Background and Purpose of the Following Draft, Reclamation Manual (RM), Directive and Standard (D&S), *Use Authorizations* (LND 08-01).

The purpose of this D&S is to streamline how Reclamation issues use authorizations on Reclamation land, facilities, and waterbodies. Reclamation Project partners, water customers, and the public have a vested interest in understanding how these uses are authorized and monitored. In addition, Reclamation may grant water user organizations and managing partners the authority to issue limited use authorizations as deemed appropriate by the Authorized Official.

LND 08-01 was originally released in 2002 and needs a revision to ensure it continues to be an effective and value-added document. LND 08-01 is a working document for land management and realty staff, providing guidance and direction for Reclamation staff issuing use authorizations. LND 08-01 establishes Reclamation’s procedures for issuing use authorizations based on regulations codified in 43 Code of Federal Regulations (CFR) Part 429 (429), *Use of Bureau of Reclamation Land, Facilities, and Waterbodies*. This revised LND 08-01 will benefit Reclamation as well as the public and third parties that have applied, will apply for future use, and have received use authorizations from Reclamation.

The revision team that has been working on the revision of this D&S is composed of Reclamation subject-matter expert representatives from all regions along with Land and Realty Program staff in the Dam Safety and Infrastructure Directorate.

The RM is used to clarify program responsibility and authority and to document internal Reclamation-wide methods of doing business. All requirements in the RM are mandatory.

See the following pages for the draft D&S.
Reclamation Manual  
Directives and Standards

Subject: Use Authorizations

Purpose: To set forth requirements for issuing use authorization documents allowing others to use land, facilities, and waterbodies under the Bureau of Reclamation’s jurisdiction. Benefits of this Directive and Standard include consistency, improvements in quality, and efficiency across Reclamation in the issuance of use authorizations.


Approving Official: Director, Dam Safety and Infrastructure

Contact: Asset Management Division (86-67200)

1. Introduction. The public may apply to use Reclamation land, facilities, and waterbodies, and may engage in the use only after authorization is received from Reclamation. Use authorizations are not required for individual recreational use of areas and facilities open to the public. The issuance of a use authorization is at Reclamation’s discretion. Reclamation reserves the right to refuse to authorize any use which may be incompatible with the Federally-authorized purposes of Reclamation Projects or interferes with Reclamation's rights or operation, as determined by the Authorized Official.

2. Applicability. This Directive and Standard (D&S) applies to Reclamation employees who issue use authorizations for possession or occupancy of, or extraction or removal of natural resources from, Reclamation land, facilities, or waterbodies under Reclamation jurisdiction unless excluded in accordance with 43 CFR 429.4.

3. Authority to Execute Use Authorizations.
   
   A. Reclamation is authorized to execute use authorizations on land, facilities, and waterbodies under its jurisdiction and does not divest itself of its overall management responsibilities by doing so.

   B. Reclamation may grant water user organizations and managing partners the authority to issue limited use authorizations as deemed appropriate by the Authorized Official. Authority to issue such use authorizations must be specifically delegated to the water user organization(s) or managing partner(s) in an operation, maintenance, and replacement (OM&R) transfer contract or agreement, partnership agreement, or other formal delegation pursuant to such contract or agreement with Reclamation. The
agreement must lay out what uses are authorized and what review and approval Reclamation’s Authorized Official will require. At a minimum, the agreement will ensure that the uses authorized meet the following conditions:

(1) the authorized uses do not convey ownership or other interest in the Federal real property;
(2) the authorized uses are not permanent or for an indefinite period;
(3) the authorized uses do not provide for an automatic right of renewal;
(4) the authorized uses are fully revocable at the discretion of Reclamation; and
(5) all revenues collected for the use of Reclamation land, facilities, and waterbodies are handled in compliance with all statutory, regulatory, and policy requirements.

C. Water user organizations and managing partners are not authorized to issue any type of use authorization that conveys a real property interest involving Reclamation land, facilities, or waterbodies, nor may they lease or dispose of any interest of the United States.


A. Application Requirements. The applicant is required to submit either Standard Form 299, Application for Transportation and Utility Systems and Facilities on Federal Lands (SF 299), or Form 7-2540, Use Authorization Application (Form 7-2540), and a $100 non-refundable application fee (see Paragraph 5.A. Application Fees). A completed and signed application along with the application fee must be submitted to the Reclamation office with jurisdiction over the land, facility, or waterbody associated with the request for use. (43 CFR 429.12)

(1) SF 299. Use of this form is required for placement, construction, and use of transportation and utility systems and facilities on Federal property including Reclamation land, facilities, or waterbodies.

(2) Form 7-2540. Use of this form is for all other proposed uses of Reclamation land, facilities, and waterbodies not covered by Paragraph 4.A.(1).

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

B. Application Review.
Reclamation may ask for additional information and details necessary to process the application.

Reclamation must acknowledge the submittal of a completed application and application fee in writing within 30 calendar days of receipt. (43 CFR 429.13)

Reclamation will conduct an initial review of the completed application to determine if the requested use is appropriate for further consideration and not likely to interfere with Reclamation's project purposes or operations. (43 CFR 429.16)

If determined appropriate, the Authorized Official will notify the applicant of acceptance of the application and request remittance, in advance, of the initial estimated administrative costs for further processing of the application.

The applicant has 90 calendar days to pay the initial estimated administrative costs as a response to indicate that they want to move forward with Reclamation processing the application. The file may be closed if this payment is not received within the required time frame.

Upon receipt of payment of the initial estimated administrative costs, the Authorized Official will continue to process the application with reviews by qualified staff for the relevant disciplines, e.g., land, cultural resources, engineering, O&M, safety, finance, environmental, etc.

