

DRAFT RECLAMATION MANUAL RELEASE

Comments on this draft release must be submitted to owalker@usbr.gov by October 2, 2012.

Background and Purpose of Draft Directive and Standard (D&S) *Sustainable Operation and Maintenance Requirements for Certain Water-Related Contracts* (PEC 05-06)

Draft PEC 05-06 is proposed to replace existing Temporary Reclamation Manual (RM) D&S TRMR-40, which has been in effect since February 15, 2011. The temporary D&S has been modified in draft PEC 05-06 for clarity.

[Executive Order 13423](#) (EO 13423), as amended and supplemented, requires Federal agencies to meet certain sustainability objectives and targets. Section 3(e) of EO 13423 requires that contracts transferring responsibility for operation of Federal facilities to non-Federal parties include responsibility for pursuing these objectives and targets.

Draft PEC 05-06 would implement the executive order and would apply to contracts that transfer responsibility for operating and maintaining Federal facilities to a non-Federal party that are executed, amended, supplemented, or renewed *after the date on which the D&S is issued*. The draft D&S provides for flexibility in meeting the requirements of the executive order.

The executive order set agency-wide targets for improving environmental performance, for instance by using more efficient equipment, adopting waste-reducing practices such as recycling, or upgrading facilities to increase efficiency. As the kinds of improvements that are most practicable and effective will vary from one facility to another, the draft D&S is designed to allow the flexibility to determine the best ways to pursue the overall agency targets on a facility-specific basis. Reclamation originally considered issuing a standard contract article providing more specific requirements, but determined that the variations among affected facilities and contractors' circumstances would make this approach difficult in practice.

The executive order lists the targeted types of improvements in more detail, and is accessible using the link above.

Please see draft PEC 05-06 below.

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PEC 05-06

Reclamation Manual

Directives and Standards

Subject: Sustainable Operation and Maintenance Requirements for Certain Water-Related Contracts

Purpose: To set forth the minimum contractual requirements for addressing sustainable operation and maintenance of Federal facilities by non-Federal parties. The benefit of this Directive and Standard is to comply with contracting requirements and continue to effectively pursue sustainability goals set forth in the authorities cited below.

Authority: The Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), and acts amendatory and supplementary thereto (Federal reclamation law); the Clean Water Act of 1948, as amended (33 U.S.C. § 1251, et seq.); the Clean Air Act of 1955, as amended (42 U.S.C. § 7401, et seq.); [Executive Order 13423](#) of January 24, 2007, *Strengthening Federal Environmental, Energy and Transportation Management*; [Executive Order 13514](#) of October 5, 2009, *Federal Leadership in Environmental, Energy, and Economic Performance*.

Approving Official: Director, Policy and Administration

Contact: Water and Environmental Resources Division, 84-55000

- 1. Introduction.** Executive Order 13423 (EO 13423), as amended and supplemented by Executive Order 13514 (EO 13514),¹ requires Federal agencies to meet certain sustainability objectives and targets. Section 3(e) of EO 13423 requires that contracts transferring responsibility for operation of Federal facilities to non-Federal parties include responsibility for pursuing these objectives and targets.² In accordance with Section 3(e) of EO 13423, this Directive and Standard (D&S) sets forth minimum requirements for Reclamation water-related contracts³ under which a non-Federal party will be responsible for the operation and maintenance (O&M) of Federal facilities. For details of the requirements associated with sustainable⁴ O&M of Federal facilities and related matters, see

¹EO 13514 extensively amends and supplements EO 13423, making it most efficient to begin with EO 13514 in using the Executive Orders to determine current goals, targets, and requirements for sustainable operation and maintenance of Federal facilities.

²Section 3(e) of EO 13423 directs agencies to “ensure that contracts entered into after the date of this order for contractor operation of government-owned facilities or vehicles require the contractor to comply with the provisions of this order with respect to such facilities or vehicles to the same extent as the agency would be required to comply if the agency operated the facilities or vehicles.”

³The term “water-related contracts” refers to contracts authorized by the Reclamation laws or the Water Conservation and Utilization Act of 1939 (WUCA). This D&S applies only to those water-related contracts described under paragraph 2.

⁴The term “sustainable” is used herein as defined at paragraph 3.F. of ENV P05.

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[Reclamation Manual \(RM\) Policy, The Bureau of Reclamation's Commitment to Environmental Stewardship \(ENV P05\)](#) and [RM D&S, Environmental Management System \(EMS\) Implementation \(ENV 05-01\)](#).

2. **Applicability.** This D&S applies to Reclamation personnel involved in proposing, approving, negotiating, and executing water-related contracts that establish responsibilities for performance of the O&M of Federal facilities by non-Federal parties. The requirements of this D&S will be applied prospectively to such contracts executed, renewed, amended, or supplemented after its issuing date.
3. **Definitions.** The definitions appearing below or under Paragraph 3 of [ENV P05](#) or Paragraph 3 of [ENV 05-01](#) apply to the defined terms where used in this D&S.
 - A. **Sustainability Objective.**⁵ A general sustainability goal associated with the O&M of Federal facilities that reflects the requirements and objectives set forth in EO 13423 and EO 13514.⁶
 - B. **Sustainability Target.** A specific performance threshold defining the accomplishment of an established sustainability objective, as defined above.⁷
4. **Responsibilities.**
 - A. **Director, Policy and Administration (Director).** The Director is responsible for establishing sustainability directives and standards for water-related contracting, and for ensuring that proposed water-related contract actions to be approved by the Commissioner meet these directives and standards.
 - B. **Regional Directors.** Regional directors are responsible for ensuring that this D&S is implemented within their jurisdictions.

⁵Agency-wide objectives are addressed under paragraph 2 of [EO 13423](#). The Department of the Interior (the Department) has developed Strategic Sustainability Performance Plan (SSPP) with internal targets and strategies for meeting the objectives of EO 13423, which are available to the public at http://www.doi.gov/greening/sustainability_plan/index.html.

⁶Such as reducing energy or water consumption, increasing reliance on renewable energy sources, implementing or expanding recycling programs, expanding green purchasing, as defined at Paragraph 3.D. of ENV P05, reducing use of chemicals and toxic material, etc.

⁷Such as a stated percentage reduction in energy or water use by a given date (e.g., 2 percent by 2015) or a stated percentage of increase of green purchasing over conventional purchasing or reliance on renewable over conventional energy by a given date. See the Department's SSPP, referenced in footnote 5 above, for examples of environmental targets.

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5. **Minimum Requirements for Environmental Stewardship Article.** Reclamation must include provisions in contracts that are subject to this D&S, as specified above in Paragraph 2, that:
- A. incorporate the requirement stated under section 3(e) of EO 13423 (quoted above in footnote 2);
 - B. state the parties' responsibilities for developing and/or implementing sustainability objectives and targets⁸; and
 - C. establish requirements for the contractor to periodically report progress toward meeting the established sustainability objectives and targets.

⁸ EO 13423 and EO 13514 set overall agency-wide requirements; they do not establish environmental objectives and targets for particular facilities. How the agency-wide objectives may be best pursued in individual cases depends on variable factors, such as the size and type of facilities involved, the size and type of organization responsible for operating those facilities, and existing equipment, systems, and practices at those facilities. Because the appropriate objectives and targets will vary among facilities, they must be determined on a case-by-case basis by responsible Reclamation staff and the contractor, where they have not already been established.