

43 USC Ch. 47: RECLAMATION TITLE TRANSFER  
From Title 43—PUBLIC LANDS

## CHAPTER 47—RECLAMATION TITLE TRANSFER

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### §2901. Purpose

The purpose of this chapter is to facilitate the transfer of title to Reclamation project facilities to qualifying entities on the completion of repayment of capital costs.

(Pub. L. 116–9, title VIII, §8001, Mar. 12, 2019, 133 Stat. 804.)

### §2902. Definitions

In this chapter:

#### (1) Conveyed property

The term "conveyed property" means an eligible facility that has been conveyed to a qualifying entity under section 2903 of this title.

#### (2) Eligible facility

The term "eligible facility" means a facility that meets the criteria for potential transfer established under section 2904(a) of this title.

#### (3) Facility

##### (A) In general

The term "facility" includes a dam or appurtenant works, canal, lateral, ditch, gate, control structure, pumping station, other infrastructure, recreational facility, building, distribution and drainage works, and associated land or interest in land or water.

## **(B) Exclusions**

The term "facility" does not include a Reclamation project facility, or a portion of a Reclamation project facility

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- (i) that is a reserved works as of March 12, 2019;
- (ii) that generates hydropower marketed by a Federal power marketing administration; or
- (iii) that is managed for recreation under a lease, permit, license, or other management agreement that does contribute to capital repayment.

## **(4) Project use power**

The term "project use power" means the electrical capacity, energy, and associated ancillary service components required to provide the minimum electrical service needed to operate or maintain Reclamation project facilities in accordance with the authorization for the Reclamation project.

## **(5) Qualifying entity**

The term "qualifying entity" means an agency of a State or political subdivision of a State, a joint action or powers agency, a water users association, or an Indian Tribe or Tribal utility authority that—

(A) as of the date of conveyance under this chapter, is the current operator of the eligible facility pursuant to a contract with Reclamation; and

(B) as determined by the Secretary, has the capacity to continue to manage the eligible facility for the same purposes for which the property has been managed under the reclamation laws.

## **(6) Reclamation**

The term "Reclamation" means the Bureau of Reclamation.

## **(7) Reclamation project**

The term "Reclamation project" means—

(A) any reclamation or irrigation project, including incidental features of the project—

- (i) that is authorized by the reclamation laws;
- (ii) that is constructed by the United States pursuant to the reclamation laws; or
- (iii) in connection with which there is a repayment or water service contract executed by the United States pursuant to the reclamation laws; or

(B) any project constructed by the Secretary for the reclamation of land.

## **(8) Reserved works**

The term "reserved works" means any building, structure, facility, or equipment—

(A) that is owned by the Bureau; and

(B) for which operations and maintenance are performed, regardless of the source of funding—

(i) by an employee of the Bureau; or

(ii) through a contract entered into by the Commissioner.

## **(9) Secretary**

The term "Secretary" means the Secretary, acting through the Commissioner of Reclamation.

(Pub. L. 116–9, title VIII, §8002, Mar. 12, 2019, 133 Stat. 804.)

## **Definition of "Secretary"**

Secretary means the Secretary of the Interior, see section 2 of Pub. L. 116–9, set out as a note under section 1 of Title 16, Conservation.

## **§2903. Authorization of transfers of title to eligible facilities**

### **(a) Authorization**

#### **(1) In general**

Subject to the requirements of this chapter, the Secretary, without further authorization from Congress, may, on application of a qualifying entity, convey to a qualifying entity all right, title, and interest of the United States in and to any eligible facility, if—

(A) not later than 90 days before the date on which the Secretary makes the conveyance, the Secretary submits to Congress—

(i) a written notice of the proposed conveyance; and

(ii) a description of the reasons for the conveyance; and

(B) a joint resolution disapproving the conveyance is not enacted before the date on which the Secretary makes the conveyance.

### **(2) Consultation**

A conveyance under paragraph (1) shall be made by written agreement between the Secretary and the qualifying entity, developed in consultation with any existing water and power customers affected by the conveyance of the eligible facility.

### **(b) Reservation of easement**

The Secretary may reserve an easement over a conveyed property if—

(1) the Secretary determines that the easement is necessary for the management of any interests retained by the Federal Government under this chapter;

- (2) the Reclamation project or a portion of the Reclamation project remains under Federal ownership; and
- (3) the Secretary enters into an agreement regarding the easement with the applicable qualifying entity.

**(c) Interests in water**

No interests in water shall be conveyed under this chapter unless the conveyance is provided for in a separate, quantified agreement between the Secretary and the qualifying entity, subject to applicable State law and public process requirements.

(Pub. L. 116–9, title VIII, §8003, Mar. 12, 2019, 133 Stat. 806.)

**§2904. Eligibility criteria**

**(a) Establishment**

The Secretary shall establish criteria for determining whether a facility is eligible for conveyance under this chapter.

