

## **DRAFT RECLAMATION MANUAL RELEASE**

**Comments on this draft release must be submitted to Owen  
Walker at [owalker@usbr.gov](mailto:owalker@usbr.gov) by February 8, 2026.**

**Rescind PEC 05-08; revise PEC P05 and PEC 06-01 to strengthen contract provisions and data reporting, tracking, and internal sharing to eliminate need for current contract compliance review requirements.**

Reclamation proposes to eliminate Reclamation Manual (RM) Directive And Standard (D&S) *Contract Compliance Reviews* (PEC 05-08) and institute a less resource-intensive approach to obtaining and the key data and monitoring and ensuring compliance with the key provisions of water contracts through revisions to RM Policy *Water-Related Contracts and Charges – General Principles and Requirements* (PEC P05) and RM D&S *Preparing Bases of Negotiation for New and Amendatory Water Service, Repayment, and Other Water-Related Contracts* (PEC 06-01). It is initiating these changes because:

- The CCR process is duplicative of other oversight mechanisms;
- It has not yielded findings commensurate with its cost;
- It is not legally required;
- Staffing reductions have made continued implementation increasingly burdensome;
- More efficient and targeted reporting and tracking mechanisms are available;

Reclamation developed the Contract Compliance Reviews (CCRs) as an internal control process to ensure that water is delivered and used in conformity with applicable law and contract terms. Initiated in 2000 (then called “district reviews”) in response to audit findings from the Department of the Interior’s Office of Inspector General, CCRs have since been conducted annually by regional and area office staff, with occasional participation from Denver-based personnel. The reviews follow a standardized checklist (PEC 05-08 Appendix B), drawing on records from Reclamation, contractors, and other entities.

The CCR process focuses on three principal objectives:

1. Ensuring water delivery aligns with congressionally authorized project purposes;

2. Verifying contract compliance in water delivery and use;
3. Confirming that revenues received by the United States are appropriate to the water's use.

Key compliance concerns include unauthorized conversions from interest-free irrigation to interest-bearing municipal and industrial use, and the use of project water on ineligible lands.

Since the inception of CCRs, communication between Reclamation and its contractors has improved significantly—due in part to technological advancements and the maturation of other oversight processes. Today, Reclamation receives regular, detailed information from most major contractors through mechanisms such as the Reclamation Reform Act acreage limitation reviews and Operation, Maintenance, and Replacement inspections. These processes often overlap with CCRs, creating redundancy.

Moreover, the CCR process has not consistently identified significant compliance issues that justify its cost and resource demands. The same level of confidence in compliance can now be achieved through streamlined reporting and oversight mechanisms, without the need for the full CCR process.

Importantly, PEC 05-08, which mandates the CCR process, is not required by statute or higher-level policy. The information it targets is generally also being captured through other means, and can be in all cases. While CCRs have fostered valuable communication between the Reclamation Law Administration Division, regional offices, and project partners, this benefit can be achieved through other contract administration activities and increased use of staff details across offices.

Reclamation proposes to replace PEC 05-08 with the strengthened contracting, tracking, and internal sharing requirements in the proposed revisions to PEC P05 and PEC 06-01. This approach will maintain the integrity of contract compliance oversight while streamlining operations, reducing administrative burden, and aligning with Reclamation's broader goals of efficiency and resource optimization. Attached are PEC 05-08 in its current form and PEC P05 and PEC 06-01 showing proposed changes in redline.

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<b>Subject:</b>	Contract Compliance Reviews
<b>Purpose:</b>	This Directive and Standard (D&S) sets forth the Bureau of Reclamation's requirements for conducting the contract compliance review process, which is beneficial for ensuring water-related contracts are consistent, effective, and compliant.
<b>Authority:</b>	The Reclamation Act of 1902 (ch. 1093, 32 Stat. 388); the Reclamation Project Act of 1939 (1939 Act) (Pub. L. 76-260; 43 USC 485, <i>et seq.</i> ); the Water Conservation and Utilization Act of 1939 (WCUA) (53 Stat. 1418; 16 USC 590y, <i>et seq.</i> ); and acts amending and supplementing these laws.
<b>Approving Official:</b>	Director, Mission Assurance and Protection Organization (MAPO)
<b>Contact:</b>	Reclamation Law Administration Division (RLAD) (84-55000)

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- Introduction.** The Contract Compliance Review (CCR) process is Reclamation's primary internal control for its water-related contracting program.<sup>1</sup> It is designed to monitor and promote contract compliance, as defined below in Paragraph 4.E. This D&S advances the objectives of ensuring that contract water is delivered and used per contract terms; that contract water deliveries are adequately monitored and recorded to make these determinations; that contract water is appropriately priced per all relevant requirements; and that the contractually established payments are being made as required.
- Applicability.** This D&S applies to all Reclamation personnel who participate in CCRs.
- Requirements.**

### A. CCR Selection and Scheduling.

- (1) **CCR General Schedule.** Each region will establish and maintain a general, region-wide schedule of CCRs (General Schedule). General Schedules will indicate the priority status of each contractor in the region subject to the CCR requirement and the timing and type of review intended for each contractor. Regions will update General Schedules on an ongoing basis.
- (2) **MAPO Director's Concurrence.** The MAPO Director's written concurrence<sup>2</sup> is required to finalize each initial regional General Schedule; to make permanent substantive changes to an existing General Schedule, such as changing a

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<sup>1</sup>As recommended in the Office of Inspector General's 1994 Audit Report *Irrigation of Ineligible Lands, Bureau of Reclamation* (Report No. 94-I-930, July 1994).

<sup>2</sup>Written concurrence, wherever required in this D&S, may be made electronically.

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contractor's priority status; and to exclude contractors from the CCR requirement under Paragraph 3.A.(4), below.

- (3) **Annual Call Letter.** The MAPO Director will issue an annual call letter to each region, no later than February 15, requesting a list of the year's CCRs, specifying the contractors' names, priority statuses, and review types, and that the region begin scheduling reviews and provide recommendations for RLAD staff attendance. Regions will submit their General Schedules to the MAPO Director, justifying any proposed revisions, by the deadline specified in the annual call letter. The MAPO Director will deem the absence of changes to a region's General Schedule as confirmation that the existing prioritizations and exclusions are appropriate.
- (4) **Priority Status and Exclusion.** Regions will assign each contractor as either high priority, standard priority, or excluded, which will determine the frequency and types of CCRs.
  - (a) **High Priority.** Contractors designated as high priority will be scheduled for CCRs at intervals of not greater than 5 years unless the regional director determines that the number of reviews to be performed in the region requires longer intervals. Justification for intervals of more than 5 years for high-priority contractors will be submitted to the MAPO Director with the region's initial General Schedule or separately as needed. All CCRs with high-priority contractors will be conducted onsite per Paragraph 3.A.(6)(b) below.
  - (b) **Standard Priority.** Contractors designated as standard priority will be scheduled for CCRs at intervals of not greater than 10 years unless the regional director determines that the number of reviews to be performed in the region requires longer intervals. Justification for intervals of more than 10 years for standard-priority contractors will be submitted to the MAPO Director with the region's initial General Schedule or separately as needed. The regional director will designate CCRs with standard-priority contractors as onsite or remote. See Paragraph 3.A.(6)(c) below regarding remote CCRs.
  - (c) **Excluded.** Contractors will be excluded from the CCR requirement if the regional director determines their review to be unwarranted and the MAPO Director concurs. The determination to exclude a contractor from the requirement will be based on the prioritization criteria under Paragraph 3.A.(5) below.<sup>3</sup> The regional director's determination and the justification

<sup>3</sup>The purpose of allowing exclusions is to promote greater emphasis on and commitment of resources to higher-priority contractors. The exclusion of a contractor from the CCR requirement affects its status with the CCR process but does not affect the region's responsibility to ensure that all contracts it administers are performed according to its terms or its authority to establish regional policy and practices for meeting this responsibility.

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will be documented, along with the MAPO Director's written concurrence, and filed with the region's General Schedule. A list of excluded contractors will be included in the CCR Annual Report, along with a summary statement of the justification for each exclusion.

