

# Reclamation Manual

## Directives and Standards

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<b>Subject:</b>	Concessions Management by the Bureau of Reclamation
<b>Purpose:</b>	To establish requirements for planning, development, and management of concession opportunities at Reclamation's direct-managed recreation areas, and for providing visitor services, amenities, goods, and opportunities on Reclamation lands and waterbodies. The benefit of this Directives and Standards (D&S) is the establishment of uniform requirements for management of concessions at direct managed recreation areas.
<b>Authority:</b>	See Appendix A in Reclamation Manual (RM), Policy, <i>Concessions Management</i> , LND P02
<b>Approving Official:</b>	Director, Dam Safety and Infrastructure
<b>Contact:</b>	Asset Management Division (86-67200)

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1. **Introduction.** Reclamation's authorities provide for recreation opportunities and allow for qualified concessionaires to manage facilities and services on lands and waterbodies in response to public demand and specific needs identified in planning documents. Both for-profit and non-profit organizations may be qualified as a concessionaire.
2. **Applicability.** This D&S applies to all Reclamation employees who oversee concessions, including the planning, development, and management of concessions on lands and waterbodies at direct managed recreation areas. RM Policy, *Concessions Management*, LND P02; RM Policy, *Recreation Program Management*, LND P04; and RM D&S, *Recreation Program Management*, LND 01-03 provide mandatory provisions for a wide variety of recreation activities.
3. **Existing Concession Contracts.**
  - A. **Compliance.** The authorized official must ensure that existing and future concession contracts are brought into compliance with LND P02 and this D&S at the first legal opportunity, for example, when an existing contract is amended, or a subsequent future contract is executed upon expiration or termination of an existing contract.
  - B. **Unusual Circumstances.** In the event that unusual circumstances prevent the authorized official from issuing a new contract in a timely manner, the authorized official has the discretion to issue a temporary contract. The authorized official must ensure that the temporary contract complies with LND P02 and this D&S. The temporary contract will be issued on a year to year basis, pending reviews and audits, for a period not to exceed 2 total years. If it is determined by the authorized official that there is a need for a period longer than 2 years, the authorized official will provide

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the Dam Safety and Infrastructure directorate with a date the request for proposals for a new long-term contract will be issued before a decision is made to issue another temporary contract.

#### 4. Concessions Planning.

- A. **General.** The various types of planned concessions activities will be based on a broader planning process for the entire recreation area, including resource management plans. The scale of planning will be commensurate with the size of the recreation and concessions operations. Concessions development will adhere to the concession's principles listed in LND P02 and be based on appropriate plans developed by Reclamation's regional and area office employees who oversee concessions.
- B. **Planning Responsibilities.** The authorized official is responsible for determining the need for concessions operations. Before issuing a request for proposal and awarding a contract, Reclamation's regional and area office employees who oversee concessions will ensure the completion of a formal commercial services plan, including a financial feasibility evaluation for direct managed concessions opportunities. These employees will allow adequate time to complete the commercial services planning process, develop a contract and request for proposal, and receive the Dam Safety and Infrastructure Office's review and approval of the contract and request for proposal. The planning for new concession contracts must begin no less than 2 years in advance of the anticipated date the contract will be awarded.
- (1) **Commercial Services Plan.** The commercial services plan will be an addendum to a resource management plan or similar planning document. At a minimum, the commercial services plan must determine the number of concessions necessary to meet the public needs, the type of facilities and services to be provided, the financial feasibility of the operations, and the location(s) appropriate for commercial activities. The complexity of commercial services plans will vary according to location, historical visitation data, estimated future revenues, and other factors, as appropriate.
  - (2) **Financial Feasibility Evaluation (FFE).** A documented determination of the financial viability of the proposed concession operation, including total benefits to the Government, a justification for the proposed length of term for the concession contract, and the underlying assumptions regarding concessionaire capital investment in the concessions operations must be included in the FFE. The FFE must be developed by a subject matter expert such as an economist, accountant, social scientist, an industry professional, or a Reclamation employee skilled in the development of an FFE. The level of evaluation shall be commensurate to the proposed level of services and capital improvements.

