

# **SUMMARY OF RELATED ENVIRONMENTAL AND CULTURAL RESOURCES LAWS, RULES, REGULATIONS, AND INSTRUCTIONS**

## **10-1 American Indian Religious Freedom Act of 1978 (P.L. 95-341)**

This Act makes it a policy of the Government to protect and preserve for American Indians, Eskimos, Aleuts, and Native Hawaiians their inherent right of freedom to believe, express, and exercise their traditional religions. It allows them access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rights. It further directs various Federal departments, agencies, and other instrumentalities responsible for administering relevant laws to evaluate their policies and procedures in consultation with Native traditional religious leaders to determine changes necessary to protect and preserve Native American cultural and religious practices. Applicable regulation is 43 CFR 7, ARPA Permitting.

## **10-2 Antiquities Act of 1906 (34 Stat. 225)**

This Act was the first general act providing protection for archeological resources. It protects all historic and prehistoric sites on Federal lands and prohibits excavation or destruction of such antiquities without the permission (Antiquities Permit) of the Secretary of the Department having jurisdiction. It also authorizes the President to declare areas of public lands as National Monuments and to reserve or accept private lands for that purpose. Applicable regulation is 43 CFR 3, Antiquities Act of 1906.

## **10-3 Archaeological Resources Protection Act of 1979 (P.L. 96-95)**

This Act supplements the provisions of the 1906 Antiquities Act. The law makes it illegal to excavate or remove from Federal or Indian lands any archeological resources without a permit from the land manager. Permits may be issued only to educational or scientific institutions, and only if the resulting activities will increase knowledge about archeological resources. Major penalties for violating the law are included. Regulations (43 CFR 7) for the ultimate disposition of materials recovered as a result of permitted activities state that archeological resources excavated on public lands remain the property of the United States. Those excavated from Indian lands remain the property of the Indian or Indian Tribe having rights of ownership over such resources.

## **10-4 Archeological and Historic Preservation Act of 1974 (P.L. 93-291)**

Congress amended the Reservoir Salvage Act to extend the provisions of the Act to all Federal construction activities and all federally licensed or assisted activities that will cause loss of scientific, prehistoric, or archeological data. It requires the Secretary of the Interior (Secretary) to coordinate this effort and to report annually to the Congress on the program. It permits agencies either to undertake necessary protection activities on their own or to transfer to the Secretary up to 1 percent

of the total authorized for expenditure on a Federal or federally assisted or licensed project to enable the Secretary to undertake the necessary protection activities.

### **10-5 Bald Eagle Protection Act of 1940 (16 U.S.C. 668-668d)**

No person within the United States, or any place subject to the jurisdiction thereof, shall possess, sell, purchase, barter, offer to sell, transport, export, or import at any time or in any manner any bald eagle or any golden eagle, alive or dead, or any part, nest, or egg thereof.

The Secretary of the Interior, if determined to be compatible with the preservation of the bald or golden eagle, can permit the taking, possession, and transportation of specimens thereof for scientific or exhibition purposes or for the religious purposes of Indian Tribes.

### **10-6 Clean Air Act (42 U.S.C. 7401) and Amendments of 1970**

National Primary and Secondary Ambient Air Quality Standards – 40 CFR 50;

State Implementation Plan Requirements – 40 CFR 51

The purposes of this Act are to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population; to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution; to provide technical and financial assistance to State and local governments for aid in their development and execution of air

pollution control programs; and to encourage and assist the development and operation of regional air pollution control programs.”

The Act requires the Environmental Protection Agency (EPA) to publish national primary standards to protect public health and more stringent national secondary standards to protect public welfare (40 CFR 50). States and local governments are to be responsible for the prevention and control of air pollution.

States, which are divided into air quality control regions, are required to submit State Implementation Plans (SIPs) for EPA approval (40 CFR 51). SIPs provide strategies for implementation, maintenance, and enforcement of national primary and secondary ambient air quality standards for each air quality control region.

EPA’s rules require Federal agencies to determine if their proposed actions conform to the appropriate SIPs. The requirement applies to proposed Federal actions occurring in nonattainment or maintenance areas for: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. Federal actions could include construction and permitting types of activities. The conformity determination examines the impacts of the direct and indirect emissions resulting from the Federal action. Federal agencies are required to take into account only those indirect emissions for which they provide support, can practically control, and are under their continuing program responsibility. Federal agencies making conformity determinations must provide a 30-day notice for both the draft and

final conformity determinations to the appropriate EPA regional office(s), State and local air quality agencies, and, where applicable, affected Federal land managers, the agency designated under Section 174 of the Act, and the Metropolitan Planning Office. Federal agencies must also make their draft conformity determinations available to the public for a 30-day review. These reviews may be integrated into the NEPA public review process.

