

# Reclamation Manual

## Directive and Standard

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<b>Subject:</b>	Safety of Dams Repayment
<b>Purpose:</b>	To provide requirements for repayment of construction costs associated with modifications performed pursuant to the Safety of Dams program. The benefit of this Directive and Standard is consistent application of these requirements by Bureau of Reclamation offices and personnel.
<b>Authority:</b>	The Reclamation Act of 1902 (32 Stat. 388), and acts amendatory of and supplemental to that Act; and the Reclamation Safety of Dams Act of November 2, 1978 (Pub. L. 95-579; 43 U.S.C. § 506, et seq.), as amended.
<b>Approving Official:</b>	Director, Policy and Administration
<b>Contact:</b>	Reclamation Law Administration Division (84-55000)

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1. **Introduction.** The Reclamation Safety of Dams Act of 1978, as amended (the SOD Act), established a program to address the costs associated with the modification of Reclamation dams due to dam safety concerns. The SOD Act provides for repayment of the Safety of Dams (SOD) modification costs that are allocable to project beneficiaries over a period not to exceed 50 years.
2. **Applicability.** This Directive & Standard (D&S) applies to all Reclamation offices and personnel in administering the repayment provisions of the SOD Act.
3. **Definitions.**
  - A. **Interest During Construction or IDC.** The interest that accrues on Federal expenditures during the period of construction. See Reclamation Manual (RM) D&S, *Interest During Construction* (FIN 07-21), for additional information.
  - B. **Interest on Investment or IOI.** The interest that accrues on a Federal investment, beginning with a notice of substantial completion of the work and continuing for the duration of the repayment term. See RM D&S, *Interest on Investment* (FIN 06-32), for additional information.
  - C. **Reimbursable Project Purposes.** The authorized project purposes that will bear the reimbursable portion of the costs incurred in the performance of SOD work, including irrigation, municipal and industrial (M&I), power, and other reimbursable purposes.
  - D. **Weighted Average Interest Rate.** The calculated interest rate for multi-year SOD projects. The weighted average interest rate is a composite rate that is calculated from the annual interest rates that are in effect for each year during which funds are expended for project construction. The calculation of this rate will be as illustrated in Appendix A of this D&S.

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### 4. Responsibilities.

- A. **Director, Policy and Administration (POLICY).** POLICY will review a submitted Basis of Negotiation (BON) to verify compliance with the requirements of the SOD Act, Reclamation law and policy, and this D&S, and will prepare a delegation of authority in the form of an approval memorandum for the Commissioner's signature.
- B. **Director, Security, Safety, and Law Enforcement (SSLE).** Pursuant to RM Policy, *Decisions Related to Dam Safety Issues* (FAC P02), SSLE is responsible for making decisions to resolve dam safety issues at specific dams in collaboration with the appropriate regional director and area manager. SSLE is also responsible for keeping the Commissioner informed of all dam safety issues and decisions, as specified in FAC P02. Additionally, SSLE is responsible for communicating with POLICY on current and upcoming SOD work and providing the draft modification report to POLICY for review and comment.
- C. **Regional Directors.** For the purposes of this D&S, regional directors are responsible for establishing the SOD cost allocation, and submitting it to POLICY with a recommendation for review and approval by the Commissioner. Regional directors are also responsible for working with POLICY staff to ensure proper repayment of costs associated with SOD modifications including: preparation of a BON, determination that SOD construction is substantially complete, and transmittal of the written notice of substantial completion to the repayment entity.

