# Reclamation Manual

Directives and Standards

**Subject:** Funding and Extended Repayment of Extraordinary Maintenance Cost

**Purpose:** To state funding and repayment requirements for extraordinary maintenance. The benefit of this Directive and Standard is consistent application of law and sound business practices to meet the most critical extraordinary maintenance needs.

**Authority:** The Reclamation Act of June 17, 1902 (32 Stat. 388), as amended and supplemented, in particular, Title IX, Subtitle G of Pub. L. 111-11, and Title XI, Section 1101 of Pub. L. 116-260 (43 U.S.C. § 510, et seq.)

**Approving Official:** Director, Mission Assurance and Protection Organization

**Contact:** Reclamation Law Administration Division (84-55000)

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## 1. Introduction.

Title IX, Subtitle G, of Public Law 111-11 authorizes Reclamation to advance funding for extraordinary maintenance (XM) to non-federal operators of Reclamation facilities (operating entities[1]), to extend repayment of reimbursable XM costs, and to execute repayment contracts. Title XI, Section 1101, of Public Law 116-260, amends this authority by establishing the Aging Infrastructure Account (AIA) and associated parameters and requirements. The current law (XM authority), as amended, is codified at 43 U.S.C. 510, et seq. The XM authority does not address funding for or authorize extended repayment of annual, routine operation, maintenance, and replacement (OM&R) costs.

## 2. Applicability.

This D&S applies to all Reclamation offices and staff administering the XM authority.[2]

## 3. Federal Funding.

Funding for XM is provided in discretionary and mandatory appropriations and from amounts repaid into the AIA. The AIA funding process outlined in this D&S is the preferred XM funding method. Other funding sources may be required when funds in the AIA are insufficient, or the urgency of XM work necessitates a faster process (e.g., emergency XM (EXM), as addressed under Paragraph 4.B.~~3~~). Paragraph 5 outlines requirements for requesting funding from the AIA. Authority to advance funding for XM from sources other than the AIA, and to enter associated repayment contracts, must be requested in accordance with Paragraph 9.

[1] The terms that are linked in this D&S are those that are defined under Paragraph 11.

2This D&S sets forth generally applicable requirements. Where needed, given the variations among Reclamation's projects and contractual relationships, implementing offices and staff should work with the Review Team identified under Paragraph 5.A. to determine allowable and appropriate variances and the associated authorization processes.

~~3As a practical matter, actions or work needed to minimize imminent harm to life and property cannot typically wait to go through the application process, which is required to use funds from the AIA. Regions are generally responsible for funding emergency XM work from their regularly budgeted funds.~~

**4. Eligibility.**

**A. XM.**
For purposes of this D&S, work is XM if:

(1) it is major, non-recurring maintenance of a mission critical asset;

(2) its purpose is to ensure the continued safe and reliable delivery of authorized project benefits (any additional benefits resulting from XM work being strictly incidental to that purpose);

(3) its costs are greater than 10 percent of Reclamation's or the operating entity's annual operation and maintenance budget for the facility or at least $100,000 in total; and

(4) it is not eligible to be performed or funded under the repayment provisions of Section 4(c) of the Reclamation Safety of Dams Act of November 2, 1978, as amended (43 U.S.C. § 506).

**B. EXM.**

(1) **In General.**
XM work qualifies as EXM to the extent that the Commissioner determines that it is necessary to minimize the risk of imminent harm to public health or safety, or to property.[4] For transferred works, the Commissioner will factor in the urgency that the operating entity and the affected local entities place on the work, as indicated by the immediacy of their associated actions and commitment of resources.

(2) **Expedited Funding.**
Funding for EXM may be provided before the execution of the associated repayment contract(s) in accordance with subparagraph 6.B.[5]

(3) **Reduced Reimbursability.**

**(a) Conditions.**
Advanced XM funds are reimbursable as described in Paragraph 8.A., except that Reclamation may provide funding on a non-reimbursable basis sufficient to cover 35 percent of the cost for EXM work on a facility that is inspected and maintained under the guidelines and criteria

4EXM is work that must be done or started immediately to prevent harm to persons or property. The key distinction from other XM work is urgency, rather than the types of potential harm, since non-emergency XM work will normally address similar risks ~~across~~ over some timeframe.

