

Reclamation Manual

Directives and Standards

Subject:	Safety of Dams Modification Reports for Submission to the Congress
Purpose:	To establish requirements for submitting Safety of Dams (SOD) modification reports to the Congress. The benefits of this Directive and Standard (D&S) are improved coordination of the Bureau of Reclamation's dam safety modifications throughout Reclamation, with its beneficiaries, and with the Congress.
Authority:	Reclamation Safety of Dams Act of 1978 (Pub. L. 95-578; 92 Stat. 2471; 43 USC 506, et seq.), as amended (SOD Act)
Approving Official:	Director, Security, Safety, and Law Enforcement
Contacts:	Dam Safety Office (D-84-44000); Reclamation Law Administration Division (84-55000)

1. **Introduction.** Section 5 of the SOD Act prohibits the Secretary of the Department of the Interior from obligating funds in excess of \$20,000,000¹ (October 1, 2015, price levels), as adjusted to reflect any ordinary fluctuations in field costs indicated by applicable engineering cost indexes, for carrying out actual construction for 30 calendar days from the date the modification report on an existing dam has been transmitted to the Congress. The modification report consists of a finding by the Secretary that modifications are required to ensure the safety of an existing dam. Procedures for identifying, communicating, and documenting decisions are described in Reclamation Manual Policy, *Decisions Related to Dam Safety Issues* (FAC P02).
2. **Applicability.**
 - A. This D&S applies to all Reclamation personnel and offices having jurisdiction and oversight responsibility for SOD work associated with high and significant hazard potential dams that are either owned by Reclamation or are included as part of an authorized Reclamation project.
 - B. This D&S establishes the requirements for submitting SOD modification reports for projects with field costs greater than \$20,000,000 to the Congress. Specific direction is provided on the \$20,000,000, as adjusted for inflation, obligation limit for carrying out "actual construction" and what costs are considered to be "actual construction." In addition, this D&S clarifies repayment is based on total costs less the cost associated with the historic preservation compliance activities.

¹Public Law 114-113 (Division D, Title II, Section 203) amended Section 5 of the SOD Act to change the threshold requirement for transmitting a modification report to the Congress from \$1,250,000 to \$20,000,000 (October 1, 2015, price levels).

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3. Definitions.

- A. **Field Cost.** The field cost is an estimate of the capital costs of a feature or project from award to construction closeout. The field cost equals the contract cost plus construction contingencies. Construction contingencies are intended to account for costs resulting from changes in designs and/or differing site conditions encountered during construction. Non-contract costs are not included in this value. (See Reclamation Manual D&S, *Cost Estimating* (FAC 09-01).) This is the “actual construction” referred to in Section 5 of the SOD Act.
- B. **Non-contract Costs.** Costs of work or services provided in support of the project. Examples of non-contract costs are project management; corrective action alternatives development; modification report; design; design data collection; external review; specification preparation; contract procurement support; environmental evaluations and mitigations; historic properties (cultural resources) investigations and actions to comply with Title 54 of the United States Code (USC), part 54 USC 300101, et seq. (formerly known as the National Historic Preservation Act (NHPA)); utility and support infrastructure relocation, repair, or improvement; land acquisitions; repayment activities; construction monitoring and management; final mitigations, restoration, and return to full operational status; and documentation. Note that some noncontract activities may be accomplished using consultant services or contracts not associated with the major construction contract.
- C. **Total Cost.** Field cost and non-contract costs.

4. Responsibilities.

- A. **Chief, Dam Safety Office.** The Chief, Dam Safety Office, in collaboration with the regional director and area manager, is responsible for:
- (1) ensuring modification reports are prepared for SOD modifications; and
 - (2) ensuring the requirements of this D&S are implemented.
- B. **Regional Director and Area Manager.** The regional director and area manager are responsible for:
- (3) collaborating with the Chief, Dam Safety Office for ensuring that the requirements of this D&S are implemented for modification reports under their jurisdiction; and
 - (4) coordinating with beneficiaries on the modification report and corrective action alternatives.

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5. **Modification Report.** Reclamation may obligate up to \$20,000,000, as adjusted for inflation, for construction on SOD work without providing a modification report to the Congress. The \$20,000,000 limitation applies only to funds expended for field costs, not total costs (as defined in Paragraph 3.A.). Reclamation must prepare a high, best, and low estimate for field costs. The most appropriate field cost estimate must be used as the basis for determining if a modification report is required.
- A. **Modification Report Content.** The modification report will include information on the following:
- (1) project background;
 - (2) SOD investigations;
 - (3) consequences of failure;
 - (4) need for corrective action;
 - (5) structural and nonstructural alternatives;
 - (6) economic comparison of alternatives;
 - (7) repayment consideration;
 - (8) environmental impacts;
 - (9) public involvement;
 - (10) participation by project beneficiaries; and
 - (11) recommendations.
- B. **Modification Report Certification Review.** A certification review team shall be established to provide internal independent oversight review for the modification reports for SOD projects. Modification reports are to be reviewed by the project management team, the certification team, and decision makers prior to submission of the reports to the Commissioner.
- C. **Congressional Submittal Review.** The modification report is submitted by the Commissioner to the Congress and must remain in the Congress for 30 calendar days. Reclamation is prohibited by the SOD Act from obligating construction funds before this 30-calendar-day period has ended.
6. **NHPA Compliance - Cost Allocation and Reimbursement.** All costs associated with compliance with the NHPA including survey and other investigations, data recovery,

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analysis, reporting, or preservation of sites, data or collections associated with a SOD modification shall be included in the non-contract cost. In addition, all such costs shall be considered non-reimbursable pursuant to Title 54 USC 312501-312508 (formerly known as the Archaeological and Historic Preservation Act) and Reclamation Manual D&S, *Cultural Resources Management* (LND-02-01). The repayment obligation is determined based on the total costs less costs to comply with NHPA.

7. **Repayment.** Repayment of the costs incurred in the modification of a structure will be performed in accordance with the requirements of Reclamation Manual D&S, *Safety of Dams Repayment* (PEC 05-05). The approval memorandum for the SOD repayment contract is developed by the Reclamation Law Administration Division, 84-55000. The approval memorandum notes the status of the modification report; however, it does not serve as the Commissioner's approval of the modification report.

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.

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Filed by: _____

Date: _____