

Reclamation Manual

Directives and Standards

- 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 (54 U.S.C. 3203 et seq. (formerly 16 U.S.C. 431-433)); Historic Sites Act of 1935 (54 U.S.C. 102303-102304 and 320101-320104, 320106 (formerly 16 U.S.C. 461-467)); Reservoir Salvage Act, as amended (54 U.S.C. 312501-312508 (formerly 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 (AHPA), as amended (54 U.S.C. 3125 et seq. (formerly 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 (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 § 60); Determinations of Eligibility for Inclusions in the National Register of Historic Places (36 CFR § 63); Curation of Federally Owned and Administered Archaeological Collections (36 CFR § 79); Protection of Historic Properties (36 CFR § 800); Preservation of American Antiquities (43 CFR § 3); Protection of Archaeological Resources (43 CFR § 7); Native American Graves Protection and Repatriation Regulations (43 CFR § 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); 411 Departmental Manual (DM) 1, *Identifying and Managing Museum Property, Policy and Management Responsibilities for Museum Property* (411 DM); *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

Reclamation Manual

Directives and Standards

Archeology and Historic Preservation: Secretary of the Interior's
(Secretary) Standards and Guidelines (48 FR 44716).

Approving Official: Director, Mission Assurance and Protection Organization (MAPO)

Contact: Environmental Compliance Division, 84-53000

1. **Introduction.** Reclamation administers and controls many cultural resources on behalf of the United States Government and in keeping with Reclamation's mission "to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public." Beginning in 1906, the Federal government has enacted numerous statutes 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 in a positive manner that fulfills the spirit of stewardship.
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. **Federal Preservation Officer (FPO).** The FPO provides advice, assistance, and oversight of Reclamation's CRM Program through responsibilities that include, but are not limited to the following:
 - A. Develops cultural resources policy, D&S, and guidance.
 - B. Approves and submits nominations to the National Register (36 CFR part 60.9(d)) and National Historic Landmark (NHL) program and approves the removal of historic properties from the National Register (36 CFR part 60.15(c)).
 - C. 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 formats, as is practicable and/or necessary.

Reclamation Manual

Directives and Standards

- D. Reviews and comments on regional requests to waive the one percent construction expenditure limitations 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.
- E. Consults with the Advisory Council on Historic Preservation (ACHP) when the ACHP terminates any NHPA Section 106, *Advisory Council on Historic Preservation (Council) Comment on Federal Undertakings* (Section 106) consultation, and the ACHP decides to consult with the FPO (36 CFR part 800.7(a)(4)).
- F. Reviews all recommendations to terminate Section 106 consultation (36 CFR part 800.7(a)(1)) and forwards recommendation for such termination to the Commissioner.
- G. Consults on complex, sensitive, or precedent setting CRM projects or programs when invited by a regional or area office, or at their 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.
- H. 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 to transfer or demolish a historic property.
- I. Evaluates whether material remains are of archaeological interest and makes a recommendation to the appropriate Federal land manager (43 CFR part 7.33(c)(2)).
- J. Coordinates with the Departmental Consulting Archeologist (DCA) to provide notifications, information, or other actions, pursuant to 43 CFR part 7.33(f) in the event of a dispute of a determination of loss or absence of archaeological interest; 43 CFR part 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 cases, the region will take the lead for DCA coordination, while reserving the ability to reassume the lead if the FPO determines it to be necessary.
- K. Consults on emergency permitting, permit grievance resolution, or civil or criminal case preparation, when unable to reach an agreement 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.

Reclamation Manual

Directives and Standards

- L. Reviews all museum property deaccessions and forwards a recommendation on deaccession to the accountable officer.
 - M. Develops and maintains Reclamation-wide CRM Program websites in coordination with regions.
 - N. 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.
 - O. Coordinates compliance actions when an emergency situation is declared that affects Reclamation historic properties. The FPO must:
 - (1) 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 of the Interior when applying the waiver of NHPA Section 110, *Federal Agencies' Responsibilities to Preserve and Use Historic Properties* (Section 110) as prescribed in 36 CFR part 78.4,
 - (2) notify the ACHP and the Secretary immediately upon receiving knowledge that an NHL will be adversely affected by the declared emergency, and
 - (3) 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 part 800.12.(b)(2) and 36 CFR part 800.12(d).
4. **Regional Archaeologist.** The regional archaeologist develops and oversees a region-wide CRM Program through responsibilities that include but are not limited to the following:
- A. Develops regional CRM Program implementation statements,
 - B. Represents the region on the CRM Working Group and any other appropriate team established by MAPO,
 - C. Reviews National Register and NHL nominations and ensures they are forwarded to the FPO,
 - D. 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;

