

Reclamation Manual

Directives and Standards

Subject:	Reclamation Standard Water-Related Contract Articles, Standard Article 5: Operation and Maintenance of Transferred Works (Federal Construction)
Purpose:	To provide the text of and requirements for the application of Standard Article 5: Operation and Maintenance of Transferred Works (Federal Construction) (Standard Article 5), for the benefit of supporting general policy and specific requirements set forth in Reclamation Manual Policy, <i>Reclamation Standard Water-Related Contract Articles</i> (PEC P10).
Authority:	The Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), especially section 6 (32 Stat. 389; 43 U.S.C. §§ 491 and 498), and acts amendatory and supplementary thereto; especially section 5 of the Reclamation Extension Act of 1914 (Pub. L. 63-170, 38 Stat. 687, 43 U.S.C. §§ 492 and 499); and subsection G of the Fact Finders' Act of 1924 (Pub. L. 68-292; 43 Stat. 702; 43 U.S.C. § 500).
Approving Official:	Director, Mission Assurance and Protection Organization (MAPO)
Contact:	Reclamation Law Administration Division (84-55000)

1. **Introduction.** In general, Standard Article 5 is required where the Contractor is or is expected to be responsible for the operation, maintenance, and replacement of Federal water supply, storage, or conveyance facilities (see Paragraph 4.B. of PEC P10). Standard Article 5 specifies conditions for expected transfers and certain rights and obligations of the parties once the transfer has occurred. There are two options for Standard Article 5: Options A and B. Option A provides a standard indemnification clause required in a contract between the United States and the Contractor where the United States is not listed as an insured party in the Contractor's commercial general liability insurance policy (see paragraph 3.A.(f)); and B provides the option that the Contractor obtain commercial general liability insurance and names the United States as an additional insured party (see paragraph 3.B.(f)). In Option B, the Bureau of Reclamation (Reclamation) still requires that the Contractor indemnify and hold the United States and its representatives harmless from all damages resulting from suits, actions, or claims of any character that are not covered by the commercial general liability insurance policy. The appropriate level of insurance coverage will be determined on a case-by-case basis with approval from the Contracting Officer. In addition, Reclamation will require the Contractor to provide annual adjustments to the policy based on fluctuations in costs, as necessary.

The Contractor may select option A or B, subject to the Contracting Officer's concurrence. Prior to concurrence, the Contracting Officer will consult with the Department of the Interior, Officer of the Solicitor on matters concerning the proposed option, including the appropriate level of insurance protection for Reclamation if Option B is selected.

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2. **Applicability.** This Directive and Standard (D&S) applies to Reclamation staff and officials involved in the contracting process, as defined at Paragraph 5.A. of PEC P10.
3. **Requirements and Responsibilities.** Reclamation staff and officials involved in the contracting process will include the text below in all contracts requiring Standard Article 5 under Paragraph 4.B. of PEC P10.
 - A. **Option A:** Standard Indemnification Clause.

OPERATION, MAINTENANCE, AND REPLACEMENT OF
TRANSFERRED WORKS¹
(Federal Construction)

(a) Upon substantial completion of transferred works, or as otherwise determined by the Contracting Officer, and following written notification, the operation, maintenance, and replacement responsibilities for any or all of those works may be transferred to the Contractor. Title to the transferred works will remain in the name of the United States, unless otherwise provided by the Congress of the United States.

(b) The Contractor, without expense to the United States, will care for, operate, and maintain the transferred works, including necessary replacements, in full compliance with the terms of this contract and in such a manner that the transferred works remain in good and efficient condition.²

(c) Necessary repairs of the transferred works will be made promptly by the Contractor. In case of unusual conditions or serious deficiencies in the care, operation, maintenance, and replacement of the transferred works threatening or causing interruption of water service, the Contracting Officer may issue to the Contractor a special written notice of those necessary repairs. Except in the case of an emergency, the Contractor will be given 60 days to either:

- 1) make the necessary repairs, or
- 2) submit a plan for accomplishing the repairs that contains a

¹Approved 02/71; revised 09/82; 11/84; 01/02; 04/10.

²Paragraph (b) may be modified to reflect any relevant costs for which the United States is responsible.

