

# Reclamation Manual

## Directives and Standards

**Subject:** Charges for Non-Project Use of Excess Capacity in Reclamation Project Facilities

**Purpose:** Describes procedures for determining charges when contracting for the use of excess capacity in Reclamation project facilities. The benefit of this Directive and Standard (D&S) is to promote consistency and transparency in the establishment of contract rates, and to help ensure a fair return to the Federal taxpayer for the value of the service provided.

**Authority:** The Reclamation Act of 1902 (ch.1093, 32 Stat. 388) and acts amendatory and supplementary thereto, especially Section 1 of the Warren Act of 1911 (36 Stat. 925; 43 USC 523); the Interior Department Appropriation Act for 1928 (44 Stat. 943); Section 14 of the Reclamation Project Act of 1939 (1939 Act) (53 Stat. 1197; 43 USC 389); Office of Management and Budget (OMB) Circular A-25 (July 8, 1993); project-specific authorizations; and acts amending and supplementing these laws and circulars.

**Approving Official:** Director, Policy and Programs

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

1. **Introduction.** Reclamation law allows pricing discretion when contracting for the use of excess capacity in Reclamation facilities, specifying in the Warren Act that the costs of construction and maintenance of project facilities will be considered. This D&S describes the procedures Reclamation will use to determine appropriate charges for non-project use of excess capacity, consistent with Reclamation Manual (RM) D&S, *Contracting for Non-Project Use of Excess Capacity in Reclamation Project Facilities* ([PEC 05-10](#)). This includes direction for determining appropriate operation, maintenance and replacement (OM&R) charges that incorporate a facility's use charge for value of the services being provided. Together, PEC 05-10 and PEC 05-11 provide a framework for Reclamation to develop funding for aging infrastructure needs throughout Reclamation by focusing pricing on project replacement costs and values—the Replacement or “R” component of OM&R.
2. **Applicability.** This D&S applies to all Reclamation personnel involved in the negotiation, execution, and administration of contracts for the use of excess capacity in Reclamation project facilities.
3. **Requirements and Responsibilities.**
  - A. **Charges for the Use of Excess Capacity.** Appropriate charges will be assessed for the non-project use of excess capacity in Reclamation projects. The Director, Policy and Programs, is responsible for supporting the Commissioner's Office in reviewing a regional director's justification of a proposed excess capacity contract charge, and

evaluating its compliance with the requirements of this D&S. Charges will include OM&R, and a fixed (construction) charge where appropriate, as described below, and will be utilized as described in PEC 05-10.

- (1) **Annual Operation and Maintenance (O&M) Component.** (The “OM” of OM&R). This component is for an appropriate share of the annual costs for routine and recurring O&M of Reclamation facilities associated with the project including costs that do not meet the criteria of Extraordinary Maintenance (XM) as described in Paragraph 3.C. of RM D&S, *Extended Repayment of Extraordinary Maintenance Costs* ([PEC 05-03](#)).<sup>1</sup>
- (2) **Replacement Component.** (The “R” of OM&R). This will reflect an appropriate value of the service being provided for use of project facilities pertinent to the proposed non-project use. The replacement component will be determined by Reclamation as described in Paragraph 3.B., herein, except where the regional director determines, and the Commissioner concurs, that there is compelling information supporting an alternate methodology as described in Paragraph 3.C., herein. The replacement component will be established and applied equally to all excess capacity contracts regardless of the end use of the water. It will be available for the project, which is providing excess capacity, unless otherwise established by law. Reclamation will establish an appropriate replacement component based on the instructions in Paragraph 3.B., herein, except as the following considerations may apply:<sup>2</sup>
  - (a) If the region demonstrates that applying these procedures is unlikely to result in net benefits or revenues to the Federal government greater than those that otherwise will accrue by continuing currently applicable rate-setting practices, those current practices will be maintained.
  - (b) Where establishing the replacement component in the manner specified in this D&S would directly conflict with fulfillment of the Federal government’s responsibilities regarding Native American water interests, Reclamation will reduce or waive this replacement component as appropriate.
  - (c) Where establishing the replacement component in the manner specified would directly conflict with the implementation of statutory law, binding agreements, or treaties, Reclamation will not apply this replacement component.
  - (d) Where establishing the replacement component in the manner specified would jeopardize substantial operational and administrative benefits or efficiencies that accrue to the Federal project as the result of an alternative

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<sup>1</sup> Reclamation uses O&M and OM&R interchangeably. This D&S refers to OM&R in order to emphasize the replacement component, however the replacement component is technically a part of the Maintenance component, and O&M always includes Replacement even if not specified.

