

# Reclamation Manual

## Directives and Standards

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- Subject:** Administration of the Archaeological Resources Protection Act (ARPA) on Bureau of Reclamation Land
- Purpose:** To prevent the theft of archaeological resources and damage or destruction of material remains of archaeological interest. To ensure archaeological work occurs only when permitted or otherwise approved by Reclamation. This Directive and Standard (D&S): establishes requirements for compliance with sections 4, 6, 7, 8, 9, and 10(c) of ARPA; defines procedures for review and approval or denial of an ARPA permit; asserts Reclamation's primacy in implementing ARPA on Reclamation land that is managed by a non-Federal entity; and requires actions to address ARPA violations. The benefits of this D&S are: satisfaction of section 10(b) of ARPA, which requires development of agency-specific permitting processes; improved protection of archaeological resources; improved understanding and increased coordination between Reclamation and non-Federal entities that manage Reclamation land; and improved coordination between Reclamation's cultural resources management (CRM) and law enforcement staff in the event of an ARPA violation.
- Authority:** Archaeological Resources Protection Act of 1979, or ARPA, as amended (16 U.S.C. 470aa-mm); Curation of Federally-owned and Administered Archeological Collections (36 CFR part 79); Protection of Archaeological Resources (43 CFR part 7); Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies (43 CFR part 423); Use of Bureau of Reclamation Facilities, Lands, and Waterbodies (43 CFR part 429); *Preservation of American Antiquities and Treatment and Disposition of Native American Cultural Items*, Departmental Manual (DM) Part 519, Chapter 2.
- Approving Official:** Director, Policy and Administration (Policy)
- Contact:** Land Resources Division, 84-53000
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- 1. Introduction.** Congress finds archaeological resources on public land to be an irreplaceable and endangered part of the Nation's heritage. ARPA was passed to improve the Federal government's ability to protect those resources from loss and destruction. Reclamation protects archaeological resources under its control by requiring prior written approval for archaeological work. Approval is documented either by a permit issued pursuant to ARPA or the Antiquities Act of 1906 (16 U.S.C. 431), or by other written approval for work conducted in accordance with 43 CFR 7.5(c), 519 DM 2.6C.(1), and Reclamation Manual (RM) D&S, *Cultural Resources Management*, LND 02-01, Paragraph 13; hereafter, the term "permit" or "permitting" incorporates both types of approval. Reclamation also protects archaeological resources under its control through law enforcement efforts to identify,

# Reclamation Manual

## Directives and Standards

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investigate, and document damage or looting; by assisting in prosecution of violations, or assessing civil penalties for prohibited acts; by safeguarding sensitive archaeological site data; through establishing heritage education programs; and by curating archaeological collections from Reclamation land consistent with 36 CFR part 79, 411 DM, *Managing Museum Property*, and RM D&S, *Museum Property Management*, LND 02-02 (hereafter termed “curation requirements”). Reclamation implements permitting, enforcement, and penalty requirements of ARPA on all Reclamation land where Reclamation retains primary management authority, including land where management has been assigned to a non-Federal entity. Permitting, reporting, and heritage education activities are implemented as part of existing CRM programs, while enforcement activities are a cooperative effort by law enforcement and CRM professional staff.

2. **Applicability.** This D&S applies to all Reclamation directors and managers who make decisions that affect archaeological resources, and to all Federal employees who could affect those resources while conducting official duties on Reclamation land.
3. **Definitions.** The following definitions will be used only for the purposes of this D&S.
  - A. **Archaeological Interest.** An archaeological resource that can provide scientific or humanistic understanding of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques.
  - B. **Archaeological Resource.** The material remains of past human life or activities which are at least 100 years of age and are of archaeological interest. Exceptions, for the purposes of ARPA, are that coins, bullets, and un-worked minerals and rocks are not considered archaeological resources unless found in direct physical relationship with an archaeological site.
  - C. **Archaeological Work.** All field activities occurring on Reclamation land to identify, document, evaluate, or recover materials or data from potential or identified archaeological resources or their setting. For the purposes of this D&S, this includes field activities involving material remains that are less than 100 years in age. As required by 519 DM 2.4, this work includes survey (including non-collection surveys), surface collection, subsurface probing or testing, or excavation of archaeological materials or samples. For permitting purposes, archaeological work also includes any form of remote sensing that requires on-ground access. It does not include archival searches or remote sensing where on-ground access is not necessary.
  - D. **CRM Professional.** CRM professional is defined in LND 02-01, Appendix B, except that when used in this D&S, the term refers only to a professional archaeologist who works in Reclamation’s CRM Program.