- (5) **Prioritization Criteria.** Regions will use the following criteria to determine the need for CCRs and the type and frequency of reviews.
  - (a) **Standard Prioritization Criteria for Contractors Receiving Water for Irrigation Use.** The following criteria will be considered in determining the priority status of contractors receiving contract water for irrigation use. Contracts meeting both criteria will be designated high priority unless the regional director determines the designation is unwarranted, and the MAPO Director concurs.<sup>4</sup>
    - (i) There is appreciable current or projected population growth or urbanization within the contractor's service area.
    - (ii) The contractor's contract water constitutes its full or primary water supply.
  - (b) **Past Findings and Recommendations.** Regions will consider findings and recommendations stated in checklists from past CCRs in determining contractors' future CCR requirements, especially recommendations specifically concerning the frequency or type of future CCRs. Contractors with recurring or outstanding contract compliance issues will be designated high priority unless the regional director determines the designation is unwarranted, and the MAPO Director concurs.
  - (c) **Regional Criteria.** Regions will, as necessary, incorporate additional or different criteria in selecting or excluding contractors and in determining contractors' priority statuses. Regions will document the criteria used to make the stated determinations and submit it to the MAPO Director with the regions' initial General Schedules or separately as needed.
- (6) **Types of CCRs.** The following types of CCRs are available, subject to the limitations and requirements for high-priority and standard-priority contractors stated above in Paragraphs 3.A.(4)(a) and (b).
  - (a) **Required Attendance.** Personnel from the regional office will attend each CCR, subject to a waiver for a given contractor by the RLAD Manager.

<sup>4</sup>This paragraph is not intended to limit regions' high-priority designations. Contractors receiving contract water only for M&I use and contractors receiving contract water for irrigation use but not meeting either of the stated criteria may nonetheless be deemed high priority based on other criteria under Paragraphs 3.A.(5)(b) and (c).

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RLAD personnel will select CCRs to attend in consultation with the regions based on priority status and other factors, such as contractors' repayment status, urbanization trends in the relevant service areas, and known issues.

- (b) **Onsite CCRs.** Reviews conducted at the contractor's facilities with Reclamation staff and the contractor or the contractor's representatives in attendance. See Paragraph 3.(C). below for preparation requirements. The review team will determine whether a visual survey of the contractor's service area and/or facilities is necessary based on the type of facilities or other relevant factors and document its determination in the associated CCR checklist.
- (c) **Remote CCRs.** Reviews conducted remotely via video or telephone with Reclamation staff and the contractor or the contractor's representatives.

## B. Training and Guidance.

- (1) **Minimum Training for Staff Assigned to Participate in CCRs.** RLAD and the regions will provide training to ensure, at a minimum, that staff expected to participate in CCRs:
  - (a) understand the basic concepts relevant to the CCR objectives, such as the legal and policy distinctions between types of water uses; benefits, requirements, and limitations associated with the different uses; the concepts associated with the eligibility of land to receive project water; the options generally available for contractors who desire to make changes to their water delivery or use and the associated requirements; and the objectives and requirements associated with internal controls;
  - (b) have reviewed documentation from past CCRs, including checklists and copies of verifying documents, and have reviewed the most recent CCR Annual Report;
  - (c) know how to prepare for CCRs, as addressed under Paragraph 3.C., below;
  - (d) can articulate the purposes, procedures, and background of the CCR process to contractors during reviews;
  - (e) understand and explain the meanings and purposes of the questions being asked and how the information will be used; and
  - (f) are prepared to discuss any contract compliance issues identified during CCRs with the contractors, along with the basic options and requirements for resolving the issues as set forth below in Paragraph 3.E.

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### (2) Training and Guidance Provided to the Regions by RLAD.

- (a) **Periodic Training.** RLAD will provide Reclamation-wide CCR training at intervals of not less than 5 years.
- (b) **Training Based on Need.** RLAD will provide further training to regions as requested, subject to staff availability and other resources.
- (c) **Guidance.** RLAD will provide standard discretionary guidance documents to the regions for conducting CCRs. In consultation with the regions, RLAD will determine the nature of the provided guidance and ensure that it is updated and accessible to staff.

### C. Preparation for CCRs.

- (1) **Regional and Lead Reviewers.** Each review team will have a regional and lead reviewer. Typically, the lead reviewer is from the relevant area office. The regional and lead reviewers will gather all internal information to monitor the relevant contractor and/or facility operations and review documents obtained for the scheduled CCR. The lead reviewer will ensure that:
  - (a) section A of the CCR checklist has been completed by Reclamation staff before the CCR;
  - (b) the checklist is provided to the contractor with section A completed and Appendix C attached at least 5 business days before the scheduled review date; and
  - (c) documentation is provided to all members attending the review in advance.
- (2) **All Reviewers.** All reviewers attending a given CCR are responsible for knowing the authorized use(s), the contractual payment requirements, and the requirements the contract places on the contractor for keeping and producing records. To the extent practicable, the reviewers scheduled to attend a CCR will schedule adequate time before the CCR to discuss pre-review findings and other relevant information.

### D. CCR Documentation and Follow-Up.

- (1) **Checklist.** Reviewers will use the standard checklist in Appendix A to conduct CCRs and to document any compliance issues identified through the CCR process.
  - (a) **Alternate Checklist.** Subject to the RLAD Manager's written concurrence, regions may establish alternate standardized checklists for use specific to a

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project or contracting authority or otherwise for standard purposes within the region.

- (b) **Modified Checklist.** Subject to the RLAD Manager's written concurrence, regions may modify the checklist to omit irrelevant material and/or add material for case-specific needs.
- (2) **General Emphases.** The following are areas of general emphasis reflected in the standard checklist. Reviewers should review the contract(s), legal authorities, water delivery records, maps and Geographic Information System data, payment records, or any other relevant information to confirm contract compliance.
  - (a) **Authorized and Actual Place of Use.** Reviewers will confirm the authorized place of use with the contractor, if applicable. The checklist will identify the means used to confirm the authorized place of use and determine whether any related contract compliance issues or potential contract compliance issues exist.
  - (b) **Authorized and Actual Type of Use.** Reviewers will confirm the authorized type(s) of use with the contractor to the greatest extent possible. The checklist will identify the means used to confirm the authorized types of use and determine whether any related contract compliance issues or potential contract compliance issues exist.
    - (i) **Determination.** What constitutes an authorized type of use under any given contract must be determined by reference to that contract and, as necessary, other evidence, such as the past conduct of the parties indicating mutual interpretations of contract terms, applicable legal definitions, legislative materials relating to the project/contract, and other sources that may assist the determination. Guidance for making this determination is included in Appendix C to this D&S. See also Paragraph 3 of Reclamation Manual (RM) D&S, *Conversions of Project Water from Irrigation Use to Municipal and Industrial Use* (PEC 09-01), regarding the identification of conversions from irrigation water uses to municipal and industrial (M&I) water uses.
    - (ii) **Emphasis on Irrigation of Small Tracts.** Where an agricultural purpose is required for irrigation use of contract water, or there is an applicable pricing difference based on agricultural versus nonagricultural irrigation, reviewers will emphasize the need to confirm that the use of irrigation water delivered to tracts of 10 acres or less

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meets the agricultural requirement.<sup>5</sup> This is confirmed through visual confirmation, documentation provided by the contractor or the water user directly (e.g., tax status, business receipts, relevant licenses, etc.), or otherwise as determined by the reviewers and recorded in the associated checklist.