Reclamation is not required to issue a use authorization and may approve or deny the application after reviewing the proposed use, based on the following criteria (e.g., 43 CFR 429.14):

(a) compatibility with authorized project purposes, project operations, safety, and security;
(b) extent of environmental impacts (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.
(8) If, in processing the application, the initial estimated administrative costs are found to be insufficient, Reclamation will, in writing, request remittance of the additional amount needed from the applicant in advance of or simultaneously with processing of the application.

C. Approval and/or Denial of Request for Use Authorization. The approval of an application and issuance of a use authorization is at Reclamation’s discretion.

(1) If approved, Reclamation will only authorize the least estate, right, or possessory interest needed to accommodate the approved use.

(2) If a request is denied, the reasons for denial must be explained in writing to the applicant. An application request recommended for denial must be discussed by qualified staff with the Authorized Official before action is taken.

(3) The Authorized Official makes any final determination associated with an action taken under this rule and will send that final determination in writing to the applicant by mail. The Authorized Official's final determination will take effect upon the date of the final approved use authorization or final determination letter.

D. Appeal. In accordance with 43 CFR 429, Subpart I, Decisions and Appeals, the applicant may appeal by writing to the Commissioner within 30 calendar days after the postmark date of the Authorized Official’s determination letter. Subsequently, the applicant may appeal the Commissioner’s decision to the Director, Office of Hearing and Appeals, Department of the Interior.

5. Financial Management. The monies received by Reclamation for the application fees and use fees are incidental revenues, as defined under Reclamation Manual (RM) Policy, *Incidental Revenues* (PEC P03), and shall be credited in accordance with RM D&S, *Crediting Requirements for Incidental Revenues* (PEC 03-01). Administrative costs shall be received in advance and expended in accordance with Paragraph 5.B of this section. Application fees, administrative costs, and use fees may be waived at the discretion of the Authorized Official (see 43 CFR 429.26, Subpart F - Reductions or Waivers of Application Fees, Administrative Costs, and Use Fees).

A. Application Fees. Applicants must submit a nonrefundable application fee of $100 to cover costs associated with the initial review of the application. The initial review will determine if the requested use is appropriate for consideration and not likely to interfere with Reclamation project purposes or operations.

B. Administrative Costs. Administrative costs are O&M costs. After the initial review and before further consideration of the request, Reclamation must collect in advance its
estimated administrative costs associated with the use authorization. Funds are to be advanced from the applicant for O&M of Reclamation lands, facilities, and waterbodies. In accordance with the Interior Department Appropriation Act for 1928 (Act of January 12, 1927; 44 Stat. 957; 43 USC § 397a); and 43 CFR 429.17; Office of Management and Budget (OMB) Circular A-25; and the Department of the Interior Accounting Handbook Chapter 6.4, Cost Recovery/User Charges, the applicant’s advanced payment shall be covered into the Reclamation fund and be available for expenditure for the purposes for which advanced in like manner as if said funds had been specifically appropriated for said purposes.

(1) The Authorized Official will collect estimated administrative costs from the applicant in advance of or simultaneously with the rendering of service. These charges will be based on a documented estimate of actual costs expected to be incurred and will be sufficient to recover the full cost to the Federal government of providing the service.

(2) If actual costs exceed the initial estimate, additional funds must be collected prior to incurring further costs. If actual costs are less than the initial estimate, the remaining funds will be refunded to the applicant.

(3) Administrative costs must be well-documented through formal cost accounting in Reclamation’s Federal Business Management System (FBMS).

C. Use Fees. Fees for use authorizations can be determined by valuation or competitive bidding. Use fees may be adjusted as deemed appropriate by Reclamation to reflect current conditions as provided in the use authorization. Use fee determinations must be prepared by qualified staff and approved by the Regional Realty Officer (RRO) in accordance with RM D&S, Real Property Appraisal (LND 05-01).

(1) Noncompetitive Use Authorizations. Appraisals or waiver valuations to determine market value will be performed to establish use fees. RM D&S, Real Property Appraisal (LND 05-01) establishes Reclamation’s requirements for determining use fees.

(a) Appraisals prepared to establish use fees must be prepared by or through the Appraisal and Valuation Services Office (AVSO) in compliance with, Uniform Standards of Professional Appraisal Practice (USPAP), this D&S, and applicable authorities, as they apply to the appraisal assignment.

(b) Appraisals for use authorizations are subject to the provisions contained in 43 CFR 429 and OMB Circular A-25. Use fees are separate and in addition to fees collected to recover Reclamation’s administrative costs, including those associated with the development of the fee(s).
(c) Waiver valuations must be developed by qualified staff utilizing fee schedules established by others or by proven valuation methods approved by the RRO. (LND 05-01)

(2) Competitive Use Authorizations. Competitive procedures will be used to determine the value of use authorizations when there is likely to be demand from more than one party, resulting in a greater return to Reclamation, unless such competition would negatively affect the public interest. Competition will be accomplished by either sealed bid or auction.

(a) Bidding Procedures. Competitive use authorizations are awarded to the highest acceptable bidder at or above minimum accepted bids for an amount that reflects the market value of the use granted. Separate administrative costs will not be added to the awarded bid price; they will be included in the minimum acceptable bid price as a predetermined line item. If the minimum acceptable bid price is not received, the Authorized Official will make a determination to discontinue, re-advertise, or otherwise offer a noncompetitive use authorization.

(b) Minimum Bids. Minimum acceptable bids, which represent market value plus administrative costs, will be established and documented under procedures outlined for determining market value in LND 05-01.

(c) Advertisements. Competitive use authorizations will be advertised. Distribution of advertisements to the fullest extent possible is encouraged. Copies will be furnished to current lessees, interested parties, adjacent landowners (if applicable), and other advertising resources.