5Work designated EXM will often be followed by longer-term work to permanently resolve underlying or associated maintenance issues. An initial EXM element does not, by itself, qualify longer-term associated work as EXM, and a distinction may be required between work of an urgency justifying funding ahead of contract execution and the ongoing work to follow.

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outlined in subsection (a) of 43 U.S.C. 510a,[6] if the following conditions are met:

(i) during the last 10 years, any Category 1 OM&R recommendations, as defined in Paragraph 7.A.(1) of Reclamation Manual (RM) D&S, Review of Operation and Maintenance (RO&M) Program Examination of Associated Facilities (Facilities other than High- and Significant-Hazard Dams) (FAC 01-04), related to XM work identified through inspection/assessments conducted under existing review programs have an identified timeframe for work to be completed and the work has been completed or is progressing within that timeframe,

(ii) during the last 10 years, any Category 2 OM&R recommendations, as defined in Paragraph 7.A.(2) of FAC 01-04, related to XM work identified through inspection/assessments conducted under existing review programs have an identified timeframe for work to be completed and the work has been completed or is progressing within that timeframe, and

(iii) the EXM does not result from inadequate performance of routine maintenance.

**5. Aging Infrastructure Account Funding ~~Application and Funding~~ Process.**
The funds in the AIA are accessed through a process outlined below.

**A. Application Review Team (Review Team).**
The Review Team[7] coordinates the AIA funding application process, which includes the following activities. ~~will:~~

(1) **Review and Report.**

(a) The Review Team ~~will~~ reviews submitted applications and regional funding requests to determine whether they meet ~~all~~ eligibility criteria, content requirements, and deadlines.

(b) No later than 3 weeks after the deadline for uploading materials to the SharePoint Site, the Review Team will provide the Commissioner with the year's submissions and recommend a prioritization among the eligible, timely, and complete submissions, based on the Commissioner's parameters and criteria.

6*See* RM D&S *Canal Hazard Program* (FAC 01-12) for inspection processes for urban canals.
7The Review Team includes members from the Reclamation Law Administration Division (RLAD) ~~of Policy and Programs~~, the Asset Management Division (AMD) of Dam Safety and Infrastructure (DS&I), and Washington Office Program & Budget (P&B).



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~~(a)~~(c) The Review Team will prepare a draft for the ~~also provide the~~ Commissioner ~~a draft~~ of the report required under 43 U.S.C. § 510b(d)(5).~~perform the responsibilities outlined under Paragraph 5.F.;~~

(2) **Communication, Guidance, and Materials.** The Review Team is responsible for:

~~(2)~~(a) prepar~~inge~~ documents to initiate each~~the~~ application cycle ~~each year~~;

~~(3)~~(b) provid~~inge~~ internal guidance through the Aging Infrastructure Applications SharePoint Site (SharePoint Site) and otherwise as needed;

~~(4)~~(c) maintaining regular communication with designated regional representatives as scheduled or as needed throughout the process; and

~~(5)~~(d) coordinat~~inge~~ among regions, the Commissioner's Office, and, as necessary, the Department of the Interior's Office of the Solicitor.

**B. Regional Responsibilities.**

~~(6)~~ **Designation of Regional Representatives.** **Each Regional Director (RD) will designate a representative who is formally responsible for ~~coordinat~~coordinating regional activities related to the AIA application and funding process, ~~regional~~ communicating~~ons~~ with the Review Team, dissemin~~ating~~ation ~~of~~ information to the appropriate regional staff and officials, and ~~ssion of~~submitting materials from the region to the Review Team.**

~~(7)~~(1) ~~**Each Regional Director (RD) will designate a representative who is formally responsible for coordinating regional activities related to the AIA application and funding process, regional communications with the Review Team, dissemination of information to the appropriate regional staff and officials, and submission of materials from the region to the Review Team.**~~

~~(8)~~(2) ~~**Annual**~~ **Application Period Notice and Deadlines.**[8]
Regional office staff will notify eligible applicants of the application process no later than 2 weeks after the initiation of an~~the~~ application cycle ~~each year~~. The public notice process will include posting information on Reclamation websites and reasonable efforts to notify eligible applicants. The public notice will include the application deadline, the minimum required application

8RLAD and other appropriate offices will continually assess the application process timelines described in this D&S and make changes as needed.



