



## MEMORANDUM

TO: SLDMWA Finance and Administration Committee, Board of Directors,  
Alternates

FROM: Pablo Arroyave, Chief Operating Officer

DATE: April 1, 2024

RE: Resolution Authorizing Execution of Contract with the United States Providing for  
the Repayment of Extraordinary Maintenance Costs for the C.W. "Bill" Jones  
Pumping Plant Excitation Cabinet and Control Panel Refurbishment Project

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### BACKGROUND

The 2021 Bipartisan Infrastructure Law (BIL) authorized \$3.2 billion for extraordinary maintenance (XM) of Reclamation facilities. These funds are available to both reserved and transferred works facilities, to be administered through the Aging Infrastructure Account (Account), a Reclamation-wide revolving fund created to sustain investment in extraordinary maintenance (XM). Reclamation's FY 2023 Spend Plan authorized \$649 million from the Account through a competitive funding process. Reclamation has indicated that there will be 4 additional application periods for a total available between FY 2023 and FY 2027 of approximately the \$3.2 billion authorized in the BIL.

As a transferred works entity, the Water Authority applied for funds to support XM of transferred works facilities in each of the last two years. In December 2022, consistent with Board Resolution No. 2022-509 authorizing application for extended repayment and funding for extraordinary maintenance work, the Water Authority applied for BIL funding for two projects: the DMC Subsidence Correction Project and the Jones Pumping Plant Excitation Cabinet and Control Panel Refurbishment Project. Each project was selected to receive \$25M in March 2023. To receive the funds, the Water Authority is required to negotiate and execute repayment contracts with Reclamation. The Water Authority and Reclamation began negotiating the repayment contract for the Jones Pumping Plant Excitation Cabinet and Control Panel Refurbishment Project in December 2023 and completed negotiations in March 2024. The draft repayment contract is attached and the Water Authority is seeking authorization to finalize and execute the contract.

### ISSUE FOR DECISION

Whether the Board of Directors should adopt the proposed Resolution Authorizing Execution of Contract with the United States Providing for the Repayment of Extraordinary Maintenance Costs for the C.W. "Bill" Jones Pumping Plant Excitation Cabinet and Control Panel Refurbishment Project.

## RECOMMENDATION

Water Authority staff recommends adoption of the proposed resolution.

## ANALYSIS

The application process is described in Reclamation Directive and Standard (D&S) PEC 05-03 (attached). Following award, the Water Authority was required to negotiate and execute a contract for extended repayment of funds.

Per Section 8E Acreage Limitation, on page 8 of D&S PEC 05-03, extended repayment of O&M expenses does **not** trigger Reclamation Reform Act pricing or acreage limitations.

Key components of the negotiated draft repayment contract include:

1. A repayment term of 27 years. The repayment term was informed by the service life of the various components of the project, as separately analyzed by the Authority and Reclamation.
2. Ability of the Water Authority to receive upfront funding from Reclamation to fund the project. This component will eliminate cash flow issues associated with issuing the contracts needed to complete this project.
3. Six separate repayment schedules for the project. While only one repayment contract will be executed for this project, Reclamation asserts that per FAC 01-05(K) Substantial Completion, repayment must begin following substantial completion of each separate Jones Pumping Plant unit during the project, because each unit at that point will return to service and new excitation system will begin providing benefits.

The proposed Resolution authorizes execution of the contract in substantial form because the contract is still with Reclamation for final review. Reclamation has indicated they may have a few proposed changes to the contract, but Water Authority staff does not expect them to be substantial. Following execution of the repayment contract, Water Authority staff will proceed in hiring a contractor to execute the project, and expects work on the first unit to begin around November 2024. Once initiated, the refurbishment of each of the six units of Jones Pumping Plant is anticipated to take approximately 6 months; the total project is anticipated to be complete within three years.

As stated above, there will be six separate repayment amounts and schedules associated with the repayment contract. Staff currently anticipates a rough break-down of the \$25 million into the following amounts:

- Unit 1: \$4.161 m
- Unit 2: \$4.161 m
- Unit 3: \$4.161 m
- Unit 4: \$4.161 m
- Unit 5: \$4.161 m
- Unit 6: \$4.191 m

Once each repayment schedule is established, Water Authority staff will assess a reserve component for that schedule. Based on the current U.S. Treasury Long Term Rate (30 Year) of 4.4600%, the current projected estimated reserve rate required to begin repaying the loan would be approximately \$.89/acre-foot. Repayment would begin no earlier than FY26.

**ATTACHMENTS**

1. Resolution Authorizing Execution of the Extended Repayment Contract for the amount of funding not to exceed \$25M for the Jones Pumping Plant Excitation Cabinet and Control Panel Refurbishment Project
2. Draft Contract Between the United States of America and the San Luis & Delta-Mendota Water Authority Providing for the Repayment of Extraordinary Maintenance Costs for the C.W. "Bill" Jones Pumping Plant Excitation Cabinet and Control Panel Refurbishment Project
3. Reclamation Directive and Standard (D&S) PEC 05-03

**SAN LUIS & DELTA-MENDOTA WATER AUTHORITY**

**RESOLUTION NO. 2024-xxx**

**RESOLUTION AUTHORIZING EXECUTION OF CONTRACT WITH THE UNITED STATES PROVIDING FOR THE REPAYMENT OF EXTRAORDINARY MAINTENANCE COSTS FOR THE C.W. “Bill” JONES PUMPING PLANT EXCITATION CABINET AND CONTROL PANEL REFURBISHMENT PROJECT**

**WHEREAS**, the San Luis & Delta-Mendota Water Authority (“**Water Authority**”) is a transferred works operator responsible for the operation, maintenance, and replacement (“**OM&R**”) of certain Central Valley Project (“**CVP**”) facilities, including the Jones Pumping Plant; and

**WHEREAS**, the Jones Pumping Plant is in need of extraordinary maintenance due to the age of the facility and the irreplaceable role the facility has of moving water from the Delta to the CVP; and

**WHEREAS**, the Water Authority and Reclamation have been and are working closely to study the need for and plan the C.W. “Bill” Jones Pumping Plant Excitation Cabinet and Control Panel Refurbishment Project (“**JPP Excitation Project**”) with a construction cost estimate of \$25 million; and

**WHEREAS**, the Water Authority submitted an application in 2022 and was awarded \$25 million in Bipartisan Infrastructure Law (“**BIL**”) funding in Fiscal Year 2023 for the JPP Excitation Project and has completed the negotiation process to determine the terms of the repayment contract; and

**WHEREAS**, the Water Authority is authorized to fund and negotiate contracts for the repayment of extraordinary maintenance projects; and

**WHEREAS**, the Water Authority is now seeking authorization to execute the Contract Between the United States of America and the San Luis & Delta-Mendota Water Authority Providing for the JPP Excitation Project (“**Repayment Contract**”); and

**WHEREAS**, the Board of Directors has considered that certain form of the Repayment Contract, Attachment 1 to this Resolution, presented to the Board of Directors and on file with the Secretary hereof; and

**WHEREAS**, authorizing execution of a repayment contract with the United States does not constitute a project or projects under the California Environmental Quality Act (“**CEQA**”) because the proposed actions represent administrative actions of the Water Authority that will not result in direct or indirect physical changes in the environment (CEQA Guidelines Section 15378(b)(5)); further, because the proposed actions are exempt from CEQA pursuant to the statutory exemption for ongoing pre-CEQA projects (CEQA Guidelines Section 15261) and the categorical exemption for the continued operation and maintenance of existing facilities at the same level of use (CEQA Guidelines Section 15301); and because it can be seen with certainty that there is no possibility that the proposed actions in question may have a significant effect on

the environment, the proposed action is not subject to CEQA (CEQA Guidelines Section 15061(b)(3)); and

**WHEREAS**, the Board is willing to authorize execution of the Repayment Contract, subject to such revisions, additions, and deletions as may be approved by the executing officers at the time of signing the Repayment Contract, said execution to provide conclusive evidence of such approval.

**NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS, THAT:**

Section 1. The facts stated in the recitals above are true and correct, and the Board so finds and determines.

