

# Reclamation Manual

## Directives and Standards

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- Subject:** Cultural Resources Management (CRM)
- Purpose:** To ensure the Bureau of Reclamation manages its cultural resources as required by statutes and in a spirit of stewardship; to clarify Reclamation's roles and responsibilities related to cultural resources and CRM; and to provide direction for consistent implementation of Reclamation's CRM responsibilities. The benefit of this Directive and Standard (D&S) is Reclamation's increased accountability for cultural resources including archaeological sites, historic buildings and structures, museum property, and Native American human remains and cultural items, through improved management processes and procedures, application of effective historic preservation practices, compliance with Federal historic preservation statutes and regulations, and increased public use of Reclamation's historic properties, as appropriate.
- Authority:** Antiquities Act of 1906 (16 U.S.C. 431-433); Historic Sites Act of 1935 (16 U.S.C. 461); Reservoir Salvage Act of 1960 (16 U.S.C. 469-469c-2); National Historic Preservation Act of 1966 (NHPA), as amended (54 U.S.C § 300101 et seq.); National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321); Archeological and Historic Preservation Act of 1974 (AHPA), as amended (16 U.S.C. 469-469c-2); American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996); Archaeological Resources Protection Act of 1979 (ARPA), as amended (16 U.S.C. 470aa-mm); Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) (25 U.S.C. 3001 et seq.); Paleontological Resources Preservation Act (PRPA) (16 U.S.C. 470aaa-aaa-11); National Register of Historic Places (National Register) (36 CFR part 60); Determinations of Eligibility for Inclusions in the National Register of Historic Places (36 CFR part 63); Curation of Federally Owned and Administered Archaeological Collections (36 CFR part 79); Protection of Historic Properties (36 CFR part 800); Preservation of American Antiquities (43 CFR part 3); Protection of Archaeological Resources (43 CFR part 7); NAGPRA Regulations (43 CFR part 10); Protection of American Indian Sacred Sites (Executive Order 13007); Consultation and Coordination with Indian Tribal Governments (Executive Order 13175); Preserve America (Executive Order 13287); Federal Real Property Asset Management (Executive Order 13327); Managing Museum Property, Departmental Manual (DM) Part 411; Protection of Properties on the National Register of Historic Places, 426 DM; Preservation of Historic Property, 519 DM; Department of the Interior Policy on Consultation with Indian Tribes (Secretarial Order 3317); and Archeology and Historic Preservation: Secretary of the Interior's (Secretary) Standards and Guidelines (48 FR 44716).

# Reclamation Manual

## Directives and Standards

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**Approving Official:** Director, Policy and Administration (Policy)

**Contact:** Land Resources Division, 84-53000

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1. **Introduction.** Reclamation administers and controls many cultural resources on behalf of the United States Government for the benefit and use of the public. Beginning in 1906, numerous Federal statutes have been enacted to address the preservation and protection of Federally-owned cultural resources, including objects and artifacts removed from Federal land. Congress has found that protection of America's heritage, as represented by its cultural resources, is in the public interest and that this legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits should be maintained and enriched for present and future generations. Congress also declared it is the policy of the Federal government to provide leadership in the preservation and protection of America's cultural resources and to administer cultural resources in a spirit of stewardship. Reclamation's responsibilities and requirements to effectively manage its cultural resources are manifest in a number of statutes and regulations that include required actions for preservation and protection of cultural resources. This D&S provides the direction and clarification necessary for Reclamation to comply with its legal obligations and administer its CRM Program effectively and efficiently.
2. **Applicability.** This D&S applies to all Reclamation employees who, as a result of their official duties and actions, have the potential to affect, either negatively or positively, cultural resources.
3. **Definitions.** See Appendix A for a list of abbreviations and acronyms, and Appendix B for a list of definitions used in this D&S.
4. **Responsibilities.** Reclamation shall manage and protect cultural resources in keeping with its mission "to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public." Reclamation implements its CRM Program in a positive manner that fulfills the spirit of stewardship as well as requirements in statutes, regulations, policies, and D&S.
  - A. **Commissioner.** The Commissioner's responsibilities are specified in Reclamation Manual (RM) Policy, *Cultural Resources Management*, LND P01.
  - B. **Federal Preservation Officer (FPO).** The FPO is responsible for oversight of Reclamation's CRM Program. This includes the development of cultural resources policy, D&S, and guidance, as well as providing advice, assistance, and oversight regarding Reclamation's CRM Program. Responsibilities include, but are not limited to the following items.