(d) Award of Bids. When sealed bids are used, they will be received at the Reclamation office in accordance with instructions in the advertisement and will be opened as stated in the advertisement. An abstract of the bids received at the date of opening will be prepared in the office where received and opened. Awards will be made to the highest bidder unless there is sufficient reason, in the judgment of the Authorized Official, RRO, or delegate, for rejecting the highest bidder's proposal. Unsuccessful bidders will be notified promptly with return of their remittance. No bidder will be permitted to meet a high bid when sealed bids are used. In the event of a tie for high bid by two or more bidders, those bidders will be allowed a specified period of time to submit one additional sealed bid at the discretion of the Authorized Official, RRO, or delegate.

6. Types of Use Authorizations and General Conditions. With the exception of a consent document, a use authorization is a legal and binding document which allows occupancy,
use, rights, or privileges on Reclamation land, facilities, or waterbodies. The use authorization is granted for a specific use of the land for a specific period of time. Appropriate and accurate use of terms will avoid misunderstandings and conflicts. Use authorization documents for short-term or one-time short-duration use such as, but not limited to, recreation events, material storage, sand and gravel extraction, and similar uses, may use abbreviated formats as appropriate. Use authorizations involving construction or placement of transmission or distribution lines, access roads, trails, pipelines, power lines, telephone lines, and other facilities involving installation or construction of improvements to remain in place over longer periods must be more detailed and of sufficient content to thoroughly and explicitly cover terms, conditions, limitations, and contract performance requirements (see Appendix B for Terms and Conditions for use authorizations).

A. **Noncompetitive Use Authorizations.** Noncompetitive use authorizations will generally not be issued for less than market value. In addition to the use fee, all direct and indirect administrative costs are collected. Under certain conditions, the collection of market value for noncompetitive use authorizations can be waived. These conditions are explained in 43 CFR 429, Subpart F. Any use authorization issued non-competitively that would normally be issued after competitive bidding, and that is not covered by one of the circumstances below, must be documented to explain the rationale for not using competition. Circumstances when use authorizations may be issued non-competitively include situations where:

1. advertising will not result in competition;
2. advertising costs will be disproportionate to the revenues received;
3. a right was advertised for competitive bidding, but no acceptable bids were received;
4. a potential competitor is a public agency providing service to the general public;
5. for whatever reason competitive bidding would result in an unfair business situation;
6. in the judgement of Reclamation would otherwise not be in the public interest; or
7. other special conditions exist.

B. **Competitive Use Authorizations.** Competitive use authorizations are those issued under competitive bidding processes outlined in Paragraph 5. Competitive processes are most appropriate for determining final and full market value for use authorizations for land, facilities, or water bodies for which limited capacity is
available and for which multiple entities desire to secure the use authorization in an open market situation.

C. **Consent Document.** To prevent conflicts where Reclamation holds an easement on land owned by others, an application submitted with sufficient detail for analysis of the proposed use is for the benefit of all parties. If, after review of the application, Reclamation determines the requested use would not unreasonably interfere with Reclamation's rights, a consent document will be issued when appropriate. To the extent allowed by the rights granted to Reclamation, the consent document or notification will list the conditions necessary to ensure that the use will not unreasonably interfere and therefore protect Reclamation's use of its easement. (43 CFR 429.7) Reclamation will not charge a use fee for a consent document. (43 CFR 429.8)

D. **General Conditions for Certain Use Authorizations.**

1. **Non-Hydro Renewable Energy (N-HRE) Projects on Reclamation Land, Facilities, and Waterbodies.** This type of development is an acceptable, discretionary use of Reclamation land, facilities, and waterbodies provided it is compatible with authorized Reclamation project purposes, is in the best interests of the public, and is consistent with 4.B.(7) of this D&S. ¹

   (a) **Requirements for N-HRE Projects.** In addition to existing regulation requirements, a detailed plan of development (POD) shall be submitted with all N-HRE project applications; a conceptual plan will be rejected. The POD must be of sufficient detail to provide the information necessary to perform impact analysis on environmental resources, water operations, power generation and pumping operations, and transmission resources.

   (i) Regional power managers must review the POD and advise the Authorized Official, RRO, and resource staff on N-HRE project compatibility with Reclamation project purposes, technical feasibility, and appropriate stipulations to ensure public health and safety as well as non-interference with project power and pumping operations. Regional power managers must also consult with Power

---

¹ Standards and procedures authorizing non-Federal hydropower resource development on Reclamation projects through a lease of power privilege are defined in RM D&S, *Lease of Power Privilege (LOPP) Processes, Responsibilities, Timelines, and Charges* (FAC 04-08).
Marketing Administrations (PMA) to ensure no negative impacts to PMA obligations.

(ii) RROs must coordinate with regional power managers and Authorized Officials to provide a recommendation for approving or denying all N-HRE PODs and use authorizations. Regional Directors must review, approve, or deny PODs and use authorizations. (RM Delegations of Authority section 4.K(4)(c))

(iii) Title to an installed N-HRE facility is held by the use authorization holder.

