

Reclamation Manual

Directives and Standards

TEMPORARY RELEASE

(Expires 08/18/2017)

Subject:	Developing Additional Project Benefits in Conjunction with a Safety of Dams Modification Project
Purpose:	To set forth the requirements for developing additional project benefits on Bureau of Reclamation projects in conjunction with a safety of dams modification. This Directive and Standard establishes general requirements for identifying, approving, and developing additional project benefits and clarifies the understandings necessary to develop the additional project benefits consistent with Reclamation law. The benefit of this Directive and Standard is defining a process for developing additional project benefits in conjunction with safety of dams modifications while assuring the timely reduction of dam safety risks and protecting existing project benefits.
Authority:	The Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), and acts amendatory of and supplemental to that Act (Federal reclamation law); particularly the Sundry Civil Appropriations Act for 1922 of March 4, 1921 (43 U.S.C. §395), and the Reclamation Safety of Dams Act of November 2, 1978 (Pub. L. 95-579; 43 U.S.C. §506 et seq.), as amended.
Approving Official:	Director, Security, Safety, and Law Enforcement
Contact:	Dam Safety Office (84-44000);Reclamation Law Administration Division (84-55000)

1. **Introduction.** The Reclamation Safety of Dams Act of November 2, 1978 (SOD Act) has been amended to include authority for Reclamation to develop additional project benefits in conjunction with a safety of dams (SOD) modification. This Directive and Standard (D&S) establishes requirements for developing additional project benefits and coordinating such development with a SOD modification project.
2. **Applicability.** This D&S applies to Reclamation personnel involved in identifying, approving, and developing additional project benefits in conjunction with a SOD modification project.
3. **Definition of Additional Project Benefits.** Those benefits, including but not limited to additional conservation storage capacity, that are developed in conjunction with a proposed SOD modification and that increase the benefits provided by a project beyond those existing at the time a SOD modification is undertaken. This increase may only be realized through an expansion of the existing authorized project purposes. All additional benefits must be developed consistent with the applicable water rights and Federal and state law.

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4. Responsibilities.

A. **Director, Security, Safety, and Law Enforcement (SSLE).** SSLE is responsible for:

- (1) coordinating the development of additional project benefits with the appropriate offices within Reclamation;
- (2) assessing the significance of efficiencies that can be achieved by integrating additional project benefits with a SOD modification project; and
- (3) ensuring that development of additional project benefits will not negatively impact a SOD modification project.

B. **Regional Director.** The regional director is responsible for:

- (1) preparing recommendations for development of additional project benefits, either in response to a request from a potential beneficiary or upon the identification of a potential need for additional project benefits;
- (2) coordinating with all necessary offices within the region¹ to ensure that the proposed development of additional project benefits complies with all requirements for such development, including Reclamation law and policy;
- (3) negotiating and executing the necessary agreements, within the parameters set by this D&S and the approval memorandum that is applicable to each agreement;
- (4) overseeing the necessary construction to develop additional project benefits and construction close-out; and
- (5) coordinating with any transferred works operating entity that will bear an increased responsibility as a result of the additional project benefits being developed.

5. **Determination to Include Development of Additional Project Benefits with a SOD Modification Action.** Pursuant to Section 5.B. of the SOD Act, as amended, Reclamation must determine that additional project benefits are necessary and in the interest of the United States and the project prior to developing any additional project benefits. SSLE will prepare a recommendation for the Commissioner's approval to finalize this determination.

¹For example, the regional director must consult with the regional finance office upon receipt of a beneficiary's prepayment to ensure proper crediting and tracking of the prepayment funds in the Financial Business Management System (i.e., FBMS).

