

# Reclamation Manual

## Policy

<b>Subject:</b>	Reclamation Standard Water-Related Contract Articles
<b>Purpose:</b>	To set forth requirements for the use of the Bureau of Reclamation's Standard Water-Related Contract Articles (Standard Articles), for the benefit of promoting efficiency and consistency in the contracting process and in contract administration.
<b>Authority:</b>	The Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), and acts amendatory and supplementary thereto; see Reclamation Manual Directives and Standards (D&S) <a href="#">PEC 10-01, et seq.</a> (PEC 10-01, et seq.), for authorities specific to the individual Standard Articles.
<b>Approving Official:</b>	Commissioner
<b>Contact:</b>	Policy and Administration; Water and Environmental Resources Division, 84-55000

1. **Introduction.** It is Reclamation's policy to promote efficiency and consistency in the contracting process and in contract administration. In furtherance of this policy, Reclamation establishes standard articles to cover common contract provisions required by various statutes, executive orders, regulations, and policies. Basic requirements for the Standard Articles, including what types of contracts require each of them, are set forth herein. Further requirements for the Standard Articles, including their required text, appear at [PEC 10-01, et seq.](#)
2. **Applicability.** This Policy applies to Reclamation staff and officials involved in the contracting process, as defined below.
3. **Definitions.** For purposes of this Policy:
  - A. **"Contracting process"** refers to the process through which Reclamation enters water-related contracts, as defined below, including the proposal, review, and approval of bases of negotiation (BONs),<sup>1</sup> and the negotiation and execution of contracts.
  - B. **"Modification"** refers to any modification to the standard form or text of a required Standard Article for purposes of a specific contract action. It does not refer to revisions, as defined below. A modification may be minor or substantive.
    - (1) **Minor modification** refers to modification that does not change the intended effect of the Standard Article on the rights and obligations of the parties. This

<sup>1</sup>For more about the BON process, see [PEC P06, Bases of Negotiation \(BON\) for New and Amendatory Water Service, Repayment, and Related Contracts](#), and [PEC 06-01, Preparing Bases of Negotiation \(BONs\) for New and Amendatory Water Service, Repayment, and Related Contracts](#).

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includes modification that replaces generalized references to parties, projects, facilities, geographical areas, etc., with specific references (e.g., replacing “Contractor” with the particular contractor’s name). It also includes modification to clarify a Standard Article’s intended effect.

- (2) **“Substantive modification”** refers to the omission of a required Standard Article and to any modification that (1) results in rights or obligations different from those the standard language is intended to create; or (2) creates ambiguity or makes the intended meaning of the Standard Article otherwise less clear. See requirements for substantive modifications below at Paragraph 5.
- C. **“Revision”** refers to any revision of an existing Standard Article that is intended to apply Reclamation-wide. It does not refer to modification, as defined above.
- D. **“Standard Article”** refers to any of the Standard Articles identified in the chart at Paragraph 6, below, and addressed in PEC 10-01, et seq.
- E. **“Water-related contract”** refers to any contract made pursuant to any of the authorities indicated in the chart at Paragraph 6 below.
4. **Responsibilities.**
- A. **Commissioner.** As part of the Commissioner’s authority over the approval of proposed BONs, the Commissioner is responsible for approving proposed substantive modifications to required Standard Articles (see Paragraph 5.B., below). The Commissioner is also responsible for establishing and amending, as appropriate, policy concerning the Standard Articles, which includes adding or amending requirements for their inclusion under Paragraph 6, below.
- B. **Director of Policy and Administration (Director).** The Director is responsible for establishing Directives and Standards (D&S) to implement this Policy, and for recommending addition or amendment of requirements under Paragraph 6. The Director is also responsible for assisting, as necessary, regional directors or their authorized representatives in determining whether proposed modifications are minor or substantive.
- C. **Regional Directors.** Regional directors are responsible for ensuring regional implementation of this Policy, as applicable. This includes ensuring that (1) contract actions executed in their regions according to authority delegated to them by the Commissioner meet the applicable requirements this Policy and (2) the BONs their regions submit to the Commissioner for approval identify and justify any proposed substantive modifications to required Standard Articles in accordance with Paragraph 5, below. It also includes determining whether proposed modifications are minor or substantive, in consultation with the Director where necessary.

