



UNITED STATES DEPARTMENT OF
THE INTERIOR BUREAU OF LAND
MANAGEMENT
MANUAL TRANSMITTAL SHEET

Release
TBD
Date
06/29/05

Subject

H - 2200-1 Land Exchange Handbook (public)

1. Explanation of Material Transmitted: This release transmits an updated Land Exchange Handbook. The Handbook provides specific guidance for the consideration of land exchanges to ensure that statutory and regulatory requirements are followed and that the public interest is protected. It provides further direction related to the objectives, authorities, responsibilities, and policy considerations outlined in Manual Section 2200, Exchange of Public Lands.

As described in the BLM Directives Manual (1221.13), handbook and manual sections have equal force and effect, and instructions provided in this Handbook are mandatory unless otherwise indicated.

2. Reports Required: None.
3. Material Superseded: Handbook H-2200-1 Release Number 2-286, dated August 14, 1997 and Release Number 2-288, dated June 4, 1999.
4. Filing Instructions: File as directed below.

REMOVE:

All of ReI. 2-286 and 2-288

(Total: 76 sheets)

INSERT:

AllofH-2200-1

(Total: 93 sheets)

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Protection

- Consultation with the Regional or Field Solicitor.
- The mining claimant must receive a copy of the Notice of Exchange Proposal.
- The prospective patentee must be willing to accept title subject to the mining claims.

Water Rights/Resources

Identification of water rights and consideration of how they will be handled in an exchange must begin at the earliest possible point in the process of considering a land exchange proposal. Being able to identify what water rights will be transferred or reserved in both the Federal and non-Federal portions of the exchange is essential to the accuracy of the valuation, notification, environmental documentation, public interest determination, and decision steps of the land exchange process. Resolution of all water-related issues is always important particularly when the BLM acquires lands specifically for their wetland or riparian values. Investigating water rights takes time and may require specialized expertise and legal consultation, research, and/or field investigations. Without water rights for the acquired lands, the BLM may have to purchase water rights or apply for more junior rights on its own.

If water rights are involved in the transaction, early consultation with your BLM water rights specialist and the ASD appraisal staff is necessary to ensure the availability of specific expertise to meet processing schedules. Water laws and practices are extremely localized, and value implications are usually significant. Use extreme caution when considering acquisition of water rights. Secure local professional expertise well versed in the entire spectrum of water laws and practices in the area. Because water is a State jurisdictional issue, early contact with the appropriate state agency dealing with water rights is essential. With the exception of federal reserved rights, it is the BLM's policy that water rights necessary for Bureau programs and projects be secured pursuant to the applicable State statutory and administrative procedures.

A water right is a valuable property right that must be managed in a way that will ensure it will not be lost. Water rights obtained under State law, whether appropriated, acquired by assignment of a deed to land, or acquired by separate purchase or exchange of water rights, may be subject to loss if not exercised in accordance with State water laws. Because non-use is the primary reason for losing a right, the use of the right is the best way to protect it.

(1) Identification of Water Rights on the Federal and Non-Federal Land

- Obtain a set of legal descriptions for the Federal and non-Federal lands involved.
- Identify all developed and undeveloped waters on Federal and non-Federal lands.
- For the non-Federal lands, obtain a list of appurtenant water rights. Have the non-Federal land owners clearly identify which water rights will transfer to the BLM, and at what stage those water rights are in (i.e., application, permit, certificate, vested, etc.). In addition, record the priority date and the authorized amount, season, period of use, and purpose of use for each water right to the U.S. would acquire.
- Identify whether any partial assignment /acquisition of water rights will occur. Sometimes, not

