

# Reclamation Manual

## Directives and Standards

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| <b>Subject:</b>            | Safety of Dams Repayment and Cost Allocation   |
| <b>Purpose:</b>            | To provide requirements for repayment and allocation of costs associated with modifications performed pursuant to the Safety of Dams program. The benefit of this Directive and Standard (D&S) is consistent application of these requirements by Bureau of Reclamation offices and personnel. |
| <b>Authority:</b>          | The Reclamation Act of 1902 (32 Stat. 388), and acts amendatory of and supplemental to that Act; and the Reclamation Safety of Dams Act of November 2, 1978 (Pub. L. 95-579; 43 USC 506, et seq.), as amended  |
| <b>Approving Official:</b> | Director, Policy and Administration (Policy)   |
| <b>Contact:</b>            | Reclamation Law Administration Division (84-55000)   |

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1. **Introduction.** The Reclamation Safety of Dams Act of 1978, as amended (the SOD Act), established requirements for recovery of a portion of the costs associated with the modification of Reclamation dams due to dam safety concerns. The SOD Act provides for repayment of the Safety of Dams (SOD) modification costs that are allocable to project beneficiaries over a period not to exceed 50 years.
2. **Applicability.** This D&S applies to all Reclamation offices and personnel in administering the repayment provisions of the SOD Act.
3. **Requirements.**
  - A. **SOD Cost Allocation.**
    - (1) Fifteen percent of SOD 4(c) costs are reimbursable. The remaining 85 percent of SOD 4(c) costs are non-reimbursable.
      - (a) Specific costs will be allocated exclusively to their associated reimbursable purpose; and
      - (b) remaining costs will be allocated to the reimbursable purposes in proportion to those purposes' share of the reimbursable net economic benefits specified in the SOD modification report.
    - (2) SOD 4(a) costs will be allocated in accordance with the existing allocation of operation and maintenance (O&M) costs of the project and will be reimbursable

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as provided by existing law.<sup>1, 2</sup> See Reclamation Manual (RM) Policy, *Allocation of Operation, Maintenance, and Replacement Costs* (PEC P07), for specific requirements associated with allocation of project O&M costs.

- (3) Costs associated with developing additional project benefits will be allocated in accordance with RM Temporary D&S, *Developing Additional Benefits in Conjunction with a Safety of Dams Modification Project* (FAC TRMR-95).

**B. Contract Requirements.** A repayment contract must be executed before a construction contract for SOD modifications is awarded. If the situation demands that work begins before a contract can be executed or that an alternative to a contract is appropriate, the regional director may request a deviation of this requirement, pursuant to RM D&S, *Request for Deviation from a Reclamation Manual Requirement and Approval or Disapproval of the Request* (RCD 03-03). Any such request must be approved by the Commissioner.

- (1) **Repayment Terms and Conditions.** SOD 4(c) costs will be repaid as follows:
  - (a) **Irrigation.** Costs allocated to the irrigation purpose of a project shall be repaid, without interest, in a period not to exceed 50 years. If the repayment entity has the ability to repay the costs in less than 50 years, the repayment period will be reduced to utilize the full repayment ability of the entity. Costs allocated to the irrigation purpose which are beyond the irrigators' ability to pay shall be reimbursed in accordance with existing law.
  - (b) **Municipal and Industrial (M&I), Power, and Other Reimbursable Purposes.** Costs allocated to the non-irrigation reimbursable project purposes shall be repaid, with interest, in a period not to exceed 50 years. The interest to be repaid will consist of both interest during construction (IDC) and interest on investment (IOI). The interest rate for the non-irrigation reimbursable SOD costs will be the rate determined by the Secretary of the Treasury that is in effect for the fiscal year in which funds are expended for SOD modifications, which corresponds to the applicable repayment period. The interest rate can be found in the Reclamation table (Table 5) for the year in which SOD funds are expended, which is located at [http://www.treasurydirect.gov/govt/rates/tcir/tcir\\_index\\_opdirannual.htm](http://www.treasurydirect.gov/govt/rates/tcir/tcir_index_opdirannual.htm).