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content described in Paragraph 5.D., and a main point of contact for interested applicants.

~~(9)~~(3) **Regional Office Application Reviews, Analysis, and SharePoint Site Submissions**[9]

(a) **Application Content.** Regional office staff will review received applications for the following required content: [10]

(i) a description of the work for which funds are requested;

(ii) the amount of funds requested;

(iii) the requested repayment period;

(iv) the financial justification for requesting an extended repayment period~~,~~;[11]

(v) alternative non-Federal funding options that the applicant has evaluated;

(vi) the financial records of the transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs sufficient to meet relevant financial analysis requirements ~~at least 1 year of the applicant's financial records~~;

(vii) any remaining environmental compliance that is required before the project commences and that is the applicant's responsibility; and

~~(b)~~(viii) the official level of cost estimate as defined in RM D&S, Cost Estimating (FAC 09-01), and provided as required by RM D&S, Representation and Referencing of Cost Estimates in Bureau of Reclamation Documents Used for Planning, Design and Construction (FAC 09-03).

(b) **Incomplete Applications.** If regional office staff determine that any applications are ineligible for funding or incomplete, they will make

9This subparagraph addresses requests for AIA funding from operating entities or project beneficiaries (each as defined under Paragraph 11) through the application process established for that purpose. Subparagraph 5.E. separately addresses AIA funding requests submitted by offices within Reclamation.

10Applications and repayment obligations involving multiple project beneficiaries will normally require the relevant information from each of them. Because the relationships among multiple applicants in one application and multiple repayment entities can vary from project to project, the approach may need to be determined on a case-by-case basis, to some extent.

~~11Paragraph 8.C.(1) may require additional financial information for contracting purposes.~~

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reasonable efforts to contact the applicant and allow them to supplement or amend their application before the application deadline.

(c) **Financial Analysis.** Area or regional office staff will conduct a financial analysis of the project and the applicant's repayment capability. The financial analysis must include a review of the contractor's financial records and reserve funds.

~~(c)~~(d) **SharePoint Site Submission**. No later than 6 weeks after the close of the application period, regional office staff, through the designated Regional Representative, will submit all applications and regional funding requests and an analysis of the reporting content required under 5.D.(1) – (4) to the Review Team through the SharePoint Site. Submissions will include the following:~~Before submitting applications to the Review Team, regional office staffs will add:~~

i. the associated Major Rehabilitation & Replacement categorization ratings (e.g., A, B, C, D or E);

ii. information sufficient for Reclamation to meet its review and reporting requirements under 43 U.S.C. 510b(d)(4) and (5);

iii. any remaining environmental compliance that is required before the project commences and that is Reclamation's responsibility;

iv. a justification for the omission of any of the material required under the prior subparagraph;

v. documentation used to fulfill applicable requirements of RM D&S, Reclamation Value Program (CMP 06-01), and RM D&S, Planning for Major Rehabilitation and Replacement of Existing Assets (CMP 09-04), to each application; and

vi. any other information the region deems necessary to the Review Team's assessment of the application.

