

Reclamation Manual

Directives and Standards

Subject:	Implementation of Historic Preservation Responsibilities for Operation, Maintenance and Replacement of Project Works
Purpose:	The purpose of this Directive and Standard (D&S) is to define requirements and responsibilities in executing operation, maintenance and replacement (OM&R) activities undertaken on all project works, either reserved or transferred across the Bureau of Reclamation's regions. - Another benefit is to ensure that historic properties receive the appropriate care, maintenance, and preservation commensurate with their status as a historic property when OM&R activities are undertaken. -Also, to ensure that historic properties and unevaluated properties that may be historic are not affected by an OM&R action prior to compliance with the National Historic Preservation Act (NHPA) and implementing regulations 36 CFR part 800.
Authority:	Reclamation Act of 1902 and Amendatory and Supplementary Acts; Title 54 of the United States Code, including the authorities formerly within and commonly known as the NHPA (54 U.S.C. 300101, et seq.); Waiver of Federal Agency Responsibilities Under section 110 of the NHPA (36 CFR part 78); Protection of Historic Properties (36 CFR part 800); Real Property Disposal (41 CFR part 102-75); Federal Real Property Asset Management (Executive Order 13327); Department of the Interior Property Management Directives supplement to the Federal Property Management Regulations (FPMR; 41 CFR part 101); <u>and Reclamation Supplements to the FPMR 114S60; and Secretarial Order 3446 Cutting Red Tape and Reducing Consumer Costs at Reclamation Construction Projects (SO3446), and Secretarial Order 3452 Timely Completion of National Historic Preservation Act Section 106 Reviews (SO 3452).</u>
Approving Official:	Director, Mission Assurance and Protection Organization (MAPO)
Contact:	Environmental Compliance Division, (84-53000)

1. Introduction.

Reclamation is responsible for ensuring compliance with cultural resources laws for all project works, even when OM&R has been transferred to a non-Federal entity. -This includes both identified historic properties (e.g., buildings, structures, facilities, or equipment) ~~-as defined in Appendix B of Reclamation Manual (RM) D&S, Cultural Resources Management (CRM) (LND 02-01)~~ and unevaluated properties that may be historically significant. -When Reclamation determines an OM&R action is an undertaking that has the potential to affect a historic property, Reclamation ~~completes the CRM section 106 process~~ "shall take into account the effect of the undertaking on any historic property"¹ (Section 106) required by the NHPA and 36 CFR part 800; in accordance with SO3446 and SO 3452; and articulated in LND 02-01. -For transferred project works, Reclamation ensures the project non-Federal

¹ NHPA §306108: <https://www.achp.gov/sites/default/files/2018-06/nhpa.pdf>

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operator (Operator) is aware of and complies with requirements defined in this D&S and manages transferred works in a manner that protects their historic integrity and significance. ~~“to the maximum extent feasible.”²~~ The Federal Preservation Officer (FPO) is responsible for oversight of Reclamation’s CRM program as described in LND 02-01.

2. Applicability.

This D&S applies to all Reclamation employees who oversee project works (both reserved and transferred), OM&R, transfers, and inspections of project works.

3. Ownership of Project Works.

All project works, either reserved or transferred, are the property of the Federal government and remain under Reclamation’s authority as pursuant to the Reclamation Act of 1902 and amendatory and supplementary acts and in RM D&S, *Completion of a Construction Activity*, FAC 01-05 until title to project works are transferred pursuant to federal law or under expressed Congressional ~~A~~authorization.

4. Implementation of Historic Preservation Responsibilities for Project Works.

The authority to implement historic preservation activities comes from Reclamation’s Commissioner and is delegated to regional directors and may be re-delegated subsequently to area managers in accordance with ~~Paragraph 4.K.(2)(d) of~~ the RM Delegations of Authority. The Reclamation CRM professional that oversees and manages a historic property for Reclamation shall complete the ~~s~~Section 106 consultation and compliance process, as per the regulatory procedures in 36 CFR part 800 and in accordance with SO3446 and SO 3452, when an undertaking is identified that could affect federally owned historic properties.

A. The Reclamation CRM professional shall maintain an up-to-date list of the federally owned historic properties for which they are responsible and provide access to or a list to the FPO and the transferred works Operators annually, as appropriate.

5. The position delegated authority by the Commissioner for CRM (typically the area manager) shall ensure that historic properties associated with reserved works are managed in a manner that takes into account the National Register eligibility of the properties. ~~-~~Project works that remain unevaluated as to National Register eligibility shall either be formally evaluated or treated as eligible for identified undertakings.

