

# Reclamation Manual

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### Official Participation in Non-Federal Entities

1. **Purpose.** Employees serving with non-Federal organizations enhances scientific and scholarly integrity through employee engagement with the communities of practice represented by professional societies. This appendix establishes processes and procedures to ensure employees engaged in outside activities with non-Federal organizations in their official capacity receive appropriate ethics support.
2. **Definitions.**
  - A. **Advisory Board.** An advisory board is a group that provides non-binding strategic advice to the management of a corporation, organization, foundation, etc. An advisory board does not have authority to vote on corporate matters or bear legal fiduciary duty responsibilities.
  - B. **Fiduciary Duty.** Fiduciary duty involves a position of trust and an obligation to act in the best interest of another. This includes being completely loyal at all times and avoiding conflicts of interest. As Federal employees, our primary fiduciary duty is to the Government. Competing fiduciary duties, such as those you may assume as an officer, board member, or trustee for a non-Federal organization, may create an actual or apparent conflict of interest.
  - C. **Liaison.** A liaison is an employee serving, in an official capacity, as the Bureau's representative to a non-Federal organization to exchange comments, views, or opinions regarding those matters in which the Bureau has an interest. A liaison is a non-voting role, and the person in that role does not participate in matters related to the other organization's management and allocation of funds.
  - D. **Non-Federal Organization.** A non-federal organization is any entity that is not a part of the Federal Government. The term includes for-profit corporations, non-profit organizations, corporations created by Federal law that have been privatized, partnerships, and civic, religious, educational, professional, and scientific organizations.
  - E. **Non-Profit Organization.** A non-profit organization is an organization that is not organized for profit and has received tax-exempt status under any subsection of section 501 of the United States Internal Revenue Code.
  - F. **Nonpublic Information.** Nonpublic information is gained through Federal employment, and the employee knows or should know that this information has not been made available to the general public. It includes information that the employee knows or reasonably should know is routinely exempt from disclosure by statute, regulations, or agency policy. It also includes information that has not been

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disseminated to the general public and is not authorized to be made available to the public on request.

- G. **Officer, Board Member, or Trustee.** An officer, board member, or trustee is an individual serving in a position of trust within a non-Federal organization who has a fiduciary duty (an obligation to act in the best interest of an entity) to the non-Federal organization. An officer is usually an executive of the organization, such as a President, Chief Executive Officer, Vice President, Secretary, or Treasurer. A board member is a member of the Board of Directors or governing body of the organization. A trustee is responsible for executing a trust, estate, or other interest under a written or implied agreement to administer it for the benefit of someone else.
- H. **Official Capacity.** Serving in official capacity means to serve on official Government duty or serving as a representative of the Bureau.
- I. **Outside Work or Activities.** Outside work or activity is any form of relationship where an employee provides personal services, with or without compensation, to a non-Federal entity. Outside employment or activities include, but are not limited to, personal services such as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker, and writing conducted under an arrangement with a non-Federal source for production or publication.
- J. **Personal Capacity.** Serving in a personal capacity means serving off-duty, representing yourself (not Reclamation) in your individual or private capacity.
- K. **Prohibited Source.** A prohibited source is any person or entity who:
- (1) Is seeking official action by Reclamation;
  - (2) Does business or seeks to do business with Reclamation;
  - (3) Conducts activities regulated by Reclamation;
  - (4) Has interests that may be substantially affected by the performance or non-performance of the employee's official duties; or
  - (5) Is an organization a majority of whose members are prohibited sources with Reclamation.

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- L. **Related to Official Duties.** An activity relates to the employee's official duties if (see 5 CFR part 2635.807(2)):
- (1) the circumstances indicate that the invitation to engage in the activity was extended to the employee primarily because of their official position rather than their expertise on the particular subject matter;
  - (2) the invitation to engage in the activity or the offer of compensation for the activity was extended to the employee, directly or indirectly, by a person who has interests that may be affected substantially by performance or nonperformance of the employee's official duties;
  - (3) the information conveyed through the activity draws substantially on ideas or official data that are nonpublic information; or
  - (4) the subject of the activity deals in significant part with:
    - (a) any matter to which the employee presently is assigned or to which the employee had been assigned during the previous 1-year period; or
    - (b) any ongoing or announced policy, program, or operation of Reclamation.
3. **Basic Requirement.** Reclamation employees are required to obtain approval from their supervisor **prior** to participating in an official capacity with an outside entity. The approval process and the applicable ethics rules will depend on your role with the outside organization as outlined below. If you are assigned to serve in a role that this appendix does not address, you are required to contact your ethics official for guidance prior to serving in that role.
4. **Advisory Board Member Rules and Requirements.**
- A. **Policy.** You may serve in an official capacity on advisory boards, committees, and similar organizations that provide non-binding strategic advice to the management of a non-governmental or non-Federal entity, if:
- (1) The advisory board does not have the authority to vote on management matters or bear legal fiduciary duty responsibilities;
  - (2) The advisory board is not organized as a separate legal entity (i.e., non-profit organization, limited liability corporation, limited partnership, etc.) to which an independent fiduciary duty or duty of loyalty is owed by advisory board members of the organization under state or local law;

