Reclamation Manual

Directives and Standards

Subject: Crediting of Incidental Revenues

Purpose: Provides the statutory requirements for the disposition of revenues generated by the incidental uses of lands and facilities under the administrative control of Reclamation. This Directive is necessary to ensure that these incidental revenues, which are Federal moneys, are accurately disposed of in accordance with Reclamation and other Federal laws.

Authority: See paragraph 11 for a complete, chronological list of Reclamation and other Federal Statutes which provides specific statutory authorities for the disposition of the various incidental revenues.

Contact: Policy Office; Reclamation Law, Contracts, and Repayment Office; D-5200

1. Introduction.

A. The development of water projects by Reclamation required the inclusion of lands necessary for the operation of the projects. These lands were either withdrawn from settlement, sale, location of minerals, or entry under the general land laws or acquired by purchase, condemnation, or donation from private landowners. Although these lands were withdrawn or acquired for Reclamation project purposes, the Secretary of the Interior (Secretary) was granted broad authority to allow use of the lands for incidental purposes including but not limited to grazing, farming, rights-of-way, cabin sites, and commercial purposes, to the extent such uses do not affect or interfere with project operations.

B. The Secretary also has authority to allow the use of project facilities for such activities as concessions, boat docks and marinas, to sell or lease surplus project water, and to use facilities for the storage and conveyance of non-project water. Revenues generated from these activities on Reclamation lands and facilities are considered incidental to the Congressionally authorized project purposes. Thus, although the revenues generated by these activities and those listed in the previous paragraph have been historically called "miscellaneous revenues," they are more accurately referred to as "incidental revenues."

C. Revenues received from the incidental use of Reclamation project lands and facilities are Federal moneys and are not the property of water districts, power entities, municipalities, or individuals. (Water districts, power entities, municipalities, or individuals are hereinafter referred to as contractors.)

D. Additional information and guidance may be found in the *Revenue Management Reference Manual*, issued in March 1998, and in the Reclamation Manual, Directives

and Standards, *Use of the Collection Information Form for Incidental Revenues,* PEC 03-02.

E. This Directive supersedes both the sunset Reclamation Instructions (RI) Series 480, Part 499.2, *Disposition of Miscellaneous Revenues*, in its entirety; and the various chapters and paragraphs relating to revenues disposition located in RI Series 210, Part 215, *Land Management*.

2. Responsibility.

A. Congressional action is necessary in order to change any current revenue crediting requirement established by law. The method of crediting of revenues is not discretionary in contract negotiations nor is it subject to arbitrary changes in Reclamation policy.

B. Regional Directors will be responsible for the implementation of this Directive which provides the necessary legal foundation for accurately crediting incidental revenues generated from the use of Reclamation lands and facilities. The Regional Directors are to ensure that all incidental revenues are credited in accordance with Reclamation and other Federal laws contained in this Directive.

C. Staff in the Denver, regional, area, and other field offices, especially in the functional areas of contracting and repayment, finance and accounting, lands, recreation, and concessions management, are responsible for following the requirements of this Directive in order to comply with the statutory requirements for the disposition of the specific incidental revenues listed herein.

3. Exclusions. This Directive does not pertain to disposition of moneys received by Reclamation for the following activities:

A. Annual or other periodic obligations paid in accordance with repayment and water service contracts.

B. Operation, maintenance, and replacement expenses paid by contractors.

C. Contracts with non-Federal public entities (i.e., State game and parks departments) made pursuant to the Federal Water Project Recreation Act (Public Law 89-72), as amended, [16 U.S.C. § 460*l*-17(g)].

D. Marketing of power by Western Area Power or Bonneville Power Administrations.

E. Leases of power privilege.

F. Any moneys received on a known reimbursable basis for goods and services provided by Reclamation. Examples of services provided by Reclamation are:

(1) Reclamation's Administrative Fees (also called Costs for Administrative Services) assessed under 43 CFR 429 (Issuing Rights-of-Use Authorizations) incurred by Reclamation staff to process the issuance of right-of-use instruments (such as leases). [The incidental revenues received from the value of the rights-of-use, as prescribed by 43 CFR 429, are part of the scope of this Directive (see paragraph 4B below.)]

(2) Reimbursable services provided to other Federal agencies authorized under the Economy Act.

4. Crediting of Incidental Revenues. Incidental revenues are Federal moneys and their crediting is governed by numerous statutory authorities (see paragraph 11 below). Congress has established a scheme for the distribution of these revenues as indicated by the specific statutes covered in this Directive. Reclamation does not have authority to change this revenue distribution scheme in dealings with a particular contractor and must follow Congress's instructions. To the extent that Congress's instructions do not specifically address the disposal of incidental revenues on acquired lands, Reclamation has adopted a policy consistent with the overall distribution scheme which must be followed in crediting revenues to a contractor. (See paragraph 7C below.)