Section 2. The Board hereby authorizes the Executive Director and Chief Operating Officer, and such Water Authority employee or consultant as either of such officers may designate to execute a repayment contract on behalf of the Water Authority for extended repayment and funding from the Aging Infrastructure Account for the C.W. “Bill” Jones Pumping Plant Excitation Cabinet and Control Panel Refurbishment Project.

Section 3. The Executive Director and Chief Operating Officer, and such Water Authority employee or consultant as either of such officers may designate, are further authorized and directed to take such additional steps, and to execute such additional documents, as may be required or reasonably necessary to the completion of the activities authorized by this Resolution.

**PASSED, APPROVED AND ADOPTED** this 4th day of April, 2024, by the Board of Directors of the San Luis & Delta-Mendota Water Authority.

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Cannon Michael, Chairman  
San Luis & Delta-Mendota Water Authority

Attest:

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Federico Barajas, Secretary

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I hereby certify that the foregoing Resolution No. 2024-xxx was duly and regularly adopted by the Board of Directors of the San Luis & Delta-Mendota Water Authority at the meeting thereof held on the 4th day of April 4, 2024.

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Federico Barajas, Secretary

UNITED STATES  
 DEPARTMENT OF THE INTERIOR  
 BUREAU OF RECLAMATION  
 Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES OF AMERICA  
AND THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY  
PROVIDING FOR  
THE REPAYMENT OF EXTRAORDINARY MAINTENANCE COSTS  
FOR THE C.W. "BILL" JONES PUMPING PLANT EXCITATION CABINET AND  
CONTROL PANEL REFURBISHMENT PROJECT

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- Exhibit A – Repayment Schedule(s)
- Exhibit B – Scope(s) of Work
- Exhibit C – Contractor Responsibilities
- Exhibit D – Standard Form 425 (SF 425)

DRAFT

1 UNITED STATES  
2 DEPARTMENT OF THE INTERIOR  
3 BUREAU OF RECLAMATION  
4 Central Valley Project, California

5 CONTRACT BETWEEN THE UNITED STATES OF AMERICA  
6 AND THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY  
7 PROVIDING FOR  
8 THE REPAYMENT OF EXTRAORDINARY MAINTENANCE COSTS  
9 FOR THE C.W. "BILL" JONES PUMPING PLANT EXCITATION CABINET AND  
10 CONTROL PANEL REFURBISHMENT PROJECT

11 THIS CONTRACT made this \_\_\_\_ day of \_\_\_\_\_, 2023, pursuant to  
12 the Reclamation Act of June 17, 1902 (32 Stat. 388), and acts amendatory and supplementary  
13 thereto, including but not limited to, Title IX, Subtitle G, Section 9603 of the Omnibus Public  
14 Land Management Act of March 30, 2009 (P.L. 111-11, 123 Stat. 1348, 43 U.S.C. § 510b), all  
15 collectively hereinafter referred to as Federal Reclamation law, between THE UNITED STATES  
16 OF AMERICA, hereinafter referred to as the "United States", and the SAN LUIS & DELTA-  
17 MENDOTA WATER AUTHORITY, hereinafter referred to as the "Contractor", a joint powers  
18 authority duly organized, existing, and acting pursuant to the laws of the State of California;

19 WITNESSETH, That:

20 RECITALS

21 a. On January 14, 2020, the United States acting through the Bureau of Reclamation,  
22 hereinafter referred to as Reclamation, and the Contractor executed Contract No. 8-07-20-  
23 X0354-X, which transferred the responsibility for operation, maintenance, and replacement of a  
24 certain portion of the Central Valley Project (CVP), Delta Division facilities, including the C.W.  
25 "Bill" Jones Pumping Plant, formerly known as the Tracy Pumping Plant, hereafter Jones  
26 Pumping Plant, to the Contractor; and

27           b.       Reclamation, in consultation with the Contractor, has determined that XM Work  
28 is needed to refurbish and modernize the excitation and control systems of each of the six units  
29 of Jones Pumping Plant; and

30           c.       The preliminary cost estimate for the entire XM Work is \$25,000,000; and

31           d.       Pursuant to Title XI, Section 1101 of Public Law 116-260 (134 Stat. 3221),  
32 Reclamation’s existing XM authority was amended by the establishment of the Aging  
33 Infrastructure Account, hereinafter “Account”, and an annual application process was established  
34 for eligible contractors to apply for funds and extended repayment. The 2021 Bipartisan  
35 Infrastructure Law provided funding for the Account for extraordinary maintenance needs over  
36 the next five years; and the Contractor submitted an application requesting funding from the  
37 Account for the Jones Pumping Plant Excitation Cabinet and Control Panel Refurbishment  
38 Project; and

39           e.       By memorandum of March 31, 2023, the Commissioner of the Bureau of  
40 Reclamation approved and authorized \$25,000,000 for planning, design, and subsequent  
41 implementation of the Jones Pumping Plant Excitation Cabinet and Control Panel Refurbishment  
42 Project submitted by the Contractor under the authority of Title IX, Subtitle G of Public Law  
43 111-11 (123 Stat. 991) and Title XI, Section 1101 of Public Law 116-260 (134 Stat. 3221); and

44           f.       This Contract is established for the repayment of reimbursable costs of the  
45 XM Work.

46           In consideration of the mutual and dependent covenants herein contained, the Parties  
47 mutually agree as follows:

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DEFINITIONS

1. When used in this Contract, the term:

(a) “Construction” shall mean the construction of the Jones Pumping Plant Excitation Cabinet and Control Panel Refurbishment Project, including, but not limited to, refurbishment and modernization of the excitation and control systems of each of the six units of Jones Pumping Plant, construction, and any required environmental mitigation activities.

(b) “Contracting Officer” shall mean the Secretary of the Interior’s duly authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or regulation.

(c) “Existing Contract” shall mean Contract No. 8-07-20-X0354-X, effective January 14, 2020, as amended, between the United States and the Contractor.

(d) “Fiscal Year” shall mean the period of October 1 through September 30 of the following Year, both dates inclusive.

(e) “Planning Study” shall mean a study prepared in compliance with Reclamation Manual Directives and Standards, Planning for Major Rehabilitation and Replacement Activities, CMP 09-04, as may be revised or superseded, as well as associated environmental compliance, permitting, and appropriate level of design, that is accepted by Reclamation for the Jones Pumping Plant Excitation Cabinet and Control Panel Refurbishment Project.

(f) “Planning Study Completion” shall mean the date the Policy Compliance Review required by CMP 09-04 is completed and signed by the Director, Policy and Programs and the California-Great Basin Regional Director determining that the Planning Study meets the

70 compliance requirements of CMP 09-04, as well as completion of the designs necessary to  
71 support a solicitation for construction work.

72 (g) “Project” shall mean the Central Valley Project located in California.

73 (h) “Repayment Obligation” shall mean the entire sum of funds expended for  
74 the XM Work pursuant to this Contract, plus accrued interest, as determined by the Contracting  
75 Officer and reflected in Exhibit A.

76 (i) “Extraordinary Maintenance” or “XM Work” shall include Construction  
77 and shall be consistent with the definition provided in PEC 05-03, as amended or supplemented.

78 (j) “Substantially Complete” or “Substantial Completion” shall be consistent  
79 with the definition provided in FAC 01-05, as amended or supplemented.

80 (k) “Year” shall mean the period January 1 through December 31, both dates  
81 inclusive.

82 TERM OF THE CONTRACT

83 2. This Contract shall become effective on the date first written above and shall  
84 remain in effect until the Contractor has fully repaid its Repayment Obligation to the United  
85 States over the period described in Article 5 herein.

86 XM WORK

87 3. (a) Reclamation will perform the work identified in Exhibit B. Exhibit B may  
88 be updated by the Contracting Officer (or his representative) without amendment of this Contract.  
89 The Contractor will have an opportunity to review Exhibit B prior to any proposed updates.

90 (b) The XM Work is to be performed by the Contractor. The XM Work may  
91 be modified upon advanced written request by the Contractor and advanced approval by the  
92 Contracting Officer in accordance with Federal reclamation law and policy. All designs,  
93 specifications, and work performed under this Contract shall be approved in advance and in

94 writing by the Contracting Officer, or as otherwise agreed to in writing at the exclusive  
95 discretion of the Contracting Officer.