# Reclamation Manual

## Directives and Standards

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- (1) Approves and submits nominations to the National Register (36 CFR 60.9(d)) and National Historic Landmark (NHL) Program, and approves the removal of historic properties from the National Register (36 CFR 60.15(c)).
- (2) Conducts program reviews of regional and area offices to monitor compliance with CRM statutes, regulations, policies, and D&S. Program reviews may be formal internal control reviews, as per the Federal Managers Financial Integrity Act (31 U.S.C. 3512) and Office of Management and Budget Circular A-123, or other format as is practicable and/or necessary.
- (3) Reviews and comments on regional requests to waive the one per centum of construction expenditure limitation placed on mitigative data recovery studies (AHPA section 7), provides a recommendation to the Commissioner, and prepares suitable documentation requesting approval by the Department of the Interior to waive the funding limitation.
- (4) Consults with the Advisory Council on Historic Preservation (ACHP) when any NHPA section 106 (section 106) consultation is terminated by the ACHP and the ACHP decides to consult with the FPO (36 CFR 800.7(a)(4)).
- (5) Becomes involved in complex, sensitive, or precedent setting CRM projects or programs when invited by a regional or area office, or at his/her discretion. Such involvement includes, but is not limited to, review and comment on: activities, plans, section 106 actions and documents, termination of consultation with a State Historic Preservation Officer (SHPO), research designs, research reports, National Register nominations, NAGPRA affiliation documents, ARPA actions and documents, environmental impact statements (EIS), and records of decision (ROD). When the FPO becomes involved in a region's CRM program or activity, the FPO will provide policy and/or peer review and scientific integrity commentary, as well as other compliance recommendations and actions as are necessary to ensure adherence to statutes, regulations, policies, and D&S.
- (6) Reviews all real property transfer and demolition actions involving surplus or excess historic properties and recommends to the Commissioner or regional director, as appropriate, whether or not to transfer or demolish a historic property.
- (7) Evaluates whether material remains are of archaeological interest and makes a recommendation to the appropriate Federal land manager (43 CFR 7.33(c)(2)).
- (8) Coordinates with the Departmental Consulting Archeologist (DCA) to provide notifications, information, or other actions, pursuant to: 43 CFR 7.33(f) in the event of a dispute of a determination of loss or absence of archaeological interest; 43 CFR 7.36(d) for permit reviews and disputes; 519 DM 2.6D in emergencies; and in association with other concerns identified by the FPO, a Federal land manager, or regional archaeologist. The FPO may determine that, for specific

# Reclamation Manual

## Directives and Standards

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cases, the region will take the lead for DCA coordination, although reserving the ability to re-assume the lead if the FPO determines it to be necessary.

- (9) Becomes involved in emergency permitting, permit grievance resolution, or civil or criminal case preparation, when agreement is not reached between a regional CRM professional and the responsible Federal land manager, or when there is likely to be significant controversy arising from, or precedent set by, decisions or actions.
  - (10) Reviews all museum property deaccessions and forwards a recommendation whether or not to deaccession to the accountable officer.
  - (11) Develops and maintains Reclamation-wide CRM Program websites in coordination with regions.
  - (12) Reviews and comments on all official regional and area office CRM Program implementation statements prior to their approval. The FPO shall provide comment to the regional director or area manager, as appropriate, within 30 days of receipt of the proposed implementation statement.
  - (13) Coordinates compliance actions when an emergency is declared that affects Reclamation historic properties.
    - (a) Consult with the regional archaeologist and prepare a report within 6 days of the declared emergency, for the Commissioner's use in notifying the Secretary when the waiver of NHPA section 110 (section 110) is applied as prescribed in 36 CFR 78.4.
    - (b) Notify the ACHP and the Secretary immediately upon receiving knowledge that a NHL will be adversely affected by the declared emergency.
    - (c) Consult with the regional archaeologist and inform the ACHP, as soon as is practicable, of actions undertaken to protect or preserve historic properties during an emergency as per 36 CFR 800.12.(b)(2) and 36 CFR 800.12(d).
    - (d) Within 30 days after conclusion of the emergency event, chair a panel that will undertake a review of the effectiveness of the CRM activities conducted during the emergency, and prepare a report documenting how the CRM activities functioned in protecting historic properties during the emergency.
- C. **Regional Director.** Regional director responsibilities are specified in LND P01. In a memorandum dated March 24, 2010, entitled "Interim Delegation of Authority – Bureau of Reclamation's Cultural Resources Management (CRM) Program," the

# Reclamation Manual

## Directives and Standards

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Commissioner delegated the CRM Program to regional directors and authorized regional directors to redelegate CRM Program responsibilities to area managers; this delegation cannot be further delegated.