### **10-7 Clean Water Act (33 U.S.C. 1251 et seq.)**

Public Law 92-500 as amended

The Clean Water Act strives to “restore and maintain the chemical, physical, and biological integrity of the Nation’s water.” To achieve this objective, the Act sets forth the following goals: “(1) that the discharge of pollutants into the navigable waters of the United States be eliminated by 1985; (2) that as an interim goal there be attained by 1983 water quality which provides for the protection and propagation of fish, shellfish and wildlife, and provides for recreation in and on the water; (3) that the discharge of toxic pollutants in toxic amounts be prohibited; (4) that Federal financial assistance be provided to construct publicly owned waste treatment works; (5) that area wide waste treatment management planning processes be developed and implemented to ensure adequate control of source pollutants in each State; (6) that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into navigable waters, waters of the contiguous zone, and the oceans; and (7) it is the national

policy that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution.”

The basic means to achieve the goals of the Act is through a system of water quality standards, discharge limitations, and permits. The Act authorizes EPA to require owners and operators of point source discharges to monitor, sample, and maintain effluent records.

If the water quality of a water body is potentially affected by a proposed action (i.e., construction of a wastewater treatment plant), a National Pollutant Discharge Elimination System (NPDES) permit (Section 402) may be required. In most cases, the EPA has turned this responsibility over to the States as long as the individual State program is acceptable to the Agency.

Similarly, if a project may result in the placement of material into waters of the United States, a U.S. Army Corps of Engineers Dredge and Fill Permit (Section 404) may be required. It should be noted that the 404 permit also pertains to activities in wetlands and riparian areas.

Prior to the issuance of either a NPDES or 404 permit, the applicant must obtain a section 401 certification. This declaration states that any discharge complies with all applicable effluent limitations and water quality standards. Certain Federal projects may be exempt from the requirements of section 404 if the conditions set forth in section 404(r) are met.

Section 319 – Nonpoint Source Management Programs – was added to the Clean Water Act by P.L. 100-4. The purpose of this section is to have the States establish nonpoint source management plans designed to deal with each State’s nonpoint source pollution problems. Section 319(k) requires each Federal department and agency to allow States to review individual development projects and assistance applications and accommodate, in accordance with Executive Order 12372, the concerns of the State regarding the consistency of these applications or projects with the State nonpoint source pollution management program.

### **10-8 Coastal Zone Management Act of 1972 (P.L. 92-583)**

Federal Consistency with Approved State Coastal Management Programs – 15 CFR 930

It is the stated policy of the Act “to preserve, protect, develop, and where possible, restore or enhance, the resources of the Nation’s coastal zone for this and future generations.”

The Act provides for financial and technical assistance and Federal guidance to States and territories for the conservation and management of coastal resources.

The Act encourages but does not require States to develop a coastal zone management program. A state program would consider such things as ecological, cultural, historic, and esthetic values, as well as economic development needs.

The provisions of 15 CFR 930.30 are provided to ensure that all federally conducted or supported activities, including development projects directly affecting the coastal zone, are undertaken in a manner consistent, to the maximum extent practicable, with approved State coastal management programs.

### **10-9 Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) (P.L. 96-510)**

The primary objective of the Superfund program is the cleanup of the worst abandoned hazardous waste sites in the country. Owners or operators of an inactive (uncontrolled) hazardous waste site must notify the appropriate State official and convey information to them as to the nature (i.e., location, waste present) of the site. States, in turn, compile this information and submit it to EPA for the development of a national inventory of hazardous waste sites. The most serious sites will be placed on the National Priorities List (NPL). The State and national lists are required to be updated annually.

Sources for cleanup funding include general revenues and excise taxes on petroleum and specified chemical manufactures. The purpose/use of the fund is to aid in the identification, assessment, and ultimate cleanup of abandoned hazardous waste sites, when those responsible either no longer exist, are unidentifiable, or lack the necessary funds for cleanup.

## **10-10 Endangered Species Act of 1973 (P.L. 93-205)**

It is the purpose of this Act to provide protection for animal and plant species that are currently in danger of extinction (endangered) and those that may become so in the foreseeable future (threatened).

Section 7 of this Act requires Federal agencies to ensure that all federally associated activities within the United States do not have adverse impacts on the continued existence of threatened or endangered species or on designated areas (critical habitats) that are important in conserving those species. Action agencies must consult with the U.S. Fish and Wildlife Service (FWS) (or NOAA-Fisheries), which maintains current lists of species that have been designated as threatened or endangered, to determine the potential impacts a project may have on protected species.

Section 9 of the Act prohibits any person subject to United States jurisdiction to possess, sell, deliver, carry, transport, or ship any species listed under this Act, except by authorized permit.

The FWS has established a system of informal and formal consultation procedures. FWS preparation of a “Biological Opinion” will conclude formal consultation. The result of informal or formal consultations with the FWS under Section 7 of the Endangered Species Act Amendments of 1978 should be described and documented in the Environmental Assessment (EA) or Environmental Impact Statement (EIS). This should include:

A list of endangered, threatened, or candidate species occurring in the project areas. What impacts, if any, the project could have on endangered fish and wildlife and their habitat.

