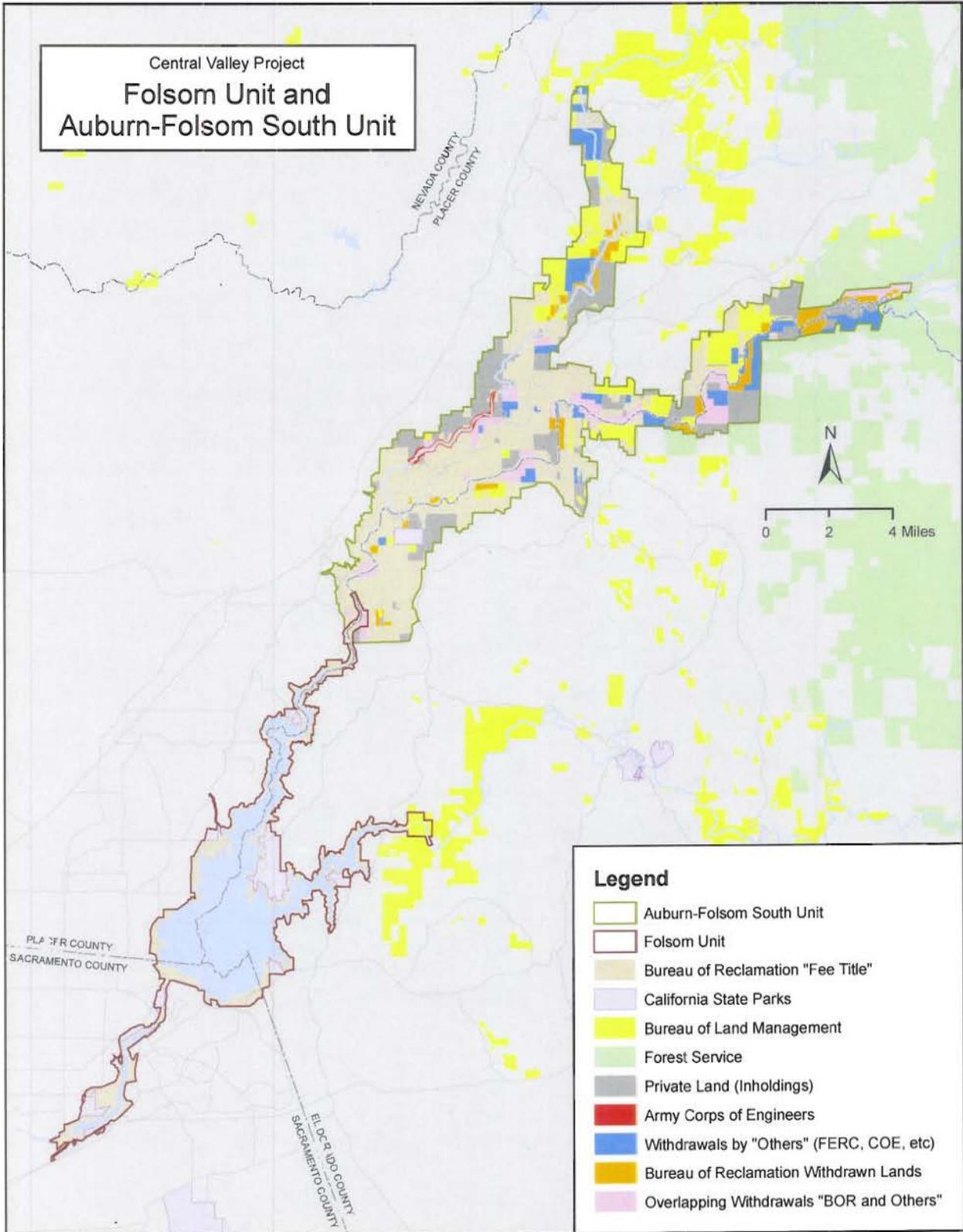


RECLAMATION

Managing Water in the West

U.S. Department of the Interior
Bureau of Reclamation

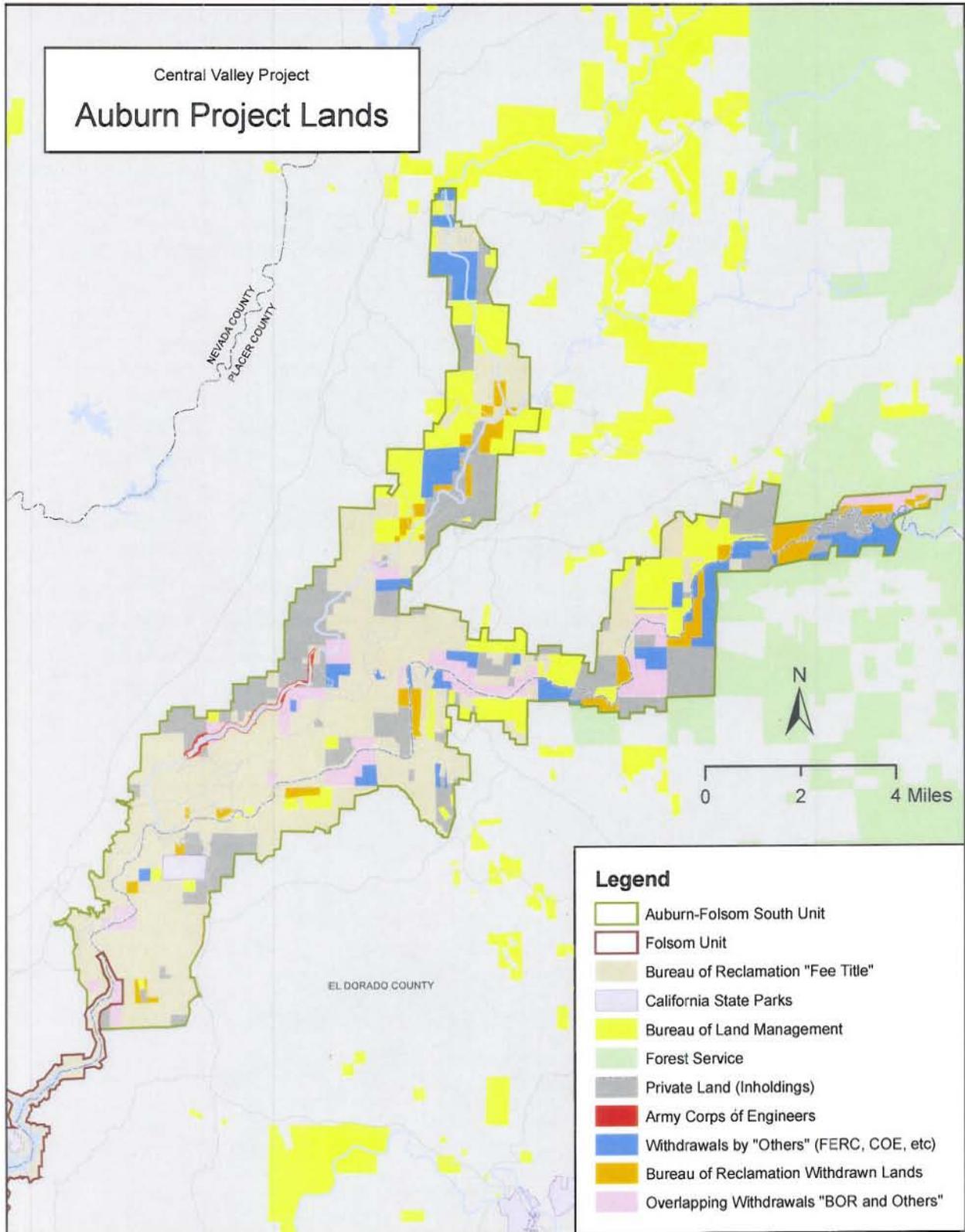


Map Dated: 11-14-11

RECLAMATION

Managing Water in the West

U.S. Department of the Interior
Bureau of Reclamation

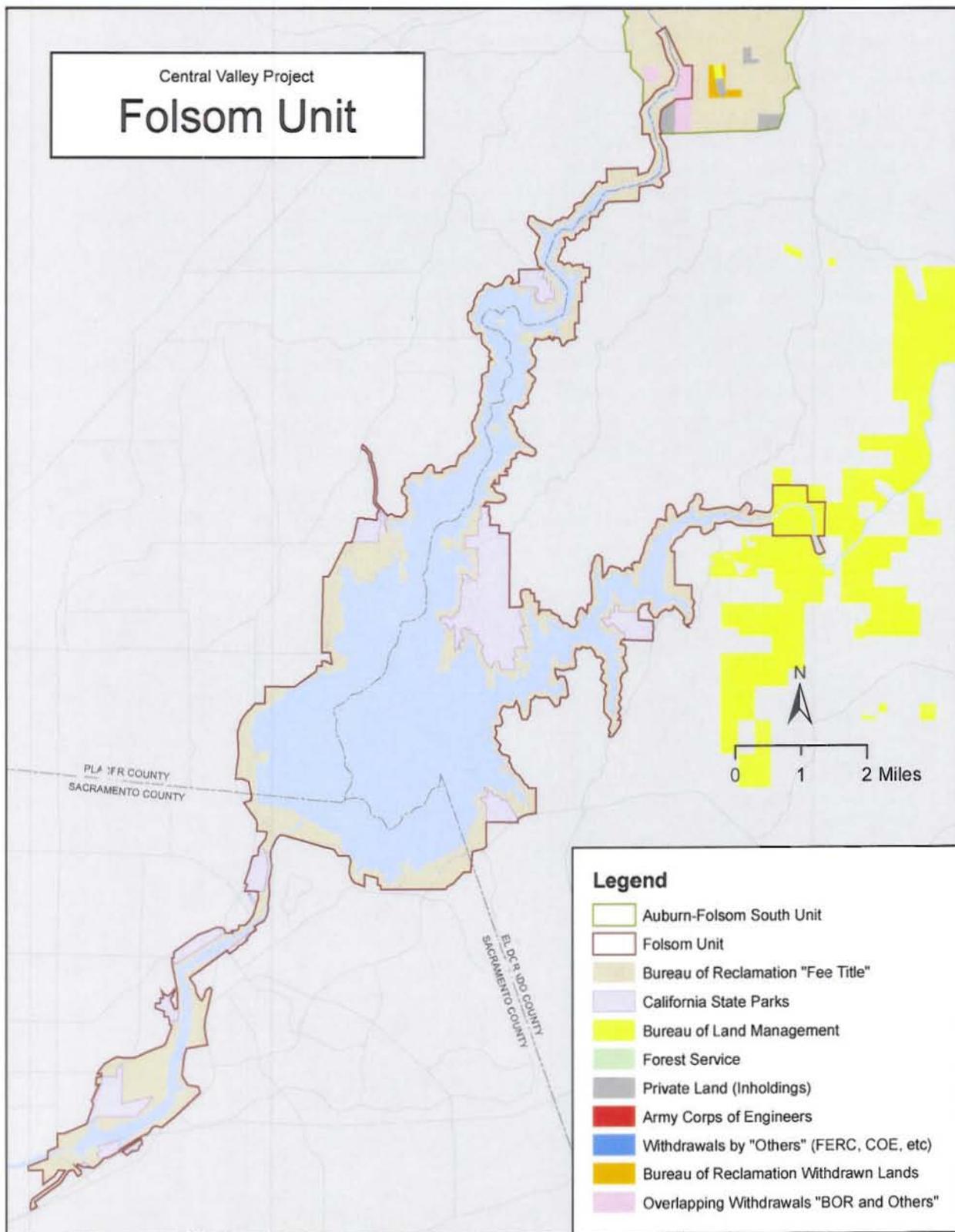


Map Dated: 11-14-11

RECLAMATION

Managing Water in the West

U.S. Department of the Interior
Bureau of Reclamation



Map Dated: 11-14-11

EXHIBIT B

ENVIRONMENTAL REQUIREMENTS

1.1 Introduction

All Actions taking place on federal property must comply with the National Environmental Policy Act (NEPA) and associated laws and regulations as amended. The Managing Partner shall work with Reclamation to integrate NEPA processes with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process and to head off potential conflicts (40 CFR 1501.2).

Actions must be consistent with the following:

1.1.1 Laws and regulations

- Fish and Wildlife Coordination Act
(PL 85-624, as amended)
- Endangered Species Act
(PL 93-205, as amended)
- Migratory Bird Treaty Act
(16 USC 703-711)
- Section 404 of the Clean Water Act
(PL 92-500, as amended; 33 USC § 1344; 40 CFR Part 230)
- Cultural Resources Compliance
(PL89-665, as amended; 36 CFR Part 800)
- Indian Trust Asset Policy and Guidance
Guidance for Implementing Indian Sacred Sites
(EO 13007)
- Environmental Justice
(EO 12898)
- Quality of Information
(PL 106-554)

1.1.2 Resource Management Plan (RMP)

1.1.3 Reclamation Policies

1.2 When is Environmental Documentation necessary

Environmental documentation is needed if a maintenance or other project includes one of the following:

- Ground disturbance
- Change in capacity
- Change in purpose
- New construction – Reclamation must receive notification in advance of modifications to determine whether environmental documentation is required.

- populations,
- Does not limit access to or ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners and does not significantly or adversely affect the physical integrity of such sacred sites; or
- Does not contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area and does not contribute to actions that may promote that introduction, range, or growth of such species.

1.4.2 Preparing the CE

In determining whether the action qualifies for a CE, fill out the Categorical Exclusion Checklist (CEC). This checklist is required on all Reclamation actions whose impacts are small that an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is not required. If all answers on the CEC are “no” then the action meets the requirements of a CE. If any answers are marked “yes,” then an EA is required to determine the significance of the action. If any items on the checklist are marked “unknown,” then the project requires additional knowledge from research or consultants. If the impacts are already known or expected to be significant, then prepare an EIS.

The State will work Reclamation to incorporate the following elements:

- The project description and purpose
- Photos and maps (including a topographic map)
- The CE checklist
- Impacts, Minor Mitigation, Avoidance Strategy, Constraints

1.5 Environmental Assessment/FONSI

1.5.1 Environmental Assessment

In the event that a Finding of No Significant Impact (FONSI) is the appropriate Environmental documentation, the State will work with Reclamation to prepare a combined Environmental Assessment (EA), addressing the issues significant under NEPA.

The draft EA will be approved by Reclamation and the State prior to circulation to the public or agencies outside Reclamation and the State. After public circulation has been completed and Reclamation as has agreed to the responses to comments received, a draft FONSI will be developed for the final EA and signature by Reclamation.

1.5.1.1 Depending on the complexity of the project, the following actions may be appropriate:

- Joint environmental documentation with State, local, and tribal agencies
- Scoping (public, inter/intra-agency)
- News releases through newspapers, newsletters, and the Internet
- Sending the draft EA to the public for comments
- Public meetings
- Sending the final EA and FONSI to the public

- Notice of Scoping Meetings is given through publication in the Federal Register and in local newspapers
- Notice of Public Information Meetings will be noticed in local newspapers
- Notice of Availability and Public Hearing will be published in the Federal Register and in local newspapers

1.6.1.2 Content of the EIS:

- All requirements detailed in section 1.5.1.2
- Alternatives: Alternatives presented in the EIS must be reasonable. Reasonable alternatives include those that are practical or feasible from the technical or economic standpoint and using common sense rather than simply desirable from the standpoint of the applicant. All reasonable alternatives must be rigorously explored and for alternatives that were eliminated from detailed study, include a brief explanation for the elimination.
- A preferred alternative should be identified and explained in such language that it may be extracted from the document to stand alone as a separate document.
- No Action Alternative-represents the projection of the future of the current situation. For O&M studies, the no action alternative assumes continuing current O&M activities with no change.

1.6.1.3 A minimum time line for the NEPA process is as follows (Reclamation may extend limits):

- The **minimum** period between the notice of a hearing and the actual hearing is 15 days (40 CFR 1506.6 (c)(2)).
- The **minimum** period for public review of the Draft EIS (DEIS) or any supplements is 45 days (40 CFR 1506.10 (c) and (d), 516 DM 4.26A).
- The **minimum** period between EPA's Federal Register notice and issuing the Record of Decision (ROD) is 30 days (40 CFR 1506.10 (b)(2)).

The recommended time line for the process is 30 days between the Notice of Availability and the Public Hearing and 15 days between the Public Hearing and the closing of comments.

1.6.2 Record of Decision

The Draft Record of Decision for Reclamation signature will contain:

- The decision, the alternatives considered, and the preferred alternative from the EIS
- The environmentally preferred alternative
- The factors considered for each alternative
- Whether or not all practicable means to avoid or minimize environmental harm for the alternative selected have been adopted, and if not, why. A summary of environmental commitments may be necessary.
- Any monitoring and enforcement program established to ensure that identified mitigation measures are accomplished

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EXHIBIT C

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EQUAL OPPORTUNITY REQUIREMENTS

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During the performance of this Agreement, the State agrees as follows:

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1. The State will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, or national origin. The State will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, age, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The State agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the United States setting forth the provisions of this Equal Opportunity clause.

2. The State will, in all solicitations or advertisements for employees placed by or in behalf of the State, state that all qualified applicants will receive consideration for employment without regard to race, color, age, religion, sex, or national origin.

3. The State will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the United States, advising the labor union or workers representative of the State's commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The State will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. The State will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant, thereto, and will permit access to its books, records, and accounts by the United States and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the State's noncompliance with the Equal Opportunity clause of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended, in whole or in part, by the United States and the State may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rules, regulations, or order of the Secretary of Labor, or as otherwise provided by law.

7. The State will include the provisions of paragraphs 1) through 6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor

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EXHIBIT D

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TITLE VI, CIVIL RIGHTS ACT OF 1964

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1. The State agrees that it will comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241), and all requirements imposed by or pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the grounds of race, color, sex, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the State receives financial assistance from the United States and hereby gives assurance that it will immediately take any measures to effectuate this Agreement.

2. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the State by the United States, this assurance obligates the State; or in the case of any transfer of such property or structure is used for a purpose involving the provision of similar service or benefits. If any personal property is so provided, this assurance obligates the State for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the State for the period during which the Federal financial assistance is extended to it by the United States.

3. This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended after the date hereof to the State by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The State recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on the State, its successors, transferees, and assignees.

EXHIBIT E

NONEXPENDABLE GOVERNMENT PROPERTY REQUIREMENTS

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1134 1. Nonexpendable government property is equipment which is complete in itself and
1135 does not ordinarily lose its identity or become a component part of another piece of
1136 equipment when put into use. Nonexpendable Government property includes the
1137 following:
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1139 a. Any single item, having a useful life of 1 year or more, which is acquired at a
1140 cost of, or valued at \$5000 or more;

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1142 b. Sensitive items identified in Article 5 below, regardless of acquisition cost;

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1144 c. All office furnishings and furniture.
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1146 2. For each item of nonexpendable United States property, the State is required to
1147 maintain an individual item record which will adequately satisfy the requirements set
1148 forth in Article 17 of this Agreement. In establishing and maintaining control over
1149 United States' property, the State will include, at the minimum, the following information
1150 in their property accounting system:
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1152 a. Contract number

1153 b. Name of item

1154 c. Manufacturer's name

1155 d. Manufacturer's model number

1156 e. Manufacturer's serial number

1157 f. Acquisition document reference and date

1158 g. Guarantee and warranty lapse date

1159 h. Location

1160 i. Unit price
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1162 3. Accessory and component equipment that is attached to, part of, or acquired for use
1163 with a specific item or equipment must be recorded on the record of the basic item. Any
1164 accessory or component item that is not attached to, part of, or acquired for use with a
1165 specific item of equipment must be recorded separately. Useable accessory or
1166 component items that are permanently removed from items of Government property must
1167 also be separately recorded.
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1169 4. The unit price of each item of government property must be contained in the State's
1170 property control system. The State's quantitative inventory record must contain the unit
1171 prices. The supplementary records containing this information must be identified and
1172 recognized as a part of the unit price of the item (less discount).
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1174 5. Firearms, museum property, motor vehicles and heavy equipment are sensitive items
1175 of nonexpendable property which shall be included in the State's property accountability
1176 system, even if the original acquisition cost is under \$5000.

Reclamation Manual

Directives and Standards

Subject: Cultural Resources Management

Purpose: To ensure that Reclamation manages its cultural resources according to legislative mandates and in a spirit of stewardship; to clarify Reclamation's roles and responsibilities related to cultural resources; and to provide direction for consistent implementation of Reclamation's cultural resources management responsibilities.

Authority: The laws, regulations, and guidance shaping Reclamation's cultural resources responsibilities include:

Antiquities Act of 1906 (16 U.S.C. 431); Historic Sites Act of 1935 (16 U.S.C. 461); Reservoir Salvage Act of 1960 (16 U.S.C. 469); National Historic Preservation Act of 1966 (16 U.S.C. 470); National Environmental Policy Act of 1969 (42 U.S.C. 4321); Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469); American Indian Religious Freedom Act of 1978 (42 U.S.C. 1996); Archaeological Resources Protection Act of 1979 (16 U.S.C. 470); Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C. 3001); National Register of Historic Places (36 CFR Part 60); Determinations of Eligibility for Inclusions in the National Register of Historic Places (36 CFR Part 63); Curation of Federally Owned and Administered Archeological Collections (36 CFR Part 79); The Protection of Historic Properties (36 CFR Part 800); Protection of Archeological Resources (43 CFR Part 7); Native American Graves Protection and Repatriation Act (43 CFR Part 10); Protection and Enhancement of Cultural Environments (Executive Order 11593); Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Executive Order 12898); Protection of American Indian Sacred Sites (Executive Order 13007); Managing Museum Property (411 DM); Protection of Properties on the National Register of Historic Places (426 DM 1); Preservation of Historic Property (519 DM 1); Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines (48 FR 44716); and Reclamation Cultural Resources Management Policy (1998) LND-P01.

Contact: Land, Recreation, and Cultural Resources, Federal Preservation Officer, D-5300

1. Definitions.

- A. **Adverse Effect** occurs when an undertaking diminishes the integrity of a historic property's location, design, setting, materials, workmanship, feeling, or association. See definition of **Effect**.

- B. **Advisory Council on Historic Preservation** (Council) is an independent Federal agency established pursuant to Section 201 of the National Historic Preservation Act

Reclamation Manual

Directives and Standards

(NHPA). Under Section 106 of NHPA, the Council must be afforded an opportunity for comment on Federal, federally assisted, or federally licensed undertakings that may affect cultural resources listed on or eligible for listing on the National Register of Historic Places (National Register).

- C. **Archaeological Resources** means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determination shall include, but not be limited to: pottery, basketry, bottles, weapons projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Non-fossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age [Section 3(1) of ARPA].
- D. **Area of Potential Effect (APE)** means the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.
- E. **Cultural Items** as used in the Native American Graves Protection and Repatriation Act (NAGPRA) are human remains, associated funerary objects, unassociated funerary objects, sacred objects, and objects of cultural patrimony [Section 2(3) of NAGPRA].
- F. **Cultural Resources** is a broad term that includes prehistoric, historic, architectural, and traditional cultural properties. Within the broad range of cultural resources are those that have recognized significance. These are called **Historic Properties**. See definition.
- G. **Cultural Resources Professional** refers to the professionally qualified individual(s) responsible for managing, coordinating, and implementing Reclamation's cultural resources policies and programs.
- H. **Cultural Resources Survey** refers to the study of an area to identify the cultural resources that are, or may be, present. Reclamation utilizes three levels of survey: Class I, Class II, and Class III.
 - (1) The purpose of the **Class I survey** is to identify known cultural resources in an area and to assess the need for additional survey information. The Class I inventory is primarily a literature and archival search. It consists of identifying cultural resources that have been listed on or determined eligible for inclusion on

Reclamation Manual

Directives and Standards

the National Register. It also includes contacting appropriate Federal, State, and local agencies, Native American tribes, other interested persons, and records repositories.

- (2) The purpose of the **Class II survey** is to identify and predict the type, density, and distribution of cultural resources in an area. It is designed to determine if significant cultural resources are present in the surveyed areas, or are likely to occur elsewhere in the study area. If significant resources are likely to occur in other portions of a study area, additional cultural resources work will be necessary. The Class II survey includes the requirements of a Class I survey and is an intensive on-the-ground examination of a sample, or portion, of the study area. A Class II survey may require test excavations or other specialized studies for the purpose of evaluating the significance of cultural resources.
 - (3) The purpose of the **Class III survey** is designed to locate all cultural resources in an area. As appropriate, a professional evaluation of their eligibility for the National Register will be undertaken. The Class III survey includes the requirements of a Class I survey and an intensive on-the-ground examination of the entire study area. A Class III survey may require test excavations or other specialized studies for the purpose of evaluating the significance of cultural resources and for determining the geographical extent of a site.
- I. **Curation** is the long-term management and preservation of collections according to professional museum and archival practices (i.e., 36 CFR Part 79 or 411 DM).
 - J. **Effect** on an historic property occurs when an undertaking may alter characteristics of the property that may qualify it for inclusion on the National Register.
 - K. **Federal Preservation Officer (FPO)** is the individual, appointed by the Commissioner, as required by Section 110(c) of NHPA, to coordinate Reclamation's overall cultural resources management program.
 - L. **Historic Property** means any prehistoric or historic district, site, building, structure, or object (see definition), included on, or eligible for inclusion on, the National Register [Section 301(5) of NHPA]. This term includes artifacts, records, and material remains related to such a property. The term "eligible for inclusion on the National Register" means cultural resources formally determined as such by the Secretary of the Interior or by Reclamation in consultation with the appropriate State Historic Preservation Officer (SHPO). Properties of traditional religious and cultural importance to an Indian tribe may be determined to be eligible for inclusion on the National Register [Section 101(d)(6) of NHPA].

