

# Reclamation Manual

## Directives and Standards

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- Subject:** Boards of Review
- Purpose:** Identifies procedures regarding the establishment and operation of a Board of Review (Board) to investigate serious incidents involving Bureau of Reclamation law enforcement and security personnel. The benefit of this Directive and Standard (D&S) is that it provides uniform direction for Reclamation; it meets the Department of the Interior's requirements regarding this topic; and provides requirements for conducting reviews of serious incidents by a Board.
- Authority:** Reclamation Act of 1902 (June 17, 1902; ch.1093; 32 Stat. 388; 43 U.S.C. § 391 et seq.), as amended and supplemented; Law Enforcement Authority at Bureau of Reclamation Facilities Act of 2001 (November 12, 2001; Pub. L. 107-69; 115 Stat. 593; 43 U.S.C. §§ 373b and 373c); Homeland Security Act of 2002 (November 25, 2002; Pub. L. 107-296; Title XVII, § 1706(b); 116 Stat. 2316; partially codified at 40 U.S.C. § 1315); 43 CFR 422, *Law Enforcement Authority at Bureau of Reclamation Projects*; Departmental Manual (DM) Part 446 *Law Enforcement*; U.S. Supreme Court Case *Graham v. Connor*, 490 U.S. 386 (1989).
- Approving Official:** Director, Security, Safety, and Law Enforcement (SSLE)
- Contact:** Chief, Information Sharing and Law Enforcement Support, SSLE (84-42000)
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### 1. Introduction.

- A. There is no more important function for a Security and Law Enforcement Program than to ensure its agents and officers are equipped to deal with the inherent risks in securing compliance with policies, procedures, and the law, and for maintaining public order. This is especially critical in serious incidents potentially involving matters of life and death. It is also essential that Reclamation has a process in place, utilizing expertise and resources of qualified employees, to review incidents involving such matters for the safety of Reclamation law enforcement and security officers, Reclamation employees, and the public.
- B. The Department provides broad requirements for a Board and Serious Incident Review Groups (SIRG) in 446 DM 25. Pursuant to requirements of the Department in 446 DM 1.5 E and F, the Director, SSLE, has been designated by the Commissioner as the Bureau Director of Law Enforcement (BDLE). It is important to distinguish a Board from an Internal Affairs investigation in that the Board looks at the systemic cause of an incident involving policy, procedures, or training, while an Internal Affairs inquiry or investigation addresses employee conduct.

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### 2. **Applicability.**

A. This D&S applies to:

- (1) Reclamation law enforcement officers, including Reclamation special agents (RSAs) and Hoover Dam police officers;
- (2) security officers who are employees of Reclamation;
- (3) security guards who are employees of Reclamation;
- (4) supervisors and managers of Reclamation employees who are law enforcement and security personnel;
- (5) law enforcement personnel of any other Federal agency that has law enforcement authority (with the exception of the Department of Defense) or law enforcement personnel of any state or local government, including an Indian tribe, and has been authorized pursuant to 43 U.S.C. § 373b(c)(2) to act as law enforcement officers to enforce Federal laws and regulations within a Reclamation project or on Reclamation lands, when acting under such authority;
- (6) Reclamation personnel who are not directly associated with the Law Enforcement or Security Programs when an appropriate request for investigation has been referred to the Director, SSLE; and
- (7) those Reclamation personnel responsible for initiating or participating in a Board or for investigating firearms or other related serious incidents.

B. This D&S does not apply to individuals working under contracts not referenced in Paragraph 2.A.(5) above [e.g., contract security guards or non-Federal law enforcement officers operating under agreements for the enforcement of local or state law where those agreements are not premised on 43 U.S.C. § 373b(c)(2)].

### 3. **Definitions.**

- A. **Firearm.** Any weapon or device as defined in 18 U.S.C. § 921(a)(3). This includes personally owned firearms or ammunition in the possession of the person at the time of the incident under review. Specifically excluded from this definition are explosive devices used for construction projects.
- B. **Law Enforcement Personnel.** Individuals who are Reclamation law enforcement officers or security guards.

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- C. **Office of Law Enforcement and Security (OLES).** The Department office responsible for oversight and all policy aspects of Department functions involving management and oversight of law enforcement and security.
- D. **Reclamation Law Enforcement Officer (RLEO).** A person who:
- (1) has entered Federal service through established law enforcement selection criteria;
  - (2) has received professional law enforcement training according to published standards;
  - (3) has been commissioned or sworn to perform law enforcement duties;
  - (4) is authorized to carry a firearm;
  - (5) is authorized to make arrests;
  - (6) is authorized to search for and seize evidence; and
  - (7) has been delegated law enforcement authority from the Secretary or the Commissioner of Reclamation pursuant to either:
    - (a) 43 U.S.C. § 373b(c)(1);
    - (b) 43 U.S.C. § 373b(c)(2); or
    - (c) any other legal mechanism (e.g. Federal Register notice, interagency agreement, memorandum of agreement, etc.) delegating authority from the Secretary to the RLEO.
- E. **RSAs.** Criminal investigators who are law enforcement officers in the general schedule (GS) 1811 job series detailed to SSLE from another Department bureau whose duties involve enforcement of applicable Federal laws to include Reclamation laws and regulations pursuant to 43 U.S.C. § 373b(c)(1). These positions include the Reclamation special agent-in-charge (SAC) and regional RSA.
- F. **Security Guard.** Any Reclamation employee, normally in the GS-0085 job series, armed or unarmed, assigned to security duties for the protection of critical infrastructure or key resources that provides a visible deterrent by controlling access to Reclamation property; assists in ensuring the safety of employees and visitors; is a member of the facility security force, an element of a security post; and has the training, equipment, and appropriate certifications to perform specific security functions. This definition does not include contract security guards.

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- G. **Security Officer.** Any Reclamation employee whose principal duties are the administration, supervision, direction, coordination, and control of security risks and programs including the development installation, and management of Reclamation's Security Program. These positions are normally in the GS-0080 job series and include the Chief Security Officer (CSO), the Deputy CSO, regional security officers, National Critical Infrastructure security officers, and others as may be designated by the CSO. This term does not include information security specialists, personnel security specialists, physical security specialists, industrial security specialists, security specialists, or contract security guards.
- H. **SIRG.** The SIRG consists of the Department's BDLEs who are to review bureau and office Board reports for purposes of identifying and addressing concerns relevant to procedures, training, or policy issues at the Department level (see 446 DM 25.8).
4. **Responsibilities.** Specific responsibilities of individuals associated with the Board are as follows:
- A. **Director, SSLE.** The Director, SSLE, will:
- (1) Administer the Law Enforcement and Security Programs, which includes implementing the provisions of Pub. L. 107-69 (43 U.S.C. §§ 373b and 373c) and performing the duties of the BDLE as specified in 446 DM and in 43 CFR 422.2(d) and 422.5.
  - (2) Provide programmatic oversight to ensure all affected employees are familiar with and comply with this D&S and other applicable policies and procedures, and therefore, is Reclamation's official to promulgate, implement, and ensure compliance with this D&S.
  - (3) Convene the Board [in coordination with the appropriate senior level manager or his/her designate (i.e., regional director, CSO, SAC)] as soon as practicable, but no later than 30 calendar days after the completion of the investigation of an incident.
  - (4) Appoint the Board members and designate the Chairperson.
  - (5) Coordinate with the appropriate Department BDLE, or head law enforcement official, if the incident being reviewed by the Board involves any Department law enforcement personnel detailed to Reclamation pursuant to 43 U.S.C. §§ 373b(c)(1) or (2).
  - (6) Notify the Director, OLES, when a Board is convened and include the names, titles, bureaus, and organization of each Board member.

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- (7) Notify the Director, OLES, of any requests by other involved parties (e.g., bureau office Internal Affairs, the Department's Office of the Inspector General, external law enforcement agencies, the Office of the Solicitor, prosecutorial offices at Federal, state, local, and tribal levels, etc.) to postpone the Board.
- (8) Submit the approved *Report of the Board of Review and Findings* (Report) to the Director, OLES, within 60 calendar days of convening the Board. If the Board Report is not completed within the 60 calendar day time frame, the Director, SSLE, will provide a status update to the Director, OLES, every 30 calendar days until it is completed.
- (9) Respond to the Department's Deputy Assistant Secretary – Law Enforcement, Security, and Emergency Management, with a plan to address SIRG's conclusions and recommendations within 30 calendar days.
- (10) Confer with the Director, OLES, upon completion of the Report, so that lessons learned and information of an urgent nature can be distributed to all applicable Department personnel as soon as possible.
- (11) Delegate, as deemed appropriate and necessary, the responsibilities referred to in this D&S, unless otherwise prohibited.

**B. SAC.** The SAC will:

- (1) serve as the Director's, SSLE, primary advisor on law enforcement matters including providing guidance, direction, and coordination on law enforcement matters;
- (2) provide guidance and direction, as necessary, to the Board Chairperson, including ensuring there is no interference with any Internal Affairs investigations;
- (3) notify the Director, SSLE, of any requests by other involved parties (e.g., bureau office Internal Affairs, the Department's Office of the Inspector General, external law enforcement agencies, the Office of the Solicitor, prosecutorial offices at Federal, state, local, and tribal levels, etc.) to postpone the Board;
- (4) receive the Board Report from the Chairperson and review for consistency and accuracy of its contents;
- (5) submit the final Report to the Director, SSLE, with findings and recommendations to approve or disapprove;
- (6) distribute lessons learned and information of an urgent nature to all applicable personnel as soon as possible after the Director, SSLE, approves the Board's completed Report; and

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- (7) collaborate and coordinate with Reclamation's CSO and others, as may be appropriate, based on the nature of the incident under review.

C. **Board Chairperson.** The Board Chairperson will:

- (1) Provide leadership and general direction to the Board.
- (2) Determine when and where the Board will meet (the Board may convene in person through teleconference, video conference, or any combination thereof, depending on the nature of the incident).
- (3) Convene investigative activity of the incident and appoint a lead investigator.
- (4) Provide coordination and collaboration with appropriate offices, internal and external to Reclamation, including but not limited to.
  - (a) **Prosecutor's Office.** The Chairperson, in coordination with the SAC, will consult as needed with the U.S. Attorney's Office or any other state, local, or tribal prosecutorial office that may be involved in the incident to avoid interference with any simultaneous criminal investigation. If the prosecutor requests a postponement of the Board, the Chairperson of the Board will request from the appropriate prosecutor a written statement requesting the postponement. The Chairperson will forward these written communications to the SAC.
  - (b) **Internal Affairs Issues.** The Chairperson will coordinate as needed with the SAC to avoid interference with any simultaneous Internal Affairs investigation.
  - (c) **Solicitor's Office Issues.** The Chairperson, in consultation with the SAC, will coordinate as needed with the Solicitor's Office regarding possible civil or criminal violations, and when appropriate, criminal actions related to the incident under review.
  - (d) **Human Resources Office.** The Chairperson will coordinate as needed with the appropriate human resources office regarding any worker's compensation or similar claim that may be filed.
- (5) Ensure the Report includes all pertinent facts, information, and findings related to a serious incident and the Report is submitted in the proper format and in a timely manner.
- (6) Review all facts related to the incident.
- (7) Provide an analysis of the incident.

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- (8) Compare facts in the incident to current policy.
  - (9) Ensure compliance with current policy.
  - (10) Make recommendations if the current policy needs to be amended.
  - (11) Derive conclusions regarding the incident as a whole.
  - (12) Neither imposes nor makes recommendations concerning administrative personnel actions related to Department/Reclamation employees.
5. **Incidents Reviewed by the Board.** Those incidents required to be reviewed by a Board are found in Appendix A.
  6. **Establishment of the Board.** A Board will be established by the Director, SSLE, to provide an objective review of each serious incident involving law enforcement or security personnel. The Board will be convened no later than 30 calendar days after the completion of investigation of an incident.
  7. **Functions of the Board.** The Board will identify policy, operational procedures, supervision, and training implications related to Reclamation law enforcement and security activities and programs. Each Board will be thorough, timely, and objective and provide recommendations for procedural improvements for “lessons learned” related to supervision and the safety of officers and the public.
  8. **Composition of the Board.**
    - A. The Board panel must consist of a minimum of three members.
    - B. The Chairperson and Board panel will be appointed by the Director, SSLE.
    - C. To ensure objectivity and avoid any appearance of a conflict of interest, care will be exercised in selecting Board panel members.
      - (1) The Director, SSLE, will exclude employees involved in the incident, their supervisors, and witnesses to the incident.
      - (2) The Director, SSLE, will ensure a Board is comprised of Department law enforcement personnel. In the event investigative requirements deem it necessary, the Board will consult with subject matter experts.
      - (3) The Chairperson of the Board will call upon non-law enforcement or security individuals, with expertise related to the incident being reviewed to provide input as appropriate, but these subject matter experts will not be members of the Board.

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- (4) Since the Board investigates systemic causes of an incident, and not employee conduct, there is no employee right to have representation on the Board.
9. **Report Scope and Requirements.** The scope and required procedures for completing a Report by the Board are found in Appendix B of this D&S.
10. **Appendices.**
- A. Incidents to be Reviewed by the Board of Review.
  - B. Scope and Requirements of the *Report of the Board of Review and Findings*.
11. **References.**
- A. 40 U.S.C. § 1315, *Law Enforcement Authority of Secretary of Homeland Security for Protection of Public Property*.
  - B. 446 DM 1, *General Policy and Responsibilities for Law Enforcement Programs*.
  - C. 446 DM 20, *Use of Deadly Force*, April 16, 2009.
  - D. 446 DM 25, *Boards of Review and Serious Incident Review Groups*.
  - E. Memorandum from Commissioner to Director, SSLE, *Law Enforcement Officer Definition*, (October 13, 2004).



## Reclamation Manual Transmittal Sheet

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