- (c) **Contractually Required Payments.** Reviewers will confirm that the contractors are in compliance with all contractual payment requirements.
- (d) **Supporting Documentation.** Basic findings of contract compliance require documentary and/or visual confirmation. The checklist will identify methods used to review findings (i.e., documentary or visual). The checklist will also list all documentation used and identify the office where the documentation is kept on file. Unless the contractor is not required by contract or otherwise to keep relevant records and provide them to Reclamation upon request, the failure to do so is a contract compliance issue that must be identified in the checklist and resolved per this D&S.
- (3) **Reviewers' Consensus in Findings.** The reviewers will work together to document the CCR and report findings that adequately reflect the reviewers' consensus. The standard version of sections C and D appears in Appendix B to this D&S.
- (4) **Distribution of Checklists.** Not later than February 15 each year, regional directors will:
  - (a) electronically submit copies of completed CCR checklists for all CCRs conducted that year, each signed by the lead reviewer, to RLAD; and
  - (b) deliver a copy of the completed CCR checklist to each reviewed contractor by mail (or other agreed-upon media) annually.
- (5) **CCR Annual Report.** Not later than June 15 of each year, RLAD will submit the CCR Annual Report to the MAPO Director, presenting the key findings and selected data gathered through CCRs conducted during the previous year. RLAD will work with the reviewers listed in the year's checklists to ensure that the CCR Annual Report accurately reflects CCR findings and statuses of identified contract compliance issues. The CCR Annual Report will be used in support of the MAPO Director's Annual Assurance Statements regarding internal controls, as

<sup>5</sup>Note that this requirement does not condition eligibility to receive irrigation water on tract size or income. Rather, its purpose is to emphasize smaller tracts to focus limited time and resources on lands receiving irrigation water that are most likely to cease using it for agricultural purposes, where that is a requirement. While Reclamation makes no assumptions about any particular tract, smaller tracts may generally indicate the subdivision of the irrigated tracts, which is often accompanied by changes in land use.

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required under Office of Management and Budget Circular A-123. The CCR Annual Report will:

- (a) list the CCRs completed for the review year, all contract compliance issues identified through CCRs for the review year, and the plan of action for resolution of each issue and its status;
- (b) state the status of contract compliance issues from CCRs conducted in previous years and describe the processes being implemented to resolve outstanding issues;
- (c) include each region's General Schedule as an appendix; and
- (d) provide other information the MAPO Director deems appropriate.

(6) **Regional Directors' Report.** A report will be prepared by RLAD for each regional director identifying CCRs completed, any compliance issues specific to their region identified in the current year CCR cycle, and any unresolved or outstanding compliance issues identified in past years' CCR cycles.

E. **Resolving Contract Compliance Issues.** Regional directors are responsible for resolving contract compliance issues identified through CCRs. Regions will document any contract compliance issues identified through CCRs and steps taken toward resolution per this D&S. Reclamation will work cooperatively with contractors, and with state, local, and tribal governments, as appropriate, to resolve contract compliance issues. RLAD will be copied on all correspondence with contractors required below.

- (1) **Determining Means of Resolution.** Upon submission of checklists by the February 15 deadline, regions will indicate the intended means for resolving each contract compliance issue identified for the year or confirm that the issues have been resolved. Regions will determine the process required for resolving identified contract compliance issues within the parameters set forth below.
- (2) **Documentation and Reporting.** Regions will document all steps taken toward resolving contract compliance issues and report the status of all outstanding issues annually. Regions will also notify the MAPO Director of any significant changes in contract compliance issue status or the status of issue resolution efforts as they occur.
- (3) **Contractor Notification.** If a contract compliance issue is identified, the region will issue a letter to the contractor within 60 days of the review. The letter's content will depend on the status of the contract compliance issue. At a minimum, the letter will specify the identified issue and enclose a copy of the relevant checklist. If the issue has been resolved, the letter will say so. If the issue has not been resolved, the letter will additionally:

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- (a) discuss the options available for resolving the issue, the actions toward resolving it that the region intends or is required to take, and any actions toward resolving it that the contractor has already taken or agreed to take;
- (b) discuss the potential penalties that could be imposed, costs, including administrative costs Reclamation incurs in resolving the contract compliance issue(s) that may be charged to the contractor, and/or other actions that could be taken if the issue is not resolved;
- (c) if appropriate, inform the contractor that it may dispute the finding of a compliance issue to the regional director and request a determination from the regional director (see Paragraph 3.E.(5)(c), below); and
- (d) allow the contractor 60 calendar days from the date of the letter to respond before Reclamation takes further action.

(4) **Informal Resolution.** The responsible region will make all reasonable efforts to resolve contract compliance issues informally. The Contracting Officer will determine and initiate the steps necessary to accomplish informal resolution, and notify the regional director and the RLAD Manager of progress toward resolution as it occurs. If an identified issue remains unresolved for 1 year after the date on which the contractor was notified under Paragraph 3.E.(3) above, the region will initiate formal resolution per Paragraph 3.E.(5). below, unless the regional director determines that the period for informal resolution should be extended and the MAPO Director concurs. An extension will not exceed 1 year. Extensions beyond the initial extension are subject to the same requirements.

(5) **Formal Resolution.** Formal resolution is required for any contract compliance issue that cannot be resolved per Paragraph 3.E.(4) above.

- (a) **Resolution Plan.** Compliance issues subject to formal resolution require a written resolution plan, which the regional director will submit to the MAPO Director for concurrence. The MAPO Director will provide concurrence in writing. The resolution plan will identify the contractor, contract, contract compliance issue, and CCR date. It will state the action(s) to be taken by the region and/or the contractor to resolve the issue. Amendments to established resolution plans require the MAPO Director's written concurrence.
- (b) **Contractor Notification.** The contractor will be notified in writing of the status of the contract compliance issue and the corresponding options and requirements for resolution within 30 calendar days of the end of attempts at informal resolution. The notification will state the reason for the initiation of formal resolution and discuss potential actions that can be taken if the issue remains unresolved, as well as the contractor's right to appeal, as set forth below.

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(c) **Appeals.** Where a contractor disputes the existence of a contract compliance issue, the region will issue a letter to the contractor acknowledging the dispute and apprising the contractor of the dispute process as set forth in RM Policy, *Voluntary Process for Appealing Decisions Made in the Administration of Water-Related Contracts and in the Crediting of Incidental Revenues* (PEC P15).

4. **Definitions.** The following definitions apply where the defined terms appear in this D&S, in other documents associated with the CCR process, and elsewhere in the Reclamation Manual (RM).

- A. **Authorized Use.** A use of contract water, as defined in Paragraph 3.D. of RM Policy, *Water-Related Contracts—General Principles and Requirements* (PEC P05), that the relevant contract authorizes. The term “authorized use” encompasses authorized place of use and authorized type of use, each as defined below.
- B. **Authorized Place of Use.** A location that, under the relevant contract, is eligible to receive the contract water.<sup>6</sup> Authorized places of use may be defined by district boundaries, a contractor’s service area, eligibility of lands to receive contract water, number of acres eligible to receive contract water, or by the project boundaries.
- C. **Authorized Type of Use.** A purpose for the use of contract water that the relevant contract authorizes.<sup>7</sup> Authorized types of use must be determined on a contract-specific basis.
- D. **CCR Checklist or Checklist.** A standard, alternate, or modified checklist as described under Paragraph 3.D.(1).
- E. **Contract Compliance.** Compliance with applicable contractual and legal provisions establishing<sup>8</sup>:
  - (1) the amount of contract water to be made available and its authorized use(s);

<sup>6</sup>For Reclamation requirements associated with irrigation suitability land classification, see RM Policy, *Determination of Irrigation Suitability of Proposed Project Lands, and Identification of Lands That May Receive Project Irrigation Water on Operating Projects* (PEC P12) and D&S, *Irrigation Suitability Land Classification for New Projects or Operating Projects* (PEC 12-01).

<sup>7</sup>The types of use normally at issue are irrigation use and M&I use. Both terms are defined under Paragraph 3 of RM Policy, *Water-Related Contracts—General Principles and Requirements* (PEC P05).

Note, however, that those definitions apply prospectively to changes in the type of use in accordance with PEC P05 and RM D&S, *Conversions of Project Water from Irrigation Use to Municipal and Industrial Use* (PEC 09-01). See the flow chart provided in Appendix A to PEC P05 and reproduced in Appendix C to this D&S.