(b) **Discretionary Guidance.** Discretionary guidance regarding use authorizations for N-HRE projects can be found in Reclamation’s publication: Guidebook – Use Authorizations for Non-Hydro Renewable Energy on Reclamation Lands.\(^2\)

(2) **Radio Communications Program.** Radio and communications sites constructed and/or operated by others require a use authorization. Close coordination with radio, security, and facility operations personnel will ensure efficient and safe permitting and operation of these sites on Reclamation land, facilities, and waterbodies. (Executive Order 13821, January 8, 2018, Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America, RM D&S, Radio Communications Program, (IRM 04-01))

(3) **Non-Public Bridges and Crossings Constructed for Authorized Use by Others.** A non-public bridge or crossing owned by Reclamation for use by others is required to have a use authorization or other contractual obligation. (RM Temporary Reclamation Manual Release (TRMR). Bridge Inventory and Inspection Program (FAC TRMR-98))

(4) **Cultural Resources Permitting.** Reclamation’s Federal Preservation Officer coordinates Reclamation's Cultural Resources Management (CRM) Program with many responsibilities carried out by regional and area offices as defined in RM D&S, Cultural Resources Management, (LND 02-01) and as delegated in RM Delegations of Authority paragraph 3.K(2) Cultural Resources Management. CRM permitting includes archaeological investigations covered under the Archaeological Resources Protection Act (ARPA) (see RM D&S, Administration of the Archaeological Resources

---

\(^2\) [https://www.usbr.gov/power/NHRE/Guidebook_NHRE_on_Rec_Lands.pdf](https://www.usbr.gov/power/NHRE/Guidebook_NHRE_on_Rec_Lands.pdf)
Protection Act, (LND 02-04) and Paleontological Resources Preservation Act (PRPA) permits. ARPA and PRPA permits are considered use authorizations that require close coordination and communication with land program staff at the appropriate office and the Regional Archaeologist or other delegated CRM professional as defined in LND 02-01 and LND 02-04

5. **Dam Safety Analysis.** When the use authorization involves changing operations, authorizing construction, or allowing drilling activities at dams with high or significant hazard potential, coordination with the Dam Safety Office is required. The Chief, Dam Safety Office will ensure evaluations are performed and documented to address the impacts of the use authorization on the existing potential failure modes and ensure that it will not create any new failure modes of concern. The evaluations will be funded by the applicant.

7. **Private Exclusive Recreational and Residential Use.** Reclamation prohibits any use that would result in new private exclusive recreational or residential use of Reclamation land, facilities, or waterbodies pursuant to 43 CFR 429.31(b). Private exclusive use that is within the terms and conditions of an existing use authorization, as specified in 43 CFR 429.32, is not considered new private exclusive use. Existing private exclusive use will be administered pursuant to 43 CFR 429 and 43 CFR 21, as applicable, and RM D&S, *Private Exclusive Use* (LND 08-04).

8. **Distribution, Filing, and Recording of Use Authorizations.**
   
   A. **Filing and Recording.** All use authorizations will be filed as official records with the office holding jurisdiction over the land and each office will ensure that all records generated from the issuance of use authorizations conform with RM D&S, *Information Management* (RCD 05-01).
   
   B. **Compliance with the Bureau of Land Management (BLM) Interagency Agreement.** When appropriate, a copy of use authorizations issued on Reclamation withdrawn land will be sent to the local BLM office for notation on the public land records in accordance with the December 1982 interagency agreement, signed March 25, 1983, between Reclamation and BLM, as amended or superseded. Long-term or perpetual use authorizations on acquired land may also be sent to BLM for notation to help prevent incompatible adjoining uses. See Appendix A., Withdrawn Land.

9. **General.**
   
   A. **Reference to Authorities and Land Status.** Each use authorization must contain a reference to the specific authority or authorities under which it is issued. Generally, all use authorizations will be pursuant to the Reclamation Act of 1902 and the Reclamation Project Act of 1939, as well as specific local project or other applicable acts. In
addition, the land status (acquired, donated acquired, or withdrawn) must be stated. If the use authorization involves land acquired in more than one manner, the land status must be shown in detail for the entire use authorization to ensure proper statutory application and disbursement of revenues.

B. **Authorized Use Area Description.** Each use authorization must contain a description of the use area involved to the greatest level of detail practical. This information is fundamental in identifying the location and ensuring that Reclamation has the needed authority to grant the use authorization.

C. **Monitoring.** After a use authorization is issued, staff determined qualified by the Authorized Official will perform periodic field reviews to ensure compliance with the provisions of the use authorization.

D. **Least Estate or Right is to be Granted.** All use authorizations will grant the least estate, right, or possessory interest needed that will fulfill the requirements of the use authorization.

E. **Disposal Considerations.** Use authorizations will only be issued after determining that there is a present or future Reclamation need for the land. If not needed for Reclamation purposes or protection of Project land, facilities and waterbodies, the property shall be disposed rather than encumbered with a use authorization. However, issuance of a use authorization may be appropriate on land determined unneeded where immediate occupancy and use by a third party is necessary and cannot be accommodated in a timely manner through the disposal or withdrawal relinquishment process. RM D&S, *Land Disposal* (LND 08-02); RM D&S, *Identification of Unneeded Land* (LND 08-03); (LND 05-01).

10. **Appendices**
   A. Appendix A – Definitions
   B. Appendix B – Terms and Conditions
   C. Appendix C – Related References

11. **Review Period.** The originating office will review this release every 4 years.
Use Authorizations Definitions

1. **Acquired Land.** Any land obtained in fee by purchase, donation, condemnation, acquisition by and transferred from another Federal agency, exchange, or other acquisition method to support Reclamation project purposes; this definition excludes withdrawn lands and those transferred lands that were previously withdrawn by the transferring agency.

2. **Authorized Official.** Regional Directors or their delegates as referenced in the RM Delegations of Authority section 4.K(4).

3. **Authorized Project Purposes.** Those purposes and uses needed and appropriate for project construction, operation, maintenance, reconstruction, decommissioning, or other uses related to an existing or proposed Reclamation development project, facility, or system that has been identified in project planning documents, or authorized by enacted law, including associated, ancillary and related activities including, but not limited to, activities of managing water user organizations, environmental mitigation and compensation, and other related and connected activities.