<sup>2</sup> RLAD will work with Regions on implementation timeline.

arrangement to exchange, replace, or deliver non-project water, Reclamation will not apply this replacement component.

- (3) **Fixed (Construction) Charge.** There is no requirement to assess a Fixed Charge. The region has discretion to determine whether any Fixed Charge or construction cost component will be assessed. When assessed, this Fixed Charge will reflect a proportional share of project construction costs.
- (4) **Total Charge.** In no case will the combined Annual O&M component, replacement component, and Fixed Charge described herein in Paragraphs 3.A.(1), 3.A.(2), and 3.A.(3) result in excess capacity contract charges that are less than charges assessed on similarly situated contractors for the storage, conveyance, and delivery of project water.<sup>3</sup>

**B. Determining the Replacement Component.** The replacement component will be calculated using the estimated replacement value of the relevant project facilities pertinent to the proposed non-project use as follows:<sup>4</sup>

- (1) **Relevant Project Facilities.** Identify and include all Reclamation-owned project facilities, and/or portions of those facilities determined essential for servicing the proposed non-project use.
- (2) **Capacity Made Available.** The replacement value will be prorated based on the amount of project (or facility) capacity being made available for non-project use divided by total project (or facility) capacity. This calculation will establish the prorated share (even if that entire capacity will be used only intermittently). Where the capacity to be made available cannot confidently be quantified in advance, it is acceptable to estimate this share on the basis of historic operations and/or hydrologic projections.
- (3) **Replacement Value.** The replacement value will be identified for the Reclamation project or facilities being used. The value will be determined through indexing the historical as-built final construction cost to the current year using the Bureau of Reclamation Construction Cost Index or other methods used to develop the current replacement value of facilities identified in the Federal Real Property Profile. This index will be applied from the year the construction was completed.<sup>5</sup>

<sup>3</sup> “Similarly situated” refers to situations in which some contractors are paying construction charges and others are not. To the extent Reclamation can compare benefits, excess capacity contractors will not pay less than project contractors.

<sup>4</sup> Because this component addresses an approximation of the value of the use of Federal facilities, and is not a construction cost recovery strategy, the extent to which original construction costs have been repaid by project beneficiaries, including any payments made by the prospective excess capacity contractor, has no bearing on the determination of this value.

<sup>5</sup> Where the relevant project facilities consist of multiple features with varying and/or uncertain dates of completion, it is acceptable to apply the index to an estimated average year of completion, weighted by the original cost of each relevant facility or facility feature. Similarly, a single overall facility or project index may be applied by the region to all excess capacity contracts pertaining to the use of that facility or project, where the Commissioner has approved the use of that index, and the region has documented how the index was derived.

- (4) **Annualization Options.** The replacement value identified in Paragraph 3.B.(3) multiplied by the portion of capacity made available identified in Paragraph 3.B.(2) will be used in calculating the annualized value. Replacement value, determined as described under Paragraph 3.B.(3), herein, will be annualized as follows:
  - (a) Option 1: If only project costs allocated to water supply purposes are used for the calculation of replacement cost, the costs will be annualized over (i.e., divided by) a 50-year replacement period.
  - (b) Option 2: If total project costs for all project purposes are used in the calculation of replacement cost, the costs will be annualized over (divided by) a 75-year replacement period.
- (5) **Unit Replacement Cost.** The replacement charge, adjusted according to Paragraph 3.D., as appropriate, and divided by the capacity being contracted,<sup>6</sup> will be used to calculate the replacement component per acre-foot or other appropriate unit of measurement.
- (6) **Documentation.** The region will document the methodology and analysis used to derive the proposed replacement value of facilities for the replacement component in its basis of negotiation or other relevant decision-making materials. This will include all of the analysis and information used in performing the steps of Paragraph 3.A. through 3.B.(5), herein. The region will share this document with the prospective excess capacity contractor.