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- M. **Indian Lands** refers to all lands under the jurisdiction or control of an Indian tribe.
- N. **Interested Parties or Persons** are those organizations and individuals, including Native Americans, concerned with the effects of an undertaking on historic properties. Interested persons may include: local governments, Federal applicants, Indian tribes, traditional cultural leaders, other agencies (Federal or State), institutions, foundations, and the public.
- O. **Museum Property** is personal property acquired by Reclamation according to a rational scheme and preserved, studied, or interpreted for public benefit (411 DM). It includes biologic, ethnographic, geologic, historic, paleontologic, and prehistoric resources, including their associated documentation. Items which illustrate the history of the mission of the agency such as historic documents, plans, maps, natural history specimens, and museum-quality fine art, including those that have been or are being displayed in Reclamation offices, are examples of museum property. Archaeological resources collected under legal mandates are museum property. Reclamation and Regional and Area Office Scope of Collections Statements guide the identification of museum property.
- P. **National Historic Landmark** is a district, site, building, structure, or object in public or private ownership, judged by the Secretary to possess national significance in American history, archeology, architecture, engineering, and culture, and so designated by him (36 CFR Part 65).
- Q. **National Register of Historic Places** (National Register) is the official list of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture maintained by the Secretary of the Interior (36 CFR Part 60).
- R. **Object** is a material thing of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment [36 CFR 60.3(j)].
- S. **Reclamation Lands** refers to real property administered by the Commissioner and includes all acquired and withdrawn lands under the jurisdiction of Reclamation.
- T. **Records** are defined in 44 U.S.C. 3301, as "all books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an Agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that Agency or its legitimate successor as evidence of

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Directives and Standards

the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them." Materials maintained solely for reference purposes, extra copies, and stocks of publications are not included as records.

- U. **Responsible Office** refers to a Reclamation office with delegated cultural resources responsibility.
 - V. **Significance** is the term used to indicate a cultural resource's eligibility for the National Register according to the criteria in 36 CFR 60.4.
 - W. **State Historic Preservation Officer (SHPO)** is the official appointed or designated by the Governor pursuant to Section 101(b)(1) of NHPA to administer the State historic preservation program.
 - X. **Traditional Cultural Property** is defined in National Register Bulletin 38 as a property that is eligible for inclusion on the National Register because of its association with cultural practices or beliefs of a living community that: (1) are rooted in that community's history and (2) are important in maintaining the continuing cultural identity of the community.
 - Y. **Tribal Preservation Official** is an individual designated by a tribe to administer the tribal historic preservation program, through appointment by the tribe's chief governing authority or as a tribal ordinance may otherwise provide [Section 101(d)(2)(B) of NHPA]. The tribal historic preservation program's is limited to tribal lands.
 - Z. **Undertaking** means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency including: (1) those carried out by or on behalf of the agency; (2) those carried out with Federal financial assistance; (3) those requiring a Federal permit, license, or approval; and (4) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency [Section 301(7) of NHPA].
2. **Implementation of Reclamation's Cultural Resources Management Responsibilities.** Reclamation will manage and protect cultural resources in keeping with its mission "To manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public." The agency will implement cultural resources management in a positive manner that fulfills the spirit as well as the letter of laws, regulations, and policies.

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Directives and Standards

- A. The **Commissioner** is responsible for the management and protection of cultural resources on Reclamation lands or associated with Reclamation activities [Section 106 of NHPA and Section 3(2) of ARPA]. The Commissioner designates a Federal Preservation Officer.
- B. The **Federal Preservation Officer (FPO)** is responsible for the development of cultural resources policy and guidance, as well as for providing Reclamation-wide advice and assistance. The FPO may conduct periodic reviews of the regional or area offices to monitor compliance with the cultural resources laws, regulations, and policies.
- (1) The FPO is required by 36 CFR 60.9(d) to approve nominations to the National Register, to approve removal of historic properties from the National Register [36 CFR 60.15(c)], as well as review and transmit to the Commissioner for approval the request for waiver of the 1 percent limit (see paragraph E below).
- C. The **Regional Director** is delegated responsibility by the Commissioner for compliance with cultural resources laws, regulations, and policies. The Regional Director will maintain a regional cultural resources professional staff to ensure that the region's existing and proposed activities are carried out according to the provisions of these directives.
- D. The **Area Office** is, in some instances, delegated responsibility for compliance with cultural resources laws, regulations, and policies. In such situations, the Area Office will utilize the services of cultural resources professionals to ensure that the area's existing and proposed activities are carried out according to the provisions of these directives.
- E. **Funding for Cultural Resources Activities.** Sections 110(g) of NHPA and 7(a) of Archeological and Historic Preservation Act (AHPA) require the expenditure of Reclamation funds for cultural resources compliance activities and resource management initiatives. The responsible office will consider costs for cultural resources activities in the budgeting process.
- (1) **Nonreimbursable v. Reimbursable Costs.** Federal cultural resources law establishes that cultural resources activities (e.g., survey, data recovery, analysis, publication, and curation) are generally nonreimbursable when they are in support of Reclamation projects [Section 7(a) of AHPA and Section 110(g) of NHPA]. For operating projects, costs may be reimbursable when cultural resources activities are completed for title transfer actions, in order to grant a right-of-way or approve the use of Reclamation lands by a non-Federal entity. In addition, costs can be reimbursable when Reclamation provides technical services to other

Reclamation Manual

Directives and Standards

Federal agencies and non-Federal entities [Section 208(3) of the 1980 amendments of NHPA].

- (2) **One Percent Waiver.** Reclamation may utilize up to 1 percent of the total authorized funding amount for a project to complete cultural resources activities. The 1 percent limitation does not apply to projects under \$50,000. A waiver to exceed the 1 percent limitation for projects over \$50,000 may be authorized in certain cases. If additional funds are required, as allowed for by Section 208(3) of the 1980 amendments to NHPA, documentation for the request will be:
 - (a) prepared by the appropriate cultural resources professional, (b) forwarded to the FPO for review, (c) FPO will transmit the request to the Commissioner for approval, and (d) if approved the request will be submitted to the Secretary of the Interior for concurrence.

 - F. **Integrated Cultural Resources Management.** To ensure that cultural resources management is fully integrated into Reclamation activities, cultural resources will be addressed at the earliest stages of planning. In order to protect historic properties and avoid unnecessary delays, conflicts, and costs, cultural resources professionals will be involved from project development, budget formulation and scheduling, through implementation.
3. **Components of Reclamation's Cultural Resources Management Responsibilities.**
- A. **The NHPA** is the pivotal historic preservation law that establishes Reclamation's cultural resources management responsibilities. Within NHPA Section 106 addresses the compliance aspects, while sections 110 and 111 address management responsibilities.
 - (1) **Section 106 of NHPA** requires Reclamation to take into account the effect of an undertaking on historic properties. The cultural resources professional is responsible for determining if there is an undertaking and, if so, for defining the APE. Additional Section 106 process steps include:
 - (a) Identification of historic properties through cultural resources surveys,

NOTE—Previously surveyed Reclamation lands may require resurvey depending on the survey standards originally applied and/or completeness of the available records. Determination of the need to resurvey Reclamation lands will be based on the judgement of the cultural resources professional, in consultation with the SHPO, as appropriate.

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- (b) Evaluation of eligibility of historic properties to the National Register,
 - (c) Assessment of effects on historic properties,
 - (d) Soliciting SHPO and Council comments when appropriate, and
 - (e) Project implementation with prevention or treatment of adverse effects, if any.
- (2) **Section 106 of NHPA, Additional Compliance Aspects.**
- (a) Completion of the compliance process frequently involves extensive consultations with the SHPO and interested parties or persons. The scope of the consultation process includes:
 - (i) Identification of information needs (e.g. level of survey, resource concerns),
 - (ii) Evaluation of National Register eligibility of identified cultural resources,
 - (iii) Assessment of effects, and
 - (iv) Development of appropriate measures to avoid or mitigate adverse effects to historic properties (see paragraph 3F, Coordination and Consultation with Interested Parties).
 - (b) The responsible office may complete the Section 106 compliance process on a case-by-case basis for individual undertakings or may enter into an agreement with the Council and appropriate SHPO(s) to streamline the process for repetitive or complex undertakings.
 - (1) In addition, the responsible cultural resources professional may use the services of grantees, applicants, consultants, or designees to prepare the necessary information and analyses, but remains accountable for Section 106 compliance. In all cases, the preparers must meet the Secretary of the Interior's Standards and Guidelines.
- (3) **Section 106 of NHPA, on Indian Lands When a Tribal Historic Preservation Program Exists.** Section 101(d)(2) allows for tribes to assume all or any part of the functions of a SHPO with respect to Indian lands. (See paragraph 3F, Coordination and Consultation with Interested Parties.)

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- (4) **Section 106 of NHPA, Responsibilities for Reclamation Title or Administrative Transfers.** The transfer of a historic property is identified in 36 CFR Part 800 as an adverse effect. However, a transfer is not considered to be an adverse effect when there are adequate conditions or restrictions to ensure the preservation of the property's historic features.
- (a) If Reclamation transfers jurisdiction of its lands or facilities to another Federal agency, Reclamation will ensure the cultural resources responsibilities transfer to the other agency.
 - (b) If Reclamation transfers title of Reclamation lands or facilities to a non-Federal entity, Reclamation will, prior to transfer, comply with Section 106 and other applicable laws, regulations, and policies.
 - (c) If Reclamation maintains title but transfers administration of projects to a non-Federal agency (e.g., State, county, or district), Reclamation remains accountable for cultural resources but may assign certain responsibilities for cultural resources to the transferee. Prior to transfer, the responsible office will: (1) ensure the non-Federal entity is capable of and willing to carry out these responsibilities and (2) provide notice to the non-Federal entity of any cultural resources responsibilities that it has been assigned. The cultural resources requirements for non-Federal entities will be included in an agreement. New and renewed lease or management agreements will detail the cultural resources responsibilities of non-Federal entities (see Reclamation Manual's Facilities Directives, FAC).
 - (d) Title transfer of Reclamation facilities will not include transfer of the associated official records. These remain the property of the Federal Government (see Reclamation Manual's Title Transfer Directives, CMP 05).
- (5) **Section 106 of NHPA, Treatment of Adverse Effects.** Reclamation policy is to preserve historic properties in place and therefore avoid adverse effects to the fullest extent possible. However, after evaluation of all factors in an undertaking, Reclamation may determine that public benefits of proceeding with the undertaking outweigh adverse effects to historic properties. When adverse effects cannot be avoided, Reclamation will seek measures to reduce and minimize them. Treatment measures will be developed in consultation with the SHPO(s), Council, and other interested parties or persons and will be appropriate to the nature and significance of the historic properties in question.

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National Historic Landmarks require special consideration, including consultation with the Council when they will be adversely affected [Section 110(f) of NHPA].

- (6) **Section 106 of NHPA, Intentional Violations.** Reclamation will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of Section 106, has intentionally significantly adversely affected a historic property, or having legal power to prevent it, allowed such significant adverse effect to occur, unless Reclamation, after consultation with the Council determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant [Section 110(k) of NHPA].
 - (7) **Section 110 of NHPA** requires Reclamation to complete cultural resources surveys and reports for all its lands and existing projects. The responsible office will develop priorities for conducting surveys on Reclamation lands using the following factors (not listed in priority order):
 - (a) Presence of known cultural resources or reason to believe resources exist,
 - (b) Significance or scientific value of cultural resources,
 - (c) Lands are within the boundaries of a resource management plan study area,
 - (d) Nature and extent of previous investigations,
 - (e) Degree to which the cultural resources are threatened and endangered, and
 - (f) Importance of cultural resources to Native American cultural values.
 - (8) **Section 111 of NHPA** directs Reclamation to explore alternatives for ensuring the preservation of historic properties under its ownership that are not needed for current or projected agency purposes. These alternatives include leases or exchanges to any person or organization, and contracts for management.
- B. **Archaeological Resources Protection Act (ARPA).** ARPA regulates the removal of archaeological resources from Reclamation lands; contains a permit system for excavating or removing archaeological resources; and includes prohibitions on the sale, purchase, transport, or entry into interstate commerce of items taken in violation of the Act. Penalties include fines and imprisonment. Amendments to the Act require Reclamation to establish public education and outreach programs.

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- (1) **Section 4 of ARPA** directs Reclamation to establish a process for issuing permits for the excavation of archaeological sites on its land. Within Reclamation, such permits are issued by the cultural resources professional within the responsible office as determined by the Regional Director.
 - (2) **Sections 6 and 7 of ARPA** establish criminal and civil processes to protect archaeological resources and include penalties for prohibited acts. ARPA enforcement on Reclamation lands is Reclamation's responsibility. While Reclamation does not have law enforcement authority or internal capabilities, each Reclamation office will ensure that enforcement personnel are available to protect archaeological resources. This can be accomplished through agreements with other Federal, State, or local agencies.
 - (3) **Section 14 of ARPA** mandates that Reclamation will develop plans and a schedule for surveying lands under its control for archaeological resources.
- C. **Native American Graves Protection and Repatriation Act (NAGPRA)** requires Reclamation to inventory human remains and associated funerary objects and to provide culturally affiliated tribes with the inventory of collections. NAGPRA also requires repatriation, on request, to the culturally affiliated tribes. For the purpose of identifying ownership or control of Native American cultural items priority will be given in the order listed:
- (1) To the lineal descendants of the Native American, or
 - (2) In any case in which such lineal descendants cannot be ascertained:
 - (a) To the Indian tribe on whose tribal land such objects or remains were discovered,
 - (b) To the Indian tribe which has the closest cultural affiliation with such remains or objects, or
 - (c) If the cultural affiliation cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized as the aboriginal land of some Indian tribe;
 - (i) To the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, or

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- (ii) If it can be shown that a different tribe has a stronger cultural relationship with the remains or objects than the Indian tribe that has the strongest demonstrated relationship.
 - (3) **Section 3 of NAGPRA.** To meet the intent of Section 3 of NAGPRA, the responsible office will have in place a plan for intentionally excavated and inadvertently discovered Native American cultural items. These plans will include a step-by-step outline of what to do when Native American cultural items are encountered.
 - (4) **Inadvertent Discovery.** If Native American cultural items are inadvertently discovered during a Reclamation activity for which there is no plan, work will cease immediately in the area of discovery and the requirements of NAGPRA regulations (43 CFR 10.4) will be followed.
- D. **National Environmental Policy Act (NEPA)** establishes a national policy to identify and consider environmental impacts of Federal actions. NEPA establishes that it is the responsibility of the Federal Government to "...preserve important historic, cultural and natural aspects of our national heritage..." [Section 101(b)(4)].
- (1) **Coordination of NEPA with Section 106 of NHPA.**
 - (a) The cultural resources professional will participate in the NEPA process. All Reclamation NEPA actions will be coordinated with the NHPA Section 106 compliance process. Compliance with Section 106 for an undertaking is required regardless of the level of NEPA documentation and will be documented in a categorical exclusion checklist, environmental assessment, or environmental impact statement, as appropriate. If such compliance is not completed prior to conclusion of the NEPA documentation, the NEPA document will contain commitments for Reclamation to complete the cultural resources compliance process. Any Reclamation action considered to be categorically excluded from review under NEPA will still require Section 106 compliance.
 - (b) If an action will have an adverse effect (see definition) on historic properties, an Environmental Assessment or an Environmental Impact Statement may be required.
 - (c) Reclamation is encouraged to use the NEPA public involvement process to meet the public participation requirements of the Section 106 process.

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- (d) The responsible official will ensure that the Finding of No Significant Impact or Record of Decision incorporates applicable mitigation measures related to adverse effects on historic properties.
- E. **Curation and Museum Property Responsibilities.** Reclamation is responsible for curating museum property under its ownership, generated as a result of its activities, or on loan to other public or private organizations. The Program Analysis Office is delegated responsibility for developing museum property policy and guidance, and for providing advice and assistance. All Reclamation offices will implement the provisions of 411 DM as defined in Reclamation policy and museum property planning documents.
- (1) The appropriate treatment and preservation of museum property, including archaeological collections, is mandated by 411 DM, "Managing Museum Property," whose standards incorporate the requirements of 36 CFR Part 79, "Curation of Federally-owned and Administered Archeological Collections."
- F. **Coordination and Consultation with Interested Parties.**
- (1) **Public Involvement** responsibilities for Reclamation actions that could affect individuals or groups are outlined in Reclamation Policy and Directives, CMP 03. The Public Involvement Directives (see Related Directives Table included therein) reference the cultural resources requirements for consultation/coordination with interested parties under NHPA and NEPA.
- (2) **Consultation Under Section 106 of NHPA.** Consulting parties are the primary participants in the Section 106 process and include Reclamation, the SHPO, and, in some cases, the Council. Coordination with other agencies, entities, and individuals having responsibilities for or interest in cultural resources is also required, as appropriate, in the planning and execution of Reclamation activities.
- (3) **Consultation with Native Americans.** Section 101(d)(2) and Section 106 of NHPA, NAGPRA, ARPA, NEPA, the American Indian Religious Freedom Act, and Executive Order 13007 require Reclamation to consult with Native Americans on complex and culturally sensitive issues (see Reclamation Manual's Native American Directives, NIA-01).
- (a) Reclamation will consult with appropriate Native American tribes or tribal entities to determine if sites or locations related to their beliefs, expressions, or exercise of traditional cultural practices are present on Reclamation lands.

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- (b) When a Reclamation activity affects Indian lands, Reclamation will invite the governing body of the appropriate tribe(s) to be a consulting party in the Section 106 process and be a signatory to any Section 106 agreement. Reclamation also may invite the appropriate tribe(s) to participate as an interested or consulting party when an undertaking would affect cultural resources of value to that tribe(s) which are on non-Indian lands.
- (c) When a Reclamation activity affects Indian lands and a Tribal Historic Preservation Program exists, Reclamation will consult with the Tribal Preservation Official in accordance with an established Tribal Preservation Plan.
- (d) Reclamation will consult with appropriate Indian tribe(s) when there are planned excavations and removal of cultural items on Reclamation lands. Where the excavations are on tribal lands, tribal consent is required. In both instances noted above, proof of consultation or consent is required (see 43 CFR Part 10).

4. Integration of Cultural Resources Management With Other Reclamation Programs.

- A. **Financial Assistance Programs.** Prior to Reclamation granting a Federal loan under the Small Reclamation Projects Act as amended, an applicant will commit to completing the necessary steps to enable Reclamation to meet its Section 106 compliance responsibilities (see Reclamation Manual's Small Reclamation Projects Act Loans Directives, LON 03).
- B. **Resource Management Plans.** To ensure that cultural resources are addressed in all resource management plans, cultural resource professionals will be involved at the outset of the process to: (1) develop scheduling and budgeting, (2) identify parties with whom Reclamation will consult in developing the RMP, and (3) develop or review cultural resources sections. Reclamation will ensure that cultural resources requirements are fully defined for all parties in instances where land management partners (e.g., other state or Federal agencies) will be implementing the RMP (see Reclamation Manual's Lands Management Directives, LND 05).
- C. **Land Exchanges, Acquisition, and Withdrawals.** When Reclamation is considering acquiring new tracts of land through land exchanges, purchases, or withdrawals, the cultural resource professional of the responsible office will be notified in order to evaluate whether there may be sensitive cultural resources issues (see Reclamation Manual's Land Acquisition Directives, LND 01).

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- D. **Resource Information System.** The Reclamation-wide Resource Information System is an automated system containing real property and related resource management information. The system's lands, buildings, and structures inventories include data fields that concern cultural resources. Cultural resource professionals will coordinate with appropriate staff to maintain accurate cultural resources information in the system.
- E. **Safety of Dams.** The modification of existing dams for safety purposes is considered an undertaking and will be subject to Section 106 of NHPA (see paragraph 3A(1) above). In addition the costs of SOD activities are considered non-reimbursable (see Reclamation Manual's Research, Applied Science, and Technology Directives, RES).
- F. **Contracts and Permits.** Reclamation contracts and permits that may result in effects to cultural resources will include a clause authorizing the contracting officer to order delays or changes in work when cultural resources or cultural items under NAGPRA are discovered. The clause will include penalties in the event the contractor fails to report discoveries. If appropriate, the contract price may be adjusted because of delays or changes in the work order (see Reclamation Manual's Contracts and Repayment Directives, PEC 01).
- G. **Outgrants.** Outgrants in the form of leases, licenses, permits, easement, and rights-of-way that involve the use of Reclamation lands or other resources may be determined to be undertakings and thus subject to the compliance requirements of Section 106. The required cultural resources survey and evaluation can either be furnished by the applicant or can be generated by Reclamation with the applicant paying the costs (see Reclamation Manual's Lands Management Directives, LND).
- H. **Emergency Management Program.** The responsible office will ensure that cultural resources compliance is addressed in all Emergency Action Plans. This will include the requirements established in the "Programmatic Memorandum of Agreement for Emergency Situations" (January 29, 1986), and its implementing plan "Plan for Taking Historic Properties Into Account During Conditions of Major Natural Disasters or National Security Emergencies" (December 5, 1986) (see Reclamation Manual's Emergency Management, FAC 01-01).
5. **Public Education Responsibilities.** The results and benefits of Reclamation-sponsored cultural resources work will be made available through public education efforts. These include but are not limited to interpretive activities, scholarly publications, and outreach activities such as volunteer laboratory and fieldwork opportunities. The public education initiative will be integrated with Reclamation's overall Public Information Program, the Department of the Interior's programs for public awareness of archaeology [Section 10(c) of

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ARPA] and the Secretary of the Interior's policy statement "A National Strategy for Federal Archaeology."

Public education efforts, as appropriate, will be used to mitigate adverse effects to historic properties.

6. **Records and Reports.** All cultural resources on Federal lands are the property of the Federal Government. All records generated as a result of cultural resources activities on Reclamation lands and for activities sponsored by Reclamation but not on Reclamation lands, are the property of the Federal Government.

In accordance with Section 304(a) of NHPA and Section 7 of ARPA, information relating to the location or character of cultural resources may be withheld from disclosure to the public when the Regional Director or Area Office Manager, in consultation with the cultural resources professional, determines that disclosure of such information may create a substantial risk of harm, theft, or destruction to such resources or to the area or place where such resources are located.

- A. **Records of Actions.** Cultural resources records will be kept by the responsible office in accordance with the official Reclamation disposition schedule. Records will include contracts for work, National Register nomination forms, Determinations of Eligibility, relevant correspondence, field notes, photographs, site cards, and other information that will aid future Reclamation actions in regard to cultural resources.
- B. **Technical Reports.** Prior to Reclamation's acceptance of completed contractual obligations, all reports concerning cultural resources surveys, studies, and/or mitigation efforts will be reviewed for technical accuracy, completeness, and adequacy by a Reclamation cultural resources professional.

- (1) All contracts or service agreements will specify:
- (a) The number of copies of reports to be produced,
 - (b) Who is responsible for providing the copies, and
 - (c) Who is responsible for the distribution noted below.
- (2) Copies of final approved reports are submitted as required to:
- (a) Program Analysis Office, Federal Preservation Officer (1 copy).

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- (b) Bureau of Reclamation Library, Denver Federal Center (1 copy).
 - (c) State Historic Preservation Officer (as appropriate).
 - (d) Other Federal and State agencies (as appropriate).
 - (e) Other persons, groups, or institutions (as appropriate).
 - (f) National Technical Information Service (optional-11 copies).
- C. **Filing Requirements for Records.** Records relating to cultural resources activities will be filed and maintained in accordance with Reclamation's Information Management Handbook using the ENV-3.00 document classification designation and its appropriate disposition instructions. An official copy of every cultural resources report will be filed by the office responsible for its creation in accordance with Reclamation's Information Management Handbook using the ENV-2.00 document classification and its appropriate disposition instruction. All cultural resources records and reports filed with the ENV-2.00 or ENV-3.00 document classification codes are designated as permanent records and will ultimately be transferred to the National Archives.