4. **Competitive Use Authorization.** Authorizations issued to a high bidder in a competitive bidding process. These are used when Reclamation desires to sell resources or authorize land uses for the purpose of fully utilizing or managing the resources that are in demand by multiple competing entities. Examples of competitive use authorizations are recreation/concession leases, grazing leases, agricultural leases, and communication sites.

5. **Incidental Revenues.** Revenues generated from the use of Reclamation lands, facilities, or waterbodies for incidental purposes, i.e., use fees & application fees.

6. **Lease.** A use authorization that transfers the rights of possession and/or use of a property from the owner to another, usually for a specified rent or compensation (cash, crop, or other remuneration). The recipient of a lease is typically referred to as a lessee or grantee. The right granted to the lessee is usually subservient to, and cannot exceed, the lessor’s right.

7. **Market Value.** Market value, sometimes referred to as fair market value, is generally determined through the real estate appraisal process as defined in RM D&S, Real Property Appraisal (LND 05-01), and can include valuation by waiver valuation (including application of approved fee schedules) or other reasonable business practice as described in the cited RM.

8. **Non-Hydro Renewable Energy (N-HRE).** Energy produced by wind, thermal, photovoltaic solar, geothermal, tidal, or other source or system that does not consume or produce hydrocarbons or radioactive substances and which does not involve the use of kinetic energy from the fall of water as used in hydropower facilities.

9. **Noncompetitive Use Authorization.** Noncompetitive use authorizations are generally used for granting rights that are of no particular benefit or use to Reclamation, and that no other
party would be interested in competing for. Examples of noncompetitive use authorizations are easements, licenses, and permits for such use authorizations as roads, trails, transmission lines, pipelines, telephone lines, waterlines, and individual irrigation facilities.

10. **OMB Circular A-25.** This Circular establishes Federal policy regarding fees assessed for Government services and for sale or use of Government goods or resources. It provides information on the scope and types of activities subject to user charges and on the basis upon which user charges are to be set. Finally, it provides guidance for agency implementation of charges and disposition of collections.

11. **Unneeded Land.** Project land that is not needed, now or in the future, for the authorized Reclamation project purposes for which it was acquired or withdrawn and which will not be needed for any other related or planned project purposes.

12. **Waiver Valuations.** A low-value valuation of land that does not involve a self-contained full appraisal. Regional realty officers are delegated the authority to approve, in writing, all waiver valuations, as defined and established in RM D&S, *Real Property Appraisal* (LND 05-01). The authority of regional realty officers cannot be re-delegated.

13. **Withdrawn Land.** Federal land withheld from settlement, sale, location, or entry under the public land laws and mining laws and for which jurisdiction has been transferred to Reclamation to support project purposes.

14. **43 CFR 429.** Use of Bureau of Reclamation Land, Facilities, and Waterbodies. Final rule adopted by Reclamation on the use of Reclamation land, facilities, and waterbodies that 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. Effective January 5, 2009.

15. Please see 43 CFR 429.2 for additional definitions.
Use Authorizations Terms and Conditions

1. **Severability (Required for all Use Authorizations).** Each use authorization shall contain a statement addressing severability of contract terms. This provision is recommended to read:

   > Each provision of this use authorization shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this use authorization shall be deemed or determined by competent authority to be invalid or prohibited hereunder, such provision shall be ineffective and void only to the extent of such invalidity or prohibition, but shall not be deemed ineffective or invalid as to the remainder of such provision or any other remaining provisions, or of the use authorization as a whole.

2. **Protection of United States Interests (Required for all Use Authorizations).** All use authorizations shall contain all special conditions or requirements necessary to protect the interests of the United States, and to ensure that the authorized uses are compatible with the Reclamation purposes for which the lands or land rights were withdrawn or acquired. All use authorizations shall also contain appropriate language that extends application of all applicable Federal, State, and local laws and regulations, Executive Orders, and Reclamation policies and directives and standards (to the beneficiary.)

3. **Hold Harmless Clause (Required for all Use Authorizations).** All use authorizations shall contain the hold harmless clause stated below as per 43 CFR §429.28(a)(1). As per 43 CFR §429.28(b), to meet local and special conditions, the Regional Director may, upon advice of the Solicitor, modify this provision.

   > The beneficiary hereby agrees to indemnify the United States for, and hold the United States and all of its representative harmless from, all damages resulting from suit 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 beneficiary.

4. **Termination Clauses (Required for all Use Authorizations).** All use authorizations, including perpetual easements, shall contain the following clauses as per 43 CFR §429.28(a)(2 through6). Note that as per 43 CFR §429.28(b), to meet local and special conditions, the Regional Director may, upon advice of the Solicitor, modify these provisions. The preamble is recommended to read:

   > This use authorization will terminate and all rights of the beneficiary hereunder will cease, and the beneficiary will quietly deliver to the United States possession of the premises in like condition as when taken, reasonable wear and damage by the elements excepted:)

   A. **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 beneficiary’s activities or facilities.

B. 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.

C. 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:

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

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

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

D. Reclamation may, at any time and at no cost or liability to the United States, terminate any use authorization if Reclamation determines that the beneficiary 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.

E. Reclamation may, at any time and at no cost or liability to the United States, terminate any use authorization if the beneficiary 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.

F. At the expiration of the term as provided by Articles; or,

(1) Without notice, upon default in payment to the United States of any installment of use fee charges as provided by Article; or,

(2) On date, of any year, upon written notice to beneficiary, served days in advance thereof; or,

(3) After failure of the lessee to observe any of the conditions of this use authorization, and on the tenth day following service of written notice on the beneficiary of termination because of failure to observe such condition.
G. The notices provided by this article will be served by certified mail addressed to the respective post office addresses given in Article and the mailing of any such notice properly enclosed, addressed, stamped, and certified, will be considered service. If the termination under Article (F.(2)) or Article (F.(3)) should be effective at a date prior to the date of the termination of the then current use authorization or extension, for which prepayment of rental will have been made, an appropriate refund or part of the rental for such then current use authorization or extension will be made.

