

Reclamation Manual

Directives and Standards

TEMPORARY RELEASE

(Expires 08/02/2021)

Subject:	Developing Additional Project Benefits in Conjunction with a Safety of Dams Modification Project
Purpose:	This Directive and Standard (D&S) establishes general requirements for identifying, approving, and developing additional project benefits and clarifies the process is consistent with the Bureau of Reclamation (Reclamation) law. The value of this D&S is defining a process for developing additional project benefits in conjunction with safety of dams (SOD) modifications while assuring the timely reduction of dam safety risks and protecting existing project benefits.
Authority:	The Reclamation Act of 1902 (Act of June 17, 1902, ch. 1093, 32 Stat. 388); Sundry Civil Expenses Appropriation Act for 1922 (Act of March 4, 1921, ch. 161, 41 Stat. 1404, 43 U.S.C. §395); and the Reclamation Safety of Dams Act of 1978, Public Law 95-578, 95th Cong. (92 Stat. 2471), as amended (the SOD Act).
Approving Official:	Director, Dam Safety and Infrastructure
Contact:	Dam Safety Office (86-67100); Reclamation Law Administration Division (84-55000)

1. **Introduction.** The SOD Act has been amended to include authority for Reclamation to develop additional project benefits in conjunction with a SOD modification project. This D&S establishes requirements for developing and coordinating additional project benefits.
2. **Applicability.** This D&S applies to all Reclamation personnel identifying, approving, and developing additional project benefits in conjunction with a SOD modification project.
3. **Initial Approval to Evaluate Development of Additional Project Benefits with a SOD Modification Action.** Pursuant to Section 5.B. of the SOD Act, Reclamation must determine additional project benefits are necessary and in the interest of the United States (U.S.) and the project prior to beginning the development of any additional project benefits. The Commissioner will determine the level of analysis required for this initial approval, which might include consideration of water demands, funding capabilities of beneficiaries, and schedule. As part of the initial approval process, the Director of Dam Safety and Infrastructure (the Director) will prepare a recommendation for the Commissioner's approval, coordinate the development of additional project benefits with the appropriate offices, assess the significance of efficiencies that can be achieved by integrating additional project benefits with a SOD modification project, and ensure development of additional project benefits will not negatively impact a SOD modification project. The Regional Director (RD) may prepare recommendations for the development of additional project

Reclamation Manual

Directives and Standards

TEMPORARY RELEASE

(Expires 08/02/2021)

benefits, either in response to a request from a potential beneficiary or upon identifying a potential need for additional project benefits, and will negotiate and execute the necessary agreements within the parameters set by this D&S and the approval memorandum applicable to each agreement. The initial approval process does not substitute for the required feasibility analysis in which final determinations will be based.

- A. **Consistency with the SOD Act.** The RD will coordinate with Dam Safety and Infrastructure and all necessary offices within the region to determine if the proposed development of the additional project benefits is consistent with the purposes of the SOD Act and complies with all requirements for such development. If the proposed development is inconsistent with the SOD Act, the RD will collaborate with Dam Safety and Infrastructure and other necessary offices within the region to recommend to the Director that further development work on the additional project benefits not proceed in conjunction with the SOD modification project.
 - B. **No Adverse Impact to Public Safety.** The RD will coordinate with the Director to determine whether developing additional project benefits will result in an adverse impact to the timely implementation of appropriate public safety risk reduction activities. If developing the additional project benefits will cause an adverse impact the RD will recommend to the Director that development of the additional project benefit not proceed in conjunction with the SOD modification project.
4. **Determination of Feasibility.** Once the Commissioner concurs with the responsible RD and the Director that studying additional project benefits are consistent with the SOD Act and potentially in the interest of the U.S., the RD will perform a feasibility analysis and develop supporting documentation to determine if the proposed additional project benefits meet Reclamation's feasibility requirements. The Director will use the determination of feasibility documentation to develop an approval memorandum for the Secretary's decision on whether the project is consistent with the SOD Act, in the interest of the U.S., and feasible.
- A. **Alternatives.** The feasibility analysis must evaluate at least three alternatives:
 - (1) the SOD modification alternative (equivalent to a no-action or baseline alternative in a typical planning study),
 - (2) the dam safety plus additional benefits project alternative (e.g., Joint Project), and
 - (3) a non-structural alternative that meets the needs and objectives of the additional benefits project.