Action or project features included to enhance, mitigate, or reduce adverse impacts to threatened or endangered species.

A description of the formal and informal consultation with the FWS and the FWS’s Biological Opinion, if appropriate.

The “Alternatives Including the Recommended Plan” chapter should include any threatened and endangered species mitigation or enhancement project features included in the proposed alternative and the reasonable alternatives.

The “Affected Environment and Environmental Consequences” chapter should compare threatened and endangered species impacts for the proposed alternative, the “Without Project (no action)” alternative, and all reasonable alternatives. If a threatened or endangered species is located within the project area and is affected by the project, it may be desirable to attach a more detailed endangered species assessment to the end of the EA or EIS.

Additional detail on Endangered Species Act compliance is found in Reclamation’s ESA Handbook.

**10-11 Executive Order 11514  
(amended by Executive  
Order 11991 - Protection and  
Enhancement of Environmental  
Quality, 1977)**

This Executive Order directs Federal agencies to initiate measures needed to direct their policies, plans, and programs so as to meet national environmental goals.

Federal agencies are responsible for developing procedures (i.e., public hearings, information on alternative courses of action) to ensure the provision of timely public review and understanding of Federal plans and programs with environmental impact in order to obtain interested party views.

This order directs the Council on Environmental Quality (CEQ) to develop regulations requiring EISs to be more concise, clear, and to the point, and therefore, more useful to the decisionmakers. CEQ has also issued regulations for implementing the procedural provisions of NEPA (40 CFR 6).

**10-12 Executive Order 11593,  
1971 (Protection and  
Enhancement of the Cultural  
Environment) (16 U.S.C. 470)**

This Executive Order requires Federal agencies to take a leadership role in preservation by surveying all lands under their ownership or control and nominating to the National Register of Historic Places all properties which appear to qualify. It also requires agencies to avoid inadvertently destroying such properties prior to

completing their inventories (codified as part of 1980 amendments to the National Historic Preservation Act).

**10-13 Executive Order 11988  
(Floodplain Management, 1977)**

*requires a construction agency to:*

“... avoid to the extent possible the long- and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative . . .” within the 100-year flood elevation.

The purpose of this directive is to avoid, where practicable alternatives exist, the short- and long-term adverse impacts associated with flood plain development.

Federal agencies are required to reduce the risk of flood loss; minimize the impact of floods on human safety, health, and welfare; and restore and preserve the natural and beneficial values served by flood plains in carrying out agency responsibility.

For proposed Federal flood plain projects, where an EIS is required, the agency shall consider alternatives to avoid adverse effects and incompatible development. If development requires siting in a flood plain, action shall be taken to modify or design the project in a way that minimizes potential harm to or within the flood plain. Procedures for early public review shall be provided in cases not requiring and EIS.

It is also recommended that planning reports/environmental impact statements include the following statement of findings on actions located in a floodplain or wetland:

1. Reasons why the proposed action must be located in a flood plain or wetlands.
2. Facts considered in making the determination to locate in a flood plain or wetlands, including alternative sites and actions considered.
3. Statement about whether the proposed action conforms to applicable State or local flood plain or wetlands protection standard.
4. Statement about whether the action affects the natural or beneficial values of the flood plain or wetlands.
5. Description of steps taken to design or modify the proposed action to minimize potential harm to or within the flood plain or wetlands.
6. A general listing of other involved agencies, groups, and organizations.

**10-14 Executive Order 11990  
(Protection of Wetlands, 1977)**

*requires a construction agency to:*

“ . . . avoid to the extent possible the long- and short-term adverse impacts associated with the destruction or modification of

wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative. . . .”

Executive agencies, in carrying out their land management responsibilities, are to take action which will minimize the destruction, loss, or degradation of wetlands, and take action to preserve and enhance the natural and beneficial values of wetlands.

Each agency shall avoid undertaking or assisting in wetland construction projects, unless the head of the agency determines that there is no practicable alternative to such construction and that the proposed action includes measures to minimize harm.

Also, agencies shall provide opportunity for early public review of proposals for construction in wetlands including those projects not requiring an EIS.

**10-15 Executive Order 12088  
(Federal Compliance with  
Pollution Control Standards, 1978)**

This Presidential directive delegates the head of each executive agency responsible for ensuring that all necessary actions are taken for the prevention, control, and abatement of environmental pollution.

EO 12088 gives EPA authority to conduct reviews and inspections for the purpose of monitoring Federal facility compliance with pollution control standards.

Also, each executive agency shall submit a semi-annual plan to the Office of Management and Budget for the control of environmental pollution. The plan shall indicate methods of improvement in the design, construction, management, operation, and maintenance of Federal facilities, and shall include annual cost estimates.

