interest.

The NEPA cost-sharing policy is only in draft form, subject to final approval from Reclamation, the Department of the Interior and others. The general philosophy that Reclamation is pursuing, pending all necessary clearances proposes a 50-50 cost share, with Reclamation's share not exceeding the base value of a project, to comply with the requirements of NEPA as part of executing a title transfer agreement. The willingness to cost-share 50 percent of the NEPA work represents a shift in policy from the Framework document, which states that the potential transferee will pay 100 percent of the NEPA costs.

Under this proposal, the transferee will be expected to finance to Reclamation the full amount of the NEPA compliance costs up-front. The portion of the NEPA costs attributed to the transferee's cost-share would then be credited as an adjustment to the base-value of the project. That base value will still be determined pursuant to the Valuation Policy attached to the Framework document, as modified by the Supplement to Project Valuation Policy dated December 6, 1996.

The transferee would receive a deduction in the base-value of the project equal to its agreed-upon share of the NEPA compliance costs. Except in cases where the base value is zero, or the transferee's share of NEPA expenses exceeds the base value, the transferee would receive a deduction in the base value of the project equal to its agreed upon share of the NEPA costs. In no case would the allowed credit exceed the base value of the project.

2. *Project Power*--In multi-purpose facilities, project pumping power can be an

issue. Currently, the principle purpose of Reclamation's project power program is to ensure an economical (rates can be less than the costs to produce the power) and reliable source of power to operate project facilities. Generally, power in excess of project needs (referred to as preference power) is marketed through a power marketing administration (PMA) to non-profit utility districts, including water districts and cities. Preference power rates on the other hand are set to cover the costs of operation, maintenance, and replacement of power facilities. These practices are consistent with the social purpose of the Reclamation program, to encourage the economic development of the arid western lands.

In some instances the availability of project power was and/or is required to make an irrigation project feasible. Under such circumstances, the continued availability of project power is critical to the viability of irrigation. Furthermore, in the absence of significant off-setting cost savings or other non-pecuniary benefits as a result to title transfer, it is anticipated that many proposed transferees will be reluctant to agree to pay the higher preference or commercial power rates as a condition of title transfer. Numerous options for handling the power component when facilities are transferred have been considered and much discussion continues on a policy solution. The options range from including project use power rights in perpetuity with a transfer of facilities which would continue to be an irrigation subsidy by commercial power users to the other extreme in which a market rate is achieved by reducing the repayment obligation of the project by the present worth of the electrical energy that would have been provided for the life of the project. In some cases including power rights with transfer of facilities as a preference power customer may be the feasible approach.

Present Administration policy would move in the direction of discontinuing subsidies to the project beneficiaries as projects are privatized. The negotiation of a termination date of a power subsidy should be as short as possible, but in no case

exceed the payout date of the project for projects with repayment contracts or the termination date of the contract for projects with water service type contracts. This will place a limit on the level of the future subsidy by the firm power customers, but gives irrigators ample time to adjust/prepare for new rates in the future.

Rather than select a single option for handling "project use" power, each project should be individually considered and the option used would be the one that incurs the least additional costs to the Government while maintaining viability for title transfer of the project. Agreement by Reclamation with a transferee to provide use of project power, preference power, or any special arrangement to adjust facility valuation due to lost power subsidy should be included in the agreement submitted to Congress for approval or ratification.

*3. Aid to Irrigation*--This is an issue between the transferee and the power entity providing the aid to irrigation. The transferee must reach an agreement with the power entity before transfer can take place. Regardless of the arrangement the power customer will still be responsible for recompensating the United States for assistance to irrigation, i.e. it is not to be written off.

*4. Liability*--The United States is no longer liable after total transfer of a facility. This is an important element of the "reinvented government" which empowers the transferee(s) i.e. public/private owner(s) of the facility. Any title transfer legislation should contain liability language to ensure that the purchaser accepts full liability for the project when it is conveyed. To implement this, we recommend strongly the following liability language in any title transfer legislation: "Effective on the date of conveyance of the project, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the project, except for damages caused by acts of negligence

committed by the United States or by its employees, agents, or contractors prior to the date of conveyance.”

Although Transfer finalization is Congressional, Reclamation does have its own related responsibilities. A brief description of the Bureau of Reclamation will help illustrate where we are today and what directions we hope to take with Title Transfer and related issues.

#### IV. Status of Title Transfer

##### A. Who/what is BOR

1. Today the Bureau of Reclamation has accomplished its original mission.
2. The West in many respects is the most urbanized region of the country.
3. Reclamations responsibilities broaden with the changing demographics of the West and our evolving social and environmental structure.
4. Other uses and considerations: , i.e. fish and wildlife, recreation, cultural resources, and endangered species, must be made in the management of all Reclamation’s projects. If title transfer is to occur with any one entity, be it private or public, the continuance of legitimate public uses will need to be assured.

