

# RECLAMATION

*Managing Water in the West*

## **Reclamation Manual Changes for Water Contracting, Transfers and Conversions, and Basic Pricing**



U.S. Department of the Interior  
Bureau of Reclamation

# The New and Revised Releases

Issued on July 24, 2013:

- Policy PEC P05, *Water-Related Contracts—General Principles and Requirements*
- Policy PEC P09, *Transfers and Conversions of Project Water*
- D&S PEC 05-01, *Water Rates and Pricing*
- D&S PEC 09-01, *Conversions of Project Water from Irrigation Use to Municipal and Industrial Use*

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# Review and Comment Process/Outreach

- 30-day review and comment period Sept, 2011
- Extended to 60 days
- Reposted drafts with revisions reflecting comments and discussions
- 90-day second review and comment period
- Presentations at water user forums
- Meetings with stakeholders

# Summary – Policy Effects and Benefits

- **Clearer policy/D&S on transfers & conversions**
- **Irrigation**
  - **Protection of resources meant for family farmers**
    - **Interest-free repayment**
    - **Aid to irrigation**
- **M&I**
  - **Receives transferred water**
  - **RRA doesn't apply**
  - **Payment at M&I rates where there's payment capability can accelerate payout and provide funds for future infrastructure costs, further securing the viability of family farms.**

# Irrigation Use Definitions

- **2001 Policy Definition: irrigation = irrigation of any vegetation with raw water (did not limit by purpose)**
- **Reclamation Reform Act of 1982: irrigation = irrigation for an agricultural purpose**
- **Policies Predating 2001 Definition: irrigation = irrigation for commercially viable agriculture**

**New Policy: irrigation = irrigation to produce commercial agricultural products (does not require commercial viability, meaning no minimum tract size or income)**

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# Changes Based on Stakeholder Comments & Suggestions

## Final Definition of “Irrigation Use”:

The use of contract water to irrigate land primarily for the production of commercial agricultural crops or livestock, and domestic and other uses that are incidental thereto.

- Emphasis on small tracts removed

# Changes to Application of New Definitions

- The definitions apply to contracts executed, renewed, amended, or supplemented on or after its issuing date
  - through the formal contracting process between the contractor and Reclamation, and
  - excluding contract amendments/supplements providing no additional benefit