96 FUNDS TO BE PROVIDED

97 4. (a) The total amount requested by the Contractor for the XM Work subject to  
98 this Contract is \$25,000,000. The total amount of funding provided pursuant to Title IX, Subtitle  
99 G of Public Law 111-11 (123 Stat. 991) and Title XI, Section 1101 of Public Law 116-260 (134  
100 Stat. 3221) is \$25,000,000. No additional funding will be provided unless the Parties agree to  
101 amend this Contract.

102 (b) Funds may be provided to the Contractor in advance of the XM Work  
103 provided that any such advance of funds shall be released in as many installments as the  
104 Contracting Officer deems necessary; *Provided further*, That the Contractor may request an  
105 advance of funds in particular installments; however, the Contractor must provide the  
106 Contracting Officer justification for the immediate need for the funds requested, including how  
107 the funds would be applied (e.g., components, labor, overhead, and shipping) and the  
108 Contracting Officer shall have the final determination in how and when installments are  
109 transmitted.

110 (c) All funds advanced to the Contractor shall be deposited and maintained in  
111 an insured account, until such time as the Contractor applies the funds against the XM Work;  
112 *Provided*, That the Contractor shall use the funds solely to finance the XM Work; *Provided*  
113 *further*, That the Contractor shall return any and all unexpended, unobligated, or unencumbered  
114 funds within thirty (30) days after the date on which the Contracting Officer determines and  
115 notifies the Contractor in writing that the entire XM Work is Substantially Complete.

116 (d) Funds will no longer be provided once the Contracting Officer determines  
117 that: (1) the work described in Article 3 herein is complete; (2) the Contractor no longer requires  
118 additional funds to complete said XM Work; or (3) the amount stated in subarticle 4(a) of the  
119 Contract has been expended.

120 CONTRACTOR'S REPAYMENT OBLIGATION

121 5. (a) The Contractor shall be obligated to repay the entire sum of funds  
122 expended, as specified in Exhibit A, plus accrued interest, as determined by the Contracting  
123 Officer, pursuant to paragraph (b)(1) herein, over a period of twenty-seven (27) years from the  
124 date the Contracting Officer deems the XM Work on each unit of Jones Pumping Plant  
125 Substantially Complete, which total sum is hereinafter referred to as Repayment Obligation.

126 (b) The interest rate used for computing interest on federal funds disbursed to  
127 the Contractor shall be the Department of the Treasury rate as of the date on which federal and/or  
128 Contractor funds are disbursed pursuant to this Contract, on the basis of average market yields on  
129 outstanding marketable obligations of the United States with the remaining periods of maturity  
130 comparable to the applicable reimbursement period pursuant to this Contract, adjusted to the  
131 nearest 1/8 of 1 percent on the unamortized balance of any portion of the Repayment Obligation.  
132 Interest accrual shall commence on the date when federal funds are advanced by the United  
133 States to the Contractor and will be computed on an annual basis on the unpaid balance of the  
134 Repayment Obligation, as determined by the Contracting Officer.

135 (c) The Contracting Officer will notify the Contractor in writing of Planning  
136 Study Completion. Following such notification, and after consultation with the Contractor, the  
137 Contracting Officer shall provide the Contractor with a repayment schedule of the Repayment  
138 Obligation requiring equal annual installments for the XM Work on each unit of the Jones

139 Pumping Plant, which schedule shall be incorporated into this Contract as Exhibit A, and which may  
140 be updated by the Contracting Officer without amendment of this Contract.

141 (d) The Contractor may, at any time, prepay all or a portion of the unpaid  
142 Repayment Obligation as provided herein without penalty, notwithstanding any interest accrued  
143 that the Contractor is required to pay.

144 REPORTING REQUIREMENTS

145 6. (a) The Contractor shall provide the Contracting Officer with progress and financial  
146 status reports to the Area Manager of the South-Central California Area Office in accordance  
147 with 43 USC 510(b), including but not limited to, the actual costs, along with supporting  
148 documentation, for each completed task identified in Exhibit C. (b) Progress

149 Reports – From project initiation through completion, the Contractor will provide by November  
150 15 of each year, a narrative description of the XM Work performed during each Federal fiscal  
151 year (October 1 through September 30). Progress reports must contain a narrative of the work  
152 accomplished, descriptions of contracts, major subcontracts, and modifications implemented  
153 during the report period, architect, and engineer (A/E) service deliverables, the percentage of  
154 work completed, the substantial completion status, and any problems encountered, and corrective  
155 actions taken. Any issues that impact or may pose a future risk to cost, scope, or schedule will be  
156 identified. For projects in the construction phase, the report will include an updated construction  
157 schedule generated by the construction subcontractor, including but not limited to components,  
158 labor, overhead, and shipping.

159 (c) Financial Reports – From project initiation through completion, the  
160 Contractor will provide quarterly financial reports using Standard Form-425 (Federal Financial  
161 Report) (see Exhibit D). Reports shall be submitted within forty-five (45) days of the end of each

162 calendar year quarter (March 31, June 30, September 30, and December 31) starting in the  
163 quarter that funding is received.

164 BUY AMERICA DOMESTIC PROCUREMENT PREFERENCE

165 7. (a) As required by Section 70914 of the Bipartisan Infrastructure Law (also  
166 known as the Infrastructure Investment and Jobs Act), Pub. L. 117-58, on or after May 14, 2022,  
167 none of the funds under a federal award that are part of federal financial assistance program for  
168 Infrastructure may be obligated for a project unless all of the iron, steel, manufactured products,  
169 and Construction materials used in the project are produced in the United States, unless subject  
170 to an approved waiver. The requirements of this section must be included in all subawards,  
171 including all contracts and purchase orders for work or products under this program.

172 Recipients of an award of federal financial assistance are hereby notified that none of the funds  
173 provided under this award may be used for a project for Infrastructure unless:

174 (1) all iron and steel used in the project are produced in the United States – this means  
175 all manufacturing processes, from the initial melting stage through the application of  
176 coatings, occurred in the United States; and

177 (2) all manufactured products used in the project are produced in the United States –  
178 this means the manufactured product was manufactured in the United States; and the  
179 cost of the components of the manufactured product that are mined, produced, or  
180 manufactured in the United States is greater than 55 percent of the total cost of all  
181 components of the manufactured product, unless another standard for determining the  
182 minimum amount of domestic content of the manufactured product has been established  
183 under applicable law or regulation; and

184 (3) all Construction materials are manufactured in the United States—this means that all  
185 manufacturing processes for the construction material occurred in the United States.

186 The Buy America preference only applies to articles, materials, and supplies that are consumed  
187 in, incorporated into, or affixed to an Infrastructure project. As such, it does not apply to tools,  
188 equipment, and supplies, such as temporary scaffolding, brought to the construction site and  
189 removed at or before the completion of the Infrastructure project. Nor does a Buy America  
190 preference apply to equipment and furnishings, such as movable chairs, desks, and portable  
191 computer equipment, that are used at or within the finished Infrastructure project but are not an  
192 integral part of the structure or permanently affixed to the Infrastructure project.

193 For further information on the Buy America preference, please visit  
194 [www.doi.gov/grants/BuyAmerica](http://www.doi.gov/grants/BuyAmerica). Additional information can also be found at the White House  
195 Made in America Office website: [www.whitehouse.gov/omb/management/made-in-america/](http://www.whitehouse.gov/omb/management/made-in-america/).

196 (b) Waivers - When necessary, recipients may apply for, and the Department  
197 of the Interior (DOI) may grant, a waiver from these requirements, subject to review by the Made  
198 in America Office. The DOI may waive the application of the Domestic content procurement  
199 preference in any case in which it is determined that one of the below circumstances applies:

200 (1) Non-availability Waiver: the types of iron, steel, manufactured products, or  
201 Construction materials are not produced in the United States in sufficient and reasonably  
202 available quantities or of a satisfactory quality; or

203 (2) Unreasonable Cost Waiver: the inclusion of iron, steel, manufactured products, or  
204 Construction materials produced in the United States will increase the cost of the overall  
205 project by more than twenty-five (25) percent; or

206 (3) Public Interest Waiver: applying the Domestic content procurement preference would  
207 be inconsistent with the public interest.