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- Subject:** Cultural Resources Management
- Purpose:** To define the Bureau of Reclamation's responsibility for the cultural resources it owns, controls, or administers on behalf of the United States in accordance with Federal laws, regulations, executive orders, and Department of the Interior policies. The benefit of this Policy is improved management and protection of, and accountability for, the cultural resources under Reclamation's stewardship.
- Authority:** The major laws, regulations, executive orders, and policies underlying Reclamation's authority and responsibility for cultural resources include:
- Antiquities Act of 1906 (16 U.S.C. 431-433); Reservoir Salvage Act of 1960, as amended (16 U.S.C. 469-469c-2); National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. 470 et seq.); Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. 470aa et seq.); Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 (25 U.S.C. 3001 et seq.); National Register of Historic Places (National Register) (36 CFR part 60); Curation of Federally-Owned and Administered Archaeological Collections (36 CFR part 79); Protection of Historic Properties (36 CFR part 800); Protection of Archaeological Resources (43 CFR part 7); NAGPRA Regulations (43 CFR part 10); and Preserve America (Executive Order 13287).
- Approving Official:** Commissioner
- Contact:** Policy and Administration, Land Resources Division, 84-53000
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1. **Introduction.** Beginning in 1906, numerous Federal laws have been enacted to preserve and protect cultural resources on Federal lands. Of these, the NHPA is the most comprehensive. It declared as policy that the Federal government would administer cultural resources under its ownership, control, or administration, in a spirit of stewardship for the inspiration and benefit of present and future generations. This Policy and its associated Reclamation Manual (RM) Directive and Standard (D&S), *Cultural Resources Management*, LND 02-01, affirm Reclamation's commitment to comply with the laws, regulations, executive orders, policies, and directives that constitute the Federal Cultural Resources Management (CRM) Program.

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2. **Applicability.** This Policy applies to all staff that can have an effect on cultural resources that are owned by the United States and controlled or administered by Reclamation on behalf of the United States.
3. **Definitions.**
 - A. **Cultural Resources.** Any prehistoric and historic districts, sites, buildings, structures, objects, cultural landscapes, sacred sites, and traditional cultural properties. Within the broad range of cultural resources are those that have recognized significance, which are called historic properties.
 - B. **Historic Properties.** Any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. This term includes artifacts, records, and remains that are related to and located within such properties. The phrase "eligible for inclusion on the National Register" means properties formally determined as such by the Secretary of the Interior or by Reclamation in consultation with the appropriate State or Tribal Historic Preservation Officer. Properties that have been determined eligible for inclusion are accorded the same protections as properties listed in the National Register.
 - C. **Museum Property.** Personal property acquired according to some rational scheme that is to be preserved, studied, and interpreted for public benefit.
 - D. **NAGPRA Cultural Items.** Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony.
 - E. **Reserved Works.** Buildings, structures, facilities, or equipment that are Reclamation-owned for which the operation and maintenance (O&M) is performed by Reclamation personnel or by contract, regardless of funding source.
 - F. **Transferred Works.** Buildings, structures, facilities, or equipment that are Reclamation-owned for which the day-to-day responsibility for O&M and funding (generally) of the project facilities has been transferred, pursuant to Reclamation law, to a project beneficiary. Under the terms of the formal O&M transfer agreement, the project beneficiary performing the day-to-day O&M is accountable to Reclamation for proper performance of the O&M. The long-term oversight responsibility of the Federal project, including its facilities, resides with Reclamation.
 - G. **Undertaking.** A project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency including:
 - (1) those carried out by or on behalf of the agency;
 - (2) those carried out with Federal financial assistance;
 - (3) those requiring a Federal permit,

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license, or approval; and (4) those subject to state or local regulation administered pursuant to a delegation or approval by a Federal agency.

4. Responsibilities.

- A. **Commissioner.** The Commissioner is responsible for promoting and maintaining Reclamation's CRM Program.
- B. **Regional Directors.** Regional directors are responsible for implementation and accomplishment of Reclamation's CRM Program within their respective regions. This responsibility includes:
 - (1) complying with cultural resources laws, regulations, policies, and D&S;
 - (2) seeking funding at the appropriate level to ensure CRM Program implementation;
 - (3) maintaining qualified CRM professionals on staff who have experience complying with cultural resources laws, regulations, policies, and D&S; and
 - (4) re-delegation of his/her CRM program responsibilities to area managers, as appropriate.

5. CRM Program Policy. In managing cultural resources that are owned by the United States and controlled or administered by Reclamation on behalf of the United States, Reclamation shall:

- A. identify, document, and evaluate cultural resources for listing in the National Register;
- B. actively nominate eligible properties to the National Register;
- C. to the fullest extent possible, manage and maintain historic properties, both reserved and transferred works, in a manner that preserves the character defining features that qualify them for listing in the National Register;
- D. integrate cultural resources concerns early in project planning processes in order to identify opportunities to protect historic properties from adverse effects and avoid unnecessary delays, conflicts, and costs for Reclamation undertakings;
- E. consider the effects of its undertakings on historic properties;

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- F. where adverse effects cannot be avoided, commit to fully completing mitigation measures prescribed in agreements executed with one or more of the following: State or Tribal Historic Preservation Offices, the Advisory Council on Historic Preservation, Native American tribes, and other interested parties;
 - G. seek input and involvement from Federal, state, tribal, and local agencies, as well as the interested public, in carrying out Reclamation's CRM Program;
 - H. support an education and outreach program to inform the public of Reclamation's cultural resources stewardship responsibilities, activities, and accomplishments;
 - I. maintain accurate information on the types, location, status, and condition of its cultural resources, which shall be used in collaboration with other Reclamation programs such as asset management;
 - J. preserve and protect its museum property as prescribed in RM Policy, *Museum Property Management*, LND P05, and accompanying D&S, *Museum Property Management*, LND 02-02;
 - K. identify NAGPRA cultural items under its control to ensure their appropriate protection, and repatriation or disposition in a timely manner according to statute and regulations;
 - L. to the extent possible, establish and implement alternatives for the continued use of historic properties that are no longer needed for current or projected Reclamation purposes in compliance with section 111 of NHPA; and
 - M. to the extent possible, follow the Secretary of the Interior's Standards for the Treatment of Historic Properties for historic buildings and structures when complying with sustainability mandates.
6. **Federal Preservation Officer.** In accordance with section 110 of the NHPA, Reclamation staffing includes the position of Federal Preservation Officer. The Federal Preservation Officer shall be a qualified CRM professional. The responsibilities for this position are detailed in D&S LND 02-01.
7. **Supporting RM Policy and D&S.** This Policy is supported by the following RM Policies and D&S.
- A. *Museum Property Management*, LND P05
 - B. *Cultural Resources Management*, LND 02-01

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- C. *Museum Property Management*, LND 02-02
- D. *Operation and Maintenance of Project Works that are Historic Properties*, LND 02-03
- E. *Inadvertent Discovery of Human Remains on Reclamation Lands*, LND 07-01
- F. *Inadvertent Discovery of Native American Graves Protection and Repatriation Act (NAGPRA) Cultural Items on Tribal Lands*, LND 10-01

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Directives and Standards

- Subject:** Concessions Management by Non-Federal Partners
- Purpose:** Establishes minimum approval standards for all new, modified, or renewed non-Federal concession contracts.
- Authority:** Reclamation Act of 1902, as amended and supplemented; the Reclamation Project Act of 1939; and the Federal Water Project Recreation Act of 1965, as amended.
- Contact:** Land, Recreation, and Cultural Resources Office, D-5300
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1. **Non-Federal Partners.** Reclamation may transfer to non-Federal partners the responsibility to develop and manage public recreation areas and concession services. Transferred areas are managed by a partner under Federal authorities, the partner's authorities, specific contracts, and agreements with Reclamation. Well-planned and -managed concessions on the Federal estate are of mutual interest to Reclamation and its partners. Reclamation is responsible for continuous management oversight of managing partners and their concessions operations.
2. **Compliance With Directives and Standards.** New concession contracts issued by managing partners must comply with these directives and standards. Existing concession contracts issued by managing partners must, at the first opportunity, be brought into compliance with these directives and standards. If a concession contract is amended or terminated because of contract default or for other reasons and a subsequent concession contract is issued by the non-Federal partner, the subsequent concession contract must be in compliance with these directives and standards.
3. **Definitions.**
 - A. **Concession.** A concession is a non-Federal commercial business that supports appropriate public recreation uses and provides facilities, goods, or services for which revenues are collected. A concession involves the use of the Federal estate and usually involves the development of real property improvements.
 - B. **Exclusive Use.** Exclusive use is any use that excludes other appropriate public recreation use or users for extended periods of time. Exclusive use includes, but is not limited to, boat docks, cabins, trailers, manufactured or mobile homes, structures, or amenities that are determined by Reclamation to be exclusive use.
 - C. **Federal Estate.** The Federal land and water areas under the primary jurisdiction of the Department of the Interior, Bureau of Reclamation.

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- D. **Fixed Assets.** Fixed assets are any structures, fixtures, or capital improvements permanently attached to the Federal estate.
 - E. **Improvement.** An addition to real property that increases its value or utility or that enhances its appearance.
 - F. **Management Agreement.** A management agreement is a binding contract between Reclamation and a partner to provide public recreation opportunities and concession services on the Federal estate.
 - G. **Non-Federal Partner.** A non-Federal partner is a non-Federal public entity that manages recreation and other resources through a contractual agreement with Reclamation.
 - H. **Total Benefits to the Government.** Total benefits include:
 - (1) **Direct Returns.** These are fees generated by authorized concession contracts and paid directly to the managing entity or to the United States Treasury.
 - (2) **Direct Benefits.** These are fees paid into a contractually designated special account for resource and capital improvements that directly benefit the public in the area of operations where the fees are collected.
 - (3) **Indirect Benefits.** These are services performed by the concessionaire that benefit the public or improvements made to the Federal estate by the concessionaire.
4. **Managing Partner Agreements.**
- A. **Third-Party Concession Agreements.** Third-party concession agreements are agreements between the non-Federal managing partner and another entity to provide concession related services and facilities.
 - (1) **Agreement Standards.** Any concession contract, including a contract renewal or modification, issued by the non-Federal managing partner must meet the requirements of these Concessions Management Directives and Standards.
 - (2) **Contract Approval.** Before issuing or renewing a non-Federal concession contract, the contract must be approved by Reclamation.
 - (3) **Stand In Stead Conditions.** All concession contracts must state that Reclamation will not stand in stead for the managing partner should the

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management agreement expire or be terminated. At Reclamation's discretion, Reclamation may issue a new concession contract that is in compliance with Reclamation Manual (RM), *Concessions Management by Reclamation*, LND 04-01. Reclamation will not issue a new contract until all exclusive use has been removed.

- B. **Review and Evaluation.** All management agreements will require Reclamation to conduct annual concession operation reviews and evaluations. Reclamation may also conduct unplanned reviews, as necessary. If a review identifies operational or administrative deficiencies in the operation of a concession, a timetable must be established by the area office to correct these deficiencies.
 - C. **Exclusive Use.** New, renewed, or modified management agreements and concession contracts will include clauses that prohibit new exclusive use and require that existing exclusive use be phased out. When existing concession contracts issued by the partner are modified or renewed, Reclamation and the partner must establish a timetable in the concession contract that phases out existing exclusive use before the expiration of the contract. This timetable must be established before the concession contract is resubmitted to Reclamation for approval. The concessionaire and a person hired to guard the concessionaires investment may reside on the Federal estate, with the written approval of Reclamation.
 - D. **Disposition of Fees.** Unless State or local laws direct how concession fees paid to the partner will be used, the following will apply: (1) fees will be returned to the area to provide for operation, maintenance, and replacement of recreation facilities and new facility development; (2) any excess fees (profit) will be returned to Reclamation and disposed of according to RM, *Crediting of Incidental Revenues*, PEC 03-01.
 - E. **Statistical Data.** Each year, the managing partner will be required to provide Reclamation with the information specified in Reclamation's Recreation Use Data Report. Other information may be required, as necessary. This information will provide an accurate inventory of facilities. The report will also contain other data about the managing partner's recreation and concession operations on the Federal estate.
5. **Concessions Planning.** Concession development will adhere to the concessions principles listed in RM, *Concessions Management* (LND P02), will be based on appropriate plans developed by the partner or Reclamation, and will be approved by the Regional Director or delegate. Reclamation can provide direction and assistance in the process, as necessary, to accomplish effective commercial services planning.

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6. **Concessions Contracting.** The following items will be addressed in all new and renewed concessions contracts issued by non-Federal partners.
 - A. **Sale and Transfer.** The sale and transfer of existing concessions must be approved according to the management agreement and reported to Reclamation in a timely manner.
 - B. **Contract Language.** The partner will develop and use contract language that complies with all applicable Federal laws, rules, regulations, and Executive Orders. Reclamation can provide examples of standard contract structure and language.
 - C. **Length of Term.** The term for a concession may not exceed the term of the management agreement between Reclamation and the partner. In general, terms should be as short as possible and based on the new investment required as determined by a financial feasibility evaluation.
 - D. **Subconcessions.** All subconcessions must meet the terms and conditions of the prime concession contract. The partner must approve all subconcessions and notify Reclamation in advance of any authorization that needs Reclamation approval. Generally, subconcessions are discouraged in order to keep operations under single management.
 - E. **Concessions Building and Improvement Program.** All designs and construction must comply with applicable Federal, State, and local environmental and historic preservation laws and regulations and building code requirements. In areas where no State or local construction standards exist, Reclamation may provide appropriate standards. Where required and before construction, building permits must be obtained from local authorities by the concessionaire. All facilities will be harmonious in form, line, color, and texture with the surrounding landscape.
 - F. **Operation and Maintenance Plan.** Concessionaires will prepare an annual operation and maintenance plan, which must be approved by the partner. The concession contract must clearly state what the plan will contain. Reclamation can provide examples of such plans for the partner and the concessionaire.

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G. Reimbursement for Fixed Assets.

- (1) A right to reimbursement may exist when a concessionaire places Reclamation-approved fixed assets on the Federal estate. Title to fixed assets must be established in the concession contract. Reimbursement of a concessionaire for fixed assets is the responsibility of the partner. The method for determining the amount of reimbursement and the method of payment will be specifically addressed in the concession contract between the partner and the concessionaire.
- (2) In the event the partner's agreement with Reclamation expires or is terminated without a commitment by both Reclamation and the partner to enter into another agreement, all the concessionaires' fixed assets and personal property must be removed from the Federal estate unless Reclamation decides to issue a new concessions contract and decides to retain the fixed assets. [See paragraph 4A(3).] The partner will be responsible for ensuring that the concession area is returned in a condition satisfactory to Reclamation.
- (3) It must be clearly stated that no financial obligation or risk will reside in the Federal Government for reimbursement for fixed assets or personal property as a result of the partner awarding a concession contract. All new concession contracts issued by the partner will address rights for reimbursement to the concessionaire for fixed assets. Interests in a concessionaire's fixed assets may not extend beyond the term of the management agreement. In addition, the concession contract must provide appropriate language regarding interests in fixed assets and methods of reimbursement, if any, to the concessionaire by the partner.

H. **Area of Operation.** Each concession contract will authorize and define only the physical area necessary to conduct the business activities allowed by the contract. Concession boundaries must be surveyed by the partner and easily recognizable by the visiting public.

I. **Additional Facilities or Services.** Any proposal for expansion of facilities or services must be reviewed by Reclamation and approved by the partner before the expansion takes place.

J. **Exclusive Use.** The contract must state that no new facility, service, or site determined by Reclamation to be exclusive use will be allowed. New, renewed, or modified concession contracts issued by the partner will include clauses that establish a timetable for phasing out existing exclusive use before the contract expires.

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- K. **Reclamation Rights.** All concession contracts must be subject to the rights of Reclamation and its agents to use the subject lands and waters for project purposes.
- L. **Termination of Concession Contract.** Concession contracts will acknowledge the right of Reclamation to terminate, for cause, any concession contract authorized by a non-Federal partner.
- M. **Total Benefits.** The partner will establish and recover fair benefits, including direct return and direct and indirect benefits, for the uses, rights, and privileges granted by a concession contract. For disposition of fees, see paragraph 4D.
- N. **Rates and Merchandise.** Rates charged by concessionaires for services, food, lodging, and merchandise will be based on charges for comparable facilities, services, and merchandise provided by the private sector in similar situations. The partner must approve the rates requested by concessionaires.
- O. **Concessions Safety Program.** Concessionaires are responsible for providing and ensuring a safe and healthful environment for both the visiting public and employees by developing, implementing, and administering health, safety, and educational programs to ensure that concession areas are managed in compliance with Federal, State, and local laws, rules, and regulations.
- P. **Environmental Compliance.** Concession contracts will address all activities with potential environmental impacts resulting from the release of hazardous materials to the environment including, but not limited to, the following: pesticides, herbicides, sewage effluents, petroleum products, and liquid waste (gray water). Concessionaires are required to follow all applicable Federal, State, and local laws, rules, and regulations related to hazardous substance use, storage, and disposal. Application for and acquisition of all required certifications and permits are the responsibility of the concessionaire.
- Q. **Food Sanitation.** Concessionaires' food services will comply with Federal, State, and local food handling and sanitation regulations.
- R. **Advertising and Signs.** The Reclamation logo or name, along with the non-Federal partner logo or name, will be displayed at all concession entrances used by the public. Outdoor signs or other forms of advertising on the Federal estate must be approved by Reclamation before they are displayed.
- S. **Sale of Personal Property.** The sale of personal property other than the approved concessions inventory is prohibited on the Federal estate. No party will be permitted to sell personal property, including vehicles, manufactured or mobile

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homes, house trailers, travel trailers, boats, or personal water craft, on the Federal estate.

- T. **Utility Services Provided by Reclamation.** The fee charged for utility services provided by Reclamation will be based on the recovery of full operating and replacement costs for utility capital investments and comparable utility rates. Utility services include, but are not limited to, electricity, power, water, waste disposal, gas, and communication systems.
- U. **Insurance Program.** Concessionaires must have and maintain an appropriate insurance policy that will indemnify the United States and meet applicable State requirements. All liability policies will provide that the insurance company will have no right of subrogation against the United States and must provide that the United States is named as an additional insured. The partner may establish similar requirements itself, but it must provide Reclamation with a copy of the insurance certificate that identifies the above conditions.
- V. **System of Recordkeeping.** Financial reports and records necessary for management and oversight of concessions must be maintained and available to the partner and to Reclamation upon request. At a minimum, each concessionaire will complete Reclamation's Annual Financial Report form(s).

7. Concessions Administration.

- A. **Annual Review and Evaluation.** All concession agreements issued by the non-Federal partner will require Reclamation and the non-Federal partner to conduct annual concession reviews and evaluations. The review should identify problems, solutions, and a timetable for resolving the problems in a written report. The non-Federal partner must ensure that any operational or administrative deficiencies noted by the review are corrected in accordance with the established timetable.
- B. **Nonprofit Organizations.** In certain circumstances, it may be suitable for cooperative associations or nonprofit organizations to sell goods or provide visitor services to meet the goals and objectives of both Reclamation and the partner. These associations and organizations must be approved by the partner if the cooperating association operates within a concession or elsewhere on the Federal estate. The cooperating association will be responsible for maintaining its accounting system, and the system cannot be combined with a concessionaire's annual financial report. Nonprofit organizations will also be given very clear instructions identifying the type of business they are authorized to conduct and the types of goods and services they may provide. All organizations must provide written proof of their nonprofit status to Reclamation and the partner.

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- C. **Employment of Reclamation Personnel or Family Members¹.** Reclamation employees or family members may not be owners, partners, board members, corporate officers, general managers, or employees of any business providing commercial services on the Federal estate, nor may they have any financial interest in such a company. Ownership of stock shares traded in a recognized open market is not considered a financial interest under these directives and standards. Reclamation employees are further prohibited from using their public office for private or family gain. A Reclamation employee involved in preparing specifications, awarding a contract, or administering a concession may not be involved in that activity if the employee or a family member is involved in any phase or operation of that concession. Any Reclamation employee or family member responsible for any phase of a concession contract will be excused from duties related to the concession contract if the employee or a family member is involved in competing for the contract or if the Reclamation employee may benefit financially from the awarding of the contract.

¹Guidance on this issue should be obtained from an ethics counselor in the servicing Reclamation Personnel/Human Resources Office.

EXHIBIT G

Department of the Interior

Departmental Manual

Effective Date: 12/01/95

Series: Intergovernmental Relations

Part 512: American Indian and Alaska Native Programs

Chapter 2: Departmental Responsibilities for Indian Trust Resources

Originating Office: Office of American Indian Trust

512 DM 2

1. **Purpose.** This Chapter establishes the policies, responsibilities, and procedures for operating on a government-to-government basis with federally recognized Indian tribes for the identification, conservation, and protection of American Indian and Alaska Native trust resources to ensure the fulfillment of the Federal Indian Trust Responsibility.

2. **Policy.** It is the policy of the Department of the Interior to recognize and fulfill its legal obligations to identify, protect, and conserve the trust resources of federally recognized Indian tribes and tribal members, and to consult with tribes on a government-to-government basis whenever plans or actions affect tribal trust resources, trust assets, or tribal health and safety.

3. **Responsibilities.**

A. **Heads of bureaus and offices** are responsible for identifying any impact of Departmental plans, projects, programs or activities on Indian trust resources. Department officials shall:

- (1) Establish procedures to ensure that the activities of Departmental organizations impacting upon Indian trust resources are explicitly addressed in planning, decision, and operational documents;
- (2) Ensure that bureaus and offices consult with the recognized tribal government whose trust resource, asset, or health and safety is potentially affected by the proposed action, plan, or activity;
- (3) Remove procedural impediments to working directly and effectively with tribal governments;
- (4) Provide drafts of all procedures or amendments to procedures developed pursuant to this Chapter to the Office of American Indian Trust for review and comment; and,
- (5) Designate a senior staff member to serve as liaison between the bureau or office and the Office of American Indian Trust.

B. **Office of American Indian Trust** is responsible for ensuring compliance with the procedures and requirements under this Chapter. The Office of American Indian Trust will serve as the Department's liaison and initial point of contact on all matters arising under this Chapter. All procedures and amendments to procedures shall be submitted by Departmental bureaus and offices to the Office of American Indian Trust for review and comment. After such review and comment, the procedures and

amendments to procedures will be transmitted to the Assistant Secretary - Indian Affairs for final approval.

C. Assistant Secretary - Indian Affairs is responsible for approving bureau and office procedures, or amendments thereto, developed pursuant to this Chapter.

4. Procedures.

A. Reports. As part of the planning process, each bureau and office must identify any potential effects on Indian trust resources. Any effect must be explicitly addressed in the planning/decision documents, including, but not limited to, Environmental Assessments, Environmental Impact Statements, and/or Management Plans prepared for the project or activity. The documentation shall:

- (1) Clearly state the rationale for the recommended decision; and
- (2) Explain how the decision will be consistent with the Department's trust responsibility.

B. Consultation. In the event an evaluation reveals any impacts on Indian trust resources, trust assets, or tribal health and safety, bureaus and offices must consult with the affected recognized tribal government (s), the appropriate office(s) of the Bureau of Indian Affairs, the Office of the Solicitor, and the Office of American Indian Trust. Each bureau and office within the Department shall be open and candid with tribal government(s) during consultations so that the affected tribe(s) may fully evaluate the potential impact of the proposal on trust resources and the affected bureau(s) or office(s), as trustee, may fully incorporate tribal views in its decision-making processes. These consultations, whether initiated by the tribe or the Department, shall be respectful of tribal sovereignty. Information received shall be deemed confidential, unless otherwise provided by applicable law, regulations, or Administration policy, if disclosure would negatively impact upon a trust resource or compromise the trustee's legal position in anticipation of or during administrative proceedings or litigation on behalf of tribal government(s).

12/01/95 #3049

Replaces 5/23/95 [#3040](#)

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American Petroleum Institute v. Johnson, 541 F.Supp.2d 165 (D.D.C. 2008), invalidating those revisions and restoring the regulatory definition of "navigable waters" promulgated by EPA in 1973. The final rule amended the definition of "navigable waters" in part 112 to comply with that decision.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at 800-424-9346 or TDD at 800-553-7672 (hearing impaired). In the Washington, DC metropolitan area, contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at 703-412-9810 or TDD 703-412-3323. For more detailed information, contact Hugo Paul Fleischman of EPA at 202-564-1968, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460-0002, Mail Code 5104A.

Correction

The Preamble of the final rule E8-28123 published on November 26, 2008, beginning on page 71941 is corrected as follows:

1. On page 71941, second column, under the heading "Summary", the citation for *American Petroleum Institute v. Johnson* is corrected to read "541 F.Supp.2d 165" instead of "571 F.Supp.2d 165".