- D. **Area Managers.** Area managers have the responsibilities for the management of a CRM Program only when so delegated that authority by the regional director. Area managers are responsible for complying with cultural resources statutes, regulations, policies, and D&S. Area managers will utilize the services of the appropriate CRM professional to ensure that area office activities, both current and proposed, are carried out in compliance with this D&S.
- E. **Regional Archaeologist.** Regional archaeologists are responsible for development and oversight of a region-wide CRM Program. Program oversight responsibilities shall include, but are not limited to, the following items:
- (1) develops regional CRM Program implementation statements;
  - (2) represents the region on the CRM Working Group and any other appropriate team established by Policy;
  - (3) reviews National Register and NHL nominations and ensures they are forwarded to the FPO;
  - (4) reviews and comments on all complex, sensitive, or precedent setting CRM projects and activities performed within the region, including, but not limited to, research designs; data recovery methodologies; contract scopes of work; NEPA documents; planning and appraisal studies; feasibility studies; research reports; programmatic agreements; Historic American Building Survey, Historic American Engineering Record, and Historic American Landscape Survey documentation; historic property disposals; deaccessions of museum property; NAGPRA excavation, treatment, and disposition plans; NAGPRA affiliation documents; and ARPA violations and permit decision appeals;
  - (5) provides review and oversight of the CRM Program component of all property transfers involving excess land and property that may contain or are historic properties;
  - (6) implements the ARPA responsibilities as per RM D&S, *Administration of the Archaeological Resources Protection Act (ARPA) on Reclamation Land*, LND 02-04;
  - (7) prepares CRM Program consolidated reports and data calls, and submits them to the FPO;

# Reclamation Manual

## Directives and Standards

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- (8) implements other mandatory or appropriate actions to comply with this D&S and further Reclamation's CRM Program; and
- (9) coordinates regional responses on NHPA section 106 and section 110 actions that take place as a result of a declared emergency.

**F. Area Archaeologists and CRM Professionals.** Area archaeologists and CRM professionals are Reclamation employees who assist the regional director or area manager as appropriate, with CRM Program activities, such as coordinating the area office CRM Program; functioning within the broader regional CRM Program; conducting consultations pursuant to compliance with 36 CFR part 800; drafting area office CRM Program implementation statements; defining undertakings; defining Areas of Potential Effect (APE); identifying the type of required CRM inventory; evaluating cultural resources located within an APE; completing determinations of eligibility of cultural resources for listing in the National Register; recommending finding of effects on historic properties for undertakings; developing treatments; recommending issuance of ARPA permits and managing issued permits; participating in ARPA criminal and civil investigations; conducting damage assessments of archaeological and paleontological resources that have been subject to ARPA or PRPA violations; recommending issuance of PRPA permits; conducting activities supporting NAGPRA compliance; conducting activities supporting museum property management; and performing other mandatory or appropriate action to comply with this D&S and further Reclamation's CRM Program.

**5. NHPA (16 U.S.C. 470 et seq).** NHPA is the historic preservation statute that establishes Reclamation's CRM responsibilities. Within NHPA, section 106 addresses the compliance aspects, while sections 110 and 111 address resource management responsibilities.

**A. Section 106 of the NHPA (16 U.S.C. 470f).** Section 106 requires Reclamation to take into account the effect of its undertakings on historic properties. Reclamation CRM professionals are assigned the task of initiating, managing, and completing the section 106 compliance process as defined and clarified in 36 CFR part 800. The section 106 compliance process commonly concludes with a concurrence letter, or with a formal memorandum of agreement or programmatic agreement. In negotiating these documents, Reclamation shall not forfeit the rights and inherently Federal obligations assigned to the agency official by NHPA or 36 CFR part 800.

- (1) **Responsibilities for Reclamation Title or Operation and Maintenance (O&M) Transfers.** The transfer of a historic property to a non-Federal entity is an adverse effect unless there are adequate conditions or restrictions to ensure the preservation of the property's historic values and features (36 CFR 800.5). Prior to a transfer, Reclamation shall comply with the requirements in section 111 of NHPA to ensure that potential other uses of historic properties are considered.

