

Reclamation Manual

Directives and Standards

Subject: Reclamation Standard Water-Related Contract Articles, Article 2: Failure to Complete Work (Federally Assisted Programs)

Purpose: To commit Reclamation's Standard Contract Article 2 to the Reclamation Manual, introduced by a brief description and direction regarding its use, for the benefit of making it easily accessible and promoting Reclamation-wide consistency in its use and content.

Authority: The Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), and acts amendatory and supplementary thereto.

Approving Official: Director, Office of Program and Policy Services

Contact: Office of Program and Policy Service; Contracts Services Office, 84-56000

1. **Failure to Complete Work (Federally Assisted Programs).** This article is included in contracts that authorize a contractor to undertake construction activities for Reclamation. Should the contractor fail to complete the work, it permits the United States to complete the work or declare it completed and initiate any repayment due from the contractor. It also requires that any funds advanced to but unexpended by the contractor be returned to the United States and authorizes the United States to take over facility operation and maintenance. The charts included in Reclamation Manual Policy PEC P10 specify which contract types require standard article 2.

2. **Reclamation Standard Contract Article 2.**

(Federally Assisted Programs)

FAILURE TO COMPLETE WORK¹

(a) In the event that the Contractor fails to complete the work to be performed pursuant to this contract for any reason other than the failure of the United States to appropriate and allocate funds, the Contractor shall, upon receipt of written notice from the Contracting Officer, suspend payment on all current contracts and return to the United States any unexpended balance of funds advanced by the United States and contributed by the Contractor in such amounts as determined to be equitable by the Contractor Officer. Following delivery of the notice, the Contracting Officer may adopt either of the following two alternatives:

¹Approved 2/71; Revised 11/84; Input 10/89; Revised 01/02.

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(1) Perform, or cause to be performed, all or any part of the work remaining under this contract and within the limits of the funds provided herein by the United States and by the Contractor for the project, as well as operate and maintain the project concurrently. The Contractor shall transfer to the United States custody and use of all equipment, materials, and supplies used or useful in the performance of the work; permit the United States, its contractors, and its agents ingress to and egress from lands, project works, and facilities of the Contractor for the performance of such work; and assign to the United States the Contractor's interest in any contract for the performance of work or the supplying of equipment or material in connection with such work where requested by the United States and agreed to by the other contracting party; or

(2) Declare the project substantially complete within the provisions of this contract by giving written notice to the Contractor that (a) the construction work on a feature is substantially complete, or (b) the feature is providing benefits and services for the intended purpose(s), or (c) the feature is generating revenue, where applicable.

Repayment of the loan obligation shall be carried out in accordance with the provisions of this contract; *Provided, That* the first annual payment shall become due in the year following the year in which the Contractor is notified of such declaration of completion.

(b) In the event the United States shall proceed as provided in (a)(1) of this article, the United States may, at any time and regardless of the progress of work performed thereunder, declare the project complete by giving written notice thereof to the Contractor, in which event the provisions of (a)(2) of this article shall apply; *Provided, That* the loan obligation shall not exceed the limitation specified in this contract, including all expenditures made pursuant to provisions of (a)(1) of this article.

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(c) Upon giving written notice of project completion to the Contractor as provided above, the United States shall have the right, without further notice, to take over the care, operation, and maintenance of the project.²

²The article may be revised as necessary for drainage and minor construction contracts. Where references are made to "provisions of this contract," specific article references may be used.