

## BUREAU OF RECLAMATION

Following are examples of legal authorities of the Bureau of Reclamation (BOR) for entering into partnerships, some of which include authority to enter into cooperative agreements and grants. Regional and site-specific authorities also are listed at the end of this section. Also the list of [Department-level authorities](#) may be consulted. The Solicitor's Office can help the BOR determine the most appropriate ways of using these authorities to accomplish its partnership goals. Consultation with the Solicitor's Office early in the initial partnership planning and discussion stages will help facilitate effective and legally supportable achievement of the agency's partnership goals.

### A. AUTHORITY TO COOPERATE WITH PARTNERS

- 1. Investigation, Research and Demonstration of Opportunities for Reclamation and Reuse of Wastewater and Naturally Impaired Ground and Surface Waters (43 U.S.C. §§ 390h to h-14):** The Reclamation Wastewater and Groundwater Study and Facilities Act of 1992 authorizes the Secretary to investigate opportunities for reclamation and reuse of municipal, industrial, domestic, and agricultural wastewater and naturally impaired ground and surface waters, for the design and construction of demonstration and permanent facilities to reclaim and reuse wastewater, and to conduct research, including desalting, for the reclamation of wastewater and naturally impaired ground and surface water. This authority is limited to the Reclamation states plus the State of Hawaii. The Secretary is required to consult and cooperate with appropriate state, regional, and local authorities to conduct an initial appraisal. Those costs are specifically non-reimbursable. Further, the Secretary is authorized to participate with appropriate Federal, State, and local authorities in studies to determine the feasibility of water reclamation and reuse projects under cost-share agreements. Finally, the Secretary is authorized to conduct research and construct, operate, and maintain cooperative demonstration projects for the research and development of appropriate treatment technologies under cost-share agreements.
- 2. Use and Improvement of Existing Public Roads during Construction of Water Resource Projects (33 U.S.C. § 701r-1 (b)):** This law provides that "[w]henver in connection with the construction of any authorized flood control, navigation, irrigation, or multiple purpose project for the development of water resources, the head of the Agency concerned determines it to be in the public interest to utilize existing public roads as a means of providing access to such projects during construction, such Agency may improve, reconstruct, and maintain such roads and may contract with the local authority having jurisdiction over the roads to accomplish the necessary work."

### B. AUTHORITY TO ENTER INTO COOPERATIVE AGREEMENTS AND GRANTS

- 1. Grants to Facilitate Development, Management, and Protection of Indian Water Resources (Pub. L. No. 108-7):** Section 201 of

the Consolidated Appropriations Resolution, 2003, Section 2, Division D, Title II (Department of the Interior) authorizes the Secretary of the Interior, acting through the Commissioner of Reclamation, to enter into grants and cooperative agreements with any Indian tribe, institution of higher education, national Indian organization, or tribal organization, pursuant to 31 U.S.C. §§ 6301-6308, in order to increase opportunities for Indian tribes to develop, manage, and protect their water resources, in FY 2003 and thereafter.

2. **Habitat Restoration Associated with Reclamation Projects (16 U.S.C. §§ 661 et seq.):** Section 1 of the Fish and Wildlife Coordination Act provides authorization to the Secretary to provide assistance to, and cooperate with, Federal, State and public or private agencies and organizations in the development, protection, rearing, and stocking of all species of wildlife, resources thereof, and their habitat, in controlling losses of the same from disease or other causes. . .and in carrying out other measures necessary to effectuate the purposes of the law.

While the authority is delegated primarily to the Fish and Wildlife Service, the Secretary in 1996 provided to the Commissioner of Reclamation a limited delegation of Section 1 authority "as is necessary to provide assistance, through grants or cooperative agreements, to public or private organizations for the improvement of fish and wildlife habitat associated with water systems or water supplies affected by Reclamation projects." *See also*, 255 Departmental Manual 14.1.

3. **Preparation of Drought Contingency Plans (43 U.S.C. § 2215):** This law authorizes Secretary to provide financial assistance in the form of cooperative agreements in States that are eligible to receive drought assistance "under this subchapter to promote the development of drought contingency plans under subchapter II of this chapter."
4. **Recreation Facilities at Reclamation Projects (16 U.S.C. §§ 460/-12 to -21):** The Federal Water Project Recreation Act authorizes agreements with non-federal public bodies to investigate, plan, construct, operate, maintain, modify, or otherwise provide for recreation and fish and wildlife enhancement facilities at Reclamation projects. Cost sharing is mandatory under the act.
5. **Security and Law Enforcement (43 U.S.C. § 373b):** This law authorizes BOR to enter into contracts and cooperative agreements in order to provide security and law enforcement for Reclamation dams and other property and facilities. 43 C.F.R. 422.9 outlines the requirements for such contracts and cooperative agreements with local and state law enforcement agencies for the purposes of protecting dams, facilities, property and the public.
6. **Soil Conservation Programs (16 U.S.C. § 590a):** This law authorizes the Secretary of Agriculture to cooperate or enter into agreements with or to furnish financial or other aid to any agency or

person to prevent soil erosion. Section 6 of Reorganization Plan No. IV (1940) transferred authorities of the Secretary of Agriculture under the Soil and Moisture Conservation Act of 1935 to the Secretary of the Interior with respect to soil and moisture conservation operations conducted on lands under the jurisdiction of Interior. The delegation from the Secretary to the Commissioner of Reclamation provides that the BOR is "responsible for performing soil and moisture conservation operations on or for the benefit of lands under [its] jurisdiction." See, 606 DM 1.2.