~~Area or regional office staff will conduct a financial analysis of the project and the applicant's repayment capability. The financial analysis must include a review of the contractor's financial records and reserve funds. See Paragraph 7.A. concerning contractually required reserve funds and see Paragraph 8.C.(1)(a) for ability-to-pay study requirements.~~

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~~Area or regional office staff will add documentation used to fulfill applicable requirements of RM D&S, Reclamation Value Program (CMP 06-01), and RM D&S, Planning for Major Rehabilitation and Replacement of Existing Assets (CMP 09-04), to each application.~~

~~If regional office staff determine that any applications are ineligible for funding or incomplete, they will make reasonable efforts to contact the applicant and allow them to supplement or amend their application before the application deadline.~~

(4) **Regional Funding Requests.**

Regional offices may also request funding from the AIA for reserved works XM or XM costs that Reclamation is otherwise required to pay.[12] Regional funding requests must be uploaded to the AIA SharePoint Site by the deadline for uploading applications established for the year. Requests must include the information listed in Paragraph 5.D. that is relevant, including financial and repayment information if there are reimbursable costs and a request for extended repayment. Indications in the submitted materials of the level of support from the project beneficiaries responsible for repayment of any reimbursable costs may be a factor in prioritizing regional funding requests.

~~No later than 6 weeks after the close of the application period, regional office staff, through the designated Regional Representative, will submit all applications and an analysis of the reporting content required under 5.D.(1) – (4) to the Review Team through the SharePoint Site.~~

~~(10)(1)**Regional Funding Requests.**~~
~~Regional offices may also request funding from the AIA for reserved works XM or XM costs that Reclamation is otherwise required to pay.[13] Regional funding requests must be uploaded to the AIA SharePoint Site by the deadline for uploading applications established for the year. Requests must include the information listed in Paragraph 5.D. that is relevant, including financial and repayment information if there are reimbursable costs and a request for extended repayment. Indications in the submitted materials of the level of support from the project beneficiaries responsible for repayment of any reimbursable costs may be a factor in prioritizing regional funding requests.~~

~~**Review and Report.**~~
~~The Review Team will review submitted applications and regional funding requests to determine whether they meet all eligibility criteria, content requirements, and deadlines. No later than 3 weeks after the deadline for uploading materials to the SharePoint Site, the Review Team will provide the Commissioner with the year's~~

12For example, where law or contract requires Reclamation to pay an established share of OM&R costs for transferred works.
~~13For example, where law or contract requires Reclamation to pay an established share of OM&R costs for transferred works.~~

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~~submissions and recommend a prioritization among the eligible, timely, and complete submissions, based on the Commissioner's parameters and criteria. The Review Team will also provide the Commissioner a draft of the report required under 43 U.S.C. § 510b(d)(5).~~

~~**Change Management.**~~

C. If a change in the scope, schedule, or budget of AIA-funded XM occurs, the established R~~r~~egional R~~r~~epresentative will submit a change management request to the SharePoint Site. The Review Team will review the submitted change management requests and provide recommendations to Reclamation leadership.

**D. Report to Congress.**

~~(11)~~(1)**Funding Determinations.** Reclamation will report the Commissioner's final determinations to Congress, as required by 43 U.S.C. § 510b(d)(5).~~**Reclamation will report the Commissioner's final determinations to Congress, as required by 43 U.S.C. § 510b(d)(5).**~~

~~(12)~~(2)**Congressional Alternative Allocation.** In accordance with 43 U.S.C. 510b(d)(6), Reclamation will not expend or award AIA funds generated from XM repayment until Congress has had the opportunity to make an alternative allocation of the funds in its annual appropriations bill. This requirement applies only to funds returned to the AIA through repayment of reimbursable XM costs; it does not apply to funds Congress appropriates into the AIA. The Review Team will notify RDs and their designated representatives of the final allocation of these funds once they can be made available, and regional staff will notify successful applicants.~~**In accordance with 43 U.S.C. 510b(d)(6), Reclamation will not expend or award AIA funds generated from XM repayment until Congress has had the opportunity to make an alternative allocation of the funds in its annual appropriations bill. This requirement applies only to funds returned to the AIA through repayment of reimbursable XM costs; it does not apply to funds Congress appropriates into the AIA. The Review Team will notify RDs and their designated representatives of the final allocation of these funds once they can be made available, and regional staff will notify successful applicants.**~~

~~B.~~E. **Fund Administration and Oversight.**
The Director, Program and Budget, maintains administration and oversight of all funds in the AIA. In addition to the standard validation and verification provided by~~that~~ Program and Budget ~~provides~~, RLAD and AMD will ensure appropriate oversight of the funded XM projects.