# Reclamation Manual

## Directives and Standards

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- E. **Ground Disturbing Activities.** Activities associated with archaeological work that may alter material remains or the ground in which they lay. Such activities include artifact collection, sampling, subsurface probing for purposes beyond initial site identification, and test excavation or data recovery excavation.
- F. **Indian Lands.** Lands of Indian tribes or individuals which are held in trust by, or are subject to a restriction against alienation imposed by, the United States.
- G. **Land Manager.** This is the regional director or another manager to whom the regional director has delegated primary management responsibility for Reclamation land (see Paragraph 4.A.), and that delegation includes ARPA responsibilities. The land manager performs the Federal land manager duties defined in ARPA, except when ARPA responsibilities have been assigned to another Federal agency in a transfer of primary management authority.
- H. **Material Remains.** The physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated, or items of material culture from those locations, as further defined in section 7.3(a)(2) of ARPA. Only material remains that are of archaeological interest, as defined above, are considered to be archaeological resources.
- I. **Material Remains Not or No Longer of Archaeological Interest.** Archaeological materials that are not capable of providing scientific or humanistic understanding of past human behavior, cultural adaptation, and related topics.
- J. **Non-Collection Survey.** Non-collection survey is defined in LND 02-01, Appendix B.
- K. **Reclamation Land.** All land acquired or withdrawn for Reclamation's authorized project purposes, except land where ARPA responsibilities have been assigned to another Federal agency in a transfer of primary management authority.
- L. **Sensitive Archaeological Site Data.** Information about the location, character, and nature of archaeological resources (Section 9(a) of ARPA), or categories of information where release of that information could impede traditional tribal religious practices at a site (36 CFR 800.11(c)). The character and nature of a resource are the physical setting, features, and contents of a resource that could attract theft or vandalism (National Register Bulletin 29, *Guidelines for Restricting Information about Historic and Prehistoric Resources*).
- M. **Site of Religious or Cultural Importance to an Indian Tribe.** As defined in 43 CFR 7.32(a), this is any location which has traditionally been considered important for any of the following reasons: association with a religious event which happened there; it contains specific natural products of religious or cultural importance; it is believed to be the dwelling place of, the embodiment of, or a place conducive to

# Reclamation Manual

## Directives and Standards

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communication with spiritual beings; it contains elements of life-cycle rituals, such as burials; or it has other specific and continuing significance in Indian religion or culture.

- N. **Violation or Prohibited Act.** As defined in section 6 of ARPA and 43 CFR 7.4, this is the unauthorized excavation, removal, damage, alteration, or defacement of archaeological resources on Reclamation land; trafficking in archaeological resources illegally obtained from Reclamation land; or violation of the terms of an ARPA permit or other approval for archaeological work.

#### 4. Responsibilities.

- A. **Commissioner.** The Commissioner's responsibilities, defined in RM Policy, *Cultural Resources Management*, LND P01, were established through a delegation of authority by the Secretary of the Interior (Secretary) in 519 DM 2.3C. The Commissioner has further delegated these authorities to the regional directors in a memorandum dated March 24, 2010, entitled "Interim Delegation of Authority – Bureau of Reclamation's Cultural Resources Management (CRM) Program." That memorandum authorizes the regional director to redelgate this authority to area managers; it cannot be further delegated.
- B. **Federal Preservation Officer (FPO).** The FPO's responsibilities are defined in LND 02-01, Paragraph 4.B.
- C. **Land Manager.** The land manager shall implement the following actions, when so delegated. The land manager will act using recommendations provided by an appropriately qualified CRM professional and consistent with ARPA, 43 CFR part 7, 519 DM 2 (hereafter called "ARPA mandates"), and this D&S.
- (1) **Fund.** Establish and fund processes that fulfill ARPA mandate requirements.
  - (2) **Qualified Staff.** Maintain CRM professional staff to perform the archaeological duties outlined in ARPA mandates and further defined in this D&S.
  - (3) **Federal Land Manager Role.** Perform the duties and responsibilities defined in ARPA for the Federal land manager, which are to:
    - (a) issue, deny, modify, monitor, suspend, or revoke permits for archaeological work, consistent with requirements defined in Paragraph 7 of this D&S;
    - (b) review disputes about issuance, denial, modification, suspension, or revocation of permits, or about inclusion of specific terms and conditions consistent with Paragraph 7 of this D&S;

# Reclamation Manual

## Directives and Standards

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- (c) ensure that potential ARPA violations are investigated, and seek or assist in prosecution of, or assess civil penalties against, persons who commit violations or prohibited acts consistent with Paragraph 8 of this D&S;
  - (d) make determinations as to whether material remains are not or are no longer of archaeological interest consistent with Paragraph 9 of this D&S; and
  - (e) fulfill or deny requests for disclosure of sensitive archaeological site data exempt from release under the Freedom of Information Act (FOIA), consistent with Paragraph 11 of this D&S.
- (4) **Professional Standards.** Ensure that archaeological work conducted on Reclamation land by permittees, CRM employees of another Federal agency or of an Indian tribe, and Reclamation's CRM contractors meet permit requirements defined in 43 CFR 7.6(b) and 7.8(a)(1), and in 519 DM 2.3C.(5) and 2.6C.(1)(a). Individuals performing archaeological work on Reclamation land who do not meet these standards shall work only under the direct supervision of an archaeologist who does fulfill these standards.
- (5) **Education.** Establish and implement heritage education and outreach programs consistent with requirements defined in Paragraph 13 of this D&S, to inform the public and Reclamation employees about the historical, cultural, and scientific importance of archaeological resources and the need to protect those resources for future generations.
- (6) **Documentation.** Ensure that records, reports, and other documentary materials are created and maintained to form an administrative record of the land manager's decisions, to support criminal prosecutions, and to address judicial review requirements concerning ARPA permitting actions, resource damage assessments, valuations, civil penalty assessments, or other determinations. These requirements are discussed in Paragraphs 7, 8, 9, and 10 of this D&S.
- D. **Regional Archaeologist.** The regional archaeologist advises and assists the regional director and, as needed, land managers to establish and implement region-wide programs that fulfill ARPA mandates, curation requirements, and the terms of this D&S. This includes developing regional ARPA policy, when appropriate, providing policy interpretation, advice, and oversight to land managers and CRM professionals in all offices within the region, and providing information and assistance to the FPO. The regional archaeologist shall complete the following requirements, as further defined in subsequent paragraphs of this D&S.
- (1) **Centralized Permit Tracking.** Establish and oversee a region-wide centralized permit tracking system and maintain records documenting permit decisions, as stipulated in Paragraph 7.F. of this D&S.

# Reclamation Manual

## Directives and Standards

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- (2) **Coordination.** Coordinate with regional law enforcement staff to build relationships and mutually define processes that aid ARPA enforcement activities defined in Paragraph 8 of this D&S.
- (3) **Review and Oversight.** Perform review and oversight of ARPA activities that are policy or precedent setting, potentially controversial, will support a judicial or civil penalty action, or result in creation of a significant museum property collection. Comments will be provided to the regional director or the land manager of the originating office, or both, as appropriate. Comments will typically be provided within 30 calendar days, except in emergencies, when a lesser time may be defined. The regional archaeologist shall review:
  - (a) draft ARPA policy or guidance statements prepared by an area office;
  - (b) permit applications consistent with Paragraph 7.C.(3) of this D&S;
  - (c) proposals to expedite permits in the event of an emergency pursuant to Paragraph 7.E.(5) of this D&S, with verbal or informal written input provided by the regional archaeologist within 1 business day of receipt;
  - (d) documentation of the reasons for denial, modification, suspension, or revocation, of a permit consistent with Paragraph 7.I. of this D&S;
  - (e) requests for review and appeals concerning permitting decisions, consistent with Paragraph 7.J. of this D&S; and
  - (f) draft site documentation, damage assessment, valuation, and other evidentiary or decisionmaking materials prepared in association with an ARPA violation, consistent with Paragraph 8.B.(7) of this D&S.
- (4) **Safeguard Data.** As stipulated in Paragraph 11 of this D&S, safeguard sensitive archaeological site data that lies under the regional archaeologist's direct control or indirect responsibility, and assist FOIA officers with requests involving archaeological data.
- (5) **Education.** Consistent with Paragraph 13 of this D&S, establish and implement a regional heritage education program, to provide heritage education and outreach to the public and internal ARPA awareness training for Reclamation managers and staff.
- (6) **Report Accomplishments.** Prepare required consolidated regional reports as stipulated in Paragraph 14 of this D&S, and provide direction and oversight to area archaeologists or other responsible CRM professionals on their preparation, reporting requirements, and schedules.

# Reclamation Manual

## Directives and Standards

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- E. **Area Archaeologist.** The area archaeologist, or the CRM professional assigned to assist offices where no area archaeologist is stationed, shall assist the land manager to establish and implement area office programs that fulfill ARPA mandates, curation requirements, and the terms of this D&S by implementing the actions listed below.
- (1) **Program Implementation.** Fulfill the professional responsibilities defined in ARPA mandates and assigned to a CRM professional in this D&S. This includes drafting area office ARPA policy or guidance, as needed, for review by the regional archaeologist and FPO, and review and approval by the land manager. If data collection, documentation, or education tasks defined in this D&S are performed by an appropriately qualified non-Reclamation professional, their performance and products shall be subject to review and approval by the responsible area archaeologist or CRM professional.
  - (2) **Coordination.** Notify, obtain review and comment from, coordinate with, and provide materials and information to the regional archeologist as required in Paragraphs 7.C.(3), 7.E.(5)(c), 7.I., 7.J., 8.B.(3), and 8.B.(7) of this D&S.
  - (3) **Education.** Consistent with Paragraph 13 of this D&S, establish and implement an office heritage education and outreach program, and provide ARPA awareness training to Reclamation managers and staff and to non-Federal entities that manage Reclamation land.
  - (4) **Safeguard Data.** Consistent with Paragraph 11 of this D&S, safeguard sensitive archaeological site data that is under the area archaeologist's or CRM professional's direct control and indirect responsibility, and assist FOIA officers with requests involving archaeological data.
  - (5) **Report Accomplishments.** Prepare reports as stipulated in Paragraph 14 of this D&S or otherwise requested by Reclamation's management, and implement commitments made in those documents.
5. **Assignment of ARPA Responsibilities.** Reclamation shall seek to assign ARPA responsibilities to the Federal agency with primary management authority for Reclamation land.
- A. Primary management authority for Reclamation land may be transferred to another Federal entity by law or written agreement. Unless otherwise specified by law or prohibited by prior policy or agreement, that non-Reclamation Federal entity will also assume all ARPA responsibilities and will assume ownership and control of archaeological collections obtained under its authority from those lands. If Reclamation and the other Federal entity agree, Reclamation will transfer to the other entity related archaeological collections made under Reclamation's authority prior to the land management transfer, using processes defined in LND 02-02, Paragraph 15.B.