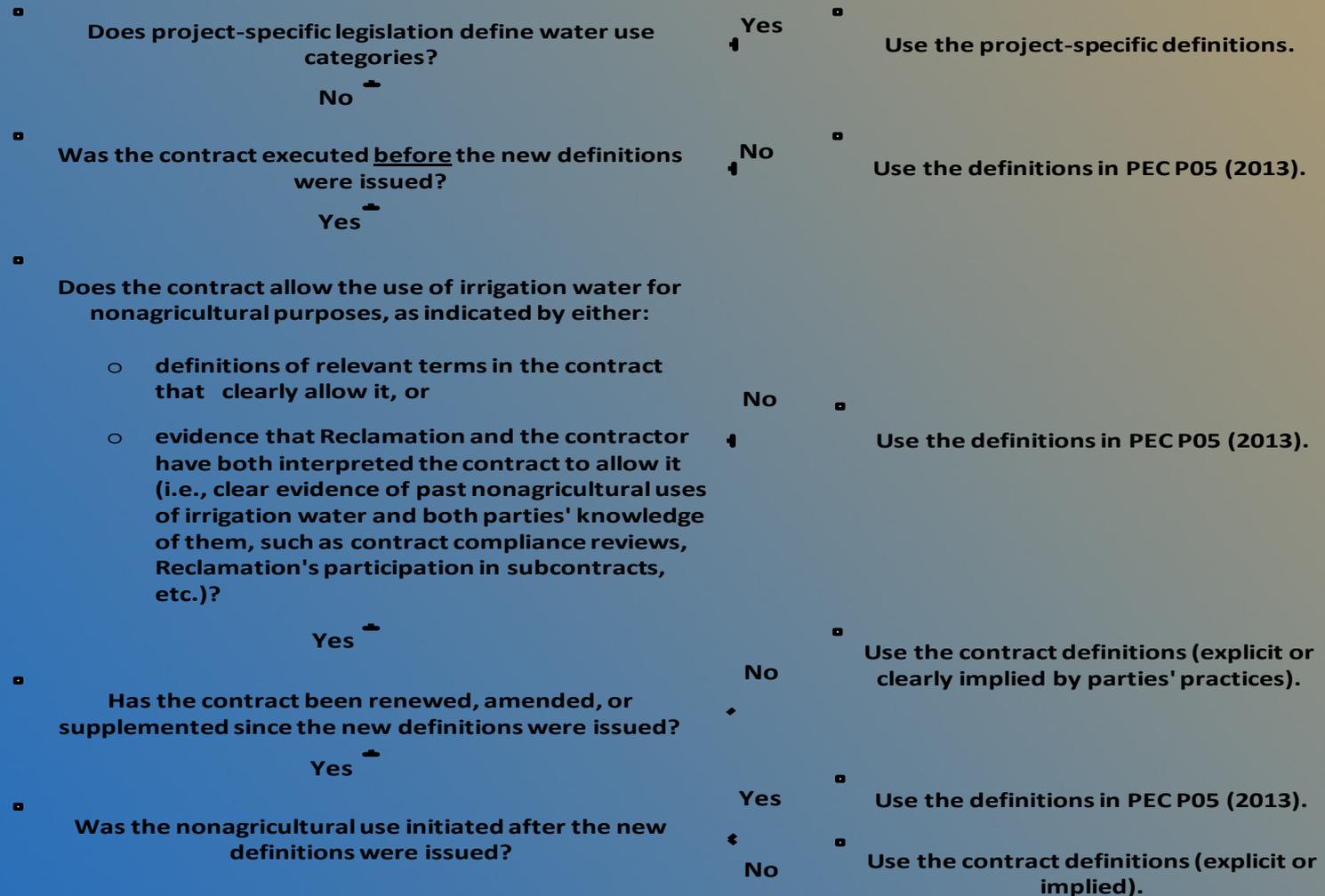
# Changes to Application of New Definitions, cont'd

- The definitions apply only to water uses established after the date on which a contract becomes subject to the Policy as described above.
- Prior established uses can be shown by evidence that both parties were aware of them and that the non-agricultural irrigation uses were not treated as contract compliance issues.