~~**Change Management.**~~

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~~If a change in the scope, schedule, or budget of AIA-funded XM occurs, the established regional representative will submit a change management request to the SharePoint Site. The Review Team will review submitted change management requests and provide recommendations to Reclamation leadership.~~

**6. Requirement of a Contract.**

**A. Transferred Works.**
XM repayment contracts are required where funds are advanced to operating entities or project beneficiaries, pursuant to 43 U.S.C. 510b(b)(2).

(1) **XM.**
Except for EXM, Reclamation will not advance funds for XM work before execution of a repayment contract.

(2) **EXM.**
Reclamation will only advance funds for EXM work without first executing a repayment contract if:

(a) Reclamation has received written assurance from the operating entity or other repayment entity that it will enter good faith negotiations toward execution of a repayment contract, and

(b) the Commissioner has made an initial written determination that the intended work meets the EXM criteria under Paragraph 4.B. and has authorized the advancement of funds prior to execution of a contract.

(3) **Funding Advanced to Project Beneficiaries for Transferred Works XM.**
For transferred works, a project beneficiary (rather than the operating entity) may request and receive funding for its costs associated with XM work. Reclamation must enter a repayment contract with the entity receiving funding in these cases. Whether a contract with the operating entity covering allowable uses of the funding and associated reporting requirements is also necessary will be determined case by case and will depend on the degree to which the operating entity is contractually or otherwise legally accountable to the project beneficiary receiving funding from Reclamation. The Basis of Negotiation (BON) (see Paragraph 9) will state and explain the Region's intended approach.

**B. Reserved Works.**
Reimbursable reserved works XM costs can be recovered through a new repayment contract or an existing contract requiring the contractor to pay OM&R costs.14

14 Reclamation has authority to extend XM repayment under an existing contract under 43 U.S.C. § 510b(b)(1).

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Extended repayment of XM costs under an existing contract cannot exceed that contract's term and requires the Commissioner's written authorization.

**7. Conditions and Limitations on Funds Advanced for Transferred Works XM.** The Region will obtain the information necessary to ensure compliance with this Paragraph from the operating entity.

**A. Operating Entity's Funding Requirements.**

(1) **XM Funded from the AIA.**
The requirements below for expenditures of the contractor's reserve funds and assessment of alternative funding sources do not apply to AIA-funded XM.

(2) **XM Funded from General Appropriations.**
Subject to the Regional Director's determination that a smaller expenditure from reserves or exemption from this requirement is necessary to avoid undue burden on the contractor, advancement of XM funding from general appropriations is subject to the following conditions:

(a) Where a prior contract with Reclamation requires the operating entity to maintain a reserve fund for maintenance costs (separate from an emergency reserve fund), Reclamation will not advance funding from regular appropriations for XM until the operating entity has expended or contractually agreed to expend at least 50 percent of the reserve fund.

(i) When an operating entity has expended reserve funds and is current in re-accumulating the funds expended according to contractual requirements, the 50 percent will be based on the accumulated amount.

(ii) If the operating entity has not maintained the reserve fund in accordance with the contract, Reclamation will require it to expend an amount equal to 50 percent of the contractually required reserve fund.

(b) If an existing contract between the operating entity and Reclamation does not require explicitly designated maintenance reserve funds, the RD will determine an appropriate amount the operating entity must expend before Reclamation will advance funds. The BON will include this determination.

(3) **EXM Advance Funding.**
Where a prior contract with Reclamation requires the operating entity to maintain a reserve fund for emergency costs, the requirements under Paragraph 7.A.(1)(a) apply to that reserve fund.

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(4) **Non-Federal Funding Options.**
Reclamation will not advance funds to the operating entity for XM work before the RD has determined that the operating entity has assessed reasonably available non-Federal funding options. The BON will acknowledge this requirement.

**B. Limits on Use of Advanced Funds.**
Regions are responsible for ensuring that operating entities use Federal funds solely for the purposes for which advanced.

