

Reclamation Manual

Directives and Standards

Subject: Cultural Resources Management

Purpose: To ensure that Reclamation manages its cultural resources according to legislative mandates and in a spirit of stewardship; to clarify Reclamation's roles and responsibilities related to cultural resources; and to provide direction for consistent implementation of Reclamation's cultural resources management responsibilities.

Authority: The laws, regulations, and guidance shaping Reclamation's cultural resources responsibilities include:

Antiquities Act of 1906 (16 U.S.C. 431); Historic Sites Act of 1935 (16 U.S.C. 461); Reservoir Salvage Act of 1960 (16 U.S.C. 469); National Historic Preservation Act of 1966 (16 U.S.C. 470); National Environmental Policy Act of 1969 (42 U.S.C. 4321); Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469); American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996); Archeological Resources Protection Act of 1979 (16 U.S.C. 470); Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001); National Register of Historic Places (36 CFR Part 60); Determinations of Eligibility for Inclusions in the National Register of Historic Places (36 CFR Part 63); Curation of Federally Owned and Administered Archeological Collections (36 CFR Part 79); The Protection of Historic Properties (36 CFR Part 800); Protection of Archeological Resources (43 CFR Part 7); Native American Graves Protection and Repatriation Act (43 CFR Part 10); Protection and Enhancement of Cultural Environments (Executive Order 11593); Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Executive Order 12898); Protection of American Indian Sacred Sites (Executive Order 13007); Managing Museum Property (411 DM); Protection of Properties on the National Register of Historic Places (426 DM 1); Preservation of Historic Property (519 DM 1); Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines (48 FR 44716); and Reclamation Cultural Resources Management Policy (1998) LND-P01.

Contact: Land, Recreation, and Cultural Resources, Federal Preservation Officer, D-5300

1. Definitions.

- A. **Adverse Effect** occurs when an undertaking diminishes the integrity of a historic property's location, design, setting, materials, workmanship, feeling, or association. See definition of **Effect**.
- B. **Advisory Council on Historic Preservation** (Council) is an independent Federal agency established pursuant to Section 201 of the National Historic Preservation Act

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(NHPA). Under Section 106 of NHPA, the Council must be afforded an opportunity for comment on Federal, federally assisted, or federally licensed undertakings that may affect cultural resources listed on or eligible for listing on the National Register of Historic Places (National Register).

- C. **Archaeological Resources** means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Non-fossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age [Section 3(1) of ARPA].
- D. **Area of Potential Effect (APE)** means the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.
- E. **Cultural Items** as used in the Native American Graves Protection and Repatriation Act (NAGPRA) are human remains, associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony [Section 2(3) of NAGPRA].
- F. **Cultural Resources** is a broad term that includes prehistoric, historic, architectural, and traditional cultural properties. Within the broad range of cultural resources are those that have recognized significance. These are called **Historic Properties**. See definition.
- G. **Cultural Resources Professional** refers to the professionally qualified individual(s) responsible for managing, coordinating, and implementing Reclamation's cultural resources policies and programs.
- H. **Cultural Resources Survey** refers to the study of an area to identify the cultural resources that are, or may be, present. Reclamation utilizes three levels of survey: Class I, Class II, and Class III.
- (1) The purpose of the **Class I survey** is to identify known cultural resources in an area and to assess the need for additional survey information. The Class I inventory is primarily a literature and archival search. It consists of identifying cultural resources that have been listed on or determined eligible for inclusion on

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the National Register. It also includes contacting appropriate Federal, State, and local agencies, Native American tribes, other interested persons, and records repositories.

