

# Reclamation Manual

## Directives and Standards

<b>Subject:</b>	Crediting Requirements for Incidental Revenues
<b>Purpose:</b>	To set forth the requirements for disposition of incidental revenues generated from the use of Bureau of Reclamation public lands, facilities, and waterbodies, for the benefit of ensuring that incidental revenues are credited in accordance with applicable authorities and through an efficient process.
<b>Authority:</b>	See Paragraph 9 of this Directive and Standard (D&S).
<b>Approving Official:</b>	Director, Policy and Administration
<b>Contact:</b>	Reclamation Law Administration Division (84-55000)

1. **Introduction.** This D&S sets forth requirements for the disposition of incidental revenues in accordance with the general policy, requirements, and parameters stated in Reclamation Manual (RM) Policy, *Incidental Revenues* (PEC P03). For further associated requirements, see RM D&S, *Use of the Collection Information Form for Incidental Revenues* (PEC 03-02). See Reclamation's *Revenue Management Reference Manual* on the Incidental Revenues Management Intranet site for additional information and guidance.
2. **Applicability.**
  - A. **Personnel.** This D&S applies to Reclamation employees involved in the process of crediting incidental revenues, especially those in the functional areas of water contracting and repayment, finance and accounting, lands, recreation, and concessions management.
  - B. **Revenues.** This D&S applies to revenues that are subject to general crediting requirements, as defined at Paragraph 3.H.(3) of PEC P03. It does not apply to revenues that are subject to project- or contract-specific crediting requirements, as those terms are defined at Paragraphs 3.H.(1) and (2) of PEC P03.
3. **Definitions.** The definitions under Paragraph 3 of PEC P03 apply to this D&S.
4. **Responsibilities.** The statement of responsibilities at Paragraph 4 of PEC P03 applies to this D&S.
5. **General Crediting Requirements.** This paragraph outlines general crediting requirements, as defined at Paragraph 3.H.(3) of PEC P03.
  - A. **Non-Mineral Land Uses under Leases, Licenses, Permits, and Other Land Use Authorizations.** See RM D&S, *Land Use Authorizations* (LND 08-01) for further requirements related to these uses.

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- (1) **Revenue Sources.**
  - (a) Agricultural, farming, grazing, and haying use authorizations.
  - (b) Cabin site rentals or residential use authorizations.
  - (c) Commercial use authorizations (e.g., oil refineries or garages).
  - (d) Communication site use authorizations (e.g., microwave or telecommunication sites).
  - (e) Other non-mineral land use authorizations, such as rights-of-way or easements for transmission lines, public roads, telecommunication lines, use of town sites, crossing permits, and other uses required for access purposes.
- (2) **Crediting.** (See Paragraph 3 of PEC P03 for definitions of terms used herein relating to types of credits and land status.)
  - (a) **Credit to the Project or Tail-end Credit.** Revenues from the sources listed above in subsection A.(1) are credits to the project if they are generated on:
    - (i) acquired (not donated) lands, or
    - (ii) improved withdrawn lands where the cost of the improvement has been charged as a reimbursable project cost and the activity generating the revenue is benefitting from the improvement.
  - (b) **General Credit to the Reclamation Fund.** Revenues from the above sources are general credits to the Reclamation fund if they are generated on:
    - (i) donated acquired lands,
    - (ii) withdrawn lands, or
    - (iii) improved withdrawn lands where the improvement either has not been charged as a reimbursable project cost or does not benefit the revenue-generating activity.
  - (c) **Front-End Credit.** Of the revenue sources listed above in subsection A.(1), only grazing and farming use authorizations produce revenues that may be eligible for front-end crediting in

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accordance with criteria set forth in Paragraph 6.B.(2) (43 U.S.C. § 501). The term “front-end credit” is defined at Paragraph 3.C. of PEC P03.