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timeframe for completing the necessary repairs acceptable to the Contracting Officer. In the case of an emergency, or if the Contractor fails to either make the necessary repairs or submit a plan for accomplishing the repairs acceptable to the Contracting Officer within 60 days of receipt of the notice, the Contracting Officer may cause the repairs to be made, and the cost of those repairs will be paid by the Contractor as directed by the Contracting Officer. The Contracting Officer will determine whether an emergency exist requiring immediate repairs or if circumstances will allow for repairs to be made, or a plan to be submitted, within 60 days of receipt of notice.³

(d) The Contractor will not make any substantial changes in the transferred works without first obtaining written consent of the Contracting Officer.

(e) The Contractor will take all reasonable measures to prevent any unauthorized encroachment on project land and rights-of-way and address any such encroachment as soon as the Contractor becomes aware of its existence.

(f) Except for the sole negligence and intentional torts committed by employees of the United States, the Contractor agrees to indemnify the United States for, and hold the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character, brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, and replacement; and supervision, examination, inspection, or other duties of the Contractor or the United States on transferred works required under this contract, regardless of who performs those duties.

³Immediate repairs can range from the time the need to make the repair(s) is discovered (e.g., same day), to another appropriate expedited timeframe to complete the repairs as determined by the Contracting Officer.

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(g) The Contractor will cooperate with the Contracting Officer in implementing an effective dam safety program. The United States agrees to provide the Contractor and the appropriate agency(ies) of the State(s) in which the project facilities are located with design data, designs, and an operating plan for the dam(s) and related facilities consistent with the current memorandum of understanding between the United States and the State(s) of _____ relating to the coordination of planning, design, construction, care, operation, maintenance, and replacement processes for dams and related facilities.⁴

(h) In the event the Contractor is found to be operating the transferred works or any part thereof in violation of this contract or the Contractor is found to be failing any financial commitments or other commitments to the United States under the terms and conditions of this contract, then upon the election of the Contracting Officer, the United States may take over from the Contractor the care, operation, maintenance, and replacement of the transferred works by giving written notice to the Contractor of such election and the effective date thereof. Thereafter, during the period of operation by the United States, upon notification by the Contracting Officer, the Contractor will pay to the United States, annually in advance, the cost of care, operation, maintenance, and replacement of the works as determined by the Contracting Officer. Following written notification from the Contracting Officer, the care, operation, maintenance, and replacement may be transferred back to the Contractor.

⁴Paragraph (g) may be omitted and subsequent paragraphs re-lettered where the relevant transferred works do not include a dam or related facilities. The sentence can be modified if Reclamation does not have a memorandum of understanding with the state as follows: The United States agrees to provide the Contractor and the appropriate agency of the State or States in which the project facilities are located with design data, designs, and an operating plan for the dam(s) and related facilities acceptable to the United States.

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(i) In addition to all other payments to be made by the Contractor under this contract, the Contractor will reimburse to the United States, following the receipt of a statement from the Contracting Officer, all miscellaneous costs incurred by the United States for any work involved in the administration and supervision of this contract.

(j) Nothing in this article will be deemed to waive the sovereign immunity of the United States.

B. **Option B:** Insurance Policy Alternative

OPERATION, MAINTENANCE, AND REPLACEMENT OF TRANSFERRED WORKS (Federal Construction)

(a) Upon substantial completion of transferred works, or as otherwise determined by the Contracting Officer, and following written notification, the operation, maintenance, and replacement responsibilities for any or all of those works may be transferred to the Contractor. Title to the transferred works will remain in the name of the United States, unless otherwise provided by the Congress of the United States.

(b) The Contractor, without expense to the United States, will care for, operate, maintain, and replace the transferred works in full compliance with the terms of this contract and in such a manner that the transferred works remain in good and efficient condition.⁵

(c) Necessary repairs of the transferred works will be made promptly by the Contractor. In case of unusual conditions or serious deficiencies in the care, operation, maintenance, and replacement of the transferred works threatening or causing interruption of water service, the Contracting Officer may issue to the Contractor a special written notice of those necessary

⁵Paragraph (b) may be modified to reflect any relevant costs for which the United States is responsible.