### 5. Requirements.

- A. **Contract Requirements.** A repayment contract must be executed before a construction contract for SOD modifications is awarded. If the situation demands that work begin before a contract can be executed or that an alternative to a contract is appropriate, the regional director may request a waiver of this requirement, pursuant to RM D&S, *Request for Deviation from a Reclamation Manual Requirement and Approval or Disapproval of the Request* (RCD 03-03). Any such request must be approved by the Commissioner.
  - (1) **SOD Cost Allocations.** As SOD modification work is considered new construction, the reimbursable SOD modification costs will be allocated among the reimbursable project purposes based on the benefit calculations developed for the SOD modification report, rather than on original construction cost allocations. Where not otherwise specified by law or contract, the allocation of construction costs among the reimbursable project purposes will be made according to the proportional net present benefits of those purposes. Pursuant to the SOD Act, the costs for SOD work will be allocated as follows:
    - (a) **Section 4(a) Costs.** All costs incurred to address age and normal deterioration of the structure or from the non-performance of reasonable and

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normal maintenance of the structure by the operating entity are operation and maintenance (O&M) costs. Costs of work performed under Section 4(a) of the SOD Act will be allocated in accordance with the existing allocation of O&M costs of the project and will be reimbursable as provided by existing law. This section of the SOD Act will not be used as an extended repayment authority. See RM Policy, *Allocation of Operation, Maintenance, and Replacement Costs* (PEC P07), for specific requirements associated with allocation of project O&M costs.

- (b) **Section 4(c) Costs.** For SOD costs incurred to modify structures to address new hydrologic or seismic data, or changes in state-of-the-art criteria deemed necessary for safety purposes as determined pursuant to Paragraph 7.A. of RM D&S, *Reclamation Dam Safety Program* (FAC 06-01), 15 percent of the total costs will be allocated to the reimbursable project purposes; the remaining 85 percent will be non-reimbursable.

(2) **Offsets to SOD Obligations.**

- (a) **Incidental Revenue Credits.** See RM D&S, *Crediting Requirements for Incidental Revenues* (PEC 03-01), for specific requirements on the crediting of incidental revenues toward SOD modification costs.
- (b) **Contributed Funds.** Funds may be contributed to accelerate completion of SOD modifications when consistent with either (1) the Sundry Civil Expenses Appropriations Act for 1922, dated March 4, 1921 (43 U.S.C. § 395) (Contributed Funds Act); or (2) the annual appropriations act that authorizes funds for the SOD work, provided that the annual appropriations act specifically authorizes the use of contributed funds. Contributed funds must only be accepted under the following conditions for SOD contracts:
  - (i) Contributed funds will only be accepted when either (1) the SOD modification report has been approved by the Congress for projects with construction costs of \$1,250,000 or greater, as adjusted for inflation; or (2) the justification document has been approved by the Commissioner for projects with construction costs of less than \$1,250,000, as adjusted for inflation.
  - (ii) Funds that are contributed specifically to address modifications that are identified in a SOD modification report will not be used to increase project benefits or for purposes other than those modifications described in the applicable report.
  - (iii) Only funds, and not the contribution of goods or services in-lieu of funds, may be contributed.

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(iv) Either the SOD repayment contract or a separate contributed funds agreement entered pursuant to the Contributed Funds Act and the SOD Act may provide for the acceptance of contributed funds.

(aa) The SOD repayment contract or the contributed funds agreement will:

- (1) acknowledge the contractor's contribution as being applicable towards its total SOD repayment obligation; and
- (2) clearly outline the circumstances (i.e., extreme construction delays) and process for returning any or all of the unused contributed funds without necessarily terminating either agreement.

(bb) In most cases, the approval memorandum for the SOD modification repayment contract will serve as a delegation of authority to accept contributed funds. If the acceptance of contributed funds is not included in this approval memorandum, a separate delegation of authority, approved by the Deputy Commissioner, Policy, Administration, and Budget, is required.

(c) **Work Accomplished by Repayment Entities.**

- (i) A repayment entity may serve as the construction contractor in performing SOD work using Federal funds in accordance with Federal Acquisition Regulations (FAR) and other appropriate legal and policy authorities.
- (ii) If a repayment entity will provide materials or services to be used in the SOD work, the valuation of the materials or services must be identified and clearly defined in the BON, and must be in accordance with the principles required for developing an independent government estimate under the FAR of the costs, and relative value, of the materials or services to be provided. No credit may be given for the valuation of materials or services without the written approval of the Commissioner, as part of the approval memorandum.