**8. Contracting and Contract Requirements.**

**A. Allocation of Costs.**
Reclamation will allocate costs for XM and EXM work in accordance with the allocation of OM&R costs for the project or facility that is in effect when it incurs costs or advances funds for XM work, subject to any modified cost allocation formally identified in an XM Justification Report prepared for support of the work, in accordance with CMP 09-04, provided the modified cost allocation and initiation of changes to the cost allocation are compliant with the Paragraph 8 of RM Policy, Allocation of Operation and Maintenance Costs (PEC P07). For EXM granted reduced repayment, 35 percent of the funds advanced and allocable to the operating entity is non-reimbursable.

**B. Statutory Credits.**
Available statutory credits will be credited against repayment obligations only after Reclamation has authorized the work and appropriated the funds. Statutory credits cannot normally be applied against annual OM&R costs.[15]

**C. Repayment Terms.**

(1) **Repayment Period.**

(a) Maximum Term.
The repayment period will not exceed the shorter of the service life of the repair or 50 years from the date on which the RD declares the work is substantially complete. ~~Additionally, if the BON proposes any repayment period longer than 30 years, an ability-to-pay study compliant with RM D&S, Irrigation Ability-to-Pay Analyses (PEC 11-01) must justify the proposed repayment period. If no ability-to-pay study has been completed within the last 5 years, a new study is required. The ability-to-pay study costs are reimbursable.~~

15For additional information on the application of statutory credits toward an XM cost obligation see Paragraph 4.A. of RM D&S, *Crediting Requirements for Incidental Revenues* (PEC 03-01).

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(b) Water Service Contractors.
If the repayment entity's primary water-related contract with Reclamation is a water service contract,[16] the period for repaying XM costs will not exceed the remaining term of the contract without the Commissioner's approval.

(2) **Interest.**
Reclamation will assess interest on all reimbursable XM costs regardless of the project purpose to which the costs are allocated.

**(a) Source of the Rate.**
The interest rate for reimbursable XM costs is the rate determined by the Secretary of the Treasury for the fiscal year in which the XM commences[17] and corresponding to the applicable reimbursement period. The rates can be found in the Range of Maturities (Table 1) at Annual Interest Rate Certification | U.S. Treasury Fiscal Data~~https://www.treasurydirect.gov/government/interest-rates-and-prices/certified-interest-rates/annual/~~. The published rate for 30 years will generally be applied to repayment terms of more than 30 years.

~~**Interest Rate for Repayment Period Greater than 30 Years.**~~
~~If a new ability-to-pay (ATP) study compliant with RM D&S, *Irrigation Ability-to-Pay Analyses* (PEC 11-01), or one that has been completed within the last five years, demonstrates a lack of ability to pay, tgenerally. If the requested minimum necessary repayment period is greater than the calculated minimum necessary repayment period by Reclamation, Regional Directors shall negotiate an appropriate interest rate not to exceed twenty basis points from the published rate for 30 years.~~[18] ~~Otherwise, one basis point will be added to the interest rate established under subparagraph 8.C.(2)(a) above for each year of repayment beyond the 30th year.~~

**(b) When Interest is Assessed.**
Reclamation will assess interest through completion of repayment, beginning on the date it advances funds for transferred works XM and on the date it expends funds for reserved works XM.

**(c) When the Interest Rate is Set.**
The applicable Treasury rate is the rate effective as of the beginning of the fiscal year in which the funded work is commenced. For purposes of

16As defined in Paragraph 4.S. of RM Policy PEC P05.
17See 43 USC 510b(b)(3).
~~[18] New ATP studies conducted under this paragraph are done at the request and for the benefit of the contractor and the associated costs are reimbursable.~~

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establishing the interest rate for reimbursable AIA funding, the work commences when expenditures have been made on work for which the AIA funding has been awarded,[19] including at least one of the following:

(i) planning

(ii) design

(iii) environmental compliance

(iv) permitting

(v) actual construction.