2. On page 71942, third column, first paragraph, the citation for *American Petroleum Institute v. Johnson* is corrected to read "541 F.Supp.2d 165" instead of "571 F.Supp.2d 165".

Dated: December 4, 2008.

Deborah Y. Dietrich,

Director, Office of Emergency Management.

[FR Doc. E8-29379 Filed 12-10-08; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 423

RIN 1006-AA55

Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule.

SUMMARY: This final rule reissues 43 CFR part 423 in its entirety. Amendments to 43 CFR part 423 were published in the *Federal Register* on September 24, 2008, (73 FR 54977) as an

interim final rule. This final rule contains only minor additional changes which we are making in response to the public comments received on the September 24, 2008 interim final rule.

DATES: This final rule is effective on January 12, 2009.

FOR FURTHER INFORMATION CONTACT: David Achterberg, Director, Security, Safety, and Law Enforcement, Bureau of Reclamation, PO Box 25007, Denver, Colorado, 80225, telephone 303-445-3736.

SUPPLEMENTARY INFORMATION:

I. Background

On November 12, 2001, Congress enacted Public Law 107-69, which provides for law enforcement authority within Reclamation projects and on Reclamation lands. Section 1(a) of this law requires the Secretary of the Interior to "issue regulations necessary to maintain law and order and protect persons and property within Reclamation projects and on Reclamation lands." The Secretary of the Interior delegated this authority to the Commissioner of Reclamation.

On April 17, 2002, Reclamation published 43 CFR part 423, Public Conduct on Bureau of Reclamation Lands and Projects (67 FR 19092, Apr. 17, 2002) as an interim final rule. In the preamble to that rule, Reclamation stated its intent to replace the interim final rule with a more comprehensive public conduct rule and set April 17, 2003, as the interim final rule's expiration date. In order to provide more time to develop the comprehensive public conduct rule, Reclamation later extended the expiration of the interim final rule to April 17, 2005 (68 FR 16214, Apr. 3, 2003), and again to April 17, 2006 (70 FR 15778, Mar. 29, 2005).

On September 13, 2005, Reclamation published a proposed public conduct rule (70 FR 54214, Sep. 13, 2005) and asked the public to comment on that proposed rule. The Final Rule, 43 CFR part 423, was published in the *Federal Register* on April 17, 2006 (71 FR 19790, Apr. 17, 2006).

On September 24, 2008, Reclamation published an interim final public conduct rule (73 FR 54977, Sep. 24, 2008) that made minor amendments to the existing part 423, and asked the public to comment on that rule. In response to those public comments, this final rule makes minor changes to the interim final rule.

In this publication, we are reprinting 43 CFR part 423 in its entirety with the amendments made in the September 24, 2008, interim final rule, as well as the

changes made as a result of comments we received during the public comment period which ended on November 24, 2008, so interested parties can view the rule as a cohesive document.

II. Summary of Comments and Responses

This section of the preamble provides responses to the comments received on the interim final rule published in the *Federal Register* on September 24, 2008 (73 FR 54977). Nine parties submitted comments during the 60-day public comment period which ended on November 24, 2008.

Comments and Responses

Comment: Several commenters were concerned about the changes we made to the effect that a seaplane is not considered a vessel under part 423.

Response: The question of whether seaplanes are considered "vessels" when on the water is essentially not material to whether seaplane activity is allowed or not allowed on any particular reservoir. The applicable rules of other entities such as the United States Coast Guard, the National Park Service, the States, and/or local governments remain in effect and must be observed. This includes other entities' rules concerning the definition of "vessel," and pilots must be aware of all applicable Federal, State and local laws and regulations when contemplating landings on Reclamation lands or waterbodies.

Due to the fact that the other entities that have varying degrees of jurisdiction over Reclamation waterbodies differ in how they define the term "vessel," we added the sentence "A seaplane may be considered a vessel" to the definition of "vessel" in section 423.2 of this final rule. We also revised section 438(a) by adding the words "or seaplane" after the word "watercraft," and we added the words "other watercraft, or seaplane" after the word "vessel" in section 438(b).

Comment: Several commenters expressed concern or disagreement regarding the status of particular Reclamation reservoirs or groups of reservoirs with respect to seaplane activity, difficulties in determining that status, and the allowance of seaplane activity in general.

Response: This rule does not determine the status of any particular reservoir or set of reservoirs with respect to seaplane activity. One of the purposes of the amendments made on September 24, 2008, was to recognize the aircraft-related laws and rules of other Federal, State, and local entities that have jurisdiction over the surface

waters of many Reclamation reservoirs. Reclamation believes that in general, decisions to allow, restrict, or prohibit aircraft on Reclamation lands and waterbodies should be made at the local level and/or by the Federal, State, and local entities that have jurisdiction. However, Reclamation reserves the authority to intervene when necessary for reasons including, but not limited to, safety, security, law enforcement, and reservoir operations.

Reclamation will continue to provide the status of the reservoirs we manage, but pilots ultimately bear the responsibility for determining the status of reservoirs under the jurisdiction of our managing partners and/or other entities.

Comment: One commenter expressed concern over the use of the term "local government" in section 423(b)(2). The commenter believed this term might be interpreted to exclude employees of water districts and other political subdivisions, thus making them subject to this rule when carrying out their regular duties on Reclamation projects.

Response: Reclamation agrees with this comment and we added the phrase "or other political subdivision" after the words "local government" in section 423(b)(2).

Summary of Changes

As discussed in the "Comments and Responses" section above, the changes we are making to the interim final rule published September 24, 2008 are:

1. Adding a sentence "A seaplane may be considered a vessel" to the definition of "vessel" in section 423.2.
2. Adding the words "or other political subdivision" after the words "local government" in section 423(b)(2).
3. Adding the words "or seaplane" after the word "watercraft" in section 438(a).
4. Adding the words "other watercraft, or seaplane" after the word "vessel" in section 438(b).

III. Procedural Requirements

1. Regulatory Planning and Review (Executive Order (E.O.) 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866. This rule makes only minor changes to 43 CFR part 423.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere

with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule makes only minor changes to 43 CFR part 423.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule makes only minor changes to 43 CFR part 423. The rule:

- (1) Does not have an annual effect on the economy of \$100 million or more.
- (2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. This rule makes only minor changes to 43 CFR part 423. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630)

In accordance with Executive Order 12630, this rule does not have significant takings implications. This rule makes only minor changes to 43 CFR part 423. A takings implication assessment is not required.

6. Federalism (E.O. 13132)

In accordance with Executive Order 12612, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule makes only minor changes to 43 CFR part 423. A Federalism Assessment is not required.

7. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

- (a) Does not unduly burden the judicial system;
- (b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

8. Consultation With Indian Tribes (E.O. 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. This rule recognizes tribal authorities, laws, and regulations but does not affect them.

9. Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required.

10. National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

11. Data Quality Act

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554).

12. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in the E.O. 13211. A Statement of Energy Effects is not required.

13. Clarity of This Regulation

We are required by E.O. 12866 and 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

List of Subjects in 43 CFR Part 423

Law enforcement, Public conduct, Reclamation lands, and Reclamation projects.

Dated: December 2, 2008.

Kameran L. Onley,

Acting Assistant Secretary—Water and Science.

■ For the reasons stated in the preamble, 43 CFR part 423 is revised to read as follows:

PART 423—PUBLIC CONDUCT ON BUREAU OF RECLAMATION FACILITIES, LANDS, AND WATERBODIES

Subpart A—Purpose, Definitions, and Applicability

Sec.

- 423.1 Purpose.
423.2 Definitions of terms used in this part.
423.3 When does this part apply?

Subpart B—Areas Open and Closed to Public Use

- 423.10 What areas are open to public use?
423.11 What areas are closed to public use?
423.12 How will Reclamation notify the public of additional closed areas?
423.13 How will Reclamation establish periodic and regular closures?
423.14 How will Reclamation post and delineate closed areas at the site of the closure?
423.15 How will Reclamation document closures or reopenings?
423.16 Who can be exempted from closures?
423.17 How will Reclamation reopen closed areas?
423.18 Use of Closures

Subpart C—Rules of Conduct

- 423.20 General Rules.
423.21 Responsibilities.
423.22 Interference with agency functions and disorderly conduct.
423.23 Abandonment and impoundment of personal property.
423.24 Trespassing.
423.25 Vandalism, tampering, and theft.
423.26 Public events and gatherings.
423.27 Advertising and public solicitation.
423.28 Memorials.
423.29 Natural and cultural resources.
423.30 Weapons, firearms, explosives, and fireworks.
423.31 Fires and flammable material.
423.32 Hunting, fishing, and trapping.
423.33 Camping.
423.34 Sanitation.
423.35 Animals.
423.36 Swimming.
423.37 Winter activities.
423.38 Operating vessels on Reclamation waters.
423.39 Standards for vessels.
423.40 Vehicles.
423.41 Aircraft.
423.42 Gambling.
423.43 Alcoholic beverages.
423.44 Controlled substances.

Subpart D—Authorization of Otherwise Prohibited Activities

- 423.50 How can I obtain permission for prohibited or restricted uses and activities?

Subpart E—Special Use Areas

- 423.60 How special use areas are designated.
423.61 Notifying the public of special use areas.
423.62 Reservations for public use limits.
423.63 Existing special use areas.

Subpart F—Violations and Sanctions

- 423.70 Violations.
423.71 Sanctions.

Authority: Public Law 107-69 (November 12, 2001) (Law Enforcement Authority) (43 U.S.C. 373b and 373c); Public Law 102-575, Title XXVIII (October 30, 1992) (16 U.S.C. 4601-31 through 34); Public Law 89-72 (July 9, 1965) (16 U.S.C. 4601-12); Public Law 106-206 (May 26, 2000) (16 U.S.C. 4601-6d); Public Law 59-209 (June 8, 1906) (16 U.S.C. 431-433); Public Law 96-95 (October 31, 1979) (16 U.S.C. 470aa-mm).

Subpart A—Purpose, Definitions, and Applicability

§ 423.1 Purpose.

The purpose of this part is to maintain law and order and protect persons and property within Reclamation projects and on Reclamation facilities, lands, and waterbodies.

§ 423.2 Definitions of terms used in this part.

Aircraft means a device that is used or intended to be used for human flight in the air, including powerless flight, unless a particular section indicates otherwise.

Archaeological resource means any material remains of past human life or activities which are of archaeological interest, as determined under 43 CFR part 7, including, but not limited to, pottery, basketry, bottles, weapons, projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human remains, or any portion of any of the foregoing items. Archaeological resources are a component of cultural resources.

Authorized official means the Commissioner of the Bureau of Reclamation and those Federal, State, local, and tribal officials, and agencies to which the Commissioner has delegated specific and limited authorities to enforce and implement this part 423.

Camping means erecting a tent or shelter; preparing a sleeping bag or other bedding material for use; parking a motor vehicle, motor home, or trailer; or mooring a vessel for the intended or

apparent purpose of overnight occupancy.

Closed means a prohibition to all public access.

Cultural resource means any man-made or associated prehistoric, historic, architectural, sacred, or traditional cultural property and associated objects and documents that are of interest to archaeology, anthropology, history, or other associated disciplines. Cultural resources include archaeological resources, historic properties, traditional cultural properties, sacred sites, and cultural landscapes that are associated with human activity or occupation.

Explosive means any device or substance that can be ignited or detonated to produce a violent burst of gas and/or other materials, including, but not limited to, blasting caps and detonatable fireworks and pyrotechnics. This definition does not include fuel and ammunition when properly transported and used.

Firearm means a device that expels a projectile such as a bullet, dart, or pellet by combustion, air pressure, gas pressure, or other means.

Fishing means taking or attempting to take, by any means, any fish, mollusk, or crustacean found in fresh or salt water.

Geophysical discovery device means any mechanism, tool, or equipment including, but not limited to, metal detectors and radar devices, that can be used to detect or probe for objects beneath land or water surfaces.

Historic property means any prehistoric or historic district, site, building, structure, or object included on, or eligible for inclusion on, the National Register of Historic Places, including artifacts, records, and material remains related to such a property or resource.

Hunting means taking or attempting to take wildlife by any means, except by trapping or fishing.

Museum property means personal property acquired according to some rational scheme and preserved, studied, or interpreted for public benefit, including, but not limited to, objects selected to represent archaeology, art, ethnography, history, documents, botany, paleontology, geology, and environmental samples.

Natural resources means assets or values related to the natural world, including, but not limited to, plants, animals, water, air, soils, minerals, geologic features and formations, fossils and other paleontological resources, scenic values, etc. Natural resources are those elements of the environment not created by humans.

Off-road vehicle means any motorized vehicle (including the standard automobile) designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or natural terrain. The term excludes all of the following:

- (1) Nonamphibious registered motorboats;
- (2) Military, fire, emergency, or law enforcement vehicles when used for emergency purpose;
- (3) Self-propelled lawnmowers, snowblowers, garden or lawn tractors, and golf carts while being used for their designed purpose;
- (4) Agricultural, timbering, construction, exploratory, and development equipment and vehicles while being used exclusively as authorized by permit, lease, license, agreement, or contract with Reclamation;
- (5) Any combat or combat support vehicle when used in times of national defense emergencies;
- (6) "Official use" vehicles; and
- (7) Wheelchairs and carts designed and used for transporting persons with disabilities.

Operator means a person who operates, drives, controls, has charge of, or is in actual physical control of any mode of transportation or other equipment.

Permit means any written document issued by an authorized official pursuant to Subpart D of this part 423 authorizing a particular activity with specified time limits, locations, and/or other conditions.

Person means an individual, entity, or organization.

Pet means a domesticated animal other than livestock. ("Livestock" is any hoofed animal used for agricultural, riding, pulling, or packing purposes.)

Public use limit means any limitation on public uses or activities established by law or regulation.

Real property means any legal interest in land and the water, oil, gas, and minerals in, on, and beneath the land surface, together with the improvements, structures, and fixtures located thereon.

Reclamation means the Bureau of Reclamation, United States Department of the Interior.

Reclamation facilities, lands, and waterbodies means Reclamation facilities, Reclamation lands, and Reclamation waterbodies.

Reclamation facility means any facility constructed or acquired under Federal reclamation law that is situated on Reclamation lands and is used or occupied by Reclamation under a lease, easement, right-of-way, license,

contract, or other arrangement. The term includes, but is not limited to, any of the following that are under the jurisdiction of or administered by Reclamation: dams, powerplants, buildings, switchyards, transmission lines, recreation facilities, fish and wildlife facilities, pumping plants, and warehouses.

Reclamation lands means any real property under the jurisdiction of or administered by Reclamation, and includes, but is not limited to, all acquired and withdrawn lands and lands in which Reclamation has a lease interest, easement, or right-of-way.

Reclamation project means any water supply, water delivery, flood control, or hydropower project, together with any associated facilities for fish, wildlife, recreation, or water treatment constructed or administered by Reclamation under the Federal reclamation laws (the Act of June 17, 1902 (32 Stat. 388, chapter 1093; 43 U.S.C. 371 *et seq.*), and Acts supplementary thereto and amendatory thereof).

Reclamation waterbody means any body of water situated on Reclamation lands or under Reclamation jurisdiction.

Refuse means any human or pet waste, litter, trash, garbage, rubbish, debris, contaminant, pollutant, waste liquid, or other discarded materials.

Sacred site means any specific, discrete, or narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the land managing agency of the existence of such a site.

Special use area means an area at or within a Reclamation facility, or an area of Reclamation lands or waterbodies, in which special rules for public conduct apply that may differ from those established in Subpart C of this part 423. A special use area must be established by an authorized official as provided in Subpart E of this part 423.

State and local laws means the laws, statutes, regulations, ordinances, codes, and court decisions of a State and of the counties, municipalities, or other governmental entities which are enabled by statute and vested with legislative authority.

Traditional cultural property means a discretely defined property that is eligible for inclusion on the National Register of Historic Places because of its

association with cultural practices or beliefs of a living community that:

- (1) Are rooted in that community's history; and
- (2) Are important in maintaining the continuing cultural identity of the community.

Trapping means taking, or attempting to take, wildlife with a snare, trap, mesh, wire, or other implement, object, or mechanical device designed to entrap, ensnare, or kill animals, including fish.

Vehicle means every device in, upon, or by which a person or property is or may be transported or drawn on land, whether moved by mechanical, animal, or human power, including, but not limited to, automobiles, trucks, motorcycles, mini-bikes, snowmobiles, dune buggies, all-terrain vehicles, trailers, campers, bicycles, and those used exclusively upon stationary rails or tracks; except wheelchairs used by persons with disabilities.

Vessel means any craft that is used or capable of being used as a means of transportation on or under water or ice, including, but not limited to, powerboats, cruisers, houseboats, sailboats, airboats, hovercraft, rowboats, canoes, kayaks, ice yachts, or personal watercraft. Inner tubes, air mattresses, and other personal flotation devices are not considered vessels. A seaplane may be considered a vessel.

Weapon means a firearm or any other instrument or substance designed, used, or which can be used to cause or threaten to cause pain, injury, or death.

Wildlife means any non-domestic member of the animal kingdom and includes a part, product, egg, offspring, or dead body or part thereof, including, but not limited to, mammals, birds, reptiles, amphibians, fish, mollusks, crustaceans, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity.

You means a person or entity on Reclamation facilities, lands, or waterbodies.

§ 423.3 When does this part apply?

(a) This part and all applicable Federal, State, and local laws apply to all persons on Reclamation facilities, lands, and waterbodies, with the following exceptions:

(1) Certain exceptions apply to Federal, State, local, and contract employees, as further addressed in paragraph (b) of this section.

(2) Certain exceptions apply to non-Federal entities, as further addressed in paragraph (c) of this section;

(3) Certain exceptions apply on Reclamation facilities, lands, and waterbodies administered by other

Federal agencies, as further addressed in paragraph (d) of this section; and

(4) Certain exceptions apply on Reclamation facilities, lands, and waterbodies subject to treaties and Federal laws concerning tribes and Indians, as further addressed in paragraph (e) of this section.

(b) This part does not apply to:

(1) Federal, State, and local law enforcement, fire, and rescue personnel in the performance of their official duties on Reclamation facilities, lands, and waterbodies;

(2) An employee or agent of the Federal, State, or local government, or other political subdivision, when the employee or agent is carrying out official duties; or

(3) An employee or agent of an entity that has entered into a contract or agreement with Reclamation to administer, operate, maintain, patrol, or provide security for Reclamation facilities, lands, and waterbodies, when the employee or agent is working within the scope of the defined activities described in the contract or agreement.

(c) If a non-Federal entity has assumed responsibility for operating, maintaining, or managing Reclamation facilities, lands, or waterbodies through a contract or other written agreement, public conduct in and on those Reclamation facilities, lands, and waterbodies will be regulated by this part 423 as well as any regulations established by the entity, the terms of the entity's contract with Reclamation, and applicable Federal, State, and local law.

(d) Public conduct on Reclamation facilities, lands, and waterbodies administered by other Federal agencies under statute or other authority will be governed by the regulations of those agencies rather than this part 423. However, Reclamation retains the authority to take necessary actions to safeguard the security and safety of the public and such Reclamation facilities, lands, and waterbodies.

(e) This part applies on all Reclamation facilities, lands, and waterbodies that are subject to Treaties with, and Federal laws concerning the rights of, federally recognized tribes, and individual Indians who are members thereof, to the extent that this part is consistent with those Treaties and Federal laws.

(f) This part 423 and other Federal laws will govern over any conflicting regulations of a non-Federal entity.

Subpart B—Areas Open and Closed to Public Use

§ 423.10 What areas are open to public use?

All Reclamation facilities, lands, and waterbodies are open to lawful use by the public unless they are closed to public use under this Subpart B of this part 423, or as provided by 43 CFR part 420, Off-Road Vehicle Use.

§ 423.11 What areas are closed to public use?

The following Reclamation facilities, lands, and waterbodies, or portions thereof, are closed to public use:

(a) Those that were closed to public use as of April 17, 2006, as evidenced by fencing, gates, barriers, locked doors, road closures, signage, posting of notices, or other reasonably obvious means, as provided in § 423.14;

(b) Those that are closed after April 17, 2006 under § 423.12;

(c) Those that are closed periodically and regularly under § 423.13; and

(d) Those that are closed to off-road vehicle use pursuant to 43 CFR part 420.

§ 423.12 How will Reclamation notify the public of additional closed areas?

(a) *Non-emergency situations.* In non-emergency situations, an authorized official must provide 30 days advance public notice before closing all or portions of Reclamation facilities, lands, or waterbodies. The notice must include publication in a newspaper of general circulation in the locale of the Reclamation facilities, lands, or waterbodies to be closed. Non-emergency situations covered by this section include:

(1) Protection and security of Reclamation facilities and of Reclamation's employees and agents;

(2) Protection of public health and safety, cultural resources, natural resources, scenic values, or scientific research activities;

(3) Safe and efficient operation and maintenance of Reclamation projects;

(4) Reduction or avoidance of conflicts among visitor use activities;

(5) National security; or

(6) Other reasons in the public interest.

(b) *Emergency situations.* In emergency situations where delay would result in significant and immediate risks to public safety, security, or other public concerns, an authorized official may close all or portions of Reclamation facilities, lands, or waterbodies without advance public notice.

§ 423.13 How will Reclamation establish periodic and regular closures?

Reclamation facilities, lands, or waterbodies that are closed periodically and regularly, regardless of the date of the initial closure, must be noticed as provided in § 423.12(a) only once, and at any time the schedule of closure is changed.

§ 423.14 How will Reclamation post and delineate closed areas at the site of the closure?

Before or at the time of closing all or portions of Reclamation facilities, lands, or waterbodies to public use, the responsible authorized official must indicate the closure by:

(a) Locked doors, fencing, gates, or other barriers;

(b) Posted signs and notices at conspicuous locations, such as at normal points of entry and at reasonable intervals along the boundary of the closed area; or

(c) Other reasonably obvious means including, but not limited to, onsite personal contact with a uniformed official.

§ 423.15 How will Reclamation document closures or reopenings?

(a) The authorized official must document the reason(s) for establishing any closure or reopening that occurs after April 17, 2006. The official must do this before the closure or reopening, except in the situations described in § 423.12(b). In such situations, the authorized official must complete the documentation as soon as practicable.

(b) Documentation of a closure must cite one or more of the conditions for closure described in § 423.12 of this part.

(c) Documentation of closures or reopenings will be available to the public upon request, except when the release of this documentation could result in a breach of national security or the security of Reclamation facilities.

§ 423.16 Who can be exempted from closures?

(a) You may be exempted from a closure, subject to any terms and conditions established under paragraph (c) of this section, by written authorization from the authorized official who effected or who is responsible for the closure, if you are:

(1) A person with a license or concession agreement that requires you to have access to the closed Reclamation facilities, lands, or waterbodies;

(2) An owner or lessee of real property, resident, or business in the vicinity of closed Reclamation facilities, lands, or waterbodies who cannot reasonably gain access to your property,

residence, or place of business without entering and crossing such closed Reclamation facilities, lands, or waterbodies; or

(3) A holder of a permit granting you an exemption from the closure issued under Subpart D of this part 423 by the authorized official who effected or who is responsible for the closure.

(b) You may request exemption from a closure by writing to the authorized official who effected or who is responsible for the closure. You need not do so if you have such an exemption in effect on April 17, 2006.

(c) An authorized official may establish terms and conditions on any exemption from a closure, or terminate such exemption, for any of the reasons listed in § 423.12.

§ 423.17 How will Reclamation reopen closed areas?

An authorized official may reopen to public use any Reclamation facilities, lands, and waterbodies, or portions thereof. The authorized official may do this at any time with advance or subsequent public notice, except as required by other statute or regulation, and must document the reopening as provided in § 423.15.

§ 423.18 Use of closures.

Closures are to be used only where all public access is to be prohibited. Special use areas are to be used to restrict specific activities as set forth in Subpart E of this part 423.

Subpart C—Rules of Conduct

§ 423.20 General rules.

(a) You must obey all applicable Federal, State, and local laws whenever you are at or on any Reclamation facilities, lands, or waterbodies.

(b) You must comply with all provisions of this Subpart C whenever you are at or on any Reclamation facilities, lands, or waterbodies, except as specifically provided by:

(1) A permit issued by an authorized official under Subpart D of this part 423;

(2) A contract with Reclamation or agency managing Reclamation facilities, lands, and waterbodies;

(3) The rules established by an authorized official in a special use area under Subpart E of this part 423; or

(4) A right-of-use issued under 43 CFR part 429.

§ 423.21 Responsibilities.

(a) You are responsible for finding, being aware of, and obeying all applicable laws and regulations, as well as notices and postings of closed and special use areas established by an

authorized official under Subpart B and Subpart E of this part 423.

