

# Reclamation Manual

## Directives and Standards

<b>Subject:</b>	Reclamation Standard Water-Related Contract Articles, Standard Article 5: Operation and Maintenance of Transferred Works (Federal Construction)
<b>Purpose:</b>	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)
<b>Authority:</b>	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)
<b>Approving Official:</b>	Director, Policy and Administration
<b>Contact:</b>	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 and maintenance of Federal water supply, storage, or conveyance facilities (see Paragraph 4.B. of PEC P10). It specifies conditions for expected transfers and certain rights and obligations of the parties once transfer has occurred.
2. **Applicability.** This Directive and Standard (D&S) applies to Bureau of 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.

### OPERATION AND MAINTENANCE OF TRANSFERRED WORKS<sup>1</sup>

(Federal Construction)

(a) Upon substantial completion of any additional project works, or as otherwise determined by the Contracting Officer, and following written notification, the care, operation, and maintenance of any or all of those project works may be transferred to the Contractor. Title

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

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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 in full compliance with the terms of this contract and in such a manner that the transferred works remain in good and efficient condition.<sup>2</sup>

(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, and maintenance 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 acceptable to the Contracting Officer that contains a timeframe for completing the necessary repairs. In the case of an emergency the written notice of necessary repairs will include a timeframe for completion of the repairs. If the Contractor fails to either: 1) make the necessary repairs within the identified timeframe; or 2) submit a plan for accomplishing the repairs acceptable to the Contracting Officer within 60 days of receipt of the notice and accomplish the repairs within the timeframe identified therein, 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.

(d) The Contractor will not make any substantial changes in the transferred works without first obtaining written consent of the Contracting Officer. The Contractor will take all reasonable measures to prevent any unauthorized encroachment on project land and rights-of-

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

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way and address any such encroachment as soon as the Contractor becomes aware of its existence.

(e) 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, except for intentional torts committed by employees of the United States, 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, 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.

(f) 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 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 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, and maintenance processes for dams and related facilities.<sup>3</sup>

(g) 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

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<sup>3</sup>Where the relevant project works do not include a dam or related facilities, paragraph (f) may be omitted and subsequent paragraphs re-lettered appropriately.

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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, and maintenance 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 operation and maintenance of the works as determined by the Contracting Officer. Following written notification from the Contracting Officer the care, operation, and maintenance of the works may be transferred back to the Contractor.

(h) 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.

(i) 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: \_\_\_\_\_