7. **Water Resource Education and Research (42 U.S.C. § 10303(h)(1)c):** This law authorizes the Secretary to enter into cooperative agreements for purposes of water resource education and research. Also, **42 U.S.C. §§ 10303(c), (g)** authorizes matching grants for reimbursement of expenditures for conduct of water resources research programs; **42 U.S.C. § 10304** authorizes grants to educational institutions, other private parties, and state and local governments for research concerning any water resource-related problem that the Secretary finds is in the National interest; and **42 U.S.C. § 10305** authorizes grants for technology development concerning any aspect of water resources.

#### C. **AUTHORITY TO ACCEPT NON-FEDERAL FUNDS, AND VOLUNTEER SERVICES**

1. **Acceptance of Non-Federal Funds (43 U.S.C. § 395):** The Contributed Funds Act provides that "all funds paid by states, municipalities, districts, or private parties for investigations, surveys, construction work, or any other development work incident thereto involving operations similar to those provided for by the reclamation law, are covered into the reclamation fund and available for expenditure by Reclamation for the purposes for which contributed, without the need for further appropriation."
2. **Acceptance of Volunteer Services (43 U.S.C. § 1475; Pub. L. No. 101-101):** The 1990 Energy and Water Development Appropriations Act provides authority for Reclamation to accept the services of volunteers and to provide for their incidental expenses to carry out any activity of the Bureau of Reclamation.

#### **BOR REGIONAL AND SITE-SPECIFIC AUTHORITIES**

1. **California's Central Valley Project (Pub. L. No. 102-575; 106 Stat. 4706):** Section 3407(e) of the Central Valley Project Improvement Act authorizes the Secretary to provide funding to the State of California or any agency or subdivision of the State, an Indian tribe, or nonprofit entity if the Secretary determines that the entity is able to assist in implementing any action authorized under the act in an efficient, timely, and cost effective manner.
2. **Deschutes River Partnerships in Oregon (Pub. L. No. 104-208, 104-333 (Sept. 30 and Nov. 12, 1996); 110 Stat. 3009-534 to 3009-536,**

- 110 Stat. 4226-4228):** The Deschutes Basin Ecosystem Restoration Projects Act of 1996, amended by the Deschutes Resources Conservancy Reauthorization Act of 2000, Pub. L. No. 106-270, Sept. 22, 2000, authorizes a local "Working Group" by consensus to propose land or water ecological restoration projects to be 50 percent cost shared by the Bureau of Reclamation. BOR, BIA, BLM, FWS, U.S. Forest Service, NRCS, FSA, National Marine Fisheries Service and BPA are all authorized to provide technical assistance and representatives to the Working Group.
3. **Elwha River Restoration Project (Pub. L. No. 102-495):** This law provides for restoration of native fish populations through removal of Elwha and Glines Canyon Dams near Olympic National Park, Washington. Mitigation measures designed to protect downstream residents and water users from the impacts of dam removal will be constructed prior to dam removal. Secretarial Order No. 3212, dated February 29, 2000, delegated implementation responsibilities to the Park Service and directed BOR to assist NPS in carrying out the terms of the law. Additional Federal support has been provided by the U.S. Army Corps of Engineers and the USGS under interagency agreements authorized by the Economy Act. Relationships / partnerships have been formed with the Lower Elwha Klallam Tribe, the City of Port Angeles, Dry Creek Water Association, Elwha Place Homeowners Association, and others to identify and implement necessary mitigation measures.
  4. **Umatilla River Partnerships in Oregon (Pub. L. No. 100-557; 102 Stat. 2791- 2795):** The Umatilla Basin Project Act authorizes specific federal actions (including now completed pumping plant and pipeline construction) to improve streamflow and fish passage conditions to restore the anadromous fishery resource in a river system heavily influenced by the Umatilla Federal Reclamation Project. It authorizes "conjunctive use" of any federal pumping capacity in excess of that needed to provide fishery benefits for irrigation of lands eligible upon its passage for service within irrigation districts that participate in the project. It authorizes acquisition from willing parties of land, water rights, or interests in land for the benefit of fishery resource restoration.
  5. **Yakima River Partnerships in the State of Washington (Pub. L. No. 103-434; 108 Stat. 4550-4565):** The Yakima River Basin Water Enhancement Project Act authorizes a program to improve streamflow and fish passage conditions to restore the anadromous fishery resource in a river system heavily influenced by the Yakima Federal Reclamation Project. It establishes a multi-party "conservation advisory group" to make recommendations to both the Secretary and the State of Washington for a wide range of measures to be part of a Basin Conservation Program with costs to be shared between Federal, State, and local participants. It authorizes acquisition from willing parties of land, water rights, or interests in land for the benefit of fishery resource restoration.