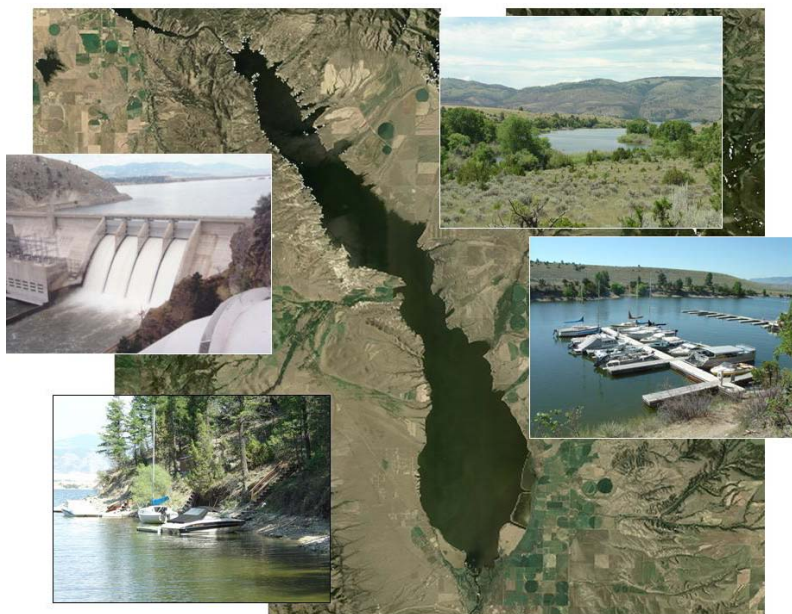


RECLAMATION

Managing Water in the West

Canyon Ferry Reservoir Shoreline Management Plan



**U.S. Department of the Interior
Bureau of Reclamation**

June 2012

Mission Statements

The U.S. Department of the Interior protects America's natural resources and heritage, honors our cultures and tribal communities, and supplies the energy to power our future.

The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

Canyon Ferry Reservoir Shoreline Management Plan



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PREFACE

The Canyon Ferry Shoreline Management Plan (Shoreline Plan) was developed in partnership with, and through input from, many individuals that attended periodic public working group meetings held from 2003–2008. The purpose of the Shoreline Plan is to provide balanced, practical, and relevant guidance for addressing public use, adjacent landowner concerns, and resource protection on the federally owned shoreline of Canyon Ferry Reservoir. It is intended to be adaptive to changing public issues, needs, and perspectives as well as to changes in Bureau of Reclamation policy and regulation. As such, the Shoreline Plan is not intended to provide rigid direction. Many of the elements contained in the Shoreline Plan were outlined as actions in the preferred alternative of the 2003 Resource Management Plan/Environmental Assessment.

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INTRODUCTION

This Shoreline Management Plan (Shoreline Plan) was developed to provide specific information about use and management of Bureau of Reclamation (Reclamation)-administered Federal land located at Canyon Ferry Reservoir below elevation 3,808 feet (i.e., the elevation of the flowage easement held by Reclamation around Canyon Ferry Reservoir). The Shoreline Plan builds upon resource management direction provided in the Canyon Ferry Reservoir Resource Management Plan/Environmental Assessment (U.S. Department of the Interior [USDI]-Bureau of Reclamation 2003). The Resource Management Plan and other documents cited in the text are available online at <http://www.usbr.gov/gp/mtao/canyonferry/index.cfm> or at the Canyon Ferry Field Office. Please see the “Literature Cited and Suggested Information Sources” section for more information. References to the Code of Federal Regulations (CFR) may be found at <http://www.gpoaccess.gov/>.

Canyon Ferry Reservoir was created by construction of a dam on the Missouri River for power generation, irrigation, municipal and industrial water, flood control, and recreation. The reservoir is a unit of the Pick-Sloan Missouri Basin Program that was authorized by the Flood Control Act of 1944 (Public Law 534, as amended). The reservoir covers roughly 34,000 surface acres at full pool with roughly 76 miles of shoreline. Both the reservoir surface area and the shoreline length change seasonally with varying reservoir elevations.

Surrounding mountains, forest, and grassland combine with broad, picturesque reservoir views to make the vicinity of Canyon Ferry highly valued for public recreation and home-site development. Recreation pursuits include fishing, boating,

Canyon Ferry Reservoir
Shoreline Management Plan

camping, picnicking, swimming, hunting, and wildlife viewing. These public recreational pursuits are very popular, and participation is growing.

Legislation unique to Canyon Ferry Reservoir made private residential ownership adjacent to shoreline locations possible. The Canyon Ferry Reservoir, Montana, Act (hereafter, The Canyon Ferry Act, Public Law 105-277, Title X, Appendix G) transferred 265 former cabin site leases to private ownership but maintained public ownership of adjacent shoreline. Administration of public shoreline near private cabin sites presents unique situations that are addressed in this Shoreline Plan.

For questions or suggestions about this Canyon Ferry Shoreline Management Plan, or for additional information, contact:

U.S. Department of the Interior
Bureau of Reclamation,
Canyon Ferry Field Office
7700 Canyon Ferry Road,
Helena, MT 59602
(406) 475-3310

DEFINITIONS

BOAT RAIL SYSTEM: A facility consisting of tracks extending into the lake that is designed to facilitate launching or retrieving boats.

BOAT RAMP: A facility consisting of a pad, driveway, or roadway extending into the lake that is designed to facilitate launching or retrieving boats.

CANYON FERRY ACT: Title X, Public Law 105-277, Canyon Ferry Reservoir, Montana, Act, October 1998, as amended, transferred 265 former cabin site leases to private ownership but maintained public ownership of adjacent shoreline.

CFR: Code of Federal Regulations available at:
<http://www.gpoaccess.gov/>.

DOCK: A platform, either nonfloating or floating that extends into, over, or across the water to provide boat moorage, access to a moorage area, swimming facilities, or other related activities.

DOCK LENGTH: Dock length is the length of that portion of the dock that extends into the lake at any time over water and is measured from the current water level to the farthest water ward end of the dock.

DOCK WING: That portion of a dock and deck that lies generally parallel to the shoreline with its main function as a wave break or to provide a boat slip or sheltered area as opposed to primarily providing access out to deep water.

EXCLUSIVE USE: Private exclusive recreational or residential use means any use that involves structures or other improvements on Reclamation-administered Federal land and

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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 43 CFR Part 21); 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 43 CFR Part 423) that attempt to exclude general public access.
5. Access routes to private land, facilities, or structures when other reasonable alternative means of access are available or can be obtained.

LIVE STAKE: Live branch cuttings that are tamped or inserted into the earth to take root and produce vegetative growth.

ORDINARY HIGH WATER (OHW): The Canyon Ferry Reservoir elevation of 3,798.5 feet that has been determined by the U.S. Army Corps of Engineers to be the ordinary high water line.

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

PERMIT: A document issued by a regulating agency verifying compliance with the requirements and provisions of State or Federal regulations.

RECONSTRUCTION: To rebuild an existing facility such that, at the time of reconstruction, in excess of 50 percent (%) of the value or size of the facility, excluding foundation, is replaced.

RETAINING WALL: Any structure built essentially parallel and contiguous to the shoreline of a lake that is designed to protect the land mass inland from the structure from erosion.

REVETMENT: A facing to sustain an embankment.

RIPRAP: A layer, facing, or protective mound of stones, rock, or other materials randomly placed to prevent erosion, scour, or sloughing of a structure or embankment.

SHORELINE AREA: Reclamation-administered Federal land located at Canyon Ferry Reservoir below elevation 3,808 feet.

PUBLIC INVOLVEMENT

The Canyon Ferry Shoreline Management Plan was developed with public input obtained during public working group meetings held from May 2003–April 2007. During this period, drafts of the document were posted to the Canyon Ferry home page to facilitate public review. The Shoreline Plan also was made available to the U.S. Army Corps of Engineers, Montana Fish, Wildlife & Parks (MFWP), Lewis & Clark Conservation District, and Montana Department of Environmental Quality.

The draft shoreline management plan was posted to Reclamation’s Web site on June 2, 2008. A public meeting to obtain input on the draft Canyon Ferry Shoreline Management Plan was held on June 24, 2008, at the Montana Association of Counties Building. The comment period was open from June 2, 2008–July 24, 2008. Comments were received, and the plan was revised per the comments.

Due to changes in the CFR, on December 5, 2008, updates were required within the document. Appropriate changes were made to the document as needed, and then a second public comment period occurred from August 18 to September 20, 2010. Comments were reviewed, compiled, and changes incorporated into the document as needed.

SHORELINE ACCESS

This section provides general descriptions of the various public uses supported by Canyon Ferry Reservoir along with the authorizations by which Reclamation administers those uses.

Access to and along the shoreline surrounding Canyon Ferry Reservoir is very important to both the general public and to Canyon Ferry cabin site owners. Roughly 1,000 acres of land in proximity to the reservoir shoreline are devoted to developed recreational facilities. An additional 8,219 acres of land are undeveloped and open for dispersed nonmotorized recreation.

On a smaller portion of the shoreline (141 acres) on the north end of the reservoir, the Canyon Ferry Act legislated a relatively unique condition whereby former cabin site lessees purchased the land for fair market value. The Canyon Ferry Act applied a “restrictive use covenant” requiring that public access to and along the shoreline of the reservoir remains unobstructed and maintained. The Act also allowed Canyon Ferry cabin site owners access to one boat dock per cabin site, as well as to other improvements (e.g., boathouses, ramps, retaining walls) that were in place at the time the Act was enacted (i.e., October 1998).

In addition to the specific provisions contained in the Canyon Ferry Act, Reclamation must administer Federal land under its jurisdiction by applying established law, regulations, and policy (e.g., 43 CFR parts 24, 420, 423, and 429). The use of Reclamation lands must be managed in the public interest and be compatible with authorized project purposes, the environment, natural and cultural resources, and public health.

Shoreline Access for Public Recreation

Public recreational use of Canyon Ferry Reservoir shoreline is increasing in popularity. Appropriate recreation opportunities, facilities, and services will be provided on Reclamation land and reservoirs. Reclamation accommodates the demand for public recreation at Canyon Ferry Reservoir by developing and maintaining campgrounds (13), day-use facilities (9), boat ramps (16), group use shelters, and public restrooms. The Silos campground, including Broadwater Bay, is located on Reclamation land but is managed by Broadwater County. Three concession marina operations exist through contract arrangements at Canyon Ferry. They offer an added variety of recreational services to the public. Public access to significant wildlife resources is provided on the 5,000-acre Canyon Ferry Wildlife Management Area, which is managed by the MFWP through a cooperative agreement with Reclamation. Please refer to the Canyon Ferry Reservoir Resource Management Plan/Environmental Assessment (USDI-Bureau of Reclamation 2003) for more detailed information on recreational facilities and partnership agreements that are in place.

The Certificate of Survey added public access sites to northern edge portion of the lake between cabin sites. A copy of the Certificate of Survey can be obtained at the Lewis and Clark County Clerk and Records Office or at the Bureau of Reclamation Canyon Ferry Division Office.

Universal Accessibility to the Shoreline

In 2000, the Reclamation set into place a 10-year plan to bring all its recreation facilities into compliance with applicable accessibility standards. The Canyon Ferry Field Office and Montana Area Office have been actively working to ensure this goal is met. To date, work has been completed at 21 recreation sites at Canyon Ferry Reservoir bringing those sites into

compliance with the accessibility standards. The improvements include accessible restrooms, parking, campsites, fire rings, picnic tables, shelters, and walkways.

Currently, there are no accessibility standards in place that can be applied to shoreline access. The United States Access Board is working on accessibility guidelines for beach access at reservoirs. Further information on the development of shoreline accessibility guideline is available at <http://www.access-board.gov/outdoor/>. Until those guidelines are in place and adopted as standards, the appropriate level of shoreline accessibility cannot be determined.

Reclamation is fully committed to providing accessible facilities to the public and will continue to actively work toward that goal. Once standards are in place for shoreline access, Reclamation will complete an evaluation of its reservoirs and make a determination of which areas will need work to bring them up to the standards.

Personal Property on the Shoreline

Leaving personal property unattended for extended periods gives the impression of exclusive use of public land. Consequently, it is important that personal items are removed at the time that users vacate the shoreline. By Federal statute, personal property is presumed to be abandoned, and may be impounded, if left unattended on Federal land for a period exceeding 24 hours (43 CFR part 423.23). This regulation applies to all Reclamation-administered Federal land, including shoreline located immediately adjacent to privately owned Canyon Ferry cabin sites. Right-of-use authorization may be requested from Reclamation to accommodate limited special uses on federally owned shoreline. Special provisions apply to docks, boathouses,

ramps, retaining walls, and other improvements that are authorized by the Canyon Ferry Act.

Beach Camping and Campfires

Most of the Canyon Ferry Reservoir shoreline is undeveloped and access by land routes is often limited. Consequently, dispersed recreational use by the boating public occurs in these areas. Undeveloped shoreline areas accessed by boaters will remain open to camping and campfires. Reclamation encourages public use that leaves undeveloped areas in the condition that they were found. Overnight camping on the shoreline within one mile of an established camping area is discouraged. Public use of remote sites will be monitored to determine the need for sanitation facilities and for the need for closure due to natural resource damage. Specific information about beach camping can be obtained by contacting the Canyon Ferry Field Office.

Hunting, Fishing, and Trapping

According to Federal regulations (43 CFR 24 and 423), hunting, fishing, and trapping are allowed on most Reclamation land according to regulations and seasons established by the MFWP. However, discharging weapons and firearms may be restricted in special use areas such as developed camping and picnic areas (43 CFR 423.2). Special hunting regulations also may apply to the Canyon Ferry Wildlife Management Area. Hunters are urged to hunt responsibly by maintaining safe distances from developed public access sites, residences, livestock, and other structures. Appendix G further defines acceptable public conduct in relationship to hunting, fishing, and trapping on Reclamation lands.

For more information contact Reclamation or the MFWP at:

Montana Fish, Wildlife, & Parks
1420 East Sixth Avenue
P.O. Box 200701
Helena, Montana 59620-0701
<http://fwp.mt.gov/default.html>

Hiking

There are no developed nonmotorized trails on Reclamation-administered land surrounding Canyon Ferry Reservoir. However, much of the shoreline is easily accessed on foot, and this type of use is allowed by Reclamation. Hiking also is allowed anywhere in the Canyon Ferry Wildlife Management Area, including on maintenance roads that are closed to public motorized use.

Prospecting

Prospecting or other mineral extraction is not allowed on Reclamation lands as defined by 43 CFR 423.29. Exemptions to this rule may be permitted through a right-of-use authorization from Reclamation. Please see the “Authorization and Permitting” section for more information.

Off Road Vehicle Use

While public motorized access is allowed on main, established roads, off-road access by motorized vehicles is prohibited unless specifically opened for that purpose (43 CFR Part 420). Federal regulations require a public review process for special uses such as ORV use (43 CFR Part 423.61). Currently, no sites or shoreline areas at Canyon Ferry have been specifically opened to ORV use. Nonmotorized overland access is allowed in

undeveloped areas to provide recreational opportunity, reduce user conflicts, and maintain the long-term integrity of natural resources. Opportunities to restore sites impacted by unauthorized motorized access on Federal land will be actively pursued (USDI-Bureau of Reclamation 2003, page VI-15).

Reclamation Policy for Private Exclusive Recreational or Residential Use of Nonconcession Areas

Reclamation policy prohibits exclusive uses unless directed otherwise in the Canyon Ferry Act or 43 CFR 429.31 and 43 CFR 429.32. Private exclusive recreational or residential use means any use that involves structures or other improvements on Reclamation-administered Federal land and that is used for recreational or residential purposes to the exclusion of public uses and is not associated with the official management of a Reclamation project. Exclusive use includes, but is not limited to, boat docks, boat ramps, cabins, trailers, manufactured or mobile homes, structures, roads, or other amenities determined by Reclamation to be exclusive use.

Enforcement

To protect public safety and security within Reclamation projects and on Reclamation facilities, lands, and water bodies, public conduct regulations were codified on December 11, 2008 (Appendix F, 43 CFR 423). The public conduct regulations cover a wide array of activities from abandonment of personal property to camping, hunting, and littering. The regulations also describe violations and potential sanctions such as fines.

DESIGN AND CONSTRUCTION GUIDELINES FOR SHORELINE FACILITIES

The long-term goal of these guidelines is to have all nonmarina docks and other permissible shoreline facilities designed and constructed to ensure that the intrinsic values of Canyon Ferry Reservoir are protected equally and fairly for everyone who uses the reservoir. Proposals by Canyon Ferry cabin site owners for reconstructing facilities that were authorized by the Canyon Ferry Act, such as stairs, landings, boat rails systems, and shoreline stabilization measures, must be reviewed and approved by Reclamation prior to construction. Docks and shoreline facilities located in marina areas are regulated by separate concession contracts.

Prior to making improvements, new installation, or alteration of existing facilities that occupy federally owned shoreline, Canyon Ferry cabin site owners also may be required to obtain permits from the U.S. Army Corps of Engineers and Lewis & Clark County Conservation District. Location and construction methods for those facilities will determine the necessity and type of permits required. Permits received from other entities do not constitute authorization to construct improvements on Reclamation land. The flow chart provided in appendix C illustrates the process by which Reclamation will evaluate dock proposals.

Call the Canyon Ferry Office prior to any construction, repair and maintenance on any shoreline facilities—a courtesy call for those that have legislated access. This will ensure that all applicable laws, regulations, and guidelines are being followed prior to work beginning.

Canyon Ferry cabin site owners are requested to design and construct docks and other shoreline facilities using the following guidelines.

Boat Dock Guidelines

Private boat docks other than those allowed by the Canyon Ferry Act constitute new private exclusive use that is not allowed. Permits from the U.S. Army Corps of Engineers and Lewis & Clark Conservation District must be secured prior to any work beginning. Failure to obtain these permits may mean that the structure will have to be removed at the dock owner's expense. Reclamation notification is required for new boat docks or for some improvements to existing docks (please refer to the Boat Dock Request Flow Chart in appendix C).