# Reclamation Manual

## Directives and Standards

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- (a) If Reclamation transfers jurisdiction of its land or facilities to another Federal agency, Reclamation shall ensure, unless otherwise specified by statute or prohibited by prior agreement, CRM responsibilities transfer to the agency.
  - (b) If Reclamation transfers title of Reclamation land or facilities to a non-Federal entity, Reclamation shall, prior to transfer, comply with section 106 and other applicable CRM related statutes, regulations, and policies.
  - (c) If Reclamation retains title but transfers administration of Reclamation land or facilities to a non-Federal entity (e.g., tribe, state, county, or irrigation district), Reclamation remains accountable for cultural resources but may assign certain tasks in cultural resources compliance and management to the transfer recipient. However, Reclamation shall retain responsibility for conducting section 106 consultations. Prior to transfer, the responsible office shall follow requirements of RM D&S, *Operation and Maintenance (O&M) of Project Works that are Historic Properties*, LND 02-03.
  - (d) If Reclamation transfers title of Reclamation land or facilities to a non-Federal entity, Reclamation shall not transfer Reclamation museum property or its associated records. These remain the property of Reclamation.
- (2) **Treatment of Adverse Effects.** Reclamation's goal is to preserve historic properties in place to the fullest extent possible and, therefore, avoid adverse effects to those properties. However, after evaluation of all factors pursuant to an undertaking, Reclamation may determine that the public benefit from proceeding with the undertaking outweighs adverse effects to historic properties. When adverse effects cannot be avoided, Reclamation will seek measures to reduce or minimize the effects. Treatment measures will be developed in consultation with the SHPO(s), tribal historic preservation officer (THPO(s)), the ACHP, Indian tribes, and other interested parties or persons, as appropriate, and will be consistent with the nature and values of the historic property affected. NHLs require special consideration, including, to the maximum extent possible, taking action as may be necessary to avoid or minimize harm to such NHL, and to consult with the ACHP when an NHL will be adversely affected by an undertaking (section 110(f) of NHPA).
- (3) **Intentional Violations.** Reclamation will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally and significantly adversely affected a historic property, or having legal power to prevent it, allowed such significant adverse effect to occur. However, the one exception to this requirement is where

# Reclamation Manual

## Directives and Standards

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Reclamation, after consultation with the ACHP, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant (section 110(k) of NHPA).

- B. Post-Review Discoveries.** If historic properties, or potential historic properties, are discovered or are identified after completion of the section 106 process, Reclamation shall either comply with requirements stipulated in a memorandum of agreement or programmatic agreement as appropriate, or if such does not exist, shall make reasonable efforts to avoid, minimize, or mitigate adverse effects to such properties (36 CFR 800.13(b)). All contracts and authorizations issued by Reclamation to carry out activities on Reclamation or tribal land, including, leases, permits, or notices to proceed, must include a requirement for the holder of the authorization to notify the appropriate Reclamation official (e.g., contracting officer, area manager, or regional director) and, when on tribal land, the appropriate tribal official, immediately upon the discovery of historic properties, or potential historic properties, so they may be assessed and a National Register eligibility determination made by a CRM professional.
- C. Section 110 of NHPA (16 U.S.C. 470h-2k).** Section 110 requires Reclamation to assume responsibility for the historic properties which it owns or controls.
- (1) To the greatest extent practicable, Reclamation shall proactively preserve and protect the historic properties it owns or controls.
  - (2) To the greatest extent practicable, Reclamation shall utilize historic properties that are available for its use for authorized purposes.
  - (3) Reclamation shall establish a historic preservation program for the historic properties it owns or controls.
    - (a) Regional offices and area offices, as appropriate, shall develop plans to identify, evaluate, and nominate historic properties under its jurisdiction or control to the National Register pursuant to NHPA section 110(a)(2), ARPA section 14, and 519 DM 1.4D.(4). These plans shall be developed in cooperation with the SHPO, THPO as appropriate, and other appropriate entities, and shall be reviewed and updated every 5 years. Copies of the approved plan shall be provided to the FPO.
    - (b) Regional offices and area offices shall manage and maintain their historic properties in a way that considers the preservation of their historic, archaeological, architectural, and cultural values.
    - (c) Reclamation shall afford the Secretary the opportunity to review and approve plans for the transfer of surplus Reclamation-owned historic properties pursuant to section 519 DM 1.4D.(9).



# Reclamation Manual

## Directives and Standards

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- (4) The results of survey and data recovery projects must be made available, in compliance with confidentiality requirements, to the public and comply with Reclamation's standards for scientific integrity (see RM Policy, *Scientific Integrity*, CMP P13).

**D. Section 111 of the NHPA (16 U.S.C. 470h-3).** Section 111 requires that Reclamation, where practicable, establish and implement alternative uses for historic buildings or structures it owns but no longer needs for current or projected Reclamation purposes.