208 There may be instances where an award qualifies, in whole or in part, for an existing DOI  
209 general applicability waiver as described at:

210 [www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers](http://www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers). If the specific financial  
211 assistance agreement, Infrastructure project, or non-domestic materials meets the criteria of an  
212 existing general applicability waiver within the limitations defined within the waiver, the  
213 recipient is not required to request a separate waiver for non-domestic materials.

214 If a general applicability waiver does not already apply, and a recipient believes that one of the  
215 above circumstances applies to an award, a request to waive the application of the Domestic  
216 content procurement preference may be submitted to the financial assistance awarding officer in  
217 writing. The waiver shall not include any Privacy Act information, sensitive data, or proprietary  
218 information within their waiver request. Waiver requests will be posted to

219 [www.doi.gov/grants/buyamerica](http://www.doi.gov/grants/buyamerica) and are subject to public comment periods of no less than 15  
220 days. Waiver requests will also be reviewed by the Made in America Office. Waiver requests  
221 shall include the below information:

- 222 (1) Type of waiver requested (non-availability, unreasonable cost, or public interest).
- 223 (2) Requesting entity and Unique Entity Identifier (UEI) submitting the request.
- 224 (3) Department of Interior Bureau or Office who issued the award.
- 225 (4) Federal financial assistance listing name and number (reference block 2 on DOI  
226 Notice of Award)
- 227 (5) Financial assistance title of project (reference block 8 on DOI Notice of Award).
- 228 (6) Federal Award Identification Number (FAIN).

- 229 (7) Federal funding amount (reference block 11.m. on DOI Notice of Award).
- 230 (8) Total cost of Infrastructure expenditures (includes federal and non-federal funds to the  
231 extent known).
- 232 (9) Infrastructure project description(s) and location(s) (to the extent known).
- 233 (10) List of iron or steel item(s), manufactured goods, and construction material(s) the  
234 recipient seeks to waive from Buy America requirements. Include the name, cost,  
235 countries of origin (if known), and relevant [PCS](#) or [NAICS](#) code for each.
- 236 (11) A certification that the recipient made a good faith effort to solicit bids for domestic  
237 products supported by terms included in requests for proposals, contracts, and  
238 nonproprietary communications with the prime contractor.
- 239 (12) A statement of waiver justification, including a description of efforts made (e.g.,  
240 market research, industry outreach) by the recipient, in an attempt to avoid the need for a  
241 waiver. Such a justification may cite, if applicable, the absence of any Buy America-  
242 compliant bids received in response to a solicitation.
- 243 (13) Anticipated impact if no waiver is issued.
- 244 Approved waivers will be posted at [www.doi.gov/grants/BuyAmerica/ApprovedWaivers](http://www.doi.gov/grants/BuyAmerica/ApprovedWaivers);  
245 recipients requesting a waiver will be notified of their waiver request determination by an  
246 awarding officer. Questions pertaining to waivers should be directed to the financial assistance  
247 awarding officer.

248 WAGE EQUALITY

249 8. The Contractor will ensure compliance with Section 41101 of the Bipartisan  
250 Infrastructure Law (Pub. L. 117-58), which requires that all laborers and mechanics employed by  
251 the Contractor or a subcontractor in the performance of construction, alteration, or repair work

252 on a project assisted in whole or in part by funding made available under the Bipartisan  
253 Infrastructure Law (Pub. L. 117-58) shall be paid wages at rates not less than those prevailing on  
254 similar projects in the locality, as determined by the Secretary of Labor in accordance with  
255 Subchapter IV of Chapter 31 of Title 40, United States Code (commonly referred to as the Davis  
256 Bacon Act).

257 PRESERVATION OF EXISTING CONTRACT

258 9. Except as specifically provided herein, the Existing Contract shall continue in full  
259 force and effect as originally written, executed, and amended. Any dispute between this  
260 Contract and the Existing Contract shall be resolved pursuant to Article 7 of this Contract.

261 SEVERABILITY

262 10. In the event that any one or more of the provisions contained herein shall, for any  
263 reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality,  
264 or unenforceability shall not affect any other provisions of this Contract, but this Contract shall  
265 be construed as if such invalid, illegal, or unenforceable provisions had never been contained  
266 herein, unless the deletion of such provisions would result in such a material change so as to  
267 cause the fundamental benefits afforded the Parties to this Contract to become unavailable or  
268 materially altered.

269 RESOLUTION OF DISPUTES

270 11. Should any dispute arise concerning any provision of this Repayment Contract,  
271 upon written request from either the Contracting Officer (or his representative) or the Contractor,  
272 the Area Manager, South-Central California Area Office and the Contractor will meet and confer  
273 in an attempt to resolve the dispute within sixty (60) days of such request. If the dispute has not

274 been resolved within the initial sixty (60) days, the dispute will be referred to the Contracting  
275 Officer for a subsequent ninety (90) days within which to resolve the dispute.

276 ENVIRONMENTAL COMPLIANCE

277 12. (a) The Contractor will comply with any applicable environmental measures  
278 contained in any environmental documentation prepared in connection with the XM Work

279 (b) The Contractor will comply with all Federal, state, local, and tribal law,  
280 and requirements imposed for protection of the environment and Indian trust assets, including,  
281 but not limited to, the Native American Graves Protection and Repatriation Act (Pub. L. 101-  
282 601, 104 Stat. 3048, 25 U.S.C. §3001 et seq.) and the Archaeological Resources Protection Act  
283 of 1979 (Pub. L. 96-95, 93 Stat. 721, 16 U.S.C. §470aa et seq.).

284 CONTRACTS WITH THIRD PARTIES

285 13. (a) The Contractor shall advertise each construction (as “construction” is  
286 defined in the Federal Acquisition Regulations (FAR) at 48 C.F.R. § 2.101), equipment, or  
287 supply contract exceeding \$25,000 (twenty-five thousand dollars) for competitive bidding. Any  
288 action proposed by the Contractor other than making the award to the lowest responsible bidder  
289 shall be subject to the Contracting Officer’s approval.

290 (b) For all construction contracts exceeding \$100,000 (one hundred thousand  
291 dollars), the Contractor shall require construction contractors to furnish performance and  
292 payment bonds, each in amounts equal to at least 100 percent of the contract price. For  
293 construction contracts exceeding \$30,000 (thirty thousand dollars), but not exceeding \$100,000  
294 (one hundred thousand dollars), the Contracting Officer shall select at least two of the payment  
295 protections set forth in the FAR at 48 C.F.R. § 28.102-1(b)(1), and the Contractor shall require  
296 the construction contractor to secure one of the selected protections. Supply and equipment  
297 contractors may be required to furnish performance bonds on supply or equipment contracts  
298 exceeding \$100,000 (one hundred thousand dollars) when the contract calls for substantial  
299 progress payments before delivery of end items.

300 (c) The United States shall not be a party to or obligated in any manner by  
301 contracts entered into between the Contractor and other parties pursuant to this contract.

302 FAILURE TO COMPLETE WORK

303 14. (a) In the event that the Contractor fails to complete the work to be performed  
304 pursuant to this contract for any reason other than the failure of the United States to appropriate  
305 and allocate funds, the Contractor shall, upon receipt of written notice from the Contracting

306 Officer, suspend payment on all current contracts and return to the United States any unexpended  
307 balance of funds advanced by the United States and contributed by the Contractor in such  
308 amounts as determined to be equitable by the Contracting Officer. Following delivery of the  
309 notice, the Contracting Officer may adopt either of the following two alternatives:

310 (1) Perform, or cause to be performed, all or any part of the work  
311 remaining under this contract and within the limits of the funds provided herein by the United  
312 States and by the Contractor for the project, as well as operate and maintain the project  
313 concurrently. The Contractor shall transfer to the United States custody and use of all  
314 equipment, materials, and supplies used or useful in the performance of the work; permit the  
315 United States, its contractors, and its agents ingress to and egress from lands, project works, and  
316 facilities of the Contractor for the performance of such work; and assign to the United States the  
317 Contractor's interest in any contract for the performance of work or the supplying of equipment  
318 or material in connection with such work where requested by the United States and agreed to by  
319 the other contracting party; or

320 (2) Declare the project substantially complete within the provisions of  
321 this contract by giving written notice to the Contractor that (a) the construction work on a feature  
322 is substantially complete, or (b) the feature is providing benefits and services for the intended  
323 purpose(s), or (c) the feature is generating revenue, where applicable. Repayment of the loan  
324 obligation shall be carried out in accordance with the provisions of this contract; *Provided, That*  
325 the first annual payment shall become due in the year following the year in which the Contractor  
326 is notified of such declaration of completion.