1. Number of Docks Allowed
 - a. Noncommercial situations
 - i. House or cabin on land adjoining the reservoir—maximum of one dock for each cabin site as authorized by the Canyon Ferry Act.
 - ii. Please see the “Authorization and Permitting” section or appendix D for more information about permitting by Reclamation, the U.S. Army Corps of Engineers, and/or the Lewis & Clark County Conservation District.
 - b. Community docks, a single dock having one or more slips that serves several houses or cabin owners, are encouraged and recommended.
 - c. All docks should be identified with a cabin number or owner's name placed on the dock in plain view.
 - d. Commercial operations may need many docks for their business. Commercial operations are guided by Reclamation and U.S. Army Corps of Engineers dock standards.

2. Dock Locations

- a. When possible, boat docks should be located in the reservoir between the boundary markers of the dock owner's cabin site.
- b. When it is not possible or practical to place the boat dock between the boundary markers of the owner's lot, landowners are encouraged to reach agreements for dock placement that are suitable to all affected property owner(s). Written documentation of these agreements is strongly encouraged to prevent disputes in the event that the affected properties change owners. It is Reclamation's position that, if affected land owner(s) written permission is not obtained, the landowner(s) must locate their dock between their lot corners.
- c. Landowners have priority to place their dock between their property boundary markers.

3. Boat Dock Design

- a. Standard boat docks
 - i. All new docks and replacement docks should be removable.
 - ii. Docks should be designed to allow water to flow under and around them. Solid docks that do not allow water to flow under or around them should not be used.

4. Boat Lifts

- a. No more than one boat lift is allowed per property.
- b. No boat lift shall impede access to other docks or property.
- c. No boat lift shall be constructed with solid side walls.
- d. No extension or other structure or object may be attached to, or upon, a boat lift; however, a boat lift may be attached to an authorized dock.

5. Jet Skis

- a. Dock attachments for jet skis must be attached to the one dock allowed by the Canyon Ferry Act and kept to within dock dimensions as described in dock sizes below.

6. Dock Sizes

- a. Docks should be placed so that they do not block or hinder boating access to other docks or any part of the reservoir.
- b. To minimize visual and other impacts to shoreline uses, docks should be held to minimum functional dimensions of 2 to 3 boats. Community docks may require larger dimensions.
- c. Docks shall not exceed 60 feet in length if there is 5 feet of water depth at the end of the dock when the lake is at its OHW elevation of 3,798.5 ft. For a 60-foot dock, where the depth of the water is less than 5 feet, additional length may be allowed.
- d. No dock shall exceed 100 feet in length as measured from elevation 3,798.5 ft.
- e. Maximum width of a dock should be 10 feet (see figure 1).
- f. On a T- or C-shaped dock, the maximum width across the head of the T or C should not exceed 40 feet (see figure 1).
- g. On an L-shaped dock, the maximum length of the wing section should not exceed 30 feet. This creates a maximum of 40 feet across the head of the L (see figure 1).

7. Dock Construction Materials

- a. Docks should be constructed of wood, metal, plastic, fiberglass, or other material standard to the industry.
- b. Factory pressure treated (nontoxic marine grade) wood, untreated wood, or plywood are suitable materials.
- c. All field applied preservatives, wood treatment, carpet, glue, paint, varnish, and other such materials must meet State and Federal standards for marine applications.
- d. When applying an approved preservative, take precautions to avoid letting the preservative drip, spill, or otherwise enter the water.
- e. When molded foam or other floating material is used, it must be enclosed or sealed to avoid breakup and/or

scattering of loose material. If floatation material becomes scattered, the source should be repaired immediately, and the loose material must be removed from the reservoir.

- f. Use durable materials for the skids on docks, such as wood, metal, metal pipe, axles, or wheels, to prevent shoreline damage and dock damage when removing and installing docks, unless the dock is lifted in and out of the water.
 - g. Natural, noncontrasting exterior finishes or colors, such as natural wood, earth tones, or other colors found in the area, should be used for all visible surfaces.
 - h. Anchor materials should be of preformed concrete, rocks, steel blocks, or driven pipe with adequate nylon or polypropylene rope or noncorrosive metal cable or chain.
8. Timeframe for Implementation of Dock Plan
- a. Dock owners should consider taking steps to meet these guidelines when docks are replaced or when dock maintenance or upgrades are more than one-fourth of the original dock. Permits for construction of new docks must be reviewed and approved by the appropriate agency before a permit is issued. Please see the “Authorization and Permitting” section and appendix D for more information.

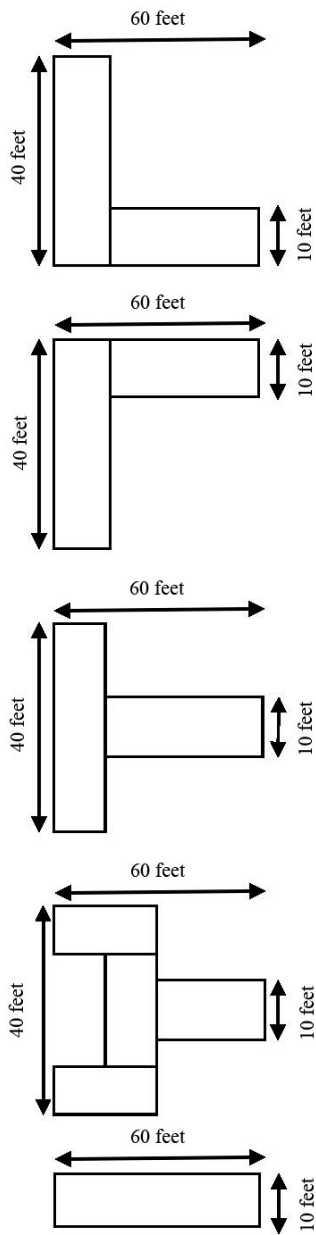


Figure 1. Standard dock designs.

Boat Docks for Canyon Ferry Cabin Sites

No special use permit is required for replacing Canyon Ferry cabin site boat docks that are of the same type and configuration and existed at the time of sale, because they are specifically allowed by the Canyon Ferry Act. Instead, a photocopy of the joint permit application required by the U.S. Army Corps of Engineers (section 404 and section 10 permits) and Lewis & Clark County Conservation District (310 permits) should be provided to Reclamation prior to the start of the project. Additionally, photocopies of subsequent permit approval from those entities also must be provided to Reclamation before dock placement.

If a new dock, new dock location, or dock improvement is proposed, the procedure illustrated in appendix C should be followed. For new docks and new dock locations that are outside of the boundary markers for the lot owner's property, the written approval of neighboring landowners should be obtained prior to notifying Reclamation. For proposed improvements to existing permitted docks, Reclamation must be notified before beginning construction. Notification may consist of photocopies of the U.S. Army Corps of Engineers and Lewis & Clark County joint permit application and subsequent permit approval.

SHORELINE PROTECTION AND EROSION CONTROL PLAN

Canyon Ferry Reservoir shoreline is highly valued for its aesthetic appeal, lake access, recreational potential, and wildlife habitat. Consequently, loss of shoreline due to erosion is a serious concern for all parties. Shoreline protection and erosion control at Canyon Ferry Reservoir includes several site-specific challenges, including seasonally varying water elevations (typically from 3,780–3,797 feet) and unique shoreline soil properties. This section of the Canyon Ferry Reservoir Shoreline Management Plan provides information to help determine: A) when erosion control is warranted, B) the sources of erosion, and C) appropriate erosion control measures. It is Reclamation's intent that, wherever possible, the natural condition of the shoreline will be maintained for its aesthetic appeal and resource functions. Shoreline protection measures on federally owned property will require right-of-use authorization from Reclamation (see the "Authorization and Permitting" section or see <http://www.usbr.gov/lands/>). Reclamation reserves the right to refuse to authorize any use deemed incompatible with administration of Federal land in the public interest.

A. When Erosion Control Is Warranted

Consideration of a right-of-use application for shoreline protection generally will be evaluated based upon the following criteria in order of priority:

1. Compatibility with authorized Reclamation projects, project purposes, project operations, and public safety and security.
2. Best interests of the United States, taking into account all associated environmental impacts and potential

conflicts with Federal projects, initiatives, and future use of the land by the United States.

3. Threats to Federal land and project operations.
4. Availability of other reasonable alternatives.
5. Threats to private lands or structures, including lateral threats to adjoining lands.
6. Replacement of existing stabilization measures.

Please see the “Authorization and Permitting” section and appendix E of this plan for more information.

B. Erosion

Shorelines surrounding Canyon Ferry Reservoir are dynamic, undergoing various rates of change related to a variety of factors. Those factors include soil structure and cohesiveness, slope, vegetative cover, wind exposure, seasonal water elevations, and fetch (length of water surface wind-ward from the shore). Canyon Ferry Reservoir supports a wide spectrum of shoreline types, ranging from granite outcrops that resist erosion (northwestern shore) to alluvial soils where erosion can be severe (northeastern shore). Understanding site-specific shoreline characteristics can provide insight regarding the need for, and type of, potential restoration or protection measures. An important consideration is how any particular erosion control measure will function given the dynamic nature and rate of shoreline change on the planning site. A comprehensive site evaluation should be completed as a first step in the shoreline planning process. Appendix C includes a form that will be used by Reclamation personnel as an evaluation tool for shoreline stabilization proposals. The form also may be used as a planning tool by individuals considering shoreline

Canyon Ferry Reservoir Shoreline Management Plan

erosion control (see figures 2 and 3). For planning assistance, please contact the Canyon Ferry Field Office.

Erosive forces are typically greatest at or near the normal full pool elevation. Erosion severity is often contingent on shoreline attributes (e.g., slope) at this elevation. Generally, shorelines with ample shallow beach and gradual shoreline slope are less susceptible to significant erosion. Shallow, low gradient beaches dissipate erosive wave energy. Coarse beach material (e.g., gravel and cobble) also dissipates wave energy and provides natural shoreline armoring. Naturally occurring vegetation contributes to shoreline stability by dissipating wave energy and holding soil in root systems. Protecting existing vegetation is an important first step in reducing the rate of shoreline erosion. Some shorelines are protected by landforms (e.g., bays and peninsulas) that reduce fetch and exposure to prevailing winds. Shorelines with characteristics such as those just described may not warrant any artificially constructed erosion control measures.

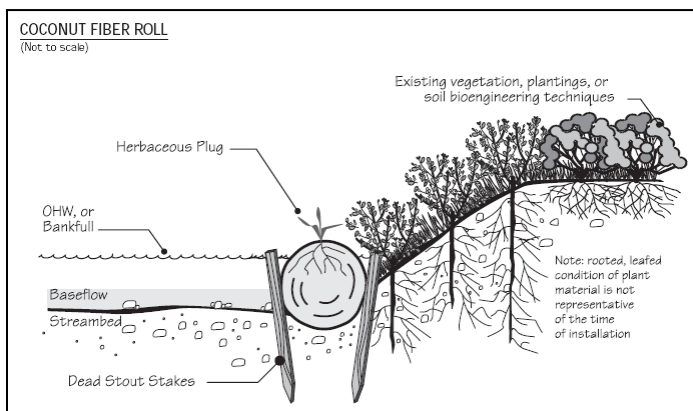


Figure 2. Coir logs (coconut fiber rolls) are used to stabilize shoreline sites. The rolls accumulate sediment and then biodegrade as plants become established.



Figure 3. Cave Point is a site where Reclamation has implemented and is monitoring shoreline stabilization measures, including a coir log and cottonwood/willow plantings.

High rates of shoreline erosion may occur on steep banks that receive high wave energy where there is no armoring beach material. Shoreline restoration and erosion control may be compelling in these areas when structures, roadways, public recreational facilities, or important wildlife habitats are threatened. However, only those methods with the least impact to the natural environment should be selected for application. Shoreline restoration and erosion control methods vary from “soft” measures that dissipate wave energy to “hard” structural measures that deflect wave energy. Hard, structural methods may deflect wave energy to the toe of the structure and may accelerate flanking erosion on adjacent sites. Consequently, shoreline restoration and erosion control efforts should be coordinated with adjacent ownerships in problem areas.

The type of shoreline protection and restoration method employed also may change within the shoreline segment as site conditions change. For example, wave energy may be greatest on an exposed point and taper off to either side of the point. Consequently, measures applied to the point would be designed for high erosive force; whereas, measures employed in flanking positions may incorporate more vegetation due to reduced erosive impact. Similarly, protection measures applied to the toe of the slope may differ from those used in less critical positions located higher on the shoreline bank.

Important criteria for selecting a method for shoreline restoration and erosion control include cultural and natural resource impacts, impacts of new stabilization on adjacent shoreline, effectiveness, cost, design complexity, functional life, risk and consequences of failure, availability of construction materials, equipment access requirements, and the amount of ongoing maintenance. For example, gabion, sheet pile, timber, or concrete walls are very expensive and have limited potential to

self-adjust to shoreline dynamics. Unstable underlying soils combined with especially severe weather events can result in compromised function, expensive repair, and/or total replacement. Due to significant resource and financial risks, the services of a qualified engineer with shoreline stabilization experience should be consulted for all structural erosion control proposals.

C. Appropriate Erosion Control Measures

Following is a suggested implementation hierarchy and brief description of selected erosion control measures:

- 1) No Action
The no action alternative is the best option to employ unless there are unavoidable and compelling reasons for active erosion control.
- 2) Relocation of Threatened Structures or Roadways
Where feasible, threatened structures and roadways should be moved rather than implement active erosion control. When siting new structures or roads, it is important that adequate setback is allowed to prevent future threats from shoreline erosion.
3. Nonstructural Stabilization
Vegetation protection, re-vegetation, and/or slope grading may be all that is needed to control shoreline erosion. Nonstructural alternatives are the least impacting and most aesthetically appealing of the active erosion control alternatives.
4. Dynamic Revetment
Dynamic revetments are appropriate on relatively low gradient shorelines. This method includes placement of gravel and cobble material that is anticipated to be re-arranged by wave action into an “equilibrium profile.”

This contrasts with boulder-sized riprap revetments that are designed not to move. Dynamic revetments will require periodic maintenance. However, they constitute a less expensive, and more natural and aesthetically appealing solution than riprap placement (see Allan et al. 2005 for more information about dynamic revetments).

5. Bioengineering

Bioengineering includes either vegetation establishment alone or in combination with structural protection measures (see figure 4). The benefits of vegetation include wave energy dissipation, soil-holding root systems, induced sediment deposition, reduced abrasion due to long shore sediment transport, aesthetic appeal, and fish and wildlife habitat. While shoreline protection using only inert materials (e.g., rock) will degrade with time, shoreline protection with live plants should improve with time. However, plant materials require special handling and planting methods (see **Natural Resources Conservation Service** (NRCS) 1996 and Allen and Leech 1997), and vegetation cannot be established until a site is stabilized. Consequently, some slope grading and structural stabilization also may be required, especially in critical toe and flank locations.

6) Stone Riprap Revetment

Stone riprap revetments combine dissipation of wave energy with soil stabilization (figure 5). First, the bank must be graded to a stable slope (a 3:1 or flatter slope is recommended). Filter fabric (geotextile) and/or gravel bedding then is placed over the graded slope to hold the underlying soil in place. Finally, rough, angular, interlocking rock of the appropriate size and thickness is placed to armor the slope. The size and thickness of the armoring stone will depend on the amount of wave energy anticipated to occur at the site. This type of

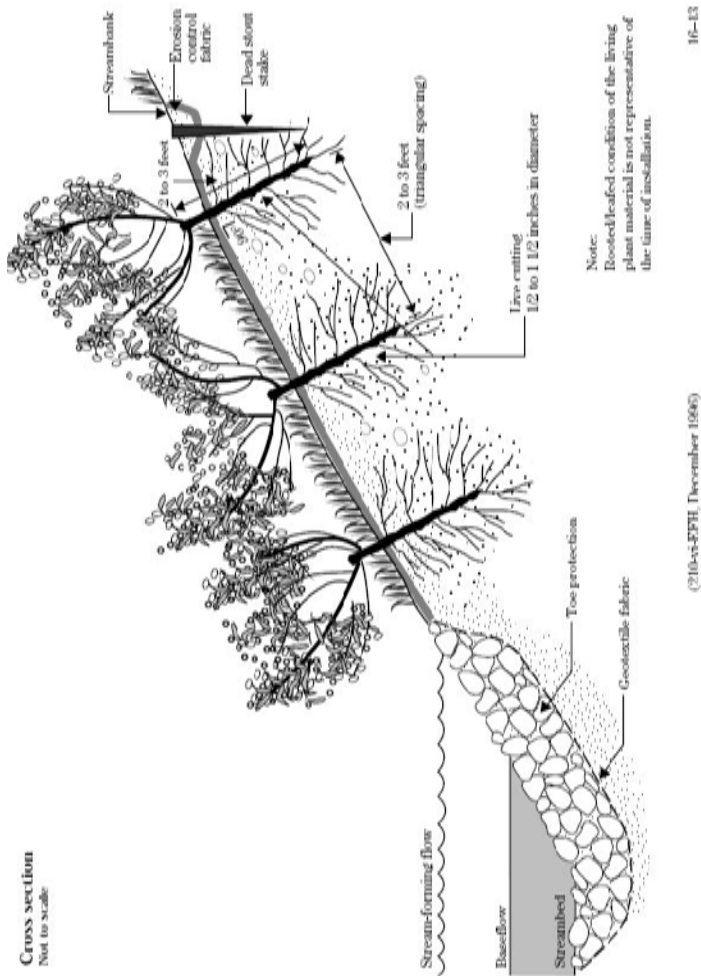


Figure 4. An example of bioengineering that incorporates both structural and vegetative measures. Taken from the NRCS *Engineering Field Handbook*, Part 650, Chapter 16 (NRCS 1996).

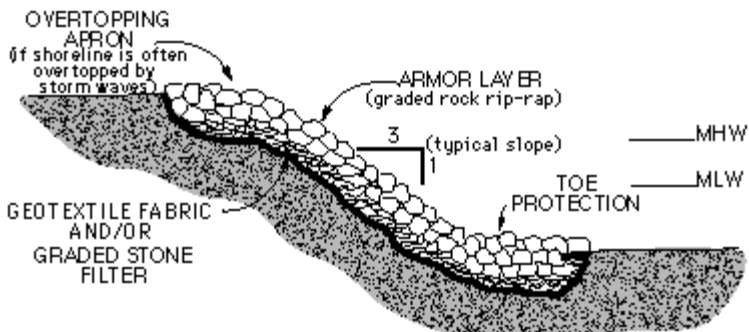


Figure 5. A basic riprap design.

shoreline protection often includes toe protection, an overtopping apron, and flanking protection at the ends of the revetment.