### B. Recreation.

- (1) **Revenue Sources.** Licenses, permits, leases, and concession and user fees for activities authorized under the Federal Water Project Recreation Act (Pub. L. 89-72, as amended by Pub. L. 102-575, Title XXVIII, Section 2803, 16 U.S.C. § 4601-12, et seq.); and the Federal Lands Recreation Enhancement Act (REA) (Pub. L. 108-447, Section 804; 16 U.S.C. § 6801, et seq.).
- (2) **Crediting.**
  - (a) Revenues from the above sources listed in subsection B.(1) are credited in the same manner that revenues from non-mineral land uses are credited, as set forth above in subsection A.(2).
  - (b) Revenues generated pursuant to REA are retained by the operating entity, with up to 80 percent to be used at the recreation site where the revenues are collected, and if Reclamation is the operating entity, then revenues are credited as set forth above in subsection A.(2)(b) (16 U.S.C. §§ 6806(c)(1), 6807).

### C. Mineral Deposits, Geothermal Steam Extraction, and Pipeline Rights-of-Way.

- (1) **Revenue Sources.** Revenues from the following sources are collected by the Office of Natural Resources Revenue (ONRR) and transferred to Reclamation (see footnotes 1 through 4, below):
  - (c) mineral deposit leases under the Mineral Leasing on Acquired Lands Act of 1947, as amended (30 U.S.C. §§ 351-59) (1947 Act);<sup>1</sup>
  - (d) pipeline rights-of-way for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product;<sup>2</sup> and

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<sup>1</sup>Pursuant to the 1947 Act, ONRR collects these revenues and transfers them to Reclamation in the same manner as other revenues from the same lands (30 U.S.C. § 355).

<sup>2</sup>Though the 1947 Act does not expressly provide for the disposition of this type of revenue, it is Reclamation policy to credit revenues similar to those that the Act does cover and that are generated on acquired lands according to the formula described in the Act.

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- (e) geothermal steam lease revenues from the extraction of reserves under the Geothermal Steam Act of 1970, as amended (30 U.S.C. § 1001, et seq.).

(2) **Crediting.**

- (a) **Credit to the Project or Tail-end Credit.** Revenues from the above sources listed in subsection C.(1) are credits to the project if they are generated on acquired (not donated) lands.
- (b) **General Credit to the Reclamation Fund.** Revenues from the above sources are general credits to the Reclamation fund if they are generated on:
  - (i) Reclamation donated acquired lands; or
  - (ii) any public domain lands, withdrawn lands, or improved withdrawn lands, whether or not they are Reclamation lands.<sup>3</sup>

D. **Mineral Materials Use Authorizations for Removal of Common Varieties of Sand, Gravel, and Other Materials (including building materials, such as timber).**

- (1) **Revenue Sources.** Leases and permits pursuant to section 10 of the Reclamation Project Act of 1939 (1939 Act) (43 U.S.C. § 387) and the Minerals Act of 1947 (30 U.S.C. § 603).
- (2) **Crediting.**
  - (a) **Credit to the Project or Tail-end Credit.** Revenues from acquired Reclamation lands generated pursuant to section 10 of the 1939 Act are credits to the project (43 U.S.C. § 387).
  - (b) **General Credit to the Reclamation Fund.** The following are general credits to the Reclamation fund:
    - (i) revenues from withdrawn lands,<sup>4</sup> and
    - (ii) revenues generated from public lands and transferred to Reclamation from the Bureau of Land Management (BLM).<sup>5</sup>

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<sup>3</sup> ONRR collects these revenues, makes required primary distributions, and distributes 40 percent of the remainder to Reclamation for crediting pursuant to section 35 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. § 191).

<sup>4</sup> See section 10 of the 1939 Act (43 U.S.C. § 387), and the Sundry Civil Expenses Appropriation Act of July 19, 1919 (43 U.S.C. § 394).

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- E. **Sale of Lands.** See RM D&S, *Land Disposal* (LND 08-02), for further requirements related to the sale and other disposal of lands.
- (1) **Revenue Sources.** Sales of land pursuant to the authorities indicated in subsection E.(2) below.
  - (2) **Crediting.**
    - (a) **Front-end Credit.** Revenues from sales of land that has been classed and subdivided as town site lots may be credited to the contractor if the source and eligibility criteria for front-end credits are met, as set forth below at Paragraph 6 (43 U.S.C. § 501).
    - (b) **Credit to the Project or Tail-end Credit.** Revenues generated from the following land sales are credits to the project:
      - (i) acquired Reclamation lands no longer needed for project purposes sold pursuant to the Sale of Surplus Acquired Lands Act of 1911 (43 U.S.C. § 374);
      - (ii) withdrawn lands classified as too small to support a family and sold pursuant to the Disposal of Small Tracts Act of 1950 (43 U.S.C. § 375e); and
      - (iii) improved withdrawn lands:
        - (aa) improved at the expense of the reimbursable construction costs of the project and sold pursuant to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 574(a)); and
        - (bb) improved at the expense of the project as a reimbursable cost, but no longer needed for project purposes and sold pursuant to the Surplus Improved Public Lands Act of 1920 (43 U.S.C. § 375).
    - (c) **General Credit to the Reclamation fund.** The following revenues are general credits to the Reclamation fund:

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<sup>5</sup>BLM transfers to Reclamation for disposition 95 percent of the net revenues from mineral materials leases or permits for removal of common varieties of sand, gravel, and vegetative materials from public lands. See the Minerals Act of 1947 and section 1 of the Reclamation Act of 1902 (43 U.S.C. § 391).

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- (i) net revenues from the sale of public lands, other than withdrawn lands addressed above in subsection E.(2)(b)(ii)-(iii) and in subsection E.(2)(d)(iii) below; and
  - (ii) revenues from the sale of town site lots made pursuant to the Town Sites and Power Development Act of 1906 (43 U.S.C. § 562) and not eligible for front-end crediting as set forth below at Paragraph 6.B.(2).
- (d) **General Credit to the Treasury.** The following revenues are general credits to the Treasury:
- (i) **Sale of Acquired (Not Donated) Land.**
    - (aa) Revenues from the sale of land acquired for specific nonreimbursable purposes, such as fish and wildlife mitigation or flood control, pursuant to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 571(a)).
    - (bb) Revenues from the sale of acquired Reclamation lands authorized under Section 106 of the Colorado River Basin Salinity Control Act of June 24, 1974, as amended by the Act of September 4, 1980 (43 U.S.C. § 1575a).
  - (ii) **Sale of Donated Acquired Land.** Revenues from the sale of land donated at no cost to the project, pursuant to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 571(a)).
  - (iii) **Sale of Improved Withdrawn Land.** Revenues from the sale of improved withdrawn project land that was improved for specific non-reimbursable purposes such as fish and wildlife mitigation or flood control, pursuant to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 571(a)).
- F. **Sale of Water.** Revenues from the sale of water pursuant to the authorities listed below are credits to the project.<sup>6</sup> Land status is not a determining factor.

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<sup>6</sup>The 1939 Act is the only contracting authority for the sale of water under temporary contracts made pursuant to section 215 of the Reclamation Reform Act of 1982 (43 U.S.C. § 390tt). Revenues from these contracts are not considered incidental and are credited in the manner of payments under water service and repayment contracts.

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- (1) Sale of surplus project water for irrigation pursuant to the Warren Act of 1911 (36 Stat. 925, 43 U.S.C. §§ 523-525) (Warren Act) (credited in accordance with Section 4, subsection J of the Fact Finders' Act (43 U.S.C. § 526)).<sup>7</sup>
- (2) Sale of surplus project water for municipal, industrial, domestic or other non-irrigation purposes pursuant to the Sale of Water for Miscellaneous Purposes Act of 1920 (41 Stat. 452; 43 U.S.C. § 521).
- (3) The payment of capital costs attributable to the sale of project or non-project water for drought purposes pursuant to the Reclamation States Emergency Drought Relief Act of 1992 (106 Stat. 55; 43 U.S.C. § 2212(f)) (Drought Act).

### G. Storage, Conveyance, and Exchange of Project or Non-Project Water.

- (1) The construction cost component of revenues paid for storage and/or conveyance of non-project water in project facilities under contracts made pursuant to section 3 of the Warren Act (43 U.S.C. § 525) and for the exchange of water for non-project purposes made pursuant to section 14 of the 1939 Act (43 U.S.C. § 389) are general credits to the Reclamation fund.
- (2) Any construction costs paid that are attributable to the use of Federal Reclamation facilities for project and non-project water for drought purposes pursuant to the Drought Act are credits to the project.

### H. Sale of Real Property (other than land and timber). Revenues from the sale of real property, other than land and timber, where the costs were not charged to the project, are credited to the General Fund of the Treasury pursuant to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 571).