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- A. **Consistency of Proposed Development of Additional Project Benefits With the SOD Act.** The regional director will coordinate with SSLE to determine if the proposed development of the additional project benefits is consistent with the purposes of the SOD Act. If the proposed development is inconsistent with the SOD Act, the regional director will collaborate with SSLE and other necessary offices within the region to identify the inconsistencies and provide information to SSLE to recommend that further development work on the additional project benefits not proceed in conjunction with the SOD modification project.
- B. **No Adverse Impact to Public Safety.** The regional director will coordinate with SSLE to determine whether developing additional project benefits will result in an adverse impact to the timely implementation of appropriate public safety risk reduction activities. The regional director will collaborate with SSLE and other necessary offices within the region to provide information to SSLE to recommend not developing additional project benefits in conjunction with a SOD modification project if Reclamation identifies that developing additional project benefits will cause an adverse impact to timely implementation of appropriate public safety risk reduction activities.
6. **Feasibility Report.** Once it has been determined that additional project benefits are necessary and in the interest of the United States and the project, Reclamation will determine if the proposed additional project benefits are feasible. See Reclamation Manual (RM) D&S, *Water and Related Resources Feasibility Studies* (CMP 09-02), for the requirements related to preparation of a feasibility study. SSLE will consult with all necessary Reclamation offices² to ensure any issues that could have a negative impact to the SOD modification project or cause the proposed additional project benefits to no longer be in the interest of the United States or the project are identified as soon as possible.
7. **Contributed Funds Agreement Requirements.** Prior to any work being conducted by Reclamation to determine if additional project benefits are necessary and in the interest of the United States and the project or to physically develop additional project benefits, a contributed funds agreement will be entered, pursuant to the Sundry Civil Appropriations Act for 1922 of March 4, 1921, also known as the Contributed Funds Act, between Reclamation and each beneficiary of the proposed additional project benefits³. A Basis of Negotiation (BON) will be required for any contributed funds agreement which includes more than \$25,000 in advance funds. Refer to RM D&S, *Preparing Bases of Negotiation for New and Amendatory Water Service, Repayment and Other Related Contracts*

²As an example, if the proposed additional project benefits include a power component Reclamation's Power Resources Office must be consulted early in this determination.

³Because the contributed funds agreement will require full prepayment of the anticipated costs of making a determination and developing the additional project benefits and will not include repayment of a beneficiary's obligation, the reserved authority of the Assistant Secretary of Water and Science to enter contracts with a repayment obligation in excess of \$50,000,000, as stated in Department Manual 255 DM 1.2.F. does not apply.

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(PEC 06-01) for the general requirements of the BON. In addition to the general requirements of PEC 06-01, the contributed funds agreement will contain the following provisions:

A. **General Requirements**⁴.

- (1) **Scope of Work.** The contributed funds agreement will clearly outline the scope of work that will be performed using the advanced funds.
- (2) **Cost Estimate.** The contributed funds agreement will identify Reclamation's estimate of the anticipated costs to the beneficiary. Reclamation shall set up a new work breakdown structure to keep track of all Reclamation costs related to the scope of work.
- (3) **Sufficient Advance Funds.** The contributed funds agreement will require sufficient funds to be provided by the beneficiary of the additional project benefits to cover the estimated costs for the scope of work. These costs include any and all work related to National Environmental Policy Act of 1969 (Pub. L. 91-190, as amended and supplemented, 42 U.S.C. §4321, et seq.), National Historic Preservation Act of 1966 (NHPA), as amended (16 U.S.C. §470, et seq.), Endangered Species Act (16 U.S.C. §1531, et seq.), and other statutory compliance; development of all necessary studies, analyses, designs, plans, specifications, and related material; and any related administrative costs.
- (4) **Additional Advances for Cost Increases.** The contributed funds agreement will require Reclamation to negotiate with the beneficiary any increase in funding requirements beyond the originally agreed upon amount before Reclamation incurs those costs.
- (5) **Unused Funds.** The contributed funds agreement will provide for any unused funds, whether these funds are not needed to complete the scope of work or Reclamation determines at any point not to proceed, to be returned to the beneficiary without interest.
- (6) **No Reimbursement for Expenditures.** The contributed funds agreement will provide that no reimbursement will be provided by Reclamation to the beneficiary for expenditures required to complete the scope of work, regardless of outcome.

⁴A contributed funds agreement that only covers the costs of making the determination discussed in Paragraph 5. must meet the requirements in Paragraph 7.A. Contributed funds agreements that cover the physical development of additional project benefits or a combination of the costs of making a determination and the physical development of additional project benefits must meet the requirements of Paragraphs 7.A. and 7.B. before Reclamation proceeds with any work related to developing additional project benefits.