H. If this use authorization is terminated under Article (F.(3)), the United States reserves the right to bar the beneficiary from the authorization to use acquired or withdrawn public land on the Project for a period of time, as determined by the Authorized Official.

5. Officials Not to Benefit (Required for all Use Authorizations). Per provisions of 41 U.S.C. § 22, the following clause shall be included in all use authorizations issued by Reclamation:

No Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon.

6. Illegal Use (Required for all Use Authorizations). The following clause shall be included in all use authorizations:

Any activity deemed to be illegal on Federal lands will be cause for immediate termination of the use authorization.

7. Hazardous Materials (generally required for all use authorizations). The following language shall be included in new, renewed, renegotiated, assigned, and amended use authorizations with the exception of use authorizations where no possibility for contamination or pollution exists:

A. The beneficiary may not allow contamination or pollution of Federal land, facilities, and waterbodies and for which the beneficiary has the responsibility for care, operation, and maintenance by its employees or agents and shall take reasonable precautions to prevent such contamination or pollution by third parties. Substances causing contamination or pollution shall include, but are not limited to, hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants.

B. The beneficiary shall comply with all applicable Federal, state, and local laws and regulations, and Reclamation policies and directives and standards, existing or hereafter enacted or promulgated, concerning any hazardous material that will be
used, produced, transported, stored, or disposed of on or in Federal lands, waters or facilities.


D. Upon discovery of any event which may or does result in contamination or pollution of Federal lands, waters or facilities, the beneficiary shall initiate any necessary emergency measures to protect health, safety and the environment and shall report such discovery and full details of the actions taken to the Authorized Official. Reporting may be within a reasonable time period. A reasonable time period means within twenty-four (24) hours of the time of discovery if it is an emergency or by the first working day if it is a non-emergency. An emergency is any situation that requires immediate action to reduce or avoid endangering public health and safety or the environment.

E. Violation of any of the provisions of this Article, as determined by the Authorized Official, may constitute grounds for termination of this contract. Such violations require immediate corrective action by the beneficiary and shall make the beneficiary liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.

F. The beneficiary agrees to include the provisions contained in paragraphs (a) through (e) of this Article in any subcontract or third-party contract it may enter into pursuant to this use authorization.

G. Reclamation agrees to provide information necessary to enable the beneficiary, using reasonable diligence, to comply with the provisions of this Article.

8. **Periodic Use Fee Review (required if use authorizations involve periodic use fees).**
   When applicable there shall be a provision in use authorizations which involve periodic use fees that allows Reclamation, at its discretion, to periodically review long-term uses for the purpose of increasing or decreasing the use fee based on current market conditions. This provision is recommended to read:

   The annual use fee will be reviewed and adjusted periodically, not more than once per year, however, in no event shall the interval between the reviews exceed five (5) years. Determination of the market rent by the United States will be based on a report, taking into consideration techniques commonly used to establish market-based land rents, exclusive of improvements constructed by the use authorization.
9. **Reclamation Land Use Stipulation (Required for Perpetual Use Authorizations Unless Granted to Another Federal Agency).** The following stipulation shall be included in perpetual easements, except those granted to other Federal agencies, as stated in 43 CFR § 429.8.

There is reserved from the rights herein granted, the prior rights of the United States acting through the Bureau of Reclamation, Department of the Interior, to construct, operate, and maintain public works now or hereafter authorized by the Congress without liability for severance or other damage to the beneficiary's work; provided, however, that if such reserved rights are not identified in at least general terms in this use authorization and exercised for works authorized by the Congress within ten (10) years following the date of this use authorization, they will not be exercised unless the beneficiary, or beneficiary's successor in interest is notified of the need, and grants an extension or waiver. If no extension or waiver is granted, the United States will compensate, or institute mitigation measures for any resultant damages to works placed on said lands pursuant to the rights herein granted. Compensation shall be in the amount of the cost of reconstruction of beneficiary's works to accommodate the exercise of the United States reserved rights. As alternatives to such compensation, the United States, at its option and at its own expense, may mitigate the damages by reconstructing the beneficiary's works to accommodate the United States facilities, or may provide other adequate mitigation measures for any damage to the beneficiary's property or right. The decision to compensate or mitigate is that of the appropriate Regional Director.

10. **Removal of Structures (Required if Structure is Built for Beneficiary’s Convenience).**

A. When a structure is built or erected by a beneficiary for their own convenience, the use authorization will provide for the removal of the structure and restoration of the site upon termination of the use authorization at the beneficiary’s expense. Removal of structures and restoration of the site will be performed under the direction of Reclamation. The use authorization will also provide that the structures may be left in place at the option of Reclamation and agreement by the beneficiary, at which time the structure becomes the property of the United States. The issuing office is then to include the structure(s) on Reclamation’s property inventory. This clause is recommended to read:

Upon the expiration, termination, or revocation of this use authorization, if all use fee charges and damage claims due Reclamation have been paid, the beneficiary shall remove all structures, equipment, or other improvements made by it from the premises at no cost to the United States. Upon failure to remove any such improvements within sixty (60) days of expiration, termination, or revocation, any remaining improvements shall, at the option of the United States, be removed or become the property of the United States. The beneficiary shall pay all expenses of the United States, or its assigns, related to removal of such improvements.
B. The above notwithstanding, (a) should Reclamation determine that there is a project or public need for specific structures and/or equipment to remain in place, the beneficiary shall be compensated the market value of such improvements as determined by an appraisal prepared by the Secretary; and/or (b) any improvements that may be historic property as described in 36 CFR § 60 shall be inventoried and evaluated to determine their eligibility to be listed on the National Register of Historic Places. If the improvement(s) qualify, then Reclamation shall conduct consultation required by Section 106 of the National Historic Preservation Act prior to demolition or taking ownership of the improvement(s).