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- C. **Commercial Services Planning Process.** Reclamation's regional and area office employees who oversee concessions shall facilitate the preparation of commercial services plans, FFEs, request for proposals, and concessions contracts at direct managed recreation areas. Decisions to contract for concessions must be based on the results of the commercial services planning process, including public involvement, an FFE, and an environmental analysis. The authorized official will ensure the following criteria will be applied to determine appropriate facilities and services during the planning process:
- (1) Facilities and services must be compatible with Reclamation project purposes.
  - (2) Facilities and services must be necessary and appropriate for a broad spectrum of public use and enjoyment.
  - (3) Facilities and services must reflect the general public's expressed needs rather than the desires of a particular individual or group. Existing concessionaires will be able to provide input through the public involvement process.
  - (4) The FFE must consider the following:
    - (a) Gross revenues (i.e., receipts) from the concessionaire's operating department (e.g., lodging, food, and beverage).
    - (b) Operating expenses:
      - (i) Direct expenses by the concessionaire's operating department, including labor and cost of goods sold.
      - (ii) Unallocated expenses, including the concessionaire's utilities, repair and maintenance expenses.
      - (iii) General and administrative expenses, including the concessionaire's overhead, officer salaries, office supplies, and travel.
      - (iv) Fixed expenses, including the concessionaire's rent, interest, depreciation, and reserve accounts.
      - (v) Franchise fees that will be paid by the concessionaire.
      - (vi) Taxes to be paid by the concessionaire.
    - (c) Earnings before interest, depreciation, taxes, and amortization (EBIDTA); which is a standard accounting value representing net operating income.

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- (d) Capital investment costs, including:
    - (i) working capital;
    - (ii) furniture, fixtures, and equipment;
    - (iii) ongoing capital replacement; and
    - (iv) new facility development costs.
  - (e) Cash flow analysis.
  - (f) Other appropriate factors that influence the concession's business opportunity, including length of season, rates, visitation, inflation, cost of future capital, and the appropriate target rate-of-return to concessionaire.
- (5) Reclamation will not allow facilities, services, or sites considered to be new private exclusive recreational or residential uses as a part of any commercial services planning effort. At the discretion of the authorized official, concessions owners and their employees are allowed to reside on the Federal Estate to safeguard facilities and be available for public assistance. At the end of a concessions contract, the authorized official will ensure concessions owners and their employees are required to vacate the premises and leave it in a state acceptable to the authorized official.
- (6) Potential impacts to natural and cultural resources must be considered in the development of facilities and services, and appropriate steps must be taken to mitigate adverse impacts.
- (7) Facilities must be harmonious with the surrounding landscape. Standard design guidelines are found in the Recreation Facility Design Guidelines located by accessing the following link:  
<https://www.usbr.gov/recreation/publications/RecreationFacilitiesDesignGuidelines.pdf>.
- (8) The planning process will consider whether existing concession facilities will be relocated because:
- (a) they would serve the public better at a different location,
  - (b) they are situated in an area that is topographically limited (e.g., steep slopes, soils subject to erosion, limited space for expansion, or the site cannot accommodate the demand),

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- (c) they cannot provide the best public services and facilities, or
  - (d) the FFE determines that combining one or more existing concessions would create a more financially stable operation.
- (9) If existing fixed assets are proposed to be retained as a part of any new concession operation, they must first be formally evaluated to determine if their existing condition and useful life is sufficient to last through the duration of a new contract. If the evaluation determines that fixed asset would need significant maintenance, repairs, or would need to be replaced during the term of the new contract, then the authorized official will have the discretion to require removal by the existing concessionaire prior to issuing a new contract.
- (10) Concession contracts and operations must comply with all applicable Federal, state and local laws, regulations, Executive Orders (E.O.), Secretarial Orders (S.O.), and Policies and D&S.

### 5. Concessions Contracting.

- A. **General Application.** The authorized official will ensure that this D&S will apply to existing concessions contracts that were executed prior to the revision date of this D&S only if agreed to by both the authorized official and the concessionaire. Except in unusual circumstances, the authorized official will ensure that existing contracts will not be renewed and the length of the term is not extended. Existing contracts that are amended or modified, subsequent to the revision date of this D&S, must adhere to the requirements of LND P02 and this D&S. The authorized official will ensure that new or replacement contracts will be awarded on a fully competitive basis.
- B. **Request for Proposals (RFP).** The authorized official will ensure that an RFP will be issued to actively solicit offers from interested parties. To allow for a wide distribution, the RFP will be published in the appropriate media sources, such as FedBizOps, the Federal Register, Reclamation websites, or local media outlets. The following approach will be applied:
- (1) **Fair Competition.** To ensure fair competition before and during the RFP process, Reclamation's regional and area office employees who oversee concessions will ensure that individual meetings to discuss the RFP with existing or potential concessionaires or other outside parties must not be conducted. It is appropriate to have meetings with existing concessionaires to deal with ongoing operational or contractual issues and programs. Reclamation's regional and area office employees who oversee concessions will ensure that the RFP includes a schedule of meetings in which all interested parties discuss requirements of the RFP. Other meetings requested by individual interested parties must be declined.

