

# Reclamation Manual

## Policy

<b>Subject:</b>	Incidental Revenues
<b>Purpose:</b>	This Policy sets forth the Bureau of Reclamation's requirements and parameters for the management of incidental revenues. The benefits of this Policy are ensuring such revenues are managed effectively and in accordance with applicable authorities.
<b>Authority:</b>	Authorities are listed alphabetically at Paragraph 9 in Reclamation Manual (RM) Directive and Standard (D&S), <i>Crediting Requirements for Incidental Revenues</i> (PEC 03-01).
<b>Approving Official:</b>	Commissioner
<b>Contact:</b>	Mission Assurance and Protection Organization, Reclamation Law Administration Division (84-55000)

1. **Introduction.** This Policy sets forth requirements and parameters for implementing Reclamation's management of incidental revenues in accordance with applicable authorities and in a consistent and systematic manner. Related requirements are outlined in PEC 03-01 and *Use of the Collection Information Form for Incidental Revenues* (PEC 03-02).<sup>1</sup>
2. **Applicability.**
  - A. **Personnel.** This Policy applies to Reclamation employees involved in the management of incidental revenues (as defined below at Paragraph 5.G.), particularly those in the functional areas of water contracting and repayment, finance and accounting, lands, recreation, and concessions management.
  - B. **Revenues.** This Policy applies to revenues that are subject to general crediting requirements, as defined at Paragraph 5.H.(3) below. It does not apply to revenues that are subject to project- or contract-specific crediting requirements, as those terms are defined at Paragraphs 5.H.(1) and (2) below.
3. **Policy.**
  - A. **Incidental Revenues Must be Deposited in the Treasury.** Incidental revenues are Federal moneys and must be deposited in the Treasury. All incidental revenues collected on Reclamation's behalf by a non-Federal entity must be remitted to Reclamation for disposition. Contractors cannot apply the revenues directly against their annual repayment obligations or operation and maintenance expenses even if authorized to receive front-end credits. Unless specifically authorized by statute or

<sup>1</sup>See the *Incidental Revenues Management Reference Manual* on Reclamation's Intranet site for additional information and guidance.

# Reclamation Manual

## Policy

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congressionally approved contract, under no circumstances are contractors to receive front-end credits in the form of cash payments (see Paragraph 4.B. of PEC 03-01 for additional requirements associated with front-end crediting).

**B. Crediting Requirements are Compulsory.** The revenue crediting requirements set forth in this Policy and in the associated D&S cited in Paragraph 1 above are non-discretionary and non-negotiable.

(1) **Statutory Requirements.** Congress has established statutory requirements for the disposition of incidental revenues (see Paragraph 7 of PEC 03-01).

Reclamation does not have authority to change these revenue distribution requirements in dealings with specific contractors.

(2) **Corresponding Policy.** To the extent that Federal statutes do not specifically address the disposition of incidental revenues, Reclamation's Policy is to credit them in a manner consistent with the most closely related statutory requirements or legal opinion.

#### 4. Program Management.

A. The Commissioner will establish and amend, as appropriate, policy concerning incidental revenues, and ensure the requirements of this Policy are met.

B. The Director, Mission Support Organization (MSO) will assess, document, and report on the internal controls over financial reporting in accordance with Office of Management and Budget (OMB) Circular A-123 *Management's Responsibility for Internal Control*, Appendix A: *Internal Control over Financial Reporting*. During this assessment, internal controls over transactions affecting material financial statement line items or material components of material financial statement line items are tested. MSO will conduct testing controls over incidental revenues on at least a 3-year rotational basis pursuant to OMB Circular A-123. The results of the assessment of internal control over financial reporting are documented and reported as required by OMB Circular A-123, Appendix A. In addition, MSO is responsible for establishing new Commitment Items as directed by the Mission Assurance and Protection Organization incidental revenues staff, as discussed in PEC 03-02.

C. The Director, Mission Assurance and Protection Organization will conduct Reclamation-wide oversight, administration, and management of incidental revenues, including developing policy and directives and standards, providing Reclamation-wide training, and developing and distributing monthly and quarterly incidental revenues reports. As part of this oversight, a monthly internal control review will be conducted to verify revenues are being properly coded based on the source of the revenue and required authorities (see RM D&S, *Programmatic Internal Control Program Management* (ADM 07-01)). The review includes analyzing the incidental revenues

# Reclamation Manual

## Policy

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and revenue reports to identify instances of improper coding or missing revenue. Questions arising from this analysis are documented in the monthly reports sent to the regional offices each month. The regions affirm the current coding or make corrections as needed. This office serves as the point of contact for all incidental revenues-related issues.