(b) You are responsible for the use of any device, vehicle, vessel, or aircraft you own, lease, or operate on Reclamation facilities, lands, or waterbodies. You may be issued a citation for a violation of regulations, including non-compliance with limitations, restrictions, closures, or special use areas applicable to the use of any device, vehicle, vessel, or aircraft as provided in this part as the owner, lessee, or operator.

(c) You are responsible for the use and treatment of Reclamation facilities, lands, and waterbodies, and the cultural resources, wildlife, and other natural resources located thereon, by you and those for whom you are legally responsible. This presumption is sufficient to issue a citation to you for violation of provisions of these regulations by you or by those for whom you are legally responsible.

(d) The regulations governing permits, other use authorizations, and fees on Reclamation lands that are found in Subpart D of this part 423 apply to your use of Reclamation facilities, lands, and waterbodies.

(e) You must furnish identification information upon request by a law enforcement officer.

§ 423.22 Interference with agency functions and disorderly conduct.

(a) You must not assault, threaten, disturb, resist, intimidate, impede, or interfere with any employee or agent of Federal, State, or local government engaged in an official duty.

(b) You must comply with any lawful order of an authorized government employee or agent for the purpose of maintaining order and controlling public access and movement during law enforcement actions and emergency or safety-related operations.

(c) You must not knowingly give a false report or other false information to an authorized government employee or agent.

(d) You must not interfere with, impede, or disrupt the authorized use of Reclamation facilities, lands, or waterbodies or impair the safety of any person.

(e) The following acts constitute disorderly conduct and are prohibited:

(1) Fighting, or threatening or violent behavior;

(2) Language, utterance, gesture, display, or act that is obscene, physically threatening or menacing, or that is likely to inflict injury or incite an immediate breach of the peace;

(3) Unreasonable noise, considering the nature and purpose of the person's

conduct, location, time of day or night, and other factors that would govern the conduct of a reasonably prudent person under the circumstances;

(4) Creating or maintaining a hazardous or physically offensive condition; or

(5) Any other act or activity that may cause or create public alarm, nuisance, or bodily harm.

§ 423.23 Abandonment and impoundment of personal property.

(a) You must not abandon personal property of any kind in or on Reclamation facilities, lands, or waterbodies.

(b) You must not store or leave unattended personal property of any kind.

(1) Unattended personal property is presumed to be abandoned:

(i) After a period of 24 hours;

(ii) At any time after a posted closure takes effect under Subpart B of this part 423; or

(iii) At any time for reasons of security, public safety, or resource protection.

(2) If personal property is presumed abandoned, an authorized official may impound it, store it, and assess a reasonable impoundment fee.

(3) The impoundment fee must be paid before the authorized official will return the impounded property to you.

(c) An authorized official may impound or destroy unattended personal property at any time if it:

(1) Interferes with safety, operation, or management of Reclamation facilities, lands, or waterbodies; or

(2) Presents a threat to persons or Reclamation project resources.

(d) An authorized official may dispose of abandoned personal property in accordance with the procedures contained in title 41 CFR and applicable Reclamation and Department of the Interior policy.

§ 423.24 Trespassing.

You must not trespass on Reclamation facilities, lands, and waterbodies. Trespass includes any of the following acts:

(a) Unauthorized possession or occupancy of Reclamation facilities, lands, or waterbodies;

(b) Personal entry, presence, or occupancy on or in any portion or area of Reclamation facilities, lands, or waterbodies that have been closed to public use pursuant to Subpart B of this part 423;

(c) Unauthorized extraction or disturbance of natural or cultural resources located on Reclamation facilities, lands, or waterbodies;

(d) Unauthorized conduct of commercial activities on Reclamation facilities, lands, or waterbodies;

(e) Holding unauthorized public gatherings on Reclamation facilities, lands, or waterbodies; or

(f) Unauthorized dumping or abandonment of personal property on Reclamation facilities, lands, or waterbodies.

§ 423.25 Vandalism, tampering, and theft.

(a) You must not tamper or attempt to tamper with, move, manipulate, operate, adjust, or set in motion property not under your lawful control or possession including, but not limited to, vehicles, equipment, controls, recreational facilities, and devices.

(b) You must not destroy, injure, deface, damage, or unlawfully remove property not under your lawful control or possession.

(c) You must not drop, place, throw, or roll rocks or other items inside, into, down, or from, dams, spillways, dikes, or other structures and facilities.

§ 423.26 Public events and gatherings.

You must not conduct public assemblies, meetings, gatherings, demonstrations, parades, and other events without a permit issued pursuant to Subpart D of this part 423. Public gatherings that involve the possession or occupancy of Reclamation facilities, lands, and waterbodies are governed by 43 CFR part 429.

§ 423.27 Advertising and public solicitation.

You must not engage in advertising or solicitation on Reclamation facilities, lands, or waterbodies except as allowed under a valid contract with Reclamation, or as allowed by a permit issued pursuant to Subpart D of this part 423.

§ 423.28 Memorials.

You must not bury, deposit, or scatter human or animal remains, or place memorials, markers, vases, or plaques on Reclamation facilities, lands, or waterbodies. This section does not apply to the burial of parts of fish or wildlife taken in legal hunting, fishing, or trapping.

§ 423.29 Natural and cultural resources.

(a) You must not destroy, injure, deface, remove, search for, disturb, or alter natural resources or cultural resources, including abandoned buildings or structures, on or in Reclamation facilities, lands, or waterbodies except in accordance with § 423.29(g) and other applicable Federal, State, and local laws.

(b) You must not introduce wildlife, fish, or plants, including their reproductive bodies, into Reclamation lands and waterbodies.

(c) You must not drop, place, throw, or roll rocks or other items inside, into, at, or down, caves, caverns, valleys, canyons, mountainsides, thermal features, or other natural formations.

(d) You may bring firewood to or gather dead wood on Reclamation lands for fires as allowed under § 423.31. You must not damage or remove any live tree or part thereof except with proper authorization under 43 CFR part 429.

(e) You must not walk on, climb, enter, ascend, descend, or traverse cultural resources on Reclamation lands, including monuments or statues, except as specifically allowed in special use areas designated by an authorized official under Subpart E of this part 423.

(f) You must not possess a metal detector or other geophysical discovery device, or use a metal detector or other geophysical discovery techniques to locate or recover subsurface objects or features on Reclamation lands, except:

(1) When transporting, but not using, a metal detector or other geophysical discovery device in a vehicle on a public road as allowed under applicable Federal, State, and local law; or

(2) As allowed by a permit issued pursuant to Subpart D of this part 423.

(g) You may engage in renewable natural resource gathering activities such as picking berries and mushrooms, collecting antlers, and other similar activities as regulated by this part 423 and other applicable Federal, State, and local laws.

§ 423.30 Weapons, firearms, explosives, and fireworks.

(a) You may possess firearms, ammunition, bows and arrows, crossbows, or other projectile firing devices on Reclamation lands and waterbodies, provided the firearm, ammunition, or other projectile firing device is stowed, transported, and/or carried in compliance with applicable Federal, State, and local law, with the following exceptions:

(1) You must not have a weapon in your possession when at or in a Reclamation facility.

(2) You must comply with any prohibitions or regulations applicable to weapons in a special use area established by an authorized official under Subpart E of this part 423.

(b) You must not discharge or shoot a weapon unless you are:

(1) Using a firearm or other projectile firing device lawfully for hunting or fishing as allowed under § 423.32, or at an authorized shooting or archery range; and

(2) In compliance with applicable Federal, State, and local law.

(c) You must not use or possess explosives, or fireworks or pyrotechnics of any type, except as allowed by a permit issued pursuant to Subpart D of this part 423, or in special use areas so designated by an authorized official under Subpart E of this part 423.

§ 423.31 Fires and flammable material.

(a) You must not leave a fire unattended, and it must be completely extinguished before your departure.

(b) You must not improperly dispose of lighted smoking materials, including cigarettes, cigars, pipes, matches, or other burning material.

(c) You must not burn materials that produce toxic fumes, including, but not limited to, tires, plastic, flotation materials, or treated wood products.

(d) You must not transport gasoline and other fuels in containers not designed for that purpose.

(e) You must comply with all applicable Federal, State, and local fire orders, restrictions, or permit requirements.

§ 423.32 Hunting, fishing, and trapping.

(a) You may hunt, fish, and trap in accordance with applicable Federal, State, and local laws, and subject to the restrictions of § 423.30, in areas where both of the following conditions are met:

(1) The area is not closed to public use under Subpart B of this part 423; and

(2) The area has not been otherwise designated by an authorized official in a special use area under Subpart E of this part 423.

(b) You must comply with any additional restrictions pertaining to hunting, fishing, and trapping established by an authorized official in a special use area under Subpart E of this part 423.

§ 423.33 Camping.

(a) You may camp on Reclamation lands, except that you must comply with any restrictions, conditions, limitations, or prohibitions on camping established by an authorized official in a special use area under Subpart E of this part 423.

(b) You must not camp on Reclamation lands at any single Reclamation project for more than 14 days during any period of 30 consecutive days, except as allowed by a permit issued under 43 CFR part 429;

(c) You must not attempt to reserve a campsite for future use by placing equipment or other items on the campsite, or by personal appearance,

without camping on and paying the required fees for that campsite daily;

(d) You must not camp on or place any equipment at a campsite that is posted or otherwise marked as "reserved" or "closed" by an authorized official without a valid reservation for that campsite, except as allowed by a permit issued under Subpart D of this part 423; and

(e) You must not dig in or level any ground, or erect any structure other than a tent, in a designated campground.

§ 423.34 Sanitation.

(a) You must not bring or improperly dispose of refuse on Reclamation facilities, lands, and waterbodies. Both the owner and the person bringing or disposing refuse may be issued a citation for violating this provision.

(b) Campers, picnickers, and all other persons using Reclamation lands must keep their sites free of trash and litter during the period of occupancy and must remove all personal equipment and clean their sites before departure.

(c) You must not place or construct a toilet or latrine such that its lowest point is lower than the high water mark of any Reclamation waterbody, or within 150 feet horizontally of the high water mark of any Reclamation waterbody.

§ 423.35 Animals.

(a) You must not bring pets or other animals into public buildings, public transportation vehicles, or sanitary facilities. This provision does not apply to properly trained animals assisting persons with disabilities, such as seeing-eye dogs.

(b) You must not abandon any animal on Reclamation facilities, lands, or waterbodies, or harass, endanger, or attempt to collect any animal except game you are attempting to take in the course of authorized hunting, fishing, or trapping.

(c) Any unauthorized, unclaimed, or unattended animal on Reclamation lands may be:

(1) Removed in accordance with Federal law, and applicable State and local laws; and

(2) Confined at a location designated by an authorized official, who may assess a reasonable impoundment fee that must be paid before the impounded animal is released to its owner.

(d) The following animals are prohibited and are subject to removal in accordance with Federal law, and applicable State and local laws:

(1) Captive wild or exotic animals (including, but not limited to, cougars, lions, bears, bobcats, wolves, and snakes), except as allowed by a permit

issued under Subpart D of this part 423; and

(2) Any pets or animals displaying vicious or aggressive behavior or posing a threat to public safety or deemed a public nuisance.

§ 423.36 Swimming.

(a) You may swim, wade, snorkel, scuba dive, raft, or tube at your own risk in Reclamation waters, except:

(1) Within 300 yards of dams, power plants, pumping plants, spillways, stilling basins, gates, intake structures, and outlet works;

(2) Within 100 yards of buoys or barriers marking public access limits;

(3) In canals, laterals, siphons, tunnels, and drainage works;

(4) At public docks, launching sites, and designated mooring areas; or

(5) As otherwise delineated by signs or other markers.

(b) You must display an international diver down, or inland diving flag in accordance with State and U.S. Coast Guard guidelines when engaging in any underwater activities.

(c) You must not dive, jump, or swing from dams, spillways, bridges, cables, towers, or other structures.

§ 423.37 Winter activities.

(a) You must not tow persons on skis, sleds, or other sliding devices with a motor vehicle or snowmobile, except that you may tow sleds designed to be towed behind snowmobiles if joined to the towing snowmobile with a rigid hitching mechanism, and you may tow disabled snowmobiles by any appropriate means.

(b) You must not ice skate, ice fish, or ice sail within 300 yards of dams, power plants, pumping plants, spillways, stilling basins, gates, intake structures, or outlet works.

(c) You must comply with all other posted restrictions.

§ 423.38 Operating vessels on Reclamation waters.

(a) You must comply with Federal, State, and local laws applicable to the operation of a vessel, other watercraft, or seaplane on Reclamation waters, and with any restrictions established by an authorized official.

(b) You must not operate a vessel, other watercraft, or seaplane in an area closed to the public.

(c) You must observe restrictions established by signs, buoys, and other regulatory markers.

(d) You must not operate a vessel, or knowingly allow another person to operate a vessel, in a reckless or negligent manner, or in a manner that endangers or is likely to endanger a

person, property, natural resource, or cultural resource.

(e) You must not operate a vessel when impaired or intoxicated under the standards established by applicable State and local law.

(f) You must not occupy a vessel overnight, except where otherwise designated under applicable Federal, State, or local law, or where otherwise designated by an authorized official in a special use area.

(g) You must not use a vessel as a place of habitation or residence.

(h) You must remove your vessels from Reclamation lands and waters when not in actual use for a period of more than 24 hours, unless they are securely moored or stored at special use areas so designated by an authorized official.

(i) You must not attach or anchor a vessel to structures such as locks, dams, regulatory or navigational buoys, or other structures not designed for such purpose.

(j) You must display an international diver down, or inland diving flag in accordance with State and U.S. Coast Guard guidelines when operating a vessel involved in any underwater activities.

(k) You may engage in towing activities, including, but not limited to, waterskiing and tubing, only during daylight hours and subject to any applicable Federal, State, and local law.

§ 423.39 Standards for vessels.

(a) All vessels on Reclamation waters must:

(1) Be constructed and maintained in compliance with the standards and requirements established by, or promulgated under, Title 46 United States Code, and any applicable State and local laws and regulations;

(2) Have safety equipment, including personal flotation devices, on board in compliance with U.S. Coast Guard boating safety requirements and in compliance with applicable State and local boating safety laws and regulations; and

(3) If motorized, have and utilize a proper and effective exhaust muffler as defined by applicable State and local laws. Actions or devices which render exhaust mufflers ineffective are prohibited.

(b) Owners or operators of vessels not in compliance with this § 423.39 may be required to remove the vessel immediately from Reclamation waterbodies until items of non-compliance are corrected.

§ 423.40 Vehicles.

(a) When operating a vehicle on Reclamation lands and Reclamation

projects, you must comply with applicable Federal, State, and local laws, and with posted restrictions and regulations. Operating any vehicle through, around, or beyond a restrictive sign, recognizable barricade, fence, or traffic control barricade, is prohibited.

(b) You must not park a vehicle in violation of posted restrictions and regulations, or in a manner that would obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property, or natural feature. Vehicles so parked are subject to removal and impoundment at the owner's expense.

(c) You must not operate any vehicle, or allow another person to operate a vehicle in your control, in a careless, negligent or reckless manner that would endanger any person, property, natural resource, or cultural resource.

(d) In addition to the regulations in this part, the regulations governing off-road-vehicle use in 43 CFR part 420 apply.

§ 423.41 Aircraft.

(a) You must comply with any applicable Federal, State, and local laws, and with any additional requirements or restrictions established by an authorized official in a special use area under Subpart E of this part 423, with respect to aircraft landings, takeoffs, and operation on or in the proximity of Reclamation facilities, lands, and waterbodies. Pilots are responsible for awareness of all applicable laws, regulations, requirements, and restrictions. This paragraph does not apply to pilots engaged in emergency rescue or in the official business of Federal, State, or local governments or law enforcement agencies, or who are forced to land due to circumstances beyond the pilot's control.

(b) You must not operate any aircraft while on or above Reclamation facilities, lands, and waterbodies in a careless, negligent, or reckless manner so as to endanger any person, property, or natural feature.

(c) This section does not provide authority to deviate from Federal or State regulations, or prescribed standards, including, but not limited to, regulations and standards concerning pilot certifications or ratings and airspace requirements.

(d) Except in extreme emergencies threatening human life or serious property loss, you must not use non-standard boarding and loading procedures to deliver or retrieve people, material, or equipment by parachute, balloon, helicopter, or other aircraft.

(e) You must comply with all applicable U.S. Coast Guard rules when operating a seaplane on Reclamation waterbodies.

(f) You must securely moor any seaplane remaining on Reclamation waterbodies in excess of 24 hours at mooring facilities and locations designated by an authorized official. Seaplanes may be moored for periods of less than 24 hours on Reclamation waterbodies, except in special use areas otherwise designated by an authorized official, provided:

(1) The mooring is safe, secure, and accomplished so as not to damage the rights of the Government or the safety of persons; and

(2) The operator remains in the vicinity of the seaplane and reasonably available to relocate the seaplane if necessary.

(g) You must not operate model aircraft except as allowed in special use areas established by an authorized official under Subpart E of this part 423.

§ 423.42 Gambling.

Commercial gambling in any form, or the operation of gambling devices, is prohibited on Reclamation facilities, lands, and waterbodies unless authorized by applicable treaties or Federal, State, and local laws or regulations.

§ 423.43 Alcoholic beverages.

You must not possess or consume alcoholic beverages in violation of Federal, State, or local law, or the rules of a special use area established by an authorized official under Subpart E of this part 423.

§ 423.44 Controlled substances.

You must not possess, consume, deliver, or be under the influence of, controlled substances included in schedules I, II, III, IV, or V of part B of the Controlled Substance Act (21 U.S.C. 812) on Reclamation facilities, lands, or waterbodies, unless the controlled substance was legally obtained through a valid prescription or order.

Subpart D—Authorization of Otherwise Prohibited Activities

§ 423.50 How can I obtain permission for prohibited or restricted uses and activities?

(a) Authorized officials may issue permits to authorize activities on Reclamation facilities, lands, or waterbodies otherwise prohibited or restricted by §§ 423.16(a)(3), 423.26, 423.27, 423.29(f), 423.30(c), 423.33(d), and 423.35(d)(1), and may terminate or revoke such permits for non-use, non-compliance with the terms of the permit, violation of any applicable law,

or to protect the health, safety, or security of persons, Reclamation assets, or natural or cultural resources.

(b) You may apply for permission to engage in activities otherwise prohibited or restricted by the sections listed in paragraph (a) of this section. You may apply to the authorized official responsible for the area in which your activity is to take place, and this authorized official may grant, deny, or establish conditions or limitations on this permission.

(c) You must pay all required fees and properly display applicable permits, passes, or receipts.

(d) You must not violate the terms and conditions of a permit issued by an authorized official. Any such violation is prohibited and may result in suspension or revocation of the permit, or other penalties as provided in Subpart F of this part 423, or both.

(e) You must, upon request by a law enforcement officer, security guard, or other government employee or agent acting within the scope of their official duties, display any permit authorizing your presence or activity on Reclamation facilities, lands, and waterbodies.

Subpart E—Special Use Areas

§ 423.60 How special use areas are designated.

(a) After making a determination under paragraph (b) of this section, an authorized official may:

(1) Establish special use areas within Reclamation facilities, lands, or waterbodies for application of reasonable schedules of visiting hours; public use limits; and other conditions, restrictions, allowances, or prohibitions on particular uses or activities that vary from the provisions of Subpart C of this part 423, except § 423.28; and

(2) From time to time revise the boundaries of a previously designated special use area and revise or terminate previously imposed schedules of visiting hours; public use limits; and other conditions, restrictions, allowances, or prohibitions on a use or activity.

(b) Before taking action under paragraph (a) of this section, an authorized official must make a determination that action is necessary for:

- (1) The protection of public health and safety;
- (2) The protection and preservation of cultural and natural resources;
- (3) The protection of environmental and scenic values, scientific research, the security of Reclamation facilities, the avoidance of conflict among visitor use activities; or

(4) Other reasons in the public interest.

(c) An authorized official establishing a special use area must document in writing the determination described in paragraph (b) of this section. Such documentation must occur before the action, except in emergencies or situations of immediate need as described in § 423.61(c), in which case the documentation is required within 30 days after the date of the action. Reclamation will make documents produced under this section available to the public upon request except where such disclosure could compromise national or facility security, or human safety.

§ 423.61 Notifying the public of special use areas.

When establishing, revising, or terminating a special use area, Reclamation must notify the public as required by this section.

(a) *What notices must contain.* The notice must specify:

- (1) The location of the special use area; and
- (2) The public use limits, conditions, restrictions, allowances, or prohibitions on uses and activities that are to be applied to the area or that are to be revised or terminated.

(b) *How notice must be made.* Reclamation must notify the public at least 15 days before the action takes place by one or more of the following methods:

- (1) Signs posted at conspicuous locations, such as normal points of entry and reasonable intervals along the boundary of the special use area;
- (2) Maps available in the local Reclamation office and other places convenient to the public;
- (3) Publication in a newspaper of general circulation in the affected area; or

(4) Other appropriate methods, such as the use of electronic media, brochures, and handouts.

(c) *When notice may be delayed.*

(1) Notice under this section may be delayed in an emergency or situation of immediate need where delaying designation, revision, or termination of a special use area would result in significant risk to:

- (i) National security;
- (ii) The safety or security of a Reclamation facility, Reclamation employees, or the public; or
- (iii) The natural or cultural environment.

(2) If the exception in paragraph (c)(1) of this section applies, Reclamation must comply with paragraph (b) of this section within 30 days after the effective date of the designation.

(3) Failure to meet the notice deadlines in paragraphs (b) or (c)(2) of this section will not invalidate an action, so long as Reclamation meets the remaining notification requirements of this section.

(d) *When advance notice is not required.* Advance notice as described in paragraph (b) of this section is not required if all the following conditions are met:

- (1) The action will not result in a significant change in the public use of the area;
- (2) The action will not adversely affect the area's natural, esthetic, scenic, or cultural values;
- (3) The action will not require a long-term or significant modification in the resource management objectives of the area; and
- (4) The action is not highly controversial.

§ 423.62 Reservations for public use limits.

To implement a public use limit, an authorized official may establish a registration or reservation system.

§ 423.63 Existing special use areas.

Areas where rules were in effect on April 17, 2006 that differ from the rules set forth in Subpart C are considered existing special use areas, and such differing rules remain in effect to the extent allowed by Subpart A, and to the extent they are consistent with § 423.28. For those existing special use areas, compliance with §§ 423.60 through 423.62 is not required until the rules applicable in those special use areas are modified or terminated.

Subpart F—Violations and Sanctions

§ 423.70 Violations.

(a) When at, in, or on Reclamation facilities, lands, or waterbodies, you must obey and comply with:

- (1) Any closure orders established under Subpart B of this part 423;
- (2) The regulations in Subpart C of this part 423;

(3) The conditions established by any permit issued under Subpart D of this part 423; and

(4) The regulations established by an authorized official in special use areas under Subpart E of this part 423.

(b) Violating any use or activity prohibition, restriction, condition, schedule of visiting hours, or public use limit established by or under this part 423 is prohibited.

(c) Any continuous or ongoing violation of these regulations constitutes a separate violation for each calendar day in which it occurs.

§ 423.71 Sanctions.

Under section 1(a) of Public Law 107-69, you are subject to a fine under chapter 227, subchapter C of title 18 United States Code (18 U.S.C. 3571), or can be imprisoned for not more than 6 months, or both, if you violate:

- (a) The provisions of this part 423; or
- (b) Any condition, limitation, closure, prohibition on uses or activities, or public use limits, imposed under this part 423.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R6-ES-2008-006; 92220-1113-0000; C6]

RIN 1018-AW35

Endangered and Threatened Wildlife and Plants; Reinstatement of Protections for the Gray Wolf in the Western Great Lakes and Northern Rocky Mountains in Compliance With Court Orders

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) are issuing this final rule to comply with three court orders which have the effect of reinstating the regulatory protections under the Endangered Species Act of 1973, as amended (ESA), for the gray wolf (*Canis lupus*) in the western Great Lakes and the northern Rocky Mountains. This rule corrects the gray wolf listing at 50 CFR 17.11 to reinstate the listing of wolves in all of Wisconsin and Michigan, the eastern half of North Dakota and South Dakota, the northern half of Iowa, the northern portions of Illinois and Indiana, the northwestern portion of Ohio, the northern half of Montana, the northern panhandle of Idaho, the eastern third of Washington and Oregon, and in north-central Utah as endangered, and reinstate the listing of wolves in Minnesota as threatened. This rule also reinstates the former designated critical habitat in 50 CFR 17.95(a) for gray wolves in Minnesota and Michigan, special regulations in 50 CFR 17.40(d) for the gray wolf in Minnesota, and special rules in 50 CFR 17.84 designating the gray wolf in the remainder of Montana and Idaho and all of Wyoming as nonessential experimental populations.

