

**3/18/2016 NOTICE: Reclamation has temporarily suspended work on this release. As soon as new revision dates are determined, that information will be posted on this site.**

## DRAFT RECLAMATION MANUAL RELEASE

Comments on this draft release must be submitted to Ms. Yolanda Smith via email at [ysmith@usbr.gov](mailto:ysmith@usbr.gov) by March 18, 2016.

### **Background and Purpose of the Following Draft Directives and Standards (D&S)**

The Reclamation Manual (RM) is used to establish Bureau of Reclamation-wide requirements, assign program responsibility and establish, and document Reclamation-wide methods of doing business. This draft addition to the RM is intended to set forth the requirements for contracting for the use of excess capacity in Reclamation project facilities.

This draft RM D&S, *Charges for Non-Project Use of Excess Capacity in Bureau of Reclamation Project Facilities*, PEC 05-11, establishes the methodology Reclamation will use to calculate the replacement component of the operation, maintenance, and replacement charge.

Please note that draft RM D&S, *Contracting for Non-Project Use of Excess Capacity in Bureau of Reclamation Project Facilities*, PEC 05-10, is also available for comment at this time (<http://www.usbr.gov/recman/drafts/pec05-10webdraft.pdf>).

This draft D&S along with PEC 05-10 are new releases and together supersede the provisions of current RM D&S, *Use of Excess Capacity in Reclamation Projects for the Impoundment, Storage, and Carriage of Non-Project Water*, WTR 04-01.

See the following pages for the draft D&S.

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## Directives and Standards

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- Subject:** Charges for Non-Project Use of Excess Capacity in Bureau of Reclamation Project Facilities
- Purpose:** Describes procedures for determining charges when contracting for the use of excess capacity in Reclamation project facilities. The benefit of this Directive and Standard (D&S) is to promote consistency and transparency in the establishment of contract rates, and to help ensure a fair return to the Federal taxpayer for the value of the service provided.
- Authority:** The Reclamation Act of 1902 (ch.1093, 32 Stat. 388) and acts amendatory and supplementary thereto, especially Section 1 of the Warren Act of 1911 (36 Stat. 925; 43 USC 523); the Interior Department Appropriation Act for 1928 (44 Stat. 943); Section 14 of the Reclamation Project Act of 1939 (1939 Act) (53 Stat. 1197; 43 USC 389); Office of Management and Budget (OMB) Circular A-25 (July 8, 1993); project-specific authorizations; and acts amending and supplementing these laws and circulars.
- Approving Official:** Director, Policy and Administration
- Contact:** Reclamation Law Administration Division (84-55000)
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1. **Introduction.** Reclamation law allows pricing discretion when contracting for the use of excess capacity in Reclamation projects, specifying that the costs of construction and maintenance of project facilities will be considered. As the Bureau of Reclamation's projects and facilities have aged, Reclamation's role in administering projects has shifted from a focus on construction to a focus on management and maintenance. In addition, OMB Circular A-25, *User Charges*, establishes that charges for providing a service for which the government is acting as a proprietor must be based on market prices. This D&S recognizes these changes and describes the procedures Reclamation will use to determine appropriate charges for use of excess capacity. This includes direction for determining appropriate operation, maintenance and replacement (OM&R) charges that incorporate an estimated replacement cost of project facilities, as this typically will approximate the market value.
2. **Applicability.** This D&S applies to all Reclamation personnel involved in the negotiation, execution, and administration of contracts for the use of excess capacity in Reclamation project facilities.
3. **Definitions.** The following definitions apply to this D&S, as do the definitions provided in Paragraph 3 of Reclamation Manual (RM) Policy *Water-Related Contracts – General Principles and Requirements*, PEC P05 and Paragraph 3 of RM D&S *Water Rates and Pricing*, PEC 05-01:
  - A. **Excess Capacity.** Diversion, storage, conveyance, or pumping capacity in Reclamation project facilities that is available at times it is not needed to meet Reclamation's obligations for authorized project purposes.