<sup>8</sup>The question for purposes of CCRs is whether the contractor complies with the relevant contract provisions, not whether the contract fully complies with law. Although a contract provision that appears to be out of compliance with law is not a contract compliance issue, Policy and Administration is to be notified if questions arise over whether a provision of a contract reviewed for CCR purposes complies with applicable law.

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- (2) the contractor's associated financial obligations to the United States;
- (3) procedural requirements for making authorized changes to the amounts, places, and types of water use; and
- (4) responsibilities for measuring and tracking water deliveries and use, keeping associated records, and providing documentation to Reclamation upon request so that the delivery amounts, type(s) of use, and place(s) of use can be verified.

F. **Unauthorized Use.** A type or place of use of contract water that the relevant contract does not authorize; a change in place or type of use that was not executed per applicable requirements.

G. **Water-Related Contract.** Any repayment or water service contract and any other legally binding agreement executed pursuant to Reclamation law or to the WCUA that:

- (1) makes water available from or through the facilities of a Federal project that Reclamation manages, operates, or funds; or
- (2) establishes OM&R responsibilities for such facilities and/or other responsibilities related to ensuring that such facilities continue to serve their intended purposes; or
- (3) makes water available to the United States.

5. **Review Period.** The originating office will review this release every 4 years.

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## Policy

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<b>Subject:</b>	Water-Related Contracts and Charges – General Principles and Requirements
<b>Purpose:</b>	To state basic principles and general policies for the Bureau of Reclamation's water-related contracting program, for the benefit of promoting clarity and consistency in the program's implementation.
<b>Authority:</b>	The Reclamation Act of 1902 (ch. 1093, 32 Stat. 388); the Sale of Water for Miscellaneous Purposes Act of 1920 (1920 Act) (41 Stat. 451; 43 USC 521); the Reclamation Project Act of 1939 (1939 Act) (Pub. L. 76-260; 43 USC 485, et seq.); the Water Conservation and Utilization Act of 1939 (WCUA) (Pub. L. 76-398; 16 USC 590y, et seq.); the Reclamation Safety of Dams Act of 1978, as amended (43 USC 506, et seq.); Title IX, Subtitle G of the Omnibus Public Land Management Act of 2009 (43 USC 510b, et seq.); and acts amending and supplementing these laws.
<b>Approving Official:</b>	Commissioner
<b>Contact:</b>	Mission Assurance and Protection Organization, Reclamation Law Administration Division (84-55000)

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### 1. Introduction.

Reclamation's water-related contracting program provides water and related project benefits, in addition to recovering reimbursable costs in a manner that is consistent with relevant law. Program activities are conducted in a way that accommodates varying circumstances, changing demands, environmental needs, and Reclamation's obligations to American Indian tribes.

### 2. Applicability.<sup>1</sup>

This Policy applies to all Reclamation personnel involved in water-related contracting activities, within the following parameters:

#### A. Higher-Level Authorities.

This Policy does not override requirements imposed by project-specific legislation,<sup>2</sup> treaties, judicial directives, or other applicable higher-level authorities, such as Federal regulations and Executive Orders.

#### B. Prospective Application to Contracts.

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<sup>1</sup> The requirements in this Policy apply generally to water-related contracting activities. Given the variability of circumstances affecting these activities, it is appropriate to note that requests can be made to the Commissioner for waivers from RM Policy requirements in accordance with Paragraph 4.A. of RM Policy, *Bureau of Reclamation's Directives System (the Reclamation Manual (RM))* (RCD P03) and D&S, *Request for Waiver from a Reclamation Manual (RM) Requirement and Approval or Disapproval of the Request* (RCD 03-03). The Commissioner cannot waive requirements fixed by higher-level authorities.

<sup>2</sup> Including statutes and documents incorporated by reference into statutes, as well as compacts, settlements, and other agreements directed or ratified by Congress.

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## Policy

To the extent that this Policy establishes new requirements for water-related contracts, it will be applied prospectively to contracts executed, renewed, amended, or supplemented through the formal contracting process between the contractor and Reclamation on or after its issuing date.<sup>3</sup> Contract amendments and supplements executed solely to conform a contract to the discretionary provisions of the Reclamation Reform Act of 1982 (Pub. L. 97-293, Title II, § 201; 43 U.S.C. 390aa, *et seq.*) or that do not provide any additional or supplemental benefit do not initiate the application of new requirements established by this Policy.

### C. Application of Water Use Definitions.

The definitions provided below for “irrigation use” and “municipal and industrial (M&I) use” do not apply to water uses established before the date on which a given contract becomes subject to this Policy under Paragraph 2.B. above.<sup>4</sup> Water uses are deemed to have been established where there is evidence that Reclamation and the contractor both interpreted the contract to allow the uses. Appendix A to this Policy, *Applicability of Irrigation and M&I Definitions in PEC P05 Issued July 24, 2013*, illustrates this paragraph’s requirements.

## 3. Policy.

### A. General Principles for Water-Related Contracting Activities.

#### (1) Requirement of a Contract.

##### (a) For Project Benefits and Cost Recovery.

Except where a superseding Federal authority dictates otherwise, Reclamation is not authorized to deliver or store project or non-project water, permit the use of Federal facilities, or recover reimbursable project costs except pursuant to a contract authorized by Federal law.

##### (b) Before Construction.

Where Reclamation will undertake or fund construction costs on a new or existing facility, a repayment contract must be executed before construction commences or a construction contract is awarded. If an alternative to a contract is appropriate or the situation demands that work begins before a contract can be executed, a waiver from this requirement can be requested from the Commissioner pursuant to RM D&S, *Request*

<sup>3</sup> These contracting actions are normally requested by the contractor, rather than being sought by the United States. For contracts entered pursuant to the authority of the Reclamation Safety of Dams Act of 1978, as amended (SOD Act) or Title IX, Subtitle G of the Omnibus Public Land Management Act of 2009, the definitions for “irrigation use” and “municipal and industrial (M&I) use” will be applied to determine the benefits, payment capacity, and repayment terms applicable to a water district for the purpose of repaying the required portion of the Federal investment made under the authority of those acts.

<sup>4</sup> These definitions are intended primarily for distinguishing between the two categories of water use for purposes of determining appropriate contracting authorities and related matters. They do not interpret state laws. They 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.

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*for Deviation from a Reclamation Manual Requirement and Approval or Disapproval of the Request (RCD 03-03).*

**(2) Authority to Contract.**

Every contract must be executed pursuant to and identify appropriate Federal statutory authority, whether found in project-specific legislation, general Reclamation law, the WCUA, or elsewhere.

**(3) Protection of Federal Interests.**

Reclamation contracts must protect the interests of the United States and of the affected Federal projects, including the primary purposes for which they were authorized. These requirements include, but are not limited to, the following:

**(a) Compliance with Law.**

In protecting the interests of the United States, Reclamation's contracts and its contracting process must comply with all applicable Federal, state, tribal, and local laws.<sup>5</sup> These laws may include environmental, civil rights, and cultural resources protection laws, among others, as well as laws that may be later enacted. Reclamation's water-related contracts will be drafted in a manner that allows Reclamation to take actions necessary to comply with all applicable laws.

**(b) Consideration of Precedent.**

Contracting personnel must give due consideration to the precedent that will be set at the local, regional, and Reclamation-wide levels by the contracts they participate in proposing, negotiating, approving, or executing.

**(c) Clear Language.**

Each contract must be drafted to clearly express the mutual understandings of the parties concerning the broad purposes of the contract and the specific rights and obligations it is intended to create.

**(4) Water Conservation Plans.**

Contracts subject to Section 210(b) of the Reclamation Reform Act of 1982 will include a provision stating the associated requirements.

**B. General Water-Related Contracting Requirements.**

Unless otherwise authorized by the Commissioner, Reclamation will negotiate water-related contracts in accordance with the general policies set forth below, as applicable.

**(1) Preamble.**

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<sup>5</sup> Subject to resolution of conflicts among these laws, where necessary.

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Each contract will begin with a preamble that identifies the contracting parties, the contract's purpose, and the Federal statutory authority.