Reclamation Manual

Directives and Standards

historic property disposals; deaccessions of museum property; NAGPRA excavation, treatment, and disposition plans; NAGPRA affiliation documents; and ARPA violations and permit decision appeals,

- E. 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 and ensures involvement of FPO as required,
 - F. Implements the ARPA responsibilities as per Reclamation Manual (RM) D&S, *Administration of the Archaeological Resources Protection Act (ARPA) on Reclamation Land*, (LND 02-04),
 - G. Prepares CRM Program consolidated reports and data calls, and submits them to the FPO,
 - H. Implements other mandatory or appropriate actions to comply with this D&S and further Reclamation's CRM Program, and
 - I. Coordinates regional responses on NHPA Section 106 and Section 110 actions that take place as a result of an emergency situation.
5. **Area Archaeologist and CRM Professional.** An area archaeologist and CRM professional assists 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 that will further Reclamation's CRM Program. An area archaeologist and CRM professional will coordinate the following activities with the regional archaeologist:
- A. National Register and NHL nominations,
 - B. Complex, sensitive, or precedent setting CRM projects and activities performed within the region as outlined in paragraph 3.E (4) of this D&S,
 - C. Property transfers that include historic properties, and

Reclamation Manual

Directives and Standards

- D. NHPA Section 106 and Section 110 actions that take place as a result of a declared emergency situation.
6. **Delegations.** *Cultural Resources Management* (LND P01) specifies the responsibilities of the Commissioner and the regional directors. In the RM *Delegations of Authority*, the Commissioner has delegated the CRM program to the regional directors, including the role of being the agency official under NHPA Section 106, of the NHPA and NAGPRA and the land manager under ARPA. Area managers have the responsibilities for CRM Program management only when so delegated by the regional director, to include 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.
7. **National Historical Preservation Act (NHPA).** NHPA is the historic preservation statute that establishes Reclamation's CRM responsibilities. Within NHPA, Section 106 addresses the compliance aspects, while Section 110 and Section 111, *Leases or Exchanges of Federal Historic Properties* (Section 111) address resource management responsibilities.
- A. **Section 106 of the NHPA.** Section 106 requires Reclamation to consider the effect of its undertakings on historic properties. Reclamation CRM professionals shall initiate, manage, and complete 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.
- (1) **Responsibilities for Reclamation Title or Operation and Maintenance 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 part 800.5). Prior to a transfer, Reclamation shall comply with the requirements in Section 111 to ensure consideration of other potential uses of historic properties.
- (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 responsible for cultural resources per Section 110 but may assign certain tasks in cultural resources compliance and management to the transfer recipient. However, Reclamation shall retain

Reclamation Manual

Directives and Standards

responsibility for conducting Section 106 consultations. Prior to transfer, the responsible office shall follow requirements of RM D&S, *Implementation of Historic Preservation Responsibilities for Operation, Maintenance and Replacement of Project Works* (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 the 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 are unavoidable, Reclamation will seek measures to reduce or minimize the effects. Reclamation will develop treatment measures in consultation with the SHPO(s), Tribal historic preservation officer (THPO), the ACHP, Indian Tribes, and other interested parties or persons, as appropriate, and will be consistent with the nature and values of the affected historic property. NHLs require special consideration including, and to the maximum extent possible, taking action as may be necessary to avoid or minimize harm to such NHL and consulting with the ACHP when an NHL will be adversely affected by an undertaking (Section 110(f)).
 - (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, 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 Reclamation discovers or identifies historic properties, or potential historic properties, 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 part 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

Reclamation Manual

Directives and Standards

assessed and a National Register eligibility determination made by a CRM professional.

