

Reclamation Manual

Policy

Subject:	Prohibition on Future Contracts for the Sale or Use of Project Water or Surplus Project Water Pursuant to the Warren Act of 1911
Purpose:	To prohibit the use of the Warren Act for future contracts for the sale or use of project water or surplus project water. The benefit of this Policy is the use of other more appropriate authorities when contracting for the sale or use of such water.
Authority:	The Reclamation Act of 1902 (ch. 1093, 32 Stat. 388) and acts amendatory and supplementary thereto, especially the Warren Act of February 21, 1911 (Warren Act) (36 Stat. 925; 43 USC 523-525); and the Reclamation Project Act of 1939 (53 Stat. 1187, 43 USC 485, <i>et seq.</i>).
Approving Official:	Commissioner
Contact:	Policy and Administration, Reclamation Law Administration Division (84-55000)

1. **Introduction.** Early Bureau of Reclamation contracts have cited Section 2 of the Warren Act as an authority for supplying project water, including “excess” or “surplus” project water, for irrigation purposes. With the subsequent establishment of additional Reclamation water contracting authorities – in particular, those established by the Reclamation Project Act of 1939 – the use of Warren Act Section 2 authority for this purpose is now unnecessary and inappropriate for new contracting actions. Instead, the use of more relevant authorities is necessary to ensure that Reclamation contracts to supply project water better align with the intent and objectives of current reclamation law.
2. **Applicability.** This Policy applies to all Reclamation personnel involved in the negotiation, execution, and administration of water-related contracts.
3. **Definitions - Project Water.** Project water means surface or ground water, including project return flows, which is pumped, diverted, and/or stored:
 - A. Based upon the exercise of water rights which have been appropriated or acquired by the United States or others, or which have been decreed, permitted, certificated, licensed, or otherwise granted to the United States or others, for a Reclamation project or a project built pursuant to the Water Conservation and Utilization Act of 1939 (WCUA)(53 Stat. 1418; 16 USC 590y, *et seq.*), or
 - B. Based upon a withdrawal or reservation of water from appropriation by the United States for a Reclamation project or a WCUA project, or
 - C. In accordance with section 215 of the Reclamation Reform Act of 1982 (43 U.S.C. 390oo), or

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- D. Based upon an act of Congress which allocated or apportioned water to a Reclamation project or a WCUA project.
4. **Responsibilities.**
- A. **Director, Policy and Administration (Director).** The Director is responsible for ensuring that Policy and Administration does not forward to the Commissioner's Office any requests to approve actions prohibited by this Policy.
- B. **Regional Directors.** Regional directors are responsible for ensuring compliance with this Policy in their regions.
5. **Policy.**
- A. **No New Contract.** Effective immediately, no new contracts for the sale or use of project water or surplus project water from a Reclamation project shall be entered into based upon the Warren Act. Rather, all future contracts for the sale or use of project water or surplus project water shall be entered into based upon the Reclamation Project Act of 1939 and/or other applicable authorities.
- B. **Existing Contracts to Remain in Effect.** Contracts for the sale of project water or surplus project water executed heretofore pursuant to the Warren Act shall remain in effect. However, such a contract may not be amended to extend its term nor renewed if and when it expires. If and when such an existing contract expires, any new contract for the sale or use of project water or surplus project water shall be entered into based upon the Reclamation Project Act of 1939 and/or other applicable authorities. An assignment of a permanent Warren Act contract to another person or entity can be permitted provided no changes have been made in the contract provisions.
- C. **Exceptions.** Regional Directors may request exceptions from this prohibition from the Commissioner. These exceptions will be considered on a case-by-case basis.

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: _____