**(2) Explanatory Recitals.**

Each contract will include explanatory recitals ("whereas" statements) to communicate the parties' understanding of the contract's purpose(s) and other clarifying matters, as the parties deem appropriate. Any relevant existing agreements will be identified within the explanatory recitals.

**(3) Standard Articles.**

See RM Policy, Reclamation Standard Water-Related Contract Articles (PEC P10).

**(4) Identification of Facilities.**

Contracts providing for the construction of facilities by the United States will describe the facilities and provide detailed maps showing their locations, where available.

**(5) Construction Work to be Accomplished and Associated Responsibilities.**

Contracts involving construction will describe the facilities to be constructed, identify reports that provide details of how and when construction will be accomplished and completed, and specify the parties' responsibilities for construction, liability, oversight, contributions of land and facilities, and ownership of title to the constructed facilities and associated property.<sup>6</sup>

**(6) OM&R Responsibilities.**

Contracts will specify the parties' responsibilities for the OM&R of project works.

**(7) Term of Contract/Repayment Period.**

Each contract will specify its term (duration), expiration date, and/or repayment period, as applicable.

**(8) Water Supply and Delivery.**

The following requirements apply to contracts providing for the delivery of water.

**(a) Source and Supply of Water.**

Each contract will provide information and establish relevant requirements in accordance with RM D&S, *Requirement of a Water Measurement Article in Contracts and Amendments* (PEC 05-04). Each contract will additionally specify any restrictions on water delivery, such as a maximum

<sup>6</sup> A contract can only provide for construction of those facilities identified in the planning report Congress relied on in deciding to approve the work. This does not preclude design changes that will have no significant effect on the contractor's repayment ability or obligation and that are within the authorized cost ceiling.

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delivery rate due to limited capacity, scheduling restrictions, or other factors. Amounts of water to be supplied must comply with applicable state water laws and the relevant terms of any permits, licenses, or other authorizing instruments.

**(b) Point of Delivery.**

Each contract will identify the point or points at which the United States will be deemed to have delivered the water as required by the contract and will state that the United States is not responsible for losses or Project water quality degradation beyond that point. If a precise point of delivery is not known upon contract execution, the contract will state that it does not bind the United States until the parties have agreed to a point of delivery in writing, and that the parties will deem such agreement to be part of the contract.

**(c) Delivery Schedule and Initial Delivery Date.**

Where applicable, contracts will specify the annual period during which water is to be made available (e.g., April 30 through October 15) and specify the initial water delivery (e.g., “the year following substantial completion of the project”).

**(d) Authorized Uses.**

Each contract will specify the authorized water uses, and any established allocation between uses. Water uses specified under a contract must comply with applicable state and Federal laws, the definitions provided in this Policy if applicable in accordance with Paragraph 2 above, and the relevant terms of any permits, licenses, or other authorizing instruments.<sup>7</sup>

**(e) Lands to be Irrigated.**

Each contract will specify the quantity and location of lands to be provided water for irrigation use, if any. A map of the contractor’s service area delineating the lands to be irrigated will be included, if available. Lands to be provided water for irrigation use must, unless otherwise provided by statute, be eligible in accordance with the requirements of RM Policy, *Determination of Irrigation Suitability of Proposed Project Lands, and Identification of Lands That May Receive Project Irrigation Water on Operating Projects* (PEC P12).

**(f) Contract Compliance Reviews.**

Each contract will include ~~an express acknowledgment of Reclamation’s authority to the contractor’s agreement to provide information sufficient to~~

<sup>7</sup> State and Federal definitions may characterize the same water use differently, for example where a use is irrigation under applicable state water law but M&I under the applicable Federal contracting authority. Because these use designations apply to different legal questions, this does not normally create an issue

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confirm compliance with contract terms defining allowable water delivery amounts, uses, and places of use. conduct contract compliance reviews in accordance with PEC 05-08Contracts will define what information is sufficient and will establish regular intervals for the associated reporting, in accordance with the Commissioner's delegation of authority for the contract through the BON process, where applicable (see Paragraph 4.F.(2)(c) of PEC 06-01).

**(9) Charges for Water and Use of Facilities.**

Each contract will establish rates contractors will pay for the use of project water and/or facilities or the charges for their assigned shares of the project costs, as applicable. See PEC 05-01 for requirements and options relating to the establishment of appropriate charges.

**(10) Identification of Environmental Compliance Documents.**

Each contract will include an explanatory recital affirming that all environmental compliance requirements for its execution have been met and identifying any associated documents by date of issuance and document number or title.

**(11) Contract Termination.**

Each contract will specify any intended conditions under which either party can terminate the contract at a time other than the contract's stated termination date, where applicable, and will include a statement of the agreed consequences of termination.

**(12) Title to Project Facilities.**

Each contract will state that title to project lands and facilities will remain in the United States until such time as Congress authorizes title to be transferred and until title is actually transferred through required procedures.<sup>8</sup>

**C. BON Required.**

Contracts for which the Commissioner has not delegated general approval authority to the regional directors require BONs and approval memoranda, in accordance with PEC P06 and PEC 06-01.

**D. Public Participation.**

- (1) Reclamation will notify the public of proposed contract actions.
- (2) Contract negotiations will be conducted in a manner that provides opportunities for the public to observe and provide meaningful input. Contract negotiations

<sup>8</sup> A statement meeting this requirement is included in Reclamation Standard Contract Article 5, as it appears in RM D&S, *Reclamation Standard Water-Related Contract Articles, Standard Article 5: Operation and Maintenance of Transferred Works (Federal Construction)* (PEC 10-05) and need not be repeated in contracts that contain that article.

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will be in strict compliance with subsection 9(f) of the 1939 Act (Pub. L. 76- 260, as amended by section 226 of Pub. L. 97-293; 43 USC 485h(f)) and with 43 CFR 426.22. See also RM Policy, *Public Involvement in Reclamation Activities* (CMP P03), and D&S, *Public Involvement in Reclamation Activities* (CMP 04-01).

### **E. Prohibition on Use of Certain Contract Authorities.**

The execution of contracts identified below is prohibited without further delegation of authority from the Commissioner:

- (1) Contracts for the sale of surplus water pursuant to the provisions of Section 2 of the Warren Act;
- (2) Contracts entered pursuant to the provisions Section 5 of the Small Reclamation Projects Act of August 6, 1956 (43 U.S.C. §422e); and
- (3) Contracts entered pursuant to the provisions of the Rehabilitation and Betterment Act of October 7, 1949 (63 Stat. 650).

**4. Contract Administration.** Along with other responsibilities associated with contract administration, Regions will ensure the receipt of the records required by contract terms established in accordance with Paragraph 3.B.(8)(f) above. The Reclamation Law Administration Division (RLAD) is responsible for providing a shared central database of the resulting information, and for monitoring progress toward resolving any identified contract compliance issues. Regions will update the database annually or as updates are available, describing any identified contract compliance issues needing to be resolved and the intended means and timeframes for the resolution. RLAD will work with regions to resolve identified compliance issues upon request, as RLAD deems necessary or is directed, or otherwise as required (for instance where resolution involves the BON process).

### **4.5. Definitions.**

Except where an RM Policy or a D&S specifies otherwise, and in accordance with Paragraph 2 above, the following definitions apply to any Reclamation Policy or D&S addressing water-related contracting activities.

#### **A. Contract Action.**

Any action that creates, renews, amends, or supplements a water-related contract to which Reclamation is a party or for which Reclamation's approval or concurrence is required.

#### **B. Contract Amendment.**

A formally executed modification to an existing water-related contract that changes existing conditions, rights, or obligations within the existing scope of the contract.

#### **C. Contract Supplement.**

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A formally executed modification to an existing water-related contract that adds new conditions, rights, or obligations and may expand the scope of the existing contract.

**D. Contract Water.**

Project water or non-project water made available under a water-related contract.

**E. Contracting Officer.**

In reference to a specific contract, the Reclamation official with present authority to negotiate, execute, and/or administer the contract, as applicable.

