



United States Department of the Interior

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TAKE PRIDE IN AMERICA

OFFICE OF THE SECRETARY
Washington, D.C. 20240

NOV

Action

W-6100

MEMORANDUM

To: Assistant Commissioner - Resources Management
From: Daniel P. Beard
Commissioner

Subject: National Environmental Policy Act (NEPA) Handbook
Procedures to Implement Indian Trust Asset Policy

Attached are the procedures to implement Reclamation's Indian trust asset policy. These procedures should be implemented upon receipt of this memorandum.

I am also directing you to commence a review of Reclamation Instructions to determine changes necessary to complete the implementation of this policy. This review should be completed by June 30, 1994.

By copy of this memorandum, I am directing all Regional Directors to designate one or more individuals who will have authority to certify on Categorical Exclusion Checklists that no impacts to Indian trust assets are anticipated. Names of these individuals should be provided to the Director of the Native American Affairs Office, W-6100.

Attachment

cc: Regional Director, PN, MP, LC, UC, GP

C-107

INDIAN TRUST CHAPTER: ASSESSMENT of IMPACTS on INDIAN TRUST ASSETS

ITA-1 Indian Trust Asset (ITA) Policy

The United States has a trust responsibility to protect and maintain rights reserved by or granted to American Indian (Indian) tribes or Indian individuals by treaties, statutes, and executive orders. These rights are sometimes further interpreted through court decisions and regulations. This trust responsibility requires that all Federal agencies, including Reclamation, take all actions reasonably necessary to protect ITAs.

Reclamation's Indian Trust Asset Policy was signed by the Commissioner on July 2, 1993. The Policy states that Reclamation will carry out its activities in a manner which protects ITAs and avoids adverse impacts when possible. When Reclamation cannot avoid adverse impacts, it will provide appropriate mitigation or compensation. Under no circumstances should Reclamation engage in a Fifth Amendment taking of ITAs without statutory authority and adequate compensation.

ITAs are legal interests in property held in trust by the United States for Indian tribes or individuals, or property that is the United States is otherwise charged by law to protect. Examples of resources that could be ITAs are lands, minerals, hunting and fishing rights, water rights, and instream flows.

ITA-2 Applying NEPA Early - Identifying ITAs

The NEPA process should consider potential impacts on ITAs at the earliest reasonable time in the decisionmaking process. The initial step will be to identify ITAs in or near the affected area. ITA identification should involve consultation with: (i) potentially affected tribes, Indian organizations or individuals, and (ii) the Bureau of Indian Affairs, the Office of American Indian Trust, the Solicitor's Office, Reclamation's Native American Affairs Office (W-6100), or the Regional Native American Affairs coordinator, all of which are in the Department of the Interior. Refer to Section 2-1, "Apply NEPA Early," for additional guidance.

ITA-3 Categorical Exclusion Checklist (CEC)

A question addressing impacts to ITAs is included in the revised CEC (Figure 2.4). Contact with the entities listed in Section ITA-2, "Applying NEPA Early - Identifying ITAs," should be established to ascertain general locations and types of ITAs in or near the affected area. A signature line has been added to the CEC for concurrence in the ITA response by the appropriate Regional Director, Assistant Commissioner, or the designated ITA representative. Refer to Sections 2-2, "Categorical Exclusions," and 2-3, "Categorical Exclusion Checklist," for additional guidance.

ITA-4 Environmental Assessments (EAs) and Environmental Impact Statements (EISs)

The format and contents of EAs, EISs, and EIS Supplements required by Chapter 2, "Initiating the NEPA Process," and Chapter 4, "The Environmental Impact Statement," will be supplemented by the sections discussed below.

The methodology for determining whether ITAs exist will include discussions with the entities listed in Section ITA-2, "Applying NEPA Early - Identifying ITAs," and should include a review of relevant treaties, statutes, and executive orders. Relevant agreements and contracts should also be considered in the impact analysis.

A. Format and Content -

1. Summary - When there is a summary, a labeled section will briefly describe any expected impacts of the proposed action on ITAs. If there are no ITAs, or if no impacts to ITAs are anticipated, a statement to that effect will be included. The summary table will include impacts to ITAs.

2. Proposed Action and Alternatives - When it is determined there will be potential impacts to ITAs, a labeled section will present those mitigation measures to protect ITAs which are part of the alternatives. Any additional mitigation measures will be included in the Environmental Commitments Section. Effort should be made to seek agreement with affected tribes or owners of allotted lands as to reasonable ITA protection, mitigation or compensation. Agreement may also be necessary with the Corps of Engineers, Fish and Wildlife Service, Bureau of Indian Affairs, and other responsible Federal agencies.

