

Reclamation Manual

Directives and Standards

Subject:	Concessions Management by Non-Federal Partners
Purpose:	Establishes minimum approval standards for all new, modified, or renewed concession contracts issued by non-Federal managing partners at the Bureau of Reclamation's recreation areas. The benefit of this Directives and Standards (D&S) is to ensure successful visitor services opportunities on Reclamation land and waterbodies by establishing uniform requirements for management of concessions at partner managed recreation areas.
Authority:	See Appendix A in Reclamation Manual (RM) Policy, <i>Concessions Management</i> (LND P02)
Approving Official:	Director, Dam Safety and Infrastructure
Contact:	Asset Management Division (86-67200)

- 1. Introduction.** Reclamation's managing partners are authorized through management agreements to seek and enter into contracts with concessionaires to manage lands, facilities, and waterbodies at Reclamation projects in response to public demand for recreation opportunities, as determined appropriate by the authorized official. The authorized official will ensure that concessions operations are subject to the terms of the management agreement with the managing partner as well as the concessions contract.
- 2. Applicability.** This D&S applies to all Reclamation employees who oversee concessions at partner managed recreation areas, including the planning, development, and management of concessions operations. 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 requirements for a wide variety of recreation activities. The authorized official must ensure that new concession contracts issued by managing partners comply with these Policies and D&S.
- 3. Managing Partner Agreements.**
 - A. Third-Party Concession Contracts.** Third-party concession contracts are agreements between the managing partner and another entity to provide concession related services, goods, and facilities. As stated in LND P02, the authorized official will ensure that partner managed concessions activities do not conflict with authorized project purposes. The authorized official must ensure that existing concession contracts issued by managing partners are brought into compliance with LND P02 and this D&S at the first available opportunity. The authorized official will require notification if a concession contract is amended or terminated because of contract default or for other reasons. The authorized official must ensure that the amended or subsequent concession contract is in compliance with LND P02 and this D&S.

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- (1) **Contract Standards.** The authorized official must ensure that any concession contract issued by the managing partner meets the requirements of LND P02 and this D&S. If LND P02 or this D&S conflict with state laws and regulations, the appropriate laws and regulations will be utilized as determined by the authorized official.
 - (2) **Contract Approval.** Authorized officials are responsible for the review and approval of all partner managed concession contracts and modifications or transfers of concessions contracts. Partner managed contracts will be submitted for Dam Safety and Infrastructure review and comment at the discretion of the authorized official.
 - (3) **Stand In-Stead Conditions.** Reclamation's regional and area office employees who oversee concessions will ensure that all concession contracts state that Reclamation will not stand in-stead for the managing partner if the management agreement expires or is terminated. At the authorized official's discretion, a new concession contract will be issued in compliance with RM D&S, *Concessions Management by the Bureau of Reclamation*, LND 04-01, subsequent to expiration or termination of the management agreement.
- B. **Concessions Review.** The authorized official is responsible for ensuring that reviews are conducted 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. All management agreements will require concession operation reviews. In addition to the frequency of reviews set forth in FAC 01-04, the authorized official will determine when risks are such that more frequent reviews, such as annual reviews, are required. The authorized official has the discretion to conduct unplanned reviews, as necessary. If a review identifies operational or administrative deficiencies in the operation of a concession, the authorized official must ensure a timetable is established by the managing partner to correct these deficiencies pursuant to recommendation categorizing and tracking requirements in FAC 01-04.
- C. **Disposition of Fees.** Unless state or local laws direct how concession fees paid to the managing partner will be used, the authorized official must ensure the following will apply:
- (1) Revenue from fees generated by concessions will be returned to the recreation management area where they are collected to provide for operation, maintenance, and replacement or enhancement of recreation facilities or new facility development.