**F. Interim Contract.**

A short-term contract that is expressly intended to be replaced with a long-term contract or a contract for an authorized interim use of project water that is allocated to another project purpose but that is not yet needed for that purpose.

**G. Irrigation Use.<sup>9</sup>**

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.

**H. Long-Term Contract.**

A contract with a term of more than 10 years.

**I. M&I Use.**

The use of contract water for municipal, industrial, and miscellaneous other purposes not falling under the definition of “irrigation use”<sup>10</sup> or within another category of water use under an applicable Federal authority.<sup>11</sup>

**J. Non-Project Water.**

The definition appearing at Paragraph 3.A. of RM Policy, *Use of Excess Capacity in Reclamation Projects for the Impoundment, Storage, and Carriage of Non-Project Water* (WTR P04) applies to this Policy where the water is made available under a water-related contract.

<sup>9</sup> This definition reflects Reclamation water-related contracting laws—most explicitly Section 202 of the Reclamation Reform Act of 1982 (RRA), which defines the term “irrigation water” as “water made available for agricultural purposes from the operation of Reclamation project facilities pursuant to a contract with the Secretary” (43 USC 390bb(5)).

<sup>10</sup> The use of contract water to irrigate land for non-agricultural uses (except to the extent that some of these uses may be incidental to uses that are primarily agricultural) falls under the definition of M&I use. In addition, commercial agricultural uses that do not require irrigation, such as fish farms and livestock production in confined feeding or brooding operations falls under the definition of M&I use.

<sup>11</sup> This definition is intended to distinguish M&I use from irrigation use for purposes of contracting to deliver water for these uses and to recover appropriate Federal costs. It is framed broadly to allow water to be made available for a wide variety of uses under Reclamation’s M&I and miscellaneous use contracting authorities. It is not intended to interfere with the application of Federal authorities under which a water use may or must be characterized and contractually addressed as a use other than either irrigation or M&I, such as authorized fish and wildlife or recreational uses.

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### **K. Operation and Maintenance (O&M) or Operation, Maintenance, and Replacements (OM&R).<sup>12</sup>**

The ongoing, regular, or routine operation, maintenance, repairs, replacements, and other activities and actions necessary for continued structural integrity and operational reliability of project facilities required for the delivery of contract water. See Paragraph 3 of RM D&S, *Extended Repayment of Extraordinary Maintenance Costs* (PEC 05-03) for definitions of the terms “Extraordinary Maintenance” (XM) and “Emergency Extraordinary Maintenance” (EXM).

### **L. Project Water.**

Surface or ground water, including project seepage and return flows, that is developed by, pumped or diverted into and/or stored in Reclamation facilities:

- (1) based on the exercise of water rights that have been appropriated or acquired by the United States or others, or that have been decreed, permitted, certificated, licensed, or otherwise granted to the United States or others, for a Reclamation project; or
- (2) based on a withdrawal or reservation of water from appropriation by the United States for a Reclamation project; or
- (3) in accordance with section 215 of the Reclamation Reform Act of 1982 (Pub. L. 97-293, Title II; 43 USC 390oo); or
- (4) based on an act of Congress that allocates or apportions water to a Reclamation project.

### **M. Reclamation Law.**

Those laws, beginning with the Reclamation Act of 1902 and excluding the WCUA, which Congress enacts or has enacted to authorize Reclamation to perform its mission, whether these are original, amending, or supplementing laws, and whether they establish general or project-specific authority.

### **N. Reclamation Project or Project.**

Any project acquired or constructed pursuant to Reclamation law or the WCUA or constructed by the United States Army Corps of Engineers (USACE) and explicitly designated, made a part of, or integrated into a Reclamation project by statute. For purposes of this Policy, the term does not refer to projects constructed pursuant to the Small Reclamation Projects Act of 1956 (Pub. L. 84-984; 43 USC 422a, *et seq.*) or the Reclamation Wastewater and Groundwater Study and Facilities Act of 1992 (Pub. L. 102-575, Title XVI), or USACE projects that have not been designated, made part of,

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<sup>12</sup> The terms “O&M” and “OM&R” are often used interchangeably within Reclamation. This Policy uses the term “OM&R” hereinafter.

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or integrated into a Reclamation project by statute, even where Reclamation markets water from them.

### **O. Repayment Contract.**

A water-related contract establishing terms for, among other things, the recovery of a share of reimbursable project costs, normally within a fixed period within a statutory maximum. Repayment contracts are authorized under general or project-specific legislation, or a combination of both. The contracting authority must be consulted for associated requirements. Types of repayment contracts<sup>13</sup> available under Reclamation's general contracting authorities include:

#### **(1) Irrigation Repayment Contract.**

A repayment contract made pursuant to subsection 9(d) of the 1939 Act or Section 4 of the WCUA to make project water available for irrigation use and establish the contractor's associated obligations to pay annual project OM&R costs and to repay portions of project construction costs allocated to irrigation (without interest). See Paragraph 4.A. of RM D&S, *Water Rates and Pricing* (PEC 05-01) regarding pricing for irrigation repayment contracts.

#### **(2) M&I Repayment Contract.**

A repayment contract made pursuant to subsection 9(c)(1) of the 1939 Act or Section 4 of the WCUA to make project water available for M&I use and establish the contractor's associated obligations to pay annual project OM&R costs and to repay portions of project construction costs allocated to M&I with interest.<sup>14</sup> See Paragraph 5.A. of PEC 05-01 regarding pricing for M&I repayment contracts.

#### **(3) Safety of Dams Repayment Contracts.**

See RM D&S, *Safety of Dams* Repayment (PEC 05-05).

#### **(4) XM Repayment Contracts.**

Repayment contracts are available for costs associated with XM under some circumstances pursuant to Title IX, Subtitle G of the Omnibus Public Land Management Act of 2009 (Pub. L. 111-11; 43 USC 510). See PEC 05-03 for options and requirements associated with this authority.

### **P. Short-Term Contract.**

A contract with a term of 10 years or less, including, but not limited to, interim and temporary contracts, as defined herein.

### **Q. Temporary Contract.**

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<sup>13</sup> Contracts may be combinations of contract types and make water available for more than one type of use.

<sup>14</sup> Required interest charges include interest during construction and interest on investment, as applicable according to the terms of RM D&S, *Interest During Construction* (FIN 07-20-10) and RM D&S, *Interest on Investment* (FIN 06-30C). The terms "interest during construction" and "interest on investment" are used herein as defined at Paragraphs 3.A. and 3.B. of PEC 05-05.

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A non-renewable contract with a term of 1 year or less.

### R. Water-Related Contract.

Any repayment or water service contract and any other legally binding agreement executed pursuant to Reclamation law or to the WCUA that:

- (1) makes water available from or through the facilities of a Federal project that Reclamation manages, operates, or funds; or
- (2) establishes OM&R responsibilities for such facilities and/or other responsibilities related to ensuring that such facilities continue to serve their intended purposes; or
- (3) makes water available to the United States.

### S. Water Service Contract.

A water-related contract to provide project water at contractually established water rates<sup>15</sup> pursuant to subsection 9(c)(2) or 9(e) of the 1939 Act, Section 9 of the WCUA, the 1920 Act, or other authority. Water service contracts are authorized under general or project-specific legislation, or a combination of both. The contracting authority must be consulted for associated requirements. Types of water service contracts<sup>16</sup> available under Reclamation's general contracting authorities include:

#### (1) Irrigation Water Service Contract.

A water service contract made pursuant to subsection 9(e) of the 1939 Act to make project water available for irrigation use and establish the contractor's associated water rates, annual project OM&R charges, and other charges as applicable. See Paragraph 4.B. of PEC 05-01 regarding the establishment of water rates for irrigation water service contracts.

#### (2) 1920 Act Contract.

A contract made pursuant to the provisions of the 1920 Act that provides for the delivery of project irrigation water for miscellaneous purposes, including M&I water use, from a project that was authorized only for an irrigation purpose and establishes the contractor's associated water rates and annual project OM&R charges. See Paragraph 5.C. of PEC 05-01 regarding the establishment of water rates for 1920 Act contracts.