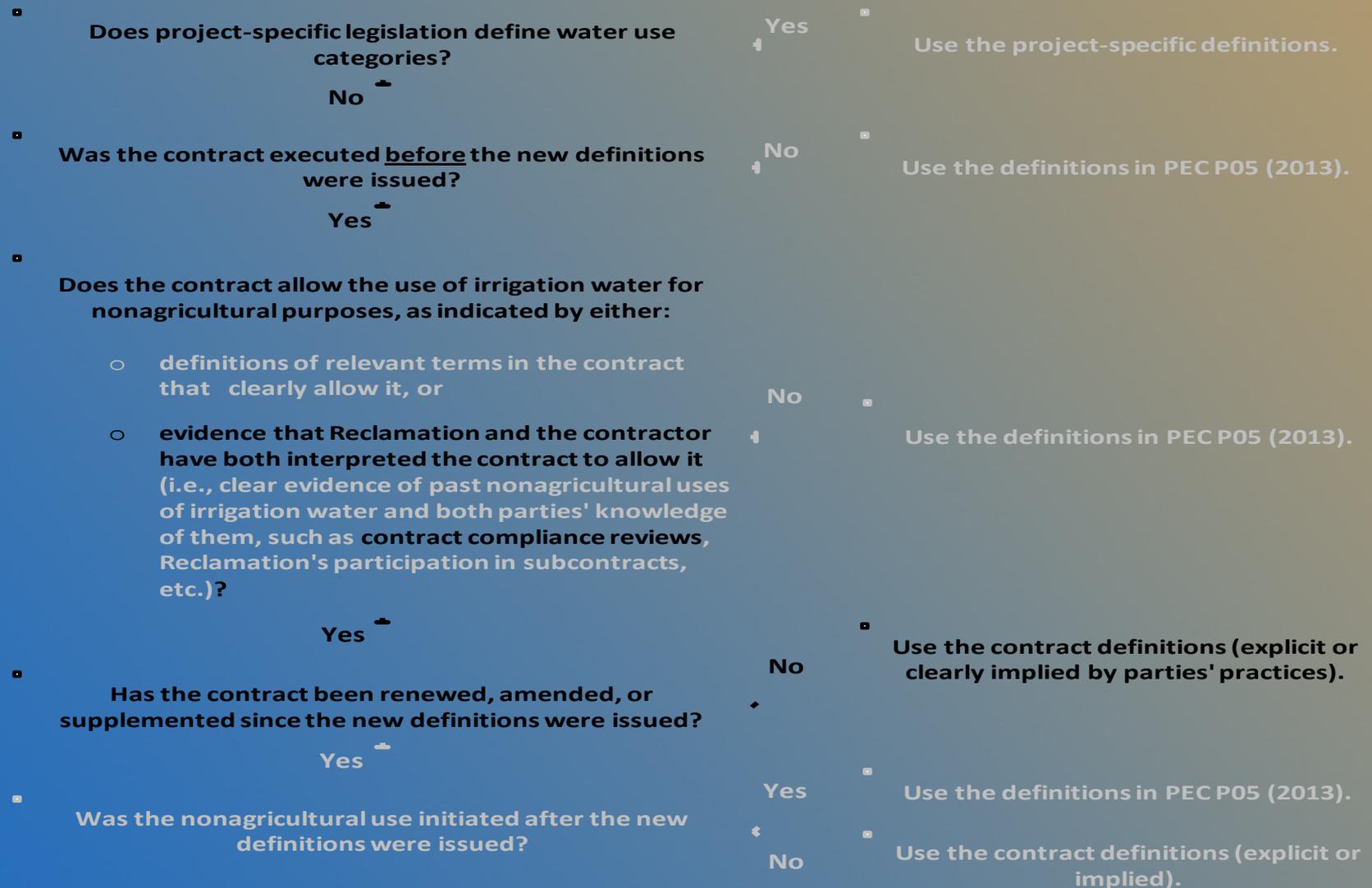
# Application of Definitions Chart

## Applicability of PEC P05 Irrigation and M&I Definitions

This flow chart addresses the circumstances under which the definitions of Irrigation and M&I uses in PEC P05 (2013) will apply to uses of contract water.