Stone riprap revetments can be very costly, are unnatural in appearance, and will require periodic maintenance. However, they are unlikely to completely fail in severe storms.

The appearance and habitat function of stone revetments can be enhanced by tamping live stakes into joints between the rocks (figures 6 and 7) (see Eubank and Meadows 2002).

7) Gabion Wall

Gabions are rectangular wire baskets filled with stone. Gabions should be staggered (rather than vertical) and joined together. Gabion walls can be very costly, are unnatural in appearance, and will deflect wave energy to the toe and to adjacent sites (flanks). Consequently, toe and flank protection (such as with riprap) is essential. Gabions will require periodic maintenance. Gabion walls do not work where loose soils occur. Best locations include cohesive soils with high clay content (figure 8).



Figure 6. Examples of riprap at Canyon Ferry Reservoir.

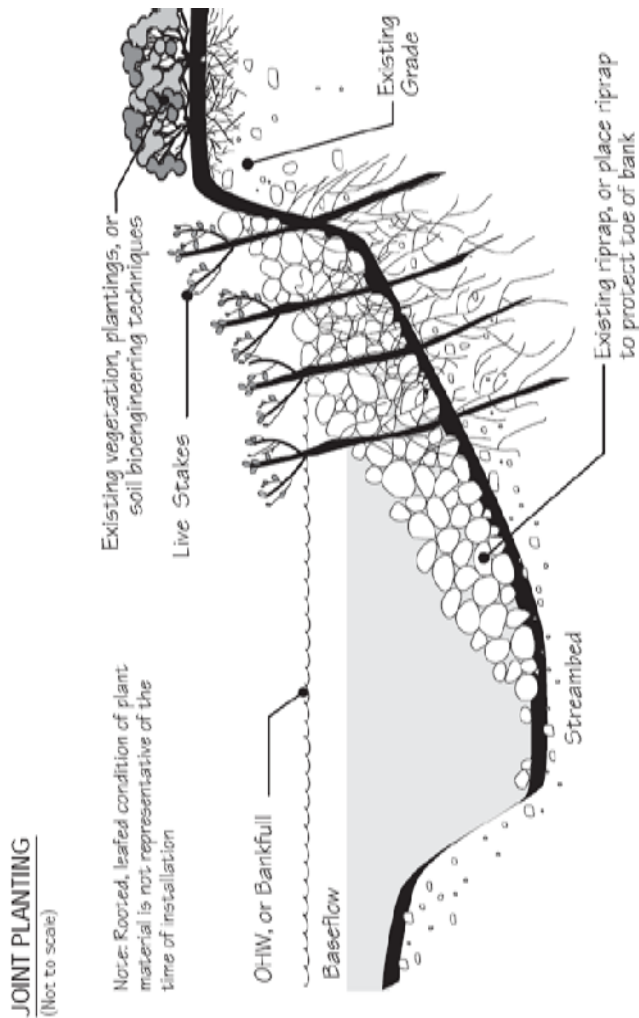


Figure 7. Planting live stakes into riprap is called joint planting.



Figure 8. An example of a gabion wall on Canyon Ferry Reservoir with flanking erosion due to deflected wave energy.

8) Concrete or Sheet Pile Walls

Constructed walls are used on steep shorelines that receive very high wave energy. These structures do not self adjust with shoreline dynamics and may require complete replacement with storm damage. Typical causes of failure include inadequate design and construction, poor quality materials, undercutting at the structure toe, freezing and thawing effects, accumulation of water behind the structure, and debris impacts. Constructed walls are very costly, un-natural in appearance, and deflect wave energy to the toe of the wall and to adjacent sites (flanks). Increased turbulence and scour from reflected wave energy may accelerate erosion of the foreshore in front of the structure. Consequently, toe and flank protection (such as with rip-rap) is essential to reduce undercutting and dissipate

wave energy. Due to high cost, engineering requisites, potential for failure, and risk of resource impacts, Reclamation strongly recommends that proposals for concrete, timber or sheet pile walls include extensive site evaluation and alternative development. If, following thorough evaluation, wall construction is still the preferred method, only engineered systems with proven reliability should be selected or will be permitted. Proposals for wall construction on federally owned shoreline will undergo rigorous and critical review to develop aesthetically desirable alternatives prior to approval or disapproval by Reclamation.

9) Shoreline Rebuilding

While measures designed to arrest shoreline erosion will be considered, proposals to rebuild shoreline will not be authorized by Reclamation due to potential negative impacts on natural resources and on public access. Natural resource impacts may accrue due to placement of backfill and resulting loss of beach. Steepened shoreline associated with placement of backfill also may impede or reduce public access. The Canyon Ferry Act emphasized the responsibility of cabin site owners and Reclamation to maintain public access to and along the federally owned shoreline.

AUTHORIZATION AND PERMITTING

Right-of-Use Authorization

Use of federally owned shoreline and other land should not result in, or give the appearance of, private exclusive recreational or residential use. Further, unless specifically designated, off-road vehicle use is prohibited, including on shoreline areas (Federal Register 43 CFR part 420). Reclamation policy for administering land and water surfaces can be found at <http://www.usbr.gov/lands/>. At Canyon Ferry Reservoir, this policy is modified by the Canyon Ferry Act (Public Law 105-277) to allow one dock per cabin site as well as access to the dock and to improvements (e.g., boathouses, ramps, boat rail systems, retaining walls) for which access was provided in the leases as of the date of enactment. Reclamation law and policy applies to all new uses and to maintenance of existing uses.

Proposed new uses of Reclamation-administered land, as well as maintenance of existing facilities located on Federal land, first must be authorized by Reclamation to ensure that Reclamation fulfills compliance requisites of the National Environmental Policy Act and National Historic Preservation Act. Right-of-use authorization may be requested by completing an application form (Form 7-2540) available at the Canyon Ferry Field Office or at <http://www.usbr.gov/lands/>. Examples of uses that may be deemed compatible with management of Federal land include temporary building material storage, stairs, walkways, trails, and temporary use of motorized vehicles including equipment used to construct or maintain shoreline facilities. However, Reclamation reserves the right to refuse to authorize any use which may be deemed incompatible. Examples of uses not likely to be considered compatible with management of Federal

land include burning debris, regular motorized vehicle use, or long-term storage of personal property on the shoreline.

Once the applicant submits a right-of-use application, Reclamation will acknowledge in writing the receipt of the completed and signed application and non-refundable application fee (\$100) within 30 calendar days of receipt. A right-of-use applicant is required to pay for all administrative costs incurred, by Reclamation plus a use fee based on an appraisal of the use pursuant to 43 CFR Part 429. Following the initial review, Reclamation will notify in writing the applicant as to whether the application appears to be appropriate for further processing. At this time, Reclamation will give the applicant an initial estimate of administrative costs required to continue processing of the application. The applicant must pay these initial, estimated administrative costs in advance before Reclamation continues to process the application. If payment is not received within 90 days, the application file may be closed. If the applicant chooses to reopen a closed application file, a new application and application fee of \$100 will be required. Pursuant to 43 CFR 429.26, a waiver or reduction of administrative fees may be granted:

- a. As determined appropriate and approved and documented by the applicable 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 X in the following table, "Situations Where Costs and Fees May Be Reduced or Waived."
- b) When a statute, Executive order, or court order authorizes the use and requires specific treatment of administrative cost recovery and collection of fees associated with that use, that requirement will be followed by Reclamation.

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.	X	X	X
(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.	X	X	X
(3) The use will benefit the general public with no specific entity or group of beneficiaries readily identifiable.	X	X	X
(4) Applicant is a public entity or tribe.	X	X	X
(5) Applicant is a nonprofit or educational entity, and the use provides a general public benefit.	X	X	X
(6) Applicant is a rural electric association, municipal utility, or cooperative.	X	X	X
(7) The use directly supports United States' programs or projects.	X	X	X
(8) The use secures a reciprocal land use of equal or greater value to the United States.	X	X	X
(9) Applicant for a consent document is the underlying owner of the property subject to Reclamation's easement.	X	X	(i)
(10) The use is issued under competitive bidding.	X	X	(ii)

(i) Not applicable.

(ii) Set by bid.

Issuance of right-of-use authorization is at Reclamation's sole discretion. Not all requests will be authorized. Right-of-use authorization is an agreement between Reclamation and a person or organization and is not transferable. A new right-of-use authorization must be issued if a new person or entity wishes to continue a use previously authorized. A right-of-use authorization is issued for a specific length of time and is not perpetual. Applicants should be aware that Reclamation may charge additional administrative costs incurred for:

1) monitoring the use over time to ensure compliance with authorized terms and conditions and 2) periodic analysis of the use to adjust the fee to reflect current conditions. Appendix A provides an explanation of fees charged for using Reclamation lands associated with right-of-use permits. Applicants are advised to contact the Canyon Ferry Field Office for additional guidance before submitting an application.

Temporary Water Service Contracts

In contrast to right-of-use authorization, temporary water service contracts are required for personal use of Canyon Ferry Reservoir water such as for irrigation of lawns and gardens (domestic use). Many times, pipes and pumps associated with temporary water service have impact on shoreline resources. The North Canyon Park Homeowners Association has contracted for the use of water by members. This is administered as a single contract. Cabin site owners wishing to participate in the use of water from Canyon Ferry for domestic use are encouraged to contact the Homeowners Association at: Box 1371, East Helena, MT 59635.

Permitting

In addition to right-of-use authorization from Reclamation, planned shoreline activities may require permits from the U.S. Army Corps of Engineers and the Lewis & Clark Conservation District. This is especially applicable to those projects falling below what the U.S. Army Corps of Engineers has determined as the “ordinary high water” line of 3,798.5 feet elevation.

A Joint Application for Proposed Work in Montana’s Streams, Wetlands, Floodplains, and Other Water Bodies is available from the U.S. Army Corps of Engineers. For more information, contact:

U.S. Army Corps of Engineers
10 West 15th Street, Suite 2200
Helena, MT 59626
(406) 441-1375

<http://www.nwo.usace.army.mil/html/od-rmt/mthome.htm>

A copy of the Joint Application for Proposed Work in Montana’s Streams, Wetlands, Floodplains, and Other Water Bodies also must be provided to the Lewis & Clark Conservation District to obtain a 310 permit required by The Montana Natural Streambed and Land Preservation Act of 1975. For more information, contact:

Lewis & Clark Conservation District
790 Colleen Street
Helena, MT 59601
(406) 449-5000 ext. 112

http://www.dnrc.mt.gov/permits/stream_permitting/310_applicant.asp

SHORELINE MANAGEMENT LAND CATEGORIES

Reclamation has categorized the areas around the shoreline by their land use function. Shoreline management categories are illustrated in figure 9 and described below.

Undeveloped/Limited Access Areas

Undeveloped areas provide dispersed recreational opportunities and provide valuable riparian and upland habitat for antelope, deer, waterfowl, non-game birds, and many other species. Some undeveloped areas are accessed by established roads. However, motorized access is prohibited in most undeveloped areas to reduce user conflicts and protect natural resources.

Opportunities to restore sites impacted by unauthorized motorized access on Federal land will be actively pursued (USDI-Bureau of Reclamation 2003, page VI-15). Hunting and trapping are allowed in these areas as permitted or regulated by MFWP.

Residential Areas

Areas of dense residential development include the Canyon Ferry cabin sites that are separated from Canyon Ferry Reservoir by a thin strip of federally owned shoreline. Land use challenges in these areas will include allowing for both legislated access (Public Law 105-277 and appendix G) to boat docks and other improvements by cabin site owners and public access to the federally owned shoreline strip. Portions of this Shoreline Plan (e.g., Shoreline Restoration and Protection, Design and Construction Plan for Shoreline Facilities) are especially relevant in these areas. While technically legal, hunting is discouraged near residences to ensure public safety.

Administrative Areas

Administrative areas are located immediately above and below Canyon Ferry Dam, and near Reclamation's Canyon Ferry Field Office, garage, shop and warehouse buildings. Portions of these areas are closed to public access for public safety and facility security purposes. Administrative area closures are identified with signage, cables, floating buoys, and chain-link and wire fences.

Also included in the administrative areas are approximately 10 acres leased to the Montana Office of Public Instruction (OPI). OPI owns 15 houses, 15 storage sheds, and boat dock facilities within the leased area. The leased land and associated facilities are used for continuing education. Hunting is not allowed in the administrative areas due to public safety and facility security purposes.

Recreation Areas

Areas developed by Reclamation for recreation around Canyon Ferry Reservoir include 13 campgrounds and 9 day-use facilities, including the Silos campground, which is managed by Broadwater County, through Agreement No. 03AG601760. These areas meet the criteria for special use areas as outlined in 43 CFR 423 Subpart E and are closed to hunting and discharge of firearms. These areas include identified campsites, group use shelters, public restrooms, beaches, and boat ramps. Developed recreation areas are heavily used. While technically legal, hunting and trapping are discouraged near developed recreation areas and are prohibited in some special use areas to ensure public safety.

Marina Areas

The three marinas around Canyon Ferry Reservoir include Goose Bay Marina, Yacht Basin Marina, and Kim's Marina and RV Resort. Marina concessions located on Reclamation land around Canyon Ferry Reservoir provide facilities, goods, and services that are not available in other developed recreational sites (e.g., boat moorage, boat rental, cabin rental, groceries and fishing equipment). While shoreline in the marina concession areas is maintained by the concessionaire, public access is allowed at the marina site and to shoreline areas. More information about marina concessions at Canyon Ferry Reservoir is available in the Canyon Ferry Reservoir Resource Management Plan/Environmental Assessment (USDI-Bureau of Reclamation 2003) and in the Commercial Services Plan and Financial Feasibility Evaluation Canyon Ferry Reservoir Montana (Aukerman, Haas & Associates 2004).

Wildlife Management Area

Management of a portion of Reclamation land on Canyon Ferry Reservoir was transferred to the MFWP through a memorandum of understanding (MOU) in 1957. The MOU formed the Canyon Ferry Wildlife Management Area (CFWMA), which is managed by MFWP to provide public recreational access to significant wildlife resources. In addition to providing wildlife habitat, dikes and ponds were constructed on the CFWMA to minimize erosion and dust problems at the south end of the reservoir during periods of low lake elevation. The CFWMA currently operates and is maintained by MFWP under Cooperative Agreement 07FC602237. Reclamation continues to work with MFWP to maintain the pond and dike system. Management direction for the CFWMA was detailed in the Canyon Ferry Wildlife Management Area Management

Plan (Carlsen and Northrup 1992). Much of the CFWMA is open to nonmotorized access only. See appendix I for a map of the CFWMA. Contact the MFWP for more information (406-444-2535) or visit the MFWP Canyon Ferry Web site at http://fwp.mt.gov/lands/site_281291.aspx.

Canyon Ferry Reservoir
Shoreline Management Plan

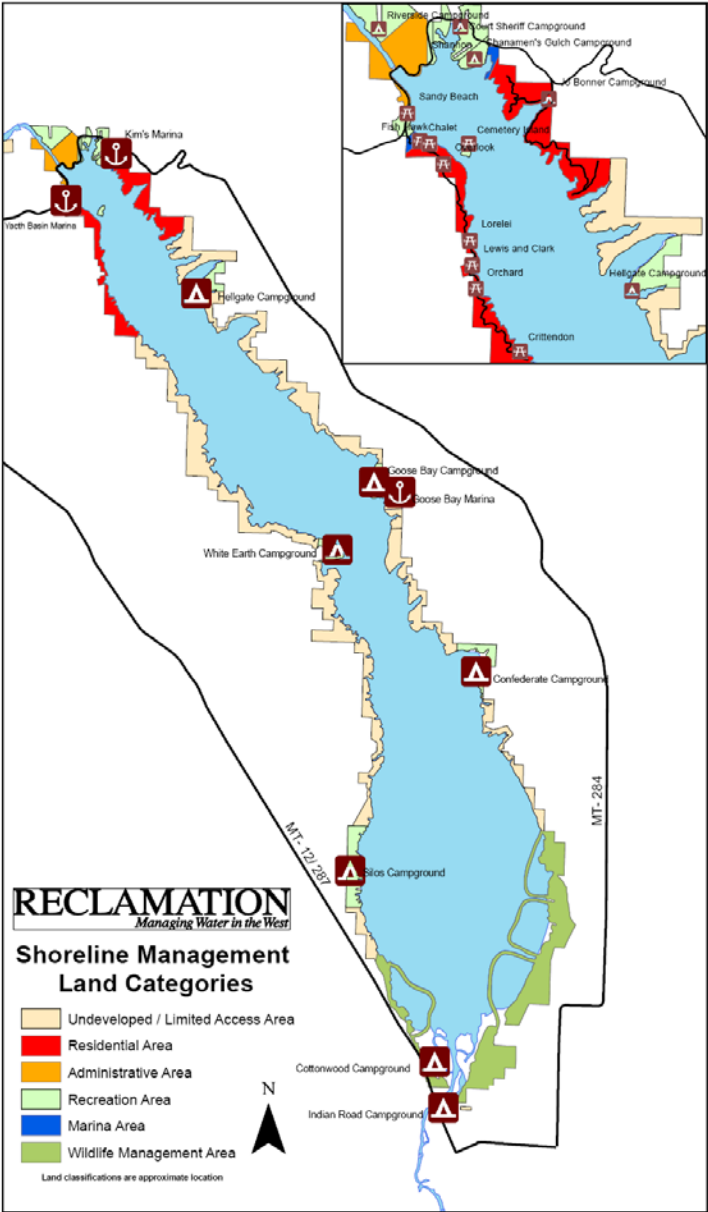


Figure 9. Shoreline management land categories.

LITERATURE CITED AND SUGGESTED INFORMATION SOURCES

Copies of the following publications may be viewed at the Canyon Ferry Field Office located at 7700 Canyon Ferry Road.

Allan, J.C., R. Geitgey, and R. Hart. 2005. Dynamic revetments for coastal erosion control. Oregon Department of Transportation, Salem, Oregon, and Federal Road Administration, Washington, DC. 83 pp. Available at http://www.oregon.gov/ODOT/TD/TP_RES/docs/Reports/DynamicRevetments.pdf.