A. Statutory Authority. In order to determine the appropriate method of crediting, three statutory authority categories must be consulted in the following priority:

(1) Project Authorization. If a specific project authorization provides for the crediting of some or all incidental revenues, then such crediting procedures must be followed. (It is important to research the project authorizing legislation first as Congress sometimes details crediting allowances unique to a specific project in such statutes.)

(2) Congressionally Approved Contracts. If a Congressionally approved contract provides for crediting of specific revenues, then that revenue crediting procedure must be followed. As with specific project authorization, Congress may have approved a contract between Reclamation and a contractor which contains unique crediting provisions. This type of contract, including its revenues provision(s), has the full force and effect of law.

(3) General Reclamation Law and Other Federal Statutes. If specific project authorization or Congressionally approved contracts do not explicitly address

revenues disposition, then it is mandatory that this Directive be followed. This Directive outlines the requirements of general Reclamation law and other Federal statutes that provide for the appropriate crediting of incidental revenues.

B. Revenue Crediting Methods. Revenues generated from the value of the rights-of-use instrument (such as a grazing lease) shall be credited in accordance with this Directive. The value of the rights of use (a grazing lease payment) may not be utilized by Reclamation offices to offset administrative fees (costs for administrative services) of issuing rights of use and must be credited using one of the following methods, as applicable:

(1) Credit to the Project or Tail-End Credit. This method credits incidental revenues against the project's construction costs without reducing a contractor's current annual repayment obligation. This method accelerates the return of construction costs of that project to the Reclamation fund and reduces the amount of the contractor's total outstanding construction repayment obligation, while not reducing the amount of their annual construction repayment obligation.

(2) General Credit. This method applies incidental revenues as a general credit to the Reclamation fund without providing a credit either to the project or to the contractor.

(3) Direct or Front-End Credit. Under a unique set of criteria, this method credits only those incidental revenues from a certain type of project power, grazing and farming on project lands, and the sale or use of town site lots directly to the contractors in the following priority to (a) the annual repayment obligations of the contractor, (b) the annual operation and maintenance (O&M) expenses, or (c) as the contractor directs for project purposes. (See paragraph 9A(2) below, for criteria.)

(4) Special Accounts or Revolving Funds. This method credits revolving funds or special accounts which are authorized under specific legislation. The respective statutes should be consulted to determine what types of revenues are authorized to be credited to these funds/accounts.

5. **Land Status, Facilities, and Their Relation to Reimbursable Project Costs.** In determining how revenues are to be credited, the most important question is whether or not Congress intended that the contractors reimburse the United States for the costs of the land or project facilities from which the incidental revenue is derived. Most revenue from withdrawn lands will be a general credit to the Reclamation Fund, with the exception of the sale of improved withdrawn project lands or where improvements to withdrawn land have been charged to the project reimbursable costs and directly benefit the incidental use of the withdrawn land. Most revenue from acquired

lands will be a credit to the project for which the land was acquired with the exception of donated acquired project lands. The following specific circumstances of each project must be known before reaching a conclusion as to proper revenue disposition:

A. Withdrawn Project Lands. Generally, revenues derived from withdrawn lands are a general credit to the Reclamation fund. In the Sundry Civil Expenses Appropriation Act of July 19, 1919, 41 Stat. 202, at 43 U.S.C. § 394, Congress provided that all revenues from leasing lands withdrawn or reserved for the Reclamation program, or from the sale of any non-mineral products from those lands, should go as a general credit to the Reclamation fund. (Reserved lands are those public domain lands set aside for the protection or operation of a reservoir.) The accumulation of this revenue in the Reclamation fund was augmented by the Mineral Leasing Act of 1920, 30 U.S.C. § 191, which provided that certain types of minerals, such as coal and phosphate, could be leased from public domain and withdrawn project lands and the revenues should also be general credit to the Reclamation fund. It should be noted that the Mineral Leasing Act included revenues from lands unrelated to the Reclamation program (that is, public domain) as well as Reclamation withdrawn project lands.

B. Improved Withdrawn Project Lands. Congress provided in the Sale of Surplus Improved Public Lands Act, 41 Stat. 605, at 43 U.S.C. § 375, that the revenues derived from the sale of improved withdrawn project land should be credited to the project or tail-end credit for which such lands had been withdrawn, where the cost of the improvements to that land had been charged to the project. However, revenues from leases for mineral extraction from improved withdrawn lands are still a general credit to the Reclamation fund because the improvement to the surface of the land does not add value to the subsurface minerals. As another example, if a grazing lease is permitted on improved withdrawn land, and the improvement is a ditch rider's house that was charged to the cost of the project repayment, the grazing lease revenues should still be treated as a general credit to the Reclamation fund as the improvement adds no additional value to the fair market value of the grazing lease.

C. Acquired Project Lands. Revenues from acquired project lands should be applied as a credit to the project or tail-end credit where the contractors are obligated to reimburse the United States for the costs of the land which produced the revenue.

