



— BUREAU OF —
RECLAMATION

Transferring Title to Reclamation Facilities

IWUA Seminar

August 31st, 2020

Outline

- Streamlining Title Transfer
 - New Law
 - New Directives & Standards
 - Eligibility Criteria from P.L. 116-9
 - New Categorical Exclusion
- The Title Transfer Process
 - What to expect
- Accomplishments
- A&B Irrigation District and Minidoka Irrigation District Title Transfers Overview
- Lessons Learned/Best Practices
- Resources
- Contacts



“This new title transfer process embodies the President’s goals of streamlining bureaucratic processes and making our government more efficient and accountable. Title transfers are a win for local communities and a win for the American taxpayer. The Department looks forward to continuing our work with local water users to reduce title transfer costs, stimulate infrastructure investment through local ownership with the bottom line goal of making this new streamlined approach a major success.”

Interior Secretary David Bernhardt (5/22/19)



Streamlining Title Transfer

A New Law, Directives & Standards, and Categorical Exclusion



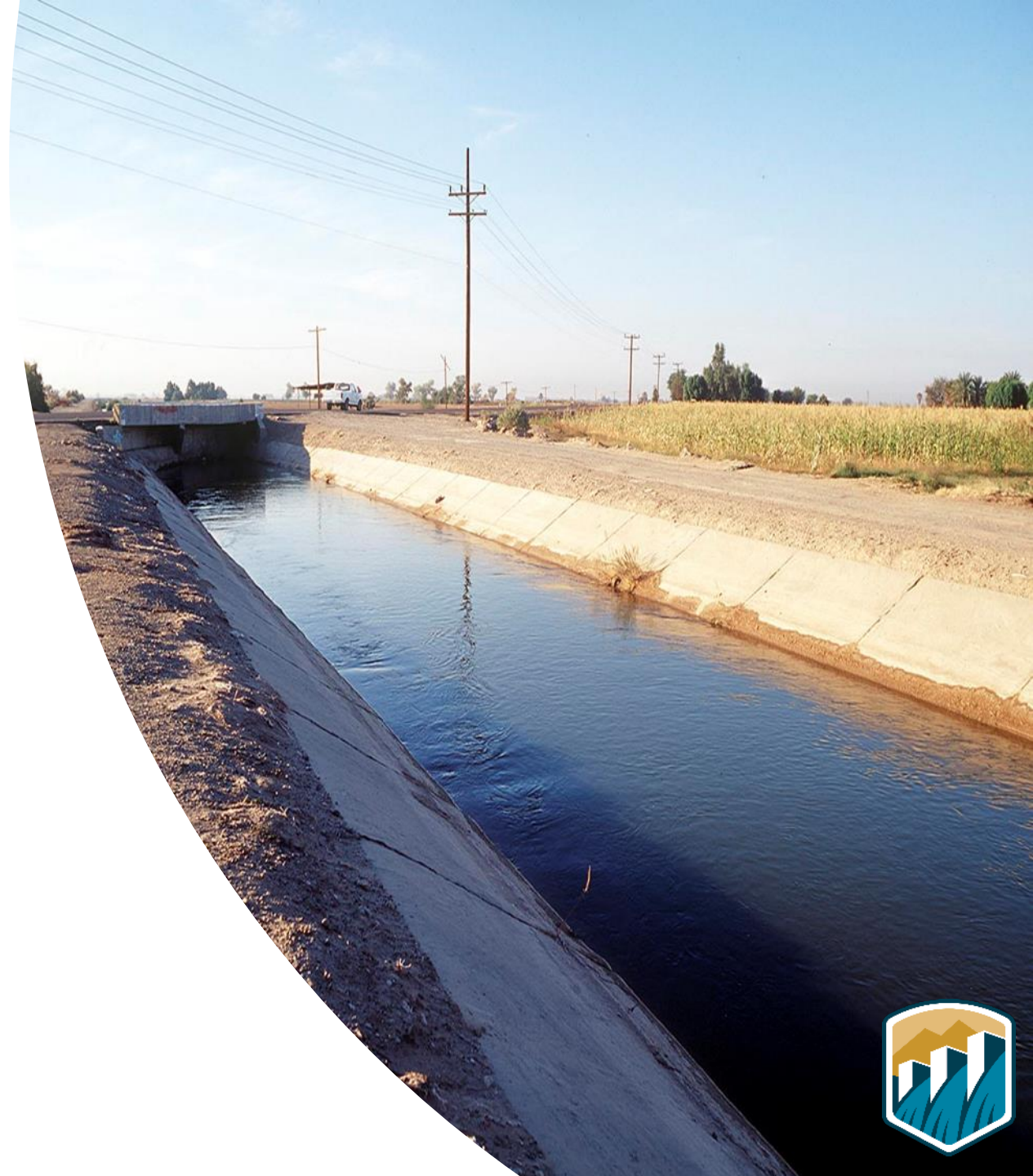
Streamlining Title Transfer: A New Law

- The Reclamation Act of 1902 requires that title “remain with the Government until otherwise provided by Congress”
- Up until March 2019, land and facility title transfers had to be authorized by specific legislation
- This changed: the John D. Dingell, Jr. Conservation, Management and Recreation Act (P.L. 116-9) was signed into law on March 12, 2019



Streamlining Title Transfer: New D&S

- Reclamation released a new Directive and Standard (D&S) CMP 11-01 “Title Transfer for Reclamation Project Facilities” in March 2020
 - Establishes a streamlined process for title transfers
 - Outlines roles and responsibilities
 - Provides more certainty when pursuing title transfer



Streamlining Title Transfer: A New Categorical Exclusion

- The National Environmental Policy Act of 1969 (NEPA) applies to all title transfers
- The new CE can be used if the scope of the requested transfer is consistent with qualification factors of the CE
- If a requested title transfer does not qualify under the factors of a CE or would involve extraordinary circumstances (43 CFR 46.215), additional analysis, such as an environmental assessment or an environmental impact statement, would be required



The Title Transfer Process



The Title Transfer Process

First steps in this process:

1. Initial request for title transfer
2. Completion of the Title Transfer Information Sheet (D&S Appendix A)
3. A Memorandum of Agreement



The Title Transfer Process

After Reclamation and the requestor both sign the MOA they will:

- District will provide funds up front for transaction/process costs
- Develop a communications plan and identify all stakeholders
- Perform the necessary activities to comply with all applicable environmental and cultural resources laws and regulations
- Review all requested land or interests in land
- Conduct an onsite pre-transfer review of the facility
- Complete Net Present Valuation



The Title Transfer Process

- **Complete appraisal of withdrawn lands (if applicable)**
 - Appraisal and Valuation Services Office (AVSO) leads and provides oversight
 - AVSO drafts the Statement of Work (SOW) in coordination with Reclamation
 - The district may contract a private appraiser approved by AVSO if desired, otherwise AVSO will implement the Federal contracting process to hire an appraiser.
 - Appraisal is based on “historical or existing uses”
- **Draft a title transfer agreement & necessary deeds and legal instruments**



The Title Transfer Process

- Draft a project use power contract (if applicable)
 - Eligible Criteria:
 - The qualifying entity is receiving project use power as of the date of enactment of the Dingell Act
 - The project use power will be used for the delivery of Reclamation project water, and;
 - 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 operations and maintenance and capital costs for the Federal facilities that general 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.
 - To be executed after title transfer agreement is signed



The Title Transfer Process

The final steps:

- **Expeditious internal review of all final reports and the draft title transfer agreement**
- **Written notice of proposed transfer sent to Congress for 90-day period**
- **Public notice of proposed transfer for concurrent 30-day period**
- **Signing of the title transfer agreement and execution of necessary deeds and legal instruments**
- **Execution of project use power contract (if applicable)**



Accomplishments

Congress has already been notified of title transfer to the following projects:

- Emery County Project, Utah
- Uintah Basin Replacement Project, Utah
- Oakes Test Area, Garrison Diversion Unit, North Dakota



A&B Irrigation District (A&B) Minidoka Irrigation District (MID) Title Transfers



A&B and MID Title Transfers - Overview

- Through the development of the Minidoka Project, the United States holds title to irrigation facilities serving the Minidoka Irrigation District (MID) and A&B Irrigation District (A&B) water users and other lands, rights and facilities supporting both the MID and A&B operations.
- MID has fully repaid and A&B has substantially repaid relevant Project construction costs in accordance with their contracts.