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- (3) You comply with the ethics requirements below; and
  - (4) You receive the required Reclamation approval.
- B. Approval Process.** You must receive approval from your supervisor to serve on an advisory committee of a non-Federal organization in your official capacity. Prior to approval from your supervisor, you must consult with an ethics official to ensure there is no conflict of interest or other ethics concerns. (Refer to Exhibit 1 – Advisory Board Request for Approval.)
- C. Ethics Requirements.** When serving as a member of an advisory board in your official capacity:
- (1) You may:
    - (a) Accept travel expenses from the non-Federal organization only if you are on an official travel authorization and have received supervisor and ethics approval in advance via the DI-2000 to attend meetings or other similar events for the organization.
    - (b) Use official time in coordination with your supervisor to perform your officially assigned duties and responsibilities with the non-Federal organization. You do not have to take annual leave to conduct these duties.
    - (c) Use Government equipment, supplies, services, and staff to carry out officially assigned duties with non-Federal organizations.
    - (d) Use your official title as a reference, identifier, or to promote attendance at a public meeting or presentation when participating in an official capacity. You may not use your official title to imply endorsement of the non-Federal organization or its products or services, if any.
    - (e) Communicate verbally or in writing on behalf of Reclamation regarding Reclamation programs, operations, or activities if you comply with Reclamation requirements on official communications. If Reclamation has taken an official position or established official policy on an issue, your statements must be consistent with that position or policy. If Reclamation has not taken an official position or established an official policy on an issue, you may state your professional opinion if you include a disclaimer to that effect with your statement.

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- (2) You shall not:
- (a) Participate in any management activities of the non-Federal organization, including voting on organizational administrative matters or on organizational policy decisions, or rendering advice or making decisions regarding contracts or finances of the organization.
  - (b) Represent the interests of the non-Federal organization to any officer or employee of the executive or judicial branches of the Federal Government, consistent with 18 USC 203 and 205. This does not prohibit you from presenting information about the positions and views of the non-Federal organization to Reclamation as part of your official duties when serving on an advisory board.
  - (c) Receive a salary or any compensation or supplementation of your Federal salary from anyone other than the United States for performing your official duties. (18 USC 209).
  - (d) Accept gifts from a prohibited source or given because of your official position, unless an exception listed in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR 2635.204, applies.
  - (e) Use any appropriated funds, official time, or Government equipment to instigate or generate lobbying activity on any issue pending before or of interest to the Congress or an official of any government, consistent with 18 USC 1913.
  - (f) Be involved in an official capacity in any fundraising activities of the non-Federal organization. (5 CFR 2635.808).
  - (g) Disclose non-public information or allow its improper use to further the interests of the non-Federal organization. (5 CFR 2635.703).
  - (h) Use official Government postage, stationery, envelopes, or labels for anything other than official Government business. (18 USC 1719).

#### 5. *Liaison Rules and Requirements.*

- A. **Policy.** You may serve as a liaison to a non-Federal organization in your official capacity if you receive the appropriate Reclamation approval and comply with the ethics requirements below. Employees are encouraged to serve in a liaison role rather than serving as an officer or member of the board of directors for the organization.

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- B. **Approval Process.** To serve as a liaison, you must contact your ethics official to initiate a Liaison Agreement and receive supervisor approval. (Refer to Exhibit 2 – Liaison Agreement template.)
- C. **Ethics Requirements.** When serving as an official liaison in your official capacity:
- (1) You may:
    - (a) Accept travel expenses from the non-Federal organization only if you are on an official travel authorization and have received supervisor and Ethics Office approval in advance via the DI-2000 to attend meetings or other similar events for the organization.
    - (b) Use official time in coordination with your supervisor to perform your officially assigned duties and responsibilities with the non-Federal organization. You do not have to take annual leave to conduct these duties.
    - (c) Use Government equipment, supplies, services, and staff to carry out officially assigned duties with non-Federal organizations.
    - (d) Use your official title as a reference, identifier, or to promote attendance at a public meeting or presentation when participating in an official capacity. You may not use your official title to imply endorsement of the non-Federal organization or its products or services, if any.
    - (e) Communicate verbally or in writing on behalf of Reclamation regarding Reclamation programs, operations, or activities if you comply with Reclamation requirements on official communications. If Reclamation has taken an official position or established official policy on an issue, your statements must be consistent with that position or policy. If Reclamation has not taken an official position or established an official policy on an issue, you may state your professional opinion if you include a disclaimer to that effect with your statement.
  - (2) You shall not:
    - (a) Participate in any management activities of the non-Federal organization, including voting on organizational administrative matters or on organizational policy decisions, or rendering advice or making decisions regarding contracts or finances of the organization.
    - (b) Represent the interests of the non-Federal organization to any officer or employee of the executive or judicial branches of the Federal Government,

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consistent with 18 USC 203 and 205. This does not prohibit you from presenting information about the positions and views of the non-Federal organization to Reclamation when approved as part of your official duties.

