

# **Chapter 1      INTRODUCTION**

For several years, the Bureau of Reclamation (Reclamation) has conducted a program of transferring ownership of certain Federal irrigation facilities to project beneficiaries who are capable of managing the facilities and where the Federal investment in the facilities has been repaid.

Fremont-Madison Irrigation District (FMID) is a political subdivision of the State of Idaho, organized in 1935 under State law by the landowners served by Reclamation's Upper Snake River Storage Division, Minidoka Project, and the Lower Teton Division, Teton Basin Project, located in Fremont, Madison, and Teton Counties, Idaho. The projects' facilities, developed and owned by the United States, provide irrigation water to FMID.

The Fremont-Madison Conveyance Act (Public Law 108-85, enacted on September 30, 2003) directs the Secretary of the Interior (the Secretary) to transfer all right, title, and interest of the United States in certain facilities, land, and a water right permit of the Minidoka and Teton Basin Projects to FMID pursuant to the terms of the Memorandum of Agreement between FMID and Reclamation. Appendix A contains the Conveyance Act, and Appendix B contains the Memorandum of Agreement contract 1425-01-MA-10-3310, as amended.

The Conveyance Act also increases the acreage of District lands eligible to receive water from the Minidoka and Teton Basin Projects to the number of acres within the District as of September 30, 2003. This increase includes lands annexed into the District in anticipation of the completion of the Teton Basin Project.

This environmental assessment (EA) documents Reclamation's analysis of the effects of transferring title of specific irrigation facilities, appurtenant lands, and associated rights to FMID. The Conveyance Act states that if this transfer has not occurred by September 13, 2004, the Secretary shall submit a report to the Congress explaining the reasons that conveyance has not been completed and stating the date it will be completed.

## **1.1      Background**

The Upper Snake River Storage Division of Reclamation's Minidoka Project and the Lower Teton Division of Reclamation's Teton Basin Project consist of Grassy Lake

## 1.2 Purpose and Need for Action

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Dam in Teton County, Wyoming; Island Park Dam, Cross Cut Diversion Dam (also known as Chester Diversion Dam), and Cross Cut Canal in Fremont County, Idaho; and five exchange wells in Madison and Fremont Counties, Idaho, together with all pumps, panels, and water rights associated with these wells, and additional undrilled wells described in the State of Idaho water right permit #22-7022. These wells, pumps, panels, and water rights are hereafter collectively referred to as “Teton Exchange Wells.” FMID currently operates and maintains these facilities in concert with Snake River system operations above Milner Dam to provide irrigation water to approximately 285,337 acres within the District boundaries.

In 1996 FMID requested title to District facilities, including Island Park Dam and Grassy Lake Dam. However, after several public meetings and discussions with various interest groups, FMID determined that transfer of the two dams was not appropriate at present and redrafted the title transfer request.

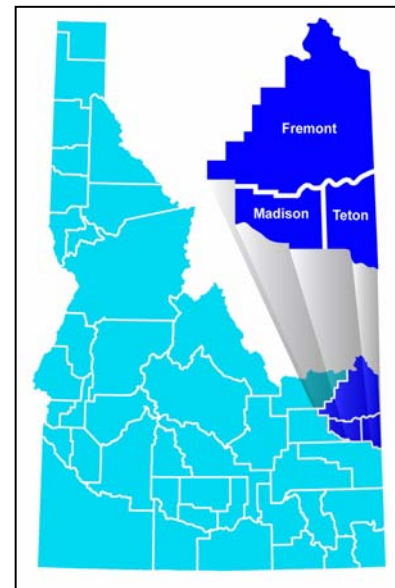
## 1.2 Purpose and Need for Action

The purpose of the Proposed Action is to implement the Conveyance Act, which requires the Secretary to transfer ownership of certain Reclamation facilities to FMID. Congress has recognized that FMID has effectively operated, maintained, and managed the District’s water resources and facilities since inception in the 1930s. FMID has also satisfied the construction obligations for the diversion dam and canal.

