

U. S. DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Operations

Construction Handbook

55 BIA M Supplement 3

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CONSTRUCTION

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- 1.1 Policies. The policy of the Bureau of Indian Affairs in regard to the construction of conservation, flood prevention, irrigation and power projects is to construct projects on existing reservations for the development, utilization and conservation of land and water resources as an important step in the socio-economic rehabilitation of the Indian and Indian lands.

On many reservations individual Indian irrigable acreages are diminishing due to normal heirship procedures, changing soil conditions, and other physical changes. At present many individual farm areas are too small to provide an adequate income for the average family. It is the policy of the Bureau to provide additional irrigation and drainage facilities for suitable lands consistent with the available water supply in order to assist with the alleviation of the above condition.

When an irrigation system has been provided and the irrigable lands developed, it is the policy to assist the prospective Indian farmer to obtain the necessary training in agriculture and livestock management required for successful farming on the new lands.

When Indians request that the management of a completed project, or parts thereof, be turned over to them, they should be assisted in the development of a suitable organization, and under appropriate agreement be entrusted with the management responsibility.

- 1.2 Methods. The construction of facilities for conservation, flood prevention, irrigation and electrical power may be carried out by either of two methods or a combination thereof. They are "force account" and "contract." The development lease might be thought of as an additional method, but it is actually just a special form of contract.

Many factors affect the choice of method. The quantity and type of work involved, its location, availability of contractors, availability of "force account" crews and equipment, and the local labor situation are a few of the factors that must be considered. Of primary importance, however, is that the desired results should be obtained at the most reasonable cost possible. It must be remembered that where reimbursable costs are involved such costs become a direct debt attached to the land.

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Always consider the development lease method wherever the construction of facilities and development of land may reasonably be combined. This method has the features of economy to the Government and usually greater speed of development that are especially desirable. In some cases the period of unavailability for Indian use is the only material disadvantage.

In making a choice of construction methods, effort must be provided to assure that no items of expense are hidden or overlooked in preparation and comparison of cost estimates.

Irrespective of the method employed, the same standards of quality, workmanship, materials, etc., shall prevail both as to basis for choice and actual excellence of the product.

See the appropriate sections of the Property and Supply Manual for technical details of construction by contract.

- 1.3 Construction Surveys. The term "construction surveys" covers all types of surveying activities which are performed in connection with any construction operations or which are necessary immediately prior to the start of construction or during construction. This includes surveying operations in connection with all types of excavation, embankment placing, structure erection, and machinery installation. Construction surveys are intended to furnish guidance to the forces, either contract or Government, which are actually performing the construction operations, to assure that the work is in compliance, so far as physical measurements are concerned, with the designs. The necessity for, and complexity of, construction surveys will vary with the magnitude and type of construction operation involved.

Specifications generally provide that the Government will furnish all necessary surveys, lines, grades, and related data during progress of construction work. The contracts may provide that the contractor furnish certain supplies and assistance. Contractual requirements should be ascertained and complied with to the fullest extent possible.

The construction survey party chief and his crew carry the direct responsibility of fulfilling the Government's obligations to supply certain surveys and data as construction proceeds. It is essential that the survey parties maintain courteous, business-like, and

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cooperative relations with the contractor and his forces at all times. Only through such relations can the work be carried on in the most efficient manner possible and result in the quality of final product desired. It should be borne in mind that the construction survey crew is also responsible for the information upon which both partial payments and final payments to the contractor are based.

The matter of accuracy is, therefore, of extreme importance in making proper payment for work done. The records of work done as well as the manner in which it was done are also of great importance. The value of such records cannot be over-emphasized should claims for over or under payment develop or should claims be made or suits filed on account of sub-standard work, structural failure, etc.

- 1.4 Designs and Specifications. The Area Engineer is responsible for all design work. He may, in the case of large intricate structures such as dams or power houses, obtain the aid of specialized technicians in the various fields by agreement with other Government design organizations such as the Bureau of Reclamation, Army Engineers, or by contracting with private engineering firms to acquire a complete design job for the facility to be constructed.

The procurement of the field data required for the preparation of final designs may have a critical bearing on both the cost of the project and its adequacy. A list of the data normally required should be provided by the Area Engineer for the field jurisdiction engineer or the engineer delegated to do the proposed field work. It is the responsibility of the field forces, however, to anticipate fully the needs of the designers by obtaining reliable information on all the factors that may affect the designs. In obtaining these data, it is required that surveying and mapping practices be based on the best experience of the Bureau and that available from textbooks, handbooks and other published documents. Blind adherence to handbook procedures, however, should not be tolerated as a substitute for the engineering judgment required to insure the construction of adequate project features in accordance with sound engineering economics. Consistent with sound technical and economical practice, it is the policy of the Bureau to perform work execution functions at the project or agency level, provided qualified personnel is available or can be delegated to the project or agency to perform the work required.

