

# Reclamation Manual

## Directives and Standards

<b>Subject:</b>	Contract Compliance Reviews
<b>Purpose:</b>	This Directive and Standard (D&S) sets forth the Bureau of Reclamation's requirements for conducting the contract compliance review process. The benefits of this D&S are consistent and effective compliance with relevant water-related contract requirements.
<b>Authority:</b>	The Reclamation Act of 1902 (ch. 1093, 32 Stat. 388); the Reclamation Project Act of 1939 (1939 Act) (Pub. L. 76-260; 43 USC 485, <i>et seq.</i> ); the Water Conservation and Utilization Act of 1939 (WCUA) (53 Stat. 1418; 16 USC 590y, <i>et seq.</i> ); and acts amending and supplementing these laws.
<b>Approving Official:</b>	Director, Policy and Administration (Director)
<b>Contact:</b>	Reclamation Law Administration Division (RLAD) (84-55000)

1. **Introduction.** The Contract Compliance Review (CCR) process is Reclamation's primary internal control for its water-related contracting program.<sup>1</sup> It is designed to monitor and promote contract compliance, as defined below at Paragraph 4.E. This D&S advances the objectives of ensuring that contract water is delivered and used in accordance with contract terms; that contract water deliveries are adequately monitored and recorded to make these determinations; that contract water is appropriately priced in accordance with all relevant requirements; and that the contractually established payments are being made as required.
2. **Applicability.** This D&S applies to all Reclamation personnel who participate in CCRs.
3. **Requirements.**
  - A. **CCR Selection and Scheduling.**
    - (1) **CCR General Schedule.** Each region will establish and maintain a general, region-wide schedule of CCRs (General Schedule). General Schedules will indicate the priority status of each contractor in the region that is subject to the CCR requirement and the timing and type of review intended for each contractor. Regions will ensure, on an ongoing basis, their prioritizations and exclusions continue to be appropriate based on current circumstances.
    - (2) **Director's Concurrence.** The Director's written concurrence<sup>2</sup> is required to finalize each initial regional General Schedule; to make permanent substantive

<sup>1</sup>As recommended in the Office of Inspector General's 1994 Audit Report *Irrigation of Ineligible Lands, Bureau of Reclamation* (Report No. 94-I-930, July 1994).

<sup>2</sup>Written concurrence, wherever required in this D&S, may be made electronically.

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changes to an existing General Schedule, such as changing a contractor's priority status; and to exclude contractors from the CCR requirement under Paragraph 3.A.(4), below.

- (3) **Annual Call Letter.** The Director will issue an annual call letter to each region not later than January 15 requesting dates for the CCRs listed for the year in the region's General Schedule and the region's recommendations for attendance by staff from RLAD. Regions will submit any intended revisions to the General Schedule for the year, specifying the reasons for them, to the Director by the deadline to be specified in the Director's annual call letter. The Director will deem the absence of changes to a region's General Schedule in any given year to be the region's confirmation that it considers the existing prioritizations and exclusions appropriate.
- (4) **Priority Status and Exclusion.** Each contractor that is not excluded will be assigned a status of high or standard priority for purposes of meeting general requirements of this D&S. Priority status will be used to determine the frequency and types of CCRs.
  - (a) **High Priority.** Contractors designated as high priority will be scheduled for CCRs at intervals of not greater than 5 years, unless the regional director determines that the number of reviews to be performed in the region requires longer intervals. Justification for intervals of more than 5 years for high priority contractors will be submitted to the Director with the region's initial General Schedule or separately as needed. All CCRs with high priority contractors will be conducted onsite in accordance with Paragraph 3.A.(6)(a) below.
  - (b) **Standard Priority.** Contractors designated as standard priority will be scheduled for CCRs at intervals of not greater than 10 years, unless the regional director determines that the number of reviews to be performed in the region requires longer intervals. Justification for intervals of more than 10 years for standard priority contractors will be submitted to the Director with the region's initial General Schedule or separately as needed. CCRs with standard priority contractors will be conducted onsite unless the contractor is also designated "desktop only" in the region's General Schedule or the Manager, RLAD approves a one-time waiver from this requirement. See Paragraph 3.A.(6)(b) below regarding desktop CCRs.
  - (c) **Excluded.** Contractors will be excluded from the CCR requirement if the regional director determines their review to be unwarranted and the Director concurs. The determination to exclude a contractor from the requirement

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will be based on the prioritization criteria under Paragraph 3.A.(5) below.<sup>3</sup> The regional director's determination and the justification will be documented, along with the Director's written concurrence, and filed with the region's General Schedule. A list of excluded contractors will be included in the CCR Annual Report, along with a summary statement of the justification for each exclusion.