- D. Regional directors will ensure regional, area, and field office staff comply with the requirements of this Policy, PEC 03-01, and PEC 03-02.
5. **Definitions.** Most terms defined below do not otherwise appear in other Policy. They are defined here because they apply to the associated D&S cited above in Paragraph 1 and to incidental revenues management in general.
- A. **Contractor.** An entity that is contractually entitled to benefits from a project, including, but not limited to water districts, power entities, municipalities, recreation entities, fish and wildlife entities, or individuals.
- B. **Credits to the Project or “Tail-end Credits.”**<sup>2</sup> Credits against total outstanding reimbursable repayment obligations for all reimbursable project construction costs that are credited toward project repayment without reducing payment of the current year annual obligation of project contracts.
- C. **Front-end Credits.** The net profits<sup>3</sup> from certain revenues that can be applied against a contractor’s current-year annual obligations pursuant to section 4, subsection I, of the Fact Finders' Act of 1924 (43 U.S.C. § 501). Eligibility requirements for front-end credits are stated at Paragraph 4.B.(2) in PEC 03-01.
- D. **General Credits to the Reclamation Fund.** Credits to the Reclamation fund, within the U.S. Treasury (Treasury), that do not apply toward contractors’ obligations. Revenues generated from lands that were not charged to the reimbursable costs of the project are normally general credits to the Reclamation fund.
- E. **General Credits to the Treasury.** Credits to the Treasury, but not specifically to the Reclamation fund, that do not apply toward contractors’ obligations. See Paragraphs 3.E.(2)(d) and 3.H. of PEC 03-01.
- F. **Incidental Purpose.** A use of Reclamation project lands, facilities, or water bodies authorized by law that is supplementary to the primary project purposes for which Congress authorized the relevant project to be built, such as grazing, rights-of-way, and easements for various purposes.

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<sup>2</sup>The terms “credit to the project” and “tail-end credit” are synonymous and frequently used interchangeably.

<sup>3</sup>Net profits are the remainder of gross revenues after subtracting the Federal government’s costs of operating, maintaining, or managing the property or facility generating the revenues.

# Reclamation Manual

## Policy

- G. **Incidental Revenues.**<sup>4</sup> Revenues generated from the use of Reclamation lands, facilities, or waterbodies for incidental purposes. The term does not include revenues from:
- (1) periodic construction payments under repayment and water service contracts;
  - (2) contractors' payments for operation, maintenance, and replacement costs;
  - (3) scrap metal salvage; including but not limited to; copper, steel, aluminum, brass, etc.;
  - (4) contracts with non-Federal public entities made pursuant to the Federal Water Project Recreation Act (Pub. L. 89-72) (16 U.S.C. § 460l-17(g)); and the Federal Lands Recreation and Enhancement Act (REA) (16 U.S.C. § 6806);
  - (5) power marketing by the Western Area or Bonneville Power Administrations, except as provided at Paragraph 4.B.(1)(c) of PEC 03-01;
  - (6) leases of power privilege; or
  - (7) payments for the reimbursable costs of goods or services provided by Reclamation, such as:
    - (a) reimbursable costs of services provided to other Federal agencies authorized under the Economy Act (31 U.S.C. § 1535; and
    - (b) administrative costs, as defined in RM D&S, *Land Use Authorizations* (LND 08-01). This exclusion does not apply to use fees as defined in LND 08-01 or revenues otherwise generated from the activities associated with use authorizations, as defined in 43 CFR § 429.2. Such fees and revenues are subject to this Policy.
- H. **Incidental Revenues Crediting Provisions (Crediting Provisions).** Implementing provisions of law and policy that establish the requirements for the disposition of incidental revenues. These requirements fall into the three categories defined below. See Paragraph 3 of PEC 03-01 for the application of these categories in the process of determining appropriate revenue dispositions.
- (1) **Contract-Specific Crediting Requirements.** Requirements for crediting revenues set forth in contracts that Congress has specifically approved. Applicable contract-specific crediting requirements direct the disposition of

<sup>4</sup>The terms "incidental revenues" and "miscellaneous revenues" have been used synonymously by Reclamation in the past; however, "incidental revenues" is the preferred term.

# Reclamation Manual

## Policy

revenues instead of any project-specific or general crediting requirements that would otherwise apply. This is true only of crediting requirements in contracts specifically approved by Congress.