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- (7) **Term of Contributed Funds Agreement.** The contributed funds agreement will identify a term for which it will be in effect. The contributed funds agreement will also provide for termination of the contributed funds agreement upon mutual agreement by the parties.
- (8) **Standard Articles.** The contributed funds agreement will contain the full list of standard contract articles that has been developed, as provided in Paragraph 11.D., below.
- B. Additional Requirements for Contributed Funds Agreement Addressing Advance Funding for Physical Development of Additional Project Benefits.** In addition to the general requirements above, the contributed funds agreement that covers the physical development of the additional project benefits will include the following provisions:
- (1) **Beneficiary Access to Additional Project Benefits.** The contributed funds agreement will identify the conditions for a beneficiary's access to and use of the additional project benefits.
- (2) **No Guarantee of Continued Access to Additional Project Benefits.** The contributed funds agreement will state that the United States makes no guarantee of access to the additional project benefits beyond the useful life of the project facility providing said benefits.
- (3) **Required Advance Funds Subject to Cost Allocation.** The contributed funds agreement will establish that the advance funds identified in the contributed funds agreement are an estimate and are subject to a final allocation of the costs of developing the additional project benefits, as further discussed in Paragraph 10, below.
- (4) **Payment of Operation, Maintenance, and Replacement (OM&R) Costs.** The contributed funds agreement will establish the allocation of OM&R costs that result from the development of additional project benefits and the beneficiary's obligation to pay the allocated OM&R costs that are associated with the additional project benefits. See RM Policy, *Allocation of Operation, Maintenance, and Replacement Costs* (PEC P07), for requirements on how the OM&R costs will be allocated and the obligation of the beneficiary will be determined.
8. **Identification of Water Rights.** The regional director will determine if sufficient project water rights exist to utilize additional project capacities resulting from the development of additional project benefits. If existing project water rights are insufficient to utilize additional project capacities, the regional director will determine if new water rights may be

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acquired or if non-project water rights are available to utilize the additional project capacities. If insufficient water rights exist to fully utilize the additional project benefits, either from project or non-project sources, the regional director will recommend to SSLE that further development of additional project benefits be postponed until sufficient water rights are identified.

9. **Notification of Determination.** Each beneficiary of the proposed additional project benefits will be notified of the outcome of the determinations required by Section 5.B. of the SOD Act, as amended, once the determinations have been made.
10. **Allocation of Costs for Additional Project Benefits.** Pursuant to Section 5.B. of the SOD Act, as amended, all costs associated with developing the additional project benefits will be allocated exclusively among the beneficiaries of the additional project benefits. See RM D&S, *Project Costs Allocations* (PEC 01-02) for the requirements related to cost allocation.
11. **BON Requirements.** In addition to the general requirements found in PEC 06-01, a required BON will include the following:
 - A. **Estimate of Costs.** The BON will provide an initial estimate of the costs to develop the proposed additional project benefits and an initial allocation of such costs to the beneficiary.
 - B. **Assurance of Funds.** The BON will identify the beneficiary's source of funds for the proposed development of additional project benefits. A written statement from the beneficiary stating the source of its funding and confirming that sufficient funding is available for the proposed development will be included as an attachment to the BON⁵.
 - C. **Proposed Term of Contributed Funds Agreement.** The BON will identify the proposed term of the contributed funds agreement.
 - D. **Standard Articles.** The BON will provide a list of standard articles that the regional director proposes to include in the contributed funds agreement. The standard articles for the contributed funds agreement will be finalized in consultation between the regional director and the Reclamation Law Administration Division, based upon the conditions identified for the contributed funds agreement to address.
12. **Prohibition on Developing Additional Project Benefits Without Advance Funding.** No development of additional project benefits will be performed before funds for said development are advanced by the beneficiaries of the additional project benefits.

⁵ The Assurance of Funds requirement may be waived if the beneficiary instead provides a surety bond for the estimated costs of developing additional project benefits.

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13. **Title to Remain With United States.** Title to project works that are constructed to develop additional project benefits will remain with the United States unless otherwise provided by the Congress.

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

Remove Sheets

Insert Sheets

All Reclamation Manual releases are available at <http://www.usbr.gov/recman/>

Filed by: _____

Date: _____