Allen, H.H., and J.R. Leech. 1997. *Bioengineering for Streambank Erosion Control, Report 1, Guidelines*. Technical Report EL-97-8. U.S. Army Corps of Engineers Waterways Experiment Station, Vicksburg, Mississippi. Available at <http://el.erdc.usace.army.mil/elpubs/pdf/trel97-8.pdf>.

Aukerman, Haas & Associates. 2004. *Commercial Services Plan and Financial Feasibility Evaluation Canyon Ferry Reservoir, Montana*. USDI-Bureau of Reclamation. Available at http://www.usbr.gov/gp/mtao/canyonferry/csp/canyon_ferry_csp.pdf.

Carlsen, T., and R. Northrup. 1992. *Canyon Ferry Wildlife Management Area Management Plan*. Montana Fish, Wildlife & Parks. 76 pp.

Eubanks, C.E., and D. Meadows. 2002. *A Soil Bioengineering Guide for Streambank and Lakeshore Stabilization*. U.S. Department of the Agriculture Forest Service. FS-683. 187 pp. Available at <http://www.fs.fed.us/publications/soil-bio-guide/>.

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- Maryland Department of Natural Resources. 1992. *Shore Erosion Control Plan for Waterfront Property Owners*. Maryland Department of Natural Resources, Water Resources Administration. 30 pp. Available at <http://www.dnr.state.md.us/grantsandloans/waterfrontpropertyownersguide.pdf>.
- NRCS. 1996. "Chapter 16, Streambank and Shoreline Protection," *in Engineering Field Handbook*, Part 650. U.S. Department of Agriculture, Natural Resources Conservation Service. Available at <http://www.info.usda.gov/CED/ftp/CED/EFH-Ch16.pdf>.
- Northwest Regional Planning Commission. 2004. *The Shoreline Stabilization Handbook*, Northwest Regional Planning Commission. 49 pp. Available at <http://nsgd.gso.uri.edu/lcsg/lcsgh04001.pdf>.
- USDI-Bureau of Reclamation. 2003. *Canyon Ferry Reservoir Resource Management Plan/Environmental Assessment*. U.S. Department of the Interior, Bureau of Reclamation. Available at <http://www.usbr.gov/gp/mtao/canyonferry/final.pdf>.
- USDI-Bureau of Reclamation. 2004. Accessibility Action Plans for Canyon Ferry (Draft). U.S. Department of the Interior, Bureau of Reclamation, Technical Service Center, Denver, Colorado.

APPENDIX A

WHAT WILL RECLAMATION CHARGE FOR THE APPROVED USE OF RECLAMATION LANDS OR NONRECREATIONAL WATER AREAS?

The following information about Reclamation fees for right-of use permits can be found at <http://www.usbr.gov/lands/ApplyingforUse.html>.

In addition to the right-of-use application fee, Reclamation is required under Federal law to collect, in advance, adequate funds to cover all administrative review and processing costs associated with the right-of-use application, including environmental compliance, contract negotiation and preparation, construction, and, if necessary, those costs of monitoring the use (administrative costs).

Reclamation must also charge a rental fee based on current market value for the actual use of Reclamation land (market-based rent). Estimates of the administrative cost associated with the application processing and the market-based rent will be provided at the time of approval, if appropriate, of your right-of-use application.

The receipt of your complete application, along with any necessary supplemental information and the \$100 application fee, will be quickly acknowledged by the reviewing office. The office then will begin the review process of your application and inform you as to whether or not the proposed use is compatible with Reclamation projects and programs in the area.

If determined compatible, you will be provided with the estimate of the administrative costs for application processing and an

Canyon Ferry Reservoir
Shoreline Management Plan

estimate of the time it will take to issue a right-of-use authorization to you. If your application is complex, involving construction and/or environmental compliance, and/or requires an appraisal to determine the market-based rent, it may take several months before the application process is concluded. You will be required to pay Reclamation administration costs prior to processing your application.

After the processing has been completed, you will be notified of approval in writing by Reclamation and receive a contract to sign. Upon receipt by Reclamation of the signed contract and the payment of the market-based rent, you will be authorized to use the land or water surface requested in your application.

APPENDIX B

**SHORELINE RESTORATION AND EROSION
CONTROL SITE EVALUATION FORM**

NAME _____

ADDRESS _____

PROJECT LOCATION _____

CABIN LOT NUMBER _____

- 1) Is the shoreline federally-owned public land? Y ☐ N ☐
- 2) Is erosion occurring at the project site? Y ☐ N ☐
- 3) Is erosion occurring on adjacent sites? Y ☐ N ☐
- 4) Why are you considering shoreline restoration and/or erosion control?

Immediate threat to an existing structure ☐
(please answer item 5)

Current loss of private land ☐

Anticipated loss of private land ☐

Want to preserve shoreline area ☐

Want to improve the aesthetic appeal of
the shoreline ☐

Other
_____ ☐

- 5) If applicable, what type of structure is threatened (e.g., road, shed, residence, etc.)?

Canyon Ferry Reservoir
Shoreline Management Plan

6) What type of slope occurs at the project site?

- | | |
|---|--------------------------|
| Steep (> 2: 1), high (> 15 feet high) bluff | <input type="checkbox"/> |
| Steep, low (< 15 feet high) bank | <input type="checkbox"/> |
| Moderately sloped (4:1 to 2:1) | <input type="checkbox"/> |
| Gentle slope (10:1 to 4:1) | <input type="checkbox"/> |
| Beach (flatter than 10:1) | <input type="checkbox"/> |

Additional comments:

7) Is the project site exposed to prevailing west winds, east winds, or located in a protected area (e.g., bay or on the lee side of a landform such as a peninsula)?

- | | |
|---|--------------------------|
| Exposed to prevailing winds
(please answer item 8) | <input type="checkbox"/> |
| Exposed to east winds (please answer item 8) | <input type="checkbox"/> |
| Protected | <input type="checkbox"/> |

Additional comments:

8) If the project site is exposed to prevailing or east winds, what is the wind-ward length of water surface (i.e., fetch) in miles? _____ miles

9) What is the condition of vegetation along the shoreline at the project site?

- | | |
|--------------------|--------------------------|
| Vegetated | <input type="checkbox"/> |
| Sparsely vegetated | <input type="checkbox"/> |
| Unvegetated | <input type="checkbox"/> |

Additional comments:

10) What kind of materials make up the soil at the project site?

- | | |
|---|--------------------------|
| Consolidated clay | <input type="checkbox"/> |
| Silt | <input type="checkbox"/> |
| Sand | <input type="checkbox"/> |
| Gravel/cobble | <input type="checkbox"/> |
| Bedrock | <input type="checkbox"/> |
| Mixed layers (sand, silt, clay, gravel) | <input type="checkbox"/> |

Additional comments:

11) Does ground water flow out of the face of the shoreline
(i.e., piping)? Y☐ N☐

12) Is there surface runoff at the project site? Y☐ N☐

13) Are there other shoreline attributes that could affect
implementation of shoreline stabilization measures (please
list)?

14) Is the erosion control project necessary to protect public
interests ? Y☐ N☐

Please explain: _____

15) Would the erosion control proposal be considered a private
exclusive use? Y☐ N☐

16) Would the erosion control proposal restrict public access to
the shoreline? Y☐ N☐

17) What type of shoreline stabilization methods might be most
appropriate for this site?

- | | |
|--|--------------------------|
| Relocation of structures, roads, or associated
facilities | <input type="checkbox"/> |
| Nonstructural stabilization | <input type="checkbox"/> |
| Dynamic revetment | <input type="checkbox"/> |

Canyon Ferry Reservoir
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Bio-engineering

☐

Stone rip-rap

☐

Gabion wall

☐

Concrete or sheet pile wall

☐

Please state the anticipated time frame for the erosion control proposal.

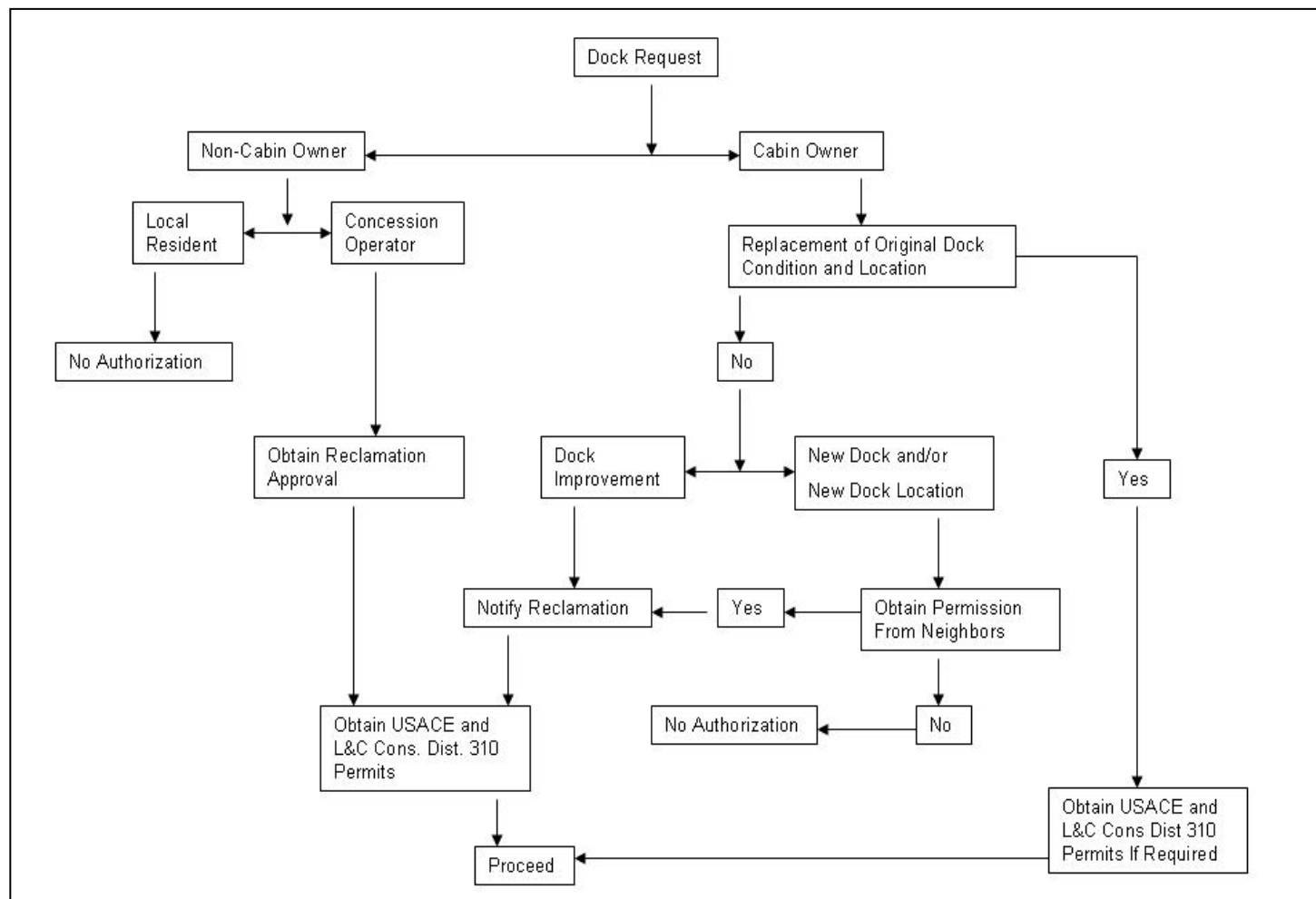
Start: _____ End _____

Please estimate the costs if known: \$ _____

Construction will be done by: ____ Reclamation ____ Lot Owner
____ Private Contractor

APPENDIX C

**BOAT DOCK REQUEST FLOW CHART FOR
CANYON FERRY RESERVOIR**

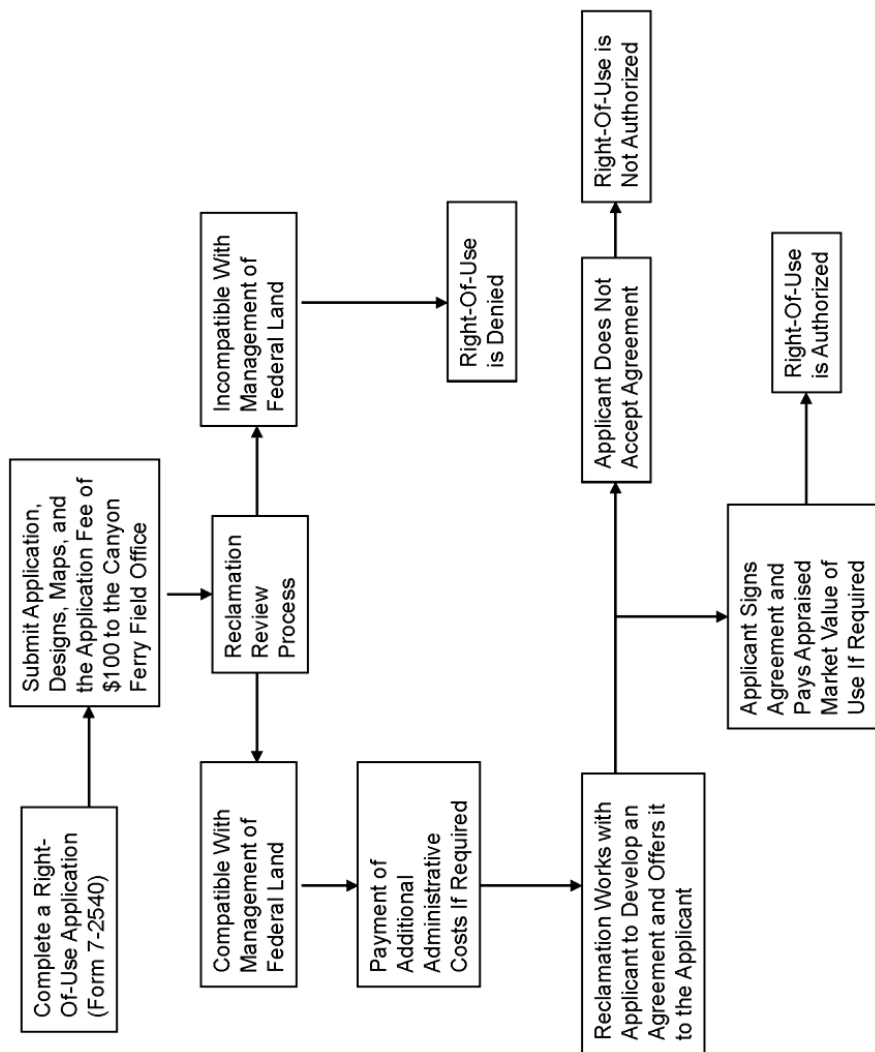


APPENDIX D

RIGHT-OF-USE AUTHORIZATION FLOW CHART FOR CANYON FERRY RESERVOIR

Please contact the Canyon Ferry Field Office (406-475-3310) or see <http://www.usbr.gov/lands/> for additional information.

Canyon Ferry Reservoir
Shoreline Management Plan



APPENDIX E

FEDERAL REGISTER
43 CFR PART 429



Federal Register

Friday,
December 5, 2008

Part III

**Department of the
Interior**

Bureau of Reclamation

43 CFR Part 429
Use of Bureau of Reclamation Land,
Facilities, and Waterbodies; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 429

RIN 1006-AA51

Use of Bureau of Reclamation Land, Facilities, and Waterbodies

AGENCY: Bureau of Reclamation, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Reclamation (Reclamation) is adopting this final rule on the use of Reclamation land, facilities, and waterbodies. This final rule addresses activities involving the possession or occupancy of any portion of, and the extraction or disturbance of any natural resources from, Reclamation land, facilities, and waterbodies. This final rule supersedes the current rule which was originally published in 1983 and partially revised in April 2006.

DATES: This final rule is effective January 5, 2009.

FOR FURTHER INFORMATION CONTACT: Richard Rizzi, Mail Code: 84-53000, Bureau of Reclamation, P.O. Box 25007, Denver, CO 80225. Telephone: (303) 445-2900.

SUPPLEMENTARY INFORMATION:

I. Background

The current rule, 43 CFR part 429, titled Procedure to Process and Recover the Value of Rights-of-Use and Administrative Costs Incurred in Permitting Such Use (current rule), established the procedures to recover administrative costs associated with processing "right-of-use" applications and the value of rights-of-use granted by Reclamation to applicants for the use of Reclamation land. Sections of the current rule were modified, in part, in 2006 to correlate with 43 CFR part 423, titled Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies.

This final rule addresses activities involving the possession or occupancy of any portion of, and the extraction or disturbance of any natural resources from, Reclamation land, facilities, and waterbodies. Regulations addressing public access to Reclamation property and occasional public activities such as hiking, camping, boating, and hunting, and closures are contained in 43 CFR part 423.

The demand for use of Reclamation land, facilities, and waterbodies for many different kinds of activities has increased dramatically since Reclamation began building Federal

water supply, flood control, and hydropower projects over 100 years ago. With increased and varied uses has come confusion among the potential users of Reclamation land, facilities, and waterbodies about the process of applying for the various types of uses, the charges and fees associated with such uses, and other concerns. The current rule does not adequately address this confusion nor does it address prohibited and unauthorized uses of Reclamation's land, facilities, and waterbodies and associated penalties.

The Independent Offices Appropriation Act (IOAA) (31 U.S.C. 9701), September 13, 1982, as amended, sets forth Congress' intent that any use, permit, or similar thing of value provided by an agency is to be self-sustaining and that the IOAA authorizes agencies to prescribe rules establishing charges for such uses. The 1993 revision of the Office of Management and Budget (OMB) Circular A-25 established Federal policy directing that administrative costs be recovered for Government services and fees for the use or sale of Government goods or resources also be charged. OMB Circular A-25 provides information on the scope and types of activities subject to use fees and the basis on which these fees are established. It also provides guidance for agencies in implementing such fees and charges. The use of Reclamation land, facilities, or waterbodies is a use of Government resources, and as such, the IOAA and OMB Circular A-25 direct Reclamation to recover the costs and fees associated with the use of these resources.