- (2) The purpose of the **Class II survey** is to identify and predict the type, density, and distribution of cultural resources in an area. It is designed to determine if significant cultural resources are present in the surveyed areas, or are likely to occur elsewhere in the study area. If significant resources are likely to occur in other portions of a study area, additional cultural resources work will be necessary. The Class II survey includes the requirements of a Class I survey and is an intensive on-the-ground examination of a sample, or portion, of the study area. A Class II survey may require test excavations or other specialized studies for the purpose of evaluating the significance of cultural resources.
 - (3) The purpose of the **Class III survey** is designed to locate all cultural resources in an area. As appropriate, a professional evaluation of their eligibility for the National Register will be undertaken. The Class III survey includes the requirements of a Class I survey and an intensive on-the-ground examination of the entire study area. A Class III survey may require test excavations or other specialized studies for the purpose of evaluating the significance of cultural resources and for determining the geographical extent of a site.
- I. **Curation** is the long-term management and preservation of collections according to professional museum and archival practices (i.e., 36 CFR Part 79 or 411 DM).
 - J. **Effect** on an historic property occurs when an undertaking may alter characteristics of the property that may qualify it for inclusion on the National Register.
 - K. **Federal Preservation Officer** (FPO) is the individual, appointed by the Commissioner, as required by Section 110(c) of NHPA, to coordinate Reclamation's overall cultural resources management program.
 - L. **Historic Property** means any prehistoric or historic district, site, building, structure, or object (see definition), included on, or eligible for inclusion on, the National Register [Section 301(5) of NHPA]. This term includes artifacts, records, and material remains related to such a property. The term "eligible for inclusion on the National Register" means cultural resources formally determined as such by the Secretary of the Interior or by Reclamation in consultation with the appropriate State Historic Preservation Officer (SHPO). Properties of traditional religious and cultural importance to an Indian tribe may be determined to be eligible for inclusion on the National Register [Section 101(d)(6) of NHPA].

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- M. **Indian Lands** refers to all lands under the jurisdiction or control of an Indian tribe.
- N. **Interested Parties or Persons** are those organizations and individuals, including Native Americans, concerned with the effects of an undertaking on historic properties. Interested persons may include: local governments, Federal applicants, Indian tribes, traditional cultural leaders, other agencies (Federal or State), institutions, foundations, and the public.
- O. **Museum Property** is personal property acquired by Reclamation according to a rational scheme and preserved, studied, or interpreted for public benefit (411 DM). It includes biologic, ethnographic, geologic, historic, paleontologic, and prehistoric resources, including their associated documentation. Items which illustrate the history of the mission of the agency such as historic documents, plans, maps, natural history specimens, and museum-quality fine art, including those that have been or are being displayed in Reclamation offices, are examples of museum property. Archaeological resources collected under legal mandates are museum property. Reclamation and Regional and Area Office Scope of Collections Statements guide the identification of museum property.
- P. **National Historic Landmark** is a district, site, building, structure, or object in public or private ownership, judged by the Secretary to possess national significance in American history, archeology, architecture, engineering, and culture, and so designated by him (36 CFR Part 65).
- Q. **National Register of Historic Places** (National Register) is the official list of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture maintained by the Secretary of the Interior (36 CFR Part 60).
- R. **Object** is a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment [36 CFR 60.3(j)].
- S. **Reclamation Lands** refers to real property administered by the Commissioner and includes all acquired and withdrawn lands under the jurisdiction of Reclamation.
- T. **Records** are defined in 44 U.S.C. 3301, as "all books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an Agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that Agency or its legitimate successor as evidence of

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the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them." Materials maintained solely for reference purposes, extra copies, and stocks of publications are not included as records.

- U. **Responsible Office** refers to a Reclamation office with delegated cultural resources responsibility.
 - V. **Significance** is the term used to indicate a cultural resource's eligibility for the National Register according to the criteria in 36 CFR 60.4.
 - W. **State Historic Preservation Officer (SHPO)** is the official appointed or designated by the Governor pursuant to Section 101(b)(1) of NHPA to administer the State historic preservation program.
 - X. **Traditional Cultural Property** is defined in National Register Bulletin 38 as a property that is eligible for inclusion on the National Register because of its association with cultural practices or beliefs of a living community that: (1) are rooted in that community's history and (2) are important in maintaining the continuing cultural identity of the community.
 - Y. **Tribal Preservation Official** is an individual designated by a tribe to administer the tribal historic preservation program, through appointment by the tribe's chief governing authority or as a tribal ordinance may otherwise provide [Section 101(d)(2)(B) of NHPA]. The tribal historic preservation program's is limited to tribal lands.
 - Z. **Undertaking** means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency including: (1) those carried out by or on behalf of the agency; (2) those carried out with Federal financial assistance; (3) those requiring a Federal permit, license, or approval; and (4) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency [Section 301(7) of NHPA].
2. **Implementation of Reclamation's Cultural Resources Management Responsibilities.** Reclamation will manage and protect cultural resources in keeping with its mission "To manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public." The agency will implement cultural resources management in a positive manner that fulfills the spirit as well as the letter of laws, regulations, and policies.

