

Reclamation Manual

Policy

TEMPORARY RELEASE

(Expires 05/16/2020)

Subject:	Use of Reclamation Water or Facilities for Activities Prohibited by the Controlled Substances Act of 1970
Purpose:	The purpose of this Policy is to provide a clear statement of the Bureau of Reclamation's intent to operate consistently with the Controlled Substances Act of 1970 with respect to the potential use of Reclamation water or facilities for the production of marijuana.
Authority:	Reclamation Act of 1902 (ch. 1093, 32 Stat. 388); Controlled Substances Act of 1970 (Pub. L. 91-513, 84 Stat. 1236, as amended by the Agricultural Improvement Act of 2018 (Pub. L. 115-334); codified as amended in various sections of 21 U.S.C.)
Approving Official:	Commissioner
Contact:	Director, Policy and Administration (84-50000)

1. **Introduction.** The Controlled Substances Act of 1970 (CSA) and its implementing regulations prohibit the cultivation of marijuana,¹ as defined at subsection 102(16) of the CSA (codified at 21 U.S.C. 802(16)). Reclamation's obligation as a Federal agency to uphold Federal law prohibits it from approving the use of Reclamation water or facilities to facilitate activities prohibited by the CSA that are not within a relevant exception or exemption established by Federal law. The legalization of marijuana's cultivation under some state laws necessitates a clear statement of Reclamation's obligations under the CSA.
2. **Applicability.** This Policy applies to Reclamation staff involved in the administration of Reclamation water-related contracts.
3. **Policy.** Reclamation will operate its facilities, make available contract water, execute and administer its water-related contracts, and otherwise perform its contractual and legal duties in a manner that is consistent with the CSA, as amended.² Specifically:

¹Spelled "marihuana" in the statute.

²This Policy does not apply to the use of Reclamation project water or facilities in the cultivation of hemp, as defined in the Agricultural Marketing Act of 1946 (7 U.S.C. 1639o), which is no longer a prohibited activity under the CSA, as amended by the Agricultural Improvement Act of December 10, 2018 (2018 Farm Bill) (Pub. L. 115-334). Section 10113 of the 2018 Farm Bill added the current definition of "hemp" to the Agricultural Marketing Act and removed hemp from the CSA's definition of "marijuana" (section 12619(a), codified at 21 U.S.C. § 802) and from its schedule of controlled substances (section 12619(b), codified at 21 U.S.C. 812(17)). Hemp cultivation is regulated by the United States Department of Agriculture (USDA) and responsible state agencies (see 7 U.S.C. 1621, *et seq.*). Reclamation staff should direct contractors and water users to the USDA and the responsible state agency for associated information.

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- A. Reclamation will not approve use of Reclamation facilities or water in the cultivation of marijuana that is prohibited under the CSA and not within an exception or exemption established by Federal law.
 - B. Should Reclamation employees become aware that Reclamation facilities or the water they supply are being used to facilitate federally prohibited cultivation of marijuana, they will, through their line management, bring this to the attention of their regional director, who will report such use to the Department of Justice and document the reporting action(s).
 - C. Throughout this process, a Reclamation employee, to be designated by the responsible regional director, will compile and maintain a record documenting all activities and communications regarding known or potential uses of Reclamation water or facilities for federally prohibited cultivation of marijuana. These records will include all relevant memos, emails, letters, records of telephone conversations, etc. about known or potential uses of Reclamation water or facilities to cultivate marijuana, including responses by Reclamation employees.
 - D. Reclamation does not have a responsibility or designated role in actively seeking enforcement of the CSA.
4. **Commingled Water.** This Policy does not apply to non-contract water commingled with contract water in non-Federal facilities.
5. **Definitions.** The definitions cited in Reclamation Manual Policy, *Water-Related Contracts-General Principles and Requirements*, PEC P05, apply to this Policy (see especially the terms “Contract Water” and “Water-Related Contract” at Paragraphs 3.D. and 3.R.).

RECLAMATION MANUAL TRANSMITTAL SHEET

Effective Date: _____

Release No. _____

Ensure all employees needing this information are provided a copy of this release.

Reclamation Manual Release Number and Subject

Summary of Changes

NOTE: This Reclamation Manual release applies to all Reclamation employees. When an exclusive bargaining unit exists, changes to this release may be subject to the provisions of collective bargaining agreements.

Filing instructions

Remove Sheets

Insert Sheets

All Reclamation Manual releases are available at <http://www.usbr.gov/recman/>

Filed by: _____

Date: _____