## 6. Crediting Methods.

- A. **Credits to the Project or Tail-end Credits.** These credits are applied against the total outstanding reimbursable repayment obligation for project construction costs. Tail-end credits do not reduce a contractor's current-year annual obligation, but rather are applied at the "tail-end" of the total outstanding reimbursable repayment obligation, and have the net effect of shortening the repayment period. Credits to the project cannot be used to offset annual operation, maintenance, and replacement (OM&R) costs that contractors are

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<sup>7</sup> Reclamation has prohibited further execution of these contracts (see RM Policy, *Prohibition on Future Contracts for the Sale or Use of Project Water or Surplus Project Water Pursuant to the Warren Act of 1911* WTR P03).

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required to pay. Credits to the project will be credited against the total outstanding reimbursable repayment obligation for the project or appropriate division as a whole, and not directly against the obligations of specific purposes, districts, or contractors unless authorized by congressionally approved contract or project-specific legislation.

- (1) **Statutory Credits to the Project.** Statutory credits are accumulated when there is no outstanding construction obligation against which to apply credits. These credits are available to repay the reimbursable costs of future work in the project that generated them. After all reimbursable construction obligations of a particular project have been repaid, statutory credits may be applied against new repayment obligations if the work has been authorized and funds appropriated. Examples of such obligations are:
    - (a) Repayment obligations established pursuant to sections 4(a) and 4(c) of the Safety of Dams Act of 1978 (SOD Act). If an appropriation has been made to cover the entire cost of a SOD Act modification, a separate appropriation to apply credits to the associated reimbursable construction obligation is not required.
    - (b) Repayment obligations established pursuant to Title IX, Subtitle G of the Omnibus Public Land Management Act of March 30, 2009 (Pub. L. 111-11; 43 U.S.C. § 510). Pub L. 111-11 provides authority to contract for repayment of costs for extraordinary operation and maintenance. Statutory credits are not to be applied against annual OM&R costs.
  - (2) Statutory credits are applied as a credit to the project or tail-end credit, except that they may be applied to a new repayment obligation prior to contract execution to reduce the total contractual repayment obligation. However, if the statutory credits are not applied prior to contract execution, these credits will be applied as a credit to the project or tail-end credit as set forth in this D&S.
- B. **Front-end Credits.** Front-end credits are credited in priority first to the annual construction repayment obligation, second to the annual OM&R expenses, and third to any project purpose as directed by the contractor. If there is no outstanding obligation or OM&R expenses to apply these credits to, front-end credits will become statutory credits and will accumulate to be applied to any future reimbursable appropriated construction obligations of the contractor. Land status is not a determining factor in their disposition. Eligibility for front-end credits does not entitle a contractor to retain Federal revenues; the contractor must remit the revenues to the United States for proper crediting.



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When a contractor is eligible to receive front-end credits, such crediting is not discretionary. Revenues must be applied as front-end credits.

(1) **Revenue Sources.** Unless otherwise specifically authorized by Congress for a particular contract or project, only revenues from the following three sources may be applied as a front-end credit, and only where authorized under the criteria listed below in subsection B.(2):

- (a) grazing and farming leases on Reclamation lands;
- (b) sale or use of lands that have been classed and subdivided as town site lots; and
- (c) sale of power by non-Federal entities (i.e., sale of surplus power generated by a Reclamation-constructed power plant operated by a non-Federal entity) (43 U.S.C. § 501).

(2) **Eligibility.** Unless otherwise specifically authorized by Congress, the contractor must meet all of the following criteria to receive front-end credits:

- (a) the contract (or an amendment thereto) must contain language that specifically invokes the net revenues crediting authority pursuant either to section 4, subsection I of the Fact Finders' Act of 1924 or to section 45 of the Omnibus Adjustment Act of 1926;
- (b) the contract or amendment must have been executed between the enactment of the Fact Finders' Act on December 5, 1924, and the enactment of the Hayden-O'Mahoney Amendment on May 9, 1938; and
- (c) the contractor must have assumed OM&R responsibilities for the project or have been granted relief from this requirement under the authority of section 45 of the Omnibus Adjustment Act of 1926.<sup>8</sup>

7. **OM&R Charges.** The OM&R component of charges in water-related contracts are not incidental revenues and shall be applied towards the appropriate OM&R account, or in accordance with applicable statute or contract.

