



## MEMORANDUM

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

FROM: Pablo Arroyave, Chief Operating Officer

DATE: November 9, 2023

RE: Resolution Authorizing Application for Extended Repayment and Funding in the Amount of up to \$873.1M From the Aging Infrastructure Account in Fiscal Year 2024 for Extraordinary Maintenance Work on O'Neill Pumping-Generating Plant and the Delta-Mendota Canal

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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 and will be administered through the Aging Infrastructure Account (Account), a Reclamation-wide revolving fund created to sustain investment in XM. The Water Authority submitted BIL applications in December 2022 for the Jones Pumping Plant Excitation and Control Modernization Project and for the DMC Subsidence Correction Project, and was awarded \$25 million for each project. Reclamation's FY 2024 Spend Plan authorizes \$680 million from the Account through a competitive funding process with the application period open from October 3, 2023 until December 1, 2023. Reclamation has indicated that there will be four additional application periods for a total available between federal FY 2023 and FY 2027 of approximately the \$3.2B authorized in the BIL.

As a transferred works entity, the Water Authority may apply for funds to support XM of transferred works facilities. Each individual project for which an application is submitted will be evaluated independently, and there is no guarantee of any project or projects being selected for award. Projects that are selected will follow the established reimbursability and terms for extended repayment, not to exceed 50 years. Projects will be selected in, or around, March 2024. Following selection, the recipients will be required to negotiate and execute repayment contracts with Reclamation.

The Water Authority has evaluated its existing 10-Year Plan and established criteria to help inform the selection of projects for inclusion in the application. The criteria include:

1. Projects that have an appraisal level cost estimate completed;
2. Multi-Year Projects over \$1M/year; and/or
3. Single-Year Projects over \$1.5M

Two EO&M projects meet this criteria for Fiscal Year 2025:

- Delta-Mendota Canal (DMC) Subsidence Correction Project: Total project cost is currently estimated at \$830M. (Note: Reclamation awarded \$25 million to this project in 2022, and has indicated that the Water Authority should reapply to be eligible for additional BIL funding.)
- O'Neill Pumping-Generating Plant (OPP) Upgrades Project: Total project cost for all projects at OPP is currently approximately \$68.1 million. Further refined cost estimates are due to the Bureau of Reclamation in January 2024. The following projects have been identified and incorporated into the OPP Upgrades Project: 1. OPP Rewind, 2. OPP Pump Bowl Replacement, 3. OPP Woodward Governor Rehabilitation, and 4. OPP Penstock and Pump Unit Rehabilitation.

### ISSUE FOR DECISION

Whether the Board of Directors should adopt the proposed Resolution authorizing application for extended repayment and funding in the amount of up to \$873.1 million from the Aging Infrastructure Account in Fiscal Year 2024 for extraordinary maintenance work on the DMC Subsidence Correction Project and the O'Neill Pumping-Generating Plant Upgrades 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). If one or all of the proposed projects is selected, the Water Authority must be willing to negotiate and execute a contract or contracts for extended repayment of funds. The Water Authority would seek at least a 30-year repayment term and would explore additional repayment terms with Reclamation during the application review process. Per Reclamation staff, per D&S PEC 11-01, *Irrigation Ability to Pay Analysis*, an Ability to Pay Study is required for any repayment term greater than 30-years. Any repayment contract would be brought to the Water Authority Board of Directors for future review and action.

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.

### ATTACHMENTS

1. Resolution Authorizing Application for Extended Repayment and Funding in the Amount of up to \$873.1M From the Aging Infrastructure Account in Fiscal Year 2024 for Extraordinary Maintenance Work on O'Neill Pumping-Generating Plant and the Delta-Mendota Canal
2. Applicant Cover letter template
3. Reclamation Directive and Standard (D&S) PEC 05-03

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

**RESOLUTION NO. 2023-xxx**

**RESOLUTION AUTHORIZING APPLICATION FOR EXTENDED REPAYMENT AND FUNDING IN THE AMOUNT OF UP TO \$873.1M FROM THE AGING INFRASTRUCTURE ACCOUNT IN FISCAL YEAR 2024 FOR EXTRAORDINARY MAINTENANCE WORK ON O'NEILL PUMPING-GENERATING PLANT AND THE DELTA-MENDOTA CANAL**

**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 O’Neill Pumping-Generating Plant (“**OPP**”), which moves water between the Delta-Mendota Canal (“**DMC**”) into the O’Neill Forebay; and the DMC, a 116.5-mile long canal that carries water from the Delta near Tracy to the Mendota Pool, about 30 miles west of Fresno; and

**WHEREAS**, the OPP was constructed in 1968, and the U.S. Bureau of Reclamation (“**Reclamation**”) has determined that the unit pump bowls are at the end of their useful life and recommended for replacement per Technical Memorandum dated October 7, 2019, with Subject Line “San Luis Delta Water Authority – O’Neill Pumping Plant Pump Bowl Modification – Delta Division – Central Valley Project (CVP), California;” and

