

# Reclamation Manual

## Directives and Standards

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- Subject:** Reclamation Standard Water-Related Contract Articles, Standard Article 6: Operation and Maintenance of Project Works (Federally Assisted Construction)
- Purpose:** To provide requirements for the content and application of Standard Article 6: Operation and Maintenance of Project Works (Federally Assisted Construction) (Standard Article 6), for the benefit of supporting general policy and specific requirements set forth in Reclamation Manual Policy PEC P10, *Reclamation Standard Water-Related Contract Articles* (PEC P10).
- Authority:** 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).
- Approving Official:** Director, Policy and Administration
- Contact:** Water and Environmental Resources Division, 84-55000
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1. **Introduction.** This Directive and Standard provides the text for Standard Article 6 and addresses related requirements. Paragraph 6 of PEC P10 indicates which contracts require Standard Article 6. In general, Standard Article 6 is required where the contractor will own and operate and maintain (O&M) facilities constructed with Federal funding. It specifies various rights and obligations of the parties related to O&M of the facilities.
2. **Applicability.** This Directive and Standard applies to Reclamation staff and officials involved in the contracting process, as defined at Paragraph 3.A. of PEC P10, for contracts requiring Standard Article 6 under Paragraph 6 of PEC P10.
3. **Definitions.** See Paragraph 3 of PEC P10.
4. **Responsibilities.** See Paragraph 4 of PEC P10.

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### 5. Text of Standard Article 6.

#### OPERATION AND MAINTENANCE OF PROJECT WORKS<sup>1</sup> (Federally Assisted Construction)

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

(b) Necessary repairs of the project works shall be made promptly by the Contractor. In case of unusual conditions or serious deficiencies in the care, operation, and maintenance of the project 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.

(c) The Contractor agrees to indemnify the United States for, and to 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 Contractor or the United States required under this contract, regardless of who performs

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

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

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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.

(d) The Contractor, as owner and/or operator of the dam(s) and reservoir(s) being constructed, modified, or rehabilitated with reimbursable funds being provided by the United States under provisions of this contract, accepts all responsibility for the structural integrity and safety of the dam(s) and related facilities being constructed, modified, or rehabilitated. The Contractor hereby releases the United States and its officers and employees from any liability whatsoever relating to the coordination of planning, design, construction, operation, and maintenance for dams and related facilities.

(e) The Contractor shall implement an effective dam safety program acceptable to the State(s) of \_\_\_\_\_ in which the facilities are located and consistent with the safety of dams component of the approved contracting authority providing the basis for this contract. If, for any reason, the State(s) decline(s) to review the Contractor's dam safety program, the Contractor shall implement an effective program acceptable to the Contracting Officer. The Contractor agrees to provide the appropriate agency(ies) of the State(s) 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.

(f) The Contractor agrees to request that the State(s) examine and evaluate the dam(s) and related facilities at least once every 3 years for structural integrity and safety. If, for any reason, the State(s) decline(s) to inspect the facilities at 3-year intervals, the Contractor shall, as a minimum, cause safety examinations and evaluations to be performed at 3-year intervals, at its

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own expense, by a qualified and impartial third party acceptable to the State(s) of \_\_\_\_\_ and the Contracting Officer. The Contracting Officer shall be afforded an opportunity to observe the safety of dam(s) examinations and shall be provided copies of reports and recommendations relating to the safety examinations.<sup>3</sup>

(g) In the event the Contractor is found to be operating the project 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 such project works by giving written notice to the Contractor of such election and of 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 notification from the Contracting Officer, the responsibility for 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 the United States following the receipt of a statement from the Contracting Officer for all miscellaneous costs incurred by the United States for any work involved in the administration and supervision of this contract.

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