- (5) **Prioritization Criteria.** Regions will use the following criteria in determining the need for CCRs and the type and frequency of reviews to be conducted for particular contractors.
- (a) **Standard Prioritization Criteria for Contractors Receiving Water for Irrigation Use.** The following criteria will be considered in determining the priority status of contractors receiving contract water for irrigation use. Contracts meeting both criteria will be designated high priority, unless the regional director determines that designation to be unwarranted and the Director concurs.<sup>4</sup>
- (i) There is appreciable current or projected population growth or urbanization within the contractor's service area.
- (ii) The contractor's contract water constitutes its full or primary water supply.
- (b) **Past Findings and Recommendations.** Findings and recommendations stated in checklists from past CCRs will be considered in determining contractors' future CCR requirements, especially recommendations specifically concerning frequency or type of future CCRs. Contractors that have had recurring contract compliance issues or that have outstanding contract compliance issues will be designated high priority, unless the regional director determines that designation to be unwarranted and the Director concurs.
- (c) **Regional Criteria.** Regions will, as necessary, incorporate additional or different criteria in selecting or excluding contractors, and in determining contractors' priority statuses. Regions' criteria will be documented when

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<sup>3</sup>The purpose of allowing exclusions is to promote greater emphasis on and commitment of resources to higher-priority contractors. The exclusion of a contractor from the CCR requirement affects its status in relation to the CCR process but does not affect the region's responsibility for ensuring that all contracts it administers are performed in accordance with their terms or the region's authority for establishing regional policy and practices for meeting this responsibility.

<sup>4</sup>This paragraph is not intended to limit regions' high priority designations. Contractors receiving contract water only for M&I use and contractors receiving contract water for irrigation use but not meeting either of the stated criteria may nonetheless be deemed high priority based on other criteria under Paragraphs 3.A.(5)(b) and (c).

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used in making the stated determinations and will be submitted to the Director with the regions' initial General Schedules or separately as needed.

- (6) **Types of CCRs.** The following types of CCRs are available, subject to the limitations and requirements for high priority and standard priority contractors stated above at Paragraphs 3.A.(4)(a) and (b).
- (a) **Onsite CCRs.**
- (i) Reviews conducted at the contractor's facilities with Reclamation staff and the contractor or the contractor's representatives in attendance. See Paragraph 3.(C). below for preparation requirements. Each onsite CCR will include a visual survey of the contractor's service area and/or facilities unless the regional review team determines in advance that the survey is not justified for the particular review based on the type of facilities or other relevant factors. The review team will document its justification for foregoing a visual survey in the associated CCR checklist.
  - (ii) Personnel from the regional office will attend each onsite CCR, subject to a general waiver for a given contractor concurred with by the Director, or a one-time waiver concurred with by the Manager, RLAD. A third consecutive waiver for a given contractor will be deemed a general waiver requiring the Director's concurrence. RLAD personnel will select onsite CCRs to attend in consultation with the regions, based on priority status and other factors, such as contractors' repayment status, urbanization trends in the relevant service areas, and known issues.
- (b) **Desktop CCRs.** Reviews conducted in-house by Reclamation staff. At a minimum, desktop reviews require review of the relevant contract(s), legal authorities, water delivery records, maps and Geographic Information System data, payment records. Reviewers will review other information necessary to confirm contract compliance.

### B. Training and Guidance.

- (1) **Minimum Training for Staff Assigned to Participate in CCRs.** RLAD and the regions will provide training to ensure, at a minimum, that staff expected to participate in CCRs:
- (a) understand the basic concepts relevant to the CCR objectives, such as the legal and policy distinctions between types of water uses; benefits, requirements, and limitations associated with the different uses; the concepts associated with eligibility of land to receive project water; the options

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generally available where contractors desire to make changes to their water delivery or use and the associated requirements; and the objectives and requirements associated with internal controls;

- (b) have reviewed documentation from past CCRs, including checklists and copies of verifying documents, and have reviewed the most recent CCR Annual Report;
  - (c) know how to prepare for CCRs, as addressed under Paragraph 3.C., below;
  - (d) are able to articulate purposes, procedures, and background of the CCR process to contractors during reviews;
  - (e) understand and can explain the meanings and purposes of the questions being asked and how the information will be used; and
  - (f) are prepared to discuss any contract compliance issues identified during CCRs with the contractors, along with the basic options and requirements for resolving the issues as set forth below in Paragraph 3.E.
- (2) **Training and Guidance Provided to the Regions by RLAD.**
- (a) **Periodic Training.** RLAD will provide Reclamation-wide CCR training at intervals of not less than 5 years.
  - (b) **Training Based on Need.** RLAD will provide further training to regions as requested, subject to the availability of staff and other resources.
  - (c) **Guidance.** RLAD will provide standard discretionary guidance documents to the regions for conducting CCRs. RLAD will determine the nature of the guidance to be provided in consultation with the regions and ensure that it is updated as needed and is easily accessible to staff expected to perform CCRs.

