

# Reclamation Manual

## Policy

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<b>Subject:</b>	Voluntary Process for Appealing Decisions Made in the Administration of Water-Related Contracts and in the Crediting of Incidental Revenues
<b>Purpose:</b>	This Policy establishes a voluntary process available to Bureau of Reclamation contractors for appealing regional directors' decisions regarding administration of water-related contracts and the crediting of incidental revenues. The benefit of this Policy is that it establishes a clear process for conducting voluntary appeals.
<b>Authority:</b>	The Reclamation Act of 1902 (32 Stat. 388) (1902 Act) as amended and supplemented, in particular by Section 10 (43 U.S.C. 373).
<b>Approving Official:</b>	Commissioner
<b>Contact:</b>	Mission Assurance and Protection Organization, Reclamation Law Administration Division (84-55000)

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1. **Introduction.** This Policy establishes the administrative appeal process Reclamation follows when a contractor, as defined below under Paragraph 5.D., seeks the Commissioner's review of final determinations made by a regional director relating to the following:
  - A. **Water-Related Contracts.** The administration of water-related contracts, as defined at Paragraph 3.R. of Reclamation Manual (RM) Policy, *Water-Related Contracts and Charges – General Principles and Requirements* (PEC P05).
  - B. **Incidental Revenues.** The disposition of incidental revenues, as defined at Paragraph 3.G. of RM Policy, *Incidental Revenues* (PEC P03). (See also RM Directive and Standard (D&S), *Crediting Requirements for Incidental Revenues* (PEC 03-01)).
  
2. **Applicability.** This Policy applies to Reclamation personnel involved in the administration of water-related contracts and in the incidental revenues crediting process. It applies to the extent that applicable appeal rights, restrictions, requirements, or processes are not dictated by rules and regulations,<sup>1</sup> other higher-level authorities, or provisions of a contract between Reclamation and the appellant.

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<sup>1</sup>Including those codified at 43 CFR 426.24, which provide for appeals of determinations required or authorized under the Acreage Limitation Rules and Regulations Reclamation promulgated pursuant to the Reclamation Reform Act of 1982 (Pub. L. 97-293, Title II; 43 U.S.C. 390aa, et seq.).

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### 3. Policy.

- A. **In General.** Reclamation will process appeal requests submitted by its contractors and conduct appeals that are within the subject matter described above in Paragraph 1 in accordance with the requirements set forth in this Policy.
- B. **Appeals Voluntary.** This Policy addresses appeals that contractors pursue on a strictly voluntary basis. This Policy does not implement or establish a mandatory administrative appeal process. It creates neither an enforceable right nor a legal obligation to appeal before or instead of pursuing litigation.
- C. **Status of Decision During Appeal: Reviewability.** For purposes of reviewability under section 704 of the Administrative Procedures Act of 1966 (Pub. L. 89-554; 5 U.S.C. 704) (APA), regional directors' decisions are considered final, and are operative while they are being appealed, except to the extent they are suspended under Paragraph 4.F., below.

### 4. Process. The following process will be followed for appeals pursued under this Policy.

- A. **Assisting Potential Appellants.** When a contractor indicates its intention to seek review of a regional director's decision within the subject matter specified under Paragraph 1, Reclamation will direct the contractor to this Policy<sup>2</sup> and provide reasonable procedural assistance at the appellant's request.
- B. **Correspondence.** Upon indication of a contractor's intention to appeal under this Policy, Reclamation will establish the preferred means of correspondence with the appellant, and correspondence will be conducted in accordance with this paragraph.

#### (1) Addresses.

- (a) **Physical Mail.** Reclamation will receive appeals addressed to the Commissioner at the Bureau of Reclamation, Mission Assurance and Protection Organization, Attention: 84-55000, P.O. Box 25007, Denver, Colorado 80225. Reclamation will address correspondence as indicated by the appellant.
- (b) **Electronic Mail.** If the appellant prefers to conduct the appeal by electronic mail, Reclamation and the appellant will provide each other the required electronic mailing addresses.

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<sup>2</sup>This Policy establishes requirements for Reclamation staff in the performance of relevant duties. It does not place requirements on parties outside Reclamation, but is available to contractors as information and guidance.

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(2) **Copies to Regional Director.** The appropriate regional director will be copied on all correspondence submitted to a Contractor for appeals being processed pursuant to this Policy.

C. **Reclamation's Deadlines.** If Reclamation is unable to meet a deadline applicable to it under this Policy, the responsible official will notify the appellant of the delay, stating its reasons and the date by which Reclamation expects to provide the relevant decision or other correspondence.

D. **Appeal Request.**

(1) **Consideration of Appeal Request.** To consider an appeal request under this Policy, Reclamation must:

- (a) receive formal notice of the contractor's intention to seek an appeal within 1 year after the decision the appellant intends to appeal;
- (b) receive a written appeal request within 30 calendar days after the appellant's notice of intention to seek an appeal that:
  - (i) identifies the appealed decision(s), the changes the appellant seeks (i.e., reversal, specific modifications), and the appellant's grounds for those changes, and
  - (ii) acknowledges this Policy and agrees to its procedures and specifications; and
- (c) confirm that each appealed decision is final, in accordance with the definition of "regional director's decision" under Paragraph 5.F.