- (1) Responsible offices shall involve a CRM professional in all activities that lead to identifying historic buildings or structures for disposal, transfer, lease, deconstruction, or demolition, and when determining management options, including when conducting property surveys, annual facility condition assessments, facility comprehensive condition assessments, asset priority index assessments, and historic property designation assessments. Involvement shall be early in the planning stage, before alternatives have been defined or decisions reached.
- (2) A CRM professional shall complete section 106 compliance for all property actions that constitute an undertaking.
- (3) A CRM professional shall participate in the process to analyze viable disposition alternatives and select disposition methods for excess historic properties, ensuring that the analyses include exploration of potential alternative uses that would preserve a historic property.
- (4) A CRM professional shall participate in the process to define terms and conditions for leases, exchanges, or transfers that would ensure long-term preservation of the historic property and the values that make the property historic.
- (5) When a historic property is identified as a candidate for deconstruction, demolition, or any other manner of disposal, and prior to a determination that an asset is excess, Reclamation shall identify alternative uses that could ensure the long-term preservation of the historic property and of the values that make the property historic. Alternative use consideration shall consist of a detailed analysis of identified alternatives using the following hierarchical order of precedence:
  - (a) options for internal use by other Reclamation offices;
  - (b) options for acquisition and use by other Federal agencies;
  - (c) options for the exchange of properties with other Federal agencies;
  - (d) options for the lease of the property to a non-Federal entity; and

# Reclamation Manual

## Directives and Standards

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- (e) when no other option proves to be feasible, disposal or demolition after compliance with section 106 of NHPA.
  - (6) When Reclamation transfers a historic property to the General Services Administration (GSA), in accordance with 41 CFR part 102-75, *Real Property Disposal*, and 41 CFR part 102-78, *Historic Preservation*, Reclamation shall complete its NHPA section 110 responsibilities and notify GSA of National Register eligible or listed properties. Following transfer of the historic property, GSA becomes responsible for section 106 compliance.
  - (7) The FPO shall be notified by the regional director of the intent to demolish or to exchange or otherwise transfer an historic property out of Federal ownership. The FPO and regional archaeologist shall be provided the opportunity to review and comment prior to formation of a final regional management decision. If demolition or transfer to a non-Federal entity is the region's preferred alternative, the FPO shall forward a recommendation, either supporting or opposing demolition or transfer, to the Commissioner or designee. The Commissioner or designee shall make a final decision as to the proposed action.
6. **ARPA (16 U.S.C. 470aa-mm).** ARPA regulates the removal of archaeological resources from Reclamation land using a permit system; prohibits trafficking of items taken from Reclamation land; defines criminal activities; identifies criminal penalties, including fines and imprisonment; gives the Federal land manager the authority to assess civil penalties for violations, including for incidental damage to archaeological resources; and requires the establishment of public education and outreach programs. Requirements and activities related to ARPA are addressed in Paragraph 13 of this D&S and in LND 02-04.
7. **AHPA (16 U.S.C. 469-469c-2).** AHPA provides for the preservation of historical and archaeological data which otherwise might be irreparably lost or destroyed as a result of alterations of the terrain caused by any authorized Federal construction project or federally-licensed activity or program.
- A. Reclamation shall conduct cultural resource inventories, evaluations, data recovery treatment actions, and preservation, including analysis and publication of CRM actions and data, under the following circumstances:
    - (1) when there is a Reclamation construction or O&M project or activity;
    - (2) when Reclamation provides financial assistance for any authorized Federal construction project or federally-licensed activity or program by loan, grant, or otherwise to a private person, association, or other public entity; or
    - (3) when a Reclamation or Reclamation-assisted or licensed project, activity, or program might damage cultural resources.

# Reclamation Manual

## Directives and Standards

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- B. Reclamation may charge Federal licensees and permittees reasonable costs for identification, surveys, evaluation, data recovery, and curation services carried out with respect to historic properties within project areas as a condition to the issuance of such license or permit (see RM D&S, *Land Use Authorizations*, LND 08-01).
  - C. Reclamation may utilize up to one per centum of the total authorized funding amount for a construction project for which it is responsible, for the purposes of mitigative data recovery activities including non-planning surveys, excavation, analysis, curation, and publication, except that the one per centum limitation shall not apply in the event that the project involves \$50,000 or less. Such costs shall be considered non-reimbursable project costs. If additional funds are required, as allowed for in section 208(3) of AHPA, documentation for the funding request shall be conducted as follows:
    - (1) prepared by the appropriate CRM professional;
    - (2) after regional office review, forwarded to the FPO for review and comment;
    - (3) forwarded by the FPO to the Commissioner for approval; and
    - (4) when approved, submitted by the Commissioner to the DCA for concurrence.
  - D. Reclamation-owned or controlled data and artifacts recovered under AHPA must be deposited in a repository that meets Federal standards for museum property management (see RM D&S *Museum Property Management*, LND 02-02) and shall be preserved, protected, and made available for public use.
  - E. The results of survey and data recovery projects must be made available, in compliance with confidentiality requirements, to the public and comply with Reclamation's standards for scientific integrity (see CMP P13).
8. **NAGPRA (25 U.S.C. 3001).** NAGPRA establishes the right of possession and control of Native American human remains, associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony, and provides that such items under the control of Federal agencies be assigned to their rightful owner as established by the processes outlined in 43 CFR part 10, subparts A, B, C, and D.
- A. Reclamation offices shall submit NAGPRA data and documents to the FPO, including but not limited to: affiliation studies; Notices of Inventory Completion; Notices of Intent to Repatriate; intentional archaeological excavation, treatment, and disposition plans; and data gathered in response to reporting requirements. These data and reports shall be submitted when developed, as appropriate, when providing data for required annual reports, and as otherwise requested in data calls.
  - B. When Reclamation conducts intentional archaeological excavations and Native American human remains, funerary objects, sacred objects, or objects of cultural