(3) **Administrative Costs.**
The RD will require the contractor to provide advance payment sufficient to cover an appropriate share of administrative costs assigned to the contractor for environmental compliance, BON development, and contract development and negotiation, unless the parties agree that Reclamation will initially fund these costs from the funding made available for the XM work and roll them into the interest-bearing repayment obligation.

(4) **Aid to Irrigation.**
Aid to irrigation is not available for repayment of XM costs.[20]

(5) **Deferrals.**
Deferrals pursuant to 43 U.S.C. § 485b-1 are not authorized for XM costs.

**D. Standard Articles.**
Paragraph 5 of RM Policy, Reclamation Standard Water-Related Contract Articles (PEC P10) identifies the standard articles required for XM contracts.

**E. Acreage Limitation.**
Reclamation law acreage limitation provisions do not apply to XM repayment contracts. Specifically, contracts for repayment of the costs of XM will not:

(1) be considered in determining whether a district, as defined in Section 202(2) of the Reclamation Reform Act of October 12, 1982 (43 U.S.C. § 390bb), has

19Note that this allows expenditures by an operating entity of its own funds to set the interest rate if the expenditures are for work for which the Commissioner has awarded AIA funding. This may be important where funding is awarded in one fiscal year but not advanced until the following fiscal year.

20 This is because XM work is a subcategory of OM&R and ability-to-pay relief and aid to irrigation are available only for costs of work that qualifies as construction under Reclamation law. (For more information about ability-to-pay relief and aid to irrigation, see RM D&S PEC 11-01.) XM work may meet the capitalization criteria for assets under construction for financial reporting. Contact the regional finance office for assistance.

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discharged its obligation to repay the construction costs of the project facilities used to make irrigation water available for delivery to land in the district,

(2) serve as the basis for reinstating acreage limitation provisions in a district that has completed payment of its construction obligation, or

(3) serve as the basis for increasing the construction repayment obligation of the district and thereby extending the period during which the acreage limitation provisions will apply.

**F. Public Participation.**
Public participation is required for all XM repayment contracts. For public participation requirements for water-related contracts, see RM Policy, Water-Related Contracts–General Principles and Requirements (PEC P05).

**G. No External Discussion of Pre-Decisional Positions.**
Reclamation managers and employees will not make commitments to an operating entity or project beneficiary concerning the eligibility of proposed XM work for emergency status or reduced repayment until the Commissioner has made the associated determinations in writing.

**H. Wage Rate Requirements.**
The relevant provisions of the Davis-Bacon and Related Acts (40 U.S.C. § 3141, 29 U.S.C. § 201, 41 U.S.C. § 351, 40 U.S.C. § 3701, 41 U.S.C. § 35, 40 U.S.C § 3145) apply to XM contracts for more than $2,000 that involve the employment of mechanics and laborers, unless the contractor is a Federal, State or local government entity and the work is performed by its own employees.[21] Contracts executed under the XM authority will include a provision describing the application of the Davis-Bacon and Related Acts requirements, whether to their own employees or to any contractors.

**I. Required Reporting.**
Contracts for repayment of transferred works XM costs must require the contractor to submit annual progress reports and quarterly Standard Form SF-425, Federal Financial Report, until the RD declares the XM work substantially complete.

**J. National Environmental Policy Act (NEPA).**
Reclamation's categorical exclusion (CE) under 516 Department Manual 14.5D(1)[22] is appropriate to use for XM projects if the scope of the project is consistent with the

21See 29 CFR 5.1 and 29 CFR 3.2(h). Note that 29 CFR 5.1(a) subjects state and local government to the Davis-Bacon and Related Acts requirements through contracts executed under laws listed there. If that list is expanded to include the XM authority under 43 U.S.C. 510, *et seq.*, then the Davis-Bacon and Related Acts requirements will apply to state or local government employees performing work funded under XM contracts.
22Covering maintenance, rehabilitation, and replacement of existing facilities which may involve a minor change in size, location, and/or operation.



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terms of the CE and there are no extraordinary circumstances. Reclamation will make the determination on the level of NEPA review and documentation, including whether an XM proposal satisfies the CE language or would trigger any of the extraordinary circumstances as described in 43 CFR 46.215. In cases where the project does not meet the above criteria or where any extraordinary circumstances exist, a higher level of NEPA evaluation will be required.