D. Donated Acquired Project Lands. Where the land was donated to the project, and the cost of the land was not included in the reimbursable project costs, revenues should go as a general credit to the Reclamation fund.

E. Project Facilities. The reimbursability of the cost of the project lands upon which Reclamation facilities are located is not a determining factor in crediting revenues

from those project facilities. The statutes listed in this Directive authorizing the use of facilities for specific incidental purposes provide for the crediting of those revenues.

6. Incidental Revenues Must be Deposited in the Treasury. All incidental revenues collected by a non-Federal entity (such as a water district or other contractor) on behalf of Reclamation will be remitted in a timely fashion to a designated Reclamation lock box in the U.S. Treasury for disposition in accordance with this Directive. The contractors may not apply the revenues directly against their annual repayment obligations or O&M expenses even if the contractor is authorized to receive front-end credits. Revenues received from the incidental use of Reclamation project lands and facilities are Federal moneys and are not the property of the water districts or other contractors.

7. Credit to the Project or Tail-End Credit.

   A. Definition. Revenues generated by the authorized, incidental use of lands acquired by Reclamation for project purposes or the use of facilities, where the cost of the land or the construction costs of those facilities were charged to the project, are to be deposited into the Reclamation fund as a credit to the project or tail-end credit. This method of crediting may be used to offset the remaining reimbursable construction costs for that project, but may not relieve the contractors of their annual construction repayment obligations. This method accelerates the United States's recovery of the reimbursable construction costs.

   B. Special Criteria. Revenues applied as a credit to the project or tail-end credit:

      (1) May not be used to offset annual O&M expenses owed by the contractors;

      (2) May not be applied pursuant to contract provisions that are not authorized under Reclamation or other applicable Federal law as outlined in this Directive, even if current contracts between Reclamation and contractors contain such revenue crediting provisions.

      (3) Will be applied as a "statutory credit to the project" for appropriate future construction after all current reimbursable project construction obligations have been repaid. ("Statutory credit to the project" refers to credits to a project where no remaining reimbursable construction obligation remains.) In this case, revenues are credited to the project and may be only used to defray the cost of future project construction, if that construction is authorized and these funds are appropriated by Congress.

C. Incidental Revenues From Acquired Project Lands.

(1) The 1911 Sale of Surplus Acquired Lands Act, 36 Stat. 895, at 43 U.S.C. § 374, is the only statute in which Congress provided express direction on the disposition of revenues from Reclamation acquired project lands. Under the 1911 Act, lands which had been acquired for the Reclamation program, but no longer needed for the purposes for which they had been acquired, could be sold and the proceeds placed as a credit to the project for which the lands had been acquired. However, in various statutes Congress has directed that revenues derived from project lands or facilities be credited to the project when the cost of the land acquisition, or the cost of the facilities, was charged to the project construction repayment. Therefore, all incidental revenues generated from various leasing activities on acquired project land should also be a credit to the project when the cost of the land or facility is reimbursable and has been charged to the project construction cost.

(2) Note that if the acquired land was "donated" to the project, and the contractors incurred no obligation to reimburse the United States for the cost of that land, then incidental revenues from leasing of these donated lands must go as a general credit to the Reclamation fund.

D. Credit to the Project. The revenue generated from the following specific incidental use activities are credits to the project or tail-end credits. Most of these activities are associated with the use of lands that were acquired and charged to the project construction repayment costs. Revenues from the sale of improved withdrawn lands, that have been improved at a cost to the project, are a credit to the project. There may be circumstances where incidental use of improved withdrawn land actually benefits from a specific improvement. As an example, a grazing lease on withdrawn lands may benefit from a perimeter fence improvement and the cost of that improvement was charged to the reimbursable costs of the project. In this type of situation, the revenues from that lease would be applied as a credit to the project.

(1) Leases, Licenses, Permits, and Other Rights-of-Use on Acquired Project Lands.

(a) Agricultural leases such as dairy farms or feed lots on acquired project lands will be a credit to the project.

(b) Cabin site rentals or residential leases on acquired project land for a fixed rent for a specified amount of time will be a credit to the project.

(i) Exception: Does not include a one-time recreation user, concession and franchise fee each time a recreational facility is used if the facility was authorized under the 1965 Land and Water Conservation Fund Act, as amended. (See paragraph 10A below.)

(c) Commercial leases (long term) for permanent structures (such as an oil refinery or garage) on acquired project lands, which is associated with commercial developments and detailed on land use plans, will be a credit to the project.

(d) Communication site permits (such as microwave or telecommunication sites) on acquired project lands will be a credit to the project.

(e) Crossing permits (such as rights-of-way for public access) across Reclamation acquired project lands will be a credit to the project.

(f) Grazing or farming leases on acquired project lands (except when a contractor is entitled to front-end credits under Subsection I of the Fact Finders' Act of 1924) will be a credit to the project.

