
This D&S provides Reclamations stakeholders with the opportunity to comment on how Reclamation manages previously authorized private exclusive recreational and residential use of Reclamation land, facilities, and waterbodies. Reclamation Project partners, water customers, and the public have a vested interest in understanding how these uses are authorized, monitored, and managed.


The revision team for this D&S is composed of Reclamation subject-matter expert representatives from all regions and the Land and Realty Program staff from the Dam Safety and Infrastructure Directorate.

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

See the following pages for the draft D&S.
Subject: Private Exclusive Recreational or Residential Use

Purpose: Provides standard procedures to address private exclusive uses associated with provisions of existing use authorization documents. This Directive and Standard (D&S) establishes a minimum set of consistent Bureau of Reclamation procedures to ensure the requirements of Subpart H of 43 Code of Federal Regulations (CFR) part 429 are met.


Approving Official: Director, Policy and Administration (Policy)

Contact: Asset Management Division (86-67200)

1. Introduction. The intent of this D&S is to establish and incorporate procedures to address private exclusive recreational and residential use (private exclusive use) in a manner consistent with the exclusive use provisions of 43 CFR 429. This includes exclusive use identification, compatibility determinations, and associated reporting to adequately document compliance reviews and findings. Reclamation Manual (RM) D&S, Land Use Authorizations (LND 08-01), applies to the issuance of use authorizations such as easements, licenses, leases, permits and consent documents for activities on or across lands or interests in lands and water surfaces under the jurisdiction of Reclamation.

2. Applicability. Reclamation prohibits any use that would result in new private exclusive recreational or residential use of Reclamation land, facilities, or waterbodies (43 CFR 429.31(b)). This D&S applies to Reclamation staff with responsibility for review of private exclusive use activities associated with use authorizations. Existing private exclusive uses authorized as of January 5, 2009, which was the effective date of 43 CFR 429, is not considered new private exclusive use. Existing private exclusive uses will be administered under 43 CFR 429 and 43 CFR 21, as applicable.
3. Existing Private Exclusive Use Compatibility Determinations. A review of whether existing private exclusive use and related improvements are compatible with public needs and authorized project purposes, project operations, safety, and security are required at least once every 20 years, except where 43 CFR 21 requires a more frequent review. At a minimum, the Authorized Official will utilize the following criteria to determine whether lands are needed for authorized project purposes, including operation and maintenance (O&M) or other public needs, and if the private exclusive use is creating any public safety or security issues.

A. Authorized Project Purposes. Determine if the subject land is needed for project purposes including an existing or proposed water-related development project or delivery system that has been identified in project planning documents, project construction, O&M plans, or associated O&M transfer agreements. If land is determined no longer needed for project purposes see RM, D&S, Land Disposal, LND 08-02.

B. Public Needs. Determine if public recreation demand exceeds the carrying capacity of existing recreation facilities as identified in an appropriate recreation planning process, including, a recreation resource management plan (RMP), commercial services plan, Water and Land Recreation Opportunity Spectrum, and recreation capacity/demand documents that evaluate proposed recreation facilities, opportunities, and programs in consideration of water resource needs and project purposes.

   (1) In accordance with RM D&S, Recreation Program Management (LND 01-03), Reclamation’s Authorized Officials will conduct an appropriate level of public involvement and outreach during the RMP or related planning processes to ensure that the public is allotted sufficient opportunity to be involved in the planning and decision-making. This is in addition to the requirement included in 43 CFR 429.32(a)(2) to notify in writing all potentially affected holders of existing use authorizations for private exclusive use of the opportunities for public participation.

   (2) If private exclusive use is inhibiting expansion of existing public recreational use to meet increasing recreation demand identified in current planning documents (e.g., RMPs, Statewide Comprehensive Outdoor Recreation Plans, etc.), identify the need for additional activities or facilities in the compatibility determination.

   (3) If public use facilities adjacent to private exclusive uses are in need of expansion to accommodate planned or proposed public uses, the Authorized Official will seek input and involvement of all parties who are interested in the assessment of recreation resource needs and the development of recreation programs in making the compatibility determination.

C. Public Safety. Reclamation and its partners are responsible for appropriate measures to protect the health and safety of the public, and identify and provide reasonable
safeguards against known hazards. The Authorized Official will establish safety procedures to address 43 CFR 423, related RM D&S, Department Manual requirements, and local health and safety codes.