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- A. The **Commissioner** is responsible for the management and protection of cultural resources on Reclamation lands or associated with Reclamation activities [Section 106 of NHPA and Section 3(2) of ARPA]. The Commissioner designates a Federal Preservation Officer.
- B. The **Federal Preservation Officer (FPO)** is responsible for the development of cultural resources policy and guidance, as well as for providing Reclamation-wide advice and assistance. The FPO may conduct periodic reviews of the regional or area offices to monitor compliance with the cultural resources laws, regulations, and policies.
- (1) The FPO is required by 36 CFR 60.9(d) to approve nominations to the National Register, to approve removal of historic properties from the National Register [36 CFR 60.15(c)], as well as review and transmit to the Commissioner for approval the request for waiver of the 1 percent limit (see paragraph E below).
- C. The **Regional Director** is delegated responsibility by the Commissioner for compliance with cultural resources laws, regulations, and policies. The Regional Director will maintain a regional cultural resources professional staff to ensure that the region's existing and proposed activities are carried out according to the provisions of these directives.
- D. The **Area Office** is, in some instances, delegated responsibility for compliance with cultural resources laws, regulations, and policies. In such situations, the Area Office will utilize the services of cultural resources professionals to ensure that the area's existing and proposed activities are carried out according to the provisions of these directives.
- E. **Funding for Cultural Resources Activities.** Sections 110(g) of NHPA and 7(a) of Archeological and Historic Preservation Act (AHPA) require the expenditure of Reclamation funds for cultural resources compliance activities and resource management initiatives. The responsible office will consider costs for cultural resources activities in the budgeting process.
- (1) **Nonreimbursable v. Reimbursable Costs.** Federal cultural resources law establishes that cultural resources activities (e.g., survey, data recovery, analysis, publication, and curation) are generally nonreimbursable when they are in support of Reclamation projects [Section 7(a) of AHPA and Section 110(g) of NHPA]. For operating projects, costs may be reimbursable when cultural resources activities are completed for title transfer actions, in order to grant a right-of-way or approve the use of Reclamation lands by a non-Federal entity. In addition, costs can be reimbursable when Reclamation provides technical services to other

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Federal agencies and non-Federal entities [Section 208(3) of the 1980 amendments of NHPA].

- (2) **One Percent Waiver.** Reclamation may utilize up to 1 percent of the total authorized funding amount for a project to complete cultural resources activities. The 1 percent limitation does not apply to projects under \$50,000. A waiver to exceed the 1 percent limitation for projects over \$50,000 may be authorized in certain cases. If additional funds are required, as allowed for by Section 208(3) of the 1980 amendments to NHPA, documentation for the request will be:
 - (a) prepared by the appropriate cultural resources professional, (b) forwarded to the FPO for review, (c) FPO will transmit the request to the Commissioner for approval, and (d) if approved the request will be submitted to the Secretary of the Interior for concurrence.

F. **Integrated Cultural Resources Management.** To ensure that cultural resources management is fully integrated into Reclamation activities, cultural resources will be addressed at the earliest stages of planning. In order to protect historic properties and avoid unnecessary delays, conflicts, and costs, cultural resources professionals will be involved from project development, budget formulation and scheduling, through implementation.

3. Components of Reclamation's Cultural Resources Management Responsibilities.

A. **The NHPA** is the pivotal historic preservation law that establishes Reclamation's cultural resources management responsibilities. Within NHPA Section 106 addresses the compliance aspects, while sections 110 and 111 address management responsibilities.

- (1) **Section 106 of NHPA** requires Reclamation to take into account the effect of an undertaking on historic properties. The cultural resources professional is responsible for determining if there is an undertaking and, if so, for defining the APE. Additional Section 106 process steps include:

- (a) Identification of historic properties through cultural resources surveys,

NOTE—Previously surveyed Reclamation lands may require resurvey depending on the survey standards originally applied and/or completeness of the available records. Determination of the need to resurvey Reclamation lands will be based on the judgement of the cultural resources professional, in consultation with the SHPO, as appropriate.