11. Bonding (Required if Damage or Loss Possible). In cases where the United States stands to lose or be damaged in the event of default on the part of a use authorization holder, Reclamation will require the applicant to furnish a bond or other security of sufficient amount to cover the potential loss or damage prior to the issuance of the use authorization. This provision is recommended to read:

The holder shall provide a bond in the amount of $ to be maintained until all construction activities of this project and restoration of the disturbed areas have been completed and accepted in writing by Reclamation. Upon completion, or partial completion, of these restoration requirements, Reclamation may terminate or allow partial reduction of the amount of the bond requirement.

Note: Consideration should also be given to requiring a bond, proof of insurance, or other security where the United States stands to lose or be damaged in the event of injury resulting from the use authorized.

12. Use Authorizations Subject to Permits Required by Other Entities (May be Required by Third Parties). In some cases there are legal or other requirements that make it necessary for the grantee to obtain permits or approval from third parties before they can proceed with using the land as authorized by Reclamation. These include, but are not necessarily limited to, the following:

A. Federal Agencies, State, Tribal, County, and Other Local Authorities. Where certain uses are regulated by other Federal, State, Tribal, county, or other local authorities, Reclamation use authorizations will only be issued subject to the grantee also obtaining the necessary permits or clearances, including environmental permits (e.g., Section 404 of Clean Water Act Permit).

B. Easement Lands. When the United States only owns an easement, Reclamation’s authority to allow other uses on the easement lands may be limited. Consents issued on easement lands by Reclamation must be issued subject to the underlying landowner's rights.
C. **Withdrawn Lands Encumbered by Use Authorizations Returned to BLM.** If withdrawn lands encumbered by third-party interests are returned to BLM for administration, the disposition of interests is governed by 43 CFR § 2370. In such cases, Reclamation should coordinate with BLM to comply with this regulation.

13. **Unrestricted Access (Generally Required).** The following stipulation will be included in all use authorizations with the exception of unusual circumstances such as high security, law enforcement, or Department of Defense facilities:

   The United States reserves the right of its officers, agents, and employees at all times to have unrestricted access and ingress to, passage over, and egress from all of said lands, to make investigations of all kinds, dig test pits and drill test holes, to survey for and construct reclamation and irrigation works and other structures incidental to Federal Reclamation Projects, or for any purpose whatsoever. Reclamation will make every reasonable effort to keep damages to a minimum.

14. **Nondiscrimination in Authorizations Involving Federal Financial Assisted Programs of the Department of the Interior (Required as Noted).** For the purposes of this part, Federal financial assistance as defined by 43 CFR §17.12 includes (i) grants and loans of Federal funds, (ii) grants or donations of Federal property and interests in property, (iii) the detail of Federal personnel, (iv) the sale or lease of, or the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration or at a consideration which is reduced for the purpose of assisting the recipient or in recognition of the public interest to be served by such sale or lease to the recipient, and (v) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. The following clauses shall be included in all use authorizations where there is Federal financial assistance, as defined for each Basis.

   A. **Nondiscrimination on the Basis of Race, Color, or National Origin.**

      The beneficiary hereby agrees:

      To comply with Title VI (Section 601) of the Civil Rights Act of July 2, 1964 (78 Stat. 241) which provides that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance," and to be bound by the regulations of the Department of the Interior for the effectuation thereof, as set forth in 43 CFR § 17.

      To obligate its subcontractors, beneficiary's, transferees, successors in interest, or any other participants receiving Federal financial assistance hereunder, to comply with the requirements of this provision.
B. **Nondiscrimination on the Basis of Disability.**

The beneficiary hereby agrees:

*To comply with Section 504 of the Rehabilitation Act of 1973, Public Law 93-112, as amended which is designed to eliminate discrimination on the basis of disability in any program or activity receiving Federal financial assistance.*

*To obligate its subcontractors, subgrantees, transferees, successors in interest, or any other participants receiving Federal financial assistance hereunder, to comply with the requirements of this provision.*

C. **Nondiscrimination on the Basis of Age.**

The beneficiary hereby agrees:

*To comply with the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, et seq., and the general age discrimination regulations at 45 CFR § 90 which are designed to prohibit discrimination on the basis of age in programs and activities receiving Federal financial assistance, as set forth in 43 CFR §17.*

*To obligate its subcontractors, beneficiary’s, transferees, successors in interest, or any other participants receiving Federal financial assistance hereunder, to comply with the requirements of this provision.*

15. **Future Year Funding Commitments (Required when the United States provides funding extending beyond current fiscal year).** The following clause shall be included in all use authorizations issued by Reclamation whenever such authorizations contain provisions for the United States to provide funding which extends beyond the current fiscal year:

*Where the operations of this use authorization extend beyond the current fiscal year, it is understood that this use authorization is made contingent upon Congress making the necessary appropriation for expenditures thereunder after such current year has expired. In case such appropriation as may be necessary to carry out this contract is not made, the United States is hereby released from all liability due to the failure of the Congress to make such appropriation.*

16. **Covenant Against Contingent Fees (Required if awarded using procedures other than sealed bid).** Pursuant to 41 U.S.C.§ 254, use authorizations awarded using procedures other than sealed bid procedures shall contain a suitable warranty as determined by the agency head. All Reclamation use authorizations, if negotiated pursuant to 41 U.S.C.§ 252 purchases and contracts for property(c), will contain the following clause:
The beneficiary warrants that no person or agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agencies maintained by the beneficiary for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this agreement without liability or in its discretion to require the beneficiary to pay, in addition to the use authorization price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