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- (2) **Equal Access to Information.** All information must be equally available to all interested parties during the RFP process.
  - (3) **Written Explanation.** Following release of an RFP, Reclamation's regional and area office employees who oversee concessions will ensure that explanations or clarifications will be provided only in writing and are sent to all parties who have received the RFP; and to any party who is to receive the RFP in the future.
  - (4) **Existing Concessionaires.** Reclamation's regional and area office employees who oversee concessions must ensure an existing concessionaire responds to the RFP as a bidder to be considered for the new contract.
- C. **Review of Proposals.** A panel composed of Reclamation "subject matter experts" (e.g., financial, recreation, and concession experts) will be convened to review submitted proposals. The authorized official has the discretion to contract with external experts to assist in analyzing offers. The area office staff involved in concessions will provide selection criteria and instructions to the panel. The panel will forward a recommendation to the authorized official. The evaluation of proposals and review panel instructions are located in Appendix B of this D&S.
6. **Contract Terms and Conditions.** The authorized official must ensure the following items are specifically addressed in concessions contracts:
- A. **Standard Contract Language.** Standard concessions contract language will be used to ensure compliance with all applicable laws, regulations, E.O., S.O., and the Policies and D&S listed in section 2 of this D&S. Examples of standard contract language are found in the Reclamation Concessions Management Guidelines.
  - B. **Interim Operator.** At the discretion of the authorized official, an interim operator will be selected if a contract is not in place at the time the existing contract expires or is terminated. Contract terms and conditions must be modified to reflect current policies and D&S. The authorized official has the discretion to select the existing concessionaire as the interim operator if the existing concessionaire is performing in a satisfactory manner. The interim contract will only be issued annually and must not exceed a total of 2 years, in accordance with the prerequisites set forth in section 3.B of this D&S, that a longer period is needed due to unusual circumstances. A new contract must be awarded as expeditiously as possible.
  - C. **Required and Authorized Visitor Services.** Reclamation's regional and area office employees who oversee concessions must ensure that contracts outline the specific types of services, facilities, goods, and activities that a concessionaire is required to provide. The contract will also specify services, facilities, goods, and activities the concessionaire is authorized to offer. It must be clear that those required services are

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not optional and must be provided. Any service, facility, goods or activity not identified as either required or authorized in the contract is not allowed without a contract amendment or written authorization from the authorized official.

- D. **Sale and Transfer.** Reclamation's regional and area office employees who oversee concessions must ensure that concessionaires or parties holding interests in a concession contract will not sell, assign, or transfer their interests or a part of their interests to another party without the prior written approval of the authorized official. The authorized official will require concessionaires to complete and submit all sale and transfer information as required by the regional and area offices before approval of a sale or transfer of all or any portion of a concession operation will be considered.
- (1) **Proposed Transfer.** A proposed transfer of interest is subject to the same evaluation process as specified by Appendix B of this D&S, that is performed for a new concession contract. The authorized official must approve a proposed sale or transfer or choose to place conditions on the approval. Refer to the Reclamation Concessions Management Guidelines for more details on a sale and transfer.
  - (2) **Change of Original Contract Terms.** Concession contracts will provide that the terms and conditions are subject to modification by the authorized official before approval of a sale or transfer. The authorized official has the discretion to reduce but not extend the length of term.
- E. **Default and Non-performance.** Clauses addressing default, penalty, and termination will be included in all concession contracts. The review and evaluation process will be critical to assist in determining whether a concessionaire is in default or not meeting the terms of the contract. The contract will also allow the authorized official to require a surety or performance bond at any time, collect penalties and administrative costs for default and non-performance, and terminate the contract.
- F. **Minimum Wage Contract Clause.** All concessions contracts issued, modified, or amended after January 1, 2015, must include the Minimum Wage Contract Clause specified in Appendix A of this D&S, pursuant to E.O. 13658, *Establishing Minimum Wage for Contractors*.
- G. **Length of Term.** The authorized official will ensure that the term of all contracts will be based primarily on the investment required of the concessionaire, as determined through the FFE. New contracts cannot contain renewal clauses.
- H. **Subconcessions.** The authorized official must ensure that all subconcessions contracts meet the terms and conditions of the prime concession contract. The authorized official

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must approve all subconcessions contracts before a contract is signed between the prime and sub concessionaire contractors.