- (c) Receive a salary or any compensation or supplementation of your Federal salary from anyone other than the United States for performing your official duties. (18 USC 209).
- (d) Accept gifts from a prohibited source or given because of your official position, unless an exception listed in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR 2635.204, applies.
- (e) Use any appropriated funds, official time, or Government equipment to instigate or generate lobbying activity on any issue pending before or of interest to the Congress or an official of any government, consistent with 18 USC 1913.
- (f) Be involved in an official capacity in any fundraising activities of the non-Federal organization. (5 CFR 2635.808).
- (g) Disclose non-public information or allow its improper use to further the interests of the non-Federal organization. (5 CFR 2635.703).
- (h) Use official Government postage, stationery, envelopes, or labels for anything other than official Government business. (18 USC 1719).

#### 6. ***Member of a Board of Directors, Trustee, or Similar Position for a Non-Profit Organization Rules and Requirements***

- A. **Policy.** You may serve as an officer, member of a board of directors, trustee, or in a similar position with a non-profit organization in your official capacity if you receive a waiver from the Commissioner and comply with the ethics requirements below and as outlined in the Departmental Manual (DM) (305 DM 3 – Scientific Integrity Procedures Handbook). Bureau of Reclamation employees may not serve as a director, officer, trustee or in any other similar position for a for-profit entity. The Office of Government Ethics (OGE) regulation, 5 CFR 2640.203(m), permits Federal employees, subject to approval by their agencies, to serve as officers, directors, and trustees of non-profit organizations in their official capacity. The Commissioner must approve your participation in writing before you begin serving in that role. Your service as an officer, director, or trustee (or in a similar position) of a non-profit organization may create an actual or apparent conflict of interest or may affect your ability to act impartially. If you hold this position, you must avoid any activity that may create the potential for preferential treatment, improper endorsement, inappropriate use of official

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time, actual or potential loss of impartiality, disclosure of non-public information, or any situation that would adversely affect the public's confidence in Reclamation.

- B. Approval Process.** You must receive a waiver from Commissioner and comply with the requirements in 305 DM 3, Scientific Integrity Procedures Handbook and must complete the following documents. The entire authorization process may take up to 3 months.
- (1) **Complete Worksheet.** You must fill out the Outside Board Service Worksheet and contact your ethics official to begin the authorization process. (*Refer to Exhibit 3 – Outside Board Service Worksheet.*)
  - (2) **Prepare Documents.** Your ethics official will assist with the preparation of the documents described below:
    - (a) A Memorandum of Understanding (MOU) signed with the non-profit organization (an MOU for board membership or similar position must be signed by a Reclamation Senior Executive),
      - (i) The MOU must explain that your primary duty of loyalty is to Reclamation if the interests of the Government conflict with the interests of the non-profit organization.
      - (ii) The MOU must be signed by a representative of the non-profit organization and a Reclamation Directorate member who has the authority to sign on behalf of Reclamation.
    - (b) A recusal letter signed by you and your supervisor documenting allowable and prohibited activities while serving in this role. For a list of ethics responsibilities, see paragraph 3a-6.3, and
    - (c) An Authorization of Assignment signed by the Commissioner. The Ethics Office will only process Authorizations of Assignment for service with organizations that have current non-profit status with the Internal Revenue Service.
  - (3) **Supervisory Chain Endorsement.** Once all documents have been prepared, your supervisory chain up to and including your first level Senior Executive must review and provide their endorsement of your request to serve as a trustee, member of a board of director, or similar position. The endorsements will become part of the request package formally submitted to the Commissioner for approval.