### C. Preparation for Onsite CCRs.

- (1) **Lead Reviewer.** Each review team will have a lead reviewer. The lead reviewer will ensure that:
  - (a) section A of the CCR checklist has been completed by Reclamation staff prior to the CCR;
  - (b) the checklist has been provided to the contractor with section A completed at least 5 business days prior to the scheduled review date; and

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- (c) documentation will be provided to all members attending the review in advance.
- (2) **Regional and Lead Reviewers.** The regional and lead reviewers will gather all internal information used for monitoring relevant contractor and/or facility operations and review documents obtained for scheduled CCR. Documentation will be provided to all members attending the review in advance.
- (3) **All Reviewers.** All reviewers attending a given CCR are responsible for knowing the authorized use(s) (as defined at Paragraph 4.A. below), the contractual payment requirements, and the requirements the contract places on the contractor for keeping and producing records. To the extent practicable, the reviewers scheduled to attend a CCR will schedule adequate time before the CCR to discuss pre-review findings and other relevant information.

### D. CCR Documentation and Follow-Up.

- (1) **Checklist.** Reviewers will use the standard checklist in Appendix A to conduct CCRs. Any compliance issues identified through the CCR process will be documented in the checklist.
  - (a) **Alternate Checklist.** Regions may establish, subject to the Manager, RLAD's written concurrence, alternate standardized checklists for use specific to a project or contracting authority or otherwise for standard purposes within the region.
  - (b) **Modified Checklist.** Regions may modify the checklist for case-specific needs, subject to the Manager, RLAD's written concurrence. The purpose of the modified checklist is to omit material that is irrelevant and/or add material necessary to ensure effectiveness of the checklist for any given CCR.
- (2) **General Emphases.** Following are areas of general emphasis reflected in the standard checklist.
  - (a) **Authorized and Actual Place of Use.** The reviewers will confirm the authorized place of use with the contractor, if applicable. The checklist will identify the means used to confirm the authorized place of use and to determine whether any related contract compliance issues or potential contract compliance issues exist.
  - (b) **Authorized and Actual Type of Use.** The reviewers will confirm the authorized type(s) of use with the contractor, to the extent possible. The

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checklist will identify the means used to confirm the authorized types of use and to determine whether any related contract compliance issues or potential contract compliance issues exist.

- (i) **Determination.** What constitutes an authorized type of use under any given contract must be determined by reference to that contract and, as necessary, other evidence, such as the past conduct of the parties indicating mutual interpretations of contract terms, applicable legal definitions, legislative materials relating to the project/contract, and other sources that may assist the determination. Guidance for making this determination is included in Appendix C to this D&S. See also Paragraph 3 of Reclamation Manual (RM) D&S, *Conversions of Project Water from Irrigation Use to Municipal and Industrial Use* (PEC 09-01), regarding the identification of conversions from irrigation water uses to municipal and industrial (M&I) water uses.
- (ii) **Emphasis on Irrigation of Small Tracts.** Where an agricultural purpose is required for irrigation use of contract water or there is an applicable pricing difference based on agricultural versus nonagricultural irrigation, reviewers will emphasize the need to confirm that the use of irrigation water delivered to tracts of 10 acres or less meets the agricultural requirement.<sup>5</sup> This is confirmed through visual confirmation, documentation provided by the contractor or the water user directly (e.g., tax status, business receipts, relevant licenses, etc.), or otherwise as determined by the reviewers and recorded in the associated checklist.
- (c) **Contractually Required Payments.** Reviewers will confirm that reviewed contractors are in compliance with all contractual payment requirements.
- (d) **Supporting Documentation.** Basic findings of contract compliance require documentary and/or visual confirmation. The checklist will identify methods used to make review findings (i.e., documentary or visual). The checklist will also list all documentation used, and will identify the office where the documentation is kept on file. Unless the contractor is not required by contract or otherwise to keep relevant records and provide them to

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<sup>5</sup>Note that this requirement does not condition eligibility to receive irrigation water on tract size or income. Rather, its purpose is to emphasize smaller tracts to focus limited time and resources on lands receiving irrigation water that are most likely to cease using it for agricultural purposes, where that is a requirement. While Reclamation makes no assumptions as to any particular tract, smaller tracts may generally indicate the subdivision of the irrigated tracts, which is often accompanied by changes in land use.

