

SUBCHAPTER XI-B—AGING
INFRASTRUCTURE

§ 510. Definitions

In this subchapter:

(1) Inspection

The term “inspection” means an inspection of a project facility carried out by the Secretary—

(A) to assess and determine the general condition of the project facility; and

(B) to estimate the value of property, and the size of the population, that would be at risk if the project facility fails, is breached, or otherwise allows flooding to occur.

(2) Project facility

The term “project facility” means any part or incidental feature of a project, excluding high- and significant-hazard dams, constructed under the Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.)¹.

(3) Reserved works

The term “reserved works” mean² any project facility at which the Secretary carries out the operation and maintenance of the project facility.

(4) Secretary

The term “Secretary” means the Secretary of the Interior, acting through the Commissioner of Reclamation.

(5) Transferred works

The term “transferred works” means a project facility, the operation and maintenance of which is carried out by a non-Federal entity, under the provisions of a formal operation and maintenance transfer contract.

(6) Transferred works operating entity

The term “transferred works operating entity” means the organization which is contractually responsible for operation and maintenance of transferred works.

(7) Extraordinary operation and maintenance work

The term “extraordinary operation and maintenance work” means major, non-recurring maintenance to Reclamation-owned or operated facilities, or facility components, that is—

(A) intended to ensure the continued safe, dependable, and reliable delivery of authorized project benefits; and

(B) greater than 10 percent of the contractor’s or the transferred works operating entity’s annual operation and maintenance budget for the facility, or greater than \$100,000.

(Pub. L. 111–11, title IX, §9601, Mar. 30, 2009, 123 Stat. 1346.)

¹So in original. Probably should be another closing parenthesis before the final period.

²So in original. Probably should be “means”.

Editorial Notes

REFERENCES IN TEXT

Act of June 17, 1902 (32 Stat. 388, chapter 1093), referred to in par. (2), is popularly known as the Reclamation Act and is classified generally to chapter 12 (§371 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 371 of this title and Tables.

§ 510a. Guidelines and inspection of project facilities and technical assistance to transferred works operating entities

(a) Guidelines and inspections

(1) Development of guidelines

Not later than 1 year after March 30, 2009, the Secretary in consultation with transferred works operating entities shall develop, consistent with existing transfer contracts, specific inspection guidelines for project facilities which are in proximity to urbanized areas and which could pose a risk to public safety or property damage if such project facilities were to fail.

(2) Conduct of inspections

Not later than 3 years after March 30, 2009, the Secretary shall conduct inspections of those project facilities, which are in proximity to urbanized areas and which could pose a risk to public safety or property damage if such facilities were to fail, using such specific inspection guidelines and criteria developed pursuant to paragraph (1). In selecting project facilities to inspect, the Secretary shall take into account the potential magnitude of public safety and economic damage posed by each project facility.

(3) Treatment of costs

The costs incurred by the Secretary in conducting these inspections shall be non-reimbursable.

(b) Use of inspection data

The Secretary shall use the data collected through the conduct of the inspections under subsection (a)(2) to—

(1) provide recommendations to the transferred works operating entities for improvement of operation and maintenance processes, operating procedures including operation guidelines consistent with existing transfer contracts, and structural modifications to those transferred works;

(2) determine an appropriate inspection frequency for such nondam project facilities which shall not exceed 6 years; and

(3) provide, upon request of transferred work operating entities, local governments, or State agencies, information regarding potential hazards posed by existing or proposed residential, commercial, industrial or public-use development adjacent to project facilities.

(c) Technical assistance to transferred works operating entities

(1) Authority of Secretary to provide technical assistance

The Secretary is authorized, at the request of a transferred works operating entity in proximity to an urbanized area, to provide

technical assistance to accomplish the following, if consistent with existing transfer contracts:

- (A) Development of documented operating procedures for a project facility.
- (B) Development of documented emergency notification and response procedures for a project facility.
- (C) Development of facility inspection criteria for a project facility.
- (D) Development of a training program on operation and maintenance requirements and practices for a project facility for a transferred works operating entity's workforce.
- (E) Development of a public outreach plan on the operation and risks associated with a project facility.
- (F) Development of any other plans or documentation which, in the judgment of the Secretary, will contribute to public safety and the safe operation of a project facility.