- I. **Capital Improvement Program.** All designs for construction must be approved in writing by the authorized official and must comply with applicable environmental, accessibility, and historic preservation laws and regulations; and building code requirements. In areas where state or local construction standards are not available, the regional and area offices will provide appropriate standards. The Architectural Barriers Act standards or a stricter state/local code, as applicable, will apply for accessibility standards. Where required and before construction, the concessionaire must obtain all required building permits from the local authorities. A Capital Improvement Plan must be provided prior to initiating any construction activities.
- J. **Environmental Compliance.** The authorized official must ensure that concessionaires are required to follow all applicable Federal, state, and local environmental laws and regulations. The authorized official must ensure that the concessionaire provides all required certifications and permits, as the responsibility of the concessionaire. Concession contracts will address all activities with potential environmental impacts including, but not limited to:
- (1) the scheduled replacement of non-encapsulated polystyrene (Styrofoam™) with another acceptable dock floatation device,
  - (2) hazardous materials storage, handling, and disposal,
  - (3) invasive and nuisance species management,
  - (4) soil erosion mitigation,
  - (5) water pollution management, and
  - (6) other site-specific environmental concerns, as required.
- K. **Flotation for Facilities on Reclamation Waters.** Materials shall be of the kind that will not become waterlogged, are resistant to damage by animals, and will not sink or contaminate the water if punctured. Approved flotation materials include extruded polystyrene, polyethylene, and expanded polystyrene, all of which have been encased with a protective covering that is warranted by the manufacturer for at least 8 years against cracking, peeling, sloughing, and deterioration from ultra violet rays while retaining its resiliency against ice and bumps by watercraft. The authorized official will ensure that both Reclamation and the concessionaire agree to a timeline to replace existing flotation that does not meet this section of this D&S.



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- L. **Interpretation and Thematic Programs.** The authorized official will ensure that contracts require concessionaires, to the extent possible, to support Reclamation's educational efforts through such actions as developing interpretive and area thematic messages in printed material (e.g., marketing, correspondence, etc.), using outdoor signs, and developing formal programs, as appropriate. The authorized official will also take steps to ensure that all interpretation and thematic programs meet accessibility standards for the associated materials presented or described.
- M. **Operation and Maintenance Plan.** The authorized official will ensure that concessionaires prepare an annual operation and maintenance plan, which must be approved by the authorized official. Concession contracts must clearly state exactly what the plan will contain. Reclamation's Concessions Management Guidelines provide an example of a list of operation and maintenance items to be considered for inclusion in the plan. The authorized official will ensure that the concessionaire is required to operate and maintain revenue generating assets essential to visitor services in a manner that extends the useful life and prevents asset deterioration throughout the duration of the contract term.
- N. **Preferential Right of Renewal.** Concession contracts will not include a preferential right of renewal.
- O. **Ownership of Fixed Assets Constructed by Concessionaires.** The authorized official will ensure that title to fixed assets will be established by a concessionaire to the extent the asset is purchased from a previous concessionaire, or paid for and constructed by the concessionaire, with prior approval from the authorized official. Concession contracts will specify whether fixed assets located on the Federal estate by a concessionaire will remain on the Federal estate or be removed at the end of the contract.
- (1) **Approval of Improvements.** The authorized official will ensure that s/he receives the required documentation for any new investment in fixed asset improvements by the concessionaire, as described in section 6.I. of this D&S. The documentation must include a schedule and details describing the construction; and must be approved in writing by the authorized official before commencement of construction activities.
  - (2) **Assets That Remain with the United States.** Concessionaires do not automatically have a right to compensation for fixed assets from the United States upon contract expiration or termination. However, at the option of the authorized official when appropriated funds are available and the facilities are necessary for future operations of the site, the regional and area offices will purchase a concessionaire's remaining assets at the appraised market value. Refer to RM,

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D&S, *General Property, Plant, and Equipment*, FIN 07-20 for proper capitalization of assets acquired by the United States.