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Design criteria, establishing the standards and procedures required for the construction of an entire project embracing all types of structures including dams, drainage systems, power plants, power transmission and distribution systems, canal and lateral structures, etc., are readily available. Whenever possible, structures of standard approved design, as set forth in the Bureau of Reclamation Design Manual, should be constructed.

For design guidance see Series No. 130 and for technical guidance see Series 500 of the Bureau of Reclamation Manual. In addition, Bureau of Reclamation has prepared other useful data on these subjects such as: Hydraulic and Excavation Tables; Concrete Manual; Measurement of Irrigation Water; Design Supplements that cover the design of structures, equipment and other facilities; and many bulletins and reports on the various properties and use of materials.

1.5 Assessment, Collection, and Repayment of Construction Costs.

- A. Funds. The construction of irrigation, drainage, and power facilities is through the use of funds appropriated by Congress. Such funds are made available to projects on the basis of need and approved project plans and cost estimates. Funds so appropriated are available until expended.
- B. Repayment. Appropriated construction funds expended on projects are reimbursable unless otherwise provided. References to the legislation pertaining to repayment of construction costs and the general regulations promulgated thereunder may be found in the Code of Federal Regulations, Title 25. On some projects construction cost repayment is based upon contracts executed with the non-Indian landowners. References to such contracts may also be found in 25 CFR.
- C. Collection. Where lands in non-Indian ownership are included in an Indian irrigation project, construction assessments for such lands shall be collected pursuant to applicable regulations set forth in 25 CFR in the absence of a repayment contract or act of Congress providing otherwise. This will continue until such time as a public notice is issued specifying the annual per acre rate of assessment and the time for the annual payments thereof. Such notice shall be published in the Federal Register as a notice of intention, and the affected landowners given not to

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exceed 30 days within which to submit written comments, suggestions or objections to the proposed action. The notice, with other pertinent data, shall recite the authority of the Secretary of the Interior to fix and collect the annual construction costs, the total reimbursable amount of such costs, the annual per acre rate of assessments, and the period of years during which the payments shall be made. The final publication or notice of adoption shall be published in the Federal Register as originally published or as amended depending upon the consideration given to the written comments, suggestions or objections made by the landowners involved.

- D. Responsibility for Making Collections of Irrigation Construction Costs. All Superintendents and other officers responsible for establishing, publishing, billing, collecting, and recording construction costs are directed to fully familiarize themselves with all laws and regulations relative thereto.

Regulations relating to irrigation fees, payments, sale of irrigable land, special water contracts, requirements, liens, and assessments are set forth in 25 CFR. These regulations are located in Parts 121, 128, 129, and 211.

Superintendents and other responsible officers shall see that irrigation assessments are promptly paid in accordance with the regulations and when covered by contract in accordance with the terms of the contract. Where circumstances are such that a question arises as to the propriety of collection of certain assessments, a prompt investigation should be made and the necessary action taken in accordance with the provisions of the Act of June 22, 1936 (49 Stat. 1803). Where reasonable effort has been made to collect charges against non-Indian lands and Indian-owned fee lands, whether covered by contract or not, and such efforts are not successful, the case, with a complete statement of action taken and of pertinent facts, shall be referred to the appropriate U. S. Attorney, through the Area Field Solicitor, for action. (For authority to assess construction charges against Indian-owned fee lands and collection of such charges, see Solicitor's Opinion No. M-36708, dated July 18, 1967.) Where the acreage or delinquency involved is small and there is any question as to propriety of the charges, every effort shall be made to resolve the matter locally prior

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to referral to the Attorney. In no case, however, should more than two years elapse after the first delinquency before such delinquency is referred to the U.S. Attorney for action.

E. Control Legislation. Excerpts from some of the laws that will further clarify and supplement the statements above are included below:

- (1) Act of March 2, 1867 (14 Stat. 514-515). This is the first congressional legislation authorizing irrigation on any Indian reservation. This act provided for the construction of a canal for the irrigation of the lands of the Colorado River Reservation.
- (2) Act of April 4, 1910 (36 Stat. 270). This provided, "* * * hereafter no new irrigation project on any Indian reservation, allotments, or lands shall be undertaken until it shall have been estimated for and a maximum limit of cost ascertained from the surveys, plans, and reports submitted by the Chief Irrigation Engineer of the Indian Service, and approved by the Secretary of the Interior, and such limit of cost shall in no case be exceeded without express authorization of Congress, and hereafter no new project to cost in the aggregate to exceed \$35,000 shall be undertaken on any Indian reservation without specific authority of Congress."
- (3) Reimbursement of Construction Costs, Act of August 1, 1914 (38 Stat. 583). Up to and including the fiscal year 1914, the cost of all irrigation work undertaken on Indian reservations under the general appropriations "Irrigation, Indian Reservations," made since 1884, had been borne by the United States, and most of the work done under special or specific appropriations had been charged against Indian tribal funds or made reimbursable out of tribal funds, although a few of the special appropriations had been made from the United States Treasury. In the appropriation act quoted above, Congress announced a distinct and sweeping change in legislation for Indian irrigation projects. This was done by two