17. **Discovery of Cultural Resources. (Required where potential for discovery exists).** The following clause shall be included in all use authorizations where there is potential for discovery of cultural resources:

The beneficiary shall immediately provide an oral notification to Reclamation’s Authorized Official of the discovery of any and all antiquities or other objects of archaeological, paleontological, cultural, historic, or scientific interest on Reclamation lands. The beneficiary shall follow up with a written report of their finding(s) to Reclamation’s Authorized Official within forty-eight (48) hours. Objects under consideration include, but are not limited to, historic or prehistoric ruins, human remains, funerary objects, and artifacts discovered as a result of activities under this authorization. The beneficiary shall immediately cease the activity in the area of the discovery, make a reasonable effort to protect such discovery, and wait for written approval from the Authorized Official before resuming the activity. Protective and mitigative measures specified by Reclamation’s Authorized Official shall be the responsibility of the beneficiary.

Note: When Reclamation’s Authorized Official is notified of a cultural resource discovery, he/she shall immediately notify the appropriate cultural resources professional.

18. **Integrated Pest Management (IPM)** The following clauses will be included in use authorizations where the potential exists for pesticides to be used:

A. The beneficiary is responsible for effectively avoiding the introduction and spread of, and for otherwise controlling, undesirable plants and animals, as defined by the Authorized Official, on or in Federal project lands, Federal project waters, and Federal project works for which and to the extent that the beneficiary has operation and maintenance responsibility. The beneficiary is responsible for exercising the level of precaution necessary in meeting this responsibility, including inspecting its vehicles, watercraft, and equipment for reproductive and vegetative parts, foreign soil, mud or other debris that may cause the spread of weeds, invasive species and other pests, and removing such materials before moving its vehicles, watercraft, and equipment onto any Federal land, into any Federal project facility waters, or out of any area on Federal project land where work is performed.
B. Where decontamination of the beneficiary’s vehicles, watercraft, or equipment is required prior to entering Federal project land or waters, the decontamination shall be performed by the beneficiary at the point of prior use, or at an approved offsite facility able to process generated cleaning wastes, pursuant to applicable laws, rules, and regulations. Upon the completion of work, the beneficiary will perform any required decontamination within the work.

C. Programs for the control of undesirable plants and animals on Federal project lands, and in Federal project waters and Federal project works for which the beneficiary has operation and maintenance responsibility will incorporate IPM concepts and practices. IPM refers to a systematic and environmentally compatible program to maintain pest populations within economically and environmentally tolerable levels. In implementing an IPM program, the Beneficiary will adhere to applicable Federal and State laws and regulations and Department of the Interior and Bureau of Reclamation policies, directives, guidelines, and manuals.

19. Pest Control (Required Where Potential Exists for Pesticide Use). The following clauses will be included in use authorizations where the potential exists for pesticides to be used:

A. The beneficiary shall not permit the use of any pesticides on Federal lands without prior written approval by Reclamation. The beneficiary shall submit to Reclamation for approval an Integrated Pest Management Plan (IPMP) thirty (30) days in advance of pesticide application.

B. All pesticides used shall be in accordance with the current registration, label direction, or other directives regulating their use (State Department of Agriculture, Department of Ecology, OSHA, etc.) and with applicable Reclamation Policy and Directives and Standards. Applicators will meet applicable state training or licensing requirements. Records maintenance shall be in accordance with State requirements and such records shall be furnished to Reclamation not later than five (5) working days after any application of a pesticide.

C. Any equipment, tools, and machines used for pesticide application shall be in good repair and suitable for such use. Equipment shall be calibrated prior to the spraying season and as deemed necessary by Reclamation.

D. Mixing, disposal, and cleaning shall be done where pesticide residues cannot enter storm drains, sewers, or other non-target areas.

E. The beneficiary shall initiate any necessary measures for containment and cleanup of pesticide spills. Spills shall be reported to the Authorized Official with full details of the actions taken. Reporting may be within a reasonable time period. A reasonable time period means within twenty-four (24) hours of the spill if it is an emergency or by the first working day if it is a non-emergency. An emergency is any situation that requires
immediate action to reduce or avoid endangering public health and safety or the environment.

F. Aerial application of pesticides is prohibited without prior written consent by Reclamation’s designated representative.

G. The beneficiary agrees to include the provisions contained in paragraphs A. through F. of this Article in any subcontract or third-party contract it may enter into pursuant to this contract.
Use Authorizations Related References

Related References. The following public laws, Federal regulations, Executive Orders, Reclamation Policy and Directives and Standards, and other directives or guidance influence the application of Reclamation’s use authorizations.

10. Section 4, Subsection I of the Second Deficiency Appropriation Act for 1924, December 5, 1924 (43 Stat 703;43 USC § 501).
16. Clean Water Act, as amended (33 USC § 1251, et seq.).


24. E.O. 13175, November 6, 2000, FR 65, FR 67249, Consultation and Coordination with Indian Tribal Governments.


27. Secretarial Order 3317, December 1, 2011, Department of the Interior Policy on Consultation with Indian Tribes.


30. Department of Interior Accounting Handbook Chapter 6.4, Cost Recovery/User Charges (provides basic Departmental cost recovery policy governing charges for services provided under specific legislative authority).

31. RM Policy, Cultural Resources Management (CRM) (LND P01).

32. RM Policy, Wetlands Mitigation and Enhancement (LND P03).

33. RM D&S, Radio Communications Program (IRM 04-01).

34. RM D&S, Cultural Resources Management (CRM) (LND 02-01)

35. RM D&S, Floodplain Management (CMP 01-01).
36. RM D&S, *Use of the Collection Information Form for Incidental Revenues* (PEC 03-02).