(2) Costs

The Secretary is authorized to provide, on a non-reimbursable basis, up to 50 percent of the cost of such technical assistance, with the balance of such costs being advanced by the transferred works operating entity or other non-Federal source. The non-Federal 50 percent minimum cost share for such technical assistance may be in the form of in-lieu contributions of resources by the transferred works operating entity or other non-Federal source.

(Pub. L. 111-11, title IX, §9602, Mar. 30, 2009, 123 Stat. 1347.)

§ 510b. Extraordinary operation and maintenance work performed by the Secretary

(a) In general

The Secretary or the transferred works operating entity may carry out, in accordance with subsection (b) and consistent with existing transfer contracts, any extraordinary operation and maintenance work on a project facility that the Secretary determines to be reasonably required to preserve the structural safety of the project facility.

(b) Reimbursement of costs arising from extraordinary operation and maintenance work

(1) Treatment of costs

For reserved works, costs incurred by the Secretary in conducting extraordinary operation and maintenance work will be allocated to the authorized reimbursable purposes of the project and shall be repaid within 50 years, with interest, from the year in which work undertaken pursuant to this subchapter is substantially complete.

(2) Authority of Secretary

For transferred works, the Secretary is authorized to advance the costs incurred by the transferred works operating entity in conducting extraordinary operation and maintenance work and negotiate appropriate 50-year repayment contracts with project beneficiaries providing for the return of reimbursable costs, with interest, under this sub-

section: Provided, however, That no contract entered into pursuant to this subchapter shall be deemed to be a new or amended contract for the purposes of section 390cc(a) of this title.

(3) Determination of interest rate

The interest rate used for computing interest on work in progress and interest on the unpaid balance of the reimbursable costs of extraordinary operation and maintenance work authorized by this subchapter shall be determined by the Secretary of the Treasury, as of the beginning of the fiscal year in which extraordinary operation and maintenance work is commenced, on the basis of average market yields on outstanding marketable obligations of the United States with the remaining periods of maturity comparable to the applicable reimbursement period of the project, adjusted to the nearest $\frac{1}{8}$ of 1 percent on the unamortized balance of any portion of the loan.

(c) Emergency extraordinary operation and maintenance work

(1) In general

The Secretary or the transferred works operating entity shall carry out any emergency extraordinary operation and maintenance work on a project facility that the Secretary determines to be necessary to minimize the risk of imminent harm to public health or safety, or property.

(2) Reimbursement

The Secretary may advance funds for emergency extraordinary operation and maintenance work and shall seek reimbursement from the transferred works operating entity or benefitting entity upon receiving a written assurance from the governing body of such entity that it will negotiate a contract pursuant to this section for repayment of costs incurred by the Secretary in undertaking such work.

(3) Funding

If the Secretary determines that a project facility inspected and maintained pursuant to the guidelines and criteria set forth in section 510a(a) of this title requires extraordinary operation and maintenance pursuant to paragraph (1), the Secretary may provide Federal funds on a nonreimbursable basis sufficient to cover 35 percent of the cost of the extraordinary operation and maintenance allocable to the transferred works operating entity, which is needed to minimize the risk of imminent harm. The remaining share of the Federal funds advanced by the Secretary for such work shall be repaid under subsection (b).

(d) Aging Infrastructure Account

(1) Establishment

There is established in the general fund of the Treasury a special account, to be known as the "Aging Infrastructure Account" (referred to in this subsection as the "Account"), to provide funds to, and provide for the extended repayment of the funds by, a transferred works operating entity or project beneficiary responsible for repayment of reimbursable costs for the conduct of extraordinary oper-