- (3) **Assets That Remain to be Purchased by a New Concessionaire.** Upon expiration, termination, or sale or transfer of a concession contract, fixed assets will remain on the Federal estate if they were determined to be necessary for future recreation related opportunities. If the fixed assets are needed for the concession operation, the authorized official must ensure that they are purchased by the new concessionaire at the appraised market value.
  - (4) **Assets to be Removed.** Assets that have not been purchased or will not remain upon the Federal estate, as determined by the authorized official upon expiration or termination of the contract, will be removed by the concessionaire.
- P. **Area of Operation.** Each contract will authorize and define the physical area necessary to conduct the business activities allowed by the contract. The contract must include a description and a detailed map. Concession boundaries must be easy to recognize by the visiting public.
- Q. **Additional Facilities or Services.** Additional facilities or services are not allowed without advance approval by the authorized official. The authorized official has the discretion to amend a concessions contract at the request of the concessionaire to include limited additional facilities or services, as determined by the authorized official, that meet public needs that were not identified in the RFP. A major expansion of facilities or services, as determined by the authorized official, is not permitted.
- R. **Total Benefits to the Government.** The authorized official will determine and recover fair compensation, including direct returns and direct and indirect benefits, for the use, rights, and privileges granted under a concession contract. The concession contract will specify the direct returns and direct and indirect benefits.
- (1) **Thresholds.** Targeted thresholds of total benefits will be developed to determine the optimal combination of payments. These will be used in advertisements, RFPs, and renegotiations to seek appropriate benefits to the Government and the public.
  - (2) **Direct Returns (Disposition of Fees).** The appropriate disposition of recreation or concession fees depends on the land status and authority used to collect the fees. Refer to the RM, *Crediting of Incidental Revenues*, PEC 03-01 for further information. Except as otherwise provided in a project specific authorization, fees collected pursuant to Reclamation law will be disposed of as follows:

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- (3) Fees generated by concessions or recreation activities on withdrawn project lands are deposited in the Reclamation Fund.
  - (4) Fees generated by concessions or recreation activities on lands acquired for project purposes are deposited in the Reclamation Fund to the credit of the project.
- S. **Utility Services Provided by Reclamation.** The value for utility services provided by Reclamation will be based on the recovery of full operating and replacement costs for utility capital investments and comparable utility rates. If the FFE determines that it would not be feasible for the concessionaire to pay rates which would compensate Reclamation for its total capital and operating costs, the authorized official must determine any appropriate utility service rates that will be applied. Utility services include, but are not limited to, electricity, power, water, waste disposal, gas, and communication systems.
- T. **Private Exclusive Recreational and Residential Uses.** 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 Part 429. Private exclusive recreational or residential uses that are within the terms and conditions of an existing use authorization, as specified in 43 CFR Part 429, is not considered new private exclusive recreational uses. Existing private exclusive recreational or residential uses will be administered under 43 CFR Part 429 and 43 CFR Part 21, as applicable.
- U. **Sale of Personal Property.** The sale of personal property other than the approved concessions inventory is prohibited on the Federal estate. No party other than the concessionaire will be permitted to sell personal property, including but not limited to vehicles, manufactured or mobile homes, house trailers, travel trailers, boats, or personal watercrafts on the Federal estate. The authorized official has the discretion to allow the concessionaire to broker the transaction of watercraft sales owned by private individuals, as authorized in the contract. If a private individual does not want to sell their watercraft through the concessionaire, the individual must be asked to remove the watercraft from the Federal estate and sell it elsewhere.
- V. **Rates and Merchandise.** The authorized official will ensure that rates charged by the concessionaires are based on comparable rates for facilities, services, food, and merchandise rates in the geographic proximity. The authorized official must approve the rates requested by concessionaires. Approved rates will ensure a fair return to the concessionaire and a reasonable charge to the public. The authorized official must ensure that any rates in excess of comparable rates are thoroughly justified and supported in writing by the concessionaire and approved by the authorized official.