Reclamation Manual

Directives and Standards

TEMPORARY RELEASE

(Expires 08/02/2021)

- B. Technical Feasibility.** The determination of technical feasibility will include a feasibility-level design and cost estimate for the Joint Project alternative prepared to the same standard as the SOD modification alternative. The Joint Project alternative will be subject to the same peer review as the SOD modification alternative, including consultant review boards and dam safety advisory team reviews. If the non-structural alternative is not viable (e.g., cost or implementation difficulty) an appraisal level design and cost estimate is acceptable.
- C. Environmental Feasibility.** The determination of environmental feasibility will be demonstrated through compliance with the National Environmental Policy Act of 1969 (NEPA) (Public Law 91-190, 83 Stat. 852, 42 U.S.C. §4321 et seq.) and other federal environmental and cultural resource laws. The RD will develop a NEPA document used to determine environmental feasibility of the additional benefits. The existing environmental documentation and review may suffice for determination of environmental feasibility.
- D. Economic Feasibility.**
- (1) The determination of economic feasibility of the Joint Project alternative may be accomplished through Reclamation's traditional economic benefit analysis approach, as specified in the Department of the Interior (DOI) Agency Specific Procedures (ASP), or through other economic justification methods typically used by the non-federal partner, such as:
 - (a) return on investment analysis,
 - (b) life cycle analysis, or
 - (c) business case analysis.
 - (2) The economic feasibility documentation for the Joint Project alternative will support the analysis and decision making to allow the non-federal partner to fund the project. The Joint Project documentation will present and, to the extent practicable, quantify and monetize the public benefits (defined in the DOI ASP, 707 DM 1) resulting from the Joint Project alternative, regardless which methodology is chosen to establish economic feasibility.
- E. Financial Feasibility.** The determination of financial feasibility will be demonstrated by the non-federal partners obtaining the necessary funds for completion of the project. A financial capability statement by the non-federal partner must be included in the project documentation and include a financing plan, a bond rating, and a commitment to provide up-front funding or obtain a bond for the amount necessary to cover

Reclamation Manual

Directives and Standards

TEMPORARY RELEASE

(Expires 08/02/2021)

potential costs incurred by Reclamation if the non-federal partner abandons the project during design or construction.

- F. **Review.** All feasibility documentation will undergo a certification review as described in Reclamation Manual (RM) D&S, *Safety of Dams Modification Reports for Submission to the Congress* (FAC 06-03). The certification review team will include a representative from the Policy and Programs Directorate. The Secretary will review the complete feasibility documentation and determine whether the additional benefits project is consistent with the SOD Act, in the interest of the U.S., and feasible.
- G. **Notification of Determination.** The RD will notify each beneficiary, of the proposed additional project benefits, of the determination's outcome (required by Section 5.B, of the SOD Act).
5. **Contributed Funds Agreement Requirements.** Prior to any work being conducted by Reclamation, to determine if additional project benefits are necessary and in the interest of the U.S. and the project or to physically develop additional project benefits, a contributed funds agreement will be entered, pursuant to the Sundry Civil Appropriations Act for 1922 of March 4, 1921, also known as the Contributed Funds Act, between Reclamation and each beneficiary of the proposed additional project benefits.¹ The contributed funds agreement will contain the general requirements of PEC 06-01 and the following provisions²:
- A. **Scope of Work.** The contributed funds agreement will clearly outline the scope of work performed using the advanced funds. The scope will include updates to the Standing Operating Procedure, Designer's Operating Criteria, Operation and Maintenance Manual, and Emergency Action Plans to include new features.
- (1) **Design and Construction of Additional Benefits.** The design of the additional project benefits will meet Reclamation's design standards. Construction will meet the requirements in RM D&S, Construction Activities (FAC 03-02). The RD will oversee the construction necessary to develop additional project benefits as well as construction close out and coordinate with any transferred works operating

¹Because the contributed funds agreement will require full prepayment of the anticipated costs of studying and developing the additional project benefits and will not include repayment of a beneficiary's obligation, the reserved authority of the Assistant Secretary of Water and Science to enter contracts with a repayment obligation in excess of \$50,000,000, as stated in Departmental Manual 255 DM 1.2.F., does not apply.

²A contributed funds agreement that only covers the costs of making the determination discussed in Paragraph 3 and 4 must meet the requirements in Paragraph 9.A. Contributed funds agreements that cover the costs of physical development of additional project benefits or a combination of making a determination and the physical development of additional project benefits must meet the requirements in Paragraphs 9.A. and 9.B.

Reclamation Manual

Directives and Standards

TEMPORARY RELEASE

(Expires 08/02/2021)

entity that will bear an increased responsibility because of the additional project benefits.