# Reclamation Manual

## Directives and Standards

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patrimony are removed from Federal land, Reclamation shall follow requirements in 43 CFR 10.3 for consultation; notification; development of a excavation, treatment, and disposition plans; and requirements in 43 CFR 10.6 for the disposition of those NAGPRA objects.

- C. When NAGPRA objects are discovered inadvertently on Reclamation land, or on tribal land when Reclamation is conducting activities on tribal land, Reclamation shall follow requirements in 43 CFR 10.4. Reclamation offices shall notify the FPO, regional director, area manager, and others as appropriate, of a NAGPRA discovery within 2 days of the discovery. For NAGPRA objects found on Reclamation land the requirements in 43 CFR 10.4(d) shall be followed, and for NAGPRA objects found on tribal land the requirements in 43 CFR 10.4(e) shall be followed.
  - D. All contracts and authorizations issued by Reclamation to carry out activities on Reclamation or tribal land including, leases, permits, or notices to proceed, must include a requirement for the holder of the authorization to notify the appropriate Reclamation official (e.g., contracting officer, area manager, or regional director) and, when on tribal land, also notify the appropriate tribal official, immediately upon the discovery of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony (43 CFR 10.4(g)).
9. **NEPA (42 U.S.C. 4321 and 4331-4335).** NEPA establishes a national policy to identify and consider environmental impacts of Federal actions, including the responsibility to "...preserve important historic, cultural and natural aspects of our national heritage..." (section 101(b)(4)).
- A. NHPA section 106 compliance requirements, including public participation, established in 36 CFR part 800 shall be coordinated with the NEPA processes outlined in 40 CFR parts 1500-1508, *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act*, as follows:
    - (1) The appropriate regional office or area office CRM professional shall participate in NEPA activities, and all Reclamation NEPA actions shall be coordinated with the section 106 compliance process. The outcome of section 106 compliance consultations and actions shall be documented in a categorical exclusion checklist (CEC), environmental assessment/finding of no significant impact (EA/FONSI), or EIS/ROD.
    - (2) If an action will have an adverse effect on historic properties, an EA or an EIS may be required if the adverse effect is determined to be a significant impact on the human environment as defined in NEPA.
    - (3) Reclamation offices shall, as appropriate, coordinate the public involvement requirements in 36 CFR part 800 with NEPA public participation requirement in 40 CFR 1501.7.

# Reclamation Manual

## Directives and Standards

---

- (4) The responsible Reclamation official (e.g., regional director or designee) shall ensure that a FONSI or ROD incorporates any commitments or any mitigation measures identified in a section 106 memorandum of agreement or programmatic agreement.
- B. If section 106 compliance is not completed prior to conclusion of the NEPA decision document, the FONSI or ROD shall contain commitments for Reclamation to complete section 106 prior to causing adverse effects to historic properties. Commitments shall include, but are not limited to, conclusion of the section 106 consultation process, implementation of negotiated mitigation measures, and a provision that no terrain alteration will occur near historic properties until such time as the section 106 process has been completed.
- C. All CECs shall be signed by a CRM professional, or shall have an accompanying legally defensible signature, (e.g., an e-mail response, noting his/her concurrence that the NEPA action has no significant impact on historic properties.) If the identified undertaking is considered as having no potential to effect historic properties, then the no potential to effect determination shall be included in the CEC.
- D. Any Reclamation action that is an undertaking which is considered to be categorically excluded from review under NEPA, or for which it is determined that NEPA does not apply, shall still require NHPA section 106 compliance as prescribed in 36 CFR 800.3 through 800.6.
10. **Museum Property and Curation.** Reclamation is responsible for curation of museum property under its control either originating from Reclamation land or generated as a result of Reclamation activities on other Federal land, non-Federal public land, tribal land, or private land where the landowner has donated those collections to Reclamation. Reclamation is not responsible for collections from non-Federal land where Reclamation ownership and control of the collections cannot be established. All Reclamation offices responsible for managing museum property shall adhere to the requirements in 36 CFR part 79; 411 DM; RM Policy, *Museum Property Management*, LND P05; and LND 02-02.
11. **Native American Consultation.** NHPA, NAGPRA, ARPA, NEPA, the American Indian Religious Freedom Act, Executive Order 13007, Executive Order 13175, and Secretarial Order 3317 require Reclamation to consult with Indian tribes and individual Native Americans, as appropriate, on complex and culturally sensitive issues.
- A. Reclamation shall consult with Indian tribes in a government-to-government manner.
- B. Reclamation shall consult with tribes in a timely manner on all CRM Program actions with tribal implications. Consultation shall begin as early as possible when considering such actions. All tribal consultations will include a minimum 30-day response time unless circumstances preclude doing so.

