

Reclamation Manual

Policy

Subject:	Reclamation Standard Water-Related Contract Articles
Purpose:	To set forth requirements for the use of the Bureau of Reclamation's Standard Water-Related Contract Articles (Standard Articles), for the benefit of promoting efficiency and consistency in the contracting process and in contract administration.
Authority:	The Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), and acts amendatory and supplementary thereto; see Reclamation Manual (RM) Directives and Standards (D&S) PEC 10-01, et seq. (PEC 10-01, et seq.), for authorities specific to the individual Standard Articles.
Approving Official:	Commissioner
Contact:	Mission Assurance and Protection Organization; Reclamation Law Administration Division (84-55000)

- 1. Introduction.** It is Reclamation's policy to promote efficiency and consistency in the contracting process and in contract administration. In furtherance of this policy, Reclamation establishes Standard Articles to cover common contract provisions required by various statutes, executive orders, regulations, and policies. Basic requirements for the Standard Articles, including what types of contracts require each of them, are set forth herein. Further requirements for the Standard Articles, including their required text, appear at [PEC 10-01, et seq.](#)
- 2. Applicability.** This Policy applies to Reclamation staff and officials involved in the contracting process, as defined in Paragraph 5.A. below.
- 3. Policy.** Reclamation water-related contracts must include all applicable standard articles in accordance with the requirements and responsibilities outlined below.
- 4. Requirements and Responsibilities**
 - A. Modification of Standard Articles.**
 - (1) Requests for Authority to Substantively Modify Standard Articles.** A required Standard Article may be substantively modified only with the Commissioner's approval.¹ A request for such approval may be made in the relevant basis of negotiation (BON) or a supplement or amendment thereto. Reclamation considers requests on a case-by-case basis. To be considered, a

¹This is true whether or not the authority to execute the contract requiring the Standard Article under this Policy has been delegated to the regional director, unless the delegation itself states otherwise.

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request must clearly state and support a case-specific justification (e.g., case-specific circumstances make a standard provision inapplicable, unworkable, less advantageous to the United States than the proposed alternative, etc.).²

- (2) **Authority for Minor Modification of Standard Articles.** Regional directors are authorized to approve minor modifications, as defined in Paragraph 5.B.(1) below. The Director, Mission Assurance and Protection Organization can assist regional directors or their authorized representatives in determining whether proposed modifications are minor or substantive.

- B. **Requirement to Include Standard Articles.** The inclusion of Standard Articles in contracts as directed by this Policy and [PEC 10-01, et seq.](#), is generally not negotiable. The following chart shows which Reclamation water-related contract types require each of the Standard Articles. The chart is followed by a key to its abbreviations and symbols.

²The purpose of this requirement is to ensure that Reclamation-wide requirements are established through the appropriate Policy/D&S development process rather than through the contracting process.

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NOTE: The Standard Articles identified in the chart below are the minimum requirements. The regional director can add additional requirements as determined appropriate.