(2) **Acknowledging Receipt.** On behalf of the Commissioner, the Director of Mission Assurance and Protection Organization (Director) will provide the appellant with written acknowledgement of Reclamation's receipt of correspondence identified in this Policy within 15 calendar days of receipt.

(3) **Director's Recommendation.** The Director will oversee the review of appeal requests and provide the Commissioner with a written recommendation to accept or deny each appeal request, in whole or in part.

(4) **Commissioner's Response.** The Commissioner will accept or deny in writing each appeal request that is received by the Director in accordance with this Policy within 60 calendar days after the date on which it is received. Where Reclamation accepts an appeal, it will include an estimate of the time it will need to conclude the appeal or a date on which it expects to conclude the appeal.

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- (5) **Analysis of Accepted Appeal Requests.** The Director will be responsible for the analysis of accepted appeal requests and will provide recommendations to the Commissioner accordingly. The Director will work with regional staff and solicitors in the Washington, D.C. Office and field offices, as needed.
- E. **Submitting Supporting Materials.** Reclamation will accept materials supporting an accepted appeal in accordance with this Paragraph.
- (1) **Time for Submission.** The Director will accept materials an appellant submits in support of an appeal for up to 30 days after the appeal is accepted or until the expiration of an extension granted under Paragraph 4.E.(2).
- (2) **Extension of Time.** The Director will extend an appellant's deadline for submitting supporting materials if the appellant requests an extension within 30 days after the appeal is accepted and to the extent that the Director deems the requested extension reasonable.
- F. **Suspension of Decision.** Reclamation will suspend all or parts of an appealed decision if the regional director or the Commissioner determines that the harm the appellant would otherwise sustain outweighs the interests of the United States and other affected parties in implementing the decision during the appeal.
- (1) **Regional Director.** Regional directors will accept suspension requests that appellants submit to them during the appeal process.
- (2) **Commissioner.** The Commissioner will only consider a suspension request if it has been rejected by the regional director and the appellant requests the Commissioner's review.
- (3) **Time for Response.** Reclamation will respond in writing within 30 calendar days of receiving a suspension request.
- G. **Termination of Appeal.**
- (1) **Termination by Reclamation.** It is within the Commissioner's discretion to terminate an active appeal for any reason. The Director may recommend that the Commissioner terminate an appeal based on the analysis of the request. If the Commissioner decides to terminate an appeal, he or she will notify the appellant in writing stating the reasons therefor.
- (2) **Termination by the Appellant.**
- (a) **Formal Termination.** Reclamation will regard an appeal formally terminated by the appellant upon receipt of the appellant's written notice of termination.

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- (b) **Effective Termination.** Reclamation will regard an appeal effectively terminated by the appellant upon determining that the appellant has taken steps toward resolution of the matter through litigation or has otherwise acted in a manner inconsistent with an intention to complete the process set forth under this Policy.
- H. **Conclusion of Appeal.** Reclamation will regard an appeal concluded once the Commissioner has submitted a final determination, as defined under Paragraph 5.E.(2), to the appellant by the means agreed under Paragraph 4.B.(1).
  - (1) **Nature of Determination.** The Commissioner's final determination will uphold, reverse, or modify, in whole or in part, the appealed decision(s).
  - (2) **Finality of Commissioner's Determination.** The Commissioner's determination is final and no further formal administrative appeal is available through Reclamation or the Department of the Interior.
  - (3) **Implementation of final determination.** The regional director will be responsible for the implementation of the Commissioner's final determination.
- 5. **Definitions.** The following definitions apply for purposes of this Policy.
  - A. **Appeal.** The process through which a contractor, as defined below, pursues the modification or reversal of a regional director's final determination regarding (1) the administration of a water-related contract, or (2) the disposition of incidental revenues.
  - B. **Appeal Request.** A contractor's written request for an appeal under this Policy.
  - C. **Appellant.** A contractor that is at any stage of the appeal process set forth in this Policy.
  - D. **Contractor.** A party to a water-related contract with Reclamation.
  - E. **Final Determination.**
    - (1) The Commissioner's final decision regarding a matter appealed pursuant to this Policy.
    - (2) The Commissioner's formal letter to an appellant stating the final decision(s) concluding an appeal processed under this Policy.
  - F. **Regional Director's Decision or Appealed Decision.** A decision affecting the administration of water-related contracts or the disposition of incidental revenues that a regional director deems final, as indicated expressly or by actions taken to implement the decision.

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- G. **Suspension of Decision.** A suspension of all or part of an appealed decision's implementation ordered by a regional director or the Commissioner pending the appeal's outcome.
  - H. **Suspension Request.** An appellant's request to a regional director or the Commissioner for a suspension of decision.
6. **Review Period.** The originating office will review this release every 4 years.

## RECLAMATION MANUAL TRANSMITTAL SHEET

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

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

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

### Reclamation Manual Release Number and Subject

### Summary of Changes

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

### Filing instructions

Remove Sheets

Insert Sheets

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

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

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