**9. BON Requirements.**
BONs and approval memoranda are required for all XM repayment contracts, and for all XM funding advances except advances for EXM meeting the requirements of Paragraph 6.A.(2). For the general BON process requirements, see RM D&S, Preparing Bases of Negotiation for New, and Amendatory Water Service, Repayment, and Related Contracts (PEC 06-01).

**A. XM BONs Generally.**
A BON for an XM contract will include:

(1) a determination of eligibility under Paragraph 4.A. with supporting evidence,

(2) an estimate of costs allocable to the project beneficiaries, as described in Paragraph 8.A.,

(3) a proposed repayment term ~~and any justification or additional information required under Paragraph 8~~,

(4) for transferred works, an explanation of how the contract will meet the requirements of Paragraph 7; and

(5) a statement that the contract will meet all applicable requirements of the XM authority and of this D&S.

**B. AIA Funded XM.**
RLAD will treat a region's submission of applications under Paragraph 5.D.(6) as a blanket BON requesting authority to execute the associated repayment contracts, or to extend repayment of reserved works XM costs under existing contracts, as long as the submitted material includes the information required under this Paragraph 9 and PEC 06-01. The Commissioner's formal award of AIA funding will constitute the BON approval delegating authority to enter repayment contracts and to otherwise extend repayment, as applicable, for the funded submissions that include the required information.

**C. EXM BONs.**
In addition to the requirements in Paragraph 9.A., EXM BONs will include:

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(1) a copy of the written assurance required under Paragraph 6.A.(2)(a) if funds have been or will be advanced before execution of a contract, and

(2) a request and justification for reduced repayment under Paragraph 4.B.(3), if applicable.

**10. Substantial Completion.**
RDs are responsible for making the determination that XM work is substantially complete[23] and for preparing and transmitting written notice to the contractors of substantial completion and the initiation of repayment.[24]

**11. Definitions.**

**A. Application.**
An eligible applicant's request for an advancement of funding from the AIA for transferred works XM or for Reclamation's expenditure of funding from the AIA for reserved works XM.

**B. Eligible Applicant.**
An operating entity or project beneficiary, as defined herein.

**C. Mission Critical Asset.**
A project facility or feature that sustains essential functions of a Reclamation project and for which an alternative facility or structure capable of continuously sustaining those functions is unavailable.[25]

**D. Operating Entity.**
An organization that is contractually responsible for OM&R of transferred works.

**E. Project Beneficiary.**
An entity that receives benefits from a Reclamation project and is responsible for repayment of reimbursable costs on reserved or transferred works.

**F. Regional Funding Request.**
A regional office's request for funding from the AIA for reserved works XM or for transferred works XM costs that Reclamation is required to pay.[26]

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23For associated requirements, see RM D&S, Project Management (CMP 07-01) and Completion of a Construction Activity: Transferring Reclamation Capital Assets Under Construction (AUC) to Operation and Maintenance (O&M) Status (FAC 01-05).
24When XM work is performed by an operating entity, coordination with that entity will be necessary; however, the RD must still make a determination and provide the operating entity with a written notice of substantial completion. Reclamation's written declaration of substantial completion to the operating entity initiates the repayment period.
25This definition encompasses major asset classes such as dams, power plants, canals, siphons, pipelines, distribution systems, recreation facilities, fish and wildlife facilities, and associated structural, mechanical, and electrical systems and subcomponents.
26A separate regional funding request is not required if the operating entity's application for XM funding includes amounts Reclamation is required to pay.

**G. Reserved Works.**
Project facilities or features for which Reclamation carries out the OM&R.

**H. Risk of Imminent Harm.**
Immediate danger or threat of injury to persons or of major damage to or loss of tangible property.

**I. Transferred Works.**
Project facilities or features for which the OM&R is carried out by an operating entity under the provisions of a contract.

**12. Review Period.**
The originating office will review this release every 2 years.

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