#### (3) M&I Water Service Contract.

A water service contract made pursuant to subsection 9(c)(2) of the 1939 Act or Section 9 of the WCUA to make project water available for M&I use and establish the contractor's associated water rates and annual project OM&R

<sup>15</sup> Although water service contract rates normally include a component reflecting a share of project construction costs, they are not repayment contracts

<sup>16</sup> Contracts may be combinations of contract types and make water available for more than one type of use.

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charges. See Paragraphs 5.B. and 5.D. of PEC 05-01 regarding the establishment of water rates for M&I water service contracts under subsection 9(c)(2) and the WCUA, respectively.

### T. Water Users' Association.

An entity organized and recognized under state laws that is eligible to enter into contracts with Reclamation to receive contract water for delivery to end users of the water and to pay applicable charges.<sup>17</sup>

#### 5.6. Review Period.

The originating office will review this release every 4 years.

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<sup>17</sup> The term "water users' association" is intended, for purposes of this Policy, to refer to a variety of entities with different names and differing functions. These entities may be identified under their enabling authorities and elsewhere by terms such as "association," "conservancy district," "irrigation district," "municipality," etc.

# Reclamation Manual

## Directives and Standards

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<b>Subject:</b>	Preparing Bases of Negotiation for New and Amendatory Water Service, Repayment, and Other Water-Related Contracts.
<b>Purpose:</b>	This Directive and Standard (D&S) sets forth the basic requirements for the form, content, and preparation of bases of negotiation (BONs) <sup>1</sup> for proposed water-related contract actions. The benefits of this D&S are that it enhances efficiency in the process and consistency in the development of BONs, and ensures the Commissioner's objectives are met in the water-related contracting process.
<b>Authority:</b>	The Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), and acts amendatory and supplementary thereto.
<b>Approving Official:</b>	Director, Policy and Programs
<b>Contact:</b>	Reclamation Law Administration Division, 84-55000

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### 1. Introduction.

- A. The Commissioner authorizes water-related contract actions, as stated in Reclamation Manual (RM) Policy *Bases of Negotiation for New and Amendatory Water Service, Repayment, and Related Contracts*, (PEC P06).<sup>2</sup> Regional directors request this authorization by preparing and submitting a BON to the Commissioner. The Commissioner responds to BONs through approval memoranda that establish specific parameters for negotiation, execution, and administration of the contract(s). BONs, therefore, must provide the Commissioner and other Reclamation employees with the information necessary to confirm prospective contract actions will adhere to applicable laws and policies and support Reclamation's objectives.
- B. Although this D&S covers basic requirements, it does not address unique laws and circumstances that may require variations. Every BON must be prepared in light of all applicable laws and relevant circumstances. Significant variations from this D&S must be noted and justified in the BON.

2. **Applicability.** This D&S applies to all Reclamation employees involved in the water service, repayment, and other water-related contracting process.
3. **Delegations of Authority and Approval.** Regional directors have been delegated authority to approve some contract actions without additional approval from the Commissioner. See

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<sup>1</sup> The acronym "BON" also refers to the singular, i.e. a basis of negotiation, and to the document itself.

<sup>2</sup> See Paragraph 5, "Delegations of Authority and Approval," of this D&S for information regarding general delegations of authority to regional directors.

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RM *Delegations of Authority*.<sup>3</sup> BONs and approval memoranda are required unless the regional director acts pursuant to these existing delegations. In all cases, contract actions must be supported by sufficient documentation to explain and justify the contract to auditors, contract administrators and other interested parties.<sup>4</sup>

### 4. Required Content.

A. **BON Distribution and Use.** All BONs must be clearly marked “Internal Document – Pre-Decisional – Not for Public Release.” In contrast, proposed and executed contracts are available to the public, as provided by law and regulation.<sup>5</sup>

B. **Purpose of a BON.** The purpose of a BON is to request authority to negotiate, execute, and administer the contract(s) as described in the BON.

#### C. Purpose of the Contracting Action.

- (1) State the objective that the United States and the contractor propose to accomplish with the contract action.
- (2) Specify the type(s) of service(s) or product(s) to be delivered (e.g., sale or lease of water, use of facilities, etc.). For Safety of Dams, the scope of work and cost allocation, as identified in the Modification Approval Documents, must be clearly stated. Refer to RM D&S, *Safety of Dams Repayment and Cost Allocation* (PEC 05-05) for additional information.
- (3) Describe the rationale for the amount of water or capacity to be supplied.
- (4) Specify whether the contractor currently has or will have a full or a supplemental supply from Reclamation.
- (5) Identify the holder of the associated water rights.
- (6) Identify the party responsible for operation, maintenance, and replacement (OM&R) of the facilities.

#### D. The Contractor.

- (1) State the contractor’s name and describe its service area and the services it provides.
- (2) Identify any existing water-related contracts between the contractor and Reclamation that are relevant to the proposed contract. Describe how the

<sup>3</sup> Available at <http://www.usbr.gov/recman/delegations/Delegations.pdf>.

<sup>4</sup> The extent of documentation must correspond to the significance and impact of the contract.

<sup>5</sup> 43 CFR 426.22(d).

# Reclamation Manual

## Directives and Standards

proposed contract action may affect existing contracts with the contractor.

- (3) Describe the contractor's financial and organizational ability to meet its obligations.
  - (a) Confirm that the contractor is legally authorized to enter into the proposed contract under state law and, if applicable, by its own controlling body (e.g., the Board of Directors).
  - (b) Describe the contractor's payment history and the current status of all outstanding obligations to Reclamation.
- (4) Describe the contractor's intended use of the water supply, including sufficient detail to allow determination of which water use definitions apply.
- (5) Identify the contractor's other sources of water and explain their relationship to the proposed supply.

### E. Contracting Authority.

- (1) Identify the legal authority for the contract and services to be provided, and, if needed, explain how/why the authority is appropriate.
- (2) Identify the authority for the project and its operation, including any project-specific authorities or restrictions that may materially affect the terms of the contract.
- (3) Confirm that the intended use(s) and place(s) of use are permitted under the project's water rights. If appropriate, describe the steps required to make the proposed contract consistent with the water rights.

### F. Negotiating Strategy.

- (1) Outline a plan of action covering the elements of the contract to be negotiated and any other pertinent matters such as renegotiation of existing contracts, water conservation issues, and compliance with applicable Federal laws. Also, describe the legally and practically acceptable range of potential outcomes for the contract terms. The following terms, which are not exhaustive, are typically negotiable and unique to each contract:
  - (a) quantity and type of water supply;
  - (b) water rate, repayment obligation, payment schedule, interest rate, and other fees or charges;
  - (c) term of contract or repayment period;

# Reclamation Manual

## Directives and Standards

(d) water use build-up and/or development period; and

(e) the collection and maintenance of reserve funds and their allowable uses, including OM&R, repayment obligation, and environmental restoration.

(2) ~~Enumerate Identify the required standard articles for the contract type,<sup>6</sup> and provide the intended language for or the intended approach to meeting other standard requirements, terms of the contract including, but not limited to:~~

(a) ~~The required standard contract articles for the proposed action.<sup>7</sup> Justify any modifications to, or omissions of, the standard articles.~~

(a) ~~The language that will be used in the water measurement article responsibilities under . For more details on this requirement see RM D&S Requirement of a Water Measurement Article in Contracts and Amendments (PEC 05-04).~~

(b) ~~The contractor's reporting responsibilities under Paragraph 3.B.(8)(f) of RM Policy Water-Related Contracts and Charges – General Principles and Requirements (PEC P05).~~

(c) The irrigation and municipal and industrial use definitions in RM Policy *Water-Related Contracts–General Principles and Requirements*, (PEC P05). Identify and explain any project-specific legislation, existing contracts, or other relevant legal authorities that conflict with these definitions.

(3) Justify any intended departures from standard requirements for the contract type.

