

Reclamation Manual

Directives and Standards

Subject:	Safety of Dams Modification Reports for Submission to the Congress
Purpose:	To establish requirements for submitting Safety of Dams (SOD) modification reports to the Congress. The benefit of this Directive and Standard (D&S) is improved coordination of the Bureau of Reclamation's dam safety modifications throughout Reclamation, with its beneficiaries, and with the Congress.
Authority:	Reclamation Safety of Dams Act of 1978 (Pub. L. 95-578; 92 Stat. 2471; 43 USC 506, et seq.), as amended (SOD Act)
Approving Official:	Director, Dam Safety and Infrastructure
Contacts:	Dam Safety Office (86-67100); Reclamation Law Administration Division (84-55000)

1. **Introduction.** The modification report consists of a finding by the Secretary of the Department of the Interior that modifications are required to ensure the safety of an existing dam. Procedures for identifying, communicating, and documenting decisions are described in Reclamation Manual Policy, *Decisions Related to Dam Safety Issues* (FAC P02). Section 5 of the SOD Act prohibits the Secretary from obligating funds more than \$20,000,000¹ (October 1, 2015, price levels) for actual construction until at least 30 days after the report has been transmitted to the Congress. The \$20,000,000 threshold is adjusted annually to reflect any ordinary fluctuations in field costs indicated by applicable engineering cost indexes.
2. **Applicability.**
 - A. This D&S applies to all Reclamation personnel and offices having jurisdiction and oversight responsibility for SOD work associated with high- and significant-hazard potential dams that are either owned by Reclamation or included as part of an authorized Reclamation project.
 - B. This D&S establishes the requirements for submitting SOD modification reports for projects with field costs greater than \$20,000,000 to the Congress. Specific direction is provided on the \$20,000,000 obligation limit, indexed annually, for carrying out actual construction and what costs are considered to be actual construction. In addition, this D&S clarifies that repayment is based on total costs less the cost associated with historic preservation compliance activities.

¹Public Law 114-113 (Division D, Title II, Section 203) amended Section 5 of the SOD Act (December 18, 2015) to change the threshold requirement for transmitting a modification report to the Congress from \$1,250,000 to \$20,000,000 (October 1, 2015, price levels).

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3. Requirements and Responsibilities.

A. **Overview.** Reclamation may obligate up to \$20,000,000, indexed annually, for construction on SOD work without providing a modification report to the Congress. The \$20,000,000 limitation applies only to funds expended for field costs (as defined in Paragraph 4.A). Reclamation must prepare a high, best, and low estimate for field costs. The most appropriate field costs estimate must be used as the basis for determining if a modification report is required. The Chief, Dam Safety Office, the regional director, and the area manager are responsible for ensuring modification reports are prepared for qualifying SOD modifications under their respective jurisdictions.

B. Modification Report Content.

(1) The modification report will include information on

- (a) project background;
- (b) SOD investigations;
- (c) consequences of failure;
- (d) need for corrective action;
- (e) structural and nonstructural alternatives;
- (f) economic comparison of alternatives;
- (g) repayment consideration;
- (h) environmental impacts;
- (i) public involvement;
- (j) participation by project beneficiaries; and
- (k) recommendations.

(2) The regional director and area manager must coordinate with project beneficiaries on corrective action alternatives and collaborate with the Chief, Dam Safety Office, on relevant content in the modification report.

C. **Modification Report Certification Review.** A certification review team shall be established to provide internal independent oversight for the modification reports for

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SOD projects. Modification reports are to be reviewed by the project management team, the certification team, and decision makers before they are submitted to the Commissioner.

- D. **Congressional Submittal and Review.** The modification report is submitted by the Commissioner to the Congress and must remain with the Congress for 30 calendar days. Reclamation is prohibited by the SOD Act from obligating construction funds before this 30–calendar day period has ended.
 - E. **National Historic Preservation Act (NHPA) Compliance—Cost Allocation and Reimbursement.** All costs associated with compliance with the NHPA, including survey and other investigations, data recovery, analysis, reporting, and preservation of sites, data, or collections associated with a SOD modification shall be included in the non-contract costs. In addition, all such costs shall be considered non-reimbursable pursuant to Title 54 USC 312501–312508 (formerly known as the Archaeological and Historic Preservation Act) and Reclamation Manual D&S, *Cultural Resources Management* (LND 02-01). The repayment obligation is the total cost less costs to comply with NHPA.
 - F. **Repayment.** Repayment of the costs incurred in the modification of a structure will be performed in accordance with the requirements of Reclamation Manual D&S, *Safety of Dams Repayment* (PEC 05-05). The approval memorandum for the SOD repayment contract is developed by the Reclamation Law Administration Division, 84-55000. The approval memorandum notes the status of the modification report; however, it does not serve as the Commissioner’s approval of the modification report.
4. **Definitions.**
- A. **Field Costs.** The “actual construction” cost referred to in Section 5 of the SOD Act. Field costs are an estimate of the capital costs of a feature or project from award to construction closeout. The field costs equal the contract costs plus construction contingencies. Construction contingencies are intended to account for costs resulting from changes in designs and/or differing site conditions encountered during construction. Non-contract costs are not included in this value. (See Reclamation Manual D&S, *Cost Estimating* (FAC 09-01).
 - B. **Non-contract Costs.** Costs of work or services provided in support of the project, as defined by FAC 09-01. Examples of non-contract costs are project management; corrective action alternatives development; modification report; design; design data collection; external review; specification preparation; contract procurement support; environmental evaluations and mitigations; historic properties (cultural resources) investigations and actions to comply with Title 54 USC 300101, et seq. (formerly known as the NHPA); utility and support infrastructure relocation, repair, or improvement; land acquisitions; repayment activities; construction monitoring and management; final mitigations, restoration, and return to full operational status; and

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documentation. Note that some non-contract activities may be accomplished using consultant services or contracts not associated with the major construction contract.

- C. **Total Cost.** Field costs plus non-contract costs.
5. **Review Period.** The originating office will review this release every 4 years.

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

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

Filed by: _____

Date: _____