

# Reclamation Manual

## Policy

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<b>Subject:</b>	Wetlands Mitigation and Enhancement
<b>Purpose:</b>	To establish policy for the Bureau of Reclamation to use in determining appropriate mitigation for all actions affecting wetlands. The benefit of this Policy is the consistent management of activities for protecting, preserving, and enhancing wetlands.
<b>Authority:</b>	Clean Water Act (P.L. 92-500, as amended; 86 Stat 816; 33 USC 1251, et seq.) (CWA); National Environmental Policy Act (P.L. 91-190, as amended; 83 Stat. 852; 42 U.S.C. 4321 et seq.) (NEPA) and their implementing regulations; Executive Order 11990 (May 24, 1977), Protection of Wetlands; 520 DM 1, Floodplain Management and Wetlands Protection Policy and Responsibilities; and 520 DM 2 Floodplain Management and Wetlands Protection Program Requirements.
<b>Approving Official:</b>	Commissioner
<b>Contact:</b>	Mission Assurance and Protection Organization (MAPO) (84-53000)

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1. **Introduction.** The purpose of this Policy is to protect, restore, and enhance wetlands and ensure no overall net loss of wetlands.
2. **Applicability.** This Policy applies to all Reclamation offices that have the responsibility of ensuring proper wetlands mitigation and enhancement.
3. **Policy.** Reclamation's Policy is to ensure proper wetlands mitigation and enhancement as required by statute, associated regulations and DM requirements.
4. **Responsibilities and Requirements.**
  - A. **Mitigation.** Reclamation will, when practicable and appropriate, mitigate for existing wetland functions and values adversely affected by its activities, including but not limited to construction, water conservation, loans and grants, operation and maintenance (O&M) activities, and special programs. Mitigation may include, but is not limited to restoration, creation, improvement, the use of wetland mitigation banking, and in special circumstances, preservation of wetlands. Identification of the most appropriate and practicable mitigation alternative should be made on a case-by-case basis; however, when appropriate and practicable, in-kind mitigation via wetland restoration is generally preferred. The likelihood of successful wetland restoration and creation measures will be considered when determining appropriate mitigation needs, monitoring responsibilities, and performance assurances. When using mitigation banking as an option, Reclamation will follow *the Federal Guidelines on the Establishment, Use, and Operation of Mitigation Banks*, 60 Fed. Reg. 58605 (November 28, 1995) and regulations on *Compensatory Mitigation for Losses of Aquatic Resources*, 73 FR 19594 (April 10, 2008).

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- (1) The first priority is to use all appropriate and practicable means to avoid adverse impacts. In the event adverse impacts cannot be avoided, all appropriate and practicable means will be used to minimize adverse impacts. After all appropriate and practicable efforts to avoid and minimize effects have been undertaken, appropriate and practicable mitigation will be determined.
- (2) Reclamation will develop appropriate mitigation strategies in accordance with applicable laws. In evaluating whether or not mitigation is appropriate and practicable, Reclamation will consider all applicable authorities, as well as economic, environmental, and other pertinent factors. These considerations should be reflected in applicable documents for compliance with the CWA and/or NEPA. Reclamation will then consider 40 C.F.R. 230, *Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material* and the Memorandum of Agreement between the Environmental Protection Agency and Department of the Army, dated February 6, 1990<sup>1</sup>. Reclamation will assess the quality and quantity of the wetland affected; the impact on the functions and values of the wetland; and the cost, appropriateness, feasibility, and practicability of mitigation alternatives.
  - (a) Impact assessment will consider all aspects of identified existing wetland functions, as well as the duration of the effect and its direct, indirect, and cumulative effects. The assessment may also consider the effects to the wetland over the O&M cycle, including the beneficial aspects created by or between O&M events and the duration and extent of adverse effects.
  - (b) Wetland functions should be determined by regional functional assessment models (i.e., those using a hydrogeomorphic approach currently being developed by the U.S. Corps of Engineers (USACE) and the Natural Resources Conservation Service. If a regional functional assessment model is not yet available or not appropriate, other commonly accepted assessment models or techniques (such as Habitat Evaluation Procedure or Wetland Evaluation Technique II) may be used to identify compensation requirements and alternatives.
- (3) For actions requiring a CWA Section 404 permit for placement of dredged or fill material into waters of the United States (which includes wetlands), the USACE (or a delegated State agency) is ultimately responsible for final decisions regarding compliance, including any mitigation requirements that may stem from compliance. For projects on private lands that require a permit from the USACE and where Reclamation may also have some review or approval capacity, Reclamation will not require additional mitigation beyond what is otherwise required by the USACE. In those situations where Reclamation is seeking an

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<sup>1</sup> Portions of this MOA that concern the type and location of compensatory mitigation are superseded by the 2008 compensatory mitigation rulemaking.

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exemption from the Section 404 permit process pursuant to Section 404(r) of the CWA, Reclamation will include in its environmental impact statement a Section 404(b)(1) evaluation that reflects the appropriate and practicable mitigation commitments Reclamation is prepared to make.

- B. **Enhancement.** Reclamation will seek opportunities to participate in enhancement of wetland functions when its actions affect wetlands in the course of carrying out its responsibilities for acquiring, managing, and disposing of Federal lands and facilities; providing federally undertaken, financed, or assisted construction and improvements; or conducting Federal activities and programs affecting land use or water management. In this context, enhancement refers to measures above and beyond Reclamation's mitigation requirements or commitments.
  - C. **Partnerships.** Reclamation will seek partnerships with any interested parties to defray costs of enhancement measures, with a goal of 50-percent cost sharing (or otherwise consistent with Reclamation law and policy) consisting of cash or other contributions.
  - D. **Coordination.** Reclamation will consult appropriate agencies on functional assessment or evaluation and delineation methodologies, project impacts, and mitigation plans including any necessary monitoring. Due to the distinct types of wetland functions, appropriate agencies include, but are not necessarily limited to, Federal, State, and/or tribal agencies with jurisdiction by law or special expertise in ground water, water quality, floodplain management, and fish and wildlife habitat.
  - E. **Exceptional Situations.** There may be a situation when the requirements of this Policy are not appropriate. In such cases, an explanation of the divergence from this Policy will be documented and submitted to the Director, MAPO (Attention: 84-53000), to provide justification for the action(s) taken and the basis for any needed future revisions to the directives.
5. **Definitions.** For the purpose of this document, the following terms and definitions apply.
- A. **Mitigation.** Follows the mitigation hierarchy defined at 40 CFR section 1508.1(s), as follows:
    - (1) Avoiding the impact altogether by not taking a certain action or parts of an action.
    - (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
    - (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
    - (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

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- (5) Compensating for the impact by replacing or providing substitute resources or environments.
- B. **Enhancement.** The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area. (33 CFR section 332.2)
6. **Review Period.** The originating office will review this release every 4 years.

## RECLAMATION MANUAL TRANSMITTAL SHEET

Effective Date: \_\_\_\_\_

Release No. \_\_\_\_\_

Ensure all employees needing this information are provided a copy of this release.

### Reclamation Manual Release Number and Subject

### Summary of Changes

NOTE: This Reclamation Manual release applies to all Reclamation employees. When an exclusive bargaining unit exists, changes to this release may be subject to the provisions of collective bargaining agreements.

### Filing instructions

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Filed by: \_\_\_\_\_

Date: \_\_\_\_\_