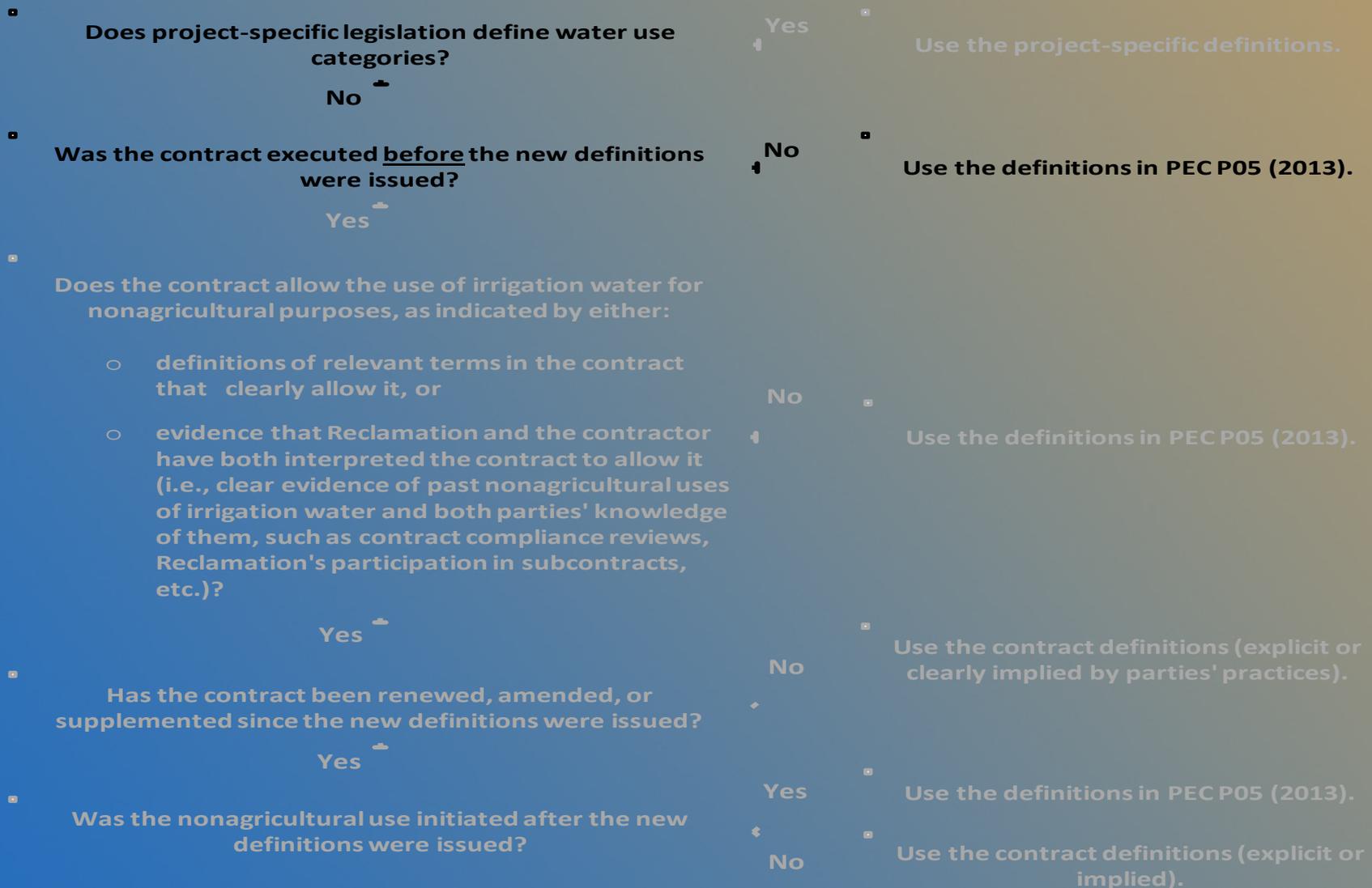
# Following Chart – Example of When Definitions *Don't* Apply: Mutual Interpretation Evidenced by Past CCR