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- B. **Market Value.** The value for a good, resource, or service that is based on competition in an open market and creates neither a shortage nor a surplus of the good, resource, or service.
  - C. **Replacement Value.** The original construction costs indexed to current dollars using the construction cost index or similar information on current replacement value contained in the Federal Real Property Profile (FRPP).
4. **Responsibilities.**
- A. **Regional Director.** Regional directors are responsible for ensuring that the charges that Reclamation establishes for an excess capacity contracting action in their region comply with the requirements and procedures described in this D&S, and are consistent with any approved basis of negotiation (BON) and Commissioner's delegation of contracting authority.
  - B. **Director of Policy and Administration.** The Director of Policy and Administration is responsible for supporting the Commissioner's office in reviewing information provided by the regional director to justify a proposed excess capacity contract charge, and evaluating its compliance with the requirements of this D&S.
5. **Charges for the Use of Excess Capacity.** Appropriate charges will be assessed for the non-project use of excess capacity in Reclamation projects. Charges will include OM&R, and a construction charge where appropriate, as described below, and will be utilized as described in RM D&S *Contracting for Non-Project Use of Excess Capacity in Reclamation Project Facilities*, PEC 05-10.
- A. **Annual Operation and Maintenance Component.** (The "OM" of OM&R). This component is for an allocable share of the annual costs for routine and recurring operation, maintenance and repair of Reclamation facilities associated with the project including costs that do not meet the criteria of XM as described in Section 3(B) of PEC 05-03.
  - B. **Replacement Component.** (The "R" of OM&R). This will reflect an appropriate proportional share of the replacement value of the Reclamation project or facilities pertinent to the proposed non-project use. The replacement component will be determined by Reclamation as described in paragraph 6. This will be considered a reasonable and acceptable surrogate for the market value for the use of project excess capacity, except where the regional director determines, and the Commissioner agrees, that there is compelling information indicating otherwise, as described in paragraph 7.
    - (1) Reclamation will establish an appropriate replacement component based on the instructions in paragraph 6, except as the following considerations may apply:
      - (a) If the region demonstrates that applying these procedures is unlikely to result in net benefits or revenues to the Federal government greater than those that

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otherwise will accrue by continuing currently applicable rate-setting practices, those current practices will be maintained;

- (b) Where establishing the replacement component in the manner specified in this D&S would directly conflict with fulfillment of the Federal government's responsibilities regarding Native American water interests, Reclamation will reduce or waive this replacement component as appropriate;
  - (c) Where establishing the replacement component in the manner specified would directly conflict with the implementation of statutory law, binding agreements, or treaties, Reclamation will not apply this replacement component;
  - (d) Where establishing the replacement component in the manner specified would jeopardize substantial operational and administrative benefits or efficiencies that accrue to the Federal government as the result of an alternative arrangement to exchange, replace, or deliver non-project water.
- C. **Fixed (Construction) Charge.** There is no requirement to assess a fixed charge. The region has discretion to determine whether any fixed charge or construction cost component will be assessed. When assessed, this fixed charge will reflect a proportional share of project construction costs.
- D. **Total Charge.** In no case will the combined Annual Operations and Maintenance Component, Replacement Component, and Fixed Charge described in paragraphs 5(A), 5(B), and 5(C) be less than the full cost of providing the service as defined in paragraph 2(A) of RM D&S *Charges for Use of Federal Assets*, PEC 01-01.
6. **Determining the Replacement Component.** The replacement component will be calculated using the replacement value of the relevant project facilities pertinent to the proposed non-project use as follows:<sup>1</sup>
- A. **Relevant Project Facilities.** Identify and include all Reclamation-owned project facilities, and/or portions of those facilities determined essential for servicing the proposed non-project use.
  - B. **Capacity Made Available.** The replacement value will be prorated based on the amount of project (or facility) capacity being made available for nonproject use divided by total project (or facility) capacity. This calculation will establish the

<sup>1</sup> Because this component addresses replacement value and serves as a surrogate for market rate, and is not a construction cost recovery strategy, the extent to which original construction costs have been repaid by project beneficiaries, including any payments made by the prospective excess capacity contractor, has no bearing on the determination of this value.

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prorated share (even if that entire capacity will be used only intermittently). Where the capacity to be made available cannot confidently be quantified in advance, it is acceptable to estimate this share on the basis of historic operations and/or hydrologic projections.

- C. **Replacement Value.** The replacement value will be identified for the Reclamation projects or facilities being used. The “Replacement Value” will be determined through indexing the historical as-built final construction cost to the current year using the Bureau of Reclamation Construction Cost Index or as otherwise identified in the FRPP. This index will be applied from the year the construction was completed.<sup>2</sup>
- D. **Annualization.** Replacement value, determined as described under paragraph 6C, will be annualized as follows:
- (1) If project costs allocated only to water supply purposes are used for the calculation of replacement value, the costs will be annualized over (i.e., divided by) a 50-year replacement period. If total project costs for all project purposes are used in the calculation of replacement value, the costs will be annualized over (divided by) a 75-year replacement period.
  - (2) The replacement value identified in paragraph 6C multiplied by the portion of capacity made available identified in paragraph 6B will be used in calculating the annualized value.
- E. **Unit Replacement Cost.** The annual equivalent in paragraph 6D divided by the capacity being contracted<sup>3</sup>, will be used to calculate the replacement component per acre-foot or other appropriate unit of measurement.
- F. **Documentation.** The region will document the methodology and analysis used to derive the proposed replacement value of facilities for the replacement component in its BON or other relevant decision-making materials. This will include all of the analysis and information used in performing the steps of Paragraph 6A – 6E. This documentation will be shared with the prospective excess capacity contractor.
7. **Determining the Replacement Charge.** The procedures described in paragraph 6 will determine the replacement charge. If the regional director establishes that relevant socioeconomic or market data are available that better approximate the market value of the service to be provided, the regional director has discretion to propose using an alternate methodology for determining the “R” component in the BON or other applicable decision