# Reclamation Manual

## Directives and Standards

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- C. When a tribe does not respond to initial invitations to consult on Reclamation actions, Reclamation shall make reasonable effort to repeat the invitation, as appropriate. Lack of tribal response within 30 days does not preclude Reclamation from moving forward with the next steps of consultation as required by regulation (36 CFR part 800).
  - D. Reclamation shall keep a detailed record of tribal consultation initiated to comply with CRM legal requirements, including, but not limited to, initial invitation to consult, other correspondence, reports, e-mail exchanges, phone contacts, and meeting notes.
  - E. Reclamation shall consult with appropriate Indian tribes, tribal entities, knowledgeable Native American individuals, and traditional practitioners, as appropriate, to determine if sacred sites or traditional cultural properties are located on Reclamation land.
  - F. When a Reclamation activity affects tribal land, Reclamation will invite the governing body of the appropriate tribe(s) and the THPO, as appropriate, to be a consulting party in the section 106 process and be a signatory or concurring party to any section 106 agreement.
  - G. Where a Reclamation undertaking is on non-Indian land and would affect cultural resources of religious and cultural value to a tribe, Reclamation will invite the tribe to participate as a consulting party pursuant to section 106.
  - H. When a Reclamation activity affects tribal land and the tribe has assumed the SHPO role, Reclamation shall consult with the THPO in accordance with 36 CFR 800.2(c)(2). Where no THPO exists, Reclamation shall consult with the tribal government.
  - I. Reclamation shall notify appropriate Indian tribes as required by ARPA when reviewing a permit application or planning an activity where the proposed action could result in harm or destruction of archaeological resources of religious or cultural importance to that tribe, consistent with requirements of LND 02-04, Paragraph 7.E.
12. **Heritage Education Responsibilities.** The results and benefits of Reclamation sponsored or permitted CRM activities will be made available through heritage education efforts, pursuant to authorities in ARPA and NHPA. These activities include, but are not limited to, exhibits, presentations, interpretive products, scholarly publications, and outreach activities such as volunteer laboratory and fieldwork opportunities. Heritage education activities, when appropriate, can be used as a means to mitigate adverse effects to historic properties.
13. **Permit or Approval of Cultural Resource Investigations on Reclamation Land.** Cultural resource investigations performed by a non-Reclamation CRM professional shall proceed only after receiving a permit or written approval from Reclamation, consistent with requirements defined in 43 CFR 3.3 through 3.6 or 43 CFR 7.5 through 7.11, and in 519 DM 2.4, 2.5A., 2.5B., and 2.6, as further defined in LND 02-04.

# Reclamation Manual

## Directives and Standards

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- A. Cultural resource investigations by a Reclamation contractor are authorized by issuance of a contract or agreement; no separate permit is required. A CRM professional shall define the methods, professional requirements, and other technical standards contained in the scope of work; review submitted materials prior to award or approval; and make a recommendation to the contracting or agreements officer as to whether proposals fulfill required standards.
- B. Archaeological work (for both historic and prehistoric period resources) performed by a non-Reclamation entity or individual shall require a permit or other approval. Departmental form *Application for Permit for Archaeological Investigations*, DI-1926, shall be used for all applications, and Reclamation may require additional information or materials as part of an application. Typically, permits shall be issued using Departmental form *Permit for Archaeological Investigations*, DI-1991, and Reclamation may attach additional terms and conditions to a permit. Two exceptions to the requirement to use DI-1991 are, when an applicant is a qualified non-Reclamation Federal employee working pursuant to 519 DM 2.6C., or when the applicant is a qualified archaeologist employed by an Indian tribe who will be working on Reclamation land confined within the boundary of that tribe's Indian reservation. Approval to perform archaeological work and any terms and conditions, will be provided by letter, for a qualified non-Federal and/or tribally-employed archaeologist. Hereafter, the term "permit" or "permitting" incorporates both forms for documenting approval. No fee will be charged when applying for a permit, however, charges will typically be levied in order to recover costs Reclamation incurs to issue and administer a permit or curate associated collections.
- (1) Archaeological inventory activities may occur under the authority of the Antiquities Act and/or ARPA. Evaluation or treatment actions on archaeological sites less than 100 years in age will be under the authority of the Antiquities Act, and sites at least 100 years in age will be under the authority of ARPA. Processes and requirements for ARPA permits are defined in LND 02-04, and those same processes and requirements shall be applied when issuing a permit for archaeological investigations pursuant to the Antiquities Act.
  - (2) Approval of a long-term permit for a non-collection survey is appropriate when Reclamation determines that a program for long-term survey is beneficial and when such a permit meets the following minimum requirements:
    - (a) A long-term permit shall not exceed 3 years in duration. All multi-year permits shall be reviewed annually by a CRM professional for conformance to permit requirements. Where a permittee is found to have violated Reclamation standards or requirements, or where quality of work was unacceptable, the permit shall be terminated.
    - (b) A long-term permit shall include a statement of minimum standards and requirements for field work and reporting.

