

# Reclamation Manual

## Directives and Standards

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1. **Use Authorizations Terms and Conditions.** The following terms and condition are to be incorporated into each use authorization as appropriate. The Regional Director may, upon advice of the solicitor, modify these terms and conditions with respect to the contents of the use authorization to meet local and special conditions.
  - A. **Severability (Required for all Use Authorizations).** Each use authorization shall contain a statement addressing severability of contract terms. This provision is recommended to read:
    - (1) 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.
  - B. **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to ensure that the authorized uses are compatible with the Reclamation purposes for which the lands or land rights were withdrawn or acquired.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.)
  - C. **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).
    - (1) 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.
  - D. **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 through 6). The preamble is recommended to read:

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- (1) 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:
    - (i) The use has become incompatible with authorized project purposes, project operations, safety, and security;
    - (ii) A higher public use is identified through a public process described at § 429.32(a)(1); or
    - (iii) Termination is necessary for operational needs of the project.
  - (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,

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- (i) Without notice, upon default in payment to the United States of any installment of use fee charges as provided by Article; or,
  - (ii) On date, of any year, upon written notice to beneficiary, served days in advance thereof; or,
  - (iii) 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.
- E. **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:
- (1) 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.
- F. **Illegal Use (Required for all Use Authorizations).** The following clause shall be included in all use authorizations:
- (1) Any activity deemed to be illegal on federal lands will be cause for immediate termination of the use authorization.
- G. **Hazardous Materials (generally required for all use authorizations).** The following language shall be included in new, renewed, renegotiated, assigned, and

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amended use authorizations with the exception of use authorizations where no possibility for contamination or pollution exists:

- (1) 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.
- (2) 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.
- (3) "Hazardous material" means any substance, pollutant, or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq., and the regulations promulgated pursuant to that Act.
- (4) 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.
- (5) 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.

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- (6) 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 use authorization.
- (7) Reclamation agrees to provide information necessary to enable the beneficiary, using reasonable diligence, to comply with the provisions of this Article.

**H. 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:

- (1) 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.

**I. 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.

- (1) 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

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or right. The decision to compensate or mitigate is that of the appropriate Regional Director.

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

- (1) 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:
  - (a) 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.
- (2) 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).

**K. 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:

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- (1) 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.
- (2) 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.

L. **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:

- (1) **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).
- (2) **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.
- (3) **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.

M. **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:

- (1) 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.

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N. **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.

(1) **Nondiscrimination on the Basis of Race, Color, or National Origin.**

- (a) 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.
- (b) 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.

(2) **Nondiscrimination on the Basis of Disability.**

- (a) 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.
- (b) 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.

(3) **Nondiscrimination on the Basis of Age.**

- (a) 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



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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.

- (b) 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.

O. **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:

- (1) 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.

P. **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:

- (1) 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.

Q. **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:

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- (1) 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.
- (2) Note: When Reclamation's Authorized Official is notified of a cultural resource discovery, he/she shall immediately notify the appropriate cultural resources professional.

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

- (1) 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.
- (2) 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.
- (3) 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

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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.

- S. **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:
- (1) 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.
  - (2) 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.
  - (3) 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.
  - (4) Mixing, disposal, and cleaning shall be done where pesticide residues cannot enter storm drains, sewers, or other non-target areas.
  - (5) 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.
  - (6) Aerial application of pesticides is prohibited without prior written consent by Reclamation's designated representative.

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- (7) 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.