(3) **Repayment Terms and Conditions.** Costs for SOD work performed under the authority of Section 4(c) of the SOD Act will be repaid as follows.

- (a) **Irrigation.** Costs allocated to the irrigation purpose of a project shall be repaid, without interest, in a period not to exceed 50 years. If an ability-to-pay study or other appropriate indicator identifies that the repayment entity has the ability to repay the costs in less than 50 years, the repayment period

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will be reduced to utilize the full repayment ability of the entity. Costs allocated to the irrigation purpose which are beyond the irrigators' ability to pay shall be reimbursed in accordance with existing law.

- (b) **M&I, Power, and Other Reimbursable Purposes.** Costs allocated to the non-irrigation reimbursable project purposes shall be repaid, with interest, in a period not to exceed 50 years. The interest to be repaid will consist of both IDC and IOI. The interest rate for the non-irrigation reimbursable SOD costs will be the rate determined by the Secretary of the Treasury that is in effect for the fiscal year in which funds are expended for SOD work, which corresponds to the applicable repayment period. The interest rate can be found in the Reclamation table (Table 5) for the year in which SOD funds are expended, which is located at:  
[http://www.treasurydirect.gov/govt/rates/tcir/tcir\\_index\\_opdirannual.htm](http://www.treasurydirect.gov/govt/rates/tcir/tcir_index_opdirannual.htm). For projects on which all SOD costs are incurred in a single year, the interest rate will be as identified above. The interest rate that is established for IDC will continue to be the rate assessed on Federal expenditures, as IOI, until repayment of the expenditures is complete. For projects on which SOD costs are incurred through multiple years, the weighted average interest rate will be used.
- (c) **Substantial Completion.** The repayment period will initiate upon the date identified in a written notice of substantial completion from the regional director to the repayment entity.
- (4) **Standard Contract Articles.** The standard articles required for any contract entered into for the repayment of SOD costs pursuant to the SOD Act will be as identified in RM Policy, *Reclamation Standard Water-Related Contract Articles* (PEC P10).
- (5) **Acreage Limitations.** Pursuant to the provisions of the SOD Act, the acreage limitation provisions of Federal reclamation law do not apply. Specifically, contracts for repayment of the costs of SOD work will not:
- (a) be considered in determining whether a district as defined in Section 202(2) of the Reclamation Reform Act of 1982 (43 U.S.C. § 390bb) has discharged its obligation to repay the construction costs of the project facilities used to make irrigation water available for delivery to land in the district; or
  - (b) serve as a basis for reinstating acreage limitation provisions in a district that has completed payment of its construction obligation; or
  - (c) serve as the basis for extending the period during which the acreage limitation provisions will apply.

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- B. **BON Requirements.** Refer to RM D&S, *Preparing Bases of Negotiation for New and Amendatory Water Service, Repayment, and Other Related Contracts* (PEC 06-01) for the general requirements of the BON. In addition to the general requirements found in PEC 06-01, the scope of work, as identified in the justification document or modification report, must be clearly stated in the BON.
- C. **Justification Document.** The justification document is provided to the Commissioner for review and approval for projects with construction costs of less than \$1,250,000, as adjusted for inflation, and is developed by the Dam Safety Office of SSLE; see RM D&S, *Safety of Dams (SOD) – Modification Reports for Congressional Review* (FAC 06-03).
- D. **Modification Report.** The modification report is provided by the Secretary to the Congress for review and approval for projects with construction costs of at least \$1,250,000, as adjusted for inflation. The modification report is developed by the Dam Safety Office of SSLE; see FAC 06-03.
- E. **Approval Memorandum.** An approval memorandum signed by the Commissioner authorizing the regional director to negotiate, execute, and administer the contract is required for each SOD repayment contract. POLICY develops the approval memorandum in response to the BON submitted by the regional director. The approval memorandum must note the status of the justification document, or the SOD modification report, and other relevant reports; however, it does not serve as the Commissioner's approval for those other documents and reports.

## 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: \_\_\_\_\_