- C. **Section 110 of NHPA.** Section 110 requires Reclamation to assume responsibility for the historic properties which it owns or controls.
- (1) To the greatest extent practicable, and in a manner consistent with its mission, 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) Reclamation encourages regional offices and area offices, to develop plans to identify, evaluate, and nominate historic properties under its jurisdiction or control to the National Register pursuant to Section 110(a)(2), ARPA Section 14, and 519 DM 1.4D.(4). Offices should develop these plans in cooperation with the SHPO, THPO, and other entities as appropriate and shall review and update the plans every five years. Offices shall provide copies of the approved plan 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, cultural values and integrity.
 - (c) Reclamation shall afford the Secretary or designee the opportunity to review and approve plans for the transfer of surplus Reclamation-owned historic properties pursuant to Section 519 DM 1.4D.(9).
 - (4) Reclamation must make the results of survey and data recovery projects 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.** 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 and the regional archaeologist 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

Reclamation Manual

Directives and Standards

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 an office identifies a historic property as a candidate for deconstruction, demolition, or any other manner of disposal, and prior to a determination that an asset is excessed, 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
 - (e) when no other option proves to be feasible, disposal or demolition after compliance with Section 106.
- (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 Section 110 responsibilities and notify GSA of National Register-eligible or listed properties. Reclamation will also notify the appropriate SHPO and the ACHP of the transfer to GSA to help ensure protection of the historic property. Following transfer of the historic property, GSA becomes responsible for Section 106 compliance.
- (7) The regional director shall notify the FPO of the intent to demolish or to exchange or otherwise transfer a historic property out of Federal ownership. The regional

Reclamation Manual

Directives and Standards

director shall provide the FPO and regional archaeologist with 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.

8. **Archaeological Resources Protection Act of 1979 (ARPA).** 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. LND 02-04 addresses the requirements and activities related to ARPA.
9. **Archeological and Historic Preservation Act (AHPA).** 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 operation and maintenance 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.
 - B. Reclamation may charge Federal licensees and permittees fees and administration costs for identification, surveys, evaluation, data recovery, curatorial services and repository fees 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, *Use Authorizations* (LND 08-01)) or lease (see RM D&S, *Lease of Power Privilege (LOPP) Processes, Responsibilities, Timelines, and Charges* (FAC 04-08)). Reclamation may utilize up to one percent 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, curatorial services, repository fees, and publication, except that the one percent limitation shall not apply in the event that the project involves \$50,000 or less. Reclamation considers such costs non-reimbursable

Reclamation Manual

Directives and Standards

project costs. If the project requires additional funds, 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.

C. Reclamation-owned or controlled data and artifacts recovered under AHPA shall be managed according to RM D&S *Museum Property Management* (LND 02-02).

D. Reclamation must make the results of survey and data recovery projects available, in compliance with confidentiality requirements, to the public and comply with Reclamation's standards for scientific integrity (see CMP P13).

10. **Native American Graves Protection and Repatriation Act (NAGPRA).** NAGPRA addresses Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony and was signed into law on November 16, 1990. Generally, management of NAGPRA items recovered prior to November 16, 1990, have different regulatory requirements than management of NAGPRA items recovered after that date. NAGPRA responsibilities are delegated under the RM *Delegations of Authority* for Reclamation facilities and non-bureau facilities holding Reclamation NAGPRA and potential NAGPRA items.

A. Offices with NAGPRA activities or items shall comply with D&S LND 02-02 NAGPRA actions.

B. Reclamation offices shall submit NAGPRA data and documents to the FPO and the national curator and NAGPRA coordinator, including but not limited to: affiliation studies; Federal Register and newspaper notices; plans of action for inadvertent and intentional archaeological excavation, treatment, and disposition plans; and data gathered in response to reporting requirements. Reclamation must submit these data and reports when developed, as appropriate, when providing data for required annual reports, and as otherwise requested in data calls.

C. When any party inadvertently discovers NAGPRA objects on Reclamation land, or on Tribal land when Reclamation is conducting activities on Tribal land, Reclamation offices shall notify the FPO and the national curator and NAGPRA coordinator, regional director, area manager, and others as appropriate of a NAGPRA discovery within two days of the discovery.

11. **Human Remains Not of Native American Descent.** Management of human remains not of Native American descent are not subject to NAGPRA. Human remains not of Native

Reclamation Manual

Directives and Standards

American descent that are accessioned are considered controlled property, and those that are not accessioned are considered sensitive property. At no time will human remains be approved for exhibition. The APO is responsible for assuring completion of inventories at Reclamation facilities and non-bureau facilities for human remains not of Native American descent.