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### 5. Modification of Standard Articles.

- A. **Requests for Authority to Substantively Modify Standard Articles.** A required standard article may be substantively modified only with the Commissioner's approval.<sup>2</sup> A request for such approval may be made in the relevant BON or a supplement or amendment thereto. Requests will be considered on a case-by-case basis. To be considered, a request must clearly state and support a case-specific justification (e.g., case-specific circumstances make a standard provision inapplicable, unworkable, less advantageous to the United States than the proposed alternative, etc.).<sup>3</sup>
- B. **Authority for Minor Modification of Standard Articles.** Regional directors are authorized to approve minor modifications, as defined above.

6. **Requirement to Include Standard Articles.** The inclusion of standard articles in contracts as directed by this Policy and [PEC 10-01, et seq.](#), is generally not negotiable. The following chart shows which Reclamation water-related contract types require each of the Standard Articles. The chart is followed by a key to its abbreviations and symbols.

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<sup>2</sup>This is true whether or not the authority to execute the contract requiring the standard article under this Policy has been delegated to the regional director, unless the delegation itself states otherwise.

<sup>3</sup>The purpose of this requirement is to ensure that Reclamation-wide requirements are established through the appropriate Policy/D&S development process rather than through the contracting process.

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Standard Articles		Contract Types														
D&S	Standard Article	<u>9(c)(1),</u> <u>9(c)(2)</u>	<u>9(d),</u> <u>9(e)</u>	<u>WSA</u>	<u>EF</u>	<u>130</u>	<u>984</u>	<u>D&amp;MC</u>	<u>R&amp;B</u>	<u>SOD</u>	<u>O&amp;M</u>	<u>Temp.</u> <u>9(c)(2)</u>	<u>Temp.</u> <u>9(e)</u>	<u>WA1</u>	<u>WA2</u>	<u>215</u>
PEC 10-01	1: Contracts with Third Parties				X	X	X	X	X	B						X
PEC 10-02	2: Failure to Complete Work				X	X	X	X	X	B						X
PEC 10-03	3: Charges for Delinquent Payments	X	X	X	X	X	X		X	B	B			X	X	
PEC 10-04	4: General Obligation—Benefits Conditioned Upon Payment	X	X	X	X	X	X		X	B	B			X	X	
PEC 10-05	5: O&M of Transferred Works (Federal Construction)	O	O	O	O				O		X					O
PEC 10-06	6: O&M of Transferred Works (Federally Assisted Construction)					X	X		X		X					X
PEC 10-07	7: Examination, Inspection, and Audit of Project Works, Records, and Reports for Determining Adequacy of Operation and Maintenance	O	O	O	O	X	X		X	B	X					O
PEC 10-08	8: Emergency Reserve Fund (Annual Deposit)**	X	X	X	O	X	X		O		X					
PEC 10-09	9: Emergency Reserve Fund (One-Time Deposit)	X	X	X	O	X	X		O		X					
PEC 10-10	10: Confirmation of Contract**	X	X	X	X	X	X		X	B				X	X	
PEC 10-11	11: Notices	X	X	X	X	X	X	X	X	B	B			X	X	
PEC 10-12	12: Contingent on Appropriation or Allotment of Funds	X	X	X	X	X	X	X	X	B	X	X	X	X	X	X
PEC 10-13	13: Officials Not to Benefit	X	X	X	X	X	X	X	X	B	X	X	X	X	X	X
PEC 10-14	14: Changes in Contractor's Organization	X	X	X	B	X	X		B	B	X			X	X	
PEC 10-15	15: Assignment Limited—Successors and Assigns Obligated	X	X	X	X	X	X	X	X		X	X	X	X	X	X
PEC 10-16	16: Books, Records, and Reports	X	X	X	X	X	X	B	B	B	B	X	X	X	X	X
PEC 10-17	17: Compliance with Federal Reclamation Laws/Small Reclamation Project Laws**	X	X	X	X	X	X		X			X	X			
PEC 10-18	18: Administration of Federal Project Lands	O	O	O					O	O	X	O	O	O	O	
PEC 10-19	19: Protection of Water and Air Quality	X	X	X		B			B		X	X	X	X	X	X
PEC 10-20	20: Contamination or Pollution of Federal Property	O	O	O		O	O		O		X	O	O	O	O	
PEC 10-21	21: Clean Air and Water**				X	X	X		X		X					O
PEC 10-22	22: Water Conservation**	X	X	X	X	X	X		X					X	X	
PEC 10-23	23: Equal Employment Opportunity (Federal Construction)**	X	X	X	X				X	B	B	X	X	X	X	X
PEC 10-24	24: Equal Employment Opportunity (Federally Assisted Construction)**					X	X	X	X	B	B					X
PEC 10-25	25: Compliance with Civil Rights Laws and Regulations*	X	X	X	B	X	X	B	B	B	B	X	X	X	X	X
PEC 10-26	26: Certification of Nonsegregated Facilities				B	X	X	B	B	B	B			X	X	
PEC 10-27	27: Relocation Assistance and Real Property Acquisition					X	X		X		X					O
PEC 10-28	28: Privacy Act Compliance*		X			X	X		X				X			
PEC 10-29	29: Pest Management	O	O	O		O	O		O		X	O	O	O	O	
PEC 10-30	30: Medium for Transmitting Payments	X	X	X	X	X	X	X	X	B	X	X	X	X	X	X
PEC 10-31	31: Contract Drafting Considerations	X	X	X	X	X	X	X	X	B	X	X	X	X	X	X
PEC 10-32	32: Constraints on Availability of Water	X	X	X			Y					X	X			