D. Public Conduct. Public Conduct is administered under 43 CFR 423 to maintain law and order and to protect persons and property within Reclamation projects and on Reclamation’s facilities, lands, and waterbodies. Enforcement of state and local laws are the responsibility of Reclamation or a managing partner, if one exists, and is generally addressed in any long-term management agreements.

4. Compatibility Documentation. The Authorized Official will prepare a report on their findings concerning the compatibility of the authorized private exclusive use with project purposes and public needs. In that report, findings associated with whether the private exclusive use is creating any public safety or security issues will also be addressed.

A. This report will be in addition to the requirements included in 43 CFR 429.32(a)(3) addressing notification via the Federal Register of determinations that the existing private exclusive use is not compatible with public needs, and the report will be prepared before any such notice is issued.

B. Copies of the report will be provided to the regional office and Policy for review and comment. A minimum of 30 calendar days will be provided for such review before the report is made available to the public and any Federal Register notice is issued.

5. Compliance Reviews Inspection Standards. Following is a minimum set of inspection standards for compliance reviews required by 43 CFR 429. Reclamation is required to review all private exclusive use on Reclamation lands at least every 5 years to ensure compliance with established criteria (43 CFR 429.32).

A. General. Reviews and evaluations of recreation areas must be comprised of local or external review teams composed of technical specialists that are qualified to assess the conditions and issues associated with the exclusive use facilities. Technical specialists will include, as appropriate with regard to the private exclusive use to be reviewed, electrical and civil engineers, accessibility coordinators, water quality specialists, and health, safety, sanitation, and food service professionals, as well as other specialists as necessary. Inspections will be conducted in accordance with the applicable Federal, state, and local laws and regulations.

B. Environmental Requirements. Inspections are required to check for compliance with all Federal, state, and local laws and regulations pertaining to potential environmental hazards, including fuel storage, hazardous materials/proper storage, sewage disposal systems, etc. Reclamation will obtain and retain on file, reference copies of all inspection reports prepared by regulatory agencies.
C. **Public Health and Safety (H&S) Requirements.** Public Health and Safety (H&S) Requirements. Public H&S codes are administered by state and local government entities including municipalities, counties, special districts, agencies, and federal agencies such as the Occupational Safety and Health Administration and the Environmental Protection Agency. Local H&S agencies may be available to assist and accompany Reclamation staff on H&S inspections contingent upon the availability of resources.

D. **Public Health and Safety (H&S) Requirements.** Public H&S codes are administered by state and local government entities including municipalities, counties, special districts, agencies, and federal agencies such as the Occupational Safety and Health Administration and the Environmental Protection Agency. Local H&S agencies may be available to assist and accompany Reclamation staff on H&S inspections contingent upon the availability of resources.

E. **Current Financial Obligations to Reclamation.** Reclamation will review the appropriate accounting records and reports maintained by Reclamation’s regional finance offices to ensure current payment of the required fees, as specified in the applicable use authorization.

6. **Compliance Inspection Documentation.**

A. A written report documenting the results of the compliance review will be maintained by the Authorized Official in accordance with record retention requirements established in RM D&S RCD 05-01, Information Management. A copy of the written report will be provided to the holder of the use authorization in accordance with 43 CFR 429.32(d), and the appropriate Land and Recreation Program staff in the Regional and Dam Safety and Infrastructure Directorate.

B. If deficiencies are identified during a compliance review, a follow-up report addressing actions taken will be prepared within 30 calendar days after the deadline that was established in the original written report to address those deficiencies. Copies of such follow-up reports will be provided to all Reclamation offices that were provided the original written report on the compliance review and maintained by the originating Reclamation office as per established records retention requirements.

7. **Extraordinary Circumstances.** To address and resolve extraordinary circumstances including but not limited to innocent trespass, newly discovered trespass due to survey or deed errors, legacy uses historically allowed by water user organizations, unresolved ongoing occupancies, authorization of uses pending final disposal of unneeded lands, or other similar situations, Reclamation will perform a review to determine if authorization pursuant to 43 CFR 429 is appropriate. Any such authorization must include a complete rationale in the use authorization contract file, undergo review by the Regional Realty Officer, and be undertaken only as part of a process culminating in permanent and final resolution.
8. **Definitions.**

   A. **Authorized Official.** Regional directors or their delegates as referenced in the RM *Delegations of Authority* Paragraph 4.K.(4).

   B. Please see 43 CFR 429.2 for additional definitions.

9. **Review Period.** The originating office will review this release every 4 years.