A&B and MID Title Transfers - Overview

- MID and A&B are interested in receiving title to relevant Project facilities, lands, and interests in lands below (downstream) of the headworks at the Minidoka Dam in order to reduce administrative costs and increase operational efficiencies.
- Operations, maintenance and care of the facilities were transferred by Reclamation to:
 - MID on December 2, 1916
 - A&B irrigation on March 1, 1966



A&B and MID Title Transfers - Overview

- MID and A&B intends to continue to operate and maintain their respective irrigation facilities in order to continue use of the eligible facilities in substantially the same manner with minimal change after title transfer is completed.
- A&B = 82,600 acres of irrigable land
- MID = 77,214 acres of irrigable land



A&B and MID Title Transfers Authority/Contracts

- Reclamation Act of June 17, 1902 (32 Stat. 388)
- John D. Dingell, Jr. Conservation, Management, and Recreation Act, Public Law 116-9, Title VIII, Subtitle A (P.L. 116.9)(hereafter Public Law 116-9).
- Other relevant agreements include MID and A&B contracts with the United States for: storage capacity in Reclamation reservoirs, construction of facilities, conveyance of water, operation of such facilities, and project use power





Minidoka Irrigation District Title Transfer



MID Title Transfer – What is Proposed for Transferred

- Facilities paid for under construction contract
- Rights-of-Ways and Easements reserved or acquired under the Ditches and Canal Act of 1890s Easements or Idaho Code 58-604
- Easements for Facilities on Federal Lands (where the land is not being transferred)
- Withdrawn Land – 390 acres (12 parcels encumbered by facilities, required for O&M)
- Acquired Land – 12 acres (3 parcels)



MID Title Transfer – Facilities Paid for Under Construction Contract

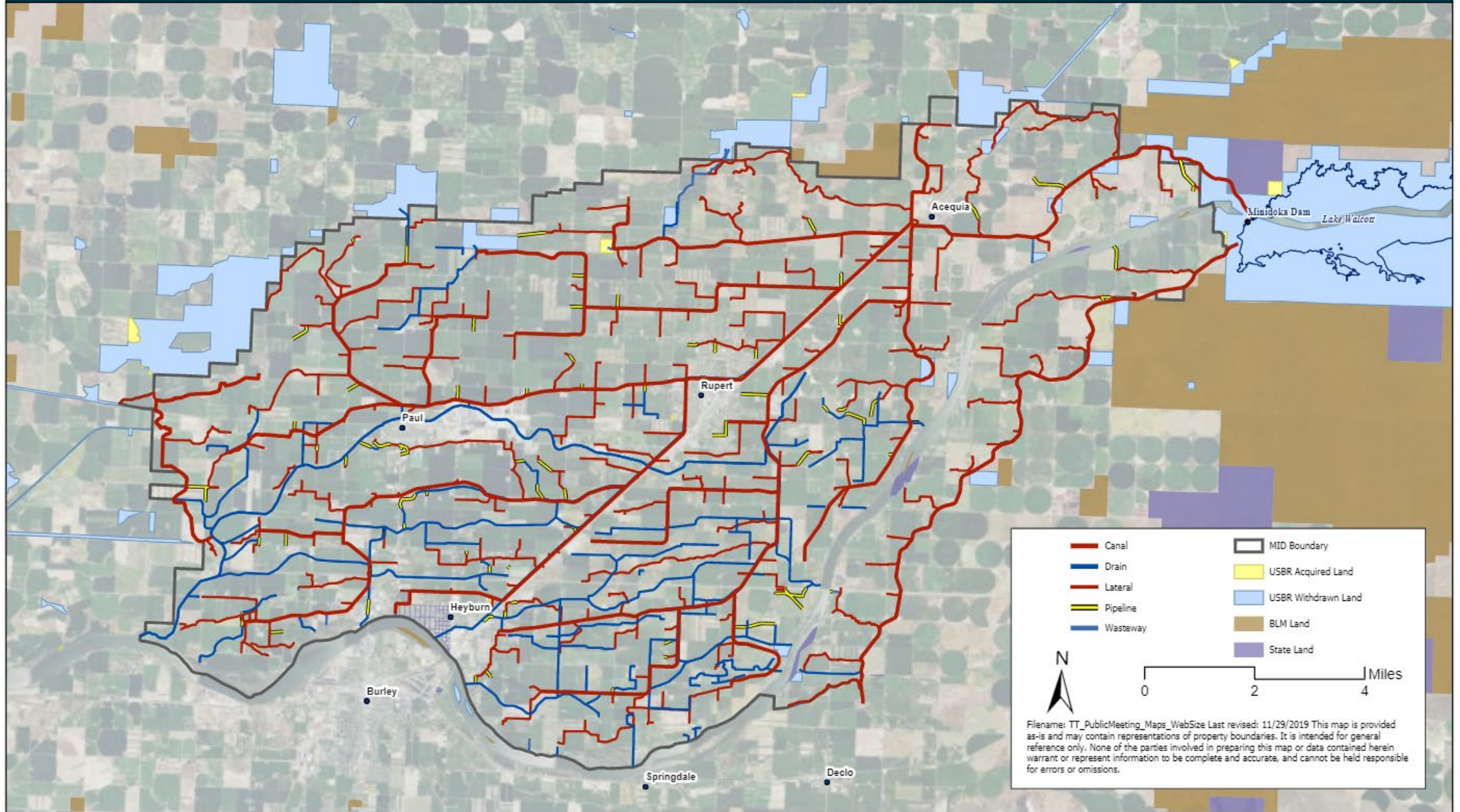
- Canals – 103 miles
- Laterals – 144 miles
- Drains – 124 miles
- Pipelines – 24 miles
- Wasteways – 3 miles
- Office/Shop – 1 yard, 6 structures
- Pump Houses – 16