Reclamation’s title transfer initiative implements the National Performance Review goal of a Federal government that works better and costs less. This action will allow FMID to be more efficient in its operation and maintenance of the transferred facilities consistent with its legal and fiduciary responsibilities.

## 1.3 Location and Setting

The Fremont-Madison Irrigation District provides a supplemental water supply to some 1,500 water users irrigating over 285,000 acres associated with the original Upper Snake River Storage Division of the Minidoka Project and the Lower Teton Division of the Teton Project. FMID lands encompass areas of Fremont, Madison, and Teton Counties in eastern Idaho (see Figure 1).



**Figure 1. Fremont, Madison, and Teton Counties, Idaho.**



**Figure 2. Cross Cut Diversion Dam.**



**Figure 3. Cross Cut Canal radial headgate.**

The Cross Cut Diversion Dam is located on the Henrys Fork of the Snake River between Ashton and St. Anthony, immediately below the confluence with the Fall River. This concrete structure diverts water into the Cross Cut Canal on the left bank and the privately-owned Last Chance Canal on the right bank. The Cross Cut Canal travels approximately 6.6 miles in a south-southwesterly direction before flowing into the Teton River near Newdale. Figure 2 and Figure 3 show these facilities.

The Teton Exchange Wells are all west of State Highway 20 in Fremont and Madison Counties. Well 1 discharges into Cartier Slough, which ultimately discharges into the Henrys Fork. Wells 2 and 5 discharge directly into the Henrys Fork. Well 3 discharges into the South Teton River. Well 4 discharges into the North Branch Independent Canal before entering the Henrys Fork.

## **1.4 Project and Facilities Descriptions**

The Conveyance Act directs the Secretary to convey all right, title, and interest of the United States in those canals, laterals, drains, other components of the water distribution and drainage system that FMID operates and maintains. These facilities are within the Minidoka and Teton Basin Projects.

### **1.4.1 Relevant Upper Snake River Storage Division, Minidoka Project, Facilities**

Reclamation built the Cross Cut Diversion Dam and Cross Cut Canal as part of the Minidoka Project. The original purpose of the Upper Snake River Storage Division was to store water from the upper Snake River basin for irrigation and other uses.

## 1.4 Project and Facilities Descriptions

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**Table 1. Relevant facilities in the Upper Snake River Storage Division, Minidoka Project.**

Facility	Description
Cross Cut Diversion Dam	Type: Concrete gravity dam with an ogee overflow Constructed: 1938 Height: 17 feet Hydraulic height: 10 feet Weir crest length: 355 feet Total length: 457 feet Crest elevation: 5040.5 feet Headworks: Two (left and right abutments)
Cross Cut Canal and Headworks	Headworks: Cable-operated, gasoline-powered radial gate Length: 6.6 miles Discharge location: Teton River near Newdale Capacity: 591 cfs at headworks; 759 cfs above North Branch Canal where the Fall River discharge water enters Other: Numerous checks, turnouts, crossings, bridges, and flumes

Table 1 identifies the relevant facilities in the Upper Snake River Storage Division, Minidoka Project. There are no associated water rights in this transfer.

Natural flow of the Snake River and some of its tributaries, as well as water stored in reservoirs (Jackson Lake, Palisades Reservoir, Grassy Lake, Island Park Reservoir, American Falls Reservoir, and Lake Walcott) are delivered at numerous diversion points to the A & B, Falls, Burley, and Minidoka Irrigation Districts, American Falls Reservoir District No. 2, and a number of supplemental supply contractors, including FMID.

The Cross Cut Canal conveys storage water to users on the Teton River and natural flow water to some of the lands within the Fall River Irrigation Company system. A portion of the Cross Cut Canal was constructed on an easement through the already existing Fall River Canal. FMID has operated and maintained the canal since it was built. FMID and FRIC jointly employ a watermaster to manage canal operations and maintenance needs.