(g) Other non-mineral rights-of-use authorizations issued on acquired project lands, including but not limited to, rights-of-way or easements for transmission lines, public roads, telecommunication lines, and other destination access requirements, will be a credit to the project.

(2) Similar Incidental Activities on Improved Withdrawn Project Lands. The incidental use activities described in paragraphs (a) through (g) above, which occur on improved withdrawn project lands where the improvement has been charged to the project reimbursable costs and the activity generating the revenue is using or benefitting from the improvement, will be applied as a credit to the project.

(3) Recreation Activities on Acquired and Improved Withdrawn Project Lands. Receipts from licenses, permits, leases, or concession and user fees from recreation activities on acquired project lands and improved withdrawn project lands (where the cost of the improvement is charged to the project and the recreation activity is using or benefitting from the improvement) authorized under the Federal Water Project Recreation Act, 16 U.S.C. § 460*l*-12, as amended by Public Law 102-575, Title XXVIII, sec. 2803(1), are a credit to the project.

(4) Mineral Deposits and Geothermal Steam Extraction, and Mineral and Building Materials Removal From Acquired Project Lands.

(a) Mineral deposit (subsurface estate) leases for the extraction of oil, gas, gilsonite, hydrocarbons, sulfur, potassium, phosphate, sodium, potash, oil shale, and coal on Reclamation acquired project lands are authorized under the Mineral Leasing on Acquired Lands Act of 1947, 61 Stat. 913, 30 U.S.C. §§ 351-59, as amended. Section 355 of this Act provides that revenues from such leases are to be distributed in the same manner as other revenues from the same lands. Therefore, revenues from incidental uses of lands acquired for a Reclamation project and charged to that project on a reimbursable basis, should be credited to the project in which the lands are located. Revenues from the incidental uses of these lands are collected by Minerals Management Service (MMS) and 100 percent is transferred to Reclamation to be applied as a credit to the project in which the lands are located.

(b) Pipelines rights-of-way for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product across Reclamation acquired project lands. The Mineral Leasing on Acquired Lands Act of 1947 does not expressly provide for the disposition of this type of revenue. However, as previously stated, it is Reclamation policy to distribute similar revenues from acquired lands according to the formula described in the Mineral Leasing on Acquired Lands Act of 1947, 61 Stat. 913, at 30 U.S.C. § 355, as amended. Thus, when these revenues are collected by MMS and 100 percent is transferred to Reclamation, they are applied as a credit to the project in which the lands are located.

(c) Geothermal steam lease revenues from the extraction of geothermal steam reserves located in acquired project land are authorized under the Geothermal Steam Act of 1970, 30 U.S.C. 1001, et seq., as amended. Under Section 1019 of this Act, revenues from these lands are credited according to the formula described in the Mineral Leasing on Acquired Lands Act of 1947, 61 Stat. 913, at 30 U.S.C. § 355, as amended. These revenues are collected by MMS and 100 percent is transferred to Reclamation to be applied as a credit to the project in which the lands are located.

(d) Mineral materials leases or permits for removal of common varieties of sand, gravel, and building materials (such as timber) from acquired project lands under the jurisdiction of Reclamation are authorized under Section 10 of the Reclamation Project Act of 1939. All revenues from these incidental

uses of lands acquired for a Reclamation project and charged to that project on a reimbursable basis, are a credit to the project in which the lands are located.

(5) Sale of Acquired, Small Tracts, and Improved Withdrawn Land.

(a) Sale of acquired project lands, that are not needed for project purposes for which they were acquired, will be a credit to the project. Disposition of revenues is authorized under the Sale of Surplus Acquired Lands Act of 1911, at 43 U.S.C. § 374.

(b) Sale of project land units, which were withdrawn from the public domain for project purposes and which have been classified as too small to support a family, will be a credit to the project. Disposition of revenues is authorized under the Disposal of Small Tracts Act of 1950, at 43 U.S.C. § 375e.

(c) Sale of lands withdrawn from the public domain for project purposes, improved at the expense of the project but which are no longer needed for project purposes, will be a credit to the project. Disposition of revenues is authorized under the Sale of Surplus Improved Public Lands Act of 1920, at 43 U.S.C. § 375.

(6) Sale of Water.

(a) The sale of surplus project water for irrigation purposes is authorized by the Warren Act of 1911, 36 Stat. 925, 43 U.S.C. §§ 523-525. These revenues should be credited in accordance with the Fact Finders' Act of 1924, Subsection J, at 43 U.S.C. § 526, as a credit to the project from which the water is supplied.

(b) The sale of surplus project water for municipal, industrial, or domestic or other non-irrigation purposes is authorized by the Sale of Water for Miscellaneous Purposes Act of 1920, 41 Stat. 452, at 43 U.S.C. § 521. Revenues derived from such sales are to be applied as a credit to the project from which the water is supplied.