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- (b) Evaluation of eligibility of historic properties to the National Register,
 - (c) Assessment of effects on historic properties,
 - (d) Soliciting SHPO and Council comments when appropriate, and
 - (e) Project implementation with prevention or treatment of adverse effects, if any.
- (2) **Section 106 of NHPA, Additional Compliance Aspects.**
- (a) Completion of the compliance process frequently involves extensive consultations with the SHPO and interested parties or persons. The scope of the consultation process includes:
 - (i) Identification of information needs (e.g. level of survey, resource concerns),
 - (ii) Evaluation of National Register eligibility of identified cultural resources,
 - (iii) Assessment of effects, and
 - (iv) Development of appropriate measures to avoid or mitigate adverse effects to historic properties (see paragraph 3F, Coordination and Consultation with Interested Parties).
 - (b) The responsible office may complete the Section 106 compliance process on a case-by-case basis for individual undertakings or may enter into an agreement with the Council and appropriate SHPO(s) to streamline the process for repetitive or complex undertakings.
 - (1) In addition, the responsible cultural resources professional may use the services of grantees, applicants, consultants, or designees to prepare the necessary information and analyses, but remains accountable for Section 106 compliance. In all cases, the preparers must meet the Secretary of the Interior's Standards and Guidelines.
- (3) **Section 106 of NHPA, on Indian Lands When a Tribal Historic Preservation Program Exists.** Section 101(d)(2) allows for tribes to assume all or any part of the functions of a SHPO with respect to Indian lands. (See paragraph 3F, Coordination and Consultation with Interested Parties.)

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- (4) **Section 106 of NHPA, Responsibilities for Reclamation Title or Administrative Transfers.** The transfer of a historic property is identified in 36 CFR Part 800 as an adverse effect. However, a transfer is not considered to be an adverse effect when there are adequate conditions or restrictions to ensure the preservation of the property's historic features.
- (a) If Reclamation transfers jurisdiction of its lands or facilities to another Federal agency, Reclamation will ensure the cultural resources responsibilities transfer to the other agency.
 - (b) If Reclamation transfers title of Reclamation lands or facilities to a non-Federal entity, Reclamation will, prior to transfer, comply with Section 106 and other applicable laws, regulations, and policies.
 - (c) If Reclamation maintains title but transfers administration of projects to a non-Federal agency (e.g., State, county, or district), Reclamation remains accountable for cultural resources but may assign certain responsibilities for cultural resources to the transferee. Prior to transfer, the responsible office will: (1) ensure the non-Federal entity is capable of and willing to carry out these responsibilities and (2) provide notice to the non-Federal entity of any cultural resources responsibilities that it has been assigned. The cultural resources requirements for non-Federal entities will be included in an agreement. New and renewed lease or management agreements will detail the cultural resources responsibilities of non-Federal entities (see Reclamation Manual's Facilities Directives, FAC).
 - (d) Title transfer of Reclamation facilities will not include transfer of the associated official records. These remain the property of the Federal Government (see Reclamation Manual's Title Transfer Directives, CMP 05).
- (5) **Section 106 of NHPA, Treatment of Adverse Effects.** Reclamation policy is to preserve historic properties in place and therefore avoid adverse effects to the fullest extent possible. However, after evaluation of all factors in an undertaking, Reclamation may determine that public benefits of proceeding with the undertaking outweigh adverse effects to historic properties. When adverse effects cannot be avoided, Reclamation will seek measures to reduce and minimize them. Treatment measures will be developed in consultation with the SHPO(s), Council, and other interested parties or persons and will be appropriate to the nature and significance of the historic properties in question.

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National Historic Landmarks require special consideration, including consultation with the Council when they will be adversely affected [Section 110(f) of NHPA].