3. Affected Environment and Environmental Consequences

a. Separate Chapter on Affected Environment - When there is a separate chapter on the Affected Environment and ITAs are located in or near the potentially impacted area, the chapter will contain a labeled section identifying potentially impacted ITAs, or a statement that there are no ITAs. This section will include full descriptions of the ITAs or a summary of ITAs described elsewhere in the chapter.

b. Separate Chapter on Environmental Consequences - When potential impacts to ITAs are identified, the chapter describing environmental impacts will contain a labeled section on ITAs. The section will include a full analysis of ITA impacts or a summary of impacts fully described elsewhere in the chapter. If the alternative would have no impact on ITAs, this should be stated.

c. Combined Chapter on Affected Environment and Environmental Consequences - The chapter will include a statement that there will be no impacts to ITAs, or a labeled section including the information discussed above in 3.a. and 3.b.

4. Consultation and Coordination - The chapter will include a separate, labeled section summarizing or describing public involvement activities undertaken to identify and assess impacts to ITAs.

5. Attachments - Environmental Commitments - The attachment will identify all measures included in the proposed action to avoid, mitigate, or compensate for impacts to ITAs.

B. Public Involvement -

A diligent effort will be made to elicit an appropriate level of input from potentially affected Indian communities in preparing and reviewing the NEPA compliance document. Public involvement should be used to: (i) assist to identify potentially affected ITAs and assess potential impacts; (ii) provide potentially affected Indian people with information about the actions being studied; and (iii) involve potentially affected Indian communities in the decisionmaking process.

The public involvement program for actions potentially affecting ITAs will include consultation with interested and affected individuals, organizations, agencies, tribal governments, and other governmental entities having jurisdictional responsibilities for the assets. Refer to Sections 2-4.C and 3-7, "Public Involvement," for further information.

ITA-5 Other Actions Associated with the Environmental Impact Statement (EIS)

A. Notice of Intent (NOI) -

When appropriate, the Federal Register NOI to prepare the EIS will briefly: (i) address the intent to assess potential impacts to ITAs, and (ii) request input about concerns or issues related to ITAs from potentially affected Indian groups and individuals, the general public, and state and Federal agencies. Refer to Section 3-5, "Notice of Intent," for additional information.

B. Notice of Availability (NOA) -

The Federal Register NOA for both the draft and final EIS will, if appropriate, refer to the analysis of impacts to ITAs.

ITA-6 Review, Filing, and Distribution

Procedures specified in Sections 2-5.C, "Processing," and 3-10, "Review, Filing, and Distribution," are amended so that potentially affected and interested Indian tribes, communities, and individuals will be placed on the distribution list to receive EAs and EISS.

ITA-7 Findings of No Significant Impact (FONSIs) and Records of Decision (RODs)

The FONSI or ROD will include: (i) a statement that there would be no impacts to ITAs, or (ii) a statement describing the expected impacts of the proposed action on ITAs, (iii) a listing of unresolved ITA issues, (iv) a list of any commitments to prevent, mitigate, or compensate adverse impacts to ITAs, and (v) a summary of any mitigation monitoring and enforcement programs related to ITAs. Refer to Section 2-5, "Finding of No Significant Impact," and Section 7-1, "Record of Decision," for additional information.

CATEGORICAL EXCLUSION CHECKLIST

Project: _____

Date: _____

Nature of Action:

Exclusion category:

Evaluation of criteria for Categorical Exclusion:

1. This action or group of actions would have a significant effect on the quality of human environment. No_Uncertain_Yes_
2. This action or group of actions would involve unresolved conflicts concerning alternative uses of available resources. No_Uncertain_Yes_

Evaluation of exceptions to actions within Categorical Exclusion:

1. This action would have significant adverse effects on public health or safety. No_Uncertain_Yes_
2. This action would have an adverse effect on unique geographical features such as wetlands, wild or scenic rivers, or scenic rivers, refuges, floodplains, rivers placed on the nationwide river inventory, or prime or unique farmlands. (Same as appendix 516-DM-2, appendix 2, part 2.2) No_Uncertain_Yes_
3. The action will have highly controversial environmental effects. No_Uncertain_Yes_
4. The action will have highly uncertain environmental effects or involve unique or unknown environmental risk. No_Uncertain_Yes_
5. This action will establish a precedent for future actions. No_Uncertain_Yes_
6. This action is related to other actions with individually insignificant No_Uncertain_Yes_

but cumulatively significant environmental effects.

- 7. This action will affect properties listed or eligible for listing in the National Register of Historic Places. No_Uncertain_Yes_
- 8. This action will affect a species listed or proposed to be listed as endangered or threatened. No_Uncertain_Yes_
- 9. This action threatens to violate Federal, state, local, or tribal law or requirements imposed for protection of the environment. No_Uncertain_Yes_
- 10. This action will affect Indian Trust Assets. No_Uncertain_Yes_

NEPA Action-- CE _____ EA _____ EIS _____

Environmental commitments, explanation, and/or remarks:

Preparer's Name and Title: _____

Regional Archeologist concurrence with item 7: _____

Regional Director or ITA designee concurrence with item 10: _____

Concur: _____ Date: _____ Division/Office Chief

Concur: _____ Date: _____ Regional Environmental Officer

Figure 2.4 - Example of a Categorical Exclusion Checklist Sheet (rev. October 1993)