8. **Exceptions.** Project- and contract-specific crediting requirements, as defined at Paragraph 3.H. of PEC P03, may direct crediting differently than this D&S. Each

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<sup>8</sup>This provision authorized the Secretary to grant the relief provided by the 1924 Fact Finders' Act to some contractors without requiring that they first assume project OM&R responsibilities. This authority extended only to contractors within projects identified in the Act.

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situation involving the application of credits to the project (including statutory credits) and front-end credits must be individually evaluated as set forth at Paragraph 5 of this D&S.

9. **Statutory and Regulatory Sources for General Crediting Requirements.**
  - A. Boulder Canyon Project Act of 1928, Section 2 (43 U.S.C. § 617a)
  - B. Colorado River Basin Project Act of 1968, Section 403 (43 U.S.C. § 1543)
  - C. Colorado River Storage Project Act of 1956, Section 5 (43 U.S.C. § 620d)
  - D. Columbia Basin Project Act of 1943, Section 6 (16 U.S.C. § 835c-2)
  - E. Disposal of Small Tracts Act of 1950, Section 4 (43 U.S.C. § 375e)
  - F. Federal Land Policy Management Act of 1976, October 21, 1976, Pub. L. 94-579 (43 U.S.C. § 1701)
  - G. Federal Lands Recreation Enhancement Act of 2004 ( 16 U.S.C. § 6806)
  - H. Geothermal Steam Act of 1970, Section 20 (30 U.S.C. § 1019)
  - I. Hayden-O'Mahoney Amendment to the Interior Department Appropriation Act for 1939, May 9, 1938 (43 U.S.C. §§ 391a-1, 392a)
  - J. Mineral Leasing Act of 1920, Section 35, as amended (30 U.S.C. § 191)
  - K. Mineral Leasing for Acquired Lands Act of 1947 (30 U.S.C. § 355)
  - L. Mineral Materials Act of 1947 (30 U.S.C. § 603)
  - M. Omnibus Adjustment Act of 1926, Section 45 (43 U.S.C. § 423d)
  - N. Reclamation Act of 1902, Section 1 (43 U.S.C. § 391)
  - O. Reclamation Project Act of 1939, Section 14 (43 U.S.C. § 389)
  - P. Reclamation States Emergency Drought Relief Act of 1992 (43 U.S.C. § 2201)
  - Q. Sale of Surplus Acquired Lands Act of 1911, Section 3 (43 U.S.C. § 374)
  - R. Sale of Surplus Improved Public Lands Act of 1920, Section 3(43 U.S.C. § 375)
  - S. Sale of Water for Miscellaneous Purposes Act of 1920 (43 U.S.C. § 521)

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- T. Second Deficiency Appropriation Act for 1924 (Fact Finders' Act), Section 4, Subsections I and J (43 U.S.C. §§ 501, 526)
  - U. Sundry Civil Expenses Appropriations Act for 1920, July 19, 1919 (43 U.S.C. § 394)
  - V. Town Sites and Power Development of 1906, Section 2 (43 U.S.C. § 562)
  - W. Warren Act of 1911, Section 3 (43 U.S.C. § 525)
10. **Solicitor's Opinions.** The following Department of the Interior Solicitors' opinions are relied upon for the guidance, interpretation, and applicability of the above statutes. They are listed in order of priority. See Section 4 of the *Revenues Management Reference Manual* for copies of these documents.
- A. Solicitor Martin L. Allday's Opinion of September 8, 1989, M-36969, Subject: Proper Disbursement and Crediting of Mineral Leasing Revenues from Reclamation Acquired Lands
  - B. Assistant Solicitor Joseph M. Oglander's Opinion of April 22, 1992 (unnumbered), Subject: Application of Mineral Leasing Revenues Against Construction Repayment Obligation Allocated to Municipal and Industrial Uses – Palmetto Bend Project, Texas
  - C. Phoenix Field Solicitor Bob Moeller's Opinion of March 5, 1990, LBR.PX.4200, Subject: Management of Reclamation Project Lands by Water Users

## 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.

### Filing instructions

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Filed by: \_\_\_\_\_

Date: \_\_\_\_\_