D&S	Standard Article	Contract Types														
		9(c)(1), 9(c)(2)	9(d), 9(e)	WSA	SOD	O&M	Temp. 9(c)(2)	Temp. 9(e)	WA1	Sec 14	102	Misc	CFA	XM (rsvd)	XM (xfrd)	215
PEC 10-01	1: Contracts with Third Parties ÷					B										X
PEC 10-02	2: Failure to Complete Work ÷					B										X
PEC 10-03	3: Charges for Delinquent Payments	X	X	X	B	B			X	H	X	X		X	X	X
PEC 10-04	4: General Obligation—Benefits Conditioned Upon Payment ***	X	X	X	B	B			X	H	X	X		X	X	X
PEC 10-05	5: O&M of Transferred Works (Federal Construction) ×	O	O	O		X						O				C
PEC 10-06	6: O&M of Transferred Works (Federally Assisted Construction) × ÷															C
PEC 10-07	7: Examination, Inspection, and Audit of Project Works, Records, and Reports for Determining Adequacy of Operation and Maintenance	O	O	O	B	X						O				C
PEC 10-08	8: Emergency Reserve Fund (Annual Deposit)** ◇	D	D	X		X								C	C	
PEC 10-09	9: Emergency Reserve Fund (One-Time Deposit) ◇	D	D	X		X								C	C	
PEC 10-10	10: Confirmation of Contract**	X	X	X	B				X	X	X	X				
PEC 10-11	11: Notices	X	X	X	B	B			X	X	X	X	X	X	X	
PEC 10-12	12: Contingent on Appropriation or Allotment of Funds	X	X	X	B	X	X	X	X	X	X	X	X	X	X	X
PEC 10-13	13: Officials Not to Benefit	X	X	X	B	X	X	X	X	X	X	X	X	X	X	X
PEC 10-14	14: Changes in Contractor's Organization	X	X	X	B	X			X	X	X	X	X	X	C	
PEC 10-15	15: Assignment Limited—Successors and Assigns Obligated	X	X	X		X	X	X	X	X	X	X	X	X	X	X
PEC 10-16	16: Books, Records, and Reports	X	X	X	B	B	X	X	X	X	X	X	X	X	X	X
PEC 10-17	17: Compliance with Federal Reclamation Laws/Small Reclamation Project Laws**	X	X	X			X	X	X	E		X		X	X	
PEC 10-18	18: Administration of Federal Project Lands	O	O	O	O	X	O	O	O	O	O	O				C
PEC 10-19	19: Protection of Water and Air Quality	X	X	X		X	X	X	X	X	X	X		X	C	X
PEC 10-20	20: Contamination or Pollution of Federal Property	O	O	O		X	O	O	O	O		O				C
PEC 10-21	21: Clean Air and Water**					X										C
PEC 10-22	22: Water Conservation** ✨	X	X	X					X	X		X				
PEC 10-23	23: Equal Employment Opportunity (Federal Construction)** † ‡	X	X	X	B	B	X	X	X	X	X	X		X	X	X
PEC 10-24	24: Equal Employment Opportunity (Federally Assisted Construction)** † ‡				B	B								X	X	
PEC 10-25	25: Compliance with Civil Rights Laws and Regulations*	X	X	X	B	B	X	X	X	X	X	X	X	X	X	X
PEC 10-26	26: Certification of Nonsegregated Facilities †	X	X	X	B	B	X	X	X	X	X	X	B	X	X	X
PEC 10-27	27: Relocation Assistance and Real Property Acquisition					X										
PEC 10-28	28: Privacy Act Compliance*		X					X								
PEC 10-29	29: Pest Management	O	O	O		X	O	O	O	O	O					C
PEC 10-30	30: Medium for Transmitting Payments	X	X	X	B	X	X	X	X	X	X	X	X	X	X	X
PEC 10-31	31: Contract Drafting Considerations	X	X	X	B	X	X	X	X	X	X	X	X	X	X	X
PEC 10-32	32: Availability and Allocation of Water	X	X	X			X	X		F	X	X				

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Key to Abbreviations

<u>Abbreviation</u>	<u>Authority</u>
9(c)(1)	Subsection 9(c)(1) of the Reclamation Project Act of August 4, 1939, as amended (1939 Act) (Pub. L. 76-260; 43 U.S.C. 485h(c)(1)) (repayment contracts for municipal & miscellaneous water purposes).
9(c)(2)	Subsection 9(c)(2) of the 1939 Act (43 U.S.C. 485h(c)(2)) (water service contracts for municipal & miscellaneous water purposes).
9(d), 9(e)	Subsections 9(d) & (e) of the 1939 Act (43 U.S.C. 485h(d) & (e)) (irrigation).
WSA	Water Supply Act of July 3, 1958, as amended (Pub. L. 85-500, Title III; 43 U.S.C. 390b).
SOD	Reclamation Safety of Dams Act of November 2, 1978, as amended (Pub. L. 95-578; 43 U.S.C. 506 through 509).
O&M	Section 6 of the Reclamation Act of June 17, 1902 (Pub. L. 57-161; 43 U.S.C. 491 and 498); Section 5 of the Reclamation Extension Act of August 13, 1914 (Pub. L. 63-170; 43 U.S.C. 492 and 499); Subsection G of the Fact Finders' Act of December 5, 1924 (Pub. L. 68-292; 43 U.S.C. 500).
Temp.	Temp. 9(c)(2) and Temp. 9(e) refer to non-renewable contracts entered into under the corresponding authorities for terms of one year or less.
WA1	Section 1 of the Warren Act of February 21, 1911, as amended (Warren Act) (Pub. L. 61-406; 43 U.S.C. 523) (secondary to project lands and entryman use of Federal facilities for storage or conveyance of nonproject water).
Sec 14	Section 14 of the Reclamation Project Act of 1939 (Pub. L. 76-260; 43 U.S.C. 389) (exchange or replacement of water, water rights, or electric energy, or for the adjustment of water rights).
102	Title I, Section 102 of the Reclamation States Emergency Drought Relief Act of 1991 (Pub. L. 102-250; 43 U.S.C. 2201).
Misc	Sale of Water for Miscellaneous Purposes Act of February 25, 1920 (Pub. L. 66-147; 43 U.S.C. 521).
CFA	Sundry Civil Expenses Appropriations Act for 1922 (March 4, 1921, chapter 161; Pub. L. 66-389; 43 U.S.C. 395) (expenditure of contributed funds, popularly known as the Contributed Funds Act of 1921).
XM (rsvd), XM (xfrd)	Title IX, Subtitle G of the Omnibus Public Land Management Act of March 30, 2009 (Pub. L. 111-11; 43 U.S.C. 510) (Extended repayment of extraordinary maintenance costs). Column XM (rsvd) applies to reserved works; column XM (xfrd) applies to transferred works.
215	Section 215 of the Reclamation Reform Act of October 12, 1982, as amended (Pub. L. 97-293, Title II; 43 U.S.C. 390oo) (temporary supply of water).