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(b) This section does not apply if:

(1) The formerly excess land becomes exempt from the acreage limitations of Federal reclamation law; or

(2) The full-cost rate is paid for any irrigation water delivered to your formerly excess land that is otherwise eligible to receive irrigation water. If you are a part owner of a legal entity that is the direct or indirect farm operator of the land in question, then the full-cost rate will apply to the proportional share of the land that reflects your interest in that legal entity.

§ 428.10 Districts' responsibilities concerning certain formerly excess land.

Districts must not make irrigation water available to formerly excess land that meets the criteria under § 428.9(a), unless an exception provided in § 428.9(b) applies.

§ 428.11 Effective date.

(a) All provisions of this part apply on January 1, 2001, except:

(1) For those districts whose 2001 water year commences prior to January 1, 2001, the applicability date of §§ 428.1 through 428.8 is October 1, 2000.

(b) On January 1, 2001, this part applies to all farm operating arrangements between farm operators and trusts or legal entities that:

- (1) Are then in effect; or
- (2) Are initiated on, or after, January 1, 2001.

PART 429—USE OF BUREAU OF RECLAMATION LAND, FACILITIES, AND WATERBODIES

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Sec.

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AUTHORITY: 43 U.S.C. 373; 43 U.S.C. 373b; 43 U.S.C. 387; 43 CFR part 21; Public Law 108-447, Title VIII; 31 U.S.C. 9701, as amended.

SOURCE: 73 FR 74335, Dec. 5, 2008, unless otherwise noted.

Subpart A—Purpose, Definitions, and Applicability

§ 429.1 What is the purpose of this part?

The purpose of this part is to notify the public that any possession or occupancy of any portion of, and the extraction or disturbance of any natural resources from Reclamation land, facilities, or waterbodies are prohibited without written authorization from Reclamation, unless excepted as listed in § 429.4. This part describes:

- (a) How to apply to Reclamation for a use authorization to allow your activity on Reclamation land, facilities, and waterbodies;
(b) How Reclamation reviews and processes your application, including the criteria for approval or denial of your application;
(c) The requirement for collection of application and use fees and the recovery of administrative costs;
(d) How Reclamation determines and collects costs and fees;

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(e) Prohibited uses on Reclamation land, facilities, and waterbodies;

(f) How Reclamation will address existing authorized uses which are otherwise prohibited, including the criteria for approval or denial of requests to renew these use authorizations;

(g) The process and penalties associated with resolution of unauthorized uses; and

(h) How to appeal an action or determination made under this part.

§ 429.2 What definitions are used in this part?

The following definitions are used in this part:

Administrative costs means all costs incurred by Reclamation in processing your application and all costs associated with evaluating, issuing, monitoring, and terminating your use authorization on Reclamation land, facilities, and waterbodies. Administrative costs are distinct and separate from application and use fees and typically include, but are not limited to:

- (1) Determining the use fee;
- (2) Evaluating and documenting environmental and cultural resources compliance;
- (3) Performing engineering review;
- (4) Preparation of the use authorization; and
- (5) Personnel and indirect costs directly associated with these actions.

Applicant means you as any person or entity (such as a private citizen, business, non-governmental organization, public entity, Indian tribe, or foreign government) who submits an application requesting use of Reclamation land, facilities, and waterbodies.

Application means either Form 7-2540 or SF 299. The choice of application form is dependent on the type of use requested.

Application fee means a \$100 non-refundable charge, which you must submit with your application to cover the costs of our initial review of your request. Application fees are distinct and separate from administrative costs and use fees.

Commissioner means the senior executive of the Bureau of Reclamation, Department of the Interior.

Consent document means a written agreement or notification listing conditions which will prevent unreasonable interference with our easement on non-Reclamation land.

Cultural resource means any pre-historic, historic, architectural, sacred, or traditional cultural property and associated objects and documents that are of interest to archaeology, anthropology, history, or other associated disciplines. Cultural resources include archaeological resources, historic properties, traditional cultural properties, sacred sites, and cultural landscapes that are associated with human activity or occupation.

Easement refers to an interest in land that consists of the right to use or control the land for a specific purpose, but does not constitute full ownership of the land.

Environmental compliance means complying with the requirements of the National Environmental Policy Act; the Endangered Species Act; the Clean Water Act; the Clean Air Act; the Comprehensive Environmental Response, Compensation, and Liability Act; applicable regulations associated with these statutes; and other related laws and regulations.

Form 7-2540 means the Bureau of Reclamation Right-of-Use Application form required for all proposed uses of Reclamation land, facilities, and waterbodies, except those associated with construction and/or placement of transportation, communication, and utility systems and facilities.

Grantee means you as the recipient or holder of a use authorization regardless of the contractual format.

Interior means the United States Department of the Interior.

Managing partner means a Federal or non-Federal public entity that manages land, facilities, or waterbodies through a management agreement with Reclamation entered into pursuant to the Federal Water Project Recreation Act, as amended.

Part 21 of this title means title 43 of the Code of Federal Regulations part 21, which is titled Occupancy of Cabin Sites on Public Conservation and Recreation Areas.

Part 423 of this chapter means title 43 of the Code of Federal Regulations part

423, which is titled Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies.

Possession or occupancy and possess or occupy mean to control, use, or reside on Reclamation land, facilities, or waterbodies.

Private exclusive recreational or residential use means any use that involves structures or other improvements used for recreational or residential purposes to the exclusion of public uses that are not associated with the official management of a Reclamation project. This includes, but is not limited to the following:

(1) Cabin sites and associated improvements (including those currently defined in part 21 of this title); mobile homes, residences, outbuildings, and related structures; and associated landscaping, patios, decks, and porches;

(2) Boat houses, docks, moorings, piers, and launch ramps;

(3) Floating structures or buildings, including moored vessels used as residences or unauthorized business sites;

(4) Sites for such activities as hunting, fishing, camping, and picnicking (other than transitory uses allowed under part 423 of this chapter) that attempt to exclude general public access; and

(5) Access routes to private land, facilities, or structures when other reasonable alternative means of access is available or can be obtained.

Public entity means States, political subdivisions or agencies thereof; public and quasi-governmental authorities and agencies; and agencies of the Federal Government.

Public needs mean the recreational requirements of the general public at areas where existing authorized private exclusive recreational or residential uses are present.

Reclamation means the Bureau of Reclamation, United States Department of the Interior.

Reclamation facility means any facility under our jurisdiction. The term includes, but is not limited to, buildings, canals, dams, ditches, drains, fish and wildlife facilities, laterals, powerplants, pumping plants, recreation facilities, roads, switchyards, transmission and telecommunication lines, and warehouses.

Reclamation land means any land under the jurisdiction of, or administered by, Reclamation and may include, but is not limited to, the following:

(1) All land acquired by Reclamation through purchase, condemnation, exchange, or donation for Reclamation project and water related purposes;

(2) All land withdrawn by Reclamation from the public domain for Reclamation purposes; and

(3) All interests in land acquired by Reclamation, including easements and rights exercised by the United States under the 1890 Canal Act (43 U.S.C. 945).

Reclamation law means the Reclamation Act of June 17, 1902 (32 Stat. 388, 43 U.S.C. 371 *et seq.*), and all Acts which supplement or amend the 1902 Act.

Reclamation project means any land, facilities, or waterbodies used for water supply, water delivery, flood control, hydropower, or other authorized purposes including fish, wildlife, and recreation administered by Reclamation under Federal laws.

Reclamation waterbodies means any body of water situated on Reclamation land and under Reclamation jurisdiction. Examples of Reclamation waterbodies include, but are not limited to, reservoirs, lakes, and impoundments.

Regional Director means any one of the representatives of the Commissioner, or their delegates, who are responsible for managing their respective region's land, facilities, and waterbodies and for the decisions made under this part.

Standard Form (SF) 299 means the form titled Application for Transportation and Utility Systems and Facilities on Federal Lands used when requesting permission for construction and/or placement of transportation, communication, or utility systems and facilities.

Unauthorized use means use of Reclamation land, facilities, and waterbodies without proper authorization.

Use authorization means a document that defines the terms and conditions under which we will allow you to use Reclamation land, facilities, and waterbodies. Use authorizations can take the form of easements, leases, li-

censes, permits, and consent documents. This document is also referred to as a "right-of-use" in part 423 of this chapter.

Use fee means the amount due to Reclamation for the use of Federal land, facilities, or waterbodies under our jurisdiction or control. Use fees are distinct and separate from application fees and administrative costs.

Valuation means the method used to establish the fee for a use authorization by appraisal, waiver valuation, or other sound or generally accepted business practice.

Water user organization means any legal entity established under State law that has entered into a contract with the United States pursuant to the Federal reclamation laws.

We, us, or our mean Reclamation.

You, your, I, me, or my, mean an applicant, grantee, or unauthorized user.

§ 429.3 What types of uses are subject to the requirements and processes established under this part?

Possession or occupancy of, or extraction or removal of natural resources from, Reclamation land, facilities, or waterbodies require a use authorization in accordance with this part. Typical uses of or activities on Reclamation land, facilities, or waterbodies regulated by this part include, but are not limited to the following:

(a) Commercial filming and photography;

(b) Commercial guiding and outfitting;

(c) Commercial or organized sporting events;

(d) Grazing, farming, and other agricultural uses;

(e) Infrastructure, such as transportation, telecommunications, utilities, and pipelines;

(f) Organized recreational activities, public gatherings, and other special events that involve the possession or occupancy of Reclamation lands;

(g) Removal of, or exploration for, sand, gravel, and other mineral resources;

(h) Timber harvesting, or removal of commercial forest products or other vegetative resources; and

(i) Any other uses deemed appropriate by Reclamation, subject to the exclusions listed in § 429.4.

§ 429.4 What types of uses are not subject to the requirements and processes established under this part?

(a) Individual, non-commercial use of Reclamation land, facilities, or waterbodies for occasional activities such as hiking, camping for periods of 14 days or less during any period of 30 consecutive days, sightseeing, picnicking, hunting, swimming, boating, and fishing, consistent with applicable laws, regulations and policies. Public conduct associated with these activities is governed by part 423 of this chapter;

(b) Buildings and structures used by concessionaires or managing partners to facilitate their operations or that are made available by them for the general, non-exclusive use of the public. Examples include, but are not limited to the following:

- (1) Boat docks available for short-term use by the public;
- (2) Marina slips available for rent by the public;
- (3) Publicly available boat ramps;
- (4) Houseboats available for short-term rent by the public;
- (5) Stores and restaurants;
- (6) Employee housing; and
- (7) Rental cabins, hotels, campgrounds, and other short-term lodging facilities.

(c) While not subject to other requirements and processes established under this part, the following types of uses must be in compliance with the requirements in subpart H of this part:

- (1) Recreational activities at sites managed by non-Federal managing partners under Public Law 89-72, titled Federal Water Project Recreation Act, July 9, 1965;
- (2) Activities managed by other Federal agencies or Interior bureaus by agreement or under other authority;
- (3) Activities at sites directly managed by Reclamation where fees or fee schedules are established for general public recreation use;
- (4) Uses authorized under concession contracts on Reclamation land, facilities, and waterbodies;

(5) Reclamation contracts for water supply or water operations;

(6) Authorized operation and maintenance activities on Reclamation land, facilities, and waterbodies undertaken by water user organizations, or their contractors, or by Reclamation contractors;

(7) Agreements and real property interests granted for the replacement or relocation of facilities, such as highways, railroads, telecommunication, or transmission lines or infrastructure governed by Section 14 of the Reclamation Project Act of August 4, 1939 (43 U.S.C. 389). Payments to equalize land values may still be required and administrative costs may still be recovered; and

(8) Activities specifically authorized under other Federal statutes or regulations.

§ 429.5 Who is authorized to issue use authorizations under this part?

Unless otherwise provided by law or regulation, only Reclamation or another Federal agency acting for Reclamation under delegated authority is authorized to issue use authorizations that convey an interest in Reclamation land, facilities, or waterbodies. Recreation managing partners under the Federal Water Projects Recreation Act, 16 U.S.C. 4601 *et seq.*, and water user organizations who have assumed responsibility for operation and maintenance of Reclamation land, facilities, or waterbodies, and provide a copy of the use authorization to the local Reclamation office, pursuant to a contract with Reclamation may issue limited use authorizations to third parties for activities on Reclamation land, facilities, or waterbodies when all of the following apply:

- (a) The recreation managing partner or water user organization is authorized to do so under its contract with Reclamation;
- (b) Such limited use authorizations do not convey ownership or other interest in the Federal real property;
- (c) The uses authorized are not permanent or for an indefinite period;
- (d) The limited use authorization does not provide for an automatic right of renewal;

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(e) The limited use authorization is fully revocable at the discretion of Reclamation; and

(f) All revenues collected for the use of Reclamation land, facilities, and waterbodies are handled in compliance with all statutory, regulatory, and policy requirements.

§ 429.6 When must water user organizations also approve use authorizations?

(a) Use authorizations for easements and rights-of-way for periods in excess of 25 years are also subject to approval from water user organizations under contract obligation for repayment of the project or division. This requirement does not apply to any other type of use authorizations.

(b) At a minimum, the appropriate water user organizations will be notified of all use authorizations prior to their issuance to avoid potential conflicts between the requested use authorization and the water user organizations' need to operate and maintain the facilities for which they have contractual responsibility.

(c) At the discretion of the responsible Regional Director, concurrence of the appropriate water user organizations not addressed in paragraph (a) of this section may be requested.

Subpart B—Proposed Uses Involving Reclamation Easements

§ 429.7 Can I use land where Reclamation holds an easement?

(a) To prevent conflicts where Reclamation holds an easement on land owned by others, you should submit an application for the proposed use. If after review of the application, Reclamation determines that your requested use would not unreasonably interfere with Reclamation's easement, a consent document may be issued to you. The consent document will contain the conditions with which you must comply to ensure that your use will not unreasonably interfere with Reclamation's use of its easement.

(b) In accordance with subpart C of this part, you should submit either SF 299 or Form 7-2540 to the local Reclamation office to request a consent document.

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(c) If you are not the underlying landowner, you must also secure the permission of the landowner for your requested use of the area covered by Reclamation's easement.

§ 429.8 Is there a fee for uses involving a Reclamation easement?

Reclamation will not charge a use fee for a consent document. However, depending upon the complexity of your requested use and issues associated with it, Reclamation may charge an application fee and administrative costs, unless waived in accordance with subpart F of this part.

Subpart C—Requesting Authorization to Use Reclamation Land, Facilities, and Waterbodies

§ 429.9 What should I do before filing an application?

Before filing an application, it is important that you contact the local Reclamation office to discuss your proposed use. This discussion can help expedite your application process.

§ 429.10 What application form should I use?

You must use one of the following application forms depending on the nature of your requested use:

(a) Use SF 299 to request a use authorization for the placement, construction, and use of energy, transportation, water, or telecommunication systems and facilities on or across all Federal property including Reclamation land, facilities, or waterbodies.

Examples of such uses are:

- (1) Canals;
- (2) Communication towers;
- (3) Fiber-optics cable;
- (4) Pipelines;
- (5) Roads;
- (6) Telephone lines; and
- (7) Utilities and utility corridors.

(b) Use Form 7-2540 to request any other type of use authorization. Examples of such uses are:

- (1) Commercial filming and photography;
- (2) Commercial guiding and outfitting;
- (3) Commercial or organized sporting events;

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(4) Grazing, farming, and other agricultural uses;

(5) Organized recreational activities, public gatherings, and other special events;

(6) Removal of, or exploration for, sand, gravel, and other mineral materials;

(7) Timber harvesting, or removal of commercial forest products or other vegetative resources; and

(8) Any other uses deemed appropriate by Reclamation.

(c) Application forms may not be required where Reclamation solicits competitive bids.

§ 429.11 Where can I get the application forms?

Both forms can be obtained from any Reclamation office or from our official internet Web site at <http://www.usbr.gov>. These forms contain specific instructions for application submission and describe information that you must furnish. However, when you submit either form to your local Reclamation office for review, the form must contain your original signature as the applicant.

§ 429.12 Where do I file my application?

File your completed and signed application, including the \$100 nonrefundable application fee, with the Reclamation office having jurisdiction over the land, facility, or waterbody associated with your request. Reclamation office locations may be found on <http://www.usbr.gov>, the official Reclamation Internet Web site.

§ 429.13 How long will the application review process take?

(a) Reclamation will acknowledge in writing your completed and signed application and application fee within 30 calendar days of receipt. Reclamation may request additional information needed to process your application, such as legal land descriptions and detailed construction specifications.

(b) The processing time depends upon the complexity of your requested use, issues associated with it, and the need for additional information from you.

(c) Should your requested use be denied at any time during the review

process, Reclamation will notify you in writing of the basis for the denial.

§ 429.14 What criteria will Reclamation consider when reviewing applications?

Reclamation will consider the following criteria when reviewing applications:

(a) Compatibility with authorized project purposes, project operations, safety, and security;

(b) Environmental compliance;

(c) Compatibility with public interests;

(d) Conflicts with Federal policies and initiatives;

(e) Public health and safety;

(f) Availability of other reasonable alternatives; and

(g) Best interests of the United States.

§ 429.15 Is Reclamation required to issue a use authorization?

No. The issuance of a use authorization is at Reclamation's discretion. At a minimum, the criteria listed at § 429.14 must be considered prior to issuance of any use authorizations. Not all requests will be authorized. If issued, Reclamation will provide only the least estate, right, or possessory interest needed to accommodate the approved use.

Subpart D—Application Fees and Administrative Costs

§ 429.16 How much is the application fee and when should it be paid?

You must remit a nonrefundable application fee of \$100 to cover costs associated with our initial review of your application, unless the payment is waived pursuant to subpart F of this part. This initial review will determine if your requested use is appropriate for consideration and not likely to interfere with Reclamation project purposes or operations.

§ 429.17 When will Reclamation collect administrative costs?

Reclamation will collect, in advance, its administrative costs for processing your application, except as provided under subpart F of this part.

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§ 429.18 When do I have to pay the administrative costs?

(a) Following the initial review, you will be notified in writing whether your application appears to be appropriate for further processing. At that time, Reclamation will give you an initial estimate of administrative costs required to continue processing your application.

(b) You must pay these initial, estimated administrative costs before Reclamation can continue to process your application, unless you are granted a waiver of administrative costs under subpart F of this part. If payment is not received within 90 days after the estimate is provided to you, Reclamation may close your file. If this occurs and you later wish to proceed, you must submit both a new application and another \$100 nonrefundable application fee.

§ 429.19 What happens if the initial estimate for administrative costs is insufficient?

If the initial estimate to cover Reclamation's administrative costs is found to be insufficient, Reclamation will notify you in writing of the additional amount needed. You must pay the amount requested before Reclamation will continue processing your application.

§ 429.20 Can I get a detailed explanation of the administrative costs?

Yes, you are entitled to receive an explanation of all administrative costs relevant to your specific application. You must request this information in writing from the Reclamation office where you submitted your application.

§ 429.21 If I overpay Reclamation's administrative costs, can I get a refund?

If, in reviewing your application, Reclamation uses all the monies you have paid, you will not receive a refund regardless of whether you receive a use authorization. If the money collected from you exceeds administrative costs, a refund of the excess amount will be made to you consistent with Reclamation's financial policies.

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§ 429.22 Can Reclamation charge me additional administrative costs after I receive a use authorization?

(a) After you receive your use authorization, Reclamation may charge you for additional administrative costs incurred for activities such as:

(1) Monitoring your authorized use over time to ensure compliance with the terms and conditions of your use authorization; and

(2) Periodic analysis of your long-term use to adjust your use fee to reflect current conditions.

(b) If your additional payment is not received by Reclamation within 90 days after notification to you in writing of the additional administrative costs, Reclamation may take action to terminate your use authorization.

Subpart E—Use Fees

§ 429.23 How does Reclamation determine use fees?

The use fee is based on a valuation or by competitive bidding. Use fees may be adjusted as deemed appropriate by Reclamation to reflect current conditions, as provided in the use authorization.

§ 429.24 When should I pay my use fee?

(a) If Reclamation offers you a use authorization, you must pay the use fee in advance, unless you are granted a waiver under subpart F of this part.

(b) Your use authorization will clearly state the use fee. Should periodic payments apply, your use authorization will also describe when you should pay those periodic use fees.

§ 429.25 How long do I have to submit my payment for the use fee and accept the offered use authorization?

You have 90 days to accept and return the use authorization and required fees, otherwise Reclamation may consider the offer to be rejected by you and your file may be closed. If this occurs and you later wish to proceed, you must submit a new application and another \$100 nonrefundable application fee. You may not commence your use of Reclamation's land, facilities, or waterbodies until Reclamation has issued a use authorization to you. A use authorization will

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only be issued upon receipt by Reclamation of all required costs and fees, and the use authorization signed by you.

cable Regional Director, the application fees may be waived, and charges for administrative costs or use fees may be waived or reduced as indicated by a ✓ in the following table:

Subpart F—Reductions or Waivers of Application Fees, Administrative Costs, and Use Fees

§ 429.26 When may Reclamation reduce or waive costs or fees?

(a) As determined appropriate and approved and documented by the appli-

| Situations where costs and fees may be reduced or waived | Application fee | Administrative costs | Use fee |
|---------------------------------------------------------------------------------------------------------------------------------------|-----------------|----------------------|------------------|
| (1) The use is a courtesy to a foreign government or if comparable fees are set on a reciprocal basis with a foreign government | ✓ | ✓ | ✓ |
| (2) The use is so minor or short term that the cost of collecting fees is equal to or greater than the value of the use | ✓ | ✓ | ✓ |
| (3) The use will benefit the general public with no specific entity or group of beneficiaries readily identifiable | ✓ | ✓ | ✓ |
| (4) Applicant is a public entity or Indian tribe | ✓ | ✓ | ✓ |
| (5) Applicant is a non-profit or educational entity and the use provides a general public benefit | ✓ | ✓ | ✓ |
| (6) Applicant is a rural electric association or municipal utility or cooperative | ✓ | ✓ | ✓ |
| (7) The use directly supports United States' programs or projects | ✓ | ✓ | ✓ |
| (8) The use secures a reciprocal land use of equal or greater value to the United States | ✓ | ✓ | ✓ |
| (9) Applicant for a consent document is the underlying owner of the property subject to Reclamation's easement | ✓ | ✓ | (¹) |
| (10) The use is issued under competitive bidding | ✓ | ✓ | (²) |

¹ Not applicable.
² Set by Bid.

(b) When a statute, executive order, or court order authorizes the use and requires specific treatment of administrative cost recovery and collection of use fees associated with that use, that requirement will be followed by Reclamation.

Subpart G—Terms and Conditions of Use Authorizations

§ 429.27 What general information appears in use authorizations?

Each use authorization will contain:

- (a) An adequate description of the land, facilities, or waterbodies where the use will occur;
- (b) A description of the specific use being authorized together with applicable restrictions or conditions that must be adhered to;
- (c) The conditions under which the use authorization may be renewed, terminated, amended, assigned or trans-

ferred, and/or have the use fee adjusted; and

(d) Primary points of contact and other terms and conditions.

§ 429.28 What terms and conditions apply to all use authorizations?

(a) By accepting a use authorization under this part, you agree to comply with and be bound by the following terms and conditions during all construction, operation, maintenance, use, and termination activities:

- (1) The grantee agrees to indemnify the United States for, and hold the United States and all of its representatives harmless from, all damages resulting from suits, actions, or claims of any character brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or

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method of performing any construction, care, operation, maintenance, supervision, examination, inspection, or other activities of the grantee.

(2) The United States, acting through Reclamation, Department of the Interior, reserves rights to construct, operate, and maintain public works now or hereafter authorized by the Congress without liability for termination of the use authorization or other damage to the grantee's activities or facilities.

(3) Reclamation may, at any time and at no cost or liability to the United States, terminate any use authorization in the event of a natural disaster, a national emergency, a need arising from security requirements, or an immediate and overriding threat to public health and safety.

(4) Reclamation may, at any time and at no cost or liability to the United States, terminate any use authorization for activities other than existing authorized private exclusive recreational or residential use as defined under § 429.2 if Reclamation determines that any of the following apply:

(i) The use has become incompatible with authorized project purposes, project operations, safety, and security;

(ii) A higher public use is identified through a public process described at § 429.32(a)(1); or

(iii) Termination is necessary for operational needs of the project.

(5) Reclamation may, at any time and at no cost or liability to the United States, terminate any use authorization if Reclamation determines that the grantee has failed to use the use authorization for its intended purpose. Further, failure to construct within the timeframe specified in the terms of the use authorization may constitute a presumption of abandonment of the requested use and cause termination of the use authorization.

