

Reclamation Manual

Directives and Standards

Subject:	Use Authorizations
Purpose:	To set forth requirements for issuing use authorization documents allowing others to use land, facilities, and waterbodies under the Bureau of Reclamation’s jurisdiction. Benefits of this Directive and Standard (D&S) include consistency, improvements in quality, and efficiency across Reclamation in the issuance of use authorizations.
Authority:	Reclamation Act of 1902 (Ch. 1093, 32 Stat 388; 43 USC 391 et seq.) as amended and supplemented; the Interior Department Appropriation Act for 1928 (Act of January 12, 1927; 44 Stat. 957; 43 USC 397a); Reclamation Project Act of 1939, August 4, 1939 (53 Stat. 1196; 43 USC 387); Use of Bureau Of Reclamation Land, Facilities, and Waterbodies 43 Code of Federal Regulations Part 429 (43 CFR 429).
Approving Official:	Director, Dam Safety and Infrastructure
Contact:	Asset Management Division (86-67200)

1. **Introduction.** The public may apply to use Reclamation land, facilities, and waterbodies, and may engage in the use only after authorization is received from Reclamation. Use authorizations are not required for individual recreational use of areas and facilities open to the public. The issuance of a use authorization is at Reclamation’s discretion. Reclamation reserves the right to refuse to authorize any use which may be incompatible with the federally authorized purposes of Reclamation projects or interferes with Reclamation's rights or operation, as determined by the Authorized Official.
2. **Applicability and Prohibitions.**
 - A. This D&S applies to Reclamation employees who issue use authorizations for possession or occupancy of, or extraction or removal of natural resources from, Reclamation land, facilities, or waterbodies under Reclamation jurisdiction unless excluded in accordance with 43 Code of Federal Regulations (CFR) 429.4.
 - B. The Department of the Interior (Department) “employees and their spouses and their minor children are prohibited from acquiring or retaining any claim, permit, lease, small tract entries, or other rights that are granted by the Department in Federal lands” (*Prohibited interests in Federal lands* 5 CFR 3501.103(c)).
3. **Authority to Execute Use Authorizations.**
 - A. Reclamation is authorized to execute use authorizations on land, facilities, and waterbodies under its jurisdiction and does not divest itself of overall management responsibilities by doing so.

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- B. Reclamation may grant water user organizations and managing partners the authority to issue limited use authorizations as deemed appropriate by the Authorized Official. Authority to issue such use authorizations must be specifically delegated to the water user organization(s) or managing partner(s) in an operation, maintenance, and replacement (OM&R) transfer contract or agreement, partnership agreement, or other formal delegation pursuