

## **DRAFT RECLAMATION MANUAL RELEASE**

**Comments on this draft release must be submitted to [dmanderson@usbr.gov](mailto:dmanderson@usbr.gov) by April 4, 2011.**

### **Background and Purpose of the Following Draft Directive and Standard (D&S)**

The goal of preparing this new D&S document and providing the public with the opportunity to comment on this draft is to help ensure that the quality of non-agricultural waters discharged into Bureau of Reclamation facilities does not jeopardize the exemption from National Pollutant Discharge Elimination System (NPDES) permitting requirements currently enjoyed by most Reclamation water conveyances. Expected benefits include:

- Helping protect the quality of water delivered to Reclamation's customers;
- Reducing opportunities for disruptions in Reclamation operations; and
- Ensuring continued compliance with the federal Clean Water Act.

The Reclamation Manual is used to establish Reclamation-wide requirements, assign program responsibility and establish and document Reclamation-wide methods of doing business.

This draft Reclamation Manual release requires that minimum water quality permitting requirements be met before Reclamation issues a "use authorization" for the discharge of non-agricultural waters into its facilities. Briefly, non-agricultural dischargers will not be allowed to discharge into Reclamation facilities until they demonstrate either that they have already secured the necessary NPDES permit, or that their discharge does not require such a permit. Reclamation *may*, but is not required, to accept such discharges.

Please note that the scope of this draft D&S is limited to the water-quality-permitting requirements associated with securing relevant use authorizations from Reclamation. Other matters related to compliance with the Clean Water Act, and to capacity and safety considerations that also must be addressed before Reclamation will accept additional discharges into its facilities, are not addressed as part of this D&S.

See the following pages for the draft D&S.

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**Subject:** Procedures to Authorize Non-Agricultural Discharges into Reclamation Facilities – Requirements Related to Federal Water Pollution Control Act (Clean Water Act) Compliance

**Purpose:** To ensure that authorizations for non-agricultural stormwater and other non-agricultural discharges into Bureau of Reclamation facilities address appropriate Clean Water Act National Pollutant Discharge Elimination System (NPDES) permit requirements. By making certain that discharges into Reclamation facilities have secured appropriate NPDES permits, Reclamation may avoid the need for new NPDES permits for Reclamation facility discharges. The benefits of this Directive and Standard (D&S) for Reclamation are the protection of resources and facilities and the prevention of unnecessary costs.

**Authority:** Reclamation Project Act of 1939, § 10 (43 U.S.C. 387); 43 CFR 429

**Approving Official:** Director, Policy and Administration

**Contact:** Water and Environmental Resources Office, 84-55000

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**1. Introduction.**

A. **Background.** Municipalities and other entities at times request that Reclamation authorize non-agricultural discharges, such as stormwater or treated municipal wastewater, into Reclamation facilities. As urbanization near Reclamation projects continues, and as federal rule-making potentially expands the scope of activities subject to Clean Water Act NPDES permit requirements, the need to address proposed discharges into Reclamation facilities is likely to increase. Reclamation is authorized to accept non-agricultural discharges when this is determined to be in the best interest of the United States. Reclamation has developed this D&S to describe the NPDES permit compliance requirements to be included as part of any authorization of such discharge, so that Reclamation may avoid the need for new NPDES permits for Reclamation facility discharges where possible.<sup>1</sup>

B. **Clean Water Act Permitting Requirements and Exemptions.** The Clean Water Act establishes permit requirements for the discharge of a pollutant into navigable waters of the United States<sup>2</sup>. Return flows from irrigated agriculture and agricultural stormwater

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<sup>1</sup> While the procedures articulated in this D&S are intended to avoid the need for new NPDES permits for Reclamation facilities, these procedures are not intended to address, resolve, or otherwise concede the question of whether Reclamation facilities are, themselves, waters of the United States.

<sup>2</sup> Clean Water Act § 301(a), 33 U.S.C. § 1311(a).

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discharges are specifically exempt from the Clean Water Act's NPDES permit requirements<sup>3</sup>. Other point-source discharges are permissible under the Clean Water Act only pursuant to an NPDES permit. To comply with the Clean Water Act, non-agricultural dischargers, including certain stormwater dischargers, must obtain permits through the NPDES permit system.

- C. **Mixed Agricultural and Non-Agricultural Discharges.** A Clean Water Act permitting authority (*e.g.*, State or U.S. Environmental Protection Agency) may require an NPDES permit for a non-agricultural discharge **either** at the point the water enters a Reclamation facility **or** the point at which the non-agricultural discharge, commingled with other waters, otherwise enters waters of the United States. If a non-agricultural discharge into a Reclamation facility is covered by an NPDES permit, then Reclamation generally will not be required to obtain a separate NPDES permit for discharge of the mixture of irrigation return flow and non-agricultural discharge into other waters. Therefore, Reclamation can reduce the likelihood that its facilities will be subject to additional NPDES permitting requirements by making certain that all authorized non-agricultural discharges into its facilities have received appropriate NPDES permit coverage.
2. **Applicability.** This D&S is applicable to all Reclamation facilities. The responsibility and requirements for complying with this D&S apply to regional directors and their designee(s). This D&S addresses only requirements related to Clean Water Act NPDES permit compliance for non-agricultural discharges into Reclamation facilities. All other considerations associated with such discharges are the responsibility of the corresponding regional office to address.
3. **Definitions.**
- A. **Non-Agricultural Discharge.** For purposes of this D&S, non-agricultural discharge is any discharge that is not covered by the Clean Water Act exemption for return flows from irrigated agriculture and agricultural stormwater discharges<sup>4</sup>.
- B. **Reclamation Facility.** For purposes of this D&S, a Reclamation facility is any facility, system, component, or feature under Reclamation jurisdiction, regardless of the ownership of underlying lands. Facilities include reservoirs; water conveyance, distribution, and delivery facilities (*e.g.*, canals and laterals); and drainage features (*e.g.*, open drains and buried drains).

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<sup>3</sup> Clean Water Act § 502(14), 33 U.S.C. § 1362 (14), 40 CFR parts 122.2 and 122.3. In the state of California, some Regional Water Boards regulate agricultural discharges through the use of conditional waivers.

<sup>4</sup> Clean Water Act § 502(14), 33 U.S.C. § 1362 (14), 40 CFR parts 122.2 and 122.3.

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- C. **Regulated Stormwater Discharge.** For purposes of this D&S, regulated stormwater discharge is stormwater subject to NPDES regulation as set forth at 40 CFR part 122.26, including stormwater discharges from certain municipal separate storm sewer systems (MS4s), construction sites one acre or larger, certain industries, and other sources designated by the U.S. Environmental Protection Agency as subject to regulation.
4. **Responsibilities.**
- A. **Regional Directors.** Regional directors are responsible for ensuring that authorizations for non-agricultural discharges into Reclamation facilities are in compliance with the requirements set forth in this D&S, including documentation of appropriate NPDES permit coverage by the discharging entity (if required), and other applicable Reclamation-wide and regional requirements. Regional directors also are responsible for ensuring that other considerations are addressed, such as facility capacity, impacts to groundwater, impacts to surface water, safety, consistency with project purposes, impacts on water users and water rights, and any other issues. Regional directors will establish regional policies or guidelines, as needed, to ensure compliance with this D&S.
- B. **Area Managers.** Area managers are responsible for ensuring that adequate information is acquired to determine whether a specific use authorization request for discharge into Reclamation facilities complies with this D&S and with applicable regional policies and guidelines.
5. **Authorization of Non-Agricultural Discharges.** Reclamation may authorize the use of its facilities to accept non-agricultural discharges that may be subject to NPDES permitting requirements, such as non-agricultural stormwater or treated municipal wastewater, and that may become commingled with irrigation return flows or other waters exempt from NPDES permitting requirements, when this is in the best interest of the United States. However, Reclamation is under no obligation to provide such authorizations. The following are minimum requirements for any authorization of non-agricultural discharges into Reclamation facilities. A discharge that meets the requirements set forth below must also comply with applicable regional requirements prior to authorization by Reclamation.
- A. **Use Authorizations.** Any action by Reclamation to authorize non-agricultural discharges into Reclamation facilities must comply with requirements for use authorizations, which are set forth at 43 CFR part 429 and Reclamation Manual D&S, *Land Use Authorizations*, [LND 08-01](#). The requirements described herein and at 43 CFR part 429 are also applicable to intentional and unauthorized non-agricultural discharge into Reclamation facilities.

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- B. Terms, Conditions, and Renewals.** Use authorization for non-agricultural discharges into Reclamation facilities may be granted for a term of no longer than five years, subject to renewal. The use authorization shall include the terms and conditions described in D&S LND 08-01 under “Use Authorization Terms and Conditions”, and shall include: (1) an indemnification and hold harmless provision acceptable to the Regional Director ensuring that Reclamation will bear no liability for the non-agricultural discharges, and that the discharging entity will bear the responsibility for any costs, damages, or impacts associated with such discharges; (2) a termination provision requiring the automatic and immediate termination of the use authorization upon failure of the discharger to comply with NPDES permitting requirements, or upon determination that the commingled waters in Reclamation facilities are no longer exempt from NPDES permitting requirements as a result of the discharge; and (3) a hazardous materials provision prohibiting the discharge into Reclamation facilities of hazardous materials defined in LND 08-01, subsection 11(G)(c), unless such discharge meets all requirements the Clean Water Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act, and other federal and state law.<sup>5</sup> Renewal of use authorizations for the purposes described in this D&S shall be contingent upon verification of compliance with past use authorizations, as determined by and at the discretion of the Regional Director, and subject to applicable policies, requirements, and laws.
- C. Compliance with NPDES Permitting.** Reclamation requires that the use authorization file for any non-agricultural discharge into a Reclamation facility include documentation that the discharger is in compliance with any applicable NPDES permit requirements, along with a copy of all their NPDES permit submittals; **or** documentation acceptable to the Regional Director that the discharge at issue does not require an NPDES permit from the discharger, including written confirmation from the applicable permitting authority (*e.g.*, the State or the Environmental Protection Agency).
- D. Recordkeeping.** For each separate location where non-agricultural discharge is authorized to enter a Reclamation facility, Reclamation will retain in the use authorization contract file all relevant written documentation, including the written request to discharge into a Reclamation facility, Reclamation’s response, the regulations at 43 CFR 429, the applicable Reclamation use authorization directives and standards, and other documentation provided in accordance with this D&S.

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<sup>5</sup> LND 08-01 subsection 11(G)(a) is not applicable to treated municipal or industrial wastes or stormwater discharges that comply with the requirements set forth in this D&S; thus that language may be excluded from applicable use authorizations. Similarly, the language of LND 08-01 subsection 11(G)(d) may be modified as the region deems appropriate for authorizations that comply with this D&S.

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Reclamation will maintain, use, and dispose of these records in accordance with the Reclamation Manual D&S for *Information Management*, RCD 05-01.

- E. **Updating Compliance Information.** The use authorization documentation provided by the discharging entity pursuant to this D&S will be updated by that entity to reflect any changed conditions, such as changes by the applicable permitting authority that affect NPDES permit requirements for regulated discharges to Reclamation facilities, any permit violations, and any other failures to comply with NPDES permit requirements.
- F. **Reclamation's Right to Sample.** The use authorization shall specify Reclamation's right to periodically collect water samples for purposes of verifying that the authorized discharges comply with their NPDES permit requirements. Authorizations shall further specify the extent to which the costs to Reclamation for corresponding water sampling and sample analysis will be reimbursed by the authorized discharger. Generally, these costs should be borne by the discharger.
6. **Unauthorized Discharges.** As the regional offices become aware of non-agricultural discharges to Reclamation facilities under their jurisdiction that are not authorized by Reclamation, they will take action to ensure that those discharges are addressed in conformance with policies set forth in this document. Unauthorized discharges may be treated as criminal violations of Reclamation's Public Conduct Rule (43 CFR 423), as described under various sections therein, including 423.21, 423.29(b) and 423.34, or may subject the discharger to other legal penalties.