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- (2) Any excess revenue from fees generated from concessions that are not returned to the recreation area in accordance with section 3.C.(1) above will be returned to Reclamation and disposed of according to RM, D&S *Crediting of Incidental Revenues*, PEC 03-01.
4. **Statistical Data.** Statistical data is utilized for various purposes such as reporting to the Department of the Interior, the Commissioner's Office, and Congressional Research Service, as well as for determining whether recreation programs are to be increased or expanded. In addition, the data will assist with Reclamation's planning efforts. As such, the authorized official will ensure that the managing partner require that concessionaires furnish information annually, at minimum, 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 ensure the concessionaire begins tracking such data.
 5. **Concessions Planning.** The authorized official shall ensure that concession development will adhere to the principles listed in LND P02, will be based on appropriate plans developed by the managing partner, and is approved by the authorized official. Reclamation's regional and area office employees who oversee concessions will provide direction and assistance in the process, as necessary, to accomplish effective commercial services planning.
 6. **Concessions Contracting.** The authorized official must ensure the managing partner require a competitive process for all concession's contracts. The authorized official will also ensure that the following items will be addressed in all new and renewed concessions contracts issued by managing partners.
 - A. **Sale and Transfer.** The authorized official shall ensure that the managing partner require that concessionaires have no authority to sell, assign, transfer, parcel out, modify, extend, sublet, renew, or amend the concession contract or any interest therein, except when agreed to in writing by the authorized official. The sale and transfer of existing concessions must be approved according to the concessions contract and reported to the authorized official in a timely manner.
 - B. **Contract Language.** The authorized official shall ensure that the managing partner will develop and use contract language that complies with all applicable Federal and state laws, regulations, and Executive Orders (E.O.). The authorized official will provide examples of standard contract structure and language as requested by the managing partner or concessionaire.
 - C. **Minimum Wage Contract Clause.** The authorized official will ensure that all partner managed concessions contracts issued, modified, or amended after January 1, 2023, include the Minimum Wage Contract Clause specified in Appendix B of this D&S, pursuant to E.O. 14026, *Increasing the Minimum Wage for Federal*

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Contractors. All concession contracts issued, modified, or amended after January 1, 2015, but before January 1, 2023 will include the Minimum Wage Contract Clause specified in Appendix A of this D&S, under Executive Order (E.O.) 13658, *Establishing Minimum Wage for Contractors.*

- D. **Length of Term.** The authorized official will ensure the managing partner requires a term of a concession that does not exceed the term of the management agreement between Reclamation and the managing partner. The authorized official shall ensure that the managing partner require a term that is primarily based on the investment required of the concessionaire, as determined by a financial evaluation and/or amortization schedule, to ensure that the concessionaire receives a reasonable return on their investment.
- E. **Subconcessions.** The authorized official will ensure that the partner managed subconcessions meets the terms and conditions of the prime concession contract. In addition, the authorized official must ensure that the managing partner determines whether to approve subconcessions and notifies the authorized official in advance of any authorization that requires Reclamation approval.
- F. **Capital Improvement Program.** All designs and construction must comply with applicable Federal, state, and local laws and regulations, including but not limited to environmental, historic preservation, and accessibility laws, regulations, and building code requirements. In areas where no local construction standards exist, the authorized official will provide appropriate standards. Reclamation's regional and area office employees who oversee concessions shall ensure that the managing partner require building permits to be obtained from local authorities by the concessionaire when required and before construction. All facilities will be harmonious in form, line, color, and texture with the surrounding landscape.
- G. **Operation and Maintenance Plan.** The authorized official must ensure that the managing partner require that concessionaires prepare an annual operation and maintenance plan, which must be approved by the managing partner. The concession contract must clearly state what the plan will contain. Reclamation's regional and area office employees who oversee concessions will provide examples of such plans at the request of the managing partner and the concessionaire.
- H. **Reimbursement for Fixed Assets.**
- (1) A right to reimbursement upon expiration or termination exists at the discretion of the authorized official when a concessionaire constructs the authorized official's approved fixed assets on the Federal estate. Reclamation's regional and area office employees who oversee concessions must ensure that title to fixed assets is established in the concession contract by the managing partner and that reimbursement to a concessionaire for fixed assets is the responsibility of the managing partner. In addition, the authorized official will ensure the managing

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partner require concession contracts provide the appropriate language regarding interests in fixed assets and methods of reimbursement, if any, to the concessionaire by the managing partner.

- (2) In the event the managing partner's agreement with Reclamation expires or is terminated without a commitment by both the authorized official and the managing partner to enter into another agreement, the authorized official must ensure that the managing partner require that all the concessionaire's fixed assets and personal property are removed from the Federal estate unless the authorized official decides to issue new concessions contract and/or retain the fixed assets. The authorized official will ensure that the managing partner is responsible for the concession area promptly being restored back to a condition agreeable to the authorized official.
 - (3) The authorized official shall ensure that the managing partner require that concession contract clearly states that no financial obligation or risk will reside in the Federal Government for reimbursement for fixed assets or personal property as a result of the managing partner awarding a concession contract. The authorized official must ensure that all new concession contracts issued by the managing partner will address rights of reimbursement to the concessionaire for fixed assets and that future interests in a concessionaire's fixed assets does not extend beyond the term of the management agreement.
- I. **Area of Operation.** The authorized official shall ensure that the managing partner require that each concession contract authorize and define the physical area necessary to conduct the business activities allowed by the contract. Concession boundaries must be included in the concession contract as an exhibit map. The authorized official must ensure that the managing partner require that all permanent land-based facilities be located outside of the flood pool or other area deemed unsafe by Reclamation.
 - J. **Additional Facilities or Services.** The authorized official must ensure that the managing partner require that any proposal for expansion of facilities or services must be reviewed and approved by the managing partner and the authorized official prior to beginning the process for implementation of an expansion.
 - K. **Private Exclusive Recreational or Residential Uses.** Reclamation prohibits any use that would result in new private exclusive recreational or residential uses of Reclamation land, facilities, or waterbodies under 43 CFR Part 429. Existing private exclusive recreational or residential use that are compliant with the terms and conditions of an existing use authorization, as specified in 43 CFR Part 429, is not considered new private exclusive recreational or residential uses. Existing private exclusive recreational or residential uses will be administered under 43 CFR Part 429 and 43 CFR Part 21, as applicable. Concessions owners and staff are allowed to reside on the Federal estate to safeguard their facilities and be available for public assistance at the discretion of the authorized official or managing partner, as appropriate. At the