**(b) Minimum requirements**

**(1) Agreement of qualifying entity**

The criteria established under subsection (a) shall include a requirement that a qualifying entity shall agree—

- (A) to accept title to the eligible facility;
- (B) to use the eligible facility for substantially the same purposes for which the eligible facility is being used at the time the Secretary evaluates the potential transfer; and
- (C) to provide, as consideration for the assets to be conveyed, compensation to the reclamation fund established by section 391 of this title, in an amount that is the equivalent of the net present value of any repayment obligation to the United States or other income stream that the United States derives from the eligible facility to be transferred, as of the date of the transfer.

**(2) Determinations of Secretary**

The criteria established under subsection (a) shall include a requirement that the Secretary shall—

- (A) be able to enter into an agreement with the qualifying entity with respect to the legal, institutional, and financial arrangements relating to the conveyance;
- (B) determine that the proposed transfer—
  - (i) would not have an unmitigated significant effect on the environment;
  - (ii) is consistent with the responsibilities of the Secretary—
    - (I) in the role as trustee for federally recognized Indian Tribes; and
    - (II) to ensure compliance with any applicable international and Tribal treaties and agreements and interstate compacts and agreements;

- (iii) is in the financial interest of the United States;
- (iv) protects the public aspects of the eligible facility, including water rights managed for public purposes, such as flood control or fish and wildlife;
- (v) complies with all applicable Federal and State law; and
- (vi) will not result in an adverse impact on fulfillment of existing water delivery obligations consistent with historical operations and applicable contracts; and

(C) if the eligible facility proposed to be transferred is a dam or diversion works (not including canals or other project features that receive or convey water from the diverting works) diverting water from a water body containing a species listed as a threatened species or an endangered species or critical habitat under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), determine that—

- (i) the eligible facility continues to comply with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) in a manner that provides no less protection to the listed species as existed under Federal ownership; and
- (ii) the eligible facility is not part of the Central Valley Project in the State of California.

### **(3) Status of reclamation land**

The criteria established under subsection (a) shall require that any land to be conveyed out of Federal ownership under this chapter is—

- (A) land acquired by the Secretary; or
- (B) land withdrawn by the Secretary, only if—
  - (i) the Secretary determines in writing that the withdrawn land is encumbered by facilities to the extent that the withdrawn land is unsuitable for return to the public domain; and
  - (ii) the qualifying entity agrees to pay fair market value based on historical or existing uses for the withdrawn land to be conveyed.

### **(c) Hold harmless**

No conveyance under this chapter shall adversely impact applicable Federal power rates, repayment obligations, or other project power uses.

(Pub. L. 116–9, title VIII, §8004, Mar. 12, 2019, 133 Stat. 806.)

## **References in Text**

The Endangered Species Act of 1973, referred to in subsec. (b)(2)(C), is [Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884](#), which is classified principally to chapter 35 (§1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.

## **§2905. Liability**

### **(a) In general**

Effective on the date of conveyance of any eligible facility under this chapter, 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 eligible facility, other than damages caused by acts of negligence committed by the United States or by agents or employees of the United States prior to the date of the conveyance.

**(b) Effect**

Nothing in this section increases the liability of the United States beyond that currently provided in chapter 171 of title 28 (commonly known as the "Federal Tort Claims Act").

(Pub. L. 116–9, title VIII, §8005, Mar. 12, 2019, 133 Stat. 808.)

**§2906. Benefits**

After a conveyance of an eligible facility under this chapter—

- (1) the conveyed property shall no longer be considered to be part of a Reclamation project;
- (2) except as provided in paragraph (3), the qualifying entity to which the conveyed property is conveyed shall not be eligible to receive any benefits, including project use power, with respect to the conveyed property, except for any benefit that would be available to a similarly situated entity with respect to property that is not a part of a Reclamation project; and
- (3) the qualifying entity to which the conveyed property is conveyed may be eligible to receive project use power if—
  - (A) the qualifying entity is receiving project use power as of March 12, 2019;
  - (B) the project use power will be used for the delivery of Reclamation project water; and
  - (C) the Secretary and the qualifying entity enter into an agreement under which the qualifying entity agrees to continue to be responsible for a proportionate share of operation and maintenance and capital costs for the Federal facilities that generate and deliver, if applicable, power used for delivery of Reclamation project water after the date of conveyance, in accordance with Reclamation project use power rates.

(Pub. L. 116–9, title VIII, §8006, Mar. 12, 2019, 133 Stat. 808.)

**§2907. Compliance with other laws**

**(a) In general**

Before conveying an eligible facility under this chapter, the Secretary shall comply with all applicable Federal environmental laws, including—

- (1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);
- (2) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and
- (3) subtitle III of title 54.

**(b) Sense of Congress**

It is the sense of Congress that any Federal permitting and review processes required with respect to a conveyance of an eligible facility under this chapter should be completed with the maximum efficiency and

effectiveness.

(Pub. L. 116–9, title VIII, §8007, Mar. 12, 2019, 133 Stat. 808.)

## References in Text

The National Environmental Policy Act of 1969, referred to in subsec. (a)(1), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

The Endangered Species Act of 1973, referred to in subsec. (a)(2), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, which is classified principally to chapter 35 (§1531 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of Title 16 and Tables.