# Reclamation Manual

## Directives and Standards

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- B. Primary management authority for Reclamation land shall not be transferred to a non-Federal entity. Therefore, when a non-Federal entity manages Reclamation land, Reclamation must retain all ARPA responsibilities, but the non-Federal entity may aid with the performance of associated duties. If a non-Federal entity is assigned ARPA duties to aid Reclamation, Reclamation's land management agreement or other document must specify the nature of those duties, limitations on the non-Federal entity's authority, and the processes for coordinating with Reclamation (see Paragraph 12.B. of this D&S).
6. **Ownership of Archaeological Collections and Associated Records.** Unless otherwise directed by law, archaeological collections from Reclamation land, with their associated records, are the property of the United States Government (see LND 02-02, Paragraph 6). This includes archaeological collections from Reclamation fee land located within the boundaries of an Indian reservation.
7. **ARPA Permitting Process.** A permit for archaeological work on Reclamation land shall only be issued when **all** the following requirements are fulfilled: it is for public benefit; it provides for curation of archaeological collections obtained under the permit; archaeological work is conducted by or implemented under the direct supervision of an appropriately qualified archaeologist; and it is consistent with management objectives for the administrative area. When these conditions are met, using recommendations provided by an appropriately qualified CRM professional, the land manager shall provide written approval for work. See LND 02-01, Paragraph 13, for general permitting process requirements. As indicated in LND 02-01, further processes and requirements defined in this D&S shall be applied when issuing a permit for archaeological investigations pursuant to either ARPA or the Antiquities Act. These further processes and requirements are listed below.
- A. Cultural resource investigations performed by a Reclamation cultural resources contractor are authorized by issuance of Reclamation's contract or agreement with that entity; no separate permit is required. See LND 02-01, Paragraph 13.A. for associated responsibilities of a CRM professional.
- B. Permits shall be issued only for archaeological work that will occur within a defined survey area or at specified site(s) or location(s), for a defined period of performance appropriate to the work being conducted, and in conjunction with a work plan or equivalent document approved by a CRM professional. However, a permit can cover multiple phases of work associated with a single prolonged project when the applicant provides a sufficiently explicit work plan for all phases, and when tribal notifications can be suitably addressed for each phase of work. If a permit's period of performance is longer than 1 year, the permittee's performance shall be reviewed by a CRM professional at least once annually. An exception to these requirements is provided for non-collection surveys occurring under a long-term permit, where a survey area need



# Reclamation Manual

## Directives and Standards

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not be defined at the time a permit is issued. See LND 02-01, Paragraph 13.B.(2), for a full listing of the requirements associated with issuing a long-term permit for a non-collection survey.

- C. No permit for archaeological work will be issued until an application is reviewed by a CRM professional, consistent with the following requirements:
- (1) The responsible CRM professional shall respond in a timely manner to requests for information, and applications shall be expeditiously reviewed to assess completeness. Permits shall be issued, or a notice of denial of a permit provided, within 60 calendar days of receipt of all necessary application information, unless complex issues affecting the permitting decision require resolution. When complex issues prevent issuance within that time period, the applicant will be notified and provided an estimated date for issuance.
  - (2) A CRM professional shall: review permit applications for conformance with requirements defined in 43 CFR 7.6(b) and 7.8; conduct tribal notifications, when needed, in accordance with Paragraph 7.E. of this D&S; confirm the proposed curation facility meets Department of the Interior and Reclamation curation standards in accordance with LND 02-02; when applicable, estimate administrative costs in accordance with Paragraph 7.G. of this D&S; ultimately make a recommendation to the land manager to issue or deny a permit, and provide any necessary permit terms and conditions; and prepare written documentation when recommending denial of a permit.
  - (3) Where permitting activities are performed by a CRM professional other than the regional archaeologist, the regional archaeologist shall be notified of all applications and provided the opportunity to review and comment. The regional archaeologist shall review all applications that involve site excavations beyond testing, that affect a site or location of religious or cultural importance to an Indian tribe, or where investigations are likely to be controversial or precedent setting. The regional archaeologist will, at his/her discretion, review other applications as they determine appropriate.
- D. Reclamation shall issue a permit only after consultation requirements of section 106 of the National Historic Preservation Act (NHPA) have been completed on the permit applicant's work plan, when the proposed work is of a type that the responsible CRM professional determines has the potential to affect an archaeological resource. When permitted actions would be implemented by an entity that is not subject to section 106, such as a university performing independent scholarly research, Reclamation must address the 36 CFR part 800 consultation requirements.