*including all auxiliary equipment and facilities within each



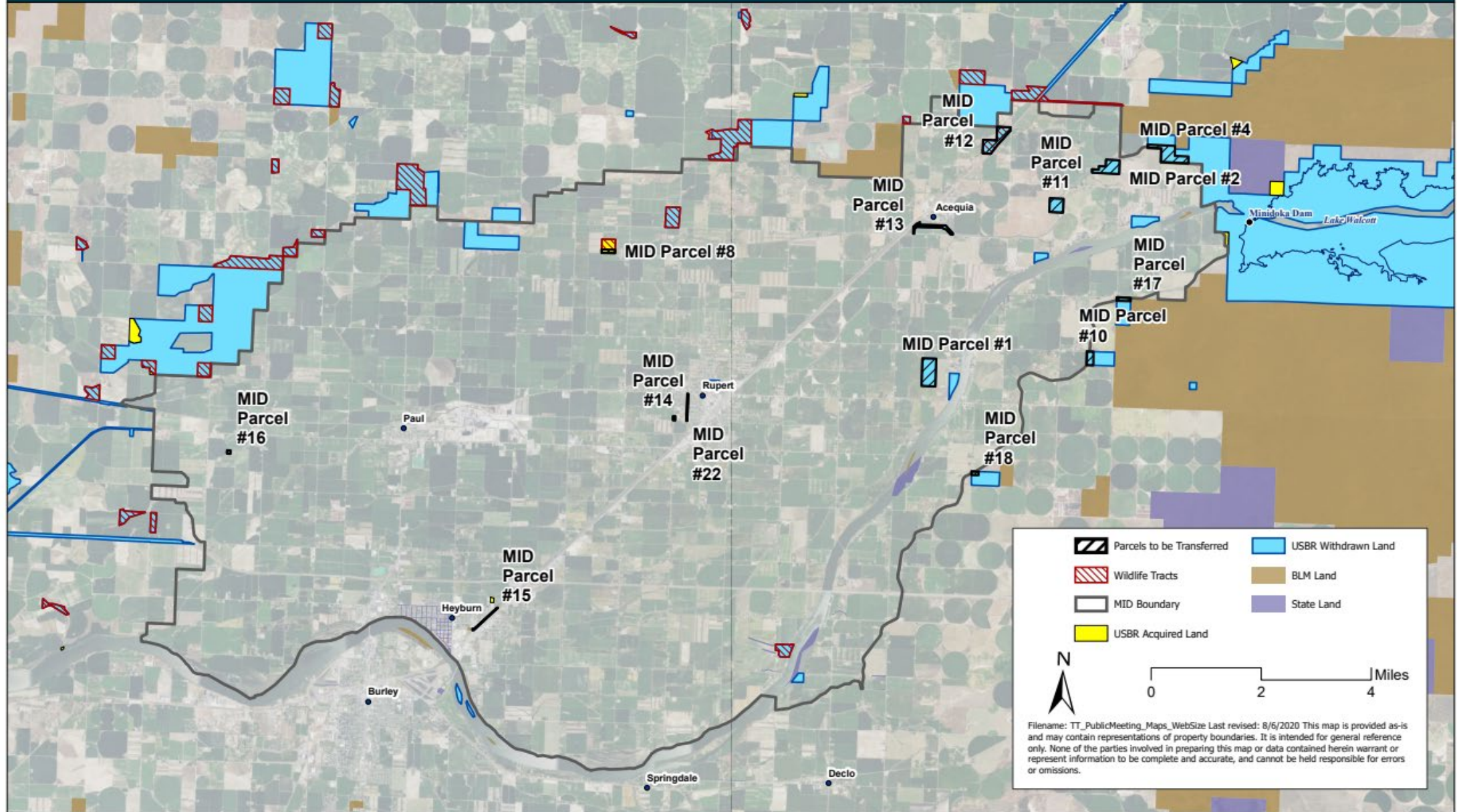


Minidoka Irrigation District Title Transfer Overview





Minidoka Irrigation District Parcels to be Transferred



Main Northside Canal



MID Main Northside Canal Split to A Canal and B Canal



A Canal Diversion



B Canal Diversion



B Canal Upstream from Rupert, ID



C Canal Headworks



MID Water Wheel





- MID Small Lateral



- MID Pump House





A&B Irrigation District Title Transfer



A&B Title Transfer – What is Proposed for Transferred

- Facilities paid for under the construction contract