12. **National Environmental Policy Act (NEPA).** 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. Reclamation shall coordinate Section 106 compliance requirements, including public participation, established in 36 CFR part 800 with the NEPA processes outlined in 40 CFR parts 1500-1508, *Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act*.
 - (1) The appropriate regional office or area office CRM professional shall coordinate the Section 106 compliance process with the NEPA process to inform final NEPA decisions. The appropriate CRM professional shall document the outcome of Section 106 compliance consultations and actions in a categorical exclusion checklist (CEC), environmental assessment/finding of no significant impact, or EIS ROD.
 - (2) If an action will have an adverse effect on historic properties and that effect cannot be mitigated to less than significant under a categorical exclusion (40 CFR 1501.4(b)(1)) or an environmental assessment/finding of no significant impact (per 40 CFR 1501.6(c)), then an EIS would be required.
 - (3) Reclamation offices shall, as appropriate, coordinate the public involvement requirements in 36 CFR part 800 with NEPA public participation requirement in 40 CFR part 1501.7.
 - (4) The responsible Reclamation official (e.g., regional director or designee) shall ensure that a finding of no significant impact or ROD incorporates any commitments, or any mitigation measures identified in a Section 106 memorandum of agreement or programmatic agreement.
 - B. If Reclamation does not complete Section 106 compliance prior to conclusion of an EIS, the ROD shall contain commitments 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. A CRM professional shall sign all CECs, or shall have an accompanying legally defensible signature, (i.e., an e-mail response, noting their concurrence that the NEPA

Reclamation Manual

Directives and Standards

action has no significant impact on historic properties.) If the identified undertaking has 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 considered to be categorically excluded from review under NEPA, or for which it is determined that NEPA does not apply, shall still require Section 106 compliance as prescribed in 36 CFR part 800.3-800.6.
13. **Museum Property.** Reclamation is responsible for care and ongoing maintenance 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 items to Reclamation. Reclamation is not responsible for museum property from non-Federal land where Reclamation ownership and control of the items cannot be established. All Reclamation offices responsible for managing museum property shall adhere to D&S LND 02-02.
14. **Native American Consultation.** Reclamation shall 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.
- 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 consultations initiated to comply with CRM legal requirements, including, but not limited to, initial invitation to consult, reports, e-mail exchanges, phone contacts, meeting notes, and other correspondence.
- E. Reclamation shall consult with appropriate 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, as a consulting party in the Section 106 process and signatory or concurring party to any Section 106 agreement.

Reclamation Manual

Directives and Standards

- G. Where a Reclamation undertaking is on non-Tribal 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 part 800.2(c)(2). Where no THPO exists, Reclamation shall consult with the Tribal government.
 - I. Reclamation shall notify appropriate 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.
15. **Heritage Education Responsibilities.** Reclamation will make the results and benefits of Reclamation-sponsored or permitted CRM activities 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. Reclamation may use heritage education activities, when appropriate, to mitigate adverse effects to historic properties.
16. **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 part 3.3-3.6 or 43 CFR part 7.5-7.11, and in 519 DM 2.4, 2.5A., 2.5B., and 2.6, as further defined in LND 02-04.
- A. Issuance of a contract or agreement authorizes cultural resource investigations by a Reclamation contractor, requiring no separate permit. 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 requires a permit or other approval. Departmental form DI-1926, *Application for Permit for Archaeological Investigations*, shall be used for all applications, and Reclamation may require additional information or materials as part of an application. Typically, Reclamation shall issue permits using Departmental form DI-1991, *Permit for Archaeological Investigations*, and Reclamation may attach additional terms and conditions to a permit. Two exceptions to the required use of 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.

Reclamation Manual

Directives and Standards

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. Reclamation will not charge a fee for those applying for a permit; however, Reclamation will typically levy charges to recover incurred costs, to issue and administer a permit, or for curatorial services or repository fees for associated museum property objects.

- (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. LND 02-04 defines these processes and requirements for ARPA permits and those same processes and requirements apply 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. A CRM professional shall review all multi-year permits annually for conformance to permit requirements. Reclamation shall terminate the permit where a permittee is found to have violated Reclamation standards or requirements, or where quality of work was unacceptable.
 - (b) A long-term permit shall include a statement of minimum standards and requirements for field work and reporting.
 - (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 the previous paragraph shall be permitted under authority of the Antiquities Act and

Reclamation Manual

Directives and Standards

subject to review by a CRM professional. Tribal notification is 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.