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Reclamation upon request, the failure to do so is a contract compliance issue that must be identified in the checklist and resolved in accordance with this D&S.

- (3) **Reviewers' Consensus in Findings.** The reviewers will work together to document the CCR and report findings that adequately reflect the reviewers' consensus. The standard version of section C and D appears in Appendix B to this D&S.
- (4) **Distribution of Checklists.** Not later than November 15 each year, regional directors will:
  - (a) electronically submit copies of completed CCR checklists for all CCRs conducted that year, each signed by the lead reviewer, to RLAD; and
  - (b) deliver a copy of the completed CCR checklist to each contactor reviewed during the year, by mail or other agreed medium.
- (5) **CCR Annual Report.** Not later than June 15 of each year, RLAD will submit the CCR Annual Report to the Director, presenting the key findings and selected data gathered through CCRs conducted during the previous year. RLAD will work with the reviewers listed in the year's checklists to ensure that the CCR Annual Report accurately reflects CCR findings and statuses of identified contract compliance issues. The CCR Annual Report will be used in support of the Director's Annual Assurance Statements regarding internal controls, as required under Office of Management and Budget Circular A-123. The CCR Annual Report will:
  - (a) list the CCRs completed for the review year, all contract compliance issues identified through CCRs for the review year, and the plan of action for resolution of each issue and its status;
  - (b) state the status of contract compliance issues from CCRs conducted in previous years and describe the processes being implemented to resolve outstanding issues;
  - (c) include each region's General Schedule as an appendix; and
  - (d) provide other information the Director deems appropriate.
- (6) **Regional Directors' Report.** A report will be prepared by RLAD for each regional director identifying CCRs completed and any compliance issues specific to their region identified in the current year CCR cycle, as well as any unresolved or outstanding compliance issues identified in past years' CCR cycles.



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- E. **Resolving Contract Compliance Issues.** Regional directors are responsible for resolving contract compliance issues identified through CCRs. Any contract compliance issues identified through CCRs will be documented and steps toward resolution taken in accordance with this D&S. Reclamation will work cooperatively with contractors, and with state, local, and tribal governments, as appropriate, to resolve contract compliance issues. RLAD will be copied on all correspondence with contractors required below.
- (1) **Determining Means of Resolution.** Upon submission of checklists by the November 15 deadline, regions will indicate the intended means for resolving each contract compliance issue identified for the year or confirm that the issues have been resolved. Regions will determine the process required for resolution of identified contract compliance issues within the parameters set forth below.
  - (2) **Documentation and Reporting.** Regions will document all steps taken toward resolving contract compliance issues and will report the statuses of all outstanding issues on an annual basis. Regions will also notify the Director of any significant changes in contract compliance issue status or the status of issue resolution efforts as they occur.
  - (3) **Contractor Notification.** If a contract compliance issue is identified, the region will issue a letter to the contractor within 60 days of the review. The content of the letter will depend on the status of the contract compliance issue. At a minimum, the letter will specify the identified issue and enclose a copy of the relevant checklist. If the issue has been resolved, the letter will so state. If the issue has not been resolved, the letter will additionally:
    - (a) discuss the options available for resolving the issue, the actions toward resolving it that the region intends or is required to take, and any actions toward resolving it that the contractor has already taken or agreed to take;
    - (b) discuss the potential penalties that could be imposed, costs, including administrative costs Reclamation incurs in resolving the contract compliance issue(s), that may be charged to the contractor, and/or other actions that could be taken if the issue is not resolved;
    - (c) if appropriate, inform the contractor that it may dispute the finding of a compliance issue to the regional director, and request a determination from the regional director (see Paragraph 3.E.(5)(c)., below); and
    - (d) allow the contractor 60 calendar days from the date of the letter in which to respond before Reclamation will take further action.
  - (4) **Informal Resolution.** The responsible region will make all reasonable efforts to resolve contract compliance issues informally. The Contracting Officer will

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determine and initiate the steps necessary to accomplish informal resolution, and will notify the regional director and the Manager, RLAD of progress toward resolution as it occurs. If an identified issue remains unresolved for 1 year after the date on which the contractor was notified under Paragraph 3.E.(3) above, the region will initiate formal resolution in accordance with Paragraph 3.E.(5). below, unless the regional director determines that the period for informal resolution should be extended and the Director concurs. An extension will not exceed 1 year. Extensions beyond the initial extension are subject to the same requirements.