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### Key to Abbreviations

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<u>Abbreviation</u>	<u>Authority</u>
9(c)(1)	Subsection 9(c)(1) of the Reclamation Project Act of August 4, 1939, as amended (1939 Act) (Pub. L. 76-260; 43 U.S.C. 485h(c)(1)) (repayment contracts for municipal & miscellaneous water purposes).
9(c)(2)	Subsection 9(c)(2) of the 1939 Act (43 U.S.C. 485h(c)(2)) (water service contracts for municipal & miscellaneous water purposes).
9(d), 9(e)	Subsections 9(d) & (e) of the 1939 Act (43 U.S.C. 485h(d) & (e)) (irrigation).
WSA	Water Supply Act of July 3, 1958, as amended (Pub. L. 85-500, Title III; 43 U.S.C. 390b).
WA1	Section 1 of the Warren Act of February 21, 1911, as amended (Warren Act) (Pub. L. 61-406; 43 U.S.C. 523) (secondary to project lands and entryman use of Federal facilities for storage or conveyance of nonproject water).
WA2	Section 2 of the Warren Act (43 U.S.C. 524) (construction and/or use, not secondary to project lands or entryman, of facilities for storage or conveyance of nonproject water).
EF	Emergency Fund Act of June 26, 1948 (Pub. L. 80-790; 43 U.S.C. 502 & 503).
130	Distribution Systems Loan Act of July 4, 1955, as amended (Pub. L. 84-130; 43 U.S.C. 421a through 421d).
984	Small Reclamation Projects Act August 6, 1956, as amended (Pub. L. 84-984; 43 U.S.C. 422a through 422k).
D&MC	Drainage & Minor Construction Act of June 13, 1956 (Pub. L. 84-575; 43 U.S.C. 505) .
R&B	Rehabilitation & Betterment Act of October 7, 1949, as amended (Pub. L. 81-335; 43 U.S.C. 504).
215	Section 215 of the Reclamation Reform Act of October 12, 1982, as amended (Pub. L. 97-293, Title II; 43 U.S.C. 390oo) (temporary supply of water).
SOD	Reclamation Safety of Dams Act of November 2, 1978, as amended (Pub. L. 95-578; 43 U.S.C. 506 through 509).

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### Article Symbols

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<u>Symbol</u>	<u>Meaning</u>
X	Required.
A	Required in contracts for federally funded construction and/or other work to be performed by non-Federal entities.
B	Can be included by reference to the primary contracts that these contracts supplement, if consistent with current standard articles.
O	Use when the operational responsibility has been transferred to the Contractor or will be transferred at the time of contract execution.
Y	Required if Reclamation provides the water supply.

### Notes

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- \* Not required in contracts if the contractor is also the water user.
- \*\* See appropriate D&S for further specifications on use. (The number of the appropriate D&S will correspond to the number of the Standard Article as it appears in the chart above. )