- Rights-of-Ways and Easements reserved or acquired under the Ditches and Canal Act of 1890s Easements or Idaho Code 58-604
- Easements for Facilities on Federal Lands (where the land is not being transferred)
- Withdrawn Land – 959 acres (14 parcels encumbered by facilities, required for O&M)
- Acquired Land – 61 acres (3 parcels)



A&B Title Transfer – Facilities Paid for Under Construction Contract

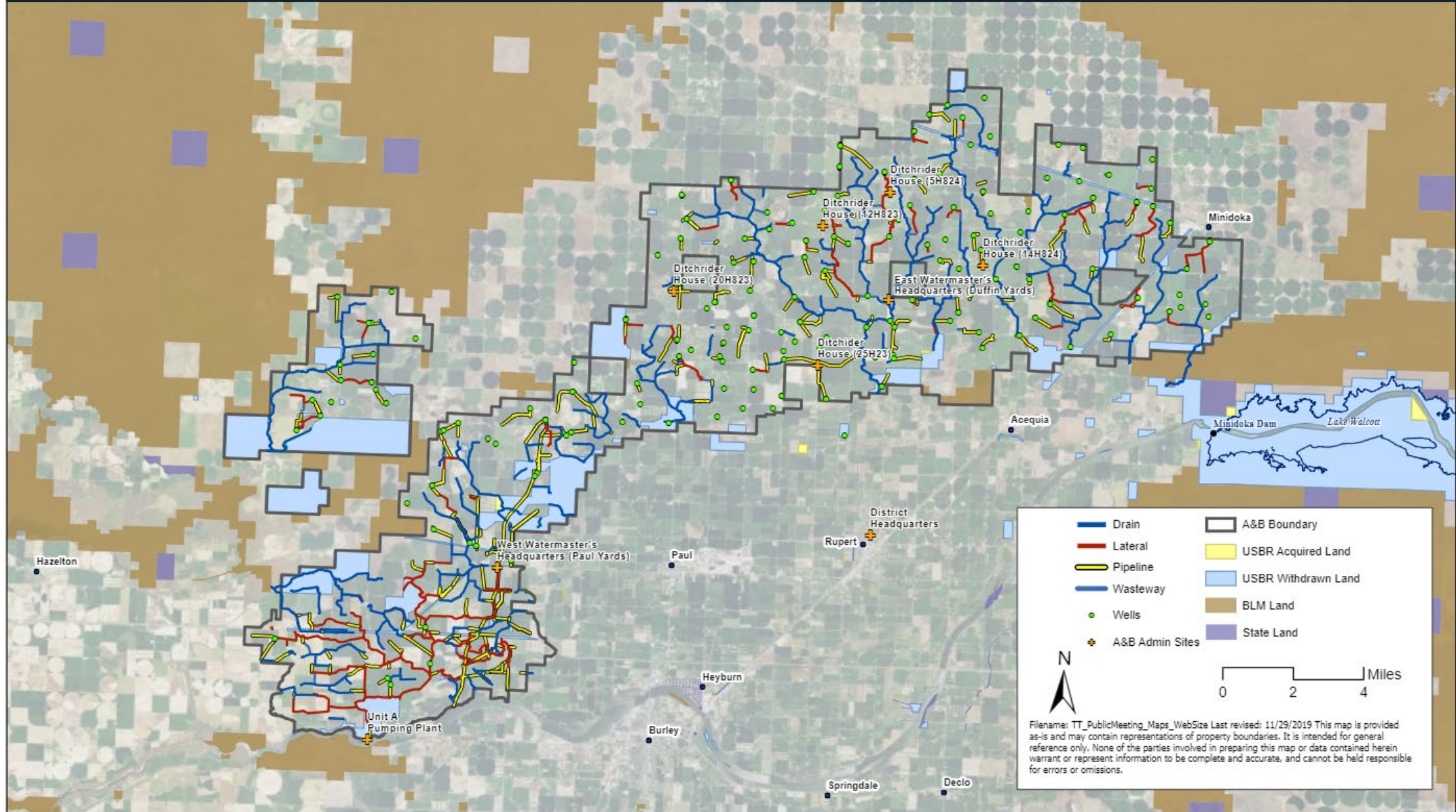
- Pumping Plants - 2
- Canals/Laterals - 68 miles
- Drains – 170 miles
- Pipelines – 80 miles
- Wasteways – 12 miles
- Wells - 291
- Ponds (Drain & Distribution) – 187 acres
- Ditchrider Houses - 11
- Office/Yards/Shops