6. Reclamation shall ensure that managers and OM&R staff are knowledgeable of the compliance processes outlined in 36 CFR part 800, comply with the processes outlined in that regulation, and coordinate management decisions involving project works historic properties with the appropriate CRM professional. ~~-~~The Reclamation CRM professional shall notify Operators of all known historic properties within their area of responsibility for which the transferred works Operator has assumed OM&R responsibility including any applicable CRM and compliance requirements, so long as the notification is commensurate with

² ~~National Historic Preservation Act §306101(a) formerly section 110(a)(1)~~

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safeguarding the historic property from risk.³ ~~pursuant to §307103. As part of this notice, Reclamation will describe any CRM and compliance requirements applicable to the property.~~

- A. Reclamation employees responsible for approving, permitting or providing funding to OM&R activities at transferred works will coordinate with the Operators on the schedule for such activities and approvals, and schedule adequate time for Reclamation to complete the Ssection 106 compliance process.
 - B. Where Reclamation determines an activity is an undertaking, the Reclamation CRM professional will complete ~~the s~~Ssection 106 compliance, ~~as required by LND 02-01.~~ The CRM professional will obtain information from Operators, as deemed appropriate and feasible, in completing this process.
 - C. After Reclamation initiates the Ssection 106 compliance process, Reclamation or the Operator will not undertake, approve or permit OM&R undertakings until the Ssection 106 compliance has been completed by a CRM professional.
 - D. Reviews conducted pursuant to RM D&S *Review of Operation and Maintenance (RO&M) Program Examination of Associated Facilities* (FAC 01-04), may be undertaken in collaboration with the area or regional CRM staff to ensure consideration of potential effects to historic properties.
 - E. Reclamation shall include historic property considerations in all OM&R transfers, including new and renewal agreements, to ensure sufficient language to meet cultural resources law as current and as specified in RM D&S, *Contracts for the Transfer of Operation, Maintenance, and Replacement Responsibilities for Federal Facilities* (PEC 05-02).
 - F. Reclamation's FPO shall work to streamline Ssection 106 activities in accordance with SO3446 and SO 3452 on transferred works in order to assist Operators. Streamlining efforts may include ~~pursuit development~~ of a Programmatic Agreement for water operations or other alternative procedures such as Program Comments or Exemptions for Ssection 106 activities.
7. Reclamation will require the Operator to notify Reclamation's CRM professional(s) of the discovery of historic properties or potentially historic properties during OM&R undertakings ~~as required by Paragraph 5.B. of LND 02-01.~~
- A. Reclamation will manage transferred works that are historic properties so as to maintain the elements and characteristics that make the property historic. ~~Reclamation will consult with Operators in the development of appropriate management requirements and following that consultation, Reclamation will communicate such necessary rules and regulations as needed to implement those requirements to the~~

³ NHPA §307103: <https://www.achp.gov/sites/default/files/2018-06/nhpa.pdf>

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Operator. Neither Reclamation nor an Operator shall change or diminish the aspects of the integrity of historic properties unless such change is approved by Reclamation after completion of the ~~s~~Section 106 compliance process. ~~-In accordance with SO3446 and SO 3452.~~ Reclamation shall ~~allow~~invite the transferred facilities Operator to be involved in the decision-making process as follows:

- (1) The Operator shall be invited to assist Reclamation in assessing the condition of historic properties associated with transferred works.
- (2) The Operator shall be invited to assist Reclamation with the completion of the ~~NHPA~~Section 106 compliance process, as appropriate.
- (3) The Operator shall be invited to assist Reclamation in determining and applying ~~an~~an-appropriate treatment for identified OM&R undertakings that cause an adverse effect on historic properties associated with transferred works. ~~-Reclamation shall make the final decision regarding determination and application of an-appropriate treatment.~~

8. Emergency Situations.

Emergency situations are addressed in D&S LND 02-01.

9. Definitions.

A. Adverse Effect.

See LND 02-01.

B. CRM Professional.

See LND 02-01, Appendix B.

C. Historic Integrity and Significance.

Historic integrity and significance refers to the authenticity of a property's historic identity, evidenced by the survival of physical characteristics that existed during the property's period of significance. ~~-~~ The significance of a historic property is conveyed through a composite of the physical characteristics that comprise integrity; these are location, design, setting, materials, workmanship, feeling, and association. ~~-All seven aspects of integrity do not need to be present, only enough to convey an overall sense of a past time and place.~~

D. Historic Property.

See RM Policy LND P01, Cultural Resources Management ~~-(LND P01)~~.

E. Operation, Maintenance, and Replacement (OM&R).

Actions undertaken on a facility which keeps a facility or system in operation, as originally designed and/or intended. ~~-~~ This includes the replacement or installation of

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component(s) to maintain the reliable function of the facility or to meet current safety standards.

F. Project Works.

Any facility, structure, or feature that makes up part of a Reclamation project.

G. Reserved Works.

Those facilities, structures or features that are part of a Reclamation project and are also owned and maintained by Reclamation.

H. Transferred Works.

Those facilities, structures, or features owned by Reclamation where Reclamation has assigned the responsibility for OM&R activities to a non-Federal operating entity pursuant to a contract or formal agreement with such an entity.

I. Treatment.

See LND 02-01 [Appendix B](#).

J. Undertaking.

See LND 02-01 [Appendix B](#).

10. Review Period.

This release will undergo review every four years.