

# Reclamation Manual

## Policy

<b>Subject:</b>	Use of Reclamation Water or Facilities for Activities Prohibited by the Controlled Substances Act of 1970
<b>Purpose:</b>	The purpose of this Policy is to state the Bureau of Reclamation's intent to operate consistently with the Controlled Substances Act of 1970 with respect to the potential use of Reclamation water or facilities for the production of marijuana
<b>Authority:</b>	Reclamation Act of 1902 (ch. 1093, 32 Stat. 388); Controlled Substances Act of 1970 (Pub. L. 91-513, 84 Stat. 1236, as amended by the Agricultural Improvement Act of 2018 (Pub. L. 115-334); codified as amended in various sections of 21 U.S.C.)
<b>Approving Official:</b>	Commissioner
<b>Contact:</b>	Director, Mission Assurance and Protection Organization (84-50000)

1. **Introduction.** The Controlled Substances Act of 1970 (CSA) and its implementing regulations prohibit the cultivation of marijuana,<sup>1</sup> which is defined in subsection 102(16), (21 U.S.C. 802(16)).<sup>2</sup> Reclamation's obligation to follow Federal law means that it may not approve the use of Reclamation project water or facilities for activities that are prohibited by the CSA and that are not within a relevant exception or exemption established by Federal law. The legalization of marijuana's cultivation under some state laws requires a restatement of Reclamation's obligations under the CSA.
2. **Applicability.** This Policy applies to Reclamation staff who administer water-related contracts and Reclamation staff with knowledge of the use or planned use of Reclamation facilities or Federal water in the cultivation of marijuana.
3. **Policy.** Reclamation will operate its facilities, make available contract water, execute and administer its water-related contracts, and perform its contractual and legal duties consistent with the CSA. Specifically:

<sup>1</sup>Spelled "marihuana" in the statute.

<sup>2</sup>This Policy does not apply to the use of Reclamation project water or facilities in the cultivation of hemp, as defined in the Agricultural Marketing Act of 1946 (7 U.S.C. 1639o), which is no longer a prohibited activity under the CSA, as amended by the Agricultural Improvement Act of December 10, 2018 (2018 Farm Bill) (Pub. L. 115-334). Section 10113 of the 2018 Farm Bill added the current definition of "hemp" to the Agricultural Marketing Act and removed hemp from the CSA's definition of "marijuana" (section 12619(a), codified at 21 U.S.C. § 802) and from its schedule of controlled substances (section 12619(b), codified at 21 U.S.C. 812(17)). Hemp cultivation is regulated by the United States Department of Agriculture (USDA) and responsible state agencies (see 7 U.S.C. 1621, *et seq.*). Reclamation staff should direct contractors and water users to the USDA and the responsible state agency for associated information.

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- A. Reclamation will not approve use of Reclamation facilities or water in the cultivation of marijuana that is prohibited under the CSA and not within an exception or exemption established by Federal law.
  - B. Should Reclamation employees become aware that Reclamation facilities or the water they supply<sup>3</sup> are being used to facilitate Federally-prohibited cultivation of marijuana, they will, through their line management, bring this to the attention of their regional director, who will report such use to the Department of Justice and document the reporting action(s).
  - C. A Reclamation employee who is designated by the regional director will compile and maintain records that document all activities and communications regarding known or potential uses of Reclamation water or facilities for Federally-prohibited cultivation of marijuana. These records will include all relevant memoranda, emails, letters, records of telephone conversations, and responses from Reclamation employees about known or potential uses of Reclamation water or facilities to cultivate marijuana.
  - D. Reclamation does not have a responsibility or designated role in actively seeking enforcement of the CSA.
- 4. **Commingled Water.** This Policy does not apply to non-contract water commingled with contract water in non-Federal facilities.
  - 5. **Definitions.** The definitions cited in Reclamation Manual Policy, *Water-Related Contracts-General Principles and Requirements*, PEC P05, apply to this Policy (see especially the terms “Contract Water” and “Water-Related Contract” at Paragraphs 3.D. and 3.R.).
  - 6. **Review Period.** The originating office will review this release every 4 years.

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<sup>3</sup> The requirements in this Policy also apply to water supplies from United States Army Corps of Engineers facilities when Reclamation staff are the contracting officers or have responsibilities for administering the water-related contracts.

## 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: \_\_\_\_\_