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repairs. Except in the case of an emergency, the Contractor will be given 60 days to either:

1) make the necessary repairs, or 2) submit a plan for accomplishing the repairs that contains a timeframe for completing the necessary repairs acceptable to the Contracting Officer. In the case of an emergency, or if the Contractor fails to either make the necessary repairs or submit a plan for accomplishing the repairs acceptable to the Contracting Officer within 60 days of receipt of the notice, the Contracting Officer may cause the repairs to be made, and the cost of those repairs will be paid by the Contractor as directed by the Contracting Officer. The Contracting Officer will determine whether an emergency exist requiring immediate repairs or if circumstances will allow for repairs to be made or a plan to be submitted within 60 days of receipt of notice.⁶

(d) The Contractor will not make any substantial changes in the transferred works without first obtaining written consent from the Contracting Officer.

(e) The Contractor will take all reasonable measures to prevent any unauthorized encroachment on project land and rights-of-way and address any such encroachment as soon as the Contractor becomes aware of its existence.

(f) The Contractor agrees to carry a commercial general liability insurance policy that covers all actions arising out of the Contractor's care, operation, maintenance, and replacement of the transferred works or any other actions taken by the Contractor or the United States under the terms of this contract. The Contractor will ensure that the United States is named as an additional insured party in the insurance policy. Except for the sole negligence or intentional torts committed by employees of the United States, the Contractor will indemnify the United

⁶ Immediate repairs can range from the time the need to make the repair(s) is discovered (e.g., same day), to another appropriate expedited timeframe to complete the repairs as determined by the Contracting Officer.

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States for, and hold the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character that are not covered by the commercial general liability insurance policy, brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, and replacement; and supervision, examination, inspection, or other duties of the Contractor or the United States on transferred works required under this contract, regardless of who performs those duties. The Contractor agrees to provide annual adjustments to the commercial general liability insurance policy based on fluctuations to all costs associated with the policy, and supplement the general policy, as necessary, to ensure the agreed upon and adequate coverage is maintained throughout the term of this contract.

(g) The Contractor will cooperate with the Contracting Officer in implementing an effective dam safety program. The United States agrees to provide the Contractor and the appropriate agency(ies) of the State(s) in which the project facilities are located with design data, designs, and an operating plan for the dam(s) and related facilities consistent with the current memorandum of understanding between the United States and the State(s) of _____ relating to the coordination of planning, design, construction, operation, maintenance, and replacement processes for dams and related facilities.⁷

(h) In the event the Contractor is found to be operating the transferred works or any part thereof in violation of this contract or the Contractor is found to be failing any financial commitments or other commitments to the United States under the terms and conditions of this

⁷Paragraph (g) may be omitted and subsequent paragraphs re-lettered where the relevant transferred works do not include a dam or related facilities. The sentence can be modified if Reclamation does not have a memorandum of understanding with the state as follows: The United States agrees to provide the Contractor and the appropriate agency of the State or States in which the project facilities are located with design data, designs, and an operating plan for the dam(s) and related facilities acceptable to Reclamation.

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contract, then upon the election of the Contracting Officer, the United States may take over from the Contractor the care, operation, maintenance, and replacement of the transferred works by giving written notice to the Contractor of such election and the effective date thereof. Thereafter, during the period of operation by the United States, upon notification by the Contracting Officer, the Contractor will pay to the United States, annually in advance, the cost of care, operation, maintenance, and replacement of the works as determined by the Contracting Officer. Following written notification from the Contracting Officer the care, operation, maintenance, and replacement may be transferred back to the Contractor.

(i) In addition to all other payments to be made by the Contractor under this contract, the Contractor will reimburse to the United States, following the receipt of a statement from the Contracting Officer, all miscellaneous costs incurred by the United States for any work involved in the administration and supervision of this contract.

(j) Nothing in this article will be deemed to waive the sovereign immunity of the United States.

4. **Definitions.**

A. **PEC P10.** See Paragraph 5 of PEC P10 for general definitions applicable to this D&S.

B. **Substantial Change.** A modification in, or addition to, a project facility which involves changes in the original design intent, function, and/or operational parameters of the facility, or changes in project benefits, including non-routine maintenance activities that involve construction or reconstruction of a portion of the facility. These modifications may be capitalized or non-capitalized. A substantial change is not a characterization of the proposed action in terms of being a major or minor action as defined in the National Environmental Policy Act.

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

Insert Sheets

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

Filed by: _____

Date: _____