- (5) **Formal Resolution.** Formal resolution is required for any contract compliance issue that cannot be resolved in accordance with Paragraph 3.E.(4) above.
- (a) **Resolution Plan.** Compliance issues subject to formal resolution require a written resolution plan, which the regional director will submit to the Director for concurrence. The Director will provide concurrence in writing. The resolution plan will identify the contractor, contract, contract compliance issue, and CCR date, and will state the action(s) to be taken by the region and/or the contractor to resolve the issue. Amendments to established resolution plans require the Director's written concurrence.
- (b) **Contractor Notification.** The contractor will be notified in writing of the status of the contract compliance issue and the corresponding options and requirements for resolution within 30 calendar days of the end of attempts at informal resolution. The notification will state the reason for initiation of formal resolution and discuss potential actions that can be taken if the issue remains unresolved and the contractor's right to appeal, as set forth below.
- (c) **Appeals.** Where a contractor disputes the existence of a contract compliance issue, the region will issue a letter to the contractor acknowledging the dispute and apprising the contractor of the dispute process as set forth in RM Policy, *Voluntary Process for Appealing Decisions Made in the Administration of Water-Related Contracts and in the Crediting of Incidental Revenues* (PEC P15).
4. **Definitions.** The following definitions apply where the defined terms appear in this D&S, in other documents associated with the CCR process, and elsewhere in the Reclamation Manual (RM).
- A. **Authorized Use.** A use of contract water, as defined at Paragraph 3.D. of RM Policy, *Water-Related Contracts—General Principles and Requirements* (PEC P05), that the relevant contract authorizes. The term “authorized use” encompasses authorized place of use and authorized type of use, each as defined below.

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- B. Authorized Place of Use.** A location that, under the relevant contract, is eligible to receive the contract water.<sup>6</sup> Authorized places of use may be defined by district boundaries, a contractor's service area, eligibility of lands to receive contract water, number of acres eligible to receive contract water, or by the project boundaries.
- C. Authorized Type of Use.** A purpose for the use of contract water that the relevant contract authorizes.<sup>7</sup> Authorized types of use must be determined on a contract-specific basis.
- D. CCR Checklist or Checklist.** A standard, alternate, or modified checklist as described under Paragraph 3.D.(1).
- E. Contract Compliance.** Compliance with applicable contractual and legal provisions establishing<sup>8</sup>:
- (1) the amount of contract water to be made available and its authorized use(s);
  - (2) the contractor's associated financial obligations to the United States;
  - (3) procedural requirements for making authorized changes to the amounts, places, and types of water use; and
  - (4) responsibilities for measuring and tracking water deliveries and use, and for keeping associated records and providing documentation to Reclamation upon request, so that the delivery amounts, type(s) of use, and place(s) of use can be verified.
- F. Unauthorized Use.** A type or place of use of contract water that the relevant contract does not authorize; a change in place or type of use that was not executed in accordance with applicable requirements.

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<sup>6</sup>For Reclamation requirements associated with irrigation suitability land classification, see RM Policy, *Determination of Irrigation Suitability of Proposed Project Lands, and Identification of Lands That May Receive Project Irrigation Water on Operating Projects* (PEC P12) and D&S, *Irrigation Suitability Land Classification for New Projects or Operating Projects* (PEC 12-01).

<sup>7</sup>The types of use normally at issue are irrigation use and M&I use. Both terms are defined under Paragraph 3 of RM Policy, *Water-Related Contracts—General Principles and Requirements* (PEC P05). Note, however, that those definitions apply prospectively to changes in type of use in accordance with PEC P05 and RM D&S, *Conversions of Project Water from Irrigation Use to Municipal and Industrial Use* (PEC 09-01). See the flow chart provided in Appendix A to PEC P05 and reproduced in Appendix C to this D&S.

<sup>8</sup>The question for purposes of CCRs is whether the contractor is complying with the relevant contract provisions, not whether the contract fully complies with law. Although a contract provision that appears to be out of compliance with law is not, itself, a contract compliance issue, Policy and Administration is to be notified if questions arise over whether a provision of a contract reviewed for CCR purposes complies with applicable law.

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- G. **Water-Related Contract.** Any repayment or water service contract and any other legally binding agreement executed pursuant to Reclamation law or to the WCUA that:
- (1) makes water available from or through the facilities of a Federal project that Reclamation manages, operates, or funds; or
  - (2) establishes OM&R responsibilities for such facilities and/or other responsibilities related to ensuring that such facilities continue to serve their intended purposes; or
  - (3) makes water available to the United States.
5. **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: \_\_\_\_\_