# Reclamation Manual

## Directives and Standards

---

- E. Reclamation shall not issue a permit until any necessary tribal notifications have been completed. Tribal notifications shall occur when permitted work would take place on or in the vicinity of a site or area that may have religious or cultural importance to an Indian tribe, consistent with the following criteria:
- (1) For archaeological surveys or documentation efforts that do not involve ground disturbing activities in known sites, the appropriate tribes shall be notified, consistent with processes defined in 43 CFR 7.7(a), when the land manager determines the proposed action may result in harm to, or destruction of, any religious or culturally important site or area.
  - (2) For any archaeological work that involves ground disturbing activities, appropriate tribes shall be notified of permit applications so that Reclamation may request information about the presence of religious or culturally important sites or locations, and as necessary implement discussions pursuant to 43 CFR 7.7(a)(3) and 7.7(b)(4). An exception is for work at archaeological sites less than 100 years in age permitted pursuant to the Antiquities Act and not associated with Native American occupation or use.
  - (3) When Reclamation is considering applications for archaeological work on Reclamation land within reservation boundaries, Reclamation will notify the tribe of the permit request and invite their comment, but does not require consent from the tribe to issue the permit. However, if the tribe objects to the proposed work, the land manager shall consider denial of a permit unless the work is necessary for legal compliance.
  - (4) Except in an emergency, any necessary tribal notification shall occur no fewer than 30 calendar days, plus delivery time, prior to issuing a permit.
  - (5) In the event of an emergency, 519 DM 2.6D. authorizes expediting the ARPA permitting process and outlines associated requirements. The following process requirements shall apply when the land manager determines that tribal notification is necessary to conform with Paragraphs 7.E.(1) through 7.E.(3) of this D&S:
    - (a) When a land manager determines that an emergency exists and it warrants expediting the ARPA permitting process, the land manager will define the length of time allowed for tribal response after considering the nature of the emergency and the potential religious or cultural importance of, and threat to, known archaeological resources. A CRM professional shall provide the land manager with the information necessary to make this assessment. For emergencies that affect known archaeological resources of religious or cultural importance to tribes but do not pose a threat to life or property (e.g., exposure of a resource on the shoreline or a discovery during

# Reclamation Manual

## Directives and Standards

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construction), the land manager shall complete tribal notification prior to approving a permittee to initiate archaeological work, but may afford the tribe less than 30 calendar days to respond. During a declared emergency or an immediate threat to human life or property, the land manager will make every reasonable effort to notify tribes of Reclamation's intent to issue a permit, but may proceed with the necessary emergency responses to preserve life and property, including associated archaeological work at known sites with tribal religious or cultural importance.

- (b) The responsible CRM professional shall prepare written documentation that briefly describes the emergency, the nature of endangered resources, and why the standard 30-calendar-day tribal notification period is not feasible.
  - (c) In the event of a discovery during construction that constitutes an emergency, a CRM professional will fulfill the duties identified for the Departmental Consulting Archaeologist (DCA) in 519 DM 2.6D. They shall also notify the FPO and regional archaeologist within 2 business days of the emergency discovery, and provide them with a brief written explanation of the circumstances that provides information sufficient to allow the recipients to understand the circumstances and the affected office's view and preferred outcome. When consistent with office protocols, notification to the FPO and regional archaeologist will be informal, such as by e-mail directly from the responsible CRM professional to the FPO and regional archaeologist. The FPO and regional archaeologist will provide their input within 1 business day of receipt of the notification of the emergency discovery; input will be in writing and provided informally where consistent with office protocols. The FPO will determine if the DCA must be notified and proceed pursuant to LND 02-01, Paragraph 4.B.(8).
- F. The regional archaeologist shall establish and maintain a centralized permit tracking system that documents who has been issued or denied a permit, and shall create a central record of permit actions. This requirement and processes defined below apply to permits issued under the authority of either the Antiquities Act or ARPA, including other written approvals issued pursuant to 43 CFR 7.5(c) and 519 DM 2.6C.(1). The purpose for these centralized procedures is to foreclose the ability of a defendant in an ARPA criminal case to cite fragmented record-keeping processes as the basis to question charges against that defendant. To fulfill this purpose, regions shall complete the following actions:
- (1) Assign an identifier to each issued permit that indicates the region, the fiscal year issued, and a unique number for that year. Offices may fulfill this requirement using unique identifiers generated by other CRM activity tracking processes, or may add or link other information to the identifier, as long as data requirements defined here are fully satisfied. In regions where multiple offices issue permits,

# Reclamation Manual

## Directives and Standards

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the regional archaeologist shall maintain a list of all permits issued throughout the region. To aid in maintaining that comprehensive list, within 30 calendar days of issuing a permit, the issuing office shall provide the regional archaeologist with the data needed to update the list.

- (2) Maintain a permanent central record of permitting actions occurring throughout the region. At a minimum this will include a list of all permit requests, a copy of all signed permits, and supporting documentation associated with revocation of any permit or other written approval. A copy of these materials shall be provided to the regional archaeologist by the issuing office within 30 calendar days of finalization.
- G. Non-Reclamation entities who apply to perform archaeological work on Reclamation land will pay for costs to Reclamation caused by issuing and administering a permit and for addressing associated curation requirements, using the following general requirements. No fee will be charged to apply for a permit.
- (1) Consistent with Office of Management and Budget Circular No. A-25, *User Charges*, Reclamation will recover administrative costs when approval of a permit will convey special benefits to the project proponent beyond those accruing to the general public. Administrative costs will include salary, overhead, travel, and other expenses associated with performing duties and responsibilities defined in Paragraph 7.C., 7.D., 7.E., and 7.H. of this D&S. A cost estimate for issuing and administering a permit shall be calculated by the responsible CRM professional. Funds in that amount shall be deposited with Reclamation by the proponent prior to issuing a permit.
  - (2) Project proponents shall be required, and other Federal agencies will typically be required, to pay costs to curate archaeological collections and associated records created under a permit. Costs to meet collection preparation and curation requirements defined in the permit shall be paid directly by the proponent or other Federal agency to the contractor or employee who is performing the preparatory work, and to the curation facility approved by Reclamation when issuing the permit.
  - (3) The regional director can waive or reduce the charges if they determine that the permitted archaeological work fits a checked category presented in 43 CFR 429, Subpart F.
- H. A CRM professional shall monitor conformance with permit requirements, and at minimum shall perform the following:

# Reclamation Manual

## Directives and Standards

---

- (1) conduct field reviews for site excavation and of work occurring at sites of religious or cultural importance to Indian tribes, and conduct field reviews of other permitted work when the CRM professional determines it to be necessary or at the direction of the land manager;
  - (2) review archaeological collections upon completion of the permitted work to ensure all items and associated records are present, field catalogs are complete and correct, and the collections are properly packaged; and
  - (3) review draft reports and other required documentary materials.
- I. If application for a permit is denied, or if an issued permit is modified, suspended, or revoked, the reasons for such actions shall be documented in writing by the responsible CRM professional. Documentation must provide facts tied to the point in controversy. The documentation shall be reviewed and approved by the regional archaeologist and land manager.
  - J. The land manager, or a higher agency official if necessary, will address requests for review and appeals concerning permitting decisions in accordance with section 7(b)(1) of ARPA, and 43 CFR 7.11 and 7.36. A copy of a request for review of an appeal shall be forwarded to the FPO and the regional archaeologist within 2 business days of receipt, as will subsequent associated documents. If, pursuant to 43 CFR 7.36(d) or 519 DM 2.3D.(3), any affected person requests DCA review, the FPO and the regional archaeologist shall be notified, and provided information sufficient to understand the circumstances and the affected office's view and preferred outcome. The FPO will thereafter take the lead in coordinating with the DCA and providing a response to the Commissioner.
- 8. Resource Protection, Enforcement, and Penalties.**
- A. Archaeological resource management actions shall be integrated into land management programs to protect sites from damage and looting. At a minimum, land managers shall perform the following:
    - (1) Identify the most valuable and most vulnerable properties, develop a long term plan to monitor and/or physically protect such sites, and implement that plan. Reclamation will accomplish this as part of its program to fulfill section 110 of NHPA (see LND 02-01, Paragraph 5.B.(3), for a discussion of the section 110 requirement to develop and periodically update plans to inventory, evaluate, and nominate historic properties).
    - (2) Inform Reclamation land users of ARPA requirements through appropriate methods, including signage at key entry and access points to Reclamation land or at appropriate focused public use locations.

# Reclamation Manual

## Directives and Standards

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- B. When Reclamation is informed of a potential ARPA violation, the land manager shall determine if a violation has in fact occurred, and shall plan and implement subsequent necessary actions if a violation is confirmed consistent with requirements outlined below. The land manager shall also consider whether a violation of 43 CFR 423.29(a) or other provision of that regulation has occurred, and bring that assessment to the attention of Reclamation law enforcement officers, as appropriate. Upon confirmation of a violation of ARPA or any part of 43 CFR Part 423, the land manager shall investigate and collect evidence of violations. The land manager will then assist in prosecutions or, if no criminal action will be pursued, shall assess civil penalties pursuant to section 7 of ARPA and 43 CFR 7.4, 7.14 through 7.17, 7.36, and 7.37.
- (1) Investigations, followed by criminal prosecution or an assessment of civil penalty, as appropriate, shall be pursued for all of the following situations:
    - (a) Cases of intentional damage or looting.
    - (b) Substantive violations of terms and conditions defined in an ARPA permit.
    - (c) Alteration or damage caused by ground disturbing activities, even when the disturbances were incidental to other activities or occurred without intent to do harm.
    - (d) Willful or incidental alteration or damage caused by a Federal employee, land management partner, contractor, subcontractor, or other entity when they are acting outside of the scope of their duties, authority, or contract. A contractor shall be held liable for ARPA penalties when their subcontractor causes damage when working within the scope of their employment or when following instruction from the principal contractor.
  - (2) Investigations of violations shall be conducted by a team composed of law enforcement and CRM professionals, and other parties where necessary for the specific case. If another Federal agency assumes the lead for the investigation on Reclamation's behalf, a CRM professional will review their findings and make recommendations to the land manager.
  - (3) When Reclamation is informed of a potential violation, the land manager and the appropriate CRM professional(s) shall immediately be notified. As quickly as is practicable thereafter, but no later than 5 business days after receiving a report of a possible violation, a CRM professional or an appropriately qualified archaeologist recommended by the responsible CRM professional shall visit the location and assess if an archaeological resource is present and if damage or looting has occurred. Unless impossible within the required timeframe, an appropriately qualified law enforcement officer will accompany the archaeological professional. Within 2 business days after confirmation of a

# Reclamation Manual

## Directives and Standards

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violation, the FPO and regional archaeologist shall be notified and provided a brief written summary of the location, nature of the violation, resource type affected, and known extent and severity of damage. When consistent with office protocols, notification will be informal, such as by e-mail directly to the FPO and regional archaeologist. The FPO and regional archaeologist will be copied with subsequent associated official correspondence and substantive materials, consistent with limitations placed by prosecutors in the event of a criminal investigation or prosecution.