*including all auxiliary equipment
and facilities within each

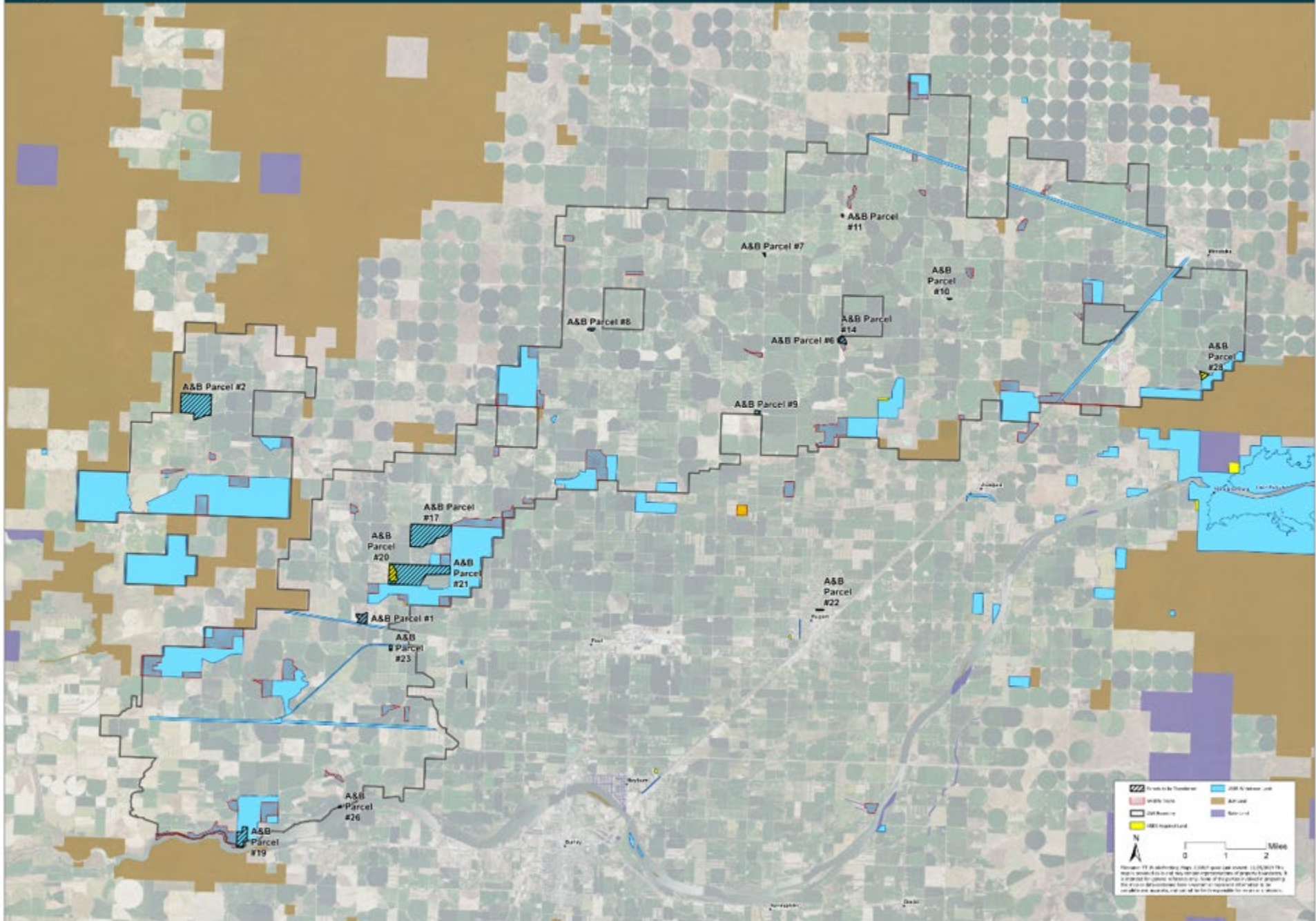




A&B Irrigation District Title Transfer Overview



A&B Irrigation District Parcels to be Transferred





A&B Pipeline from Pumping Plant #1



A&B Main Canal (from Pumping Plant #1)





ABID & MID Title Transfers – Schedule & Next Steps

- Title Transfer Initiation – August 2016
- MOA executed – November 2019
- Agency/Tribe Meeting – November 2019
- Communication Plan – November 2019
- Public Meeting – December 2019
- CERCLA (HazMat) – January 2020
- Onsite Pre-Transfer Review of Facilities – February 2020
- NEPA (CE) – March/April 2020



ABID & MID Title Transfers – Schedule & Next Steps

- Section 110/106 – March/April 2020
- Net Present Valuation – May 2020
- Review of Requested Facilities, Land, and All Interest in Lands and Determinations – May 2020
- Draft Final Supplemental Project Use Power Contract – May 2020
- Appraisal – Initial May 2020, reappraisal target September 2020
- Draft Title Transfer Agreement to Congress – Sept/Oct 2020
- Final Title Transfer Agreement – December 2020



Lessons Learned/Best Practices

- **Strong and Open Communication**
 - Weekly (or frequent) coordination meetings between the district and Reclamation team
 - Transparency
 - Frequent coordination meetings with Reclamation leadership and other agencies as determined (i.e. AVSO)
 - Reclamation provide updates to Board of Directors routinely
- **Dedication from the district and Reclamation/Department team**
- **IWUA dedication and commitment**



Lessons Learned/Best Practices

- District Board of Directors and management involvement and commitment to the title transfer
- Coordination with local, state and federal government agencies, tribes, and the public throughout the process
 - Begin outreach prior to title transfer and early in the process