- (6) **Section 106 of NHPA, Intentional Violations.** Reclamation will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of Section 106, has intentionally significantly adversely affected a historic property, or having legal power to prevent it, allowed such significant adverse effect to occur, unless Reclamation, after consultation with the Council determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant [Section 110(k) of NHPA].
 - (7) **Section 110 of NHPA** requires Reclamation to complete cultural resources surveys and reports for all its lands and existing projects. The responsible office will develop priorities for conducting surveys on Reclamation lands using the following factors (not listed in priority order):
 - (a) Presence of known cultural resources or reason to believe resources exist,
 - (b) Significance or scientific value of cultural resources,
 - (c) Lands are within the boundaries of a resource management plan study area,
 - (d) Nature and extent of previous investigations,
 - (e) Degree to which the cultural resources are threatened and endangered, and
 - (f) Importance of cultural resources to Native American cultural values.
 - (8) **Section 111 of NHPA** directs Reclamation to explore alternatives for ensuring the preservation of historic properties under its ownership that are not needed for current or projected agency purposes. These alternatives include leases or exchanges to any person or organization, and contracts for management.
- B. **Archaeological Resources Protection Act (ARPA).** ARPA regulates the removal of archaeological resources from Reclamation lands; contains a permit system for excavating or removing archaeological resources; and includes prohibitions on the sale, purchase, transport, or entry into interstate commerce of items taken in violation of the Act. Penalties include fines and imprisonment. Amendments to the Act require Reclamation to establish public education and outreach programs.

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- (1) **Section 4 of ARPA** directs Reclamation to establish a process for issuing permits for the excavation of archaeological sites on its land. Within Reclamation, such permits are issued by the cultural resources professional within the responsible office as determined by the Regional Director.
 - (2) **Sections 6 and 7 of ARPA** establish criminal and civil processes to protect archaeological resources and include penalties for prohibited acts. ARPA enforcement on Reclamation lands is Reclamation's responsibility. While Reclamation does not have law enforcement authority or internal capabilities, each Reclamation office will ensure that enforcement personnel are available to protect archaeological resources. This can be accomplished through agreements with other Federal, State, or local agencies.
 - (3) **Section 14 of ARPA** mandates that Reclamation will develop plans and a schedule for surveying lands under its control for archaeological resources.
- C. **Native American Graves Protection and Repatriation Act (NAGPRA)** requires Reclamation to inventory human remains and associated funerary objects and to provide culturally affiliated tribes with the inventory of collections. NAGPRA also requires repatriation, on request, to the culturally affiliated tribes. For the purpose of identifying ownership or control of Native American cultural items priority will be given in the order listed:
- (1) To the lineal descendants of the Native American, or
 - (2) In any case in which such lineal descendants cannot be ascertained:
 - (a) To the Indian tribe on whose tribal land such objects or remains were discovered,
 - (b) To the Indian tribe which has the closest cultural affiliation with such remains or objects, or
 - (c) If the cultural affiliation cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized as the aboriginal land of some Indian tribe;
 - (i) To the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, or

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- (ii) If it can be shown that a different tribe has a stronger cultural relationship with the remains or objects than the Indian tribe that has the strongest demonstrated relationship.
 - (3) **Section 3 of NAGPRA.** To meet the intent of Section 3 of NAGPRA, the responsible office will have in place a plan for intentionally excavated and inadvertently discovered Native American cultural items. These plans will include a step-by-step outline of what to do when Native American cultural items are encountered.
 - (4) **Inadvertent Discovery.** If Native American cultural items are inadvertently discovered during a Reclamation activity for which there is no plan, work will cease immediately in the area of discovery and the requirements of NAGPRA regulations (43 CFR 10.4) will be followed.
- D. **National Environmental Policy Act (NEPA)** establishes a national policy to identify and consider environmental impacts of Federal actions. NEPA establishes that it is the responsibility of the Federal Government to "...preserve important historic, cultural and natural aspects of our national heritage..." [Section 101(b)(4)].
- (1) **Coordination of NEPA with Section 106 of NHPA.**
 - (a) The cultural resources professional will participate in the NEPA process. All Reclamation NEPA actions will be coordinated with the NHPA Section 106 compliance process. Compliance with Section 106 for an undertaking is required regardless of the level of NEPA documentation and will be documented in a categorical exclusion checklist, environmental assessment, or environmental impact statement, as appropriate. If such compliance is not completed prior to conclusion of the NEPA documentation, the NEPA document will contain commitments for Reclamation to complete the cultural resources compliance process. Any Reclamation action considered to be categorically excluded from review under NEPA will still require Section 106 compliance.
 - (b) If an action will have an adverse effect (see definition) on historic properties, an Environmental Assessment or an Environmental Impact Statement may be required.
 - (c) Reclamation is encouraged to use the NEPA public involvement process to meet the public participation requirements of the Section 106 process.

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- (d) The responsible official will ensure that the Finding of No Significant Impact or Record of Decision incorporates applicable mitigation measures related to adverse effects on historic properties.