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provisos appended to the general irrigation appropriation act. They read as follows:

"Provided further, that all moneys expended heretofore or hereafter under this provision shall be reimbursable where the Indians have adequate funds to repay the Government, such reimbursements to be made under such rules and regulations as the Secretary of the Interior may prescribe: Provided further, that the Secretary of the Interior is hereby authorized and directed to apportion the cost of any irrigation project constructed for Indians and made reimbursable out of tribal funds of said Indians in accordance with the benefits received by each individual Indian so far as practicable from said irrigation project, said cost to be apportioned against such individual Indian under such rules, regulations, and conditions as the Secretary of the Interior may prescribe."

- (4) Act of February 14, 1920 (41 Stat. 409) - Begin Partial Reimbursement. For several years following the Act of 1914, no steps were taken and no regulations were formulated by the Interior Department looking to an apportionment of irrigation costs as therein directed. The reason given was that the costs could not be known until the irrigation systems were completed, and practically none was then completed. In this situation, Congress in the Indian Appropriation Act of February 14, 1920, supra, enacted the following:

"The Secretary is hereby authorized and directed to require the owners of irrigable land under any irrigation system heretofore or hereafter constructed for the benefit of Indians and to which water for irrigation purposes can be delivered to begin partial reimbursement of the construction charges where reimbursement is required by law, at such times and in such amounts as he may deem best; all payments hereunder to be credited on a per acre basis in favor of the land in behalf of which such payments shall have been made and to be deducted from the total per acre charge assessable against said land."

Under the 1920 Act the assessment rate to be made was left to the discretion of the Secretary of the Interior

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except on the Fort Hall and Wapato Projects, where the rates had already been fixed by law. On three of the projects -- Flathead, Blackfeet and Fort Peck -- the assessment rates were fixed at 50 cents per acre annually. On the remaining projects, assessments were fixed at the rate of five per cent of the per acre construction cost as of June 30, 1920, and made due November 15, 1920, and each year thereafter until 1927, when the rates on these projects were reduced as per Title 25 CFR, Part 211.2 through 211.4.

- (5) Lien Act -- March 7, 1928 (45 Stat. 210). For many years the Department, to a considerable extent, had been handicapped in making irrigation collections on certain projects due to the fact that there was no general law specifically making irrigation charges a lien against the lands of such projects. This situation was relieved by this act which specified the projects for which legislation liens had been created and extended the lien to all Indian irrigation projects where the construction and operation and maintenance costs of such projects remain unpaid and are reimbursable.
- (6) Act of July 1, 1932 (47 Stat. 564). This act, providing for adjustment of reimbursable debts of Indians, reads as follows: "* * * That the Secretary of the Interior is hereby authorized and directed to adjust or eliminate reimbursable charges of the Government of the United States existing as debts against individual Indians or tribes of Indians in such a way as shall be equitable and just in consideration of all the circumstances under which such charges were made: Provided, That the collection of all construction costs against any Indian-owned lands within any Government irrigation project is hereby deferred, and no assessments shall be made on behalf of such charges against such lands until the Indian title thereto shall have been extinguished and any construction assessments heretofore levied against such lands in accordance with the provisions of the Act of February 14, 1920 (41 Stat. 409), and uncollected, are hereby canceled: Provided further, That a report shall be made to Congress annually, on the first Monday in December, showing adjustments so made during the preceding fiscal year: Provided further, That any proceedings

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hereunder shall not be effective until approved by Congress unless Congress shall have failed to act favorably or unfavorably thereon by concurrent resolution within sixty legislative days after the filing of said report, in which case they shall become effective at the termination of the said sixty legislative days." (The Solicitor for the Department has held by Opinion No. M-36708, dated July 18, 1967, that Indian-owned fee lands are subject to construction assessments and the collection thereof.)

- (7) The Act of June 22, 1936. The Act of June 22, 1936 (49 Stat. 1803; 25 USC 389 and 389a), directed an investigation to determine whether the owners of non-Indian lands under Indian irrigation projects and in projects where the United States had purchased water rights for Indians were unable to pay irrigation charges, because of inability to operate profitably due to soil fertility, inadequate water supply, or defects of irrigation works. It authorized the Secretary to adjust, defer, or cancel charges as conditions warranted and it also authorized the Secretary to execute contracts for repayment of past due charges over periods not exceeding 10 years; and with the consent of landowners to eliminate permanently non-irrigable lands from projects, and in certain cases to cancel outstanding charges.

1.6 Project Equipment Rental. (See 55 BIAM Supplement No. 4 - 1.1J).