(c) Section 390tt of Reclamation Reform Act authorizes temporary (not to exceed 1 year) supplies of project water, which cannot be stored or managed because of its unusually large volume or flood origins, may be made available for irrigation, municipal, or industrial purposes to the extent a contract is entered into pursuant to the following authorities:

(i) Sale of Water for Miscellaneous Purposes Act of 1920, at 43 U.S.C. § 521. Under this authority water can be contracted for non-irrigation purposes, and the revenues are applied as a credit to the project.

(ii) Warren Act of 1911, as supplemented by Subsection J of the Fact Finders' Act of 1924, at 43 U.S.C. § 526. Under this authority water can be contracted for irrigation purposes, and the revenues are applied as a credit to the project.

(iii) Section 9 of the Reclamation Project Act of 1939. Revenues from contracts executed under this authority are not considered incidental and are treated in the same manner as other water service and repayment contract payments.

8. General Credit to the Reclamation Fund.

A. Definition. Revenues generated from (1) the authorized, incidental use of lands withdrawn by the United States for Reclamation project purposes; (2) certain authorized uses of public domain land; and (3) the use of acquired project lands donated to a Reclamation project at no cost to the project repayment, are a general credit to the Reclamation fund. When revenues are a general credit to the Reclamation fund, rather than a credit to a specific project, they are not targeted for a specific function or project, but must be spent as directed by the laws that govern the use of the Reclamation fund.

B. General Credit to the Reclamation Fund. The following sources of revenue are to be deposited as a general credit to the Reclamation fund. Generally, incidental revenues from the use of improved withdrawn lands, which have been improved at the expense of the project, are a general credit to the Reclamation fund. The reason for this is that the actual improvements on withdrawn project lands are typically paid for by the user of the improvement, and do not add value to the incidental use of the land.

(1) Leases, Licenses, Permits, and Other Rights-of-Use on Withdrawn Project Lands.

(a) Agricultural leases such as dairy farms and feed lots on withdrawn project lands will be a general credit to the Reclamation fund as authorized in the Sundry Civil Expenses Appropriation Act of July 19, 1919 (Act of 1919), at 43 U.S.C. § 394.

(b) Cabin site rentals or residential leases on withdrawn project lands for fixed rent for a specified amount of time will be a general credit to the Reclamation fund as authorized in the Act of 1919, at 43 U.S.C. § 394.

(i) Exception: Does not include a one-time recreation user, concession and franchise fee each time a recreational facility is used if that facility was authorized under the 1965 Land and Water Conservation Fund Act. (See paragraph 10A below.)

(c) Commercial leases (long term) for permanent structures (such as an oil refinery or garage) on withdrawn project lands, which are associated with commercial developments and detailed on land use plans, will be a general credit to the Reclamation fund as authorized in the Act of 1919, at 43 U.S.C. § 394.

(d) Communication site permits (such as telecommunication or microwave sites) on withdrawn project lands will be a general credit to the Reclamation fund as authorized in the Act of 1919, at 43 U.S.C. § 394.

(e) Crossing permits (such as rights-of-way for public access) across Reclamation withdrawn project lands will be a general credit to the Reclamation fund as authorized in the Act of 1919, at 43 U.S.C. § 394.

(f) Grazing or farming leases on withdrawn project lands (except when a contractor is entitled to front-end credits under Subsection I of the Fact Finders' Act of 1924) will be a general credit to the Reclamation fund as authorized in the Act of 1919, at 43 U.S.C. § 394.

(g) Other non-mineral rights-of-use authorizations issued on withdrawn project lands, including but not limited to, rights-of-way or easements for transmission lines, telecommunication lines, public roads, and other destination access requirements will be a general credit to the Reclamation fund as authorized in the Act of 1919, at 43 U.S.C. § 394.

(2) Similar Incidental Activities on Donated Acquired Project Lands. The incidental use activities described in paragraphs (a) through (g) above, which occur on donated acquired project lands, should also be applied as a general credit to the Reclamation fund.

(3) Recreation Activities on Withdrawn and Donated Acquired Project Lands. Receipts from licenses, permits, leases, or concession and user fees from recreation activities on withdrawn and donated acquired project lands are

authorized under the Federal Water Project Recreation Act (Public Law 89-72) as amended by Public Law 102-575, Title XXVIII, Section 2803(1). These revenues will be a general credit to the Reclamation fund as authorized in the Act of 1919, at 43 U.S.C. § 394.

(4) Mineral Deposits and Geothermal Steam Extraction, and Mineral, Building and Vegetative Materials Removal From Withdrawn and Donated Acquired Project Lands, and Public Domain Lands.