- (4) When a violation has been confirmed, the land manager shall work with the appropriate CRM professional(s) to complete actions and collect data as defined below in Paragraph 8.B.(5) and (6), and shall work with the regional special agent or special agent in charge (RSA/SAC) to implement a plan to collect evidence of a violation. These investigative processes shall commence within 5 days of confirmation of a violation, implemented either by Reclamation personnel or other appropriately qualified professionals.
- (5) When a violation has been confirmed, Indian tribes that ascribe religious or cultural importance to the affected site shall be notified at an appropriate point in an investigation, consistent with limitations placed by prosecutors in the event of a criminal investigation or prosecution.
- (6) Damage assessments, archaeological valuations consistent with 43 CFR 7.14, and other evidence collection actions requiring archaeological expertise shall be prepared by appropriately qualified CRM professionals or other qualified archaeologists. Detailed statements shall be prepared that document the archaeological resource site and its location; current condition and the apparent change in condition related to the damage; and the nature, extent, and scientific impact of the damage. Plans, with detailed itemized budgets, shall also be prepared for site protection or restoration and for scientific investigation of the damaged portion of the site. In the event of criminal prosecution, this information will be used as evidence and considered when assessing fines against violators and terms of imprisonment. For civil actions, these materials will be used to develop a monetary valuation of damage and support civil penalty assessments. Documentation and estimates shall include explanations of the logic and observations that are the rational basis for conclusions, recommendations, and cost and labor effort estimates.
- (7) Draft damage assessment documentation and cost estimates shall be reviewed for accuracy, legal sufficiency, and reasonableness. The FPO, land manager, regional archaeologist, RSA/SAC, and the U.S. Attorney's office if an ARPA criminal case is anticipated, shall be offered an opportunity to review and comment before materials are finalized.

# Reclamation Manual

## Directives and Standards

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- (8) If a civil case will be pursued, the responsible CRM professional will recommend a civil penalty amount to the land manager, using estimates for the recovery of costs for investigation, remediation of damage to the site, and either loss of scientific value or commercial value. The basis for their recommendation shall be thoroughly documented. The CRM professional shall also assist the land manager with preparation of all required notifications and forms to ensure due process consistent with ARPA mandates. If meetings occur between the land manager and an individual who has been assessed a civil penalty, the discussion and any agreement or dispute shall be documented in official notes.
9. **Determinations of Loss or Absence of Archaeological Interest.** The land manager is authorized under 43 CFR 7.3(a)(5) to determine that certain material remains are not, or are no longer, of archaeological interest and are not to be considered archaeological resources for the purposes of ARPA. These determinations shall be made using processes defined in 43 CFR 7.33, except for the following:
- A. For 43 CFR 7.33(c)(2), consistent with regional delegations of authority, the regional archaeologist or responsible area archaeologist or CRM professional shall assess whether the material remains under consideration are of archaeological interest. They will then notify the FPO and provide supporting information sufficient to allow the FPO to understand the circumstances and the affected office's view and preferred outcome, after which the FPO will make a recommendation to the land manager.
  - B. When material remains may be of religious or cultural importance for Indian tribes, or when insufficient information is available to make such an assessment, the land manager shall notify the appropriate Indian tribes of the intent to make a determination of archaeological interest, and consult with them. Tribes shall be provided no fewer than 30 calendar days, plus delivery time, to respond to the request.
10. **Documentation of ARPA Actions and Determinations, and Managing ARPA Records.**
- A. ARPA actions and determinations may later be subject to judicial review for a grievance against the decision or may be used in court. Those actions and determinations must therefore be well documented, prepared in a manner suitable for judicial review and use, and retained in permanent files. The basis for reaching decisions must be clearly explained and tied to facts and evidence. Documentation must provide information that is credible and tied to the point in controversy, and present facts that prove the elements of the case by a preponderance of the evidence.
  - B. All documentation of ARPA actions and determinations received or generated in the administration of ARPA, with their supporting materials, shall be retained in accordance with Reclamation's approved records retention schedule, defined in the *Bureau of Reclamation Information Management Handbook, Volumes I and II*.



# Reclamation Manual

## Directives and Standards

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11. **Confidentiality of Sensitive Archaeological Site Data.** ARPA provides Reclamation with the authority to restrict access to and limit the release of sensitive archaeological site data about resources on Reclamation land, and to redact sensitive archaeological site data from materials released under a FOIA request, if release would create a risk of harm to the resource. Reclamation shall also be a responsible custodian for sensitive archaeological site data entrusted to it by other entities.

- A. To protect the confidentiality of sensitive data concerning archaeological sites on Reclamation land, consistent with processes outlined in 43 CFR 7.18, Reclamation shall, at a minimum, do the following:
- (1) specify data protection requirements in all permits and in Reclamation's CRM contracts;
  - (2) when releasing sensitive archaeological site data or information to a State Governor or to parties or members of the public qualified to receive those materials, clearly mark all released materials containing such data as being sensitive and belonging to Reclamation;
  - (3) secure sensitive archaeological data under direct agency control, and ensure that Reclamation's sensitive data housed in other locations is suitably protected; and
  - (4) ensure that a CRM professional reviews materials containing archaeological data that are subject to a FOIA request to identify any sensitive archaeological data therein, assess if the requesting party is qualified to receive such data, and redact sensitive archaeological data when the request is from parties or members of the public not qualified to receive such data.
- B. When Reclamation has custody of sensitive archaeological site data belonging to another party, a CRM professional shall safeguard these data, ensuring it is suitably protected from unauthorized access. Sensitive data about sites on non-Federal land shall be protected consistent with applicable state law and any additional limitations defined by the property owner. Sensitive data about sites from Federal land under another agency's jurisdiction or from Indian land shall be protected consistent with ARPA and additional limitations defined by the agency or Indian tribe with jurisdiction over these data. Unless specifically authorized to do so by the other entity, Reclamation shall not copy or forward sensitive site data to another individual or entity.

