

Reclamation Manual

Directives and Standards

1531.53a--

TITLE 1540 - EXTERNAL RELATIONS

1531.5 - Bureau of Reclamation

1531.53 - Construction and Development

1531.53a - Master Interagency Agreement for Water Resource Related Projects Within or Adjacent to National Forest System Lands

MASTER INTERAGENCY AGREEMENT
Number 86-SIE-004
BETWEEN
THE BUREAU OF RECLAMATION, U.S. DEPARTMENT OF THE INTERIOR
and
THE FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE
CONCERNING WATER RESOURCE RELATED PROJECTS OF THE
BUREAU OF RECLAMATION
WITHIN OR ADJACENT TO NATIONAL FOREST SYSTEM LANDS

I. PREFACE

This Master Agreement is made under authority of the Federal Water Project Recreation Act July 9, 1955, (79 Stat. 213; 16 U.S.C. 450L-18) and the Economy Act (31 U.S.C. 1535). This agreement supersedes the Memorandum of Understanding between the Bureau of Reclamation (Reclamation) and the Forest Service (Service) dated January 1973, and the Memorandum of Agreement between Reclamation and the Service dated April 1974. Reclamation and the Service recognize that good public land management requires that all of the resources of these lands must be managed in accordance with sound management practices. The lands should be made available for the use and enjoyment of the general public insofar as is consistent with their dedication to Reclamation and National Forest System purposes.

II. PURPOSE

The purpose of this Master Agreement is to establish procedures for planning, developing, operating, and maintaining water resource projects and related programs of Reclamation located on or affecting lands and resources administered by the Service, and for the Service's planning and implementation of activities on National Forest System (NFS) lands within the total area of project influence. It requires the implementation of project supplemental agreements and establishes procedures and policies for the development of the project supplemental agreements for both agencies to manage and administer resources within the total areas of project influence.

-FSM 9/87 AMEND 116-

Reclamation Manual

Directives and Standards

1531.03a--2

TITLE 1500 - EXTERNAL RELATIONS

11. DEFINITIONS

A. Withdrawal - As defined in sections 103 and 202(e) (5) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1702). Withdrawals predating FLPMA were made under authority of the Reclamation Act of June 17, 1902 (43 U.S.C. 416).

B. Withdrawn Area - Federal lands identified in a withdrawal order.

C. Reclamation Project - A Federal project authorized under the Act of June 17, 1902 (32 Stat. 388), as supplemented and amended.

D. Authorized Project - A Reclamation project authorized and funded by Congress and approved by the President (43 U.S.C. 413 and 414).

E. Project Supplemental Agreement - A local agreement supplemental to this agreement that is developed by the appropriate Project Manager and Forest Supervisor for a specific Reclamation project and approved by the respective Regional Director and Regional Forester.

F. Project Area - The area of a project as authorized by Congress and approved by the President, within which Federal ownership or control is necessary. The Bureau of Reclamation retains control for construction, operation, maintenance, and protection of the project as identified in the project supplemental agreement. The project area may include lands where the project uses, such as transmission lines, canals, ditches, laterals, and drains, require Reclamation's jurisdiction.

G. Maximum Flow Line of the Reservoir - The identified highwater line of the individual project water storage facilities when the inflows to the reservoir are at the maximum inflow design level.

H. Normal Flow Line - The identified water line of the reservoir when the storage pool is full and inflows equal outflows without any water withdrawals for irrigation, municipal, or industrial use.

-FSM 9/87 AMEND 116

Reclamation Manual

Directives and Standards

1541-53a--3

TITLE 1500 - EXTERNAL RELATIONS

I. Minimum Flow Line - The water surface level when water withdrawals have reached a maximum level beyond which design criteria or contractual provisions do not permit further reservoir drawdown.

J. Area of Project Influence - Lands outside the project area remaining in Service jurisdiction but requiring special consideration to ensure that management actions will minimize adverse effects on or enhance the operation and maintenance of the project.

K. Take Line - The area of land over which Reclamation will exercise control in conjunction with the construction, operation, and maintenance of an authorized Reclamation project. Usually delineated on a map by contour line or aliquot parts.

IV. COORDINATION AND COOPERATION

To facilitate the orderly development, management, and administration of Federal resources within areas of mutual interest and/or responsibility, Reclamation and the Service agree:

A. Planning - (1) To undertake cooperative planning beginning with the information collection stage of a forest land management plan and with the plan formulation and advance planning stages of a Reclamation water project and continuing throughout the life of the project.

(2) To exchange draft and approved Reclamation water and associated resource management and/or development plans and Service draft or approved Forest land and resource management and/or development plans.

(3) To develop project supplemental agreements as provided in Part V of this agreement, at the Project/forest administrative levels applicable.

(4) To identify Reclamation's needs outside project areas such as access, hydrometeorological stations, and other related needs including the mitigating and enhancing of fish, wildlife, and recreational needs.

(5) To inventory and analyze lands within the area of project influence to determine (1) those NFS lands required in connection with project improvements and (2) those NFS lands available for other compatible resource uses and development.

-FSM 9/87 AMEND 116-

Reclamation Manual

Directives and Standards

1531.53a--4

TITLE 1550 - EXTERNAL RELATIONS

(6) To mutually refer unresolvable points of disagreement to the next higher management level for resolution.

B. Management - (1) In project supplemental agreements developed under the provisions of Part V of this agreement, the two agencies may agree to authorize the Service to let timber removal contracts for Reclamation. Any such contract will contain provisions provided by Reclamation. Receipts for sale of timber or other resources or for the use of NFS lands where such lands are within the project area shall be deposited in accordance with the Act of July 19, 1919, (41 Stat. 202; 43 U.S.C. 394). Receipts derived from activities on National Forest lands lying in the area of project influence but outside the project area shall be deposited into the appropriate Service receipt account as authorized by law (16 U.S.C. 499, 7 USC 1012). For purposes of this agreement, lands needed for the protection or operation of any reservoir or project (43 U.S.C. 394) shall, unless otherwise directed by law, be limited to the project area as defined in section III.F. of this agreement.

(2) To jointly identify rights-of-way or other use authorizations needed in connection with project planning, development, construction, operation, or maintenance. Generally, preauthorization activities not involving ground disturbance or occurring inside a project area do not require use authorizations. Within a project area, use authorizations from the Service are not required for project activities, including construction, operation, and maintenance.

(3) To periodically conduct joint management reviews of selected projects for the purposes of: (1) determining the effectiveness of agreements in guiding activities in accomplishing the management objectives of both agencies, and (2) identifying and recommending potential solutions to existing and potential problems.

(4) (a) To identify lands on which protective withdrawals are needed to guard against non-discretionary mineral entry or on which Reclamation requires sufficient jurisdiction to fulfill requirements of Reclamation law, and for Reclamation, with the Service's concurrence to propose those identified lands to the Bureau of Land Management for withdrawal.

-FSM 9/87 AMEND 116-

Reclamation Manual

Directives and Standards

1531.93a--5

TITLE 1500 - EXTERNAL RELATIONS

(b) To recognize all withdrawals made prior to the promulgation of the provisions of the Federal Land Policy and Management Act (FLPMA) as having been as broad as necessary to meet authorized or recognized project needs.

(5) That all National Forest and NFS lands withdrawn for Reclamation purposes retain their appropriate status unless jurisdiction is requested in the withdrawal application and is transferred to Reclamation by the Secretary of Agriculture.

(5) To propose and concur in the relinquishment of all withdrawals on land no longer needed for Reclamation purposes.

V. PROJECT SUPPLEMENTAL AGREEMENTS

A. These agreements shall be developed for each Reclamation project involving NFS lands.

B. The principles expressed in this master agreement are applicable to projects already underway or completed to the extent that such application is reasonable in consideration of the existing situation.

C. Project agreements now in force will remain in effect to the extent they are not in conflict with provisions of law reflected in this agreement. Within 12 months from the effective date of this agreement those sections of existing agreements in conflict with provisions of law, as reflected in this master agreement, will be updated to resolve the conflict. Working local agreements not in conflict with current laws need not be revised.

D. Using input from all interested and affected entities, the Project Manager and Forest Supervisor will develop the project supplemental agreement for signature by the Regional Director and the Regional Forester. Project supplemental agreements should address, but need not be limited to the following:

(1) Identify the specific NFS lands within the maximum, normal, and minimum reservoir flowlines, within the project area, and within the area of project influence and designate management responsibilities and limitations;

(2) Detail the duties and responsibilities of each agency in all planning processes;

-FSM 9/67 AMEND 116-

Reclamation Manual

Directives and Standards

1531.53a--6

TITLE 1500 - EXTERNAL RELATIONS

- (3) Identify the lands necessary for jurisdictional transfer to enable each agency to effectively carry out its responsibilities: Generally Reclamation will maintain jurisdiction of the project area. Real property records and reporting will be handled by the agency having primary jurisdiction over the specified lands.
- (4) Set forth, by incorporation, development, or reference, a basic plan covering fire protection and control, recreation, watershed, minerals, timber, grazing, fish, wildlife, and other resource management within the project area;
- (5) Identify the existing Service improvements and structures to be moved, removed, or replaced, and schedule such action;
- (6) Identify rights-of-way and other use authorizations located outside the project area which may be or are needed by Reclamation or its managing entity;
- (7) Establish procedures for resolving issues, misunderstandings, or disputes;
- (8) Provide for an annual meeting to review and discuss operation and maintenance plans, including proposed activities that may impact either agency's budget, programs, operations, or facilities. This review should include, but not be limited to, reservoir operations, mineral and other resource activities, watershed management, timber harvest, stand improvement and reforestation, recreation management activities, and construction or development activities;
- (9) Provide for identification of Reclamation needs outside authorized project areas including hydrometeorological stations or other needs related to Reclamation development, operation, maintenance, or the mitigating and enhancing of fish, wildlife, and recreational needs as required by Public Laws 89-72, the Federal Water Project Recreation Act, (16 U.S.C. 460); the Fish and Wildlife Coordination Act (16 U.S.C. 661); and section 8 of the Colorado River Storage Project Act (43 U.S.C. 620g); or other authority;
- (10) Identify the entity responsible for granting rights-of-way or other use authorizations to third parties for use of lands within the project area. Also identify any needed restrictions pertaining to type of uses that may be authorized, any special stipulations conditioning the use, and the land areas covered by special restrictions;

-FSM 9/87 AMEND 116-

Reclamation Manual

Directives and Standards

1531.53a--7

TITLE 1500 - EXTERNAL RELATIONS

(11) Set forth management guidelines for long-term operations and management of all facilities and activities initiated as a result or consequence of project authorization, including annual work plans, financial plans and funding authorities.

(12) Provide for the removal of floating debris from project reservoirs, which will generally be the responsibility of the recreation managing agency having jurisdiction over the water surface, except where the removal of such debris is primarily for the purpose of maintaining dam safety and integrity.

VI. AGENCY RESPONSIBILITIES

IT IS AGREED THAT:

A. Reclamation will:

(1) Consult and coordinate all project planning, including plan formulation, with the local Forest Supervisor office(s). Coordination and consultation will continue throughout the project life.

(2) Provide the Service with any Reclamation developed project and/or reservoir area land or resource management plan.

(3) To the extent permitted by contract, project authorization, appropriation, or other law (i.e.: contract law, authorization law, appropriation law, or other law), not commence construction of any project feature until the required local project supplemental agreement is executed.

(4) As determined by the Service and to the extent permitted by law, remove, replace, or relocate Service-owned or authorized improvements or structures that will be destroyed or rendered useless by the project. Any upgrading of improvements exceeding basic safe and sanitary standards, improvement in structure size, numbers, or quality will be at the expense of the Service, and, if necessary, be accomplished through Service issued contract or inhouse workforce. To the degree possible, construction of in-kind replacement improvements or structures or relocation will be by Reclamation contract. No Forest Service replacement facility being constructed at Reclamation expense will be upgraded beyond that required to meet local or national safe or sanitary codes, unless upgrading costs are borne by the Service, and is specified in the project supplemental agreement.

-FSK 9/87 AMEND 116-

Reclamation Manual

Directives and Standards

1531.53a--8

TITLE 1500 - EXTERNAL RELATIONS

- +- (5) Take, and require contractors to take, all reasonable precautions to prevent and suppress forest fires on the project area and to prevent unnecessary damage to lands and resources associated with project construction. To the extent permitted by law and construction schedules and procedures, collaborate with the Service to:
- (a) formulate fire prevention and control plans and programs,
 - (b) locate access roads, and relocate transportation facilities,
 - (c) establish land clearing and debris disposal standards, and
 - (d) resolve other matters essential to the protection of resources; conserve the scenic and aesthetic aspects of the project environment; and facilitate project development, operation, and maintenance.
- (6) To the extent permitted by project authorizing legislation, appropriation language, and funding allocations, provide the land acquisition necessary for the total development of recreation, fish and wildlife, and other values set forth in project reports, and provide funds for, or construct required basic recreation and fish and wildlife features, including offsite mitigation.
- (7) Transfer to Service jurisdiction, those lands under Reclamation's jurisdiction which are not encumbered by project facilities, not necessary for operation and maintenance of the project by either Reclamation or a water user organization, and/or not necessary to the protection and safety of Reclamation works or facilities. After transfer, Reclamation will have use and occupancy rights as agreed to in the local project supplemental agreement.
- (8) Not issue permits or leases on NFS lands within or adjacent to a project area, nor issue permits or leases on lands appropriate for transfer to the Service, without first obtaining Service concurrence on use conditions and stipulations. However, management responsibilities for project features and adjacent project lands may be conveyed to the project beneficiaries in accord with section 6 of the Reclamation Act of 1902 (43 U.S.C. 491, 498) without service concurrence. →

-FSM 9/87 AMEND 116-

Reclamation Manual

Directives and Standards

1531.53a--9

TITLE 1500 - EXTERNAL RELATIONS

(9) Once construction is completed, with the concurrence of the Service, request the Bureau of Land Management to revoke withdrawals on lands no longer needed for Reclamation purposes or no longer in need of protection from non-discretionary entry or appropriation.

(10) Be responsible for the appropriate level of reservoir area clearing necessary for the construction, maintenance, and operation of all project features and facilities.

(11) Submit to the Service, 30 months preceding the budget year needed, planned projects that may require Service funds or fiscal authorization.

B. The Service will:

(1) Provide Reclamation copies of land and resource management plans or portions thereof (including annual work schedules) for all lands and other associated resources within the area of project influence.

(2) When Service resources are available, and when so requested by Reclamation, or as required by project authorization, on a reimbursable or non-reimbursable basis as the situation and project agreement dictate, provide recreation, fish, and wildlife plans; conduct recreation survey and design; prepare contract specifications; and supervise construction of recreation, fish, and wildlife facilities.

(3) Administer and manage any lands and associated resources under its jurisdiction lying within the area of project influence in a manner which does not conflict with the purposes for which the project was constructed. Solicit and consider, to the maximum extent possible, Reclamation input in the development of resource activity plans for lands within the area of project influence. Unless required by an emergency, take no action likely to adversely impact project operation or maintenance.

(4) Participate with Reclamation within any legal authorization limits in identifying lands appropriate to withdraw for Reclamation project purposes.

(5) Submit to Reclamation, 30 months preceding the budget year needed, planned projects that may require Reclamation funds.

-FSM 9/87 AMEND 116-

Reclamation Manual

Directives and Standards

1531.53a--10

TITLE 1500 - EXTERNAL RELATIONS

(6) Cooperate in issuing use authorizations for installation of hydrometeorological stations for subsequent data collection and upkeep, and for other Reclamation occupancy and use needs outside project areas.

(7) Transfer to Reclamation the jurisdiction over any NFS lands as required for Reclamation project facilities, operation or maintenance, or protection and safety of the project facilities.

(8) As requested by Reclamation, collect and provide recreation, fish, and wildlife use and development data for Reclamation project lands and facilities under Service management.

(9) Not issue permits or leases on National Forest or National Forest System lands within the area of project influence, nor issue permits and leases on lands appropriate for transfer to Reclamation or to water user organization administration, without first obtaining Reclamation's concurrence on use conditions and stipulations.

VII. DELEGATION

Regional Directors and Regional Foresters are designated as the authorized representatives of the Bureau of Reclamation and the Forest Service respectively. As such, they are delegated authority to execute local project supplemental agreements developed within the scope of this document. Each Regional Forester and Director will establish and maintain a numbering system for any project supplemental agreement suitable for their areas of responsibility.

VIII. TRANSFER OF PROJECT MANAGEMENT AND OPERATION

Section 6 of the 1902 Reclamation Act (43 U.S.C. 498) requires that under certain conditions the management and operation of Reclamation project facilities or features shall pass to an appropriate water user group under rules and regulations acceptable to the Secretary of the Interior. Water users, under repayment contracts executed under provisions of Reclamation law (43 Stat. 1166ff.) (53 Stat. 1187), and with Reclamation exercising oversight responsibilities, may be involved in project management, operation, and maintenance activities during the life of the project. Documents, usually operation and maintenance agreements or transfer letters, which outline user involvement will contain stipulations. Service input into these stipulations will be solicited and given all consideration possible. As with any contract all conditions will be mutually acceptable to Reclamation and water use organization. Copies

-FSM 9/87 AMEND 116.

Reclamation Manual

Directives and Standards

1531.93a--11

TITLE 1500 - EXTERNAL RELATIONS

will be provided to the appropriate offices. While the Service may provide input into the agreement through Reclamation, it is not a signatory to the agreement. Reclamation will, to the maximum extent possible, include in the provisions of the repayment contract, the water service contract, operation and maintenance agreement, transfer letter or other contract with the water users the provisions submitted by the Service, to the degree that such provisions are not in conflict with law, regulation, or authorized project uses or purposes, or are not unusual or outside of those considered customary in light of existing similar contracts. The administration and oversight of all repayment, water service, operation and maintenance agreement, transfer letter or other contracts with the project beneficiaries shall be the sole responsibility of Reclamation.

IX. MODIFICATION AND TERMINATION

This agreement may be modified or amended upon the instigation of either agency and the concurrence of the other. This agreement may be terminated upon 60 days notice of either agency.

Nothing herein shall be construed as obligating either party for future payments in excess of appropriations authorized by law and administratively allocated for these activities.

CHIEF
FOREST SERVICE
U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C.

COMMISSIONER
BUREAU OF RECLAMATION
U.S. DEPARTMENT OF THE INTERIOR
WASHINGTON, D.C.

/s/ B. MAX PETERSON.....

/s/ C. DALE DUVAL.....

Date: 1/16/87

Date: 4/6/87

■-FSM 9/87 AMEND 116-■

Reclamation Manual

Directives and Standards

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IX. MODIFICATION AND TERMINATION


This agreement may be modified or amended upon the instigation of either agency and the concurrence of the other. This agreement may be terminated upon 60 days notice of either agency.

Nothing herein shall be construed as obligating either party for full payments in excess of appropriations authorized by law and administratively allocated for these activities.

CHIEF
FOREST SERVICE
U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C.


Date: 4/16/87

COMMISSIONER
BUREAU OF RECLAMATION
U.S. DEPARTMENT OF THE INTERIOR
WASHINGTON D.C.


Date: 4/6/87