E. **Curation and Museum Property Responsibilities.** Reclamation is responsible for curating museum property under its ownership, generated as a result of its activities, or on loan to other public or private organizations. The Program Analysis Office is delegated responsibility for developing museum property policy and guidance, and for providing advice and assistance. All Reclamation offices will implement the provisions of 411 DM as defined in Reclamation policy and museum property planning documents.

- (1) The appropriate treatment and preservation of museum property, including archaeological collections, is mandated by 411 DM, "Managing Museum Property," whose standards incorporate the requirements of 36 CFR Part 79, "Curation of Federally-owned and Administered Archeological Collections."

F. **Coordination and Consultation with Interested Parties.**

- (1) **Public Involvement** responsibilities for Reclamation actions that could affect individuals or groups are outlined in Reclamation Policy and Directives, CMP 03. The Public Involvement Directives (see Related Directives Table included therein) reference the cultural resources requirements for consultation/coordination with interested parties under NHPA and NEPA.
- (2) **Consultation Under Section 106 of NHPA.** Consulting parties are the primary participants in the Section 106 process and include Reclamation, the SHPO, and, in some cases, the Council. Coordination with other agencies, entities, and individuals having responsibilities for or interest in cultural resources is also required, as appropriate, in the planning and execution of Reclamation activities.
- (3) **Consultation with Native Americans.** Section 101(d)(2) and Section 106 of NHPA, NAGPRA, ARPA, NEPA, the American Indian Religious Freedom Act, and Executive Order 13007 require Reclamation to consult with Native Americans on complex and culturally sensitive issues (see Reclamation Manual's Native American Directives, NIA-01).
 - (a) Reclamation will consult with appropriate Native American tribes or tribal entities to determine if sites or locations related to their beliefs, expressions, or exercise of traditional cultural practices are present on Reclamation lands.

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- (b) When a Reclamation activity affects Indian lands, Reclamation will invite the governing body of the appropriate tribe(s) to be a consulting party in the Section 106 process and be a signatory to any Section 106 agreement. Reclamation also may invite the appropriate tribe(s) to participate as an interested or consulting party when an undertaking would affect cultural resources of value to that tribe(s) which are on non-Indian lands.
- (c) When a Reclamation activity affects Indian lands and a Tribal Historic Preservation Program exists, Reclamation will consult with the Tribal Preservation Official in accordance with an established Tribal Preservation Plan.
- (d) Reclamation will consult with appropriate Indian tribe(s) when there are planned excavations and removal of cultural items on Reclamation lands. Where the excavations are on tribal lands, tribal consent is required. In both instances noted above, proof of consultation or consent is required (see 43 CFR Part 10).

4. **Integration of Cultural Resources Management With Other Reclamation Programs.**

- A. **Financial Assistance Programs.** Prior to Reclamation granting a Federal loan under the Small Reclamation Projects Act as amended, an applicant will commit to completing the necessary steps to enable Reclamation to meet its Section 106 compliance responsibilities (see Reclamation Manual's Small Reclamation Projects Act Loans Directives, LON 03).
- B. **Resource Management Plans.** To ensure that cultural resources are addressed in all resource management plans, cultural resource professionals will be involved at the outset of the process to: (1) develop scheduling and budgeting, (2) identify parties with whom Reclamation will consult in developing the RMP, and (3) develop or review cultural resources sections. Reclamation will ensure that cultural resources requirements are fully defined for all parties in instances where land management partners (e.g., other state or Federal agencies) will be implementing the RMP (see Reclamation Manual's Lands Management Directives, LND 05).
- C. **Land Exchanges, Acquisition, and Withdrawals.** When Reclamation is considering acquiring new tracts of land through land exchanges, purchases, or withdrawals, the cultural resource professional of the responsible office will be notified in order to evaluate whether there may be sensitive cultural resources issues (see Reclamation Manual's Land Acquisition Directives, LND 01).