 - Continue outreach as needed and ensure transparency
- Preparation prior to initiating title transfer (district and Reclamation)
 - GIS data accurate and updated
 - Relevant records available



Lessons Learned/Best Practices

- **Develop final footprint initially (facilities and lands)**
 - This ensures efficiencies with other tasks (i.e. NEPA, appraisal, title transfer agreement and conveyance deeds, notification to stakeholders/public)
- **Complete Section 106 consultation ahead of appraisal of withdrawn lands (if an option)**
 - Early and frequent coordination with SHPO (including: site visit, coordination meetings)
 - Mitigation process (if applicable)
- **Begin drafting project use power contract (if applicable) early in the process**



Lessons Learned/Best Practices

- **Begin the appraisal of withdrawn lands as early as possible in the process**
- **Begin drafting the title transfer agreement, deeds and legal documents early in the process**
- **Continued process and efficiency development and refinement (includes: templates, best practices)**



Resources/Information

Reclamation Title Transfer Webpage

- <https://www.usbr.gov/title/index.html>

Reclamation Directives and Standards (CMP 11-01)

- <https://www.usbr.gov/recman/cmp/cmp11-01.pdf>

Reclamation Title Transfer Categorical Exclusion

- <https://www.usbr.gov/title/ce.html>



Resources/Information

Reclamation CPN Region Title Transfer Webpage

- <https://www.usbr.gov/pn/programs/title/index.html>

A&B Irrigation District Title Transfer Webpage

- <https://www.usbr.gov/pn/programs/title/ab/index.html>

Minidoka Irrigation District Title Transfer Webpage

- <https://www.usbr.gov/pn/programs/title/mid/index.html>



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Questions?

Visit: usbr.gov/title



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