DRAFT RECLAMATION MANUAL RELEASE
Comments on this draft release must be submitted to jgiliberti@usbr.gov by January 24, 2020.

Background and Purpose of the Following Draft Directive and Standard (D&S)

The goal of preparing this revised D&S, Implementation of Historic Preservation Responsibility for Operation, Maintenance and Replacement of Project Works (LND 02-03) and providing stakeholders with the opportunity to comment on it in draft form is to enhance common understanding of Bureau of Reclamation procedures for addressing its’ legal responsibilities to ensure that operation, maintenance and replacement activities are conducted such that historic properties receive the appropriate care, maintenance, and preservation commensurate with their status as a historic property, as required by the National Historic Preservation Act.

Reclamation is revising this D&S, first released in April of 2011, to ensure that requirements, roles and responsibilities are current with applicable law and to address internal and stakeholder request for clarification of requirements.

The drafting team included all Reclamation regional archaeologists, Reclamation’s Federal Preservation Officer, and a special assistant to the Reclamation Columbia-Pacific Northwest Regional Director. In addition, this D&S was the subject of a stakeholder workshop held in April of 2019, which included water operators, senior leadership, and a representative of the Advisory Council on Historic Preservation. Finally, the draft D&S has undergone two rounds of Reclamation Leadership Team review.

Substantive changes to the D&S clarify Reclamation employee responsibilities for implementing historic preservation requirements on project works. Editorial changes required by D&S, Reclamation Manual Procedures (RCD 03-01) are also incorporated. The title of the D&S was also revised for clarity and consistency with described revisions.

The Reclamation Manual is used to clarify program responsibility and authority and to document internal Reclamation-wide methods of doing business. All requirements in the Reclamation Manual are mandatory.

See the following pages for the draft D&S.
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 (Reclamation) 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); and Reclamation Supplements to the FPMR 114S60.

Approving Official: Director, Policy and Administration

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 required by the NHPA and 36 CFR part 800, and articulated in LND 02-01. For transferred project works, Reclamation ensures the project non-Federal 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.” 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 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 CRM professional that oversees and manages a historic property for Reclamation shall complete the section 106 consultation and compliance process, as per the regulatory procedures in 36 CFR part 800, 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.

   B. 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.

   C. 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 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, so long as the notification is commensurate with safeguarding the historic property from risk pursuant to §307103. As part of this notice, Reclamation will describe any CRM and compliance requirements applicable to the property.

   D. Reclamation employees responsible for approving, permitting or providing funding to

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1 National Historic Preservation Act §306101(a) formerly section 110(a)(1)
2 Paragraph 4.K.(2)(d) of the RM Delegations of Authority delegates CRM authority to Regional Directors and allows them to re-delegate their authority to area managers.
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 section 106 compliance process.

E. Where Reclamation determines an activity is an undertaking, the Reclamation CRM
professional will complete the section 106 compliance, as required by LND 02-01.
Operators may provide information to assist Reclamation CRM staff in completing this
process.

F. After Reclamation initiates the section 106 compliance process, Reclamation or the
Operator will not undertake, approve or permit OM&R undertakings until the section 106
compliance has been completed by CRM professional.

G. 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.

H. 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).

I. Reclamation’s FPO shall work to streamline section 106 activities on transferred works in
order to assist Operators. Streamlining efforts may include pursuit of a Programmatic
Agreement for water operations or other alternative procedures such as Program
Comments or Exemptions for section 106 activities.

J. Reclamation will require the Operator to notify Reclamation CRM professional of the
discovery of historic properties or potentially historic properties during OM&R
undertakings as required by Paragraph 5.B. of LND 02-01.

K. 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 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 section 106 compliance process. Reclamation shall allow the transferred facilities
Operating Entity 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 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.

5. **Emergency Situations.** Emergency situations are addressed in LND 02-01.

6. **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, *Cultural Resources Management* (LND P01).
   
   E. **Operation, Maintenance, and Replacement.** 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 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.

7. **Review Period.** This release will undergo review every four years.