## 12. Reclamation Land Management Agreements.

- A. Any new agreement executed with another Federal entity that has the potential to have an effect on Reclamation land shall include a clause that specifies which agency will implement ARPA responsibilities. Existing agreements that have that potential and lack such specification of responsibilities must, at the first opportunity, be brought into

# Reclamation Manual

## Directives and Standards

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compliance with this D&S. This will be accomplished by modifying the existing agreement or issuing a separate statement specifying who holds those responsibilities. As indicated in Paragraph 5.A. of this D&S, when Reclamation transfers primary land management responsibility to another Federal entity, Reclamation will seek to have that other entity assume the ARPA responsibilities.

- B. Any new agreement, contract, or other instrument executed with a non-Federal entity that assigns them responsibility to manage Reclamation land or facilities shall include a clause that defines Reclamation's own and the other entity's respective ARPA roles and responsibilities. It shall also detail the process to notify Reclamation of damage to or looting of an archaeological resource. Existing documents that assign such responsibilities and lack this information must, at the first opportunity, be brought into compliance with this D&S by modifying the existing agreement or issuing a separate statement specifying each party's respective ARPA roles and responsibilities. Educational actions defined in Paragraph 13.B. of this D&S shall be completed.
- C. Unless directed to do so by the President, Congress, the Secretary, or the courts, Reclamation shall not assign a non-Federal entity the authority or responsibility to do any of the following:
  - (1) proceed with ground disturbing work without first receiving approval from Reclamation for the specific activity;
  - (2) approve requests from a third party to implement actions that could potentially damage archaeological resources, including requests for use of a metal detector;
  - (3) conduct, or employ a third party to conduct, archaeological work without first receiving a permit from Reclamation;
  - (4) make determinations as to whether material remains are not or are no longer of archaeological interest;
  - (5) independently conduct, or to take the lead in, ARPA evidence collection, assessment of value, or other fact finding in the event of a violation (the non-Federal entity can, however, assist Reclamation staff in these activities); or
  - (6) assume control of, or determine the disposition of, recovered archaeological collections and associated records.
- D. If a non-Federal entity is suspected of assuming ARPA duties beyond their authority or of violating ARPA or 43 CFR 432.29(a) or other provision of 43 CFR part 423, a CRM professional and other appropriate persons shall conduct a review. If they find that the non-Federal entity's actions harmed an archaeological resource, then formal ARPA investigative actions shall commence as defined in Paragraph 8 of this D&S.

# Reclamation Manual

## Directives and Standards

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13. **Heritage Education Program.** Regions and offices shall establish and implement an education program to inform the public and Reclamation employees about the historical, cultural, and scientific importance of archaeological resources, resource protection concerns, and penalties for inadvertently or intentionally damaging an archaeological resource. To address this requirement, at a minimum the regional or area office CRM professionals, assisted as appropriate by other individuals, shall do the following:
- A. Integrate education and outreach efforts, when appropriate, into permit requirements and contracts for archaeological work. Offices will also seek opportunities to participate in or partner with other entities in archaeological education, outreach, or stewardship programs.
  - B. Provide ARPA education to all non-Federal entities that manage Reclamation land where archaeological resources might be present. The educational effort shall occur within 6 months of signature of a new land management agreement, with a refresher occurring at 2-year intervals thereafter. The educational effort will provide entities with an understanding of pertinent legal requirements, Reclamation's ARPA processes and its role in those processes, limitations on its authority, how it must coordinate with Reclamation, and consequences if it or its employees or contractors violate ARPA or damage an archaeological resource.
  - C. Provide ARPA education to all Reclamation program managers and staff who authorize, plan, conduct, or oversee land uses or ground disturbing actions that might damage archaeological resources. Land managers will be given an understanding of their Federal land manager duties and required processes. Law enforcement staff that could potentially become involved in an ARPA investigation will be educated about processes and their role in implementation. Furthermore, Reclamation employees whose regular duties take them onto public or Indian lands will be informed of how their actions have the potential to inadvertently damage resources. ARPA training efforts must be incorporated into existing training programs when appropriate.
14. **Reporting.** To satisfy requirements of section 13 of ARPA and 43 CFR 7.19, Reclamation shall annually report on ARPA activities conducted in the prior fiscal year. At a minimum, the report must document ARPA enforcement and public education activities, and describe archaeological resource inventory accomplishments. Policy shall annually notify regions of the reporting requirement and provide a due date for submittal. Consolidated regional reports shall be submitted to the FPO, who will prepare a consolidated Reclamation-wide report for submittal to the Department through the Secretary of the Interior's Annual Report to Congress on the Federal Archaeology Program.