- (2) **Project-Specific Crediting Requirements.** Requirements for the crediting of revenues outlined in project-specific legislation. Applicable project-specific crediting requirements control the disposition of revenues over any general crediting requirements that would otherwise apply, but not over any applicable contract-specific requirements appearing in contracts with specific congressional approval.
- (3) **General Crediting Requirements.** Requirements set forth in statutes and implementing policies that apply generally to the crediting of incidental revenues. General crediting requirements apply to revenues crediting when, or to the extent that, neither contract- nor project-specific requirements apply. General crediting requirements are addressed in Paragraph 3 of PEC 03-01.

I. **Land Status.** For purposes of this Policy “land status” refers to any of the following seven designations. It is normally necessary to know the status of the relevant land to determine the appropriate disposition of revenues.<sup>5</sup> See RM D&S, *Land Acquisition* (LND 06-01), and *Land Disposal* (LND 08-02), for further information.

- (1) **Acquired Lands.** Lands obtained from non-Federal sources or other Federal agencies by purchase, exchange, jurisdictional transfer, or condemnation, where the costs of the lands are reimbursable project costs.<sup>6</sup>
- (2) **Donated Acquired Lands.** Land acquired through donation at no expense to the Federal Government.<sup>7</sup>
- (3) **Withdrawn Lands.** Withholding an area of Federal land from settlement, sale, location, or from entry, under some or all of the general land laws. See RM D&S, *Land Withdrawals, Withdrawal Reviews, and Withdrawal Revocations* (LND 03-01).

<sup>5</sup>In the case of the incidental use of Reclamation facilities, whether the cost of the Reclamation lands on which Reclamation facilities are located is reimbursable is not a determining factor in how revenues from those facilities are credited. The statutes listed in this Policy authorizing the use of facilities for specific incidental purposes provide for the crediting of those revenues.

<sup>6</sup>While LND 06-01 refers to lands of the various statuses as “acquired,” this Policy uses the word “acquired” to refer only to lands with the status of “acquired lands,” as defined herein.

<sup>7</sup>Donated acquired lands are a subset of acquired lands but are treated as a separate category herein because of the effect the lands’ status as donated has on the crediting of revenues generated on them.

# Reclamation Manual

## Policy

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- (4) **Improved Withdrawn Lands.** Withdrawn Reclamation lands that have been improved through the addition of structures (e.g., fencing for grazing)<sup>8</sup> where such improvements are a benefit to the activity generating the revenues.
  - (5) **Public Lands.** This Policy uses the term “public lands” as it is defined in LND 08-02 as follows: As defined in the Federal Land Policy Management Act of 1976, public lands include only those Federal lands administered by the Bureau of Land Management (BLM) (with the exception of lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts, and Eskimos). Once public lands are withdrawn from BLM by Reclamation, those lands should then be referred to as Reclamation withdrawn project lands. (See LND 03-01 and the Bureau of Reclamation Land Withdrawal Handbook.)
  - (6) **Public Domain Lands.** Lands that have always been federally owned.
  - (7) **Reclamation Project Lands.** This Policy uses the term “Reclamation project lands” (shortened to “Reclamation lands,” as context allows) as defined in LND 08-02 as follows: Land or interests in land owned by the United States and under the jurisdiction of Reclamation which have been withdrawn from public lands, acquired, or donated to Reclamation for project purposes.
- J. **Special Accounts and Revolving Funds.** Accounts or funds Congress creates to support certain projects or specified activities. These accounts are maintained separately from the Reclamation Fund and are managed and used in accordance with the authorizing legislation. The authorizing legislation determines what revenues are to be deposited into the special accounts and revolving funds and for what purposes the moneys may then be used. The existing special accounts and revolving funds that receive incidental revenues are listed in Appendix A of this Policy.
- K. **Statutory Credits to the Project.** Credits to the project are applied after all project repayment obligations have been paid. Statutory credits are available to repay the reimbursable costs of future authorized and appropriated project construction in the project that generated the credits for which there is a repayment obligation, including construction authorized pursuant to the Safety of Dams Act of 1978 (SOD Act). See Paragraph 4.A.(1) of PEC 03-01.
6. **Review Period.** The originating office will review this release every 4 years.

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<sup>8</sup>Improved withdrawn lands are a subset of withdrawn lands but are treated as a separate category herein because of the effect that improvement has on the crediting of revenues generated on them.

## 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: \_\_\_\_\_