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- W. **Concessions Safety Program.** The authorized official must ensure that concessionaires are responsible for providing and ensuring a safe and healthy environment for both the visiting public and employees by developing, implementing, and administering health and safety programs to ensure that concession areas are managed in compliance with Federal, state, and local laws, and regulations. The results of county or state health inspections will be provided to the authorized official within 90 days of the report. Violations which result in the shutdown of services shall be reported to the authorized official immediately.
- X. **Food Sanitation.** The authorized official must ensure that concessionaires' food services will comply with Federal, state, and local food handling and sanitation laws, rules, and regulations. Copies of inspection reports will be provided to the authorized official within 90 days of the report. Violations which result in the shutdown of food services shall be reported to the authorized official immediately.
- Y. **Insurance Program.** The authorized official must ensure that concessionaires have an insurance policy that will indemnify the United States and meet applicable state requirements. All liability policies will provide that the insurance company will have no right of subrogation against the United States and will provide that the United States is named as an additional insured. The authorized official must be provided with a certificate of insurance by the insurance agent to confirm that the above requirements are met before development begins or operations commence. The authorized official must ensure that concessionaire provide the regional and area offices with a copy of each insurance renewal certificate throughout the term of the concession contract. The authorized official will establish a minimum insurance requirement based on the facilities and services offered by individual concessions.
- Z. **System of Recordkeeping.** The authorized official must ensure that concessionaires complete Reclamation's Annual Financial Report (AFR) form, or other documentation as specified in the concessions contract. The AFR forms will be provided by Reclamation's regional and area office staff who oversee concessions. The AFR forms will be modified based on the size and scale of the operation.
- AA. **Advertising and Signs.** All identification signs and promotional material, regardless of media format (i.e., printed, electronic, broadcast) provided to the public by the concessionaire in connection with the services described in the concession contract, must be approved in writing by the authorized official. Outdoor signs must also be displayed on the Federal estate and require prior written approval of the authorized official. Outdoor signs must meet Reclamation's Visual Identity standards, must be displayed on the Federal estate, and require prior written approval of the authorized official.

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- (1) All identification signs will display the Reclamation logo and identify the location as an authorized concessionaire of the Bureau of Reclamation, Department of the Interior.
- (2) Reclamation's regional and area office staff who oversee concessions must ensure that concessionaires notify the public that they are authorized by Reclamation to conduct business on the Federal estate. At a minimum, all such information will identify the concessionaire as an authorized concessionaire of the Bureau of Reclamation, Department of the Interior.
- (3) Use of the Reclamation seal, logo, or name must be approved by the authorized official before it is displayed in advertisements or on signs.

**BB. Statistical Data.** Statistical data is utilized for various purposes such as reporting to the Department, the Commissioner's Office, and Congressional Research Service, as well as for determining whether recreation programs will be increased or expanded. In addition, the recreation related data will assist with Reclamation's planning efforts. As such, the authorized official must ensure that concessionaires furnish information at a minimum annually, or as needed, and in the manner specified by the authorized official. This information shall be produced in a timely manner. If the concessionaire is not tracking the data requested, Reclamation's regional and area office employees who oversee concessions will require that the concessionaire begin tracking such data.

**CC. Concessions Reviews.** Reclamation's concessions reviews will be consistent with RM D&S, *Review of Operation and Maintenance Program Examination of Associated Facilities (Facilities Other Than High and Significant-Hazard Dams)*, FAC 01-04. In addition to the frequency of reviews set forth in FAC 01-04, Reclamation's regional and area office staff who oversee concessions will determine when risks are such that more frequent reviews, such as annual reviews, are required. The reviews will examine, at minimum:

- (1) the extent to which the concession operations meet LND P02 and this D&S,
- (2) the extent to which the concession activities are consistent with resource management plans and commercial services plans,
- (3) the extent to which the concessionaire is in compliance with the contract provisions, especially with respect to building improvements, operations, prices charged by concessionaires, fees returned to the Government, and annual financial reporting to Reclamation,
- (4) self-evaluation and transition plans and reports associated with the removal of barriers pursuant to Title III of the ADA, Section 504 of the Rehabilitation Act,

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and 43 CFR part 17, Nondiscrimination in Federally Assisted Programs of the Department of the Interior,

- (5) the quality and condition of the facilities and services related to the health and safety of the employees and the visiting public,
- (6) the recordkeeping system(s) used by the local Reclamation office to determine that the concessionaire uses generally accepted accounting practices,
- (7) the recordkeeping system(s) used by the local Reclamation office to conduct quarterly and annual reviews,
- (8) the local Reclamation office records regarding the annual reviews and annual rating, and
- (9) traditional operation and maintenance activities as listed in the content section of FAC 01-04.

