

Reclamation Manual

Directives and Standards

Subject: Reclamation Standard Water-Related Contract Articles, Article 5: Operation and Maintenance of Transferred Works—Payment of Miscellaneous Costs (hold harmless) (Federally Constructed Programs)

Purpose: To commit Reclamation’s Standard Contract Article 5 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), especially section 6 (43 U.S.C. § 498), and acts amendatory and supplementary thereto, especially section 5 of the Reclamation Extension Act of 1914 (Pub. L. 63-170; 43 U.S.C. § 499), and subsection G of the Fact Finder’s Act of 1924 (Pub. L. 68-292; 43 U.S.C. § 500).

Approving Official: Director, Office of Program and Policy Services

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

1. **Operation and Maintenance of Transferred Works: Payment of Miscellaneous Costs (hold harmless) (Federally Constructed Programs).** This article is included in contracts where the United States has built or is building water supply, storage, or conveyance facilities and the potential exists for the contractor to take over the operation and maintenance (O&M) of those facilities. It provides the general conditions under which the contractor may take over the O&M. The charts included in Reclamation Manual Policy PEC P10 specify which contract types require standard article 5.

2. **Reclamation Standard Contract Article 5.**

(Federally Constructed Programs)

OPERATION AND MAINTENANCE OF TRANSFERRED WORKS--
PAYMENT OF MISCELLANEOUS COSTS¹

(a) Upon substantial completion of the project works, or as otherwise determined by the Contracting Officer, and following written notification, the care, operation, and maintenance of any or all of the project 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.

¹ Approved 2/71; Revised 9/82; 11/84; 01/02; 8/05.

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

(c) Necessary repairs of the transferred works shall 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 make the necessary repairs or submit a plan for accomplishing the 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 shall be paid by the Contractor as directed by the Contracting Officer.

(d) The Contractor shall not make any substantial changes in the transferred works without first obtaining written consent of the Contracting Officer. The Contractor shall ensure that no unauthorized encroachment occurs on project land and rights-of-way.

(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 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

² In situations where the United States is responsible for certain costs, sub-article (b) may be modified to reflect such commitments.

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Contractor or the United States on transferred works required under this contract, regardless of who performs those duties. The Contractor does not agree to indemnify the United States for any damages arising from intentional torts or malicious actions committed by employees of the United States.

(f) The Contractor shall cooperate with the Contracting Officer in implementing an effective safety of dam(s) 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.³

(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 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 shall 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

³ In situations where operation and maintenance does not include a dam and related works or a dam and related works is retained by the United States, Section (f) may be omitted and subsequent sections re-lettered appropriately.

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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 shall 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.