Section 10 (43 U.S.C. 373) of the Reclamation Act of June 17, 1902, provides the Secretary of the Interior (Secretary) with the authority to issue rules as necessary for the purposes of carrying out the provisions of the Act. Section 10 (43 U.S.C. 387) of the Reclamation Project Act of 1939 provides the Secretary the authority, in his discretion, to grant leases, licenses, easements, and rights-of-way. These two Acts provide Reclamation with the general statutory authority to issue rules on authorizing or prohibiting uses of Reclamation land, facilities, and waterbodies.

This final rule addresses:

- (a) The possession or occupancy of any portion of, or the extraction or disturbance of any natural resource from, Reclamation land, facilities, and waterbodies;
- (b) The procedures to follow when the proposed use involves a Reclamation easement;
- (c) The procedures to apply for use of Reclamation land, facilities, and

waterbodies that involves the possession or occupancy of any portion of, or the extraction or disturbance of any natural resource from, Reclamation land, facilities, or waterbodies;

(d) The criteria Reclamation will use to evaluate applications;

(e) Our statutory authority and the basis for charging application fees, recovering administrative costs, and collecting use fees associated with authorized uses;

(f) Conditions under which application fees, administrative costs, or use fees may be waived or reduced if determined appropriate by Reclamation or as currently listed in OMB Circular A-25;

(g) The required terms and conditions associated with use authorizations;

(h) Prohibited uses of Reclamation land, facilities, and waterbodies and how Reclamation will resolve unauthorized uses;

(i) The criteria Reclamation will use to evaluate existing authorizations for otherwise prohibited uses of Reclamation land, facilities, and waterbodies; and

(j) The decisions and appeals process applicable to actions taken under this part.

II. Revision of Existing Rule

On December 20, 1983, Reclamation published 43 CFR part 429 titled Procedure to Process and Recover the Value of Rights-of-Use and Administrative Costs Incurred in Permitting Such Use in the **Federal Register** at 48 FR 56223. Sections of this rule were revised on April 17, 2006, in the **Federal Register** at 71 FR 19802 to better correlate with 43 CFR part 423. The sections that were revised or added were § 429.1 Purpose, § 429.2 Definitions, § 429.3 Establishment of the value of rights-of-use, § 429.6 Applications for rights-of-use, § 429.12 Applicability, and § 429.13 General Restrictions.

On July 18, 2007, Reclamation published a notice in the **Federal Register** at 72 FR 39530 announcing the availability of the proposed rule for a 90-day public comment period ending on October 16, 2007. As a result of comments received, the proposed rule was revised. Reclamation again published a notice of the proposed rule in the **Federal Register** at 73 FR 42236 on July 18, 2008, for a 60-day public comment period ending on September 16, 2008. During the 60-day public comment period, informational meetings regarding the proposed rule were held in each of Reclamation's five regions.

When the public comment period closed on the proposed rule, Reclamation considered the comments and incorporated them, where appropriate. This final rule, titled Use of Bureau of Reclamation Land, Facilities, and Waterbodies, supersedes the 1983 version and its 2006 modifications in their entirety.

III. Summary of Changes, Comments, and Responses

This section of the preamble describes changes from the proposed rule published on July 18, 2008, and provides responses to the comments received on that proposed rule by section. Approximately 260 individuals submitted comments during the 60-day comment period which ended on September 16, 2008.

Comments received that are similar in nature have been categorized by subject and in some instances have been combined with related comments. Comments and our responses on general issues not related to a specific section of the preamble or text of the proposed rule are arranged first. This section is followed by comments regarding the preamble of the proposed rule and our responses; and lastly, the changes we have made, comments received, and our responses related to specific sections of the text of the proposed rule.

General Comments and Responses

Comment: In its current form the proposed rule fairly manages the lands in Reclamation's charge and represents well the needs and desires of the people. It balances new and existing uses with an eye to the future.

Response: No response required.

Comment: The revised proposed rule provides for an acceptable process for fair and open decisions, and demonstrates that the public comment process does work and our government listens to its managing partners and the public at large.

Response: No response required.

Comment: It is more effective to manage a weed control program locally than from out of state.

Response: Weed control programs are managed at the local or regional office level.

Comment: Exclusions for the special circumstances at our reservoir should be made in the rule.

Response: We suspect that all holders of recreational and residential use authorizations would be quick to note the unique and special circumstances associated with their reservoir. But no reservoir is so unique that the requirements for Reclamation to manage its land, facilities, and waterbodies and

to comply with Federal requirements, such as the Independent Offices Appropriation Act and Office of Management and Budget Circular A-25, could be put aside. Rather, we have incorporated into this rule flexibility so that local Reclamation offices can factor in special circumstances in managing use authorizations. For example: Use fees are determined locally; minimum time frames have been established for certain deficiencies to be corrected, but the local Reclamation office can provide more time when needed; minimum time frames have been established as to when inspections must occur, but the local Reclamation office can provide more frequent inspections if warranted; etc.

Comment: Why doesn't a land use agency such as the U.S.D.A. Forest Service manage our large recreational area?

Response: We are continually exploring opportunities to work with managing partners including the U.S.D.A. Forest Service, National Park Service, Bureau of Land Management, Fish and Wildlife Service, and State and local agencies to manage our recreation areas through formal agreements. We have been very successful in this endeavor in that only 42 of the 289 recreation areas located on Reclamation lands and waterbodies are directly managed by Reclamation. However, to date, we have not been able to find a governmental entity that is willing to take over management of the recreation at the reservoir in question.

Preamble Comments and Responses

Only those sections of the preamble to the proposed rule that received comments are discussed in this section.

IV. Informational Meetings

Comment: The meeting date in Albuquerque, New Mexico, conflicted with the monthly board meetings of the Carlsbad Irrigation District and the Elephant Butte Irrigation District preventing the two major districts in New Mexico from participating in the informational meeting.

Response: The dates and times for the informational meetings were established by the local office hosting the meeting and every attempt was made to meet the needs of the concerned public and to provide adequate advance notice of the meetings. The direct phone number for Reclamation's contact person was included in the published rule to allow for maximum availability to persons and groups unable to attend public meetings scheduled in their area. We regret that such a conflict occurred. Written comments were submitted by Elephant Butte Irrigation District and are

included in the comments section of this document.

V. Procedural Requirements

Comment: The proposed rule will have a financial affect in excess of \$100 million on irrigation districts. It alters the budgetary obligations of all affected irrigation districts by decreasing revenue credits. The rule raises legal and policy issues with respect to revenue credits and it constitutes a major Federal action since it impacts existing repayment and operation and maintenance contracts with irrigation districts.

Response: It is Reclamation's responsibility to make this determination based on economic analysis. We did not receive any evidence that contradicts our analysis, which shows that the total amount of fees and charges we annually collect for uses of Reclamation land, facilities, and waterbodies is well under \$100 million. Additionally, revenues collected for the use of Reclamation land, facilities, and waterbodies must be handled in accordance with all statutory, regulatory, and policy requirements. Since such statutes, regulations, and policies have all been in place for years, even decades, this rule is not raising legal and policy issues.

Changes, Comments, and Responses Related to the Text of the Proposed Rule

Subpart A—Purpose, Definitions, and Applicability

Section 429.1 This section describes the purpose of 43 CFR part 429.

We made no changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.2 This section establishes the definitions for terms that are used in part 429.

We made minor editorial changes to this section as compared to the previously proposed rule as well as expanding the definition of *private exclusive recreational or residential use* for clarification purposes.

Comment: Rewrite the definitions for *application* and *Reclamation*. For *application*, allow an authorized form provided by responsible water user organization; and for *Reclamation* include in the definition a water user organization that has assumed responsibility for the operation and maintenance of a project.

Response: Reclamation can only accept one of the two Office of Management and Budget (OMB) approved application forms listed under § 429.10: Form 7-2540 or SF 299. All

forms collected by a Federal agency which collects information from 10 or more individuals or entities on an annual basis must be approved by OMB and renewed by them on a 3-year basis. This does not preclude managing partners and water user organizations from using their own forms to facilitate activities for which they are responsible. Reclamation is an agency of the Federal government and as such the definition cannot be expanded to include a non-Federal entity.

Comment: The definition for *private exclusive recreational or residential use* should be modified to remove the statement "which create the perception of such exclusion." To equate exclusive to exclusion is irrational.

Response: We have removed the subject phrase from the definition of *private exclusive recreational or residential use*.

Comment: Language should be added which makes it clear that issuing authorizations for a particular facility to a particular applicant is not the exclusionary conduct that the rule seeks to prohibit.

Response: We made changes under § 429.4 to clarify which uses are not considered private exclusive use.

Comment: Boat docks should be defined "as lesser forms of private use." This terminology is used by the U.S. Army Corps of Engineers in their shoreline management guidelines.

Response: Although the U.S. Army Corps of Engineers' (COE) definition for private exclusive use does exclude such uses as boat docks and moorings, the definition goes on to state that those uses will be included in their shoreline management requirements. The COE shoreline management requirements include non-transferability of permits for any reason including sale of associated improvements or death of permittee and permits are issued for terms of 5 years or less. Reclamation has decided to go in a direction that allows for more flexibility for both the operators of Reclamation facilities and those who hold authorizations for existing private exclusive recreational and residential uses.

Comment: Add a definition for *commercial photography* to provide for the parallel treatment of filming and photography.

Response: We did not add a definition for commercial photography to the rule. Both commercial filming and photography are subject equally to Reclamation's requirements and processes as stated under § 429.3.

Section 429.3 This section describes the types of uses of and activities on Reclamation land, facilities, and

waterbodies that typically require a use authorization under part 429.

We made no changes to this section as compared to the previously proposed rule.

Comment: Traditional public uses of Reclamation land may be subject to the proposed new rule instead of 43 CFR part 423. The terms of § 429.3(c) and (f) would remove the ambiguity and potential conflict with the proposed new § 429.4(a) which exempts individual, non-commercial uses.

Response: In fact, many activities on Reclamation land, facilities, and waterbodies may be subject to both part 423 and part 429 of this chapter. The distinction between these two parts is that part 429 specifies for which activities use authorizations must be obtained and part 423 specifies what conduct by the public is or is not acceptable on Reclamation land, facilities, and waterbodies. Even though an activity may be authorized under part 429 of this chapter, use authorizations do not condone all possible conduct by the public.

Section 429.4 This section lists the types of uses of and activities on Reclamation land, facilities, and waterbodies that do not require authorization under part 429.

We made changes to this section as compared to the previously proposed rule for clarification purposes including the addition of a new paragraph (b) which provides examples of the types of buildings and structures used by concessionaires or managing partners that are not subject to this part.

Comment: Is written permission needed to boat or swim on Reclamation waterbodies?

Response: No. These activities are listed under § 429.4 as not being subject to the requirement and processes established under this part. They are, however, subject to part 423 of this chapter which relates to public conduct on Reclamation land, facilities, and waterbodies.

Section 429.5 This section addresses who is authorized under part 429 to issue use authorizations.

We made changed this section as compared to the previously proposed rule to add that a copy of all use authorizations issued by managing partners be provided to the local Reclamation office.

Comment: Reclamation is commended for amending the 2007 proposed rule. The changes allow for the efficient and effective relationship between Reclamation and water user organizations that have assumed contractual responsibility for the operation and maintenance of

Reclamation projects. Reclamation's efforts in balancing its ultimate responsibility for Federal land, with the practical realities of operating and managing Reclamation project are appreciated.

Response: No response required.

Comment: Do not make any changes to grazing leases or re-route the revenues collected for such leases issued by water user organizations.

Response: Under this section, water user organizations who have assumed responsibility for operation and maintenance of Reclamation land, facilities, or waterbodies pursuant to a contract with Reclamation may issue limited use authorizations. All revenues collected for the use of Reclamation land, facilities, and waterbodies must be handled in compliance with all statutory, regulatory, and policy requirements.

Comment: Requiring authorization from a water user organization constitutes an improper delegation of federal authority per 43 U.S.C. 387 which provides the Secretary with the authority to grant leases, license, easements, and rights-of-way. It may be proper for the Secretary to delegate this authority to Reclamation, but not to a water user organization.

Response: Only water user organization's who are authorized under their contract for operation and maintenance of Reclamation land, facilities, and waterbodies may issue limited use authorizations to third parties. Additionally, only Reclamation or another Federal agency may issue authorizations that convey an interest in Reclamation land, facilities, or waterbodies.

Section 429.6 This section details when water user organizations must approve Reclamation's use authorizations.

We changed this section as compared to the previously proposed rule. Section 10 of the Reclamation Project Act of 1939 as amended is the statutory authority for use authorizations under paragraph (a). Due to comments received, we requested a legal review within the Department of the Interior of this provision and this paragraph has now been revised to track with section 10.

Section 10 of the Reclamation Project Act of 1939 as amended is the statutory authority for use authorizations under paragraph (a). This paragraph has now been revised to track with Section 10.

We have added paragraph (c) which addresses the Regional Directors' discretionary authority to seek concurrence for all use authorizations not addressed in paragraph (a). This was

formerly addressed in paragraph (b) and limited to use authorizations of less than 25 years.

Comment: Delete the requirement that Reclamation obtain the approval of water user organizations for easements and rights-of-way for periods in excess of 25 years, and indicate that such a requirement is at the discretion of the regional director.

Response: Section 10 of the Reclamation Project Act of 1939 specifies that Reclamation will grant easements and rights-of-way for periods in excess of 25 years only with the written approval of any water user organization under contract obligation for repayment to Reclamation.

Comment: Rewrite this section to state that all use authorizations for easements and rights-of-way within a project or division are subject to the approval of any water user organization under contract obligation for repayment, and for those water user organizations who have assumed responsibility for operation and maintenance of that project or division. This requirement would not apply to any other type of authorization.

Response: Section 10 of the Reclamation Project Act of 1939 specifies that Reclamation will grant easements and rights-of-way for periods in excess of 25 years only with the written approval of any water user organization under contract obligation for repayment to Reclamation. We do, however, provide in the rule that at a minimum all affected water user organizations be notified prior to the issuance of any use authorization. Additionally, at the discretion of the Regional Director, the affected water user organization may be asked to formally concur with the issuance of the proposed use authorization.

Subpart B—Proposed Uses Involving Reclamation Easements

Section 429.7 This section discusses the use of land not owned by Reclamation, but where Reclamation holds easements.

We made no changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.8 This section discusses whether fees are required for the use of Reclamation easements.

We made no changes to this section as compared to the previously proposed rule. We received no comments on this section.

Subpart C—Requesting Authorizations To Use Reclamation Land, Facilities, and Waterbodies

Section 429.9 This section explains what you should do before filing an application.

We made no changes to this section as compared to the previously proposed rule.

Comment: Revise this section to include discussion of a proposed use with the water user organization as described in § 429.5.

Response: In contacting Reclamation, a potential applicant will be referred to the appropriate water user organization if that organization has the contractual authority to issue use authorizations for the intended use. This issue will be more directly addressed in revisions to applicable Reclamation Manual Directives and Standards and handbooks rather than in this rule. Additionally, when Reclamation is responsible for issuing the use authorization, local Reclamation offices will continue to coordinate with water user organizations when applicable to determine whether a proposed use is compatible with the needs and purposes of the project.

Section 429.10 This section describes what application forms to use and how to determine which application form is appropriate to use.

We made no changes to this section as compared to the previously proposed rule.

Comment: Revise this section to add a water user organization's form authorized by Reclamation.

Response: Reclamation can only accept one of the two OMB approved application forms listed under § 429.10: Form 7–2540 or SF 299. All forms used by a Federal agency which collect information from 10 or more individuals or entities on an annual basis must be approved by OMB and renewed by them on a 3-year basis.

Section 429.11 Where the use authorization application forms can be found is provided in this section.

We made no changes to this section as compared to the previously proposed rule.

Comment: Revise this section to include wording that contact information for the appropriate water user organization can be obtained from any Reclamation office.

Response: The local Reclamation office will provide water user organization contact information when appropriate. This will be addressed more directly in revisions to applicable Reclamation Manual Directives and Standards and handbooks.

Section 429.12 The appropriate location for filing an application is listed in this section.

We made no changes to this section as compared to the previously proposed rule.

Comment: Revise this section to read: "File your application * * * with the Reclamation office or water user organization having jurisdiction over the land.* * *"

Response: Although some water user organizations may have assumed responsibility for the operation and maintenance of Reclamation land, facilities, and waterbodies pursuant to a contract with Reclamation, Reclamation still maintains jurisdiction over the subject land, facilities, and waterbodies. The location for filing an application should be coordinated between the local Reclamation office and water user organization.

Section 429.13 This section tells how long the application review process will take.

We made no changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.14 The criteria Reclamation will consider when reviewing applications is described in this section.

We made no changes to this section as compared to the previously proposed rule.

Comment: This section does not include the best interests of the affected project beneficiaries, nor does it address the impacts of not receiving revenue credits which would create further financial burdens on the water user organizations.

Response: This rule complies with OMB Circular A–25 which directs the recovery of revenues for administrative costs incurred by Reclamation in the processing of use applications and for the use of Federal lands. Although the responsibility for operation and maintenance of Reclamation land, facilities, and waterbodies may be contractually transferred in some instances to a water user organization, they are owned by the United States. All revenues collected for the use of Reclamation land, facilities, and waterbodies must be handled in accordance with applicable Federal statutes, regulations, and policies.

Section 429.15 This section discusses whether Reclamation is required to issue use authorizations.

We made no changes to this section as compared to the previously proposed rule. We received no comments on this section.

Subpart D—Application Fees and Administrative Costs

Section 429.16 The amount of the application fee and when to pay the fee is described in this section.

We made no changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.17 This section explains under what circumstances administrative costs will be collected.

We made no changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.18 This section explains when administrative costs will be due and payable.

We made no changes to this section as compared to the previously proposed rule.

Comment: Administrative costs should include a reasonable charge for project related land, facilities, and waterbodies for the benefit of the project beneficiaries.

Response: OMB Circular A-25 provides our authority to collect administrative costs that are incurred by us in processing a use application for an authorization to use Reclamation land, facilities, or waterbodies. We do not have authority to collect administrative costs for any other entity.

Section 429.19 This section describes what the process is when the initial estimate for administrative costs is insufficient.

We made no changes to this section as compared to the previously published rule. We received no comments on this section.