- B. **Cost Estimate.** The contributed funds agreement will identify Reclamation's estimate of the costs to the beneficiary. Reclamation shall set up a new work breakdown structure to keep track of all Reclamation costs related to the scope of work.
- C. **Sufficient Advance Funds.** The contributed funds agreement will require sufficient funds be provided by the beneficiary of the additional project benefits to cover the estimated costs for the scope of work. These costs include: all work related to NEPA, the National Historic Preservation Act of 1966 (16 U.S.C. ch. 1A, subch. II § 470 et seq., 80 Stat. 915), and the Endangered Species Act of 1973 (16 U.S.C. ch. 35 § 1531 et seq., 87 Stat. 884); development of all necessary studies, analyses, designs, plans, specifications, and related material; and any related administrative costs.
- (1) **Required Advance Funds Subject to Cost Allocation.** The contributed funds agreement will establish the advance funds required by the contributed funds agreement are based on an estimate of costs and are subject to a final allocation of the actual costs of developing the additional project benefits (discussed in Paragraph 8).
- (2) **Additional Advances for Cost Increases.** The contributed funds agreement will require Reclamation to negotiate any increase in funding requirements beyond the originally agreed upon amount, with the beneficiary, before Reclamation incurs those costs.
- D. **Unused Funds.** The contributed funds agreement will provide for any unused funds, whether these funds are not needed to complete the scope of work or Reclamation determines at any point not to proceed, to be returned to the beneficiary without interest.
- E. **No Reimbursement for Expenditures.** The contributed funds agreement will stipulate that no reimbursement will be provided by Reclamation to the beneficiary for expenditures required to complete the scope of work, regardless of outcome.
- F. **Term of Contributed Funds Agreement.** The contributed funds agreement will identify a term for which it will be in effect. The contributed funds agreement will also provide for termination of the contributed funds agreement upon mutual agreement by the parties.
- G. **Standard Articles.** The contributed funds agreement will contain the full list of standard contract articles developed by Reclamation (described in Paragraph 9.D).

Reclamation Manual

Directives and Standards

TEMPORARY RELEASE

(Expires 08/02/2021)

- H. **Additional Requirements for Contributed Funds Agreements Addressing Advance Funding for Physical Development of Additional Project Benefits.** The contributed funds agreement which covers the physical development of the additional project benefits will include the general requirements above and the following provisions:
- (1) **Allocation of Costs for Additional Project Benefits.** Pursuant to Section 5.B. of the SOD Act, all costs associated with developing the additional project benefits will be allocated exclusively among the beneficiaries of the additional project benefits (RM D&S, Project Cost Allocations (PEC 01-02)).
 - (a) **Beneficiary Access to Additional Project Benefits.** The contributed funds agreement will identify the conditions for a beneficiary's access to, and use of, the additional project benefits.
 - (b) **Prohibition on Developing Additional Project Benefits Without Advance Funding.** No development of additional project benefits will be performed before funds for the development are advanced by the beneficiaries.
 - (2) **No Guarantee of Continual Access to Additional Project Benefits.** The contributed funds agreement will state the U.S. makes no guarantee of access to the additional project benefits beyond the useful life of the project facility providing those benefits.
 - (3) **Payment of Operation, Maintenance, and Replacement (OM&R) Costs.** The contributed funds agreement will establish the allocation of OM&R costs which result from the development of additional project benefits and the beneficiary's obligation to pay the allocated OM&R costs associated with the additional project benefits (RM Policy, *Allocation of Operation, Maintenance and Replacement Costs* (PEC P07)).
6. **Basis of Negotiation (BON) Requirements.** A BON will be required for any contributed funds agreement which includes more than \$25,000 in advance funds (RM D&S, *Preparing Bases of Negotiation for New and Amendatory Water Service, Repayment, and Other Water-Related Contracts* (PEC 06-01)). A required BON will include the general requirements found in PEC 06-01 and the following:
- A. **Estimate of Costs.** The BON will provide an initial estimate of the costs to develop the proposed additional project benefits and an initial allocation of such costs to the beneficiary.

Reclamation Manual

Directives and Standards

TEMPORARY RELEASE

(Expires 08/02/2021)

- B. **Assurance of Funds.** A written statement from the beneficiary stating the source of its funding and confirming funding is available for the proposed development will be included as an attachment to the BON.³
- C. **Proposed Term of Contributed Funds Agreement.** The BON will identify the proposed term of the contributed funds agreement.
- D. **Standard Articles.** The BON will provide a list of standard articles that the RD proposes to include in the contributed funds agreement. The standard articles will be finalized in consultation between the RD and the Reclamation Law Administration Division and will depend on the conditions the contributed funds agreement must address.
7. **Identification of Water Rights.** The RD will determine if project water rights exist to utilize additional project capacities resulting from the development of additional project benefits. If existing project water rights are insufficient to utilize additional project capacities, the RD will determine if new water rights may be acquired or if non-project water rights are available to utilize the additional project capacities. If insufficient water rights from either project or non-project sources exist to fully utilize the additional project benefits, the RD will recommend to the Director that further development of additional project benefits be postponed until water rights are identified.
8. **Title to Remain with the U.S.** Title to project works which are constructed to develop additional project benefits will remain with the U.S. unless otherwise provided by the Congress.
9. **Definitions.**
- A. **Additional Project Benefits.** Including but not limited to, additional conservation storage capacity, developed in conjunction with a proposed SOD modification and increases the benefits provided by a project beyond those existing at the time a SOD modification is undertaken. This increase may only be realized through an expansion of the existing authorized project purposes.
- B. **Non-federal Partner.** Entity seeking development of additional benefits.

³The Assurance of Funds requirement may be waived if the beneficiary instead provides a surety bond for the estimated costs of developing additional project benefits.

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

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Filed by: _____

Date: _____