(6) Reclamation may, at any time and at no cost or liability to the United States, terminate any use authorization if the grantee fails to comply with all applicable Federal, State, and local laws, regulations, ordinances, or terms and conditions of any use authorization, or to obtain any required permits or authorizations.

43 CFR, Subtitle B, Ch. I (10-1-09 Edition)

(b) The Regional Director may, upon advice of the Solicitor, modify these terms and conditions with respect to the contents of the use authorization to meet local and special conditions.

§ 429.29 What other terms and conditions may be included in my use authorization?

Reclamation may include additional terms, conditions, or requirements that address environmental law compliance, the protection of cultural and natural resources, other interests of the United States, and local laws and regulations.

§ 429.30 May use authorizations be transferred or assigned to others?

Your use authorization may not be transferred or assigned to others without prior written approval of Reclamation, unless specifically provided for in your use authorization or as provided under subpart H of this part for existing private exclusive recreational and residential uses. Should you wish to transfer or assign your use authorization to another individual or entity, you must contact the Reclamation office that issued your use authorization prior to taking such action.

Subpart H—Prohibited and Unauthorized Uses of Reclamation Land, Facilities, and Waterbodies

§ 429.31 What uses are prohibited on Reclamation land, facilities, and waterbodies?

(a) Reclamation prohibits any use that would not comply with part 423 of this chapter.

(b) Reclamation prohibits any use that would result in new private exclusive recreational or residential use of Reclamation land, facilities, or waterbodies as of the effective date of this part. Improvements that are within the terms and conditions of an existing authorization will not be considered new private exclusive recreational or residential use.

§ 429.32 How will Reclamation address currently authorized existing private exclusive recreational or residential uses?

The administration and potential renewal of use authorizations, existing as of January 1, 2008, for private exclusive recreational or residential uses of Reclamation land, facilities, and waterbodies, as defined in this part, will be administered in accordance with the following requirements.

(a) Existing private exclusive recreational or residential uses must be compatible with public needs and with authorized project purposes, project operations, safety, and security. A review of whether existing private exclusive recreational or residential uses is compatible with public needs and authorized project purposes, project operations, safety, and security will be made at least once every 20 years, except where part 21 requires a more frequent review.

(1) Reclamation will only make final determinations regarding the compatibility of existing private exclusive recreational or residential uses with public needs or project purposes through a public process involving one or more public meetings. Examples of such public processes include resource management plan development, recreation demand analysis studies, and project feasibility studies.

(2) Reclamation will notify in writing all potentially affected holders of existing authorizations for private exclusive recreational or residential use regarding the opportunities for public participation when any action is proposed that could lead to an incompatibility determination.

(3) Determinations that existing private exclusive recreational or residential uses are not compatible with public needs will be published in the FEDERAL REGISTER.

(4) If a determination of incompatibility with public needs is made, affected use authorizations may be extended up to 5 years from the date of publication in the FEDERAL REGISTER, if the Regional Director determines that such extension is necessary to the fair and efficient administration of this part.

(b) Reclamation will conduct a compliance review of all existing private exclusive recreational or residential uses at least once every 5 years to determine if the following criteria are being met:

- (1) Environmental requirements;
- (2) Public health and safety requirements; and
- (3) Current in financial obligations to Reclamation.

(c) Reclamation will provide the holder of the use authorization with a written report of the results of the compliance review by certified mail, return receipt requested. The report will state whether the existing use meets the required criteria listed in paragraph (b) of this section and will list any deficiencies that can be corrected. A minimum of 90 days will be provided to make corrections identified in the report. Failure to correct the deficiencies within the time provided in the report will result in termination of the use authorization.

(d) In addition to the compliance reviews described above, Reclamation will initiate a review of the existing private exclusive recreational or residential uses for compliance with the required criteria listed in paragraph (b) of this section at least 6 months prior to the expiration date of the existing use authorization. Reclamation will provide the holder of the use authorization with a written report of the results of the compliance review results by certified mail, return receipt requested. The report will state whether the existing use meets the required criteria under this section as applicable and will list any deficiencies that must be corrected prior to a renewal of the use authorization. A minimum of 90 days will be provided prior to the expiration of the permit to make corrections identified in the report. In addition, this report will serve as a reminder that it is time to seek renewal of the use authorization and provide information on the process that needs to be followed.

(e) Reclamation must be notified in advance by certified mail, return receipt requested, of any transfers of use authorizations for existing private exclusive recreational or residential uses.

(f) Any renewal of use authorizations for existing private exclusive recreational or residential uses of Reclamation land, facilities, and waterbodies will not exceed 20-year terms. Any such renewals will be subject to the periodic reviews described in paragraphs (a) and (b) of this section and these reviews could potentially result in the termination of the use agreement prior to the end of the term of years.

(g) Upon non-renewal or termination of a use authorization for an existing private exclusive recreational or residential use of Reclamation land, facilities, and waterbodies, the grantee will remove any improvements from the site within 90 days from the date of termination or non-renewal of the use authorization. The grantee will return the property as near as possible to its original undisturbed condition. Any property not removed within 90 days may be removed by Reclamation at the expense of the prior grantee.

(h) Renewal decisions of use authorizations for existing private exclusive recreational or residential uses located on Reclamation land, facilities, and waterbodies will be made by the Regional Director. If the Regional Director determines that deficiencies identified under paragraph (d) of this section cannot be corrected prior to the expiration date of the use authorization, the use authorization may be extended for a period not to exceed 6 months.

(i) Requests for the renewal, extension, or reissuance of use authorizations for private exclusive recreational or residential uses that expired and were not renewed prior to the effective date of this part and were not renewed or are subsequently not renewed or terminated under the procedures of this section will be considered requests for uses prohibited under § 429.31 and will not be approved. Conversely, requests for the renewal, extension, or reissuance of use authorizations for private exclusive recreational or residential uses that were in existence on the effective date of these regulations and that are in compliance with all requirements of the applicable use authorization at the time a request is made will not be considered requests for uses prohibited under § 429.31. Re-

quests for renewal, extension, or reissuance of use authorizations for private exclusive recreational or residential uses must be made by submitting Form 7-2540 as stated under § 429.10(b) and in compliance with subpart D of this part.

(j) Unauthorized existing private exclusive recreational or residential uses will be administered under §§ 429.31 and 429.33 and part 423 of this chapter.

§ 429.33 What are the consequences for using Reclamation land, facilities, and waterbodies without authorization?

(a) Reclamation may seek to collect the following:

(1) All administrative costs incurred by Reclamation in resolving the unauthorized use;

(2) All costs of removing structures, materials, improvements, or any other real or personal property;

(3) All costs of rehabilitation of the land, facilities, or waterbodies as required by Reclamation.

(4) The use fee that would have applied had your use been authorized from the date your unauthorized use began;

(5) Interest accrued on the use fee from the date your unauthorized use began as specified in paragraph (a)(4) of this section; and

(6) The interest charge rate shall be the greater of either the rate prescribed quarterly in the FEDERAL REGISTER by the Department of the Treasury for application to overdue payments or the interest rate of 0.5 percent per month. The interest charge rate will be determined as of the due date and remain fixed for the duration of the delinquent period.

(b) As an unauthorized user, you will receive a written notice in which Reclamation will outline the steps you need to perform to cease your unauthorized use.

(c) If appropriate, you will receive a final determination letter detailing the applicable costs and fees, as set forth under paragraph (a) of this section, which must be paid to Reclamation for your unauthorized use. Payment must be made within 30 days of receipt of this letter unless Reclamation extends this deadline in writing. Failure to

make timely payment may result in administrative or legal action being taken against you.

(d) Reclamation may determine that issuing a use authorization to you for an existing unauthorized use is not appropriate; and may deny future use applications by you because of this behavior. As noted at § 429.15, use authorizations are always issued at Reclamation's discretion.

(e) If, however, your unauthorized use is deemed by Reclamation to be an unintentional mistake, consideration may be given to issuing a use authorization provided that you qualify and meet the criteria at § 429.14; and, in addition to the normal costs, you agree to pay the following:

(1) The use fee that would have been owed from the date your unauthorized use began; and

(2) Interest accrued on the use fee from the date your unauthorized use began as specified in paragraph (f)(1) of this section.

(f) Under no circumstances will your unauthorized use or payment of monies to the United States in association with an unauthorized use either:

(1) Create any legal interest or color of title against the United States; or

(2) Establish any right or preference to continue the unauthorized use.

(g) Under part 423 of this chapter, unauthorized use of Reclamation land, facilities, or waterbodies is a trespass against the United States. You may be subject to legal action including criminal prosecution as specified under § 423.71.

Subpart I—Decisions and Appeals

§ 429.34 Who is the decisionmaker for Reclamation's final determinations?

(a) The appropriate Regional Director, or the Regional Director's designee, makes any final determination associated with an action taken under this rule and will send that final determination in writing to you by mail.

(b) The Regional Director's final determination will take effect upon the date of the final determination letter.

§ 429.35 May I appeal Reclamation's final determination?

(a) Yes, if you are directly affected by a final determination, you may appeal by writing to the Commissioner within 30 calendar days after the postmark date of the Regional Director's determination letter.

(b) You have an additional 30 calendar days after the postmark of your written appeal to the Commissioner within which to submit any additional supporting information.

(c) The Regional Director's final determination will remain in effect until the Commissioner has reviewed your appeal and provided you with that decision, unless you specifically request a stay and a stay is granted by the Commissioner.

§ 429.36 May I appeal the Commissioner's decision?

(a) Yes, you may appeal the Commissioner's decision by writing to the Director, Office of Hearing and Appeals (OHA), U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203.

(b) For an appeal to be timely, OHA must receive your appeal within 30 calendar days from the date of mailing of the Commissioner's decision. Rules that govern appeals to OHA are found at part 4, subparts B and G, of this title.

(c) Notwithstanding the provisions of § 4.21(a) of this title, the Commissioner's decision will take effect upon issuance and remain in effect unless you specifically request a stay and a stay is granted under § 4.21(b) of this title.

§ 429.37 Does interest accrue on monies owed to the United States during my appeal process?

Except for any period in the appeal process during which a stay is then in effect, interest on any nonpayment or underpayment, as provided in § 429.33(a), continues to accrue during an appeal of a Regional Director's final determination, an appeal of the Commissioner's decision to OHA, or during judicial review of final agency action.

EXHIBIT I

FEDERAL REGULATIONS AND GUIDANCE

This section lists the Federal Regulations and guidelines that provide Reclamation with the authority and guidance to perform the agency mission of fulfilling its obligations for water delivery, water conservation, water recycling and reuse, power generation, and protecting natural and cultural resources. These regulations and guidelines also provide the authority necessary for management of Federal lands and resources.

Reclamation Act of 1902 (Chapter 1093, 32 Stat. 388)

This act set aside funds for the construction and maintenance of irrigation projects. This act established the Bureau of Reclamation to administer the program.

Federal Migratory Bird Treaty Act (MBTA) of 1918 (16 USC, Sections 703-712)

The MBTA prohibits the take, harm, or trade of any migratory bird species and requires that all agencies have a policy in place to prevent harm to such species as a result of the agency's actions. An amendment in 1972 included owls, hawks and other birds of prey into the MBTA.

Fish and Wildlife Coordination Act of 1934

This act requires consultation with the U.S. Fish and Wildlife Services (USFWS) and state agencies whenever the waters or channels of a body of water are modified by a department or agency of the U.S., with a view to the conservation of wildlife resources. The act provides that land, water, and interests may be acquired by Federal construction agencies for wildlife conservation and development.

Reclamation Project Act of 1939 (43 US Code [USC], Section 485)

This act provided a feasible and comprehensive plan for the variable payment of construction charges on United States reclamation projects, to protect the investment of the United States in such projects.

Federal Water Project Recreation Act of 1965 (PL 89-72)

This act requires that recreation and fish and wildlife enhancement be given full consideration in Federal water development projects. The act authorizes the use of Federal water project funds for land acquisition in order to establish refuges for migratory waterfowl and authorizes the Secretary of the Interior to provide facilities for outdoor recreation and fish and wildlife at all reservoirs under the Secretary's control, except those within National Wildlife Refuges.

National Historic Preservation Act of 1966 (NHPA) (16 USC Sections 470-470x-6)

This law requires Federal agencies to consider historic preservation values when planning their activities. Each Federal agency must establish a preservation program for identifying, evaluating, and protecting properties under its ownership or control that are eligible for listing on the National Registry of Historical Places (NRHP).

In the section 106 process Federal agencies must identify historic properties that may be affected by its actions, evaluate the proposed actions affects on the property, and explore ways to avoid or mitigate those effects.

National Environmental Policy Act of 1969 (NEPA) (42 USC, Section 4321 et seq.)

Federal agencies must consider the environmental consequences of proposed major actions. The spirit and intent of NEPA is to protect and enhance the environment through well-informed Federal decisions, based upon sound science. NEPA is premised on the assumption that providing timely information to the decision maker and the public concerning the potential environmental consequences of the proposed actions would improve the quality of the Federal decisions. The NEPA process includes the systematic, interdisciplinary evaluation of potential consequences expected to result from implementing a proposed action.

Federal Bald Eagle Protection Act (16 USC, Sections 668-668d)

This act prohibits persons within the United States from possessing, selling, purchasing, offering for sale, transporting, exporting or importing any bald eagle or golden eagle alive or dead, or any part, nest, or egg.

Clean Water Act of 1972 (CWA) (PL 92-500) (33 USC, Sections 1251 et seq.) and implementing Regulations (33 CFR, parts 320-330, 335-338, and 40 CFR, parts 104-140, 230-233, 401-471)

The CWA is the law for which most U.S. Army Corp of Engineers (USACE) permits are issued for discharging fill into wetlands. Most of the CWA addresses water pollution, which is the purview of the U.S. Environmental Protection Agency (EPA). Responsibility for disposing of dredged materials was delegated to the USACE because of its historic role in that arena, but the EPA still maintains ultimate responsibility for overseeing the program. USACE and EPA regulations are often referred to as Section 404 guidelines. The point of contact for Section 404 permit issues is the USACE. States may adopt administration of parts of the CWA but the USACE and EPA continue to provide program oversight.

Executive Order 11593: Protection and Enhancement of the Cultural Environment (1/15/71)

This order requires Federal agencies to inventory historic properties on Federal lands and to document properties altered or demolished through Federal actions.

Federal Endangered Species Act of 1973 (ESA) (16 USC, Sections 1531-1544) and Implementing Regulations (50 CFR, parts 17, 401-424, 450-453)

All Federal agencies, in consultation with the Secretary of the Interior, must take all necessary precautions to ensure that their actions do not jeopardize federally listed endangered or threatened species or destroy or degrade their habitats. The ESA provides a program for the conservation of threatened and endangered plants, animals and their habitats in which they are found. It is designed to protect critically imperiled species from extinction due to "the consequences of economic growth and development untempered by adequate concern and conservation".

Rehabilitation Act of 1973 (29 USC, Section 794)

This law requires that access to Federal facilities be provided for persons with disabilities.

Executive Order 1190: Protection of Wetlands (5/25/77)

This order requires agencies to minimize destruction of wetlands when managing lands, administering Federal Programs, or undertaking construction activities. Agencies are required to consider the effects of such Federal actions on the health and quality of wetlands.

Federal Cave Resource Protection Act of 1988 (16 USC, Sections 4301-4309)

This act requires inventory of significant caves on Federal lands, implementation of the management of measures, and to provide certain protections of cave resources. The act requires that significant caves be considered in resource management planning and that the public be invited to participate in the planning process.

The act provides for the issuance of permits for collection or removal of cave resources and identifies criminal and civil penalties for conducting prohibited acts.

American with Disabilities Act of 1990 and 1995

This law requires that States, counties and local governments provide accessibility to all facilities for persons with disabilities. Federal, state and local agencies are to provide "a similar opportunity for persons with disabilities to enjoy outdoor recreation facilities and to share similar experiences". The U.S. Department of Justice was charged with enforcement of this law.

Regulations were amended in 2005 and 2008 by the Department Justice through the American Board of Architecture and Design to provide access to trails, walkways and outdoor recreation facilities providing for those with disabilities that confine them to wheel chairs and motorized mobile units. Future recreation facilities are to be designed and developed utilizing a "universal standard" that will provide those with disabilities to enjoy a similar experience than those with no disability.

Reclamation Recreation Management Act of 1992 (PL 102-575)

This act amends the Federal Water Project Recreation Act of 1965 to "provide for the development, use, conservation, protection, enhancement, and management of resources on Reclamation lands".

This Act permits Reclamation to provide cost-share opportunities with non-Federal recreation partners (e.g. state, county, local governments, special districts); to assist in planning, development, operation, maintenance, and replacement of recreation and fish and wildlife resource facilities at partner managed Reclamation project recreation areas.

The non-Federal partner is required to have the capability to provide at least 50 percent of the cost of the project and provide up-front funding for planning activities, services and facilities that are open to the general public. The non-Federal partner must show the capability to provide at least 50 percent of the costs incurred in long-term operations and maintenance (O&M) of facilities.

Executive Order 13112: Invasive Species (2/3/99)

This order requires Federal agencies to prevent the introduction of invasive species and to provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause.

Law Enforcement Authority: 2001 (PL 107-69)

Allows Reclamation to enforce laws on its lands and facilities using law enforcement services with other Department of the Interior agencies or contracting with other Federal, state or local law enforcement organizations.

Clean Air Act (CAA) Reauthorized 2006 (42 USC, Sections 7401 et seq.)

The CAA is the principal Federal law protecting air quality in the United States. The CAA regulates air emissions from area, stationary, and mobile sources. Under this law, the National Ambient Air Quality Standards are established for each state in order to protect public health and the environment (EPA

2008). The CAA requires states to develop and implement plans, describing how they will attain the Ambient Air Standards in accordance with 40 CFR 52.220.

Executive Order 13443: Facilitation of Hunting Heritage and Wildlife Conservation (8/02/07)

This order directs Federal agencies with programs and activities that have a measurable effect on public land management, outdoor recreation, and wildlife management including the Department of the Interior to facilitate the expansion and enhancement of hunting opportunities and the management of game species and their habitat.

STATE OF CALIFORNIA REGULATIONS AND GUIDANCE

This section lists the Regulations and guidelines that provide California State Parks with the authority and guidance to perform the agency mission of providing for the health, inspiration and education of the people of California by helping to preserve the state's extraordinary biological diversity, protecting its most valued natural and cultural resources, and creating opportunities for high-quality outdoor recreation.

EXHIBIT J

RESERVE FUND ANNUAL RECONCILIATION

- Line 1. Enter the amount from Schedule A, Line 1.
- Line 2. Enter amounts authorized in the contract or permit. In most circumstances, this will be the amount shown on Schedule I, Line 21.
- Line 3. Subtract Line 2 from Line 1 and enter the amount.
- Line 4. Show the percentage amount stated in the contract or contract amendment.
- Line 5. Multiply Line 3 by 4 and enter the amount.
- Line 6. Specify other calculations used in determining reserve fund fees.
- Line 7. Add Line 5 and Line 7 and enter the amount.
- Line 8. Insert the ending balance from Schedule N, Line 13, from the preceding year.
- Line 9. Show the actual deposits made in the current accounting year.
- Line 10. Show the actual expenditures made in the current accounting year.
- Line 11. Show the interest income reported for this account in the current accounting year.
- Line 12. Show the bank charges reported for this account in the current accounting year.
- Line 13. Add Lines 8, 9, and 11, subtract Lines 10 and 12, and enter the amount.
- Line 14. If Line 13 has a positive balance and these funds are already obligated to another project, list the projects along with the amount of money obligated to each project.
- Line 15. Show the amount of money that is not obligated for projects.
- Line 16. Add Lines 14 and 15 and enter the amount.
- Line 17. List the deposits made in the current accounting year that were accruals due in the past calendar or fiscal year.
- Line 18. List deposits made in the current accounting year that are for payments of current year special account liabilities.
- Line 19. Add Lines 17 and 18 and enter the amount.
- Line 20. List the accrued liability the Concession Contractor has on the current year deposits.
- Line 21. Add Lines 18 and 20 and enter the amount.

Concession Contractor

Year Ending:

Reserve Fund Annual Reconciliation

SCHEDULE N

- 1. Gross Revenues (Schedule A, Line 1)
- 2. Less-Adjustments to Gross Revenues
- 3. Gross Revenues Subject to Reserve Fund Calculation.....
- 4. Reserve Fund Percentage Rate %
- 5. Amount Due Reserve Fund
- Other Method (Specify Calculation)
- 6.
- 7. Accrued Amount Due to Reserve Fund for Current Year

Reserve Fund Combined Cash Reconciliation

- 8. Balance in Reserve Account from Prior Year
- 9. Plus: Current Year Deposits
- 10. Less: Current Year Expenditures (Must also complete Schedule O).....
- 11. Plus: Current Year Interest.....
- 12. Less: Current Year Bank Charges.....
- 13. Balance in Reserve Fund at Year End (Should equal Schedule B, Line16)

Allocation of Line 13

- 14. Encumbered Balances (List Projects and Amounts)
-
-
-
-
-
-
-
-
-
- 15. Unencumbered Balance.....
- 16. TOTAL - Add lines 14 and 15 (Should equal Line 13 above)

Deposit Reconciliation

- 17. Reserve Fund Deposits for Prior Year Liabilities.....
- 18. Deposits for Current Year Liabilities.....
- 19. TOTAL - Add Line 17 and Line 18 (Should equal Line 9 above)
- 20. Accrued Liability Not Yet Deposited for Current Year.....
- 21. TOTAL - Add Line 18 and Line 20 (Should equal Line 7 above)

RESERVE FUND EXPENDITURES

- Line 1. Column 1. List the project number of each reserve fund project.
- Column 2. List expenditures from reserve fund by locations or site in date order.
- Column 3. List amount spent on each specific project.
- Column 4. Show the percentage amount of completion for the overall project.