**DD. Notice of Violation.** Reclamation's regional and area office employees who oversee concessions will require that the concessionaire immediately notify the appropriate regional and area office of any actual or proposed notice of violation from other regulatory agencies of any applicable laws and regulations arising out of the activities of the concessionaire, its agents, or employees.

**EE. Disputes.** The authorized official must ensure that disputes between Reclamation and the concessionaire, as a result of reviews and recommendations, be resolved through informal negotiations and discussions. In the event that such disputes fail to reach resolution, a request must be made by Reclamation or the concessionaire to initiate a non-binding arbitration. Each party selects one member for the arbitration panel and, together, these two members will select the third (neutral) panel member. The panel will treat each party equally and fairly. Recommendations must be made by a majority of the panel members. If either party disagrees with the arbiter's recommendation, that party must file an appeal with the Secretary of the Department of the Interior under 43 CFR Part 4, Subpart G. The Secretary's determination is final and binding.

### 7. Miscellaneous.

**A. RFP and Contract Review.** All direct managed RFPs, concession prospectuses, and contracts must be reviewed and approved by Reclamation's Dam Safety and Infrastructure Office. The following sequence of steps must be followed:

- (1) The authorized official must submit the proposed contract and RFP along with supporting information to the Dam Safety and Infrastructure Office. The

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supporting information must include the appropriate planning documentation and FFE.

- (2) The Dam Safety and Infrastructure Office will establish a review team appropriately suited to the complexity and scope of the contract and RFP. The team will evaluate the contract and RFP for sufficiency and compliance with the LND P02 and this D&S.
- (3) The Dam Safety and Infrastructure Office will return the approved contract and RFP for modifications and resubmittal if necessary.

**B. Training.** The authorized official is responsible for ensuring that Reclamation's regional and area office employees who oversee concessions receive training commensurate with their responsibilities. Possible types of training include but are not limited to public health and safety, concessions management training, accessibility, etc.

**C. Non-profit Organizations.**

- (1) All non-profit arrangements must be approved by the authorized official. The authorized official is responsible for review and approval of a non-profit organization activities if the organization operates within a concession or elsewhere on the Federal estate. Non-profit organizations will also be given very clear allowances and restrictions identifying the type of business they are authorized to conduct and the type of goods or services they provide. In certain circumstances, it is appropriate for non-profit organizations to sell goods or provide visitor services to meet Reclamation's goals and objectives, as approved by the authorized official. The authorized official will ensure non-profit organizations are prohibited from providing items or services not specifically authorized.
- (2) The authorized official will ensure that the non-profit organization will be responsible for maintaining its accounting system, and the system cannot be combined with the AFR submitted by a concessionaire.

**D. Employment of Reclamation Personnel or Family Members.** Reclamation employees or immediate family members (i.e., spouses and minor children of Reclamation employees) must not be owners, partners, board members, corporate officers, general managers, or employees of any business providing commercial services on the Federal estate, or have any financial interest in such a company. Ownership of stock shares traded in a recognized open market is not considered a financial interest under this D&S. Reclamation employees are further prohibited from using their public office for private or family gain.

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A Reclamation employee involved in preparing specification formulation, contract award, or the administration or operation of a concession will not participate in that activity if the employee or family member is involved in any phase or operation of that concession. Any Reclamation employee responsible for any phase of a concession contract will be excused from duties related to the contract if the employee or family member is involved in the competition for the contract or the Reclamation employee or a family member is to benefit financially from the award of the contract.

### 8. Definitions.

- A. **Authorized Official.** Regional Directors or their delegates as referenced in the RM *Delegations of Authority*, sections 3.D. and 4.K.(1).
- B. **Concession.** A concession is a non-government commercial business that supports appropriate public recreation uses by providing facilities, and/or goods and services from which revenues are collected by the entity contracted to provide the operations. A concession involves the use of the Federal estate and sometimes involves the development of real property improvements. A concession is most often a commercial, for-profit entity but can also be a non-profit entity.
- C. **Federal Estate.** The Federal land and water areas under the primary jurisdiction of the Department of the Interior, Bureau of Reclamation.
- D. **Fixed Assets.** Fixed assets are any structures, fixtures, or capital improvements permanently attached to the Federal estate.
- E. **Gross Revenues.** The total amount received or realized by, or accruing to the concessionaire from all sales for cash or credit of services, accommodations, materials, and other merchandise made pursuant to the rights granted by the concession contract; and commissions earned on contracts or agreements with other persons or companies operating in the area; and gross revenues earned from electronic media sales. Excluded as gross revenues are:
  - (1) intra-company earnings on account of charges to other departments of the operation such as laundry,
  - (2) charges for employee meals, lodging, and transportation,
  - (3) cash discounts on purchases,
  - (4) cash discounts on sales,
  - (5) interest on money loaned or in bank accounts,