(a) Mineral deposit lease revenues resulting from the extraction of oil, gas, gilsonite, phosphate, potassium, coal, hydrocarbons, oil shale, potash, sulfur, and sodium from public domain lands (public domain lands are lands that have always been owned by the United States) and withdrawn project lands (including improved withdrawn lands) are collected by the Minerals Management Service (MMS). MMS then distributes 40 percent to Reclamation where it is placed as a general credit to the Reclamation fund, 50 percent goes to the State, and 10 percent is credited to the general fund of the Treasury (except when derived from lands in Alaska, in which case 90 percent is paid to State and 10 percent is credited to the general fund of the Treasury). This disposition formula is authorized by the Mineral Leasing Act of 1920, Section 35, at 30 U.S.C. § 191, as amended.

(b) Pipelines rights-of-way for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product across Reclamation withdrawn project lands. Using the same revenue disposition formula as mineral deposit leases in paragraph (a) above, these lease revenues are collected by the MMS and 40 percent is distributed to Reclamation where they are applied as a general credit to the Reclamation fund as authorized by the Mineral Leasing Act of 1920, Section 35, at 30 U.S.C. § 191, as amended.

(c) Geothermal steam lease revenues from the extraction of geothermal steam from withdrawn Reclamation project and public domain lands are authorized under the Geothermal Steam Act of 1970, 30 U.S.C. § 1001, et seq., as amended. Under Section 1019 of this Act, revenues from these lands are credited according to the formula described in the Mineral Leasing Act of 1920, at 30 U.S.C. § 191, as amended. Like mineral deposit leases in paragraph (a) above, these lease revenues are collected by the MMS and 40 percent is distributed to Reclamation where they are applied as a general credit to the Reclamation fund.

(d) When distributing revenues from donated acquired project lands generated from activities listed in paragraphs (a), (b), and (c) above, 100 percent of these revenues are transferred from MMS to Reclamation where they are applied as a general credit to the Reclamation fund (not as a credit to the project) as authorized by the Mineral Leasing Act on Acquired Lands of 1947, at 30 U.S.C. §355.

(e) Mineral materials leases or permits for removal of common varieties of sand, gravel, and building materials (such as timber) from withdrawn project lands under the jurisdiction of Reclamation are authorized under Section 10 of the Reclamation Project Act of 1939, at 43 U.S.C. § 387. Revenues from these sources are a general credit to the Reclamation fund as authorized by the Sundry Civil Expenses Appropriation Act of July 19, 1919, at 43 U.S.C. § 394.

(f) Mineral materials leases or permits for removal of common varieties of sand, gravel, and vegetative materials from public lands under the jurisdiction of the Bureau of Land Management (BLM), are authorized under the Mineral Materials Act of 1947, 30 U.S.C.§ 601, et seq., as amended. Section 603 of this Act provides that such revenues be disposed of in the same manner as those derived from the sale of public lands. The Reclamation Act of 1902 at 43 U.S.C. § 391 provides that 95 percent of the net revenues from the sale of public lands are transferred from BLM to Reclamation for deposit as a general credit to the Reclamation fund.

(5) Sale of Withdrawn or Public Domain Land.

(a) Sale of public domain lands. Under the Reclamation Act of 1902, at 43 U.S.C. § 391, as amended, 95 percent of the net revenues from the sale of public lands are a general credit to the Reclamation fund.

(i) Exception: For disposition of revenues from (1) the sale of project withdrawn lands which are classified as too small to support a family and (2) the sale of withdrawn project lands which have been improved at a cost to the project reimbursable costs, refer back to paragraphs 7(4)(b) and (c), respectively.

(b) Sale of town site lots (unless contractor has authorized benefits of front-end crediting under Subsection I of the Fact Finders' Act of 1924) will be applied as a general credit to the Reclamation fund as authorized by the Town Sites and Power Development Act of 1906, at 43 U.S.C. § 562.

(6) Storage and Conveyance of Non-Project Water. Storage and/or conveyance of non-project water using project facilities for irrigation purposes will be applied as a general credit to the Reclamation fund as authorized under the Warren Act of 1911, Section 3, at 43 U.S.C. § 525.

9. Direct or Front-End Credit.

A. Fact Finders' Act of 1924, Section 4, Subsection I , 43 U.S.C. § 501. This Act provides for the direct crediting of net profits from specific revenue sources if the contractor has (1) explicit language in their contract that provides for Subsection I revenue crediting; (2) a contract which was entered into between December 5, 1924 (date of the Fact Finders' Act), and prior to the enactment of the Hayden-O'Mahoney Amendment on May 9, 1938; and (3) assumed O&M responsibilities for the project (or a division thereof). Net revenues are credited in priority first to the annual construction repayment obligation; second, to the annual operation and maintenance expenses; and then to any project purpose as directed by the contractor.

(1) Sources of Net Profits (Revenues) Applicable to Front-End Crediting. Only the following three specific incidental revenue sources may be directly credited to a contractor when authorized under the criteria listed in paragraph 9A(2) below. Under a direct or front-end crediting situation only, the acquired or withdrawn land status is not a determining factor for revenues disposition.