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Article Symbols

<u>Symbol</u>	<u>Meaning</u>
X	Required.
A	Required in contracts for federally funded construction and/or other work to be performed by non-Federal entities.
B	Can be included by reference to the primary contracts that these contracts supplement, if consistent with current standard articles.
C	Required where this article is not already included in the relevant water delivery or O&M transfer contract(s) with the contractor.
D	Not required where the contractor is not required to pay a significant portion of project OM&R costs, or where a reserve fund is already required in the master contract.
E	Required when the contract provides for the storage or conveyance of non-Project water using Federal facilities.
F	Required if Project water is being provided as part of the exchange or replacement.
H	Not required where no payments are required under the contract.
O	Use when the operational responsibility has been transferred to the Contractor or will be transferred at the time of contract execution.

Notes

* Not required in contracts if the contractor is also the water user.

** See appropriate D&S for further specifications on use. (The number of the appropriate D&S will correspond to the number of the Standard Article as it appears in the chart above.)

*** Paragraph (a) of this article is not required for water service contracts, excess capacity contracts, or other contracts that do not establish a general repayment obligation on the part of the District.

☼ Not required for water-related contracts entered into with individuals. In addition, see RM D&S, *Administering Water Conservation Plans Pursuant to Statutory and Contractual Requirements*, WTR 01-01, for a description of circumstances under which a Water Conservation Plan is not required for a district: where those circumstances apply, this article is not required.

∴ Not required when Reclamation performs extraordinary maintenance at transferred works facilities (XM) (xfrd).

† Contracts involving transactions of \$10,000 or less are exempted from requiring Articles 23, 24, and 26, as are contracts with state or local governments.

× The contract shall include Article 5 or Article 6 but not both.

◇ The contract shall include Article 8 or Article 9 but not both.

≡ The contract shall include Article 23 or Article 24 but not both.

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5. Definitions.

- A. **Contracting Process.** The process through which Reclamation enters water-related contracts, as defined below, including the proposal, review, and approval of BONs,³ and the negotiation and execution of contracts.
- B. **Modification.** Any modification to the standard form or text of a required Standard Article for purposes of a specific contract action. A modification may be minor or substantive.
- (1) **Minor Modification.** A modification that does not change the intended effect of the Standard Article on the rights and obligations of the parties. This includes modification that replaces generalized references to parties, projects, facilities, geographical areas, etc., with specific references (i.e., replacing “Contractor” with the particular contractor’s name). It also includes modification to clarify a Standard Article’s intended effect.
- (2) **Substantive Modification.** The omission of a required Standard Article and any modification that (1) results in rights or obligations different from those the standard language is intended to create; or (2) creates ambiguity or makes the intended meaning of the Standard Article otherwise less clear.
- C. **Standard Article.** Any of the Standard Articles identified in the chart at Paragraph 4.B above and addressed in PEC 10-01, et seq.
- D. **Water-related Contract.** Defined in RM Policy, *Water-Related Contracts – General Principles and Requirements* (PEC P05), and includes any contract made pursuant to any of the authorities indicated in the chart at Paragraph 4.B. above.
6. **Review Period.** The originating office will review this release every 4 years.

³For more about the BON process, see RM Policy, [Bases of Negotiation \(BON\) for New and Amendatory Water Service, Repayment, and Related Contracts \(PEC P06\)](#), and D&S, [Preparing Bases of Negotiation \(BONs\) for New and Amendatory Water Service, Repayment, and Related Contracts \(PEC 06-01\)](#).

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: _____