17. **CRM Records.** Reclamation shall manage and maintain all CRM records, regardless of media, as official records in accordance with the Departmental Records Schedule in a Reclamation-approved records repository and in accordance with the official Reclamation disposition schedule and procedures in Reclamation's D&S, *Information Management* (RCD 05-01) and the *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. A CRM professional shall maintain all CRM records 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.
18. **Technical Reports.** Prior to Reclamation's approval and acceptance of any CRM reports and/or official documents, information, and data, a CRM professional shall review such items for technical accuracy, completeness, and adequacy. 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.
19. **CRM Program Cost Allocation and Recovery.**
 - A. Costs associated with the CRM Program identified in this D&S are charged to the Reclamation project, program, or activity account that is responsible for the action, unless otherwise noted.
 - B. In compliance with Office of Management and Budget Circular No. A-25, as revised, or when authorized by statute or Executive order, Reclamation may recover CRM Program costs, as appropriate, from entities using or occupying Reclamation facilities or land which cause the CRM Program to incur costs; for example: NHPA compliance, NAGPRA discovery and compliance, and ARPA investigations and data recovery. See

Reclamation Manual

Directives and Standards

LND 02-04, Paragraph 7.G., for cost recovery requirements associated with user charges for permits.

20. **Emergency Situations.** An emergency situation for the purpose of Section 106 includes “operations which respond to a disaster or emergency declared by the President, a Tribal government, or the Governor of a State or which respond to other immediate threats to life or property” per 36 CFR part 800.12(a). The appropriate program-specific Reclamation official based on the *Delegations of Authority* shall declare any determination that a situation is an immediate threat to life or property. During an emergency or an immediate threat to life or property, Reclamation shall follow the requirements in 36 CFR part 800.12(b)(2) and 36 CFR part 800.12(d) with respect to Section 106 compliance.
21. **Definitions.**
- A. **Adverse Effect.** An adverse effect occurs when an undertaking alters any characteristic of a historic property that qualifies the property for inclusion in the National Register and would diminish the integrity of a historic property’s location, design, setting, materials, workmanship, feeling, or association.
 - B. **Advisory Council on Historic Preservation (ACHP).** The ACHP is an independent Federal agency, established pursuant to Section 201 of the NHPA, which promotes the preservation, enhancement, and productive use of our nation’s historic resources, and advises the President and Congress on national historic preservation policy.
 - C. **Archaeological Resources.** These are any material remains of past human life or activities which are of archaeological interest. Archaeological resources include, but are not limited to, pottery, basketry, bottles, weapons, projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items that are of human design, manufacture, possession, or use. Non-fossilized and fossilized paleontological specimens, or any portion or piece thereof, are not considered archaeological resources unless found in an archaeological context.
 - D. **Area of Potential Effect (APE).** An APE is the geographic area(s) within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if any such properties exist.
 - E. **Cultural Resources.** Any prehistoric and historic districts, sites, buildings, structures, objects, cultural landscapes, sacred sites, and traditional cultural properties. Within the broad range of cultural resources are those that have recognized significance, which are called historic properties.
 - F. **Cultural Resources Inventory, Evaluation, and Treatment.** The strategies used by Reclamation to investigate and study an APE and appropriate associated areas and locales; to identify and/or predict the types and quantity of cultural resources that are, or may be, present; to evaluate their eligibility for listing on the National Register; and

Reclamation Manual

Directives and Standards

to resolve adverse effects to historic properties.