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<sup>1</sup>As provided in the Approval Memorandum from the Commissioner dated November 2007, in the Central Valley Project (CVP), SOD 4(a) costs may also be allocated in accordance with each CVP storage facility's interim or final cost allocation, whichever is in effect at the time. Costs allocated according to the interim allocation will be adjusted to accord with the final allocation pursuant to Pub. L. 99-546.

<sup>2</sup>Reclamation will follow United States Army Corps of Engineers (USACE) cost allocation formulas when contracting for the recovery of costs associated with safety of dams work on USACE dams that was funded with USACE appropriations under USACE authority.

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- (i) For projects on which all SOD costs are incurred in a single year, the interest rate will be as identified above. The interest rate that is established for IDC will continue to be the rate assessed on Federal expenditures, as IOI, until repayment of the expenditures is complete.
  - (ii) For projects on which SOD costs are incurred through multiple years, the weighted average interest rate will be used.
  - (c) **Substantial Completion.** The repayment period will initiate upon the date identified in a written notice of substantial completion from the regional director to the repayment entity.
- (2) **Offsets to SOD Obligations.**
- (a) **Incidental Revenue Credits.** See RM D&S, *Crediting Requirements for Incidental Revenues* (PEC 03-01), for specific requirements on the crediting of incidental revenues toward SOD modification costs.
  - (b) **Contributed Funds.** Funds may be contributed to accelerate completion of SOD modifications when consistent with either (1) the Sundry Civil Expenses Appropriations Act for 1922, dated March 4, 1921 (43 USC 395) (Contributed Funds Act); or (2) the annual appropriations act that authorizes funds for the SOD modification, provided that the annual appropriations act specifically authorizes the use of contributed funds. Contributed funds must only be accepted under the following conditions for SOD contracts:
    - (i) Contributed funds will only be accepted after an agreement has been entered with the entity providing the contributed funds. A basis of negotiation (BON) will be required for any contributed funds agreement which includes more than \$25,000 in contributed funds. Funds that are contributed to accelerate completion of SOD modifications<sup>3</sup> will only be used to accomplish the scope of work that is identified as the preferred alternative in the SOD modification report.
    - (ii) Only funds, and not the contribution of goods or services in lieu of funds, may be contributed as an offset toward a repayment entity's obligation.
    - (iii) Either the SOD repayment contract or a separate contributed funds agreement entered pursuant to the Contributed Funds Act and the SOD Act may provide for the acceptance of contributed funds.

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<sup>3</sup>Funds that are contributed for developing additional project benefits in accordance with the provisions of FAC TRMR-95 are excluded from this provision.

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- (aa) The SOD repayment contract or the contributed funds agreement will:
  - (1) acknowledge the contractor's contribution as being applicable towards its total SOD repayment obligation; and
  - (2) clearly outline the circumstances (i.e., extreme construction delays) and process for returning any or all of the remaining contributed funds without necessarily terminating either agreement.
- (bb) In most cases, the approval memorandum for the SOD modification repayment contract will serve as a delegation of authority to accept contributed funds. If the acceptance of contributed funds is not included in this approval memorandum, a separate delegation of authority, approved by the Deputy Commissioner, Policy, Administration, and Budget, is required.

(c) **Work Accomplished by Repayment Entities.**

- (i) A repayment entity may serve as the construction contractor in performing SOD modifications using Federal funds in accordance with Federal Acquisition Regulations (FAR) and other appropriate legal and policy authorities.
  - (ii) A repayment entity may provide its own materials or services to be used in the SOD modification in accordance with the principles required for developing an independent government estimate under the FAR of the costs, and relative value, of the materials or services to be provided. As stated in Paragraph 3.B.(2)(b)(iii) above, the value of these materials or services shall not be identified as an offset to that entity's obligation to repay SOD 4(c) costs, but must be paid under FAR requirements and will be included in the SOD modification cost.
- (3) **Standard Contract Articles.** The standard articles required for any contract entered into for the repayment of SOD 4(c) costs pursuant to the SOD Act will be as identified in RM Policy, *Reclamation Standard Water-Related Contract Articles* (PEC P10).
- (4) **Acreage Limitations.** Pursuant to the provisions of the SOD Act, the acreage limitation provisions of Federal reclamation law do not apply. Specifically, contracts for repayment of the SOD 4(c) costs will not:
- (a) be considered in determining whether a district as defined in Section 202(2) of the Reclamation Reform Act of 1982 (43 USC 390bb) has discharged its