327 (b) In the event the United States shall proceed as provided in (a)(1) of this  
328 article, the United States may, at any time and regardless of the progress of work performed  
329 thereunder, declare the project complete by giving written notice thereof to the Contractor, in  
330 which event the provisions of (a)(2) of this article shall apply; *Provided, That* the loan obligation  
331 shall not exceed the limitation specified in this contract, including all expenditures made  
332 pursuant to provisions of (a)(1) of this article.

333 (c) Upon giving written notice of project completion to the Contractor as  
334 provided above, the United States shall have the right, without further notice, to take over the  
335 care, operation, and maintenance of the project.

336 CHARGES FOR DELINQUENT PAYMENTS

337 15. (a) The Contractor shall be subject to interest, administrative, and penalty  
338 charges on delinquent payments. If a payment is not received by the due date, the Contractor  
339 shall pay an interest charge on the delinquent payment for each day the payment is delinquent  
340 beyond the due date. If a payment becomes 60 days delinquent, the Contractor shall pay, in  
341 addition to the interest charge, an administrative charge to cover additional costs of billing and  
342 processing the delinquent payment. If a payment is delinquent 90 days or more, the Contractor  
343 shall pay, in addition to the interest and administrative charges, a penalty charge for each day the  
344 payment is delinquent beyond the due date, based on the remaining balance of the payment due  
345 at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt  
346 collection services associated with a delinquent payment.

347 (b) The interest rate charged shall be the greater of either the rate prescribed  
348 quarterly in the Federal Register by the Department of the Treasury for application to overdue  
349 payments, or the interest rate of 0.5 percent per month. The interest rate charged will be  
350 determined as of the due date and remain fixed for the duration of the delinquent period.

351 (c) When a partial payment on a delinquent account is received, the amount  
352 received shall be applied first to the penalty charges, second to the administrative charges, third  
353 to the accrued interest, and finally to the overdue payment.

354 GENERAL OBLIGATION—BENEFITS CONDITIONED UPON PAYMENT

355 16. (a) The obligation of the Contractor to pay the United States as provided in  
356 this Contract is a general obligation of the Contractor notwithstanding the manner in which the  
357 obligation may be distributed among the Contractor's water users and notwithstanding the default  
358 of individual water users in their obligation to the Contract.

359 (b) The payment of charges becoming due pursuant to this Contract is a  
360 condition precedent to receiving benefits under this Contract. The United States shall not make  
361 water available to the Contractor through Project facilities during any period in which the  
362 Contractor may be in arrears for more than 12 months in the payment of any construction  
363 charges due the United States.

364 NOTICES

365 17. Any notice, demand, or request authorized or required by this Contract shall be  
366 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or  
367 delivered to the Area Manager, South-Central California Area Office, Bureau of Reclamation,  
368 1243 N Street, Fresno, California 93721, and on behalf of the United States, when mailed,  
369 postage prepaid, or delivered to the Executive Director, of the Contractor, P.O. Box 2157, Los  
370 Banos, California 93635. The designation of the addressee or the address may be changed by  
371 notice given in the same manner as provided in this article for other notices.

372 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

373 18. The expenditure or advance of any money or the performance of any obligation of  
374 the United States under this Contract shall be contingent upon appropriation or allotment of  
375 funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any  
376 obligations under this Contract. No liability shall accrue to the United States in case funds are  
377 not appropriated or allotted.

378 OFFICIALS NOT TO BENEFIT

379 19. No Member of or Delegate to the Congress, Resident Commissioner, or official of  
380 the Contractor shall benefit from this Contract other than as a water user or landowner in the  
381 same manner as other water users or landowners.

382 ASSIGNMENT LIMITED—SUCCESSORS AND ASSIGNS OBLIGATED



419 (3) The Contractor will not discharge or in any other manner discriminate  
420 against any employee or applicant for employment because such employee or applicant has  
421 inquired about, discussed, or disclosed the compensation of the employee or applicant or another  
422 employee or applicant. This provision shall not apply to instances in which an employee who  
423 has access to the compensation information of other employees or applicants as a part of such  
424 employee's essential job functions discloses the compensation of such other employees or  
425 applicants to individuals who do not otherwise have access to such information, unless such  
426 disclosure is in response to a formal complaint or charge, in furtherance of an investigation,  
427 proceeding, hearing, or action, including an investigation conducted by the employer, or is  
428 consistent with the Contractor's legal duty to furnish information.

429 (4) The Contractor will send to each labor union or representative of workers  
430 with which he has a collective bargaining agreement or other contract or understanding, a notice,  
431 to be provided by the agency Contracting Officer, advising the labor union or workers'  
432 representative of the Contractor's commitments under section 202 of Executive Order No. 11246  
433 of September 24, 1965, and shall post copies of the notice in conspicuous places available to  
434 employees and applicants for employment.

435 (5) The Contractor will comply with all provisions of Executive Order No.  
436 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of  
437 Labor.

438 (6) The Contractor will furnish all information and reports required by  
439 Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of  
440 the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and  
441 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to  
442 ascertain compliance with such rules, regulations, and orders.

443 (7) In the event of the Contractor's noncompliance with the nondiscrimination  
444 clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be  
445 canceled, terminated or suspended in whole or in part and the Contractor may be declared  
446 ineligible for further Government contracts in accordance with procedures authorized in  
447 Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and  
448 remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule,  
449 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

450 (8) The Contractor will include the provisions of paragraphs (1) through (8) in  
451 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the  
452 Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September  
453 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The  
454 Contractor will take such action with respect to any subcontract or purchase order as may be  
455 directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions  
456 for noncompliance: *Provided, however*, that in the event the Contractor becomes involved in, or  
457 is threatened with, litigation with a subcontractor or vendor as a result of such direction, the  
458 Contractor may request the United States to enter into such litigation to protect the interests of  
459 the United States.

460

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

461           24.   (a)    The Contractor shall comply with Title VI of the Civil Rights Act of 1964  
 462 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub. L. 93-112, Title V, as  
 463 amended; 29 U.S.C. §791, et. Seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title  
 464 III; 42 U.S.C. § 6101, et seq.), Title II of the Americans with Disabilities Act of 1990 (Pub. L.  
 465 101-336; 42 U.S.C. § 12131, et seq.), and any other applicable civil rights laws, and with the  
 466 applicable implementing regulations and any guidelines imposed by the U.S. Department of the  
 467 Interior and/or Bureau of Reclamation.

468           (b)    These statutes prohibit any person in the United States from being  
 469 excluded from participation in, being denied the benefits of, or being otherwise subjected to  
 470 discrimination under any program or activity receiving financial assistance from the Bureau of  
 471 Reclamation on the grounds of race, color, national origin, disability, or age. By executing this  
 472 Contract, the Contractor agrees to immediately take any measures necessary to implement this  
 473 obligation, including permitting officials of the United States to inspect premises, programs, and  
 474 documents.

475           (c)    The Contractor makes this Contract in consideration of and for the  
 476 purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other  
 477 Federal financial assistance extended after the date hereof to the Contractor by the Bureau of  
 478 Reclamation, including installment payments after such date on account of arrangements for  
 479 Federal financial assistance which were approved before such date. The Contractor recognizes  
 480 and agrees that such Federal assistance will be extended in reliance on the representations and  
 481 agreements made in this article, and that the United States reserves the right to seek judicial  
 482 enforcement thereof.

483           (d)    Complaints of discrimination against the Contractor shall be investigated  
 484 by the Contracting Officer's Office of Civil Rights.