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end of a concessions contract, owners and staff will be required to vacate the premises and leave it in a state acceptable to the authorized official.

- L. **Reclamation Rights.** The authorized official must ensure that all concession contracts are subject to the rights of Reclamation and its agents to use the subject lands and waters for project purposes.
- M. **Termination of Concession Contract.** The authorized official must ensure that concession contracts acknowledge the right of the authorized official to terminate, for cause, any concession contract authorized by a managing partner.
- N. **Total Benefits.** The authorized official must ensure that the managing partner establish and recover fair benefits, including direct return and direct and indirect benefits, for the uses, rights, and privileges granted by a concession contract.
- O. **Rates and Merchandise.** The authorized official must ensure that the managing partner require the following concerning rates:
- (1) Rates charged by the concessionaires are based on comparable rates for facilities, services, food, and merchandise rates in the geographic proximity.
 - (2) Rates are reviewed for approval by the managing partner on an annual basis.
 - (3) Rates are capable of yielding a fair return to the concessionaire and a reasonable charge to the public.
 - (4) Any rates in excess of comparable rates must be thoroughly justified and supported in writing by the concessionaire and approved by the managing partner.
- P. **Concessions Safety Program.** The authorized official will ensure the managing partner require 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, safety, and other programs to ensure that concession areas are managed in compliance with Federal, state, and local laws, and regulations.
- Q. **Environmental Compliance.** The authorized official will ensure the managing partner require that the concessionaires follow all applicable Federal, state, and local laws, rules, and regulations. The authorized official shall ensure the managing partner require that the application for and acquisition of all required certifications and permits are the responsibility of the concessionaire. The authorized official will ensure the managing partner require that concession contracts address all activities with potential environmental impacts including, but not limited to:
- (1) The scheduled replacement of non-encapsulated polystyrene (Styrofoam™) with

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another acceptable dock floatation device,

- (2) Hazardous materials storage, handling, and disposal.
 - (3) Invasive and nuisance species control.
 - (4) Soil erosion mitigation.
 - (5) Water pollution control.
 - (6) Other site-specific environmental concerns, as required.
- R. **Flotation for Facilities on Reclamation Waters.** The authorized official will ensure that the managing partner require that materials are 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 or more against cracking, peeling, sloughing, and deterioration from ultra violet rays while retaining its resiliency against ice and bumps by watercraft. Reclamation's regional and area office employees who oversee concessions shall ensure that the managing partner and the concessionaire agree to a timeline to replace existing flotation that does not meet the requirements of this D&S.
- S. **Food Sanitation.** The authorized official will ensure the managing partner require that concessionaire's food services will comply with Federal, state, and local food handling and sanitation regulations. Copies of inspection reports will be retained by the managing partner and provided to the authorized official upon request. The authorized official will ensure managing partners provide notification to Reclamation and address any identified violations.
- T. **Advertising and Signs.** Reclamation's regional and area office employees who oversee concessions will ensure that the managing partner require that use of the Reclamation seal, logo, or name must be approved by the authorized official before it is displayed in advertisements or on signs.
- U. **Sale of Personal Property.** The authorized official shall ensure that the managing partner require that the sale of personal property other than the approved concessions inventory is prohibited on the Federal estate. No party will be permitted to sell personal property, including but not limited to vehicles, manufactured or mobile homes, house trailers, travel trailers, boats, or personal watercraft on the Federal estate that is not contained in the approved concessions inventory. If allowed by state law and written into the concession contract, the authorized official has the discretion to authorize the managing partner's approval of the concessionaire brokering the sales of watercraft at a marina on behalf of a private individual.