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- D. **Resource Information System.** The Reclamation-wide Resource Information System is an automated system containing real property and related resource management information. The system's lands, buildings, and structures inventories include data fields that concern cultural resources. Cultural resource professionals will coordinate with appropriate staff to maintain accurate cultural resources information in the system.
- E. **Safety of Dams.** The modification of existing dams for safety purposes is considered an undertaking and will be subject to Section 106 of NHPA (see paragraph 3A(1) above). In addition the costs of SOD activities are considered non-reimbursable (see Reclamation Manual's Research, Applied Science, and Technology Directives, RES).
- F. **Contracts and Permits.** Reclamation contracts and permits that may result in effects to cultural resources will include a clause authorizing the contracting officer to order delays or changes in work when cultural resources or cultural items under NAGPRA are discovered. The clause will include penalties in the event the contractor fails to report discoveries. If appropriate, the contract price may be adjusted because of delays or changes in the work order (see Reclamation Manual's Contracts and Repayment Directives, PEC 01).
- G. **Outgrants.** Outgrants in the form of leases, licenses, permits, easement, and rights-of-way that involve the use of Reclamation lands or other resources may be determined to be undertakings and thus subject to the compliance requirements of Section 106. The required cultural resources survey and evaluation can either be furnished by the applicant or can be generated by Reclamation with the applicant paying the costs (see Reclamation Manual's Lands Management Directives, LND).
- H. **Emergency Management Program.** The responsible office will ensure that cultural resources compliance is addressed in all Emergency Action Plans. This will include the requirements established in the "Programmatic Memorandum of Agreement for Emergency Situations" (January 29, 1986), and its implementing plan "Plan for Taking Historic Properties Into Account During Conditions of Major Natural Disasters or National Security Emergencies" (December 5, 1986) (see Reclamation Manual's Emergency Management, FAC 01-01).
5. **Public Education Responsibilities.** The results and benefits of Reclamation-sponsored cultural resources work will be made available through public education efforts. These include but are not limited to interpretive activities, scholarly publications, and outreach activities such as volunteer laboratory and fieldwork opportunities. The public education initiative will be integrated with Reclamation's overall Public Information Program, the Department of the Interior's programs for public awareness of archaeology [Section 10(c) of

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ARPA] and the Secretary of the Interior's policy statement "A National Strategy for Federal Archaeology."

Public education efforts, as appropriate, will be used to mitigate adverse effects to historic properties.

6. **Records and Reports.** All cultural resources on Federal lands are the property of the Federal Government. All records generated as a result of cultural resources activities on Reclamation lands and for activities sponsored by Reclamation but not on Reclamation lands, are the property of the Federal Government.

In accordance with Section 304(a) of NHPA and Section 7 of ARPA, information relating to the location or character of cultural resources may be withheld from disclosure to the public when the Regional Director or Area Office Manager, in consultation with the cultural resources professional, determines that disclosure of such information may create a substantial risk of harm, theft, or destruction to such resources or to the area or place where such resources are located.

- A. **Records of Actions.** Cultural resources records will be kept by the responsible office in accordance with the official Reclamation disposition schedule. Records will include contracts for work, National Register nomination forms, Determinations of Eligibility, relevant correspondence, field notes, photographs, site cards, and other information that will aid future Reclamation actions in regard to cultural resources.
- B. **Technical Reports.** Prior to Reclamation's acceptance of completed contractual obligations, all reports concerning cultural resources surveys, studies, and/or mitigation efforts will be reviewed for technical accuracy, completeness, and adequacy by a Reclamation cultural resources professional.
- (1) All contracts or service agreements will specify:
 - (a) The number of copies of reports to be produced,
 - (b) Who is responsible for providing the copies, and
 - (c) Who is responsible for the distribution noted below.
 - (2) Copies of final approved reports are submitted as required to:
 - (a) Program Analysis Office, Federal Preservation Officer (1 copy).

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- (b) Bureau of Reclamation Library, Denver Federal Center (1 copy).
 - (c) State Historic Preservation Officer (as appropriate).
 - (d) Other Federal and State agencies (as appropriate).
 - (e) Other persons, groups, or institutions (as appropriate).
 - (f) National Technical Information Service (optional-11 copies).
- C. **Filing Requirements for Records.** Records relating to cultural resources activities will be filed and maintained in accordance with Reclamation's Information Management Handbook using the ENV-3.00 document classification designation and its appropriate disposition instructions. An official copy of every cultural resources report will be filed by the office responsible for its creation in accordance with Reclamation's Information Management Handbook using the ENV-2.00 document classification and its appropriate disposition instruction. All cultural resources records and reports filed with the ENV-2.00 or ENV-3.00 document classification codes are designated as permanent records and will ultimately be transferred to the National Archives.