##### B. O&M

*1. Definition:* Reclamation owns and operates numerous facilities which, if located in other parts of the country, would likely be owned , operated, and funded by private organizations or local government agencies. It has been Reclamation's policy for decades to transfer operation and maintenance (O&M) to local entities where and when appropriate. Interest in actual transfer of title (with its attendant responsibilities) appears to be growing slowly.

*2. Distinction:* There is an important distinction between transfer of title and transfer of O&M facilities. Reclamation has and continues to transfer O&M

responsibility to districts and water user entities. The criteria for transferring O&M responsibility are generally understood throughout Reclamation. The transfer of O&M responsibility is typically associated with water conveyance and distribution system works. The cost for operating and maintaining these facilities is a financial obligation of a well defined business entity, the district. The beneficiaries of performing the facility O&M are the constituent members of the district. Reclamation may enter into these transactions on its own accord, whereas title transfer requires legislation.

- a. However, O&M does not offer as many potential benefits for the transferee as the Title Transfer. While it is still necessary in certain instances to transfer only O&M facilities, Title Transfer offers several advantages.

C. Related Benefits for Transferee(s):

1. Greater control
2. Cost-effective maintenance
3. Minimize red tape
4. Exemption from acreage limitation ( Note: Acreage limitation exempt only if title to all irrigation facilities is transferred.)

D. Two year history of Federal Title Transfer: In the last 18 months we have learned a lot about Title Transfer

1. No such thing as simple projects
2. The need for Partial Transfers
3. Each project is unique. A one-size-fits-all approach is not successful.
4. Time Issues--Dealing with the number of stakeholders and beneficiaries interested in Transfer takes time so that all interests are represented takes time.
5. Liability and safety concerns deter transfer
  - a. Many facility managers are not ready to assume these



responsibilities. In other words, the benefits do not exceed the risks.

#### **E. Title Transfer Completion**

##### **1. Completed Transfers via legislation prior to Framework**

- a. Rio Grande--below Elephant Butte
- b. Vermejo Project
- c. Boulder City Pipeline
- d. San Diego Aqueduct

##### **2. Projects Under Discussion for Framework**

- a. Clear Creek
- b. Contra Costa
- c. Lower Yellowstone
- d. Canadian River
- e. McGee Creek
- f. Palmetto Bend
- g. Nampa Meridian
- h. Freemont Madison

##### **3. Projects opting for legislative process over Framework**

- a. Republican River
- b. Burley, ID
- c. Carlsbad
- d. Oroville Tonasket
- e. Collbran

#### **V. What the Framework does not entertain.**

##### **A. Litigation**

- 1. The Framework is designed as an alternative to litigation. Often, results from

litigated transfers do not represent the rights and interests of all stakeholders related to the facility. By providing a Title Transfer process, the Framework helps guarantee that all measures and issues are considered so that Congress will be more likely to approve the transfer.

#### B. Over compromising

1. Reasons legislative attempts to transfer have not succeeded in the past include: failure to develop a public process; waivers of NEPA and other environmental laws; and, limited recognition of stakeholders.
2. There has been no assurance of protection of such public aspects such as flood control, recreation and fish and wildlife; and proposed price tags which fail to protect tax-payer interest.

### VI. Conclusion

#### A. Appreciation and Acceptance of Title Transfer

Those of us at Reclamation believe in the Framework process and believe it is working to protect public values associated with a project and the interests of all stakeholders. We believe there are viable solutions to the obstacles in any Title Transfer. If we choose to work together, instead of against each other, we will be able to continue improving our Title Transfer process so that all parties are fairly represented when Legislation is developed and sent to Congress. And that is the process which makes the most sense.

#### General References

Bureau of Reclamation, *Title Transfer, Issue Teams: Draft Analysis*. June 1995.

Bureau of Reclamation Projects, *Framework for the Transfer of Title*, August 7, 1995.

Gore, Al. *The Blair House Papers*. (National Performance Review, Washington D.C., January, 1997).

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

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

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

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

## PURPOSE

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

## SCOPE OF APPLICATION OF FRAMEWORK

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

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

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

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

## **CRITERIA FOR TITLE TRANSFER**

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

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

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

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

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

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

## **GENERAL GUIDELINES APPLYING TO TRANSFERS**

All transfers will be voluntary.

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

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

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

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

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

Potential transferees must be competent to manage the project and be willing and able to fulfill all legal obligations associated with taking ownership of that project, including compliance with Federal, State, and tribal laws that apply to facilities in private ownership and assumption of full liability for all matters associated with ownership and operation of the transferred facilities. Potential transferees must be able to demonstrate the technical capability to maintain project safety on a permanent basis and an ability to meet financial obligations associated with the project.

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

The financial interests of the Government and general taxpayers will be protected. Transferees must agree to fair and equitable terms based upon the factual circumstances associated with each project. (See attachment which describes the valuation of projects.) Transferees will be expected to pay upfront the estimated transaction costs, such as costs associated with

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

compliance with the National Environmental Policy Act, real estate boundary surveys, and so forth. Reclamation will not provide new loans to finance transfers.

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

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

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

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

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

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