**WHEREAS**, the Water Authority and Reclamation have worked closely to plan four extraordinary maintenance projects for OPP, including the OPP rewind, OPP pump bowl replacement, OPP Woodward Governor rehabilitation, and OPP penstock and pump unit rehabilitation (together, the “**OPP Upgrades Projects**”); and the preliminary construction cost estimate for all projects is \$68.1 Million; and

**WHEREAS**, the DMC has experienced significant land subsidence that has resulted in a reduced conveyance capacity and the Water Authority and Reclamation are working closely to develop and further the DMC Subsidence Correction Project, and the feasibility level construction cost estimate is \$830 Million; and

**WHEREAS**, the Water Authority was awarded \$25 million in Bipartisan Infrastructure Law (“**BIL**”) funding in FY23 for the DMC Subsidence Correction Project and has begun the negotiation procedures to determine the terms of the repayment contract; and

**WHEREAS**, the Water Authority is now pursuing all possible financing options, including reasonable cost share provisions, or non-reimbursable funding, with which to pay the cost of extraordinary maintenance at the OPP and the DMC; and

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

**WHEREAS**, Congress provides federal funding for extraordinary maintenance work by means of discretionary and mandatory appropriations and, with the addition of the Aging

Infrastructure Account, federal funding will also be provided by repayment amounts from extraordinary maintenance contracts that were funded by the Aging Infrastructure Account; and

**WHEREAS**, if the OPP Upgrades Project and/or the Delta-Mendota Canal Subsidence Correction Project are/is selected to receive extended repayment and funding from the Aging Infrastructure Account in Fiscal Year 2023, the Water Authority would proceed in negotiating a contract for extended repayment of funds, and the contract would be brought to the Water Authority Board of Directors for review and action; and

**WHEREAS**, authorizing application for funding for extraordinary maintenance and negotiation of a repayment contract with the United States do 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 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)); further, future CEQA review will be completed prior to approval or any construction of the extraordinary maintenance in question.

**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 to submit an application on behalf of the Water Authority for Extended Repayment and Funding from the Aging Infrastructure Account in Fiscal Year 2024 for two projects, the O’Neill Pumping-Generating Plant Upgrade Project and the Delta-Mendota Canal Subsidence Correction 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 enter into negotiations with the United States for a repayment contract or repayment contracts, with the expectation that any such contract will be presented to the Board of Directors for approval.

Section 4. 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 9<sup>th</sup> day of November, 2023, 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. 2023-\_\_\_ 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 9th day of November, 2023.

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Federico Barajas, Secretary

[Date]

[Name]

[Title]

[Organization]

[Address]

[City, State, Zip Code]

Subject: Application for Funding from the Aging Infrastructure Account in FY 2024,  
[District/Association/Entity Name] [(Abbreviated Name)], [Reclamation Project], [State]

[Abbreviated Name] is a transferred works operator responsible for reimbursable costs of operating and maintaining [Reclamation Facility or Facilities]. We are formally applying for [Funding Request in \$] from the Aging Infrastructure Account (Account) in FY 2024 for extraordinary maintenance (XM) work on [Reclamation Facility or Facilities] (XM Project).

The estimated cost of the XM Project is based on [attached cost estimate documentation]. This funding will be used to [short, high-level description of activities for which funding is requested].

We understand that compliance with Federal environmental laws and regulations is required for the XM Project before any funding allocations can be made.

We request an advancement of funds from the Account for the proposed XM work. If the work is selected for funding from the Account and Reclamation advances funds, [Abbreviated Name] understands there is an obligation to repay our share of the reimbursable costs and that we will be required to sign a contract for extended repayment of the funds. We acknowledge that the [Facility or Facilities] transferred works would be using the funds to perform justified XM work.

We understand that Reclamation has the authority to fund and negotiate contracts for the repayment of XM projects. We have worked with your staff to satisfy the application and eligibility requirements.

We have evaluated the following non-Federal funding options:

[List any non-Federal funding options evaluated]

None of these options were feasible due to [explanation for infeasibility].

We have also attached [# of years of financial records (minimum of 1 year: the prior year)] and the fiscal operating budget for [Abbreviated Name]. This constitutes our financial justification for extended repayment by demonstrating that the costs of the work are greater than 10 percent of the operating entity's annual O&M budget for the facility or at least \$100,000 in total.

We request a repayment term of [requested repayment period] years. We confirm that the proposed work is major, non-recurring maintenance to ensure the continued safe, dependable, and reliable delivery of authorized project benefits.

Please accept this letter and application to request funding from the Account.

[Required: Electronic/Wet Signature with Date Stamp]

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## 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.

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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).



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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.

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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

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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:

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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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## Directives and Standards

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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.