Section 429.20 This section describes how to request a detailed explanation of the administrative costs.

We made no changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.21 This section describes what occurs if the administrative costs are overpaid.

We made no changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.22 This section discusses whether future administrative costs can be charged after a use authorization is issued by Reclamation.

We made no changes to this section as compared to the previously proposed rule. We received no comments on this section.

Subpart E—Use Fees

Comment: This subpart fails to include the best interests of the affected

project beneficiaries by not charging a reasonable fee for the project beneficiaries and not providing those reasonable fees as revenue credits to the benefit of the affected project.

Response: This rule complies with OMB Circular A-25 which directs the recovery of revenues for the use of Federal lands. Although the responsibility for operation and maintenance of Reclamation land, facilities, and waterbodies may be contractually transferred in some instances to a water user organization, they are owned by the United States. All revenues collected for the use of Reclamation land, facilities, and waterbodies must be handled in accordance with applicable Federal statutes, regulations, and policies.

Section 429.23 How Reclamation determines use fees is described in this section.

We made no changes to this section as compared to the previously proposed rule.

Comment: Increased fees have adverse impacts on cabin owners forcing them from their cabins.

Response: This rule does not set fees for cabins or any other use of Reclamation land, facilities, or waterbodies. Use fees are established on a case-by-case basis as determined by a valuation process or competitive bidding.

Comment: This section must be defined more clearly as well as accurately.

Response: The Reclamation Manual Directive and Standard, *Real Property Appraisal*, LND 05-01, which may be found at <http://www.usbr.gov/> outlines in depth the valuation process for determining use fees. The alternative method that may be used under this section for determining use fees is the competitive bidding process.

Section 429.24 This section explains when use fees should be paid.

We made no changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.25 This section describes the length of time allowed to both submit a use fee payment and accept the offered use authorization.

We made no changes to this section as compared to the previously proposed rule. We received no comments on this section.

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

Section 429.26 This section describes under what conditions

Reclamation may waive or reduce costs or fees.

We made minor editorial changes to this section.

Comment: This section does not take into consideration the affect that waiving fees would have on water user organizations. The requirement to collect fair market value should be retained.

Response: Section 6 of OMB Circular A-25 allows for a reduced fee or waiver under certain circumstances and we have simply incorporated this concept into this rule. As listed under § 429.23, we are required to collect a use fee based on a valuation or competitive bidding process unless the use fees have been waived by the applicable regional director. All revenues collected for the use of Reclamation land, facilities, and waterbodies must be handled in accordance with applicable Federal statutes, regulations, and policies.

Comment: Costs and fees associated with obtaining Reclamation's approval for an easement, right-of-way, or other authorized use should be automatically waived for applicants that are public entities.

Response: Public entities and others who believe they may be eligible for a waiver of some or all fees associated with the use of Reclamation land, facilities, or waterbodies may request such a waiver from the applicable Regional Director.

Subpart G—Terms and Conditions of Use Authorizations

Section 429.27 This section describes the general information that is contained in each use authorization.

We made no changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.28 Terms and conditions that apply to all use authorizations from Reclamation are outlined in this section.

We made changes to this section as compared to the previously proposed rule. Under § 429.28(a)(3) we clarified when Reclamation may terminate a use authorization. These now include, but are not limited to, events such as a natural disaster or threats to public health and safety. We also modified § 429.28(a)(4) by deleting the condition that lack of use in a 2-year timeframe may result in the termination of a use authorization. We added the condition that failure to construct during the timeframe specified in the use authorization may constitute a presumption of abandonment and cause for termination.

Comment: The proposed rule allows existing docks to stay for now. However, it also gives Reclamation unilateral authority to terminate dock permits at any future point without public comment.

Response: We have revised § 429.28 to clarify under what conditions an authorization could be terminated without public comment. Additionally, § 429.32(a) has been revised to more clearly explain the public process that would be required prior to Reclamation making a determination that authorizations for existing private exclusive recreational and residential use would be terminated.

Comment: Under the proposed rule, individuals holding valid permits who do not construct or use their boat docks for a period of two years can lose their permits forever through a presumption of abandonment.

Response: We have revised § 429.28(a)(4) by removing the 2-year timeframe and adding the condition that construction must occur within the timeframe specified in the use authorization or the use authorization may be terminated.

Comment: It appears that this document may be in violation of First Amendment rights by denying the right to appeal.

Response: All final determinations made by Reclamation may be appealed using the process outlined in subpart I of this rule.

Section 429.29 This section describes additional terms and conditions or requirements that will be included in a use authorization.

We made no changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.30 This section explains whether a use authorization can be transferred or assigned to another individual or entity.

We made changes to this section as compared to the previously proposed rule to incorporate revisions made regarding the transfer of authorizations for existing private exclusive recreational or residential uses as described under § 429.32(e).

Comment: The proposed rule does not recognize homeowners' rights to transfer their dock permits should they sell their lakeside homes or pass them on to their heirs. Transfer authority is solely at the discretion of the local Reclamation office. This right should be recognized in the rule. Reclamation authority over transfers should be limited to record keeping and permit compliance.

Response: The conditions for transfer of use authorizations for existing private

exclusive recreational or residential uses are now under 429.32(e). Notification of transfers must be provided to Reclamation in advance of the transfer. Holders of use authorizations should keep in mind, however, that a use authorization for private exclusive recreational or residential use does not vest an interest in Reclamation land, facilities, or waterbodies with the holder of the use authorization.

Subpart H—Terms and Conditions of Use Authorizations

Section 429.31 This section describes what the prohibited uses are on Reclamation land, facilities, and waterbodies.

We made changes to this section as compared to the previously proposed rule.

Section 429.31(b) now reflects that improvements made within the terms and conditions of an existing use authorization will not be considered a new private exclusive recreational or residential use. These improvements may include those necessary to maintain or repair the authorized use. Expansions of the authorized use within the terms and conditions of the existing authorization may also be allowed. Any such expansions should, however, be reviewed by the local Reclamation office prior to initiating the activity to ensure that the planned change is truly within the terms of the use authorization.

Additionally, § 429.31(b)(1) has been moved and incorporated into the definition of *private exclusive recreational and residential use* under § 429.2 and § 429.31(b)(2) has been moved to § 429.4(b).

Comment: Reword § 429.31(b) to state that uses outside an already existing permitted area would be prohibited. This would allow improvements, expansions, or repairs within the existing footprint of an existing authorized use.

Response: We have revised § 429.31(b) to incorporate the intent of this comment. Improvements, expansions, or repairs of the authorized use within the terms and conditions of the existing authorization may also be allowed. Any such improvements, expansions, or repairs should, however, be reviewed by the local Reclamation office prior to initiating the activity to ensure that the planned change is truly within the terms of the use authorization.

Comment: Prohibitions against new docks on lakes with limited public facilities are inconsistent with both Congressional mandates and agency principles. Requiring property owners

to use limited public boat dock moorings reduces recreational opportunities for the public.

Response: Under this rule, new public docks are not prohibited. When as a result of an appropriate public planning process a need for additional public facilities is shown, we will explore opportunities to construct needed facilities under existing project authorities or seek managing partners willing to construct and maintain such facilities.

Comment: New landscaping is prohibited under the proposed rule while existing authorizations are grandfathered. Since use authorizations for landscaping have not as yet been issued by the local office, these uses would now be prohibited and subject to civil and criminal penalties. Homeowners' efforts to improve the shoreline in accordance with the resource management plan should be encouraged.

Response: New landscaping that falls within the parameters of an existing authorization for private exclusive recreational or residential use will not be considered new private exclusive recreational or residential use as stated under § 429.31(b). Applications submitted for a use authorization for landscaping will be reviewed and evaluated on a case-by-case basis by the local or regional Reclamation office.

Section 429.32 How Reclamation will address existing uses which are otherwise prohibited is discussed in this section.

The majority of comments received relate to this section of the proposed rule. Most of the commenters hold existing use authorizations for cabin sites or other recreational or residential uses, including boat docks, on Reclamation land, facilities, or waterbodies.

In response to comments received and to improve the clarity of this section, we have made several changes to this section as follow:

Paragraph (a) of this section more thoroughly describes the public process we will use when determining whether existing private exclusive recreational or residential uses remain compatible with public needs or project purposes. The minimum timeframe for such reviews has been increased from 5 years to 20 years, except for those instances where part 21 of this title requires reviews at least every 5 years. In addition, clarification was incorporated on how holders of existing use authorizations would be notified of opportunities for public participation.

Paragraphs (b), (c), and (d) of this section now address how and when

reviews of compliance with environmental, health and safety, and financial requirements will be conducted and how those results will be provided to the holder of the use authorization.

Paragraph (e) of this section was added to address the conditions for transferring existing authorizations for private exclusive recreational and residential uses.

Minor editorial changes were made to paragraph (f) (previously paragraph (e)) of this section.

No changes other than re-lettering were made to paragraphs (g), (h) and (i) (previously paragraphs (f), (g) and (h)) of this section.

A clarification was made to paragraph (i) (previously paragraph (h)) of this section concerning what use authorizations could not be renewed, transferred, etc.

Comment: The proposed rule provides no rationale for reversing the regulations previously proposed. Reclamation is not authorized to provide for private exclusive use. The proposed rule would violate Reclamation's Congressional mandate to provide for public recreation. We strongly object to the change in the proposed rule to allow private exclusive use to continue. Please do not privatize our public lands.

Response: Under this rule existing private exclusive recreational and residential uses will be discontinued when, through a public process, a determination is made that the needs of the public or of Reclamation projects are not being adequately met. We will continue to take into consideration the needs of the public in the management of these lands, facilities, and waterbodies.

Comment: The U.S.D.A. Forest Service regulations contain better protections for cabin owners and recognition of appropriate time periods which are omitted in this section.

Response: The U.S.D.A. Forest Service and Reclamation are governed by different Federal statutes, regulations, and policies that determine how both agencies manage cabin sites on Federal lands for which they have management responsibilities.

Comment: The term for compliance reviews should be expanded from 5 years to 20 years and reviews should be done on a lake-wide basis since individual dock compliance will occur at permit renewal.

Response: This section has been revised to reflect that we will conduct reviews for determinations as to compatibility with public needs and project purposes at least once every 20

years unless required otherwise by part 21 of this title. Compliance reviews for the criteria found under § 429.32(b) will be conducted once every 5 years since it is not appropriate to review, for example, an area any less frequently to determine if there are health and safety concerns.

Comment: The 90-day notification period to authorization holders for correction of identified deficiencies is not adequate in areas where weather limitations could impact their ability to bring their use into compliance with the requirements.

Response: Section 429.32(c) allows a minimum of 90 days to be provided to make corrections. Local managers will work with authorization holders to establish reasonable timeframes for curing deficiencies. Additionally, the compliance review reports will be provided to the holder of the use authorization by certified mail, return receipt requested.

Comment: Reclamation has no requirement to inform permit holders of expiring permits which could result in permanent loss of docks for unaware homeowners who miss renewal deadlines. Permit holders should be notified at least 90 days prior to permit expiration dates. Reclamation offices issuing permits should be given discretionary authority to reinstate lapsed permits where lack of notice or other extenuating circumstances can be shown.

Response: Section 429.32(d) has been revised to include written notification to the holder of an authorization for existing private exclusive recreational or residential use with the results of the compliance review that will be completed at least 6 months prior to the expiration date of the authorization. The notification will be sent at least 90 days prior to the expiration of the authorization and will include a reminder that it is time to renew the use authorization.

Comment: All dock permits should be for a term of 20 years.

Response: Under § 429.32(f) renewals of authorizations for all private exclusive recreational or residential will not exceed 20 year terms. The determination as to the appropriate length of the term which may be up to 20 years will be made on a case-by-case basis by the issuing Reclamation office.

Comment: Our existing use authorizations for private exclusive recreational and residential uses will not be renewed upon expiration.

Response: We will renew private exclusive recreational and residential use authorizations provided that the

requirements of this final rule continue to be met.

Section 429.33 This section describes the consequences for using Reclamation land, facilities, and waterbodies without authorization.

We made changes to this section compared to the previously proposed rule. Paragraph (a) of this section was rewritten and is now a new paragraph (g) which discusses when legal action under part 423 of this chapter may apply.

Comment: Potential penalties under this proposed rule give Reclamation officials the right to hand out jail terms to people failing to remove docks for which permits have lapsed or been denied.

Response: Reclamation officials cannot unilaterally impose jail terms for violations. Penalties for unauthorized use of Reclamation land, facilities, or waterbodies are established under part 423 of this chapter not under this rule. We have added a new paragraph (g) to this section to clarify that a violation may be subject to legal action including criminal prosecution under part 423 of this chapter.

Comment: Fines levied can be retroactively assessed to the date of infraction. Interest on penalties should accrue from the date an individual is notified in writing of any violation.

Response: We reviewed this issue and determined it is appropriate to charge use fees as well as any penalties and interest from the date that the unauthorized use commenced. Those that use Reclamation land, facilities, or waterbodies without authorization should not be treated the same as those who have complied with the requirements. The application of interest from the date the unauthorized use commenced incorporates this concept.

Subpart I—Decisions and Appeals

Section 429.34 The decisionmaker for Reclamation's final determinations is listed in this section and provides when that decision will be effective.

We made minor editorial changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.35 This section explains if and when an appeal can be made to a final determination.

We made changes to this section as compared to the previously proposed rule to clarify that the appeal process applies to final determinations and to specify that you can appeal a Regional Director's final determination to the Commissioner within 30 days of the

postmark date of a Regional Director's letter of final determination.

Comment: The 30-day appeal period should commence on the date of receipt of decision.

Response: We changed this section to state that you can appeal a Regional Director's final determination to the Commissioner within 30 days of the postmark date of a Regional Director's letter of final determination.

Section 429.36 This section describes if and when a Commissioner's decision can be appealed. The process

for and timeliness of such an appeal is also discussed in this section.

We added paragraph (c) to this section to clarify that the Commissioner's decision will take effect upon issuance and remain in effect unless a stay is specifically requested and granted by the Director, Office of Hearing and Appeals.

We received no comments on this section.

Section 429.37 This section discusses what happens to monies owed to the United States during an appeal process.

We made a change to this section as compared to the previously proposed rule to clarify that interest does not accrue when a stay has been issued at any point in the appeal process.

We received no comments on this section.

VI. Distribution Table

The following table indicates each section of the original 1983 rule, as modified in 2006, and where each was incorporated into the proposed rule or not included as the case may be.

Old section	New section
429.1	429.1.
429.2(a)–(n)	429.2.
429.3(a)	429.23.
429.3(b)	429.33(a) and (c).
429.3(c)	429.33(a) and (b).
429.4	429.26.
429.5	Removed.
429.6	429.7(b); 429.12; and 429.14.
429.6(a)	429.10.
429.6(a)(1)–(3)	Removed. Now contained in Application Forms.
429.6(b)	429.16; 429.20–429.22; and 429.26.
429.6(c)(1)–(4)	429.26.
429.6(d)(1)–(4)	429.13(a) and (b).
429.6(e)	429.19; 429.22.
429.6(f)	429.23–429.25.
429.6(g)	Removed. See Preamble.
429.7(a)	429.27–429.30.
429.7(b)	429.6.
429.7(c)	Removed.
429.7(d)	429.28(a)(3).
429.7(e)	429.28(a)(1).
429.7(f)	Removed.
429.8	429.28(a)(2), (3), and (4).
429.9(a)	429.28(a)(1).
429.9(b)	429.28(b).
429.10(a)	429.34(a) and (b); 429.35(a), (b), and (c).
429.10(b)	429.36(a) and (b).
429.11	Removed.
429.12(a)	429.1; 429.3–429.6.
429.12(b)	429.4(a).
429.12(c)	429.26.
429.12(d)	429.4(g).
429.12(e)	Removed.
429.13	429.1; 429.3.

VII. Procedural Requirements

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

OMB has determined that this rule is not a significant rule and has not reviewed this rule under the requirements of E.O. 12866. We have evaluated the impacts of this rule as required by E.O. 12866 and have determined that it is not a significant regulatory action. The results of our evaluation follow:

(a) This rule will not have an effect of \$100 million or more on the economy. It would not adversely affect in any material way the economy, productivity, competition, jobs, environment, public

health or safety, or State, local, and tribal governments or communities. The original rule covered only Reclamation lands. It was modified in 2006 to explicitly incorporate uses of Reclamation facilities and waterbodies. The proposed rule requires collecting an initial, nonrefundable deposit of \$100 (referred to as the "application fee"), the recovery of additional administrative costs in excess of the initial application fee, and a fee for the use of Reclamation land. It should be noted that this rule reduces the initial application fee from \$200 (\$150 refundable under specific circumstances) to a nonrefundable \$100 application fee. The rule does not change the requirement for full cost

recovery of additional administrative costs in excess of the \$100 nonrefundable application fee or the requirement to collect the fee for use of Reclamation land, facilities, and waterbodies. Like the current rule, this rule provides for waivers or reductions of costs and fees under unique circumstances as determined to be appropriate by us in compliance with OMB Circular A–25.

(b) This rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Since this rule is specific to Reclamation land, facilities, and waterbodies, any impact on another agency would be minimal.

Nevertheless, nothing in this rule precludes us from cooperating with other agencies on proposed actions that may impact or require the use of Reclamation's land, facilities, and waterbodies. An example of our working with other agencies is this rule's requirement to use Standard Form (SF) 299, Application for Transportation and Utility Systems and Facilities on Federal Lands, under E.O. 13327. The purpose of E.O. 13327 is to promote the efficient and economical use of America's real property assets. This proposed rule also requires the use of Form 7-2540, Bureau of Reclamation Right-of-Use Application Form, for all other requested uses.

(c) This rule does not alter the budgetary effects of entitlements, grants, user fees, concessions, loan programs, water contracts, management agreements, or the rights and obligations of their recipients.

(d) This rule does not raise any novel legal or policy issues. The recovery of administrative fees and charging of application and use fees are required by the IOAA, OMB Circular A-25, and the current rule.

2. Regulatory Flexibility Act

The Department of the Interior (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 does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule. A small business's wish to apply to use Reclamation land, facilities, or waterbodies is strictly voluntary. One of the purposes of this rule is to provide small business applicants and others with the requirements they must follow when applying for such a use. An Initial Regulatory Flexibility Analysis is not required and, accordingly, a Small Entity Compliance Guide is not required.

3. Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule:

(a) Does not have an annual effect on the economy of \$100 million or more. There are no major changes in the costs or fees charged to applicants.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local, or tribal government agencies, or geographic regions. It is anticipated that

this rule will not result in significant increases in administrative costs or use fees for any one applicant, but it will clarify for the public the basis for determining such costs and fees.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. The cost to the private sector requesting use of Reclamation land, facilities, or waterbodies is a small fraction of a percent of an individual entity's total cost of doing business. Under this rule, such requests are made on a voluntary basis.

4. Unfunded Mandates Reform Act

This proposed rule does not impose an unfunded mandate or a requirement to expend monies on the part of State, local, or tribal governments or communities, or the private sector of \$100 million or more annually. This rule does not have a significant or unique effect on State, local, or tribal governments or communities, or the private sector. Requests from any of these entities to use Reclamation land, facilities, and waterbodies are strictly voluntary. If a requested use is authorized by Reclamation, the recovery of administrative costs and the payment of use fees associated with such use are required by law, OMB Circular, and regulation. There are provisions to allow a reduction or waiver of such costs and fees, at our discretion, when specific criteria are met. We are not imposing a duty, requirement, or mandate on State, local, or tribal governments or communities, or the private sector to request such uses. Thus, a statement containing information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630 and E.O. 13406)

Under the criteria in E.O. 12630 and E.O. 13406, this proposed rule does not have any implications of takings of property rights. This rule sets forth the requirements for applying to use Reclamation land, facilities, and waterbodies. It also clarifies the basis for charging application and use fees, and for the recovery of administrative costs under the requirements of the IOAA and OMB Circular A-25. A Takings Implication Assessment is not required.

6. Federalism (E.O. 13132)

Under the criteria in E.O. 13132, the rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The rule is not associated with, nor will it have

substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. 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 of E.O. 13175, Reclamation has evaluated this rule and determined that it would have no substantial effects on federally recognized Indian Tribes. This rule does not apply to land under the sovereign ownership of federally recognized Indian Tribes.

9. Paperwork Reduction Act

This rule does require information collection from 10 or more applicants and a submission under the Paperwork Reduction Act (PRA) is required. However, the information collection requirements associated with this rule have been previously submitted to OMB for review and have received approval under the requirements of the PRA. The SF 299, Application for Transportation and Utility Systems and Facilities on Federal Lands (used for access across our land, facilities, and waterbodies), was authorized by OMB No. 1004-0189, expiring on November 30, 2008. OMB also has approved the information collection in this rule (using the Bureau of Reclamation Right-of-Use Application Form 7-2540) and has assigned approval number 1006-0003, expiring on March 31, 2009. We estimate the burden associated with this latter information collection to be 2 hours per application. We use the information provided by applicants to determine the nature of the requested use and whether the requested use of our land, facilities, or waterbodies interferes with project operations or project security, or may create other issues. The information provided on the applications is also used to ensure, where appropriate and applicable, the technical and financial

resources of the applicant are sufficient to complete the construction of the infrastructure or project.

10. National Environmental Policy Act of 1969

This rule does not constitute a major Federal action and would not have a significant effect on the quality of the human environment. Therefore, this rule does not require the preparation of an environmental assessment or environmental impact statement under the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), and its regulations.

11. Information Quality Act

In developing this rule, there was no need to conduct or use a study, experiment, or survey requiring peer review under the Information 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:

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

List of Subjects in 43 CFR Part 429

Administrative practice and procedures, Public lands, Reclamation, Recreation and recreation areas, and Land rights-of-way.

Dated: November 17, 2008.

Kris D. Polly,

Acting Assistant Secretary—Water and Science.

■ For the reasons stated in the preamble, the Bureau of Reclamation revises 43 CFR part 429 as follows:

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

Subpart A—Purpose, Definitions, and Applicability

Sec.

- 429.1 What is the purpose of this part?
429.2 What definitions are used in this part?

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

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

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

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

Subpart I—Decisions and Appeals

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

429.35 May I appeal Reclamation's final determination?

429.36 May I appeal the Commissioner's decision?

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

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.

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;

(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 nonrefundable 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 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.

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, licenses, 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;

(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.

(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;
 - (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.

§ 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.

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

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 applicable 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:

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 transferred, 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 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.

(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. Requests 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.

[FR Doc. E8-28740 Filed 12-4-08; 8:45 am]
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APPENDIX F

**FEDERAL REGISTER
43 CFR PART 423**

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]

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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.

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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

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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?

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423.16 Who can be exempted from closures?

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423.25 Vandalism, tampering, and theft.

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423.27 Advertising and public solicitation.

423.28 Memorials.

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423.30 Weapons, firearms, explosives, and fireworks.

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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–nnm).

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 of 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-2008-008; 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.

APPENDIX G

TITLE X—CANYON FERRY RESERVOIR, MONTANA, ACT

SECTION 1001. FINDINGS.

Congress finds that the conveyance of the properties described in section 4(b) to the lessees of those properties for fair market value would have the beneficial results of—

- (1) reducing Pick-Sloan project debt for the Canyon Ferry Unit;
- (2) providing a permanent source of funding to acquire publicly accessible land and interests in land, including easements and conservation easements, in the State from willing sellers at fair market value to—
 - (A) restore and conserve fisheries habitat, including riparian habitat;
 - (B) restore and conserve wildlife habitat;

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- (C) enhance public hunting, fishing, and recreational opportunities; and
- (D) improve public access to public land;
- (3) eliminating Federal payments in lieu of taxes and associated management expenditures in connection with the Federal Government's ownership of the properties while increasing local tax revenues from the new owners; and
- (4) eliminating expensive and contentious disputes between the Secretary and leaseholders while ensuring that the Federal Government receives full and fair value for the properties.

SEC. 1002. PURPOSES.

The purposes of this Act are to—

- (1) establish terms and conditions under which the Secretary of the Interior shall, for fair market value, convey certain properties around Canyon Ferry Reservoir, Montana, to private parties; and

- (2) acquire certain land for fish and wildlife conservation purposes.

SEC. 1003. DEFINITIONS.

In this Act:

- (1) CANYON FERRY-BROADWATER COUNTY TRUST.—
The term “Canyon Ferry-Broadwater County Trust” means the Canyon Ferry-Broadwater County Trust established under section 8.
- (2) CFRA.—The term “CFRA” means the Canyon Ferry Recreation Association, Incorporated, a Montana corporation.
- (3) COMMISSIONERS.—The term “Commissioners” means the Board of Commissioners for Broadwater County, Montana.
- (4) LEASE.—The term “lease” means a lease or permit in effect on the date of enactment of this Act that gives a leaseholder the right to occupy a property.
- (5) LESSEE.—The term “lessee” means—
 - (A) the leaseholder of 1 of the properties on the date of enactment of this Act; and
 - (B) the leaseholder’s heirs, executors, and assigns of the leasehold interest in the property.
- (6) MONTANA FISH AND WILDLIFE CONSERVATION TRUST.—
The term “Montana Fish and Wildlife Conservation Trust” means the Montana Fish and Wildlife Conservation Trust established under section 7.
- (7) PROJECT.—The term “project” means the Canyon Ferry Unit of the Pick-Sloan Missouri River Basin Project.
- (8) PROPERTY.—
 - (A) IN GENERAL.—The term “property” means 1 of the cabin sites described in section 4(b).
 - (B) USE IN THE PLURAL.—The term “properties” means all 265 of the properties and any contiguous parcels referred to in section 4(b)(1)(B).
- (9) PURCHASER.—The term “purchaser” means a person or entity, excluding CFRA or a lessee, that purchases the properties under section 4.

- (10) RESERVOIR.—The term “Reservoir” means the Canyon Ferry Reservoir, Montana.
- (11) SECRETARY.—The term “Secretary” means the Secretary of the Interior.
- (12) STATE.—The term “State” means the State of Montana.

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SEC. 1004. SALE OF PROPERTIES.

- (a) IN GENERAL.—Consistent with the Act of June 17, 1902 (32 Stat. 388, chapter 1093) and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.), the Secretary shall convey to CFRA or a purchaser—
 - (1) all right, title, and interest (except the mineral estate) of the United States in and to the properties, subject to valid existing rights and the operational requirements of the Pick-Sloan Missouri River Basin Program; and
 - (2) perpetual easements for—
 - (A) vehicular access to each property;
 - (B) access to and use of 1 dock per property; and
 - (C) access to and use of all boathouses, ramps, retaining walls, and other improvements for which access is provided in the leases as of the date of enactment of this Act.
- (b) DESCRIPTION OF PROPERTIES.—
 - (1) IN GENERAL.—The properties to be conveyed are—
 - (A) the 265 cabin sites of the Bureau of Reclamation located along the northern end of the Reservoir in portions of sections 2, 11, 12, 13, 15, 22, 23, and 26, Township 10 North, Range 1 West; and
 - (B) any small parcel contiguous to any property (not including shoreline or land needed to provide public access to the shoreline of the Reservoir) that the Secretary determines should be conveyed in order to eliminate an inholding and facilitate administration of surrounding land remaining in Federal ownership.

Canyon Ferry Reservoir
Shoreline Management Plan

- (2) **ACREAGE; LEGAL DESCRIPTION.**—The acreage and legal description of each property and of each parcel shall be determined by the Secretary in consultation with CFRA.
- (3) **RESTRICTIVE USE COVENANT.**—
 - (A) **IN GENERAL.**—In order to maintain the unique character of the Reservoir area, the Secretary, the purchaser, CFRA, and each subsequent owner of each property shall covenant that the use restrictions to carry out subparagraphs
 - (B) and (C) shall—
 - (i) be appurtenant to, and run, with each property; and
 - (ii) be binding on each subsequent owner of each property.
 - (B) **ACCESS TO RESERVOIR.**—
 - (i) **IN GENERAL.**—The Secretary, the purchaser, CFRA, and the subsequent owners of each property shall ensure that—
 - (I) public access to and along the shoreline of the Reservoir in existence on the date of enactment of this Act is not obstructed; and
 - (II) adequate public access to and along the shoreline of the Reservoir is maintained.
 - (ii) **FEDERAL RECLAMATION LAW.**—
 - (I) **IN GENERAL.**—No conveyance of property under this Act shall restrict or limit the authority or ability of the Secretary to fulfill the duties of the Secretary under the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental 112 STAT. 2681–713 PUBLIC LAW 105–277—OCT. 21, 1998 to and amendatory of that Act (43 U.S.C. 371 et seq.).
 - (II) **NO LIABILITY.**—The operation of the Reservoir by the Secretary in fulfillment of the duties described in subclause (I) shall not result in liability for damages, direct or indirect, to the owner of any property conveyed under section 4(a) or damages from any loss of use or enjoyment of the property.
 - (C) **HISTORICAL USE.**—The Secretary, the purchaser, CFRA, and each subsequent owner of each property shall covenant that future uses of the property shall be limited

to the type and intensity of uses in existence on the date of enactment of this Act, as limited by the prohibitions contained in the annual operating plan of the Bureau of Reclamation for the Reservoir in effect on October 1, 1998.

(c) **PURCHASE PROCESS.**—

- (1) **IN GENERAL.**—The Secretary shall—
 - (A) solicit sealed bids for the properties;
 - (B) subject to paragraph (2), sell the properties to the bidder that submits the highest bid above the minimum bid determined under paragraph (2); and
 - (C) not accept any bid for less than all of the properties in 1 transaction.
- (2) **MINIMUM BID.**—
 - (A) **IN GENERAL.**—Before accepting bids, the Secretary shall establish a minimum bid, which shall be equal to the fair market value of the properties determined by an appraisal of each property, exclusive of the value of private improvements made by the leaseholders before the date of the conveyance, in conformance with the Uniform Appraisal Standards for Federal Land Acquisition.
 - (B) **FAIR MARKET VALUE.**—Any dispute over the fair market value of a property under subparagraph (A) shall be resolved in accordance with section 2201.4 of title 43, Code of Federal Regulations.
- (3) **RIGHT OF FIRST REFUSAL.**—If the highest bidder is other than CFRA, CFRA shall have the right to match the highest bid and purchase the properties at a price equal to the amount of the highest bid.

(d) **TERMS OF CONVEYANCE.**—

- (1) **PURCHASER.**—If the highest bidder is other than CFRA, and CFRA does not match the highest bid, the following shall apply:
 - (A) **PAYMENT.**—The purchaser shall pay the amount bid to the Secretary for distribution in accordance with section 6.
 - (B) **CONVEYANCE.**—The Secretary shall convey the properties to the purchaser.
 - (C) **OPTION TO PURCHASE.**—The purchaser shall give each lessee of a property conveyed under this section an

option to purchase the property at fair market value, as determined under subsection ©(2).

(D) NONPURCHASING LESSEES.—

(i) RIGHT TO CONTINUE LEASE.—A lessee that is unable or unwilling to purchase a property shall be provided the opportunity to continue to lease the PUBLIC LAW 105–277—OCT. 21, 1998 112 STAT. 2681–714 property for fair market value rent under the same terms and conditions as apply under the existing lease for the property, and shall have the right to renew the term of the existing lease for 2 consecutive 5-year terms.

(ii) COMPENSATION FOR IMPROVEMENTS.—If a lessee declines to purchase a property, the purchaser shall compensate the lessee for the fair market value, as determined pursuant to customary appraisal procedures, of all improvements made to the property by the lessee. The lessee may sell the improvements to the purchaser at any time, but the sale shall be completed by the final termination of the lease, after all renewals under clause (i).

(2) CFRA.—If CFRA is the highest bidder, or matches the highest bid, the following shall apply:

(A) CLOSING.—On receipt of a purchase request from a lessee or CFRA, the Secretary shall close on the property and prepare all other properties for closing within 45 days.

(B) PAYMENT.—At the closing for a property—

- (i) the lessee or CFRA shall deliver to the Secretary payment for the property, which the Secretary shall distribute in accordance with section 6; and
- (ii) the Secretary shall convey the property to the lessee or CFRA.

(C) APPRAISAL.—The Secretary shall determine the purchase amount of each property based on the appraisal conducted under subsection ©(2), the amount of the bid under subsection ©(1), and the proportionate share of administrative costs pursuant to subsection (e). The total purchase amount for all properties shall equal the total bid amount plus administrative costs under subsection (e).

- (D) **TIMING.**—CFRA and the lessees shall purchase at least 75 percent of the properties not later than August 1 of the year that begins at least 12 months after title to the first property is conveyed by the Secretary to a lessee.
- (E) **RIGHT TO RENEW.**—The Secretary shall afford the lessees who have not purchased properties under this section the right to renew the term of the existing lease for 2 (but not more than 2) consecutive 5-year terms.
- (F) **REIMBURSEMENT.**—A lessee shall reimburse CFRA for a proportionate share of the costs to CFRA of completing the transactions contemplated by this Act, including any interest charges.
- (G) **RENTAL PAYMENTS.**—All rent received from the leases shall be distributed by the Secretary in accordance with section 6.
- (e) **ADMINISTRATIVE COSTS.**—Any reasonable administrative costs incurred by the Secretary, including the costs of survey and appraisals, incident to the conveyance under subsection (a) shall be reimbursed by the purchaser or CFRA.
- (f) **TIMING.**—The Secretary shall make every effort to complete the conveyance under subsection (a) not later than 1 year after the satisfaction of the condition established by section 8(b).

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- (g) **CLOSINGS.**—Real estate closings to complete the conveyance under subsection (a) may be staggered to facilitate the conveyance as agreed to by the Secretary and the purchaser or CFRA.
- (h) **CONVEYANCE TO LESSEE.**—If a lessee purchases a property from the purchaser or CFRA, the Secretary, at the request of the lessee, shall have the conveyance documents prepared in the name or names of the lessee so as to minimize the amount of time and number of documents required to complete the closing for the property.

SEC. 1005. AGREEMENT.

- (a) **MANAGEMENT OF SILO'S CAMPGROUND.**—Not later than 180 days after the date of enactment of this Act, the Secretary, acting through the Commissioner of Reclamation, shall—
- (1) offer to contract with the Commissioners to manage the Silo's campground;
 - (2) enter into such a contract if agreed to by the Secretary and the Commissioners; and
 - (3) grant necessary easements for access roads within and adjacent to the Silo's campground.
- (b) **CONCESSION INCOME.**—Any income generated by any concession that may be granted by the Commissioners at the Silo's recreation area—
- (1) shall be deposited in the Canyon Ferry-Broadwater County Trust; and
 - (2) may be disbursed by the Canyon Ferry-Broadwater County Trust manager as part of the income of the Trust.

SEC. 1006. USE OF PROCEEDS.

Notwithstanding any other provision of law, proceeds of conveyances under this Act shall be available, without further Act of appropriation, as follows:

- (1) 10 percent of the proceeds shall be applied by the Secretary of the Treasury to reduce the outstanding debt for the Pick-Sloan project at the Reservoir.
- (2) 90 percent of the proceeds shall be deposited in the Montana Fish and Wildlife Conservation Trust.

SEC. 1007. MONTANA FISH AND WILDLIFE CONSERVATION TRUST.

- (a) **ESTABLISHMENT.**—The Secretary, in consultation with the State congressional delegation and the Governor of the State, shall establish a nonprofit charitable permanent perpetual public trust in the State, to be known as the “Montana Fish and Wildlife Conservation Trust” (referred to in this section as the “Trust”).