485

CERTIFICATION OF NONSEGREGATED FACILITIES

486           25.   The Contractor hereby certifies that it does not maintain or provide for its  
 487 employees any segregated facilities at any of its establishments and that it does not permit its  
 488 employees to perform their services at any location under its control where segregated facilities  
 489 are maintained. It certifies further that it will not maintain or provide for its employees any  
 490 segregated facilities at any of its establishments and that it will not permit its employees to  
 491 perform their services at any location under its control where segregated facilities are  
 492 maintained. The Contractor agrees that a breach of this certification is a violation of the Equal  
 493 Employment Opportunity clause in this Contract. As used in this certification, the term  
 494 "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms,  
 495 restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas,  
 496 parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing  
 497 facilities provided for employees which are segregated by explicit directive or are in fact  
 498 segregated on the basis of race, creed, color, or national origin, because of habit, local custom,  
 499 disability, or otherwise. The Contractor further agrees that (except where it has obtained  
 500 identical certifications from proposed subcontractors for specific time periods) it will obtain

501 identical certifications from proposed subcontractors prior to the award of subcontracts  
502 exceeding \$10,000 which are not exempt from the provisions of the Equal Employment  
503 Opportunity clause; that it will retain such certifications in its files; and that it will forward the  
504 following notice to such proposed subcontractors (except where the proposed subcontractors  
505 have submitted identical certifications for specific time periods):

506 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR  
507 CERTIFICATIONS OF NONSEGREGATED FACILITIES

508 A Certification of Nonsegregated Facilities must be submitted prior to the award of a  
509 subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal  
510 Employment Opportunity clause. The certification may be submitted either for each subcontract  
511 or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). Note: The  
512 penalty for making false statements in offers is prescribed in 18 U.S.C. § 1001.

513 MEDIUM FOR TRANSMITTING PAYMENTS

514 26. (a) All payments from the Contractor to the United States under this Contract  
515 shall be by the medium requested by the United States on or before the date payment is due. The  
516 required method of payment may include checks, wire transfers, or other types of payment  
517 specified by the United States.

518 (b) Upon execution of the Contract, the Contractor shall furnish the  
519 Contracting Officer with the Contractor’s taxpayer’s identification number (TIN). The purpose  
520 for requiring the Contractor’s TIN is for collecting and reporting any delinquent amounts arising  
521 out of the Contractor’s relationship with the United States.

522 CONTRACT DRAFTING CONSIDERATIONS

523 27. This Contract has been negotiated and reviewed by the Parties hereto, each of  
524 whom is sophisticated in the matters to which this Contract pertains. Articles 1 through 7 of this  
525 Contract have been drafted, negotiated, and reviewed by the Parties, and no one Party shall be  
526 considered to have drafted the stated Articles.

527 IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of  
528 the day and year first above written.

529 UNITED STATES OF AMERICA

530 By: \_\_\_\_\_  
531 Regional Director  
532 Interior Region 10: California-Great Basin  
533 Bureau of Reclamation

534 (SEAL) SAN LUIS & DELTA-MENDOTA WATER  
535 AUTHORITY

536 By: \_\_\_\_\_  
537 Chair of the Board of Directors

538 Attest:

539 By: \_\_\_\_\_  
540 Secretary of the Board of Directors

EXHIBIT A

XM Work

Central Valley Project

REPAYMENT SCHEDULE

DRAFT

EXHIBIT B

XM Work

Central Valley Project

SCOPE(S) OF WORK

The scope of work includes, but is not necessarily limited to, the following:

- (1) The Planning Study, conducted by Reclamation in accordance with Directive & Standard CMP 09-04.

EXHIBIT C

XM Work

Central Valley Project

CONTRACTOR RESPONSIBILITIES

Definitions used in this Exhibit:

“Consultant(s)” shall mean the contractor(s) hired by the Contractor to complete the XM Work.

“Contractor” shall mean the SAN LUIS & DELTA-MENDOTA WATER AUTHORITY.

1. Products and/or Services Furnished by Contractor

a. Planning Study

- i. Contractor will furnish to Contracting Officer the Final Report entitled, XXXX

EXHIBIT D

XM Work

Central Valley Project

STANDARD FORM 425 (SF 425)

DRAFT

# Reclamation Manual

## Directives and Standards

<b>Subject:</b>	Extended Repayment of Extraordinary Maintenance Costs
<b>Purpose:</b>	To state requirements for repayment of extraordinary maintenance work. The benefit of this Directive and Standard is consistent and budget-conscious application of the relevant authorities by Bureau of Reclamation staff.
<b>Authority:</b>	The Reclamation Act of June 17, 1902 (32 Stat. 388), as amended and supplemented, in particular, Title IX, Subtitle G of Pub. L. 111-11, and Title XI, Section 1101 of Pub. L. 116-260 (43 U.S.C. § 510, et seq.) (XM authority).
<b>Approving Official:</b>	Director, Policy and Programs
<b>Contact:</b>	Reclamation Law Administration Division (84-55000)

1. **Introduction.** Pub. L. 111-11 authorizes Reclamation to fund extraordinary maintenance (XM) work and execute contracts for extended repayment of the reimbursable costs. Pub. L. 116-260 expanded the authority by establishing the Aging Infrastructure Account (Account), requiring an annual application process and a Congressional reporting requirement. The XM authority does not include extended repayment of annual, routine operation, maintenance, and replacement (OM&R) costs. This Directives and Standards (D&S) ensures that Reclamation uses its authority to meet the most critical needs.
2. **Applicability.** This D&S applies to all Reclamation offices and staff in administering the provisions of the XM authority.
3. **Federal Funds.** Congress provides Federal funding for XM work by means of discretionary and mandatory appropriations and, with the addition of the Account, Federal funding will also be provided by the receipts (or repayment amounts) from XM contracts that were funded by the Account. The XM work requested through the application process set out in this D&S will be funded from the Account whenever there are sufficient funds in the Account to do so, with the following exception.<sup>1</sup> If XM work is urgent but does not qualify as emergency XM (EXM), regional directors (RDs), through the Basis of Negotiation (BON) process, can request authority to fund the work with their region's funds and not require the transferred works operator to go through the application process.

<sup>1</sup> As a practical matter, any action or work needed to minimize imminent harm to life and property cannot typically wait to go through the application process, which is required to use funds from the Account. Regions are responsible for funding emergency XM work from their regularly budgeted funds.

# Reclamation Manual

## Directives and Standards

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### 4. Eligibility.

#### A. **XM.** Work is XM if:

- (1) it is major, non-recurring maintenance of a mission critical asset,
- (2) its purpose is to ensure the continued safe, dependable, and reliable delivery of authorized project benefits (any additional benefits being strictly incidental to that purpose),
- (3) its costs are greater than 10 percent of Reclamation's or the operating entity's annual O&M budget for the facility or at least \$100,000 in total, and
- (4) it is not eligible to be performed or funded under the repayment provisions of Section 4(c) of the Reclamation Safety of Dams Act of November 2, 1978, as amended (43 U.S.C. § 506).

#### B. **EXM.** Work is EXM if it qualifies as XM and it is necessary to minimize the risk of imminent harm to public health or safety or to property. The Commissioner reserves the discretion to determine if XM work qualifies as EXM.

#### C. **Qualified EXM.** If designated as qualified EXM, 35 percent of the Federal funding advanced or expended is non-reimbursable. Application of the 35 percent non-reimbursable funding applies only the amounts advanced and allocable to the transferred works operating entity.<sup>2</sup> Otherwise, the work will be reimbursable in the same manner as XM work, as described in Paragraph 8.A of this D&S. XM work on Transferred Works that meets the criteria for EXM and the additional conditions outlined below is eligible for designation as qualified EXM.

- (1) During the last 10 years, all Category 1 OM&R recommendations, as defined in Paragraph 7.A.(1) of Reclamation Manual (RM) D&S, *Review of Operation and Maintenance (RO&M) Program Examination of Associated Facilities (Facilities other than High- and Significant-Hazard Dams)* ([FAC 01-04](#)), related to XM work identified under urbanized canal inspections or through inspection/assessments conducted under existing review programs have an identified timeframe for work to be completed and work has been completed within that timeframe.
- (2) During the last 10 years, all Category 2 OM&R recommendations, as defined in Paragraph 7.A.(2) of FAC 01-04 related to XM work identified under urbanized canal inspections or through inspection/assessments conducted under existing review programs, and reasonably within the ability of the operating entity to

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<sup>2</sup> See 43 U.S.C. 510b(c)(3).