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<sup>2</sup> Where the relevant project facilities consist of multiple features with varying and/or uncertain dates of completion, it is acceptable to apply the index to an estimated average year of completion, weighted by the original cost of each relevant facility or facility feature. Similarly, a single overall facility or project index may be applied by the region to all excess capacity contracts pertaining to the use of that facility or project, where the Commissioner has approved the use of that index, and the region has documented how the index was derived.

<sup>3</sup> Typically, this capacity will be quantified in terms of a volume (e.g., acre-feet) or a rate of flow (e.g., cubic feet per second).

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document, if supporting economic data and analysis are provided that justify the proposed alternative rate. The Commissioner's office will make the final determination as to whether the proposed methodology is acceptable based on an evaluation of the relevancy and soundness of the data and analysis, and considering the conformance of the analysis with applicable guidelines for making this determination developed by Reclamation's Technical Service Center.

8. **Replacement Charge Adjustments for Other Federal Benefits.** Both the regional office's determination of a replacement value of facilities (as described in paragraph 6) and any proposed alternative replacement charge (as described in paragraph 7) will take into consideration the benefits that would accrue to the Federal government as a result of the proposed excess capacity contracting action (monetary, operational, environmental, or otherwise). The replacement charge will be adjusted to reflect the estimated equivalent financial value of those benefits to Federal interests. However, no adjustments will be made for any benefits obtained from additional head for, or water going through, Reclamation-owned electric power generators at Reclamation project facilities as a result of storage or conveyance of non-project water.
9. **Charge Escalator.** The excess capacity contract will specify that the negotiated facility replacement charge, determined as described above, will be updated periodically, and no less than once every five years, to adjust for the effects of inflation on the value of the payments made by the contractor. This periodic adjustment will be made by applying the Gross Domestic Product deflator published by the U.S. Department of Commerce, Bureau of Economic Analysis.
10. **Drought Year Reduction.** For an excess capacity contract executed with a Reclamation project water contractor for storage or conveyance of that contractor's non-project water in reserved works, the regional director has discretion to specify in that contract that the replacement charge, determined as described above, will be reduced by up to one-half in any year that a state governor declares a drought emergency applicable to the area where the water will be used.
11. **Annual Operation and Maintenance Charge (O&M)**
  - A. **Reserved Works.** The O&M component of the excess capacity use charge will reflect the actual and reasonable proportional cost of the routine and recurring operation and maintenance of the relevant facilities.
  - B. **Transferred Works.** If a transferred works operating entity has assumed responsibility for and is directly funding the O&M of the Reclamation project facilities, the transferred works contractor may establish charges for the use of excess capacity that reflect the O&M contractor's associated actual and reasonable routine and recurring operation and maintenance costs.

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### Sample Calculation

#### Hypothetical Example:

A prospective contractor seeks to use available storage and conveyance capacity from a multi-purpose Reclamation project for the storage and delivery of up to 5,000 acre-feet annually of non-project water for M&I use.

#### Relevant Federal Facilities Used, and Corresponding Capacity Made Available:

Reservoir A: 5,000 acre-feet (AF) out of 250,000 AF storage capacity (2.0% of capacity)

Canal B: 5,000 AF of 125,000 AF annual delivery capacity (4.0% of capacity)

Lateral C: 2,500 AF out of 50,000 AF annual delivery capacity (5.0% of capacity)

Lateral D: 2,500 AF of 50,000 AF annual delivery capacity (5.0% of capacity)

#### Facility Current Replacement Values (from FRPP):

Reservoir A: \$250,000,000

Canal B: \$25,000,000

Lateral C: \$1,500,000

Lateral D: \$1,500,000

#### Partial-Year Use:

Not applicable.

#### Contractor's Pro-rated Share of Facilities Replacement Costs:

$(\$250,000,000 * 0.02) + (\$25,000,000 * 0.04) + (\$1,500,000 * 0.05) + (\$1,500,000 * 0.05)$   
= \$6,150,000

#### Annualized Replacement Component:

$\$6,150,000 / 5,000 \text{ AF} / 75 \text{ years} = \mathbf{\$16.40/AF}$