- (b) **PURPOSE.**—The purpose of the Trust shall be to provide a permanent source of funding to acquire publicly accessible land and interests in land, including easements and conservation easements, in the State from willing sellers at fair market value to—
 - (1) restore and conserve fisheries habitat, including riparian habitat;
 - (2) restore and conserve wildlife habitat;
 - (3) enhance public hunting, fishing, and recreational opportunities; and
 - (4) improve public access to public land.
- (c) **ADMINISTRATION.**—
 - (1) **TRUST MANAGER.**—The Trust shall be managed by a trust manager, who—

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- (A) shall be responsible for investing the corpus of the Trust; and
- (B) shall disburse funds from the Trust on receiving a request for disbursement from a majority of the members of the Joint State-Federal Agency Board established under paragraph (2) and after determining, in consultation with the Citizen Advisory Board established under paragraph (3) and after consideration of any comments submitted by members of the public, that the request meets the purpose of the Trust under subsection (b) and the requirements of subsections (d) and (e).
- (2) **JOINT STATE-FEDERAL AGENCY BOARD.**—
 - (A) **ESTABLISHMENT.**—There is established a Joint State-Federal agency Board, which shall consist of—
 - (i) 1 Forest Service employee employed in the State designated by the Forest Service;
 - (ii) 1 Bureau of Land Management employee employed in the State designated by the Bureau of Land Management;
 - (iii) 1 Bureau of Reclamation employee employed in the State designated by the Bureau of Reclamation;

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- (iv) 1 United States Fish and Wildlife Service employee employed in the State designated by the United States Fish and Wildlife Service; and
 - (v) 1 Montana Department of Fish, Wildlife and Parks employee designated by the Department.
- (B) REQUESTS FOR DISBURSEMENT.—After consulting with the Citizen Advisory Board established under paragraph
- (3) and after consideration of the Trust plan prepared under paragraph (3)© and of any comments or requests submitted by members of the public, the Joint State-Federal Agency Board, by a vote of a majority of its members, may submit to the Trust Manager a request for disbursement if the Board determines that the request meets the purpose of the Trust.
- (3) CITIZEN ADVISORY BOARD.—
 - (A) IN GENERAL.—The Secretary shall nominate, and the Joint State-Federal Agency Board shall approve by a majority vote, a Citizen Advisory Board.
 - (B) MEMBERSHIP.—The Citizen Advisory Board shall consist of 4 members, including 1 with a demonstrated commitment to improving public access to public land and to fish and wildlife conservation, from each of—
 - (i) a Montana organization representing agricultural landowners;
 - (ii) a Montana organization representing hunters;
 - (iii) a Montana organization representing fishermen; and
 - (iv) a Montana nonprofit land trust or environmental organization.
 - (C) DUTIES.—The Citizen Advisory Board, in consultation with the Joint State-Federal Agency Board and the Montana Association of Counties, shall prepare and periodically update a Trust plan including recommendations for requests for disbursement by the Joint State-Federal Agency Board.

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- (D) OBJECTIVES OF PLAN.—The Trust plan shall be designed to maximize the effectiveness of Montana Fish and Wildlife Conservation Trust expenditures considering—
 - (i) public needs and requests;

- (ii) availability of property;
 - (iii) alternative sources of funding; and
 - (iv) availability of matching funds.
- (4) PUBLIC NOTICE AND COMMENT.—Before requesting any disbursements under paragraph (2), the Joint State-Federal Agency Board shall—
 - (A) notify members of the public, including local governments; and
 - (B) provide opportunity for public comment.
- (d) USE.—
 - (1) PRINCIPAL.—The principal of the Trust shall be inviolate.
 - (2) EARNINGS.—Earnings on amounts in the Trust shall be used to carry out subsection (b) and to administer the Trust and Citizen Advisory Board.
 - (3) LOCAL PURPOSES.—Not more than 50 percent of the income from the Trust in any year shall be used outside the watershed of the Missouri River in the State, from Holter Dam upstream to the confluence of the Jefferson River, Gallatin River, and Madison River.
- (e) MANAGEMENT.—Land and interests in land acquired under this section shall be managed for the purpose described in subsection (b).

SEC. 1008. CANYON FERRY-BROADWATER COUNTY TRUST.

- (a) ESTABLISHMENT.—The Commissioners shall establish a nonprofit charitable permanent perpetual public trust to be known as the “Canyon Ferry-Broadwater County Trust” (referred to in this section as the “Trust”).
- (b) PRIORITY OF TRUST ESTABLISHMENT.—
 - (1) CONDITION TO SALE.—No sale of property under section 4 shall be made until at least \$3,000,000, or a lesser amount as offset by in-kind contributions made before full funding of the trust, is deposited as the initial corpus of the Trust.
 - (2) IN-KIND CONTRIBUTIONS.—
 - (A) IN GENERAL.—In-kind contributions—
 - (i) shall be approved in advance by the Commissioners;
 - (ii) shall be made in Broadwater County;
 - (iii) shall be related to the improvement of access to the portions of the Reservoir lying within Broadwater

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County or to the creation and improvement of new and existing recreational areas within Broadwater County; and

(iv) shall not include any contribution made by Broadwater County.

(B) APPROVAL.—Approval by the Commissioners of an in-kind contribution under subparagraph (A) shall include approval of the value, nature, and type of the contribution and of the entity that makes the contribution.

(3) INTEREST.—Notwithstanding any other provision of this Act, all interest earned on the principal of the Trust shall PUBLIC LAW 105-277—OCT. 21, 1998 112 STAT. 2681-718 be reinvested and considered part of its corpus until the condition stated in paragraph (1) is met.

(c) TRUST MANAGEMENT.—

(1) TRUST MANAGER.—The Trust shall be managed by a nonprofit foundation or other independent trustee to be selected by the Commissioners.

(2) USE.—The Trust manager shall invest the corpus of the Trust and disburse funds as follows:

(A) PRINCIPAL.—A sum not to exceed \$500,000 may be expended from the corpus to pay for the planning and construction of a harbor at the Silo's recreation area.

(B) INTEREST.—The balance of the Trust shall be held and the income shall be expended annually for the improvement of access to the portions of the Reservoir lying within Broadwater County, Montana, and for the creation and improvement of new and existing recreational areas within Broadwater County.

(3) DISBURSEMENT.—The Trust manager—

(A) shall approve or reject any request for disbursement; and

(B) shall not make any expenditure except on the recommendation of the advisory committee established under subsection (d).

(d) ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Commissioners shall appoint an advisory committee consisting of not fewer than 3 nor more than 5 persons.

(2) DUTIES.—The advisory committee shall meet on a regular basis to establish priorities and make requests for the disbursement of funds to the Trust manager.

- (3) **APPROVAL BY THE COMMISSIONERS.**—The advisory committee shall recommend only such expenditures as are approved by the Commissioners.
- (e) **NO OFFSET.**—Neither the corpus nor the income of the Trust shall be used to reduce or replace the regular operating expenses of the Secretary at the Reservoir, unless approved by the Commissioners.

SEC. 1009. AUTHORIZATION.

- (a) **IN GENERAL.**—The Secretary is authorized to—
 - (1) investigate, plan, construct, operate, and maintain public recreational facilities on land withdrawn or acquired for the development of the project;
 - (2) conserve the scenery, the natural historic, paleontologic, and archaeologic objects, and the wildlife on the land;
 - (3) provide for public use and enjoyment of the land and of the water areas created by the project by such means as are consistent with but subordinate to the purposes of the project; and
 - (4) investigate, plan, construct, operate, and maintain facilities for the conservation of fish and wildlife resources.
- (b) **COSTS.**—The costs (including operation and maintenance costs) of carrying out subsection (a) shall be nonreimbursable and nonreturnable under Federal reclamation law.

Amendment Title IV

PUBLIC LAW 106–113—NOV. 29, 1999

PUBLIC LAW 106–113—APPENDIX E 113 STAT. 1501A–307

TITLE IV—CANYON FERRY RESERVOIR, MONTANA

SEC. 401. DEFINITION OF INDIVIDUAL PROPERTY PURCHASER.

Section 1003 of title X of division C of the Omnibus Consolidated

and Emergency Supplemental Appropriations Act, 1999 (112 Stat. 2681–711) is amended—

(1) by redesignating paragraphs (4) through (12) as paragraphs (5) through (13), respectively; and

(2) by inserting after paragraph (3) the following:

“(4) **INDIVIDUAL PROPERTY PURCHASER.**—The term ‘individual property purchaser’, with respect to an individual cabin site described in section 1004(b), means a person (including CFRA or a lessee) that purchases that cabin site.

SEC. 402. SALE OF PROPERTIES.

Section 1004 of title X of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, is amended—

(1) in subsection (c)(2) (112 Stat. 2681–713), by striking subparagraph (B) and inserting the following:

“(B) **APPRAISAL.**—

“(i) **IN GENERAL.**—The appraisal under subparagraph (A) shall be based on the Canyon Ferry Cabin Site appraisal with a completion date of March 29, 1999, and amended June 11, 1999, with an effective date of valuation of October 15, 1998, for the Bureau of Reclamation, on the conditions stated in this subparagraph.

“(ii) **MODIFICATIONS.**—The contract appraisers that conducted the original appraisal having an effective date of

valuation of October 15, 1998, for the Bureau of Reclamation shall make appropriate modifications to permit recalculation of the lot values established in the original appraisal into an updated appraisal, the function of which shall be to provide market values for the sale of each of the 265 Canyon Ferry Cabin site lots.

“(iii) CHANGES IN PROPERTY CHARACTERISTICS.—If there are any changes in the characteristic of a property that form part of the basis of the updated appraisal (including a change in size, easement considerations, or updated analyses of the physical characteristics of a lot), the contract appraisers shall make an appropriate adjustment to the updated appraisal.

“(iv) UPDATING.—Subject to the approval of CFRA and the Secretary, the fair market values established by the appraisers under this paragraph may be further updated periodically by the contract appraisers through appropriate market analyses.

“(v) RECONSIDERATION.—The Bureau of Reclamation and the 265 Canyon Ferry cabin owners have the right to seek reconsideration, before commencement of the updated appraisal, of the assumptions that the appraisers used in arriving at the fair market values derived in the original appraisal.

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“(vi) CONTINUING VALIDITY.—Notwithstanding any other provision of law, the October 15, 1998, Canyon Ferry Cabin Site original appraisal, as provided for in this paragraph, shall remain valid for use by the Bureau of Reclamation in the sale process for a period of not less than 3 years from the date of completion of the updated appraisal.”;

(2) in subsection (d) (112 Stat. 2681–713)—

(A) in paragraph (1)(D), by adding at the end the following:

“(iii) REMAINING LEASES.—

“(I) CONTINUATION OF LEASES.—The remaining lessees shall have a right to continue leasing through August 31, 2014.

“(II) RIGHT TO CLOSE.—The remaining leases shall have the right to close under the terms of the sale at any time before August 31, 2014. On termination of the lease either by expiration under the terms of the lease or by violation of the terms of the lease, all personal property and improvements will be removed, and the cabin site shall remain in Federal ownership.”; and

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by inserting “or if no one (including CFRA) bids,” after “bid”; and

(ii) in subparagraph (D)—

(I) by striking “12 months” and inserting “36 months”; and

(II) by adding at the end the following: “If the requirement of the preceding sentence is not met, CFRA may close on all remaining cabin sites or up to the 75 percent requirement. If CFRA does not exercise either such option, the Secretary shall conduct another sale for the remaining cabin sites to close immediately, with proceeds distributed in accordance with section 1008.”;

(3) by striking subsection (e) (112 Stat. 2681–714) and inserting the following:

“(e) ADMINISTRATIVE COSTS.—

“(1) ALLOCATION OF FUNDING.—The Secretary shall allocate all funding necessary to conduct the sales process for the sale of property under this title.

“(2) REIMBURSEMENT.—Any reasonable administrative costs incurred by the Secretary (including the costs of survey and appraisals incident to the conveyance under subsection (a)) shall be proportionately reimbursed by the property owner at the time of closing.”; and

(4) by striking subsection (f) (112 Stat. 2681–714) and inserting the following:

“(f) TIMING.—The Secretary shall—

“(1) immediately begin preparing for the sales process on enactment of this Act; and

“(2) not later than 1 year after the date of enactment of this Act, begin conveying the property described in subsection (b).”.

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309

SEC. 403. MONTANA FISH AND WILDLIFE CONSERVATION TRUST.

Section 1007(b) of title X of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (112 Stat. 2681–715), is amended—

(1) in subsection (c)—

(A) in paragraph (1), in the matter preceding subparagraph (A), by striking “trust manager” and inserting “trust manager (referred to in this section as the ‘trust manager’)”;

(B) in paragraph (2)(A), in the matter preceding clause (i), by striking “agency Board” and inserting “Agency Board (referred to in this section as the ‘Joint State-Federal Agency Board’)”;

(C) in paragraph (3)(A), by striking “Advisory Board” and inserting “Advisory Board (referred to in this section as the ‘Citizen Advisory Board’)”;

(2) by adding at the end the following:

“(f) RECREATION TRUST AGREEMENT.—

“(1) IN GENERAL.—The Trust, acting through the trust manager, in consultation with the Joint State-Federal Agency Board and the Citizen Advisory Board, shall enter into a legally enforceable agreement with CFRA (referred to in this section as the ‘Recreation Trust Agreement’).

“(2) CONTENTS.—The Recreation Trust Agreement shall provide that—

“(A) on receipt of proceeds of the sale of a property under section 1004, the Trust shall loan up to \$3,000,000 of the proceeds to CFRA;

“(B) CFRA shall deposit all funds borrowed under subparagraph (A) in the Canyon Ferry-Broadwater County Trust;

“(C) CFRA and the individual purchasers shall repay the principal of the loan to the Trust as soon as reasonably

practicable in accordance with a repayment schedule specified in the loan agreement; and

“(D) until such time as the principal is repaid in full, CFRA and the individual purchasers shall make an annual interest payment on the outstanding principal of the loan to the Trust at an interest rate determined in accordance with paragraph (4)(C).

“(3) TREATMENT OF INTEREST PAYMENTS.—All interest payments received by the Trust under paragraph (2)(D) shall be treated as earnings under subsection (d)(2).

“(4) FIDUCIARY RESPONSIBILITY.—In negotiating the Recreation Trust Agreement, the trust manager shall act in the best interests of the Trust to ensure—

“(A) the security of the loan;

“(B) timely repayment of the principal; and

“(C) payment of a fair interest rate, of not less than 6 nor more than 8 percent per year, based on the length of the term of a loan that is comparable to the term of a traditional home mortgage.

“(g) RESTRICTION ON DISBURSEMENT.—Except as provided in subsection (f), the trust manager shall not disburse any funds from the Trust until August 1, 2001, as provided for in the Recreation Trust Agreement, unless Broadwater County, at an earlier date, certifies that the Canyon Ferry-Broadwater County Trust has been fully funded in accordance with this title.

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“(h) CONDITION TO SALE.—No closing of property under section 1004 shall be made until the Recreation Trust Agreement is entered into under subsection (f)”).

SEC. 404. CANYON FERRY-BROADWATER COUNTY TRUST.

Section 1008(b) of title X of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (112 Stat. 2681–718), is amended—

(1) by striking paragraph (1) and inserting the following:

“(1) AGREEMENT.—

“(A) CONDITION TO SALE.—No closing of property under section 1004 shall be made until CFRA and Broadwater County enter into a legally enforceable agreement (referred to in this paragraph as the ‘ Contributions Agreement’) concerning contributions to the Trust.

“(B) CONTENTS.—The Contributions Agreement shall require that on or before August 1, 2001, CFRA shall ensure that \$3,000,000 in value is deposited in the Canyon Ferry-Broadwater County Trust from 1 or more of the following sources:

“(i) Direct contributions made by the purchasers on the sale of each cabin site.

“(ii) Annual contributions made by the purchasers.

“(iii) All other monetary contributions.

“(iv) In-kind contributions, subject to the approval of the County.

“(v) All funds borrowed by CFRA under section 1007(f).

“(vi) Assessments made against the cabin sites made under a county park district or any similar form of local government under the laws of the State of Montana.

“(vii) Any other contribution, subject to the approval of the County.”;

(2) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(3) by inserting after paragraph (1) the following:

“(2) ALTERNATIVE FUNDING SOURCE.—If CFRA agrees to form a county park district under section 7–16–2401 et seq., of the Montana Code Annotated, or any other similar form of local government under the laws of the State of Montana, for the purpose of providing funding for the Trust pursuant to the Contributions Agreement, CFRA and Broadwater County may amend the Contributions Agreement as appropriate, so long as the monetary obligations of individual property purchases under the Contributions Agreement as amended are substantially similar to those specified in paragraph (1).”; and

(4) in paragraph (4) (as redesignated by paragraph (2), by striking “until the condition stated in paragraph (1) is met”.

SEC. 405. TECHNICAL CORRECTIONS.

Title X of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 is amended—

(1) in section 1001 (112 Stat. 2681–710), by striking “section 4(b)” and inserting “section 1004(b)”;

(2) in section 1003 (112 Stat. 2681–711)—

(A) in paragraph (1), by striking “section 8” and inserting “section 1008”;

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(B) in paragraph (6), by striking “section 7” and inserting “section 1007”;

(C) in paragraph (8)—

(i) in subparagraph (A), by striking “section 4(b)” and inserting “1004(b)”;

(ii) in subparagraph (B), by striking “section 4(b)(1)(B)” and inserting “section 1004(b)(1)(B)”;

(D) in paragraph (9), by striking “section 4” and inserting “section 104”;

(3) in section 1004 (112 Stat. 2681–712)—

(A) in subsection (b)(3)(B)(ii)(II), by striking “section 4(a)” and inserting “section 1004(a)”;

(B) in subsection (d)(2)(G), by striking “section 6” and inserting “section 1006”.

Amendment Section 206

PUBLIC LAW 106-377—OCT. 27, 2000

114 STAT. 1441A-69 PUBLIC LAW 106-377—APPENDIX B

SEC. 206. CANYON FERRY RESERVOIR, MONTANA. (a)
APPRAISALS.—

Section 1004(c)(2)(B) of title X of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (112 Stat. 2681-713; 113 Stat. 1501A-307) is amended—

(1) in clause (i), by striking “be based on” and inserting “use”;

(2) in clause (vi), by striking “Notwithstanding any other provision of law,” and inserting “To the extent consistent with the Uniform Appraisal Standards for Federal Land Acquisition,”; and

(3) by adding at the end the following:

“(vii) APPLICABILITY.—This subparagraph shall apply to the extent that its application is practicable and consistent with the Uniform Appraisal Standards for Federal Land Acquisition.”.

(b) TIMING.—Section 1004(f)(2) of title X of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (112 Stat. 2681-714; 113 Stat. 1501A-308) is amended by inserting after “Act,” the following: “in accordance with all applicable law,”.

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(c) INTEREST.—Section 1008(b) of title X of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (112 Stat. 2681-717; 113 Stat. 1501A-310) is amended by striking paragraph (4).

APPENDIX H

**CANYON FERRY WILDLIFE MANAGEMENT
AREA**