**10-16 Executive Order 12114  
(Environmental Effects Abroad of  
Major Federal Actions, 1979)**

EO 12114 addresses the issue of how the environmental review process should be implemented for major Federal actions having significant environmental effects outside the borders of the United States.

Procedures to implement this order shall be developed by Federal agencies taking actions that will impact areas outside the United States border, its territories, and possessions.

**10-17 Executive Order 13186  
(Responsibilities of Federal  
Agencies to Protect Migratory  
Birds)**

EO 13186 was issued to assist Federal agencies in complying with the Migratory Bird Treaty Act (MBTA) and to reduce agencies' liability under the MBTA in regards to unintentional take of migratory birds. The EO lists 15 actions that agencies may take to avoid or minimize take of migratory birds. These measures should be considered and implemented, to the extent practicable, to reduce liability under the MBTA.

**10-18 Executive Order 13352,  
Facilitation of Cooperative  
Conservation**

This Executive Order encourages agencies to collaborate and work cooperatively with other Federal, State, local and tribal governments, interest groups, and individuals in promoting natural resource conservation. It encourages local participation in Federal decisionmaking. Federal agencies are to report annually to the Chairman of CEQ on actions taken to implement the order.

**10-19 Farmland Protection Policy  
Act**

Farmland Protection Policy Act, Public Law 97-98 (Council on Environmental Quality Memorandum, dated August 11, 1980, Analysis of Impacts on Prime and Unique Agricultural Lands in Implementing the National Environmental Policy Act)

The U.S. Soil Conservation Service (SCS) is responsible for administering the Farmland Protection Policy Act, Public Law 97-98. The SCS office in the project area should be contacted and asked to identify whether the proposed action will affect any lands classified as prime and unique farmlands.

**10-20 Federal Insecticide,  
Fungicide, and Rodenticide Act  
(FIFRA) (through P.L. 100-460,  
100-464 to 100-526, and 100-532)**

The Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is the basic law regulating pesticides in the

United States. The EPA is responsible for the regulatory aspects of this Act. The Act regulates the marketing of economic poisons and devices, as well as the requirements for its use.

The FIFRA requires all pesticides used be classified for restricted or general use, as well as requiring only certified applicators, or applicators under the direct supervision of a certified applicator to apply restricted use pesticides. Each State provides an individual certification program. This program may be conducted by the State's department of agriculture or, in some cases, EPA may administer the program.

EPA responsibilities include regulating the amount of residue of a pesticide which can remain in or on raw farm products. The FIFRA prohibits using a pesticide in a manner inconsistent with its labeling. EPA may assess penalties for violations of the FIFRA.

### **10-21 Federal Water Project Recreation Act of 1965 (P.L. 89-72)**

The policy of this Act states that Federal agencies in planning navigation, flood control, reclamation, hydroelectric, or multi-purpose water resource projects must consider the potential outdoor recreational opportunities and potential fish and wildlife enhancement that the project might afford. If both purposes can be served by the project, it shall be constructed, operated, and maintained accordingly.

Also, project construction agencies shall encourage non-Federal public bodies to administer project land and water areas for recreation and fish and wildlife

enhancement purposes, and operate, maintain, and replace facilities used for these purposes. There are also specific cost sharing requirements prescribed by the Act.

### **10-22 Fish and Wildlife Coordination Act of 1958 (Public Law 85-624)**

The objective of this Act is to provide that wildlife conservation receive equal consideration and be coordinated with other features of water resource development programs.

Sections 1 and 2 of the Fish and Wildlife Coordination Act (FWCA) mandate that fish and wildlife receive equal consideration with water resources development programs throughout planning, development, operation, and maintenance. Whenever Reclamation proposes to impound, divert, channelize, or otherwise alter or modify any stream, river, or other body of water for any purpose, Reclamation must first consult and coordinate its actions and projects with the FWS and the affected State fish and game agency(ies) wherein the impoundment, diversion, or other control facility is to be constructed. This consultation and coordination will address ways to conserve wildlife resources by preventing loss of and damage to such resources, as well as to further develop and improve these resources.

The FWS is authorized to survey, investigate, prepare reports, and recommend methods to determine the possible damage to wildlife resources and to determine means and measures that should be adopted to prevent the loss of, or damage to, such wildlife

resources, as well as to concurrently develop and improve such resources. The FWCA report shall be made a part of any Reclamation report submitted to Congress. Reclamation shall give full consideration to the report and recommendations and to any report of the State agency. The project plan shall include such justifiable fish and wildlife means and measures as Reclamation determines necessary to obtain maximum overall project benefits.

The usual FWS procedure is to provide Reclamation with periodic planning aid memorandums or planning aid letters throughout the planning process, and to provide a FWCA report at the conclusion of the planning process. Any FWS planning aid memorandums should be made a part of the project record, and any FWCA report received should be attached to the NEPA document (EA or EIS).