(a) Grazing and Farming Leases on Reclamation Lands. For contractors who are authorized to receive Subsection I of the 1924 Fact Finders' Act revenue credits, grazing and farming revenues from either acquired or withdrawn lands are the first type of revenues which may be a direct or front-end credit.

(b) Sale or Use of Town Site Lots. These revenues are generated from the sale or any use of lands that have been classed and subdivided as town site lots. For contractors who are authorized to receive Subsection I of the 1924 Fact Finders' Act of 1924 revenue credits, revenues from the sale or use of town site lots are the second type of revenues which may be a direct or front-end credit.

(c) Sale of Power by Non-Federal Entities. Revenues generated by the sale of surplus power generated by a Reclamation-constructed power plant operated by a non-Federal entity. For contractors who are authorized to receive Subsection I of the 1924 Fact Finders' Act of 1924 revenue credits, revenues from sale of power by non-federal entities is the third type of revenue which may be a direct or front-end credit.

(2) The Benefits of Subsection I are Not Automatic. The contractor must meet all of the following criteria in order to receive the benefits of direct crediting:

(a) The contractor's contract (or an amendment thereto) must contain specific language that invokes the Subsection I net revenues crediting procedure as delineated in the Fact Finders' Act of 1924 (see the procedure in paragraph 9A). Inclusion of this language in the contract may be authorized by either the Fact Finders' Act of 1924 or by Section 45 of the Omnibus Adjustment Act of 1926, at 43 U.S.C. § 423d;

(b) The contractor's contract must have been entered into between December 5, 1924 (date of the Fact Finders' Act), and prior to the enactment of the Hayden-O'Mahoney Amendment on May 9, 1938 (43 U.S.C. § 391a-1, 392a); and

(c) The contractor must have assumed O&M responsibilities of the project in order to receive the benefits under Subsection I of the Fact Finders' Act of 1924, or have been granted relief from assuming O&M responsibilities under the authority of Section 45 of the Omnibus Adjustment Act of 1926.

(d) Direct or front-end crediting provisions in contracts between the contractor and Reclamation, which do not meet the criteria in paragraphs (a) through (c) above are unauthorized under Reclamation law and unenforceable.

(3) Omnibus Adjustment Act of 1926, Section 45, 44 Stat. 648, 43 U.S.C. § 423d. This Act authorized the Secretary, at his discretion, to grant contractors from the specific projects mentioned in the Act, the relief provided by the 1924 Fact Finders' Act without assuming O&M of the project. Because the Secretary has discretion, the benefits of Subsection I of the Fact Finders' Act of 1924 were not automatically granted to the contractors that were the beneficiaries of the projects mentioned in the 1926 Act. In order to receive the benefits of Subsection I, the contractor's contract must contain language authorizing Subsection I revenue credits, and the contract (or amendment) must have been executed prior to May 9, 1938, the date of enactment of the Hayden-O'Mahoney Amendment.

(4) Exceptions for Specific Project Authorization or Congressionally Approved Contracts. The contractor does not have to meet the requirements of paragraphs (2)(a) through (2)(c) or (3) above if there is either specific project authorization or a Congressionally approved contract which expressly provides for direct crediting of revenues.

B. The Hayden-O'Mahoney Amendment (43 U.S.C. § 392a) Ended Direct or Front-End Crediting. Enacted on May 9, 1938, this Amendment to the Interior Department Appropriation Act of 1939 ended both the opportunity for the new application of Subsection I of the 1924 Fact Finders' Act and the Secretary's authority to exercise his discretion in accordance with Section 45 of the 1926 Act. Specifically, the Amendment requires that all revenues received by the United States in connection with a Reclamation irrigation project be deposited to the Reclamation fund unless there is an existing law or pre-existing contract (entered into prior to May 9, 1938) which provides otherwise.

C. Net Profits. Subsection I of the 1924 Fact Finders' Act provided for "net profits" to be a direct credit to the contractor. Net profits refers to moneys generated from the use of Reclamation project lands and facilities which are incidental to the project purpose(s) that remain after associated expenses have been deducted. A determination of net profits is derived by deducting from gross revenues the costs of operating, maintaining, or managing the property or facility by the Secretary or the Secretary's designee from the gross revenues. Such a determination may include any cost deemed appropriate by the Secretary but shall not include any guaranteed payment or profit to the repayment entity above actual costs as such a payment or profit would defeat the net profit provision of Subsection I. Subsection I also does not guarantee that net profits will be generated.

10. Special Accounts and Revolving Funds. Special accounts and revolving funds were created by Congress and are operated in support of certain projects or specialized activities. They are maintained separately from the Reclamation fund and are managed and used in accordance with their authorizing legislation. The special accounts and revolving funds (with their respective crediting statutory authorities in brackets or parentheses) are:

A. Recreation, Entrance and User Fees Account. Specific recreation user fees, concession and franchise fees collected under the authority of the Land and Water Conservation Fund Act of 1965, as amended, are credited to the Land and Water Conservation fund as specified in the Omnibus Budget Reconciliation Act of 1987, at 16 U.S.C. § 460*l*-6a.(I)(1)].