# Reclamation Manual

## Directives and Standards

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address, have an identified timeframe for work to be completed and work has been completed within that timeframe.

### 5. Annual Application Process

- A. **Annual Notice and Deadlines.**<sup>3</sup> By October 31 of each year, regional office staff will issue a public notice of the annual application process for funding of XM projects. The public notice will include posting information on Reclamation websites and reasonable efforts to notify project beneficiaries on reserved and transferred works and transferred works operating entities.<sup>4</sup> The notice will include relevant information from the XM authority and this D&S, including descriptions of the minimum required application content described in Paragraph 5.B. of this D&S, and a main point of contact for interested applicants. The notice will state that applications will be accepted until December 31. Both reserved and transferred works are eligible. The Reclamation Law Administration Division (RLAD) will coordinate with other affected offices to continually evaluate the appropriateness of these dates in the application cycle and make adjustments as necessary.
- B. **Applicants.** Eligible applicants include transferred works operators and project beneficiaries responsible for repayment of reimbursable costs on reserved and transferred works. If a project beneficiary on transferred works applies for extended repayment but the operator does not apply or request advanced funds, Reclamation, the operator, and the applicant may enter a three-party contract to advance the applicant's share of the XM project to the operator.
- C. **Region Office Application Review**
- (1) As applications are received, and no later than January 24, area or regional office staff will review applications for the following required content:
- (a) a description of the project for which the funds are requested,
  - (b) the amount of funds requested,
  - (c) the repayment period requested by the transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs,
  - (d) alternative non-Federal funding options that have been evaluated,

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<sup>3</sup> Reclamation Law Administration Division and other appropriate offices will continually assess and refine the application process timelines described in this D&S, as needed.

<sup>4</sup> Reclamation staff will coordinate with project beneficiaries responsible for repayment of reimbursable costs on reserved works when they request extended repayment. When using funds from the Account, applications are required for XM work on reserved works.

# Reclamation Manual

## Directives and Standards

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- (e) the financial justification for requesting an extended repayment period,
  - (f) at least 1 year of the financial records of the transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs,
  - (g) to the extent that it is the responsibility of the applicant, any remaining environmental compliance that is required before the project commences, and
  - (h) the official level of cost estimate as defined in RM D&S, *Cost Estimating* ([FAC 09-01](#)), and provided as required by RM D&S, *Representation and Referencing of Cost Estimates in Bureau of Reclamation Documents Used for Planning, Design and Construction* ([FAC 09-03](#)).
- (2) Area or regional office staff will add any information of relative importance regarding each submitted project and the Major Rehabilitation & Replacement categorization rating to each application. To the extent that it is the responsibility of Reclamation, they will also identify any remaining environmental compliance that is required before the project commences.
  - (3) Area or regional office staff will add documentation used to fulfill RM D&S, *Reclamation Value Program* ([CMP 06-01](#)), and RM D&S, *Planning for Major Rehabilitation and Replacement of Existing Assets* ([CMP 09-04](#)), requirements to each application, respectively.
  - (4) If regional office staff determine that any applications are ineligible for funding or incomplete, they will make reasonable efforts to contact the applicant and allow them to supplement or amend their application before December 31.
  - (5) No later than January 24, regional office staff, through their RD, will send all applications and an analysis of the reporting content required under 43 U.S.C. § 510b(d)(5)(C) to RLAD.
- D. **Review and Report.** RLAD staff will review all applications to determine whether all qualification criteria are met, including a review of the regional office analyses. RLAD, Program and Budget, and Asset Management Division staff will categorize the applications based on the criteria above and then recommend a categorization of applications and funding and send all applications to the Commissioner no later than February 15. RLAD staff will also draft the report required under 43 U.S.C. § 510b(d)(5).
- E. **Commissioner Review, Office of Management and Budget, and Report to Congress.** By March 8, after obtaining the Commissioner's final determinations and

# Reclamation Manual

## Directives and Standards

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consent, Reclamation will submit a report to Congress, as required by 43 U.S.C. § 510b(d)(5).

- F. **Congressional Alternative Allocation.** Under 43 U.S.C. § 510b(d)6, Reclamation staff will wait for Congress, as applicable under the “alternative allocation” requirement, to act, if it chooses, and direct an alternate allocation of funds before responding to applicants. Following the required waiting period and passage of full-year appropriations for energy and water development and related agencies, RLAD staff will notify RDs and regional office staff of the final allocation of funds for the relevant application period. Regional office staff will notify successful applicants as soon as possible.
- G. **Funding Appropriated into the Account.** Funds appropriated into the Account can be expended without the requirement above in Paragraph 5.G.
- H. **Fund Administration and Oversight.** The Director, Program and Budget, maintains administration and oversight of all funds control of the Account. In addition to the standard validation and verification that Program and Budget provides, RLAD and Asset Management Division will also provide appropriate oversight of the funded XM projects.

### 6. Repayment Contracts Are Required.

- A. **XM.** With the exception of EXM, Reclamation will not advance funds for XM work before execution of a repayment contract or contracts.
- B. **EXM.** Reclamation will only advance funds for EXM work without first executing a repayment contract if:
  - (1) Reclamation has received written assurance from the governing body of a project beneficiary that it will enter good faith negotiations toward execution of a repayment contract, and
  - (2) the Commissioner has made an initial written determination that the intended work meets the EXM criteria under Paragraph 4.B. of this D&S and has authorized the advancement of funds prior to execution of a contract. The BON and approval memorandum process will formalize this determination.

### 7. Conditions and Limitations for Advanced Funds on Transferred Works.

- A. **Operating Entity’s Funds.** The advancement of funds is conditioned on the operating entity’s expenditure of its own funds as follows:

# Reclamation Manual

## Directives and Standards

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- (1) Advanced Funds for EXM will not be advanced to the operating entity until it has expended at least 75 percent of any contractually required reserve funds on the emergency work for which the funding is requested.
    - (a) When a contractor has expended reserve funds and is current in re-accumulating the funds expended according to contractual requirements, the 75 percent will be based on whatever amount the contractor has accumulated.
    - (b) If the contractor has not maintained the reserve fund in accordance with the contract, Reclamation will require it to expend an amount equal to 75 percent of the contractually required reserve fund.
  - (2) If an existing contract between the operating entity and Reclamation does not require explicitly designated reserve funds, the RD will determine an appropriate amount of funds the operating entity must expend before Reclamation will advance funds. The BON will include this determination.
  - (3) The financial analysis described in Paragraph 8.C.(1)(b) will verify the availability of reserve funds for XM work.
- B. Exhausting Non-Federal Funding Options.** Advanced funds for XM work will not be advanced to the operating entity before reasonably available non-Federal funding options have been analyzed. The RD is responsible for making this determination.
- C. Limits on Use of Advanced Funds.** RDs will ensure the operating entity uses advanced funds solely for the purposes for which advanced.

### 8. Contracting and Contract Requirements.

- A. Allocation of Costs.** Reclamation will allocate costs for XM and EXM work in accordance with the existing allocation of OM&R costs of the project or facility. See RM Policy, *Allocation of Operation and Maintenance Costs* ([PEC P07](#)), for specific requirements associated with allocation of OM&R costs. For qualified EXM work on transferred works, 35 percent of the advanced funds for the costs of the EXM work allocable to the operating entity is non-reimbursable.
- B. Statutory Credits.** Repayment obligations will be repaid with available statutory credits only after the work has been authorized and funds appropriated. Statutory credits cannot be applied against annual OM&R costs. For additional information on the application of statutory credits toward an XM cost obligation see Paragraph 4.A. of RM D&S, *Crediting Requirements for Incidental Revenues* ([PEC 03-01](#)).

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### C. Repayment Terms.