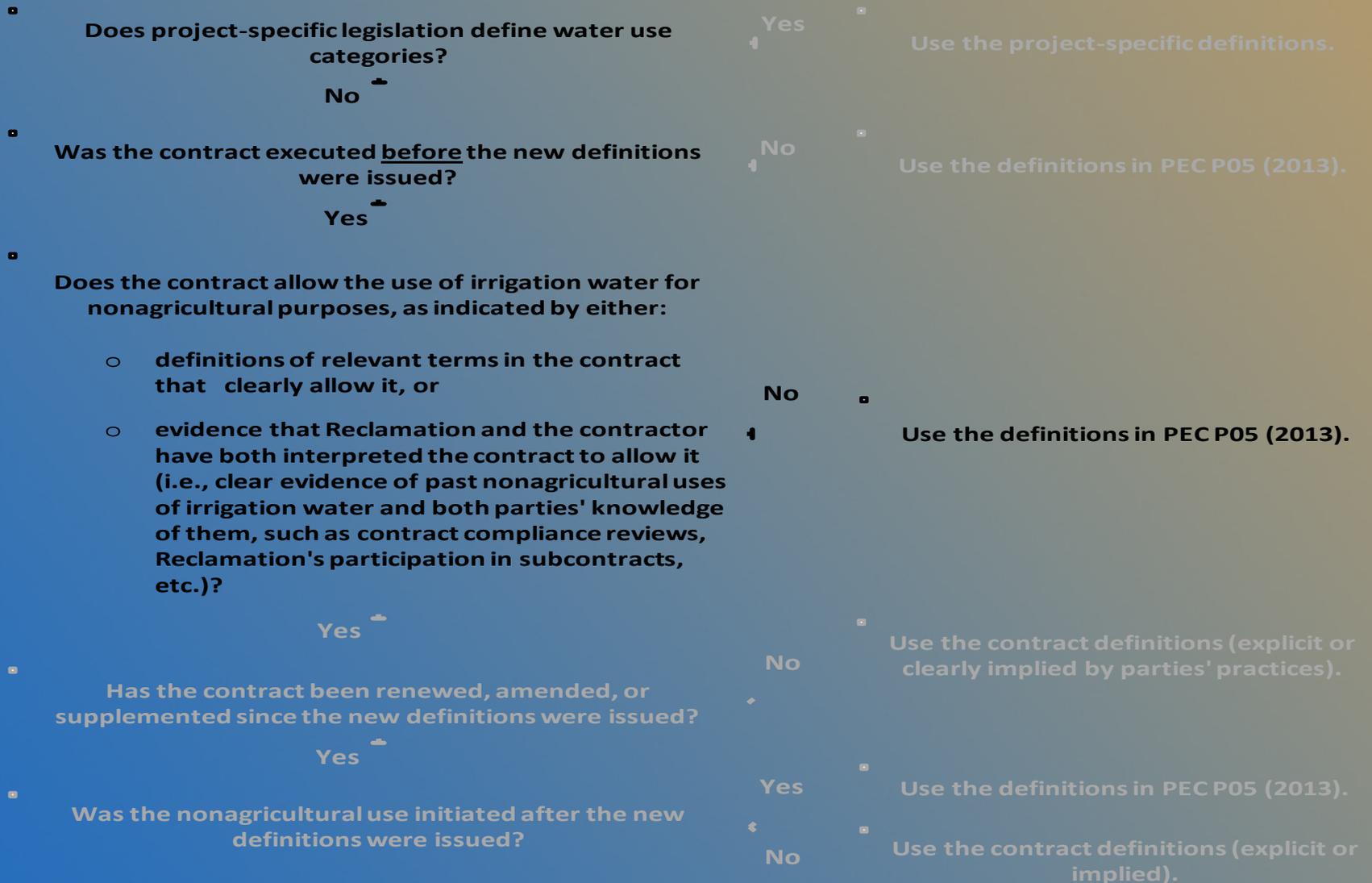
# Following Chart – Example of When Definitions *Don't* Apply: Mutual Interpretation Evidenced by Past CCR

<ul style="list-style-type: none"><li>Does project-specific legislation define water use categories? No</li></ul>	Yes	Use the project-specific definitions.
<ul style="list-style-type: none"><li>Was the contract executed <u>before</u> the new definitions were issued? Yes</li></ul>	No	Use the definitions in PEC P05 (2013).
<ul style="list-style-type: none"><li>Does the contract allow the use of irrigation water for nonagricultural purposes, as indicated by either:<ul style="list-style-type: none"><li>definitions of relevant terms in the contract that clearly allow it, or</li><li>evidence that Reclamation and the contractor have both interpreted the contract to allow it (i.e., clear evidence of past nonagricultural uses of irrigation water and both parties' knowledge of them, such as contract compliance reviews, Reclamation's participation in subcontracts, etc.)? Yes</li></ul></li></ul>	No	Use the definitions in PEC P05 (2013).
<ul style="list-style-type: none"><li>Has the contract been renewed, amended, or supplemented since the new definitions were issued? Yes</li></ul>	No	Use the contract definitions (explicit or clearly implied by parties' practices).
<ul style="list-style-type: none"><li>Was the nonagricultural use initiated after the new definitions were issued? No</li></ul>	Yes	Use the definitions in PEC P05 (2013).
	No	Use the contract definitions (explicit or implied).