# Reclamation Manual

## Directives and Standards

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- (c) A long-term permittee is required to notify Reclamation, in writing and in advance, of any specific non-collection survey proposed under the long-term permit, and at a minimum shall provide Reclamation with: a map delineating the survey location; start date, duration, and reporting schedule; name and resume of the field director, if not already on file; and a research design and methods statement commensurate with the scope and complexity of the inventory action.
    - (d) Prior to issuance of a long-term permit, as appropriate, the issuing office shall review and approve the permit application, conduct tribal consultation, assign a unique number to the permit, and thereafter provide documentation to the regional archaeologist, all consistent with processes defined in LND 02-04, Paragraph 7.
  - C. Cultural resources investigations by a non-Reclamation CRM professional that do not involve an archaeological inventory or an archaeological resource as described in Paragraph 13.B. of this D&S (e.g., documentation of an historic building or structure) shall be permitted under authority of the Antiquities Act, subject to review by a CRM professional. Tribal notification would be required only in the case where a CRM professional assesses that a non-archaeological property, or an archaeological site that is less than 100 years in age, holds historical or cultural importance for an Indian tribe.
- 14. **CRM Records.** All CRM records shall be maintained in accordance with the official Reclamation disposition schedule and procedures in Reclamation's *Information Management Handbook*.
  - A. All cultural resources located on or recovered from Federal land are the property of the Federal government, and all records generated as a result of CRM activities on Reclamation land, and for activities sponsored by Reclamation but not on Reclamation land, are the property of the Federal government.
  - B. CRM records shall be maintained by a CRM professional with appropriate safeguards to protect the records from unauthorized access or use. Reclamation's CRM records, data, and information must be kept in a secure location with controlled access.
  - C. In accordance with section 304(a) of NHPA and section 9 of ARPA for sensitive archaeological site data, information relating to the location or character of cultural resources may be withheld from disclosure to the public when the delegated responsible Reclamation land manager, after acquiring advice from a CRM professional, determines that disclosure of such information may create a substantial risk of harm, theft, or destruction to such resources or to the area or place where such resources are located.



# Reclamation Manual

## Directives and Standards

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15. **Technical Reports.** Prior to Reclamation's approval and acceptance of any CRM reports and/or official documents, information, and data, such items shall be reviewed for technical accuracy, completeness, and adequacy by a CRM professional. For complex or controversial projects, technical reports shall be reviewed and approved by the regional archaeologist and, at the FPO's discretion, reviewed and commented on by the FPO prior to approval.
16. **CRM Program Cost Allocation and Recovery.**
  - A. Costs associated with the CRM Program identified in this D&S generally are charged to the Reclamation project, program, or activity account that is responsible for the action.
  - B. In compliance with Office of Management and Budget Circular No. A-25, as revised, or when authorized by statute or executive order, CRM Program costs must be recovered, as appropriate, from entities using or occupying Reclamation facilities or land and which cause the CRM Program to incur costs, for example, NHPA compliance, NAGPRA discovery and compliance, and ARPA investigations and data recovery. See LND 02-04, Paragraph 7.G., for cost recovery requirements associated with user charges for permits.
17. **Emergency Situations.** During a declared emergency or an immediate threat to life or property, Reclamation shall follow the requirements in 36 CFR 800.12(b)(2) and 36 CFR 800.12(d) with respect to section 106 compliance.

## 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

Remove Sheets

Insert Sheets

All Reclamation Manual releases are available at <http://www.usbr.gov/recman/>

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

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