~~(3)(4) Identify the positions of affected or interested third parties and how they may affect the contracting process and outcome.~~

~~(4)(5) For amended or renewed contracts, describe any existing or potential conversions between water uses and how they will be addressed.~~

~~(5)(6) Describe any other problems or unique issues with the proposed contract action.~~

~~(6)(7) Describe any special circumstances or emergencies that require an expedited contracting process.~~

<sup>6</sup> See RM Policy *Reclamation Standard Water-Related Contract Articles* (PEC P10), and RM PEC D&S 10-01 through 10-32.

<sup>7</sup> See RM Policy *Reclamation Standard Water Related Contract Articles* (PEC P10), and RM PEC D&S 10-01 through 10-32.

# Reclamation Manual

## Directives and Standards

### G. Rate Setting and Repayment Procedures.

- (1) Explain the method(s) used to determine water rates and/or ability to pay, and cite the corresponding regulations, policies, and D&S for those methods.
- (2) Explain the determination and allocation of the reimbursable project costs.
- (3) Describe the revenue sources that the contractor will use to meet its obligations to the United States.
- (4) Identify any incidental revenue credits and the effects they may have on repayment.

### H. Compliance with Laws, Regulations, Rules, and Existing Policies.

- (1) Briefly discuss how the proposed contract is consistent with the project authorizing documents, such as definite plan reports and/or feasibility reports, authorizing legislation, environmental requirements, and current contracting policy.
- (2) State that the contracting process is subject to compliance with all applicable laws and regulations, including the National Environmental Policy Act of 1969 (Pub. L. 91-190, as amended and supplemented, 42 USC § 4321, et seq.) (NEPA), the Endangered Species Act (16 U.S.C. 1531, et seq.) and public participation requirements of section 9(f) of the Reclamation Project Act of 1939 (Pub. L. 76-260, as amended and supplemented, 43 U.S.C. § 485h(f)).
- (3) State the anticipated level of NEPA analysis and documentation.
- (4) Identify and explain the application of any recognized exceptions from established policies or procedures.
- (5) Verify that the appropriate field or regional Office of the Solicitor has concurred with the legal sufficiency of the BON.

### I. Omissions.

Some of the content in Paragraph 6 is not applicable to every proposed contract. If a specific element is not applicable, the BON will note the omission<sup>8</sup>. To the extent possible, the layout of the BON must mirror Paragraph 6 of this D&S.

### 5. Process Requirements.

<sup>8</sup> If one or several Paragraphs are not applicable to the proposed contract, they will be enumerated in the BON or as an appendix to the BON. For example, “Paragraphs 6.D(3)(a), 6.F(4), ... are not relevant to this contract action.” Further explanation for the omission will be provided as necessary.

# Reclamation Manual

## Directives and Standards

### A. Approval Memoranda – Issue to Expiration.<sup>9</sup>

- (1) Upon receipt of the BON, the Reclamation Law Administration Division (RLAD) will provide the regional staff with an estimated timeframe for reviewing it and preparing an approval memorandum for the Commissioner.
- (2) Unless extended according to Paragraphs 7.A.(2)(a-b), approval memoranda will be valid for 24 months from the date of issue<sup>10</sup>. Approval memoranda will, if authorized, be extended for an additional 24-months as described in Paragraphs 7.A.(2)(a-b). Approval memoranda will not be extended beyond four years from the date of issue. If an approval memorandum is no longer valid, it cannot be used as a basis of authority for negotiating or executing contracts. However, the timeframes in this Paragraph do not apply to a contract that has been fully negotiated but not executed due to litigation.
  - (a) To obtain a 24-month extension, the regional staff will submit a request, along with adequate justification, to the RLAD. The RLAD, acting on behalf of the Commissioner, will evaluate requests and send written notification of a decision to extend to the regional office. Requests for extension will be submitted via email or letter. Only one 24-month extension will be issued.
  - (b) A request for an extension will include, but is not limited to, documentation and information that demonstrates why the contract action has not commenced or been completed, a timeframe for completing negotiations, and other information that confirms the BON and approval memorandum are still relevant and comply with existing policies and the Commissioner's objectives.
- (3) Approved supplements and amendments to BONs will recommence the timeframes in Paragraph (2), above.

### B. Negotiations and Execution.

- (1) Technical meetings<sup>11</sup> are permitted in order to discuss factual information. They must be conducted in a manner that will not compromise public negotiations and

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<sup>9</sup> Approval memoranda that were issued more than two years prior to the release date of this D&S are automatically valid for one year from the release date of this D&S. With adequate justification those same approvals may be extended an additional year, for a maximum of two years from the release date of this D&S. The process in Paragraphs 7.A.(2)(a-b) will apply to the request for the additional extension. Approval memoranda that were issued within the last two years before the release date of this D&S are automatically valid for four years from the date the approval was signed and issued. Following the extensions described in this footnote, approval memoranda will no longer be valid unless the associated BON is supplemented or amended and approved by the Commissioner.

<sup>10</sup> The date on which the approval memorandum is signed will begin the 24 month timeframe.

<sup>11</sup> See RM Policy PEC P06.

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also be clearly identified in official records as technical meetings. Reclamation staff cannot engage in negotiations at technical meetings nor offer commitments until delegated the appropriate contracting authority.

- (2) Develop and describe a communications plan for public participation. The plan should include outreach through various media (newspaper, direct email, website posting, etc.) and a timeline that will provide for adequate advance notice of negotiations. The regional staff will determine the plan's level of detail.
  - (a) At a minimum, all contract negotiations subject to a BON will be open to public participation and conducted in compliance with the Reclamation Project Act of 1939, section 9(f) [Pub. L. 76-260, as amended by section 226 of the Reclamation Reform Act of 1982 (RRA), Pub. L. 97-293, Title II, 43 U.S.C. § 485h(f)] and applicable RRA rules and regulations (43 CFR 426.22).
  - (b) If discussions between parties occur outside of the public negotiations that influence the negotiation process, the relevant details of those discussions must be presented during the next public negotiation session. The relevant details will be no less than is required to support Reclamation's administrative record.
- (3) Contract negotiating staff will contact the RLAD and discuss appropriate actions for handling issues that arise in negotiations that are outside the terms of the BON and approval memorandum. Substantive issues that are outside the terms of the BON and approval memorandum will require a supplement or amendment to the BON before the contract is executed by a regional director.
- (4) The Commissioner's Office will review negotiated contracts for conformity to the specific requirements set out in the approval memorandum and BON. In the event a proposed contract does not conform to the specific requirements in the approval memorandum, the RLAD will collaborate with regional staff to develop a remedy.
  - (a) This is not an additional level of approval, and will not focus on details or negotiable terms of the contract that are within the regional director's discretion and delegated authority. This review is limited to a determination that the contract does or does not exceed the parameters and requirements specified in the BON and Approval Memorandum. This review will enable the Commissioner's Office to identify and resolve any deviations from the approval memorandum and will strengthen internal controls.
  - (b) This review will normally take place prior to, or concurrent with, the public review process, but in every case prior to contract execution. The RLAD, acting on behalf of the Commissioner, will provide any necessary feedback

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to the regional staff within five business days following receipt of the contract, or according to an agreed-upon timeframe.

- (5) Following contract execution, the region will submit a copy of the contract to the RLAD.

### 6. Definitions.

- A. **Amendment to a BON.** A change, revision, or modification of an existing BON. Generally, the scope of the original BON remains the same.
- B. **Approval Memorandum.** A document issued by the Commissioner in response to a BON that constitutes an official delegation of authority to the regional director to negotiate, execute, and administer contracts within specific parameters. An approval memorandum is a pre-decisional, internal document and is not available for public release.
- C. **Bases of Negotiation.** A pre-decisional, deliberative document used to make and justify a recommendation to the Commissioner that a proposed contract action be authorized. BONs are not available for public release. BONs detail the material terms of the proposed contract, the negotiable terms, the parties' respective negotiating positions, and pertinent legal and practical boundaries (e.g., applicable legal and policy limits, and relevant financial circumstances, etc.).
- D. **Supplement to a BON.** An addition to a BON, which typically expands the original scope.

7. **Review Period.** The originating office will review this release every 4 years.