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- V. **Utility Services Provided by Reclamation.** The fee charged for utility services provided by Reclamation will be based on the recovery of full operating and replacement costs for utility capital investments and comparable utility rates. Utility services include, but are not limited to, electricity, power, water, waste disposal, gas, and communication systems.
- W. **Insurance Program.** The authorized official must ensure that the managing partner require the concessionaires to have and maintain an appropriate insurance policy, as determined by the managing partner. The policy will indemnify the United States and meet applicable state requirements. The authorized official will ensure that all liability policies will provide that the insurance company will have no right of subrogation against the United States and must provide that the United States is named as an additional insured. The authorized official will also require that the managing partner ensure that all liability policies between the concessionaire and the managing partner provide that the insurance company will have no right of subrogation against the managing partner. The authorized official must ensure that a copy of the insurance certificate that identifies the above conditions is provided by the managing partners. An insurance bond is not accepted as a substitute for an insurance policy, as a bond does not provide any form of liability coverage.
- X. **System of Recordkeeping.** The authorized official shall ensure that the managing partner require financial reports and records necessary for management and oversight of concessions and that the records are maintained and available to the managing partner and Reclamation employees who oversee concessions, upon request. In addition, the authorized official will ensure that the managing partner require that each concessionaire complete Reclamation's Annual Financial Report (AFR) form(s) and Recreation Use Data Report (RUDR) on an annual basis, or as requested by the authorized official. The authorized official must approve of other types of financial reports provided by the managing partner and concessionaire that supplement the AFR.
7. **Concessions Administration.**
- A. **Concessions Review.** Refer to section 3.B. for concessions review requirements.
- B. **Non-Profit Organizations.** The authorized official will ensure that the managing partner approves non-profit organizations if the non-profit organization operates within a concession or elsewhere on the Federal estate. The authorized official must ensure the managing partner require that the non-profit organization is responsible for maintaining its accounting system, and the system will not be combined with a concessionaire's AFR. Non-profit organizations will also be given very clear instructions identifying the type of business they are authorized to conduct and the types of goods and services they will be providing. The authorized official must ensure that the managing partner require written proof of the organization's non-profit status.

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- C. **Employment of Reclamation Personnel or Family Members.** Reclamation employees involved in recreation and concessions or their immediate family members (i.e., spouses and minor children of Reclamation employees) will not be owners, partners, board members, corporate officers, general managers, or employees of any business providing commercial services on the Federal estate, nor will they have any financial interest in such a company. Ownership of stock shares traded in a recognized open market is not considered a financial interest under this D&S. Reclamation employees are further prohibited from using their public office for private or family gain.

A Reclamation employee involved in preparing specifications, awarding a contract, or administering a concession shall not be involved in that activity if the employee or a family member is involved in any phase or operation of that concession. Any Reclamation employee or family member responsible for any phase of a concession contract will be excused from duties related to the concession contract if the employee or family member is involved in competing for the contract or if the Reclamation employee will benefit financially from the awarding of the contract Federal estate.

8. Definitions.

- A. **Authorized Official.** Regional directors or their delegates as referenced in the RM *Delegations of Authority*, section 3.D.
- B. **Concession.** A concession is a non-governmental 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 potentially involves the development of real property improvements. A concession is most often a commercial, for-profit entity or a non-profit entity.
- C. **Federal Estate.** The Federal land and water areas under the primary jurisdiction of Reclamation.
- D. **Fixed Assets.** Fixed assets are any structures, fixtures, or capital improvements permanently attached to the Federal estate.
- E. **Improvement.** An addition to real property that increases its value or utility or that enhances its appearance.
- F. **Management Agreement.** A management agreement is a binding contract between Reclamation and a managing partner to provide and manage public recreation opportunities and concession services on the Federal estate.
- G. **Managing Partner.** A non-Federal public entity that manages recreation and other resources through a contractual management agreement with Reclamation.

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- H. **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.
- I. **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.
- J. **Stand In-Stead.** Taking the place of a managing partner or concessionaire in the event that the partner or concessionaire is no longer authorized or able to perform the contract/agreement, or the contract/agreement has terminated or expired.
- K. **Total Benefits to the Government.**
- (1) **Direct Returns.** Fees generated by authorized concession contracts and paid directly to the managing partner or to the United States Treasury and credited in accordance with RM D&S, Crediting of Incidental Revenues (PEC 03-01).
 - (2) **Direct Benefits.** These are fees paid into a contractually designated special account for resource and capital improvements that directly benefit the public in the area of operations where the fees are collected.
 - (3) **Indirect Benefits.** These are services performed by the concessionaire that benefit the public or improvements made to the Federal estate by the concessionaire.
9. **Review Period.** The originating office will review this release every 4 years.