Any recommendations of the FWS received should be summarized in the NEPA document and responses made to such recommendations. This summary is usually made a part of the Consultation and Coordination section. If Reclamation decides not to implement a recommendation, the reasons the recommendation is not implemented must be given.

### **10-23 Food Security Act (Farm Bill) of 1985**

The major intent of this Act is to reverse the declining economic environment on the American farm. As part of the legislation, Congress recognized a need to more effectively manage the physical environment upon which American farmers depend. Several conservation

provisions were included in the legislation which present opportunities to conserve and restore wetlands, prairies, and other habitats.

The “sodbuster” and “swampbuster” provisions will help to conserve the natural values of wetlands, will help to reduce soil erosion, and will help to reduce commodity surpluses. The wetland conservation provisions will reduce the loss of wetlands by making producers who convert them and produce an agricultural commodity on the converted wetland ineligible for certain U.S. Department of Agriculture programs’ benefits. The soil erosion provisions will reduce erosion and the loss of topsoil from agricultural lands by making producers who farm on highly erodible lands, as determined by SCS, ineligible for most agricultural subsidies, unless they farm such lands under a “Conservation Plan” that SCS has approved.

The legislation also provides for the establishment of conservation reserve, conservation set aside, and conservation easement programs on existing farmlands.

### **10-24 Intergovernmental Cooperation Act of 1968 (P.L. 90-577)**

It is the purpose of this Act to encourage better cooperation and coordination of activities among levels of government in order to improve the operation of our Federal system.

The Act states that the President shall prescribe regulations governing the formulation, evaluation, and review of government programs and projects

having significant impact on community development. These regulations shall promote sound and orderly development of urban and rural areas by considering such things as an appropriate choice of use for land development (i.e., housing, commercial, industrial), conservation of natural resources, balanced transportation systems, and adequate outdoor recreation and open space areas.

This Act also gives authority to Federal departments and agencies to provide specialized or technical services to States or local governments when a written request and payment for services has been made.

Title II of the Act aims to improve administration of grants-in-aid to the States.

### **10-25 Migratory Bird Treaty Act (16 U.S.C. 703-711)**

Under the Migratory Bird Treaty Act (MBTA), it is unlawful “by any means or manner to pursue, hunt, take, capture, or kill” any migratory bird except as permitted by regulations issued by the Fish and Wildlife Service (Service). “Take” is not defined in the MBTA, but the Service’s regulations define it as “pursue, hunt, shoot, wound, kill, trap, capture, or collect any migratory bird or any part, including nest or egg.” The Service has developed a system of permits for activities involving intentional take of migratory birds but has no regulations for unintentional take. Federal agencies are liable under the MBTA for unintentional take, even when carrying out lawful activities. In carrying out actions, Federal agencies should implement measures to avoid or minimize take of migratory birds.

### **10-26 National Historic Preservation Act of 1966 (P.L. 89-665), as amended (Public Law 95-515)**

*Cultural (Historical, Archeological, Architectural, and Paleontological) Resources*

National Historic Preservation Act of 1966, as amended (P.L. 89-665; 80 Stat. 915; 16 U.S.C. 470) establishes, as Federal policy, the protection of historic sites and values in cooperation with other nations, States, and local governments. The Act creates the National Register of Historic Places and extends protection to historic places of State and local, as well as national, significance. It establishes the Advisory Council on Historic Preservation, State Historic Preservation Officers, Tribal Preservation Officers, and a preservation grants-in-aid program.

Section 106 directs Federal agencies to take into account effects of Federal actions (“undertakings”) on properties in or eligible for the National Register. Section 106 is implemented by regulations of the Advisory Council on Historic Preservation, 36 CFR Part 800. <http://www.achp.gov/regs/html>. Among other things, the regulations outline the process for coordinating compliance with section 106 and the requirements of NEPA. The DOI criteria and procedures for evaluating a property’s eligibility for the National Register are at 36 CFR Part 60.

Section 110(a) sets inventory, nomination, protection, and preservation responsibilities for federally owned cultural properties. Section 110(c) requires each Federal agency to

designate a Preservation Officer to coordinate activities under the Act.

The NEPA process requires that an evaluation be conducted to determine whether a proposed action will affect districts, sites, structures, or objects listed in, or eligible for listing in, the National Register of Historic Places (National Register). It is then determined whether the effect is adverse.

Reclamation uses three levels of surveys to locate and identify cultural resources. Consultation with the appropriate SHPO is necessary at appropriate times during and after such surveys.

**Class I Survey.** A class I survey is primarily a literature/archival search. It consists of consulting the National Register and supplemental National Register listings to determine whether any National Register eligible-listed properties exist in the area of a Reclamation action. It also includes contacting the SHPO, State Archeologist, State Historian, State Historical Society, and/or other appropriate individuals, agencies, or institutions to determine what cultural resources may be present in an area and what kind of additional information may be needed for an adequate inventory of cultural resources. Regional records shall also be examined for potentially eligible properties for listing on the National Register on lands under Reclamation's administration. It may be necessary to visit potentially significant areas or sites identified by the literature/archival research. If a class I survey indicates the area has not been adequately inventoried, a field examination is necessary.