As indicated, FMID provides a supplemental water supply to approximately 1,500 water users irrigating over 285,000 acres of land originally associated with the projects. To deliver storage water to its spaceholders, FMID uses numerous canal companies that either existed prior to FMID's creation or are successors in interest of these original canal companies. These canal companies supply the natural flow water (primary water supply) to lands of their shareholders. They also conduct their own operation and maintenance of their facilities. Several individual spaceholders not associated with canal companies receive their supplemental water directly from

FMID through their authorized diversions. These canal companies and individual spaceholders are hereafter collectively referred to as “Canal Companies.”

### 1.4.2 Relevant Lower Teton Division, Teton Basin Project, Facilities

In the early 1970s, Reclamation applied for a State of Idaho permit to drill up to 45 wells to serve the Lower Teton Division of the Teton Basin Project. These wells were to be operated in dry years to supplement the surface water supply from the Teton Reservoir and to mitigate impacts from the proposed Teton Dam to downstream water users. As a test, Reclamation drilled five wells to determine if sufficient water existed and how many of the 45 wells would be needed to serve the Lower Teton Division. When the Teton Dam failed in June 1976, the five test wells became the only supplemental water source available to irrigate the lands affected by the dam’s failure. Table 2 identifies the relevant facilities and properties of the Teton Exchange Wells in the Lower Teton Division, Teton Basin Project.

**Table 2. Description of the Teton Exchange Wells.**

Well	Well Name	Location	Depth (feet)	Casing Diameter (inches)	Casing Depth (feet)	Production Zone Basalt Thickness (feet)	Water Depth (feet)	Capacity in gallons per minute-gpm (cfs)
1	Beaver Dick	25-6N-38-E	685	30	450.6	234	18.05	9500 (21.2)
2	Salem Well	19-7N-40E	394	20	198.5	196	30.83	7500 (16.7)
3	Golf Course	23-6N-39E	426	24	245	181	25.91	4300 (9.6)
4	Egin Well	16-7N-39E	503	22	255.6	247	59.51	7500 (16.7)
5	Fisher Well	34-7N-39E	410	24	156.7	253	11.35	8500 (18.9)
6-45 <sup>1</sup>	Undeveloped	na	na	na	na	na	na	na

<sup>1</sup> These 40 undeveloped wells are included in the State of Idaho water right permit #22-7022 (dated April 23, 1969).

On September 17, 1977, FMID and Reclamation entered into a contract to allow the use of the wells as a backup water supply in low water years. The contract requires an annual payment of \$9,000 for use of the wells, pumps, motors, and appurtenant facilities over a 25-year period. FMID pays all operation, maintenance, power, and replacement costs. The Fremont-Madison Conveyance Act extends this contract until all conditions in the Conveyance Act are fulfilled. During low water years, FMID pumps water from the wells into the Henrys Fork, the Teton River, and the North Branch Independent Canal to increase its supplemental water supply. The five wells currently provide up to 30,000 acre-feet annually during the irrigation season.

### **1.5 Regulatory Compliance**

Various laws and Executive Orders apply to the Proposed Action. A summary of major laws and Executive Orders follows.

#### **1.5.1 National Environmental Policy Act**

The Conveyance Act requires the Secretary to complete all environmental reviews and analyses identified in the Memorandum of Agreement between FMID and Reclamation; this includes compliance with the National Environmental Policy Act of 1969 (NEPA). The NEPA process is used to determine whether or not there are significant adverse impacts to the environment associated with proposed Federal actions (in this case, title transfer). If there are no significant environmental impacts, a Finding of No Significant Impact (FONSI) can be signed to complete the NEPA compliance.