B. Lower Colorado River Basin Fund. All revenues collected in connection with the operation of facilities of the Central Arizona Project except those associated with recreation user fees, concession or franchise fees are credited to this fund (Colorado River Basin Project Act of September 30, 1968, Section 403, 43 U.S.C. § 1543).

C. Columbia Basin Land Development Account. All revenues generated by the sale, exchange, or lease of the Columbia Basin Project lands are credited to this account (Columbia Basin Project Act of March 10, 1943, Section 6, 16 U.S.C. § 835c-2).

D. Colorado River Dam Fund. All revenues specific to the Boulder Canyon Project, including the user and visitor fees and concessions fees specific to Hoover Dam and visitor center, are credited to this fund (Boulder Canyon Project Act of December 21, 1928, Section 2, 43 U.S.C. § 617a).

E. Upper Colorado River Basin Fund. All revenues derived from the initial units of the Upper Colorado River Storage Project and participating projects are credited to this fund (Colorado River Storage Project Act of April 11, 1956, Section 5, 43 U.S.C. § 620d).

F. North Platte Project Fund. Only those specific revenues listed under Subsections I and J of the Fact Finders Act of 1924 derived from the North Platte Project are deposited into this special fund (Amended Contracts, North Platte Project Act of July 17, 1952, Section 4, 66 Stat. 755 and the Amended Contract with Northport Irrigation District of August 13, 1957, 71 Stat. 342).

11. Statutes for Crediting the Revenues Listed in This Directive.

A. Chronological List of Reclamation and Other Federal Statutes.

- The Reclamation Act, June 17, 1902, Section 1 (43 U.S.C. § 391)
- Town Sites and Power Development, April 16, 1906, Section 2 (43 U.S.C. § 562)
- Sale of Surplus Acquired Lands, February 2, 1911, Section 3 (43 U.S.C. § 374)
- Warren Act, February 21, 1911, Section 3 (43 U.S.C. § 525)
- Sundry Civil Expenses Appropriations Act for 1920, July 19, 1919 (43 U.S.C. § 394)
- Mineral Leasing Act, February 25, 1920, Section 35 (30 U.S.C. § 191)
- Sale of Water for Miscellaneous Purposes, February 25, 1920 (43 U.S.C. § 521)
- Sale of Surplus Improved Public Lands, May 20, 1920, Section 3 (43 U.S.C. § 375)
- Second Deficiency Appropriation Act for 1924 (Fact Finders' Act), December 5, 1924, Section 4, Subsections I and J (43 U.S.C. §§ 501, 526), respectively
- The Omnibus Adjustment Act, May 25, 1926, Section 45 (43 U.S.C. § 423d)
- Boulder Canyon Project Act, December 21, 1928, Section 2 (43 U.S.C. § 617a)

- Hayden-O'Mahoney Amendment to the Interior Department Appropriation Act, 1939, May 9, 1938 (43 U.S.C. §§ 391a-1, 392a)
- Columbia Basin Project Act, March 10, 1943, Section 6 (16 U.S.C. § 835c-2)
- Mineral Materials Act of 1947, July 31, 1947 (30 U.S.C. § 603)
- Mineral Leasing Act for Acquired Lands, August 7, 1947 (30 U.S.C. § 355)
- Disposal of Small Tracts, March 31, 1950, Section 4 (43 U.S.C. § 375e)
- Amended Contracts, North Platte Project, July 17, 1952, Section 4 (66 Stat. 755)
- Colorado River Storage Project, April 11, 1956, Section 5 (43 U.S.C. § 620d)
- Amended Contract with Northport Irrigation District, August 13, 1957, Section 1 (71 Stat. 342)
- Land and Water Conservation Fund Act of 1965, September 3, 1964, as amended at 16 U.S.C. § 460*l*-6a
- Colorado River Basin Project Act, September 30, 1968, Section 403 (43 U.S.C. § 1543)
- Geothermal Steam Act of 1970, December 24, 1970, Section 20 (30 U.S.C. § 1019)

B. Solicitors' Opinions. In addition to these statutory authorities, the following Department of the Interior Solicitors' opinions were also relied upon for guidance and interpretation of the applicability of some of the above statutes.

- Phoenix Field Solicitor Bob Moeller's Opinion of March 5, 1990, LBR.PX.4200
- Associate Solicitor Lawrence J. Jensen's Draft 1988 Opinion, LBR.ER.0237
- Solicitor Martin L. Allday's Opinion of September 8, 1989, M-36969
- Assistant Solicitor Joseph M. Oglander's Opinion of April 22, 1992 (unnumbered)