**Class II Survey.** The goal of the class II survey is to evaluate the resources based on a sample that can serve as an indicator of resources present in the entire area to be affected. This type of survey would normally be an on-the-ground examination of a statistically valid sample of the total survey area and may include remote sensing and/or geomorphological investigations or other appropriate techniques. Class II surveys are designed to aid in determining the necessity for a class III survey and may be combined with a class I survey or bypassed in favor of a class III survey.

**Class III Survey.** A class III survey consists of an intensive on-the-ground examination of all the areas to be affected by Reclamation action or on lands under Reclamation's administration. It is designed to locate and make a preliminary professional evaluation of all identified cultural resources. All cultural resources identified as historically significant will be nominated to the National Register or a determination of eligibility will be sought. A class III survey may require test excavations or other specialized studies for the purpose of evaluating the significance of cultural resources.

The EA or EIS shall document the results of all cultural resources surveys conducted. In addition to identifying the effects of the proposed action to identified National Register listed-eligible properties, the EA or EIS will describe mitigation plans to the extent they have been resolved with the SHPO and Advisory Council on Historic Places.

Reclamation Instruction 376.11,  
"Identification and Administration of

Cultural Resources,” contains additional information on the process outlined here. Complete or full compliance with the NEPA process given here does not constitute compliance with all cultural resources legislation and regulations. See RI 376.11 for details.

**10-27 Native American Graves Protection and Repatriation Act of 1990, as amended (P.L. 101-601; 104 Stat. 3048; 25 U.S.C. 3001 et seq.)**

This Act establishes rights of Indian tribes and Native Hawaiian organizations to claim ownership of certain “cultural items,” including human remains, funerary objects, sacred objects, and objects of cultural patrimony, held or controlled by Federal agencies and museums that receive Federal funds. It requires agencies and museums to identify holdings of such remains and objects and to work with appropriate Native Americans toward their repatriation. Permits for the excavation and/or removal of “cultural items” protected by the Act require Native American consultation, as do discoveries of “cultural items” made during Federal land use activities. The Secretary of the Interior’s implementing regulations are at 43 CFR Part 10.

**10-28 Reservoir Salvage Act of 1960 (P.L. 86-523)**

Federally constructed reservoirs represent another major source of destruction of archeological resources that cannot be resolved without a specific source of funding. The act requires Federal agencies building or permitting the building of reservoirs to

notify the Secretary of the Interior when such activities might destroy important archeological, historic, or scientific data. The Secretary is authorized to conduct appropriate investigations to protect those data. The act also authorizes agencies to spend up to 1 percent of their construction funds on the protection of historic and archeological resources. This is the first act to recognize that archeological sites are important for their data content, and to provide a source of funding for collecting archeological data.

**10-29 Rivers and Harbors Act of 1899 (33 U.S.C. 401-413; Sec 407, referred to as the Refuse Act)**

*Permits for structures or work in or affecting navigable waters of the United States — 33 CFR 322*

Section 10 of the Rivers and Harbors Act of 1899 prohibits the unauthorized obstruction or alteration of any navigable waters of the United States. The construction of any structure in or over any waters of the United States, excavation or deposit of material in such waters, and various types of work performed in such water, including fill and stream channelization, are examples of activities requiring a U.S. Army Corps of Engineers permit (33 CFR 322).

**10-30 Resource Conservation and Recovery Act of 1976 (RCRA) (P.L. 94-580)**

Identification and Listing of Hazardous Waste – 40 CFR 261  
Standards Applicable to Generators of Hazardous Waste – 40 CFR 262

Standards for Treatment, Storage, and Disposal Facilities (T/S/D's) – 40 CFR 264

Interim Status Standards for T/S/D's – 40 CFR 265

Interim Status Standards for Owners and Operators of a New Hazardous Waste Land Disposal Facility – 40 CFR 267

Land Disposal Restrictions – 40 CFR 268

Requirements for Authorization of a State Hazardous Waste Program – 40 CFR 271

Standards Applicable to Transporters of Hazardous Waste – 40 CFR 272

The objectives of RCRA are to promote the protection of health and the environment and to conserve valuable material and energy resources. The first serious Federal attempt to address the problems of solid waste and hazardous waste management began with the passage of RCRA.

Subtitle C of RCRA establishes a hazardous waste program. The program is designed to regulate all areas of hazardous waste management from generation to disposal. States can assume authority for implementation of a hazardous waste program (40 CFR 271), and all but a few have not acquired this authority. State programs must be at least equivalent to the Federal program, and many are more stringent.

EPA is responsible for identifying what wastes are hazardous by either listing those wastes that are hazardous or by identifying hazardous characteristics for waste (40 CFR 261). It is the responsibility of the persons generating solid waste to determine if the waste they are generating is hazardous.