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- (4) **Office of the Solicitor Review.** Before the Commissioner approves your service, the ethics official is required to provide the documents above to the Departmental Ethics Office within the Office of the Solicitor for review. The Departmental Ethics Office will apply the following criteria when recommending whether the Commissioner should approve your service as a board member, officer, trustee, or other similar position:
- (a) **Number of Departmental employees serving on the same board in an official capacity.** If more than 49% of the board's members (including your participation) would consist of Departmental employees, the Departmental Ethics Office will reject your request. If the board represents a local chapter of a national organization, the percentage requirement applies only to the local board.
  - (b) **Reclamation funding to the non-Federal organization.** If the non-Federal organization has a contract or cooperative agreement with Reclamation, the Departmental Ethics Office may reject your request. Funding from Reclamation to the non-Federal organization for routine purposes (e.g., co-sponsored events, conference fees, or printing costs) will not prevent the request from being approved.
  - (c) **Other.** The Departmental Ethics Office will:
    - (i) Check the organization's website to ensure that other Reclamation employees are not serving on the board in an unauthorized status. If employees are serving in an unauthorized status, the situation must be mitigated before the Departmental Ethics Office will recommend approval for the employee requesting to serve;
    - (ii) Check that Reclamation employees serving in their personal capacity on the board are not using their official contact information for personal purposes. If there are any, the situation must be mitigated before the Departmental Ethics Office will recommend approval for the employee requesting to serve; and
    - (iii) Determine if there are any other legal or policy issues that require disapproval.
- (5) **Commissioner (Reclamation Ethics Counselor) Approval.** After clearance through the Departmental Ethics Office, the ethics official will submit the Authorization of Assignment to the Commissioner for final approval. Once approved, you may begin serving in this role.

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- C. **Ethics Requirements.** When serving in your official capacity as an officer, member of a board of directors, trustee, or in a similar position with a non-profit organization:
- (1) You may:
    - (a) Accept travel expenses from the non-Federal organization only if you are on an official travel authorization and have received supervisor and Ethics Office approval in advance via the DI-2000 to attend meetings or other similar events for the organization.
    - (b) Use official time in coordination with your supervisor to perform your officially assigned duties and responsibilities with the non-Federal organization. You do not have to take annual leave to conduct these duties.
    - (c) Use Government equipment, supplies, services, and staff to carry out officially assigned duties with non-Federal organizations.
    - (d) Use your official title as a reference, identifier, or to promote attendance at a public meeting or presentation when participating in an official capacity. You may not use your official title to imply endorsement of the non-Federal organization or its products or services, if any.
    - (e) Communicate verbally or in writing on behalf of Reclamation regarding Reclamation programs, operations, or activities if you comply with Reclamation requirements on official communications. If Reclamation has taken an official position or established official policy on an issue, your statements must be consistent with that position or policy. If Reclamation has not taken an official position or established an official policy on an issue, you may state your professional opinion if you include a disclaimer to that effect with your statement.
  - (2) You shall not:
    - (a) Represent the interests of the non-Federal organization to any officer or employee of the executive or judicial branches of the Federal Government, consistent with 18 USC 203 and 205. This does not prohibit you when serving on an advisory board from presenting information about the positions and views of the non-Federal organization to Reclamation as part of your official duties.
    - (b) Receive a salary or any compensation or supplementation of your Federal salary from anyone other than the United States for performing your official duties. (18 USC 209).

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- (c) Accept gifts from a prohibited source or given because of your official position, unless an exception listed in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR 2635.204, applies.
- (d) Use any appropriated funds, official time, or Government equipment to instigate or generate lobbying activity on any issue pending before or of interest to the Congress or an official of any government, consistent with 18 USC 1913.
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- (f) Disclose non-public information or allow its improper use to further the interests of the non-Federal organization. (5 CFR 2635.703).
- (g) Use official Government postage, stationery, envelopes, or labels for anything other than official Government business. (18 USC 1719).

#### 7. Official Participation in Non-Federal Entities Examples.

- A. Example 1: Employee serves as a liaison in official capacity to Association of State Dam Safety Officials (ASDSO) and is attending ASDSO's annual conference. Reclamation is paying the cost of registration for the conference, and there is an option to register for a "social outing" with a separate fee. The "social outing" will not normally be considered part of the employee's official duties and should not be paid for with government funds unless specifically authorized by the appropriate supervisor who determines there is an official purpose for the "social outing." If the "social outing" is included in the regular registration fee and not separable then government funds may be used.
- B. Example 2: Employee serves in official capacity with the American Society of Civil Engineers (ASCE) on the Concrete Structures Committee. The local Younger Members group of ASCE is having a networking event during non-duty hours. Employee believes that attending the networking event will help them to better understand their role on the Concrete Structures Committee. Employee may use official time and resources only for duties related to their responsibilities as a committee member on the Concrete Structures Committee and not for other entities who happen to be a part of ASCE.
- C. Example 3: Employee serves as a liaison in official capacity to Idaho Water Users Association (IWUA). IWUA has asked all members to reach out to their contacts to solicit sponsorships for IWUA's annual conference. Employee is allowed to assist in the promoting of a professional conference but may not participate in any of IWUA's

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fundraising activities. Fundraising includes any event where any portion of the cost of attendance may be taken as a charitable tax deduction. Employee may also not directly solicit either a subordinate or any prohibited source either in an official or non-official capacity.