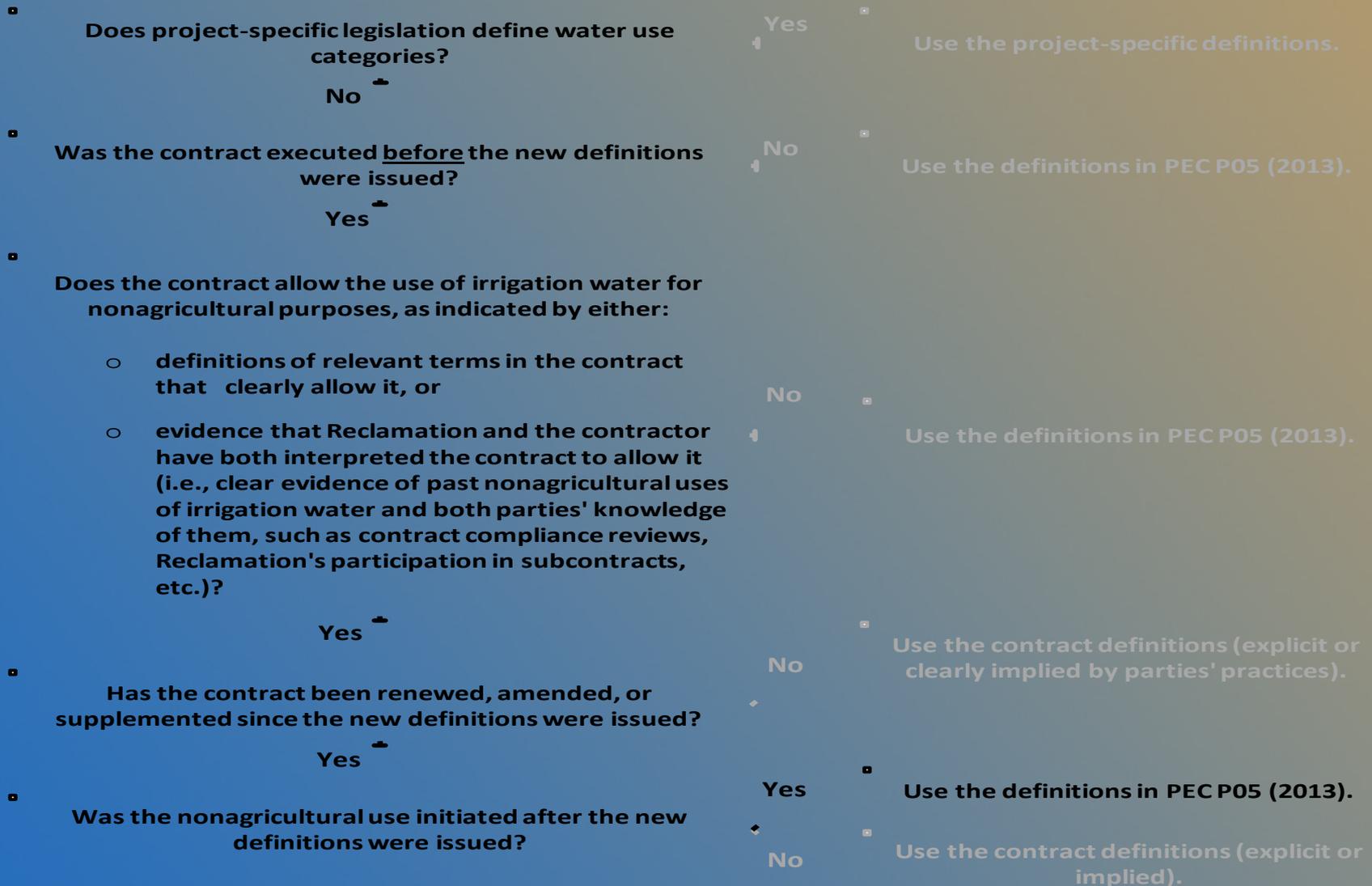
# Following Chart – When Definitions *Do* Apply: Contract Executed After New Definitions Issued



# Following Chart – When Definitions *Do* Apply: Terms not Clearly Defined or Mutually Interpreted for Non-Ag.



# Following Chart – When Definitions *Do* Apply: Use is Initiated After Contract is Subject



# Following Chart – When Definitions *Do* Apply: Contractor's Choice

Contractor wants to use policies to help accelerate repayment or raise revenues for future infrastructure costs