#### **1.5.2 Endangered Species Act**

The Endangered Species Act (ESA) requires all Federal agencies to ensure that their actions do not jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat. As part of the ESA's "Section 7" process, an agency must request species lists from the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NOAA Fisheries) that identify threatened and endangered species within or near the action area. The agency then must evaluate impacts to those species. If the action may impact any listed species, the agency must consult with USFWS or NOAA Fisheries.

#### **1.5.3 Secretary's Native American Trust Responsibilities**

Indian Trust Assets (ITAs) are legal interests in property held in trust by the United States for Indian Tribes, Nations, or individuals. The Secretary is the trustee for the United States on behalf of Indian Tribes. All Department of the Interior agencies share the Secretary's duty to act responsibly to protect and maintain ITAs reserved by or granted to Indian Tribes, Nations, or individuals by treaties, statutes, and Executive Orders. These rights are sometimes further interpreted through court decisions and regulations. Examples of ITAs are lands and minerals; hunting, fishing, and gathering rights; and water rights. The Department of the Interior carries out its activities in a manner that protects ITAs and avoids adverse impacts when possible.

### **1.5.4 National Historic Preservation Act**

The National Historic Preservation Act (NHPA) of 1966 requires that Federal agencies take into account the effect of an undertaking on any properties included in or eligible for inclusion in the National Register of Historic Places, and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings. The “Protection of Historic Properties” (36 CFS Part 800) defines the process of implementing requirements of Section 106, including procedures for determining project effects and mitigating adverse effects on historic properties, in consultation with the appropriate State Historic Preservation Office, the ACHP, relevant Tribes, and other parties.

### **1.5.5 Executive Order 13007: Indian Sacred Sites**

Executive Order 13007, dated May 24, 1996, instructs Federal agencies to promote accommodation of access to and protect the physical integrity of American Indian sacred sites. A “sacred site” is a specific, discrete, narrowly delineated location on Federal land. An Indian tribe or an Indian individual determined to be an appropriately authoritative representative of an Indian religion must identify a site as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion.

### **1.5.6 Executive Order 12898: Environmental Justice**

Executive Order 12898, dated February 11, 1994, instructs Federal agencies to make achieving environmental justice part of its mission. Agencies must address disproportionately high and adverse human health or environmental effects on minority populations and low-income populations. Environmental justice means the fair treatment of people of all races, incomes, and cultures with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment implies that no person or group of people should shoulder a disproportionate share of negative environmental impacts resulting from the execution of environmental programs.

### **1.5.7 Reclamation Reform Act**

In 1982, Congress passed the Reclamation Reform Act, which imposes an acreage limitation for water users and requires districts to complete water conservation plans. Under certain conditions, farmers can receive Reclamation project water on additional acreage, but they must first pay the full cost of the water, including both capital and interest components. Reclamation periodically reviews FMID’s compliance with RRA provisions. If title is transferred and the construction

## 1.6 Similar or Related Actions

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obligation for the Teton Exchange Wells is fully repaid, the acreage limitation provisions would no longer apply to that water supply.

### **1.6 Similar or Related Actions**

There are three other transfer-of-title actions that have occurred or are in progress within Reclamation's Snake River Area Office administrative boundaries.

- The Burley Irrigation District (Minidoka Project) received title to all district facilities, lands, rights-of-way, and water rights on February 24, 2000. Transferred facilities included pumping plants, canals, drains, laterals, roads, pumps, checks, headgates, transformers, pumping plant substations, and buildings. Also transferred were other improvements, appurtenances to the land, and those used for the delivery of water from the headworks (but not the headworks themselves) of the South Side Canal at the Minidoka Dam to land in the district.
- The Nampa-Meridian Irrigation District (Boise Project) received title to distribution, conveyance and drainage facilities, and rights-of-way on July 13, 2001. The district did not request transfer of water rights.
- The American Falls Reservoir District No. 2 (Minidoka Project) is currently seeking title to Milner-Gooding Canal and various Reclamation lands. The district is not requesting transfer of water rights.