C. **Establishing the Replacement Component.** The procedures described in Paragraph 3.B, herein, will determine the replacement component. The regional director has discretion to consider and propose using an alternate methodology for determining the “R” component, subject to Commissioner approval, if it better represents the value of the use of Federal facilities. The alternate methods that may be considered are:

- (1) an analysis of locally relevant economic, socioeconomic, engineering, and/or market data; or
- (2) an analysis of projected XM of the facilities being used. The calculation shall include the total cost of XM needs of the facilities identified in Reclamation’s major replacement and rehabilitation (MR&R) list, at a minimum<sup>7</sup>, and the time period used to annualize charges will be commensurate with the time period of the identified XM needs.<sup>8</sup>

D. **Replacement Charge Adjustments for Other Federal Benefits.** Both the regional office’s determination of a replacement value of facilities (as described herein in

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<sup>6</sup> Typically, this capacity will be quantified in terms of a volume (e.g., acre-feet) or a rate of flow (e.g., cubic feet per second).

<sup>7</sup> Reclamation’s MR&R list is periodically updated, and include safety of dams, deferred maintenance, and extraordinary maintenance needs.

<sup>8</sup> Here, “time period of the identified XM needs” refers to the period over which XM needs are assessed, not the anticipated useful life of the implemented XM.

Paragraph 3.B.(3)) and any proposed alternative replacement charge (as described herein in Paragraph 3.C.) will take into consideration the benefits that would accrue to the Federal project as a result of the proposed excess capacity contracting action (monetary, operational, environmental, or otherwise). The replacement charge will be adjusted to reflect the estimated equivalent financial value of those benefits to the Federal project. However, no adjustments will be made for any benefits obtained from additional head for, or water going through, Reclamation-owned electric power generators at Reclamation project facilities as a result of storage or conveyance of non-project water.

- E. **Charge Escalator.** The excess capacity contract will specify that the negotiated facility replacement charge, determined as described above, will be adjusted to account for the effects of inflation on the value of the payments made by the contractor, either through updates at intervals of no less than once every five years or through contractually established periodic cost escalators. This periodic adjustment will be made by applying the Gross Domestic Product deflator published by the U.S. Department of Commerce, Bureau of Economic Analysis.<sup>9</sup>
- F. **Administrative Costs.** The party requesting the contract will be required to pay Reclamation's costs for negotiating and entering into a contract to the extent and in the manner required by the then applicable policies concerning payment of Reclamation's contracting costs. That party also must bear all costs associated with its compliance with state, tribal, and local laws, and all costs of compensating third parties whose legally cognizable interests under state, tribal, or local laws will be affected by the use of excess storage or carrying capacity for the storage or conveyance of non-project water.

#### 4. Definitions.

- A. **Excess Capacity.** Diversion, storage, conveyance, or pumping capacity in Reclamation project facilities that is not needed to meet Reclamation's obligations for authorized project purposes.
- B. **Excess Capacity Contract.** For purposes of this D&S, any contract entered under the authority of the Warren Act of February 21, 1911 (Warren Act), or Section 14 of the Reclamation Project Act of August 4, 1939 (Section 14), or any other applicable reclamation law, which facilitates diversion, storage, conveyance or pumping of non-project water through available excess capacity, as defined above at Paragraph 4.A.
- C. **Non-Project Water.** Surface or ground water:
- (1) that is pumped, diverted, exchanged, and/or stored based upon the exercise of water rights that have not been appropriated or acquired by, or apportioned to, the United States or others, or which have not been decreed, permitted, certificated, licensed, or otherwise granted to the United States or others, for a Reclamation project, or

<sup>9</sup> An alternative source of this economic data can be found at <https://fred.stlouisfed.org/series/GDPDEF/>.

- (2) that is not reserved, allocated, or withdrawn from appropriation by the United States for a Reclamation project.
- D. **Operation and Maintenance.** The definition in Paragraph 4.K. of RM Policy, *Water-Related Contracts and Charges – General Principles and Requirements* ([PEC P05](#)) applies to this D&S.
- E. **Project Water.** The definition in Paragraph 4.L of PEC P05 applies to this D&S.
- F. **Replacement.** The definition for XM in Paragraph 3.C. of RM D&S, *Extended Repayment of Extraordinary Maintenance Costs* ([PEC 05-03](#)) is the relevant definition for Replacement in this D&S.
- G. **Reserved Works.** Reclamation-owned facilities for which Reclamation manages and performs O&M, either through Reclamation personnel or through a maintenance contract.
- H. **Transferred Works.** Reclamation-owned facilities for which the responsibility to manage and perform O&M has been transferred by contract or agreement to a non-federal operating entity.
5. **Review Period.** The originating office will review this release every two 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

Insert Sheets

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

Filed by: \_\_\_\_\_

Date: \_\_\_\_\_