<ul style="list-style-type: none"> <li>• Does project-specific legislation define water use categories?           <ul style="list-style-type: none"> <li>No</li> </ul> </li> </ul>	<p>Yes</p>	<ul style="list-style-type: none"> <li>• Use the project-specific definitions.</li> </ul>
<ul style="list-style-type: none"> <li>• Was the contract executed <u>before</u> the new definitions were issued?           <ul style="list-style-type: none"> <li>Yes</li> </ul> </li> </ul>	<p>No</p>	<ul style="list-style-type: none"> <li>• Use the definitions in PEC P05 (2013).</li> </ul>
<ul style="list-style-type: none"> <li>• Does the contract allow the use of irrigation water for nonagricultural purposes, as indicated by either:           <ul style="list-style-type: none"> <li>○ definitions of relevant terms in the contract that clearly allow it, or</li> <li>○ evidence that Reclamation and the contractor have both interpreted the contract to allow it (i.e., clear evidence of past nonagricultural uses of irrigation water and both parties' knowledge of them, such as contract compliance reviews, Reclamation's participation in subcontracts, etc.)?</li> </ul> </li> </ul>	<p>No</p>	<ul style="list-style-type: none"> <li>• Use the definitions in PEC P05 (2013).</li> </ul>
<ul style="list-style-type: none"> <li>• Has the contract been renewed, amended, or supplemented since the new definitions were issued?           <ul style="list-style-type: none"> <li>Yes</li> </ul> </li> </ul>	<p>No</p>	<ul style="list-style-type: none"> <li>• Use the contract definitions (explicit or clearly implied by parties' practices).</li> </ul>
<ul style="list-style-type: none"> <li>• Was the nonagricultural use initiated after the new definitions were issued?           <ul style="list-style-type: none"> <li>No</li> </ul> </li> </ul>	<p>Yes</p>	<ul style="list-style-type: none"> <li>• Use the definitions in PEC P05 (2013).</li> </ul>

# Clarifications to Application of New Definitions

## These definitions

- Are primarily for distinguishing between irrigation and M&I contracting authorities
- Are not intended to interfere with the application of other legal authorities available to Reclamation for providing water for other uses, such as fish and wildlife and recreation
- Do not interpret or interfere with state laws regarding types of use

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# Clarifications to Application of New Definitions, cont'd

Also regarding state and federal laws:

- State and Federal definitions may define the same water uses differently without creating a conflict because the definitions apply to different things. See FN 17, P.10.
  - State definitions: water rights
  - Federal definitions: appropriate contract types/contract terms

# M&I Pricing

## Key Points:

- **Prospective application**
- **Rate set by negotiation – no pre-determined rate**
- **Revenues used for project purposes**
- **Construction charges not required if project/district is paid out**
  - **Water users' choice whether to charge for XOM or future construction needs**

# Changes Based on Stakeholder Comments & Suggestions

## Market Data and Other M&I Pricing Factors:

- Market rates are not required;
- Limit use of market data to finding negotiating ceiling.
- Clarify uses of other information D&S directs staff to use (e.g., current cost method for floor, etc.)

# Changes Based on Stakeholder Comments & Suggestions, cont'd

## M&I Pricing After Payout

- **No construction component required after payout, but may be negotiated**
  - revenues accumulate in Rec fund for SOD
- **Contractor's option of contractor-managed rehabilitation and replacement fund.**
  - Save funds for inevitable aging infrastructure costs.

# Changes Based on Stakeholder Comments & Suggestions, cont'd

## Use of Revenues:

- **Clarify that all revenues go to pay project costs:**
  - above minimum for water service, additional revenues accelerate repayment of project costs
  - Construction charges after payout accumulate in the rec fund as statutory credits that can only be used to defray future project construction costs (i.e., SOD)
  - Replacement fund (Contractor-managed) defrays costs of rehabilitation and extraordinary maintenance
  - Revenues are not lost in the Treasury or used for purposes beyond the generating project

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# Continuing Outreach

- **Case-by-case**
  - **Project-specific and contract-specific legislation**
  - **Case-specific circumstances**
- **Area Offices are primary source for ongoing questions about how these changes apply**
- **Regional offices and Water and Environmental Resources Division will continue to engage in outreach, both in general forums like this, and in specific discussions with area office staff.**

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**Questions?**

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