Under authority of subtitle C, EPA establishes standards for generators, transporters, and treatment, storage, and disposal facilities (T/S/D's).

Generators are required to prepare manifests for tracking the hazardous waste when it is being transported to a T/S/D facility. Generators must use T/S/D facilities that have acquired an EPA identification number and, therefore, are also regulated under RCRA (40 CFR 272).

To own and operate a T/S/D facility, permit is required (40 CFR 264). Interim status allows facilities existing at the time the regulations went into effect (November 19, 1980) to remain in operation until a permanent RCRA permit has been issued. Interim status standards (40 CFR 265) are comparable to permanent standards. To date, very few final operating permits have been issued, either by EPA or authorized States.

In the 1984 amendments, a ban on the disposal in landfills of noncontainerized hazardous waste and waste containing free liquids was imposed and became effective on May 8, 1985. Also, in 1984, the Congress directed EPA to determine whether to ban or restrict, in whole or in part, the land disposal of all RCRA hazardous wastes that are not pretreated using the best available technologies. If EPA misses the deadlines established in RCRA section 3004 for any phase, the ban for all waste in that phase will automatically go into effect.

Interim status standards for owners and operators of a new hazardous waste land disposal facility and land disposal

restrictions are standards in 40 CFR 267 and 268, respectively.

### **10-31 Safe Drinking Water Act of 1974 (P.L. 93-523) as amended by the Safe Drinking Water Act Amendments of 1986**

National Primary Drinking Water Regulations – 40 CFR 141

National Interim Primary Drinking Water Regulations Implementation – 40 CFR 142

National Secondary Drinking Water Regulations – 40 CFR 143

The Safe Drinking Water Act provides for the safety of drinking water supplies throughout the United States by establishing national standards of which the States are responsible for enforcing.

The Act provides for the establishment of primary regulations for the protection of the public health and secondary regulations relating to the taste, odor, and appearance of drinking water. Primary drinking water regulations, by definition, include either a maximum contaminant level (MCL) or, when a MCL is not economically or technologically feasible, a prescribed treatment technique which would prevent adverse health effects to humans. An MCL is the permissible level of a contaminant in water that is delivered to any user of a public water system. Primary and secondary drinking water regulations are stated in 40 CFR 141 and 143, respectively.

The Act's 1986 amendments require EPA to publish, by January 1, 1988, and at 3-year intervals thereafter, a list of contaminants which are known or anticipated to occur in public water

systems. Two years after publication of this list, EPA is to publish proposed maximum contaminant goals and promulgate national primary drinking water regulations for at least 25 of these contaminants.

The Act also provides measures to protect underground drinking water sources through State underground injection control programs. State programs protect drinking water from subsurface placement of fluids from well operations.

In 1962, the U.S. Public Health Service set standards for water used in interstate commerce. (EPA was established in 1970.)

### **10-32 Superfund Amendments and Reauthorization Acts of 1986 (SARA) (P.L. 99-499)**

This Act extensively amends CERCLA or Superfund. SARA's major goals include a stepped-up pace of cleanup, increased public participation, and more stringent and better defined cleanup standards, emphasizing remedial actions that permanently and significantly reduce hazardous situations. Remedial actions are generally more extensive than removal actions, usually requiring a National Priorities Listing, a detailed site study, and an analysis of the cost effectiveness of various cleanup options, known as Remedial Investigation and Feasibility Study. Removal actions are for more immediate needs not requiring any of the above-mentioned restrictions.

The Act requires EPA to revise the Hazard Ranking System to more accurately reflect the degree of risk to human health and the environment.

SARA adds (1) damage to natural resources and (2) contamination of ambient air as criteria to be considered in evaluating potential hazards.

SARA also requires that EPA or the State provide public notice and opportunity to comment on any proposed plan for remedial action prior to government approval of the plan. In addition to requiring a cost-effective cleanup remedy for a Superfund site, as required by CERCLA, SARA requires that preference be given to remedies that permanently reduce the toxicity, volume, or mobility of the hazardous substances.

To reduce health and environmental risks to communities near chemical manufacturing facilities, the Act establishes a comprehensive reporting and emergency planning program. Each local emergency committee is to complete, by October 17, 1988, an emergency plan. The plan shall include such things as identifying facilities covered by the emergency response requirements (i.e., those facilities using any of the 402 extremely hazardous substances listed by EPA), emergency response methods for facility operators and local medical personnel, and evacuation plans.

### **10-33 Toxic Substances Control Act of 1986 (TSCA) (P.L. 99-519)**

Polychlorinated biphenyls (PCB's) – manufacturing, processing, distribution in commerce, and use prohibitions – 40 CFR 761

The stated policy of TSCA is to place the responsibility of developing data on

the effect of chemical substances and mixtures on those who do the manufacturing and processing. Also, to provide authority for the regulation of chemical substances presenting unreasonable risk of injury to health and/or the environment.