- (1) Inventory. An inventory is the execution of an appropriate level of survey, including documents and literature searches, on-the-ground field survey, and remote sensing techniques.
 - (2) Evaluation. An evaluation is the process of investigating the individual cultural resources identified within the APE to determine eligibility for listing in the National Register per criteria of evaluation established in 36 CFR part 60.
 - (3) Treatment. Treatment is a concrete step taken to mitigate adverse effects to historic properties that have been agreed upon through consultation.
- G. Cultural Resources Management (CRM) Professional. Refers to the professionally qualified individual(s), as per the Secretary's *Standards and Guidelines for Archaeology and Historic Preservation* and/or Office of Personnel Management experience requirements for CRM related disciplines (e.g., archaeology, history, museum property management, or anthropology), who are Bureau of Reclamation employees and who are responsible for developing, managing, coordinating, and implementing Reclamation's CRM policies and programs.
- H. Federal Land Manager. A Reclamation land manager is a regional director, or an area manager who has been delegated primary management responsibility for Reclamation land consistent with the *Delegations of Authority*. The land manager performs the Federal land manager duties defined in the ARPA, except when ARPA responsibilities have been assigned to another Federal agency.
- I. Federal Preservation Officer (FPO). The FPO is the individual, appointed by the Commissioner, as required by Section 110(c) of the NHPA, to coordinate and oversee Reclamation's CRM Program.
- J. Historic Properties. Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. This term includes artifacts, records, and remains that are related to and located within such properties. The phrase "eligible for inclusion on the National Register" means properties formally determined as such by the Secretary or by Reclamation in consultation with the appropriate SHPO or Tribal Historic Preservation Officer (THPO). Properties that have been determined eligible for inclusion are accorded the same protections as properties listed on the National Register.
- K. Human Remains. 43 CFR part 10.2(d) defines human remains.
- L. Indian Land or Tribal Land. For the purposes of this D&S, except in ARPA situations when the definition of Indian land is used as defined in RM D&S *Administration of the Archaeological Resources Protection Act (ARPA) on Reclamation Land*, LND 02-04, the definition of Indian land is derived from NAGPRA. This means all lands

Reclamation Manual

Directives and Standards

within the exterior boundaries of any Indian reservation and all dependent Indian communities.

- M. Interested Parties or Persons. These refer to those organizations and individuals, concerned with the effects of an undertaking on historic properties. Interested parties may include: Federal, State, or local agencies, federally recognized Indian Tribes, Native American organizations or individuals, traditional cultural leaders, institutions, foundations, applicants, and the public.
- N. Material Remains. Means physical evidence of human habitation, occupation, use, or activity including the site, location, or context in which such evidence is situated, including the classes of items identified in 43 CFR part 7.3(a)(3).
- O. Museum Property. Personal property (sensitive, non-capitalized) acquired according to a rational plan and preserved, studied, or interpreted for public benefit. A unit can have museum property even though it does not have a museum or museum space. Museum property disciplines are identified as archaeology, archives (including associated records), art, biology, ethnography, geology, history, and paleontology. Museum property will fit within a unit's Scope of Collections Statement. Collectively, museum objects may be referred to as a museum collection or as collectible heritage assets.
- P. National Historic Landmark. This is a district, site, building, structure, or object in public or private ownership, determined by the Secretary to possess national significance in American history, archaeology, architecture, engineering, and culture.
- Q. National Register of Historic Places or National Register. The National Register is the official list of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture maintained by the Keeper of the National Register on behalf of the Secretary (36 CFR part 60).
- R. Non-Collection Survey. Means a CRM investigation which documents the presence of cultural resources through non-invasive techniques and does not include artifact collection, sampling, subsurface probing beyond initial site identification, or excavation.
- S. Reclamation Land. This is all land acquired or withdrawn for Reclamation's authorized project purposes except land where CRM management responsibilities (including those specified in NHPA, NAGPRA, and ARPA, and their implementing regulations) have been assigned to another Federal agency in a transfer of primary management authority.
- T. Records. As defined in 44 U.S.C. 3301, records include all books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public

Reclamation Manual

Directives and Standards

business. Materials maintained solely for reference purposes, extra copies, and stocks of publications are not records.

- U. Responsible Office. Refers to a Reclamation office with delegated cultural resources management responsibility.
 - V. Sacred Site. Refers to any specific, discrete, narrowly delineated location on Reclamation land identified by an Indian Tribe, or Indian individual determined an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious importance to, or ceremonial use by, an Indian religion.
 - W. State Historic Preservation Officer or SHPO. The SHPO is the official appointed or designated by the Governor pursuant to Section 101(b)(1) of NHPA to administer the State Historic Preservation Program.
 - X. Traditional Cultural Property. A property that is listed in, or is eligible for inclusion in, the National Register because of its association with cultural practices or beliefs of a living community that are rooted in that community's history and important in maintaining the continuing cultural identity of the community (National Register Bulletin #38).
 - Y. Tribal Historic Preservation Officer or THPO. The THPO is the Tribal official appointed by the Tribe's chief governing authority or designated by a Tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of Section 106 compliance on Tribal land (36 CFR part 800.16(w)).
 - Z. Undertaking. Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license, or approval.
22. **Review Period.** The originating office will review this release every 4 years.