#### (1) Repayment Period.

- (a) **Maximum Term.** The repayment period will not exceed the service life of the repair or 50 years from the date on which the RD declares the work is substantially complete. Additionally, if the BON proposes any repayment period longer than 30 years, a financial analysis must justify the proposed repayment period.
- (b) **Financial Analysis.** The financial analysis must include a review of the contractor's financial records and reserve funds. If an ability-to-pay study has been completed within the last 5 years, it will be used in the financial analysis. A new ability-to-pay study is not required in all cases unless it is needed to justify a repayment period greater than 30 years. Reclamation will not pay for new ability-to-pay studies because they are reimbursable in this circumstance.
- (c) **Water Service Contractors.** If the repayment entity's primary water-related contract with Reclamation is a water service contract, the period for repaying XM or EXM costs will not exceed the remaining term of the water service contract. If, however, the RD determines that the repayment period should extend beyond the expiration of the contractor's water service contract because the remaining term is too short, and the requirement will be a financial hardship on the contractor, the RD will include this information in the BON.

- (2) **Interest.** Reclamation will assess interest on all reimbursable costs of XM and EXM regardless of the project purpose to which the costs are allocated. Reclamation will assess interest on the repayment amount as of the date of disbursement of the funds through completion of repayment. The interest rate for the reimbursable costs of XM and EXM work performed under the XM authority will be the rate determined by the Secretary of the Treasury that is in effect for the fiscal year in which the XM or EXM work is commenced and corresponding to the applicable reimbursement period. The applicable rates can be found in the Range of Maturities (Table 1) for the year in which construction commences. See <https://www.treasurydirect.gov/government/interest-rates-and-prices/certified-interest-rates/annual/>.

- (3) **Administrative Costs.** The RD will require each project beneficiary to provide an advance payment sufficient to cover an appropriate share of the administrative costs of the environmental compliance, development of the BON, and development and negotiation of the contract(s).

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- (4) **Ability to Pay.** XM work is not considered construction for repayment purposes, and as a result, ability-to-pay relief and aid to irrigation are not available for repayment of these costs.<sup>5</sup>
- (5) **Deferrals.** Deferrals allowed under Section 17.B of the Reclamation Project Act of August 4, 1939, as amended (43 U.S.C. § 485b-1), apply to repayment of construction costs under that Act, and are not authorized under the XM authority.
- D. **Standard Articles.** Paragraph 6 of RM Policy, *Reclamation Standard Water-Related Contract Articles* ([PEC P10](#)) identifies the standard articles required for XM and EXM contracts. Reclamation may exclude standard articles 5, 6, 7, 8, 9, 14, 18, 19, 20, 21, and 29 if the primary O&M transfer contract includes their most recent version.
- E. **Acreage Limitation.** The acreage limitation provisions of Federal Reclamation law do not apply to XM repayment contracts. Specifically, contracts for repayment of the costs of XM or EXM will not:
- (1) be considered in determining whether a district, as defined in Section 202(2) of the Reclamation Reform Act of October 12, 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,
  - (2) serve as the basis for reinstating acreage limitation provisions in a district that has completed payment of its construction obligation, or
  - (3) serve as the basis for increasing the construction repayment obligation of the district and thereby extending the period during which the acreage limitation provisions will apply.
- F. **Public Participation.** Public participation is required for all XM repayment contracts. Refer to RM Policy, *Water-Related Contracts—General Principles and Requirements* ([PEC P05](#)) for general public participation requirements for water-related contracts.
- G. **No External Discussion of Pre-Decisional Positions.** Reclamation managers and employees will not make any pre-decisional commitment to the operating entity concerning the eligibility of proposed XM work for emergency status until the Commissioner issues a written initial determination of eligibility. Reclamation managers and employees will also not make any pre-decisional commitment to the operating entity concerning reduced reimbursable costs until the Commissioner makes a final determination that the proposed XM work meets the criteria of qualified EXM.

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<sup>5</sup> XM work may meet the capitalization criteria for assets under construction for financial reporting. Contact the regional finance office for assistance.

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- H. **Wage Rate Requirements (Construction).** The relevant provisions of the Davis-Bacon and Related Acts (40 U.S.C. § 3141, 29 U.S.C. § 201, 41 U.S.C. § 351, 40 U.S.C. § 3701, 41 U.S.C. § 35, 40 U.S.C. § 3145) apply to every contract in excess of \$2,000 to which the Federal Government is a party, for the construction, alteration, or repair of public buildings and public works of the Federal Government and which requires or involves the employment of mechanics and laborers.
- I. **National Environmental Policy Act (NEPA).** Reclamation's categorical exclusion (CE) 516 Department Manual 14.5D(1)<sup>6</sup> is appropriate to use for XM projects if the scope of the project is consistent with the terms of the CE, and there are no extraordinary circumstances. Consideration for a CE does not guarantee that a CE will be appropriate. Reclamation will make the determination on the level of NEPA review and documentation, including whether an XM proposal satisfies the CE language or would trigger any of the extraordinary circumstances as described in 43 CFR 46.215. In cases where the project does not meet the above criteria or where any extraordinary circumstances exist, a higher level of NEPA evaluation will be required.
9. **BON Requirements.** Except as noted in Paragraph 6.B. above, a BON and approval memorandum are required for all advances and repayment of funds for XM or EXM work. See RM D&S, *Preparing Bases of Negotiation for New, and Amendatory Water Service, Repayment, and Related Contracts (PEC 06-01)*, for the general requirements of the BON and approval memorandum. In addition, the following requirements apply.
- A. **XM BONs.** A BON for an XM contract will include:
- (1) a determination of eligibility under Paragraph 4.A. with supporting evidence,
  - (2) an estimate of costs allocable to the project beneficiaries, which follows the existing annual OM&R allocation for the relevant facilities,
  - (3) a proposed repayment term, and
  - (4) if applicable, an explanation of how the proposed contract will meet the requirements of Paragraph 7, above.
- B. **EXM BONs.** In addition to the requirements in Paragraph 9.A., EXM BONs will include:
- (1) written assurance from the contractor of their intention to enter a repayment contract if funds are expected to be advanced prior to execution of a contract, and

<sup>6</sup> 516 DM 14.5(D)(1) Maintenance, rehabilitation, and replacement of existing facilities which may involve a minor change in size, location, and/or operation.

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- (2) a justification for the determination that the work on the project facility will likely meet the criteria for qualified EXM and a recommendation that 35 percent of the advanced funds for the EXM costs be non-reimbursable. The approval memorandum will document the final decision on this determination.
10. **Substantial Completion.** At the appropriate time, RDs are responsible for making the determination that XM work is substantially complete. RDs will also prepare and transmit written notice to the contractor of substantial completion and the initiation of repayment.<sup>7</sup>
11. **Definitions.**
- A. **Advanced Funds.** Funds that Reclamation advances to an operating entity to cover costs of extraordinary maintenance or emergency extraordinary maintenance work performed pursuant to the XM authority.
  - B. **Mission Critical Asset.** A facility or structure that sustains essential functions of a Reclamation project and for which an alternative facility or structure capable of continuously sustaining those functions is unavailable. This definition encompasses major asset classes such as dams, power plants, canals, siphons, pipelines, distribution systems, and associated structural, mechanical, and electrical systems and subcomponents.
  - C. **Operating Entity.** An organization that is contractually responsible for OM&R of transferred works.
  - D. **Project Facility.** Any part or feature of a Reclamation-owned project constructed under the authority of the Reclamation Act of June 17, 1902, or acts amendatory of, or supplemental to, that Act.
  - E. **Reserved Works.** Any project facility at which Reclamation carries out the OM&R of the facility.
  - F. **Risk of Imminent Harm.** Immediate danger or threat of injury to persons or damage to or loss of tangible property.
  - G. **Transferred Works.** Project facilities for which the OM&R is carried out by an operating entity under the provisions of a formal contract.
12. **Review Period.** The originating office will review this release every 4 years.

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<sup>7</sup> When XM work is performed by an operating entity, coordination with that entity will be necessary; however, the RD still must make a determination and provide the operating entity with a written notice of substantial completion. The written declaration of substantial completion by Reclamation to the operating entity initiates commencement of the repayment period.