Note: The listing of expenditures is to be specific for each individual item. Expenditures are not to be lumped together. Terms that will not be acceptable will include Building Improvements and Leasehold Improvements.

| Zipcode | Bldg # | Latitude | Longitude | RealPropertyUn | SqFt InstallationName | Remarks |
|---------|--------|-------------|-------------|----------------|----------------------------------------------------|------------------------------------|
| 95630 | | 38.423218 | 121.101389 | new | 1644 STATE PARK HEADQUARTER OFFICE (public access) | |
| 95630 | | 38.70628383 | 121.1690098 | 0214001100B | 3136 STATE PARK DIST. HQ (FOLSOM) | |
| 95630 | | 38.70660021 | 121.1682994 | 0214001200B | 1840 STATE PARK DIST RANGERS OFFICE (FOLSOM) | |
| 95630 | | 38.70708472 | 121.168047 | 0214001300B | 2000 STATE PARK WAREHOUSE | |
| 95630 | | 38.706943 | 121.1672652 | 0214001400B | 2400 STATE PARK REC-AUTO SHOP (FOLSOM) | |
| 95630 | | 38.70614749 | 121.169111 | 0214002900B | 240 STATE PARK STORAGE BUILDING | |
| 95630 | | 38.68030 | 121.17600 | 0214000100S | 0 FOLSOM HISTORIC POWERHOUSE | |
| 95670 | | 38.63405579 | 121.2216991 | 0214001500B | 840 STATE PARK SIGN SHOP (NIMBUS RD) | No actual street address avail |
| 95670 | | 38.63405579 | 121.2216991 | 0214001600B | 2000 STATE PARK STORAGE BLDG (NIMBUS RD.) | No actual street address avail |
| 95670 | | 38.63405579 | 121.2216991 | 0214001700B | 700 STATE PARK STORAGE BLDG 2 (NIMBUS RD) | No actual street address avail |
| 95603 | | 38.90484574 | 121.0559512 | 0214010200B | 276 STATE PARK STORAGE (AUBURN) | |
| 95603 | | 38.90369848 | 121.0556481 | 0214010300B | 1190 STATE PARK DISTRICT HQ (AUBURN) | |
| 95603 | | 38.90458307 | 121.0560921 | 0214010400B | 2805 STATE PARK COMPLEX MAINTENANCE SHOP (AUBURN) | |
| 95603 | | 38.90448939 | 121.0558462 | 0214010500B | 1728 STATE PARK AND BOR STORAGE (AUBURN) | |
| 95603 | | 38.90420814 | 121.056217 | 0214010600B | 220 STATE PARK COMPLEX GAS STATION (AUBURN) | |
| 95603 | | 38.9048991 | 121.0560166 | 0214010700B | 1728 STATE PARK WAREHOUSE (AUBURN) | |
| 95603 | | 38.90493053 | 121.0558867 | 0214010800B | 1321 STATE PARK RANGER OFFICE (AUBURN) | |
| 95603 | | 38.90415898 | 121.0555065 | 0214010900B | 1486 STATE PARK TRAINING OFFICE (AUBURN) | No longer used as Residence |
| 95603 | | 38.90413501 | 121.0556361 | 0214010901B | 720 STATE PARK GARAGE STORAGE SOUTH (AUBURN) | No longer used as Residence garage |
| 95603 | | 38.90428877 | 121.0554552 | 0214010902B | 744 STATE PARK GARAGE STORAGE NORTH (AUBURN) | No longer used as Residence garage |

27018

| Zipcode | Bldg # | Latitude | Longitude | RealPropertyUn | SqFt InstallationName | Remarks |
|---------|--------|-----------|-----------|----------------|-------------------------------------------------|---------|
| 95630 | | 38.423028 | 121.10308 | | 2000 STATE PARKS CORP YARD - RANGER OFFICE | |
| 95630 | | 38.423040 | 121.1037 | | 1200 STATE PARKS CORP YARD - SUPV RANGER OFFICE | |
| 95630 | | 38.423178 | 121.10056 | | 4000 STATE PARKS CORP YARD - WAREHOUSE | |
| 95630 | | 38.423072 | 121.10433 | | 300 STATE PARKS CORP YARD - GARAGE | |

7500

EXHIBIT K

EXHIBIT L

FOLSOM/AUBURN PROJECT AREAS

TYPES OF AUTHORIZED ACTIVITY FEES

| <u>Activity</u> | <u>Purpose</u> |
|--------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <u>Use of Recreation Area</u> | Activities associated with the use of recreation facilities within a park or recreation area. |
| Entrance Fee | Admission to the park. |
| Parking Fee | Daily fee charged for use of a designated parking area while visiting a recreation area or facility. |
| Day Use | Daily Use for picnicking, hiking, biking and other similar activities |
| Camping | Occupancy of site intended for overnight visitation not to exceed 14 days. Sites may be developed, floating or primitive. |
| RV Hook-ups | Permits RV's to connect to utilities such as water, wastewater, and electricity |
| Boat Launch | Daily launching of boat, Jet ski, Kayak, or canoes. |
| <u>Miscellaneous</u> limited to: | Activities that support or impact recreation operations. May include but are not limited to: |
| Sanitary Dump Station | Use of RV Dump Station |
| Extra Vehicle Fees | Permits parking of additional vehicles |
| Shower Fees | Fee associated with the use of showers |
| Pet Fees | Permits visitors to bring pets other than service dogs to the recreation area |
| <u>Concessions</u> | Concessions are intended to provide a service or services to park visitors that go beyond those normally provided by a government agency. Concession opportunities can be either long term or seasonal in nature, dependent upon the visitor demand and other factors. Environmental review may be required prior to award of a concessions contract. Concession opportunities include, but are not limited to: |

| | |
|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Marina | Operation of facilities for boat mooring, store, boat rental, restaurant, fuel sales and other amenities deemed appropriate. |
| Guide/Outfitters | Includes fishing, white water rafting, kayak tours, instruction and other similar activities |
| Watercraft Rental | Either long term or seasonal, includes rental services for motorized and non-motorized boats. Contracts awarded usually for one or more years. |
| Repair Services | Concessions for operations of marine repair services. Though usually associated with marina operations, it may be separate concession activity. Repair services may include marine repairs of boats, motors and boat towing or other similar services. |
| Food Services | Either long term or seasonal, includes restaurant or food cart services. Foods may be either prepared or pre-packaged. Contracts awarded usually for one or more years. |
| Equestrian | Concession for equestrian-related activities including riding stables, equestrian events, horseback riding instruction and other similar activities. |
| <u>Special Use/Events</u> | Special Use or Special Events are usually short term uses or events of one to three days for a specific activity. Fees are normally tiered based upon size of event, such as numbers of people or boats involved. Special Use/Events may involve assistance from park staff for coordination and management of recreation facilities while the event occurs. Events may require environmental review and concurrence from Reclamation based upon the size or type of event planned. Events may or may not require short term exclusive use of Recreation Facilities. Special Events may include but are not limited to the following: |
| Wedding | Outdoor event which may involve exclusive use of Recreation Facilities or group sites. |
| Training | Private instruction or specialized training for Athletic or Competitive events |
| Fishing Tournaments | Scheduled fishing event involving either boating or shoreline fishing |
| Group Picnics | Company, family or organizational group picnics, Day Use with no overnight camping involved |
| Group Camping | Company, family, or organized groups staying one or more nights for the purpose of camping in the Recreation Area. |
| Photography/Filming | Photography or Filming of events and/or natural resources usually lasting from one to three days |

Parking/staging May be temporary parking for off-site events such as school activity or other similar events. Provide short term parking for large equipment or vehicles associated with an event.

Whitewater Rafting Short term event usually lasting one to three days and which may reoccur through the rafting season.

Equestrian Outdoor event including trail rides, horseback riding competitions and other similar activities. Events are usually one to three days in length. Events usually involve parking/staging impacts.

Athletic/Competitive Event Examples include Triathlons, Cross-country races and bicycle competitions. May include Start/Finish line celebration, often requires set-up and take down before or after normal working hours or spanning several days. These events may involve temporary road and recreation facility closures.

Land Use Authorization Special Use Events or other activities which do not fit within the above criteria and which use Reclamation lands or waters must comply with land use authorizations per 43 Code of Federal Regulations Part 429.

Applicant would be responsible for all costs incurred by the State and Reclamation including environmental review (if required), cost of staff coordination for event, cost for use of facilities and/or lands, costs associated with temporary alteration of public access (if required), and all entrance, parking, camping or other day use fees associated with the recreation facilities.

Auburn Project Lands Status - OTHER RIGHTS ISSUED ON FEE TITLE AND/OR EASEMENTS

Central Valley Project, American River Division, Auburn-Folsom South Unit

| ACQUIRED LANDS | | RIGHTS ISSUED BY UNITED STATES | | | | | COMMENTS |
|--------------------------------|-----------|--------------------------------|-------------------------------------|---------------------------|-----------------|------------|------------------------------------------------------------------------------------------------|
| Township, Range, Section | Index No. | Unit No. | To | Type | Contract Number | Date | |
| CVP-1269, T14N., R10E., | | | | | | | |
| no rights issued | | | | | | | |
| CVP-1270 T14N., R9E., | | | | | | | |
| Section 1 | 4 | AD-475 | County of Placer | Easement | 2-07-20-L2273 | 6/28/1982 | Construct Colfax-Iowa Hill Bridge |
| Section 1 | 4 | AD-475 | PG&E | Perpetual License | ? | 8/12/1982 | Powerline Xing - Iowa Hill Bridge |
| CVP-1320, T13N., R8E., | | | | | | | |
| No rights issued | | | | | | | |
| CVP-1321, T13N., R9E., | | | | | | | |
| Section 31 | 4 | AD-301A | Pacific Telephone | Grant of Easement | none | 8/22/1975 | Relocation of its facilities |
| Section 32 | 4 | AD-301A | County of Placer | Easement | | 10/7/1976 | R/W Auburn-Foresthill Rd (Tracts 5 & 6) |
| Section 32 | 5 | AD-334 | County of Placer | Easement | none | 10/7/1976 | R/W Auburn-Foresthill Rd (Tracts 6 & 7) |
| Section 32 | 8 | AD-336 | County of Placer | Easement | none | 10/7/1976 | R/W Auburn-Foresthill Rd (Tracts 6) |
| Section 14 | 67 | AD-605 | County of Placer | Easement | 6-07-20-L6848 | 9/5/1997 | Construct Auburn-Foresthill Road |
| Section 3 | 12 | AD-677 | Bradley Reeves - Sierra Energy Co. | License - 5 year | 05-LC-20-8875 | 5/23/2006 | Hydro Facility, vicinity of Dardanells Crk |
| CVP-1322, T11N., R13N., | | | | | | | |
| Section 3 | 12 | AD-677 | Kenneth Wilson - Eagle Hydro, Inc | License - 5-year | 10-LC-20-0298 | 11/8/2010 | Access, O&M Hydro Facility |
| CVP-1341, T12E., R9E., | | | | | | | |
| Section 18 | 3 | AD-44 | Pacific Bell Telephone | Grant of Easement | 01-LC-20-7913 | 11/11/2003 | 20' Telephone Line Corridor (Tract 1) |
| Section 18 and 19 | 6 | AD-128 | PG&E | Grant of Easement | 175r-2602 | 2/8/1951 | R/W for relocation of powerlines |
| Section 18 | 7 | AD-128A | Northside Fire Protection District | Lease | 0-07-20-L1517 | 10/1/1980 | Fire Station and related facilities |
| Section 18 | 7 | AD-128A | Pacific Bell Telephone | Grant of Easement | 01-LC-20-7913 | 11/14/2003 | 20' Telephone Line Corridor |
| Section 18 | 8 | AD-126-2 | State of California | Grant of Easement | 14-06-200-7901A | 4/22/1975 | Improve segment of Hwy 49, Cool |
| Section 18 | 8 | AD-126-2 | Pacific Bell Telephone | Grant of Easement | 01-LC-20-7913 | 11/14/2003 | 20' Telephone Line Corridor |
| Section 6 | 10 | AD-300 | County of Placer | Quit/Claim | | 10/7/1976 | R/W for Auburn-Foresthill Road (tracts 4 & 5) |
| Section 6 | 10 | AD-300 | County of Placer | Easement (drainage) | 6-07-20-L6658 | 4/9/1997 | Repair of Old Foresthill Road |
| Section 19 | 15 | AD-126-3 | Northside Elementary School | Subject to* Grant Deed | 14-06-859-185 | 8/4/1970 | Existing r/w & easement to use & O&M sump pump & waterline from Georgetown PUD ditch to school |
| Section 4 | 18 | AD-548x | Trans Land Company | Reservation - Grant Deed | 14-06-859-231 | 12/21/1970 | Construct, O&M, use a roadway |
| Section 4 | 18 | AD-548x | Dorothy Kalen | Contract & Grant of Easem | 9-07-20-L1348 | 1/28/1980 | Construct, O&M, use access road |
| Section 6 | 20 | AD-300b | Pacific Bell Telephone | Grant of Easement | ? | 8/22/1975 | Underground telephone cables |
| Section 19 | 22 | AD-126-3x | Black Oak Mine Unified School Dist. | License | 11-LC-20-0015 | 2/7/2011 | Access, O&M of bus turnaround & playground |
| Section 30 | 23 | AD-17 | Grantor | Reservation - Grant Deed | 14-06-859-278 | 4/28/1972 | O&M and use existing well & wtr pipeline (expire 1/1/2002) |
| Section 30 | 25 | AD-134 | Grantor | Reservation - Grant Deed | 14-06-859-293 | 5/8/1972 | O&M and use existing well & wtr pipeline |
| Section 18 | 26 | AD-126b | State of California | Grant of Easement | 14-06-200-7901 | 4/22/1975 | Improve segment of Hwy 49, Cool |
| Section 6 & 7 | 40 | AD-330c | Cool Cave Quarry, LLC | Lease | 05-20-LC-8368 | 6/10/2005 | Pub. Safety, Land Rec., & Mineral Lease |

EXHIBIT M

| | | | | | | | |
|-------------------------------|-----|--------------|-----------------------------------|------------------------|-----------------|------------|---------------------------------------------------|
| CVP-1342, T12N., R8E., | | | | | | | |
| Section 1 | 20 | AD-301A | Pacific Telephone & Telegraph Co. | Easement and QuitClaim | ? | 8/22/1975 | R/W Relocation of communication facilities |
| Section 1 | 20 | AD-301A | County of Placer | Easement and QuitClaim | ? | 11/16/1976 | R/W Auburn-Foresthill Road (tract 2&3) |
| Section 1 | 20 | AD-301A | Pac Bell Telephone Co. | Grant of Easement | 01-LC-20-7913 | 4/5/2004 | 20' wide r/w |
| Section 2 | 22 | AD-310 | Pacific Telephone & Telegraph Co. | Easement and QuitClaim | 175r-2570 | 8/22/1975 | R/W Relocation of communication facilities |
| Section 2 | 22 | AD-310 | County of Placer | Easement and QuitClaim | ? | 11/16/1976 | R/W Auburn-Foresthill Road (tract 2) |
| Section 2 | 23 | AD-311 | Pacific Telephone & Telegraph Co. | Easement and QuitClaim | 175r-2570 | 8/22/1975 | R/W Relocation of communication facilities |
| Section 2 | 23 | AD-311 | Ferguson, Francis F. (grantee) | Easement (perpetual) | ? | 2/14/1972 | Road easement and r/w |
| Section 11 & 12 | 25 | AD-120 | Pac Bell Telephone Co. | Grant of Easement | 01-LC-20-7913 | 4/5/2004 | 20' wide r/w (nw, e1/2 Sec. 12)(NENE, Sec1) |
| Section 13 & 14 | 49 | AD-42a & 42b | Pac Bell Telephone Co. | Grant of Easement | 01-LC-20-7913 | 4/5/2004 | 20' telephone line corridor for fiber optic cable |
| Section 14, 15, 22, & 23 | 51 | AD-30 | PG&E | Grant of Easement | | 2/20/1989 | Telephone purposes & elect. T.L. & poles |
| Section 22 | 72 | AD-39 | Comstock Investment Company | Grant of Easement | no number | 9/30/1971 | R/W for a road |
| Section 2 | 94 | AFRFH-2 | Placer County Water Agency | Cont. & Grant Easmt. | 14-06-200-7198A | 3/30/1973 | |
| Section 2 | 101 | AFRFH-12 | Richardson, Ernest | Grant of Easement | no number | 2/14/1972 | Perpetual road easement and r/w |
| Section 15 | 102 | AFRPA-1 | PCWA | Easement | 99-LC-20-7259 | 12/21/2000 | 10'wide esmt. For 20" waterline |
| Section 26 | 143 | AD-10 | Garland, Gordon H. (Grantor) | Grazing Lease | no number | ? | Grazing lease issued 6-6-84 |
| Section 2 | 159 | AD-302x | County of Placer | Easement | no number | 10/7/1976 | R/W for Auburn-Foresthill Road (Tract 2) |
| Sections 1, 11, 12, 14 | 160 | AD-330 | PG&E | License | no number | 8/12/1980 | Constr. & O&M Aircraft Warning Markers |
| Sections 1, 11, 12, 14 | 160 | AD-330 | Pac Bell Telephone Co. | Easement | 01-LC-20-7913 | 4/5/2004 | 20'wide telephone corridor |
| Section 12 | 180 | AD-107 | Pac Bell Telephone Co. | Easement | 01-LC-20-7913 | 4/5/2004 | 20'wide telephone corridor |
| Section 15 | 183 | AD-50b | City of Auburn | Permit | 1-07-20-L1713 | 9/25/1981 | Op. trans. Tower. Expired 9-25-91 |

Folsom and Lake Natoma Project Lands Status - OTHER RIGHTS ISSUED ON FEE TITLE AND/OR EASEMENTS

Central Valley Project, American River Division

| ACQUIRED LANDS | | RIGHTS ISSUED by UNITED STATES | | | | | COMMENTS |
|-------------------------------|-----------|--------------------------------|-----------------------------------------------------------------------------------------|------------------------|-------------------|------------|-----------------------------------------------------------------------------------------------|
| Township, Range, Section | Index No. | Unit No. | To | Type | Contract Number | Date | |
| CVP-1342, T12N., R8E., | | | | | | | |
| Section 34 | 4 | 283 | Pacific Gas & Electric Co. | Right of Entry | no number | 8/26/1980 | Survey, drill, archeological survey in connection with Newcastle Powerhouse (expired 8/26/81) |
| CVP-1389, T11N., R7E., | | | | | | | |
| Section 36 | 1 | 53 | Pacific Gas & Electric Co. | Easement | DA-04-167-eng-440 | 11/23/1954 | 50' R/W electric transmission line |
| Section 36 | 1 | 53 | San Juan Suburban Water District | Easement | 3-07-20-L2632 | 7/14/1983 | Pipeline & appurtenance |
| CVP-1390, T11N., R8E., | | | | | | | |
| Section 4 | 4 | 282 | Pacific Gas & Electric Co. | Easement | DA-04-167-eng-539 | No date | Transmission Line |
| Section 4 | 4 | 282 | Pacific Gas & Electric Co. | Easement & Agreement | 5-07-20-X0277 | 7/30/1985 | Construct, O&M Newcastle Powerhouse (expires 4-30-2013) |
| Section 8, 9, 16 | 19 | 90 | Pacific Gas & Electric Co. | Flowage Easement | | 8/23/1954 | Flowage easement (excluded from Estate & Interest) T-90 |
| Section 16 | 39 | 84 | Norwin E. Threlkel (Grantor) | Reservation - Deed | | 4/9/1953 | Taking water from spring & install, O&M pump/pipeline |
| Section 26 | 57 | 191 | County of El Dorado | Easement | DA-04-167-eng-532 | 6/25/1954 | R/W for County Road |
| Section 29, 30, 31 | 83 | 62 | Clyde W. Rust & Emma F. Dixon | Conveyance - Deed | | 7/23/1953 | R/W for 20' in width |
| Section 32 | 69 | 42-2 | Edna F. Dixon, etal (Grantor) | Revestment Reservation | | 9/26/1955 | Access Road |
| Section 25 | 72 | 192-1 | Myrtle B. Applegate (Grantor) | Revestment Reservation | | 2/13/1956 | Access Rd. R/W 20' wide (portion Tract 192-1) |
| Section 25 | 72 | 192-1 | County of El Dorado | Easement | | 6/25/1954 | R/W for County Road (nw portion of property) |
| Section 18 | 93 | 77-E1 | Ehrman, Coffing, Stoltz, Shepard, Pipher-Ostrom, Pipher-Cottle, heirs, successors, etc. | Easement | No. 112-82 | 8/12/1958 | R/W for a Road or Street |

| | | | | | | | |
|--------------------------|------|-------|----------------------------------|---------------------------|-------------------|------------|-------------------------------------------------------------------------------------------------------------|
| Section 18 | 93 | 77-E1 | Santa Ana Valley Irrigation Co. | Permit | 0-07-20-L1574 | 10/3/1980 | Improve, Lomida Lane & Use as Access Rd to Subdivision |
| Section 18 | 93 | 77-E1 | Pacific Gas & Electric Co. | License | 9-07-20-L1220 | 10/12/1979 | Construct, O&M a 12 kV poleline (expires 50 years) |
| CVP-1391, T11N., R9E., | | | | | | | |
| No other rights issued | | | | | | | |
| CVP-1417, T10N., R8E., | | | | | | | |
| Section 30 | 29 | 128 | Pacific Gas & Electric Co. | License | | 2/16/1968 | R/W 50' for 115 kV T.L. |
| Section 20, 21, & 28, 29 | 34 | 148 | County of Sacramento | Easement | DA-04-167-eng-301 | 1953/1954 | R/W 80' Wide for County Highway |
| Section 20, 21, & 28, 29 | 36 | 145 | County of Sacramento | Easement | DA-04-167-eng-301 | 1953/1954 | R/W 80' Wide for County Highway |
| Section 21, & 28 | 37 | 141 | El Dorado County | Easement | | 1980/1982 | R/W for County Road |
| Section 16 & 21 | 45 | 160 | Pacific Gas & Electric Co. | License | 14-06-200-5368A | 7/8/1971 | R/W for 12kV T.L. (50 Year Term) |
| Section 16 & 21 | 45 | 160 | Pacific Telephone & Telegraph | Permit | | 2/19/1975 | |
| Section 16 & 21 | 45 | 160 | Pacific Telephone & Telegraph | License | 14-06-200-7952A | 3/7/1975 | 10'W R/W for Underground Aerial telephone cable (50 yr) |
| Section 21 & 22 | 47 | 161 | El Dorado County | Easement | | 9/12/1980 | R/W for County Road No. P2 |
| Section 21 & 22 | 47 | 161 | Pacific Gas & Electric Co. | License | 14-06-200-5368A | 7/8/1971 | R/W for 12 kV T.L. (50 Year Term) |
| Section 21 & 22 | 47 | 161 | Pacific Telephone & Telegraph | License | 14-06-200-7925A | 3/7/1975 | 10'W R/W for Underground Aerial telephone cable (50 yr) |
| Section 21 & 22 | 47 | 161 | El Dorado County | Easement | 7-07-20-L6760 | 2/17/1998 | Additional R/W for Green Valley Road |
| Section 21 & 22 | 47 | 161 | El Dorado County | Easement | 04-LC-20-8284 | 12/14/2004 | R/W County Road |
| Section 15 | 48 | 162 | Pacific Gas & Electric Co. | License | 14-06-200-5368A | 7/8/1971 | R/W for 12 kV T.L. (50 Year Term) |
| Section 15 | 48 | 162 | Pacific Telephone & Telegraph | License | 14-06-200-7925A | 3/7/1975 | 10'W R/W for Underground Aerial telephone cable (50 yr) |
| Section 2 | 65 | 178-1 | Francis J. Power (Grantor) | Reservation/Easement | | 1/13/1961 | R/W for Access Road 20' width |
| Section 1 | 70 | 181 | James A. Haddock (Grantor) | Easement | Final Judgement | 3/12/1956 | Construct, O&M water storage tank & water pipeline |
| Section 1 | 70 | 181 | County of El Dorado | Easement | DA-04-167-eng-532 | 8/25/1954 | R/W for County Road |
| Section 2 | 74 | 208-1 | Francis J. Power (Grantor) | Reservation/Easement | | 1/13/1961 | R/W for access road 20' Wide |
| Section 11 | 79 | 291 | Robert W. Taylor (Grantor) | Reservation/Final Judge. | | 6/11/1955 | R/W for existing spring above take line (466') & right to take water & install steel tank, pump & pipeline |
| Section 11 | 80 | 177 | Donald A. McKinnon (Grantor) | Reservation | | 12/14/1954 | Ingress/Egress frm. Cnty Rd. to Grantor's remaining land |
| Section 11 | 80 | 177 | County of El Dorado | Easement | 14-06-200-8152A | 7/15/1975 | Construct, O&M County Road No. 39 |
| Section 14 | 81 | 216 | County of El Dorado | Easement | 14-06-200-8152A | 7/15/1975 | Construct, O&M County Road No. 39 |
| Section 11 | 82 | 248 | Delmer Hide Rosier (Grantor) | Reservation - Deed | | 8/7/1953 | Electric powerline r/w & 40' r/w for a road |
| Section 11 | 82 | 248 | County of El Dorado | Easement | 14-06-200-8152A | 7/15/1975 | Construct, O&M County Road No. 39 |
| Section 14 | 83 | 169 | Delmer H. DeRosier (frm Grantor) | "Subject to" Grant Deed | | 5/21/1954 | Road easement |
| Section 14 | 83 | 169 | County of El Dorado | Easement | 14-06-200-8152A | 7/15/1975 | Construct, O&M County Road No. 39 |
| Section 30 | 95 | 205 | Pacific Gas & Electric Co. | License | | 2/18/1968 | R/W 50' for 115 kV T.L. |
| CVP-1418, T10N., R7E., | | | | | | | |
| Section 14 | none | 244-2 | San Juan Suburban Water District | Easement Deed | DA-04-167-eng-182 | 8/26/1955 | Relocated Rose Springs Ditch |
| Section 24 & 25 | 13 | 1 | Pacific Gas & Electric Company | Easement | None | 2/18/1956 | Install electric transmission line 50" wide |
| Section 24 & 25 | 13 | 1 | County of Sacramento | Easement | None | 5/4/1970 | R/W Greenback Lane & Rainbow Bridge |
| Section 24 & 25 | 13 | 1 | City of Folsom | Easement & Consent | 14-06-200-7301A | 6/5/1975 | Folsom Interceptor Sewer Project (50 year term) |
| Section 24 & 25 | 13 | 1 | Pacific Gas & Electric Company | Perpetual License | none | 4/22/1958 | Electric powerline - 220 kV |
| Section 24 & 25 | 13 | 1 | State of California | Easement | None | 10/10/1961 | Such purpose, reasonably necessary for the operation of Folsom Prison |
| Section 24 & 25 | 13 | 1 | State of California | "Subject to" Final Judgmt | none | 5/12/1958 | Perpetual easement to discharge storm waters & sewage effluent from Folsom State Prison, etc. |
| Section 24 & 25 | 13 | 1 | WAPA | Memo of Agreement | none | 2/15/1980 | Easement for T.L. & Ingress/Egress for O&M |
| Section 26 | 15 | 3 | Pacific Gas & Electric Company | Easement | none | 2/16/1956 | Install electric transmission line |
| Section 35 | 16 | 4 | North Fork Ditch Co. | Easement | None | 6/1/1954 | To convey in upon, over & across said land overflow of drainage waters from Hinkle Reservoir adjacent areas |
| Section 35 | 16 | 4 | County of Sacramento | Easement | None | 5/4/1970 | R/W Greenback Lane & Rainbow Bridge |