If EPA finds that a chemical substance, through its processing, use, or disposal, will pose an unreasonable risk to health and/or the environment, it may apply certain requirements prohibiting a particular use, or use in a particular concentration, limit the amount that can be manufactured, and/or require the substances to be marked with warnings and instructions for use, distribution, and disposal.

To ensure compliance with the requirements of this Act, EPA may inspect any facility where chemicals are manufactured, processed, and stored, or any conveyance being used to transport chemical substances.

This Act required EPA to prescribe methods for the disposal of PCB's and unless by EPA rule, no person may manufacture, process, distribute in commerce, or use PCB's (40 CFR 761).

The Act also provided for the establishment of Federal regulations which require inspection for asbestos-containing material and implementation of appropriate response actions (methods that protect human health and the environment from asbestos-containing material).

**10-34 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646) and Title IV – Uniform Relocation Act amendments of 1987 (42 U.S.C. 4601)**

The purpose of this Act is to provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally listed programs.

The Act states that whenever the acquisition of real property for a program or project by a Federal agency will result in the displacement of any person, the agency shall make a payment to the displaced person for:

1. Reasonable moving expenses accrued while searching for a replacement business, farm operation, or other personal property.
2. Direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation.
3. Reasonable expenses accrued while searching for a replacement business or farm.

The Act also provides for relocation planning, assistance coordination, and advisory services. These services shall include such measures, facilities, or

services as may be necessary or appropriate to:

1. Determine and make timely recommendations on the needs and preferences, if any, of displaced persons for relocation assistance.
2. Provide current and continuing information on the availability, sales prices, and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations.
3. Ensure that a person shall not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling.
4. Assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location.
5. Supply information concerning other Federal and State programs which may be of assistance to displaced persons, technical assistance to such person in applying for assistance under such programs.
6. Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

### **10-35 Wild and Scenic Rivers Act of 1986 (P.L. 90-542)**

Construction of Water Resources Projects Affecting Wild and Scenic Rivers administered by the Secretary of Agriculture – 36 CFR 297

*The Wild and Scenic Rivers Act ensures that:*

“. . . Certain selected rivers . . . shall be preserved in a free flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations.”

It is policy of this Act to select certain rivers of the Nation possessing remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values; preserve them in a free-flowing condition; and protect their local environments. This Act establishes three classes of river areas (1) wild river areas, characterized as being free of impoundments, generally inaccessible except by trail, watersheds or shoreline essentially primitive, and unpolluted waters; (2) scenic river areas, characterized as being free of impoundments, accessible in places by road, and have shorelines or watersheds still largely undeveloped; (3) recreational river areas are characterized as being readily accessible by road or railroad, may have some development along their shoreline, and may have undergone some impoundment or diversion in the past.

36 CFR 297 applies to the construction of water resources projects affecting

wild and scenic rivers or study rivers administered by the Secretary of Agriculture.

Selected rivers and streams have been placed into the National Rivers Inventory by acts of Congress. Other rivers and streams have been proposed to be included into the system. Rivers and streams included or proposed for inclusion into the system must be considered during project planning and project impacts identified in the EA or EIS. If there are no impacts to wild and scenic rivers, this fact should be noted in the Wild and Scenic Rivers Act summary.

There is no legal requirement to consider State-listed wild and scenic rivers and streams or unique areas during project planning or in the EA or EIS. However, it is recommended that any impacts to State-listed, or proposed-for-listing, rivers and streams and unique areas be considered and addressed at levels comparable to consideration given to rivers and streams protected by the Wild and Scenic Rivers Act.

### **10-36 Others**

Anadromous Fish Conservation Act  
Commercial Fisheries Research and Development Act of 1974  
Department of Transportation Act  
Federal Aid in Fish Restoration Act  
Federal Environmental Pesticide Control Act of 1972  
Federal Power Act  
Federal Water Pollution Control Act  
Federal Water Pollution Control Act Amendments of 1972  
Federal Power Act  
Federal Water Pollution Control Act

Federal Water Pollution Control Act  
Amendments of 1972  
Fish and Wildlife Act of 1956  
Land and Water Conservation Fund Act  
Marine Protection, Research and  
Sanctuaries Act of 1972  
Marine Mammal Protection Act  
Migratory Bird Conservation Act  
National Trails System Act  
National Wildlife Refuge System  
Administration Act of 1966  
Noise Control Act of 1972 (Public Law  
92-574)

Noise Pollution and Abatement Act of  
1970 (Public Law 91-604)  
Pesticides Research Act  
Quiet Communities Act of 1978 (Public  
Law 95-609)  
Water Bank Act  
Water Resources Research Act of 1964  
Watershed Protection and Flood  
Prevention Act  
Wild Horses and Burros Protection Act  
of 1964  
Wilderness Act of 1964