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- (6) income from investments,
- (7) sale of property that was acquired for the purpose of resale and not for use under the concession contract,
- (8) income from any subsidiary companies not arising from business conducted in conjunction with the concession contract,
- (9) sales and excise taxes that are added as separate charges to sales prices, gasoline taxes, transient occupancy taxes, fishing license fees, and postages stamps, provided that the amount excluded shall not exceed the amount due or paid Government agencies,
- (10) all revenue received by the concessionaire from coin operated devices whether provided by the concessionaire or by others, and
- (11) all revenues received by the concessionaire from charges for in-room telephone or computer access.

F. **Improvement.** An addition to real property that increases its value or utility or that enhances its appearance. Refer to RM, D&S, *General Property, Plant, and Equipment*, FIN 07-20 for proper capitalization of assets acquired by the United States.

G. **Incidental Revenues.** Incidental revenues are generally defined as those revenues generated from the use of Reclamation's project lands and facilities that are incidental to authorized project purposes. Although recreation and concession facilities are authorized project purposes, it has been determined that revenues generated from the use of the Federal estate by concessionaires are to be credited as incidental revenues.

H. **Total Benefits to the Government.** Total benefits include:

- (1) **Revenues retained.** RM D&S, *Federal Lands Recreation Enhancement Act (REA) Program Management*, LND 01-02, addresses revenues that are to be retained pursuant to this authority as a designated REA recreation site. Revenues that are not designated as REA sites or are generated at recreation areas without a project specific authority is subject to section 8.I.(2) immediately below.
- (2) **Direct Returns.** Revenues generated by authorized concession contracts and paid directly to the United States Treasury and credited in accordance with RM, *Crediting of Incidental Revenues*, PEC 03-01.

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- (3) **Direct benefits.** These are fees paid into a contractually designated special account for resource and capital improvements that directly benefit the public in the area of operations where the fees are collected.
  - (4) **Indirect Benefits.** These are services or improvements to the Federal estate performed by the concessionaire that indirectly benefit the public.
- I. **Market Value.** The amount in cash or on terms reasonably equivalent to cash, for which in all probability the property would have sold on the effective date of the appraisal, after a reasonable exposure time on the open competitive market, from a willing and reasonably knowledgeable seller to a willing and reasonably knowledgeable buyer, with neither acting under any compulsion to buy or sell, giving due consideration to all available economic uses of the property at the time of the appraisal. All government appraisals shall conform to the Uniform Appraisal Standards for Federal Land Acquisitions, as implemented in accordance with the Department's Appraisal and Valuation Services Office.
  - J. **Non-Profit Organization.** A group organized for purposes other than generating profit and in which no part of the organization's income is distributed to its members, directors, or officers. Non-profit organizations must be designated as non-profit when created and may only pursue purposes permitted by statutes for non-profit organizations. Examples of non-profit organizations include churches, public schools, public charities, public clinics and hospitals, political organizations, legal aid societies, volunteer services organizations, labor unions, professional associations, research institutes, museums, and some governmental agencies.
  - K. **Private Exclusive Recreational or Residential Uses.** Any use that involves structures or other improvements used for recreational or residential purposes to the exclusion of public uses and are not associated with the official management of a Reclamation project. This includes those uses described in 43 CFR part 429 and the uses currently defined in 43 CFR part 21.
9. **Review Period.** The originating office will review this release once every 4 years.

## RECLAMATION MANUAL TRANSMITTAL SHEET

Effective Date: \_\_\_\_\_

Release No. \_\_\_\_\_

Ensure all employees needing this information are provided a copy of this release.

### Reclamation Manual Release Number and Subject

### Summary of Changes

NOTE: This Reclamation Manual release applies to all Reclamation employees. When an exclusive bargaining unit exists, changes to this release may be subject to the provisions of collective bargaining agreements.

### Filing instructions

Remove Sheets

Insert Sheets

All Reclamation Manual releases are available at <http://www.usbr.gov/recman/>

Filed by: \_\_\_\_\_

Date: \_\_\_\_\_