- all points of diversion and/or places of use will be transferred to the BLM. If a partial acquisition will occur, negotiate an equitable split (for example, identify the amount of irrigated acreage each will own after the exchange). Often, changes in the type of use allowed for a water right will initiate a review by the state water authorities, resulting in a change (usually a reduction) in the amount of water that can be transferred. A full understanding of these legal intricacies is required as the exchange is analyzed and the valuation problem formulated. Consult with the DOI ASD review appraiser, and anticipate the need for external, local expertise.
- Identify any developed waters on the Federal and non-Federal lands involved that do not have water rights.
- Obtain logs for any wells on non-Federal lands.
- Review a copy of appraisals as soon as they are complete. These appraisals typically identify irrigated acreage and water sources for various uses.
- If the BLM is acquiring land for another Federal agency as part of a three-way exchange, contact that agency's water rights coordinator and get them involved.
- Determine whether there are any assessment fees for water rights the BLM would acquire (for example, some irrigation districts charge a fee for water usage).
- Obtain a list of water rights on all the properties involved from the State agency responsible for water resources. Compare this list with the ones developed by the non-BLM party and investigate discrepancies.
- Determine whether any of the Federal or non-Federal lands are in a municipal watershed, wellhead protection area, or are located in a watershed closed to further appropriation.

(2) Identification of Any Reserved Water Rights on Federal Lands

Federal reserved water rights cannot be transferred out of the BLM's ownership because, by law, Federal reserved water rights can only exist on lands owned by the Federal government. Therefore, if a Federal reserved water right exists on land transferred out of the BLM's ownership, the new landowner must be advised that the existing water right will no longer be in effect.

The most common and one of the more important reserved water rights for the BLM is for public water holes and springs (Public Water Reserves). Many of these Public Water Reserves have not been registered with the State, nor do they show up on a Mater Title Plat as a withdrawal. It is important that the District/Field Office/State Office water rights coordinator determine whether potential or existing Public Water Reserves occur on the Federal lands to be exchanged.

(3) Establish Title/Ownership

Determine whether all water rights to be transferred to the BLM are in the non-Federal party's name. If a third party ownership is involved, ensure title conveyance to the BLM or to a non-Federal exchange party prior to the exchange, for subsequent conveyance to the BLM. Obtain hard copies of applications, certificates, permits, proofs of appropriation, etc. for water rights on non-Federal lands to be transferred to the BLM. Obtain a copy of the current chain of title for water rights being transferred to the BLM. Some states will not recognize new owners of water rights if there are deficiencies or conflicts in the chain of title.

(4) Field Verification

Properties to be acquired by the BLM should always be field checked to ensure that:

- each water right is being exercised according to the provisions of State law;
- the water right is not subject to a declaration of forfeiture or abandonment by the State under provisions of State law due to nonuse, unauthorized changes in type of use, place of diversion or use, or other reasons; and
- the water right(s) will satisfactorily serve the present and future foreseeable needs of the BLM.

The field inspection also serves to identify water sources which have not appeared in official water rights lists or on maps; inaccurate legal descriptions for the place of use, point of diversion, or delivery systems; water delivery and control system repair needs; and management options for use of the existing water rights.

(5) Evaluation/Case Processing

Include a description of the water rights to be considered in the exchange proposal in all relevant land exchange evaluation process steps. This would include addressing the water rights as a part of the property interest at a minimum in the feasibility report, ATI, NOEP, NEPA document, decision and Notice of Decision. Address in the evaluation process, as necessary, any management costs or responsibilities that would be associated with acquisition of the water rights.

(6) Conveyance Documents and Filing

All water rights issues must be resolved before the closing. The non-Federal parties will have little incentive to work with the BLM on water rights issues after the closing. All water rights to be transferred should be specifically listed in the final deeds consistent with state requirements. Even though the law in many states assumes that all appurtenant water rights are automatically transferred with changes in ownership, a specific list will eliminate any doubt and future questions about ownership.

All parties should be provided with the documentation for the water rights each party is acquiring. This documentation will include (but is not limited to) applications, permits, proofs of appropriation, certificates, and transfer documents. Attach a copy of the final chain of title to each documentation package. If not already done, have all parties fill out the necessary paperwork for transferring ownership of water rights. It may be a “Report of Conveyance” form or similar type of document that must be signed and submitted to the State. Determine who will pay any recording fees, if they are required. If existing water uses on the land acquired by the BLM need to be changed or amendments are needed to existing water rights paperwork, file the necessary paperwork with the State, along with payment of any fees.