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obligation to repay the construction costs of the project facilities used to make irrigation water available for delivery to land in the district; or

- (b) serve as a basis for reinstating acreage limitation provisions in a district that have completed payment of its construction obligation; or
- (c) serve as the basis for extending the period during which the acreage limitation provisions will apply.

- C. **BON Requirements.** Refer to RM D&S, *Preparing Bases of Negotiation for New and Amendatory Water Service, Repayment, and Other Related Contracts* (PEC 06-01) for the general requirements of the BON. In addition to the general requirements, the scope of work and cost allocation<sup>4</sup>, as identified in the SOD modification approval documents, must be clearly specified in the BON.
- D. **SOD Modification Project Documents.** The Dam Safety Office will communicate with Policy on current and upcoming SOD modifications and will provide the draft SOD modification report to Policy for review and comment. For additional information regarding the review and approval of SOD modification projects refer to RM D&S, *Safety of Dams Modification Reports for Submission to the Congress* (FAC 06-03) and *Submittal of Safety of Dams Modification Projects with Field Cost of Less than \$20,000,000*(FAC 06-04).
- E. **Approval Memorandum.** An approval memorandum signed by the Commissioner authorizing the regional director to negotiate, execute, and administer the contract is required for each SOD repayment contract. Policy develops the approval memorandum in response to the BON submitted by the regional director. The approval memorandum must note the status of the SOD modification approval documents, and other relevant reports; however, it does not serve as the Commissioner's approval for those other documents and reports.

#### 4. Definitions.

- A. **Interest During Construction or IDC.** The interest that accrues on Federal expenditures during the period of construction. See RM D&S, *Interest During Construction* (FIN 07-21), for additional information.
- B. **Interest on Investment or IOI.** The interest that accrues on a Federal investment, beginning with a notice of substantial completion of the work and continuing for the duration of the repayment term. See RM D&S, *Interest on Investment* (FIN 06-32), for additional information.

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<sup>4</sup>In order for the BON to accurately identify the scope of work and cost allocation, the BON should not be submitted for approval by the Commissioner until the SOD modification approval document has been certified.

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- C. **Net Economic Benefits.** The difference between annual gross economic benefits and the annual specific cost for each reimbursable project purpose identified in the SOD modification report.
  - D. **Reimbursable Project Purposes.** The authorized project purposes that will bear the reimbursable portion of the costs incurred in the performance of SOD modifications, including irrigation, M&I, power, and other reimbursable purposes.
  - E. **SOD 4(a) Costs.** Costs incurred to address age and normal deterioration of the structure or from the non-performance of reasonable and normal maintenance of the structure by the operating entity.
  - F. **SOD 4(c) Costs.** Costs incurred in the modification of structures to address new hydrologic or seismic data, or changes in state-of-the-art criteria deemed necessary for safety purposes as determined pursuant to Paragraph 6.A. of RM D&S, *Bureau of Reclamation Dam Safety Program (FAC 06-01)*<sup>5</sup>.
  - G. **Weighted Average Interest Rate.** The calculated interest rate for multi-year SOD projects. The weighted average interest rate is a composite rate that is calculated from the annual interest rates that are in effect for each year during which funds are expended for project construction. The calculation of this rate will be as illustrated in Appendix A of this D&S.
5. **Review Period.** The originating office will review this release every 4 years.

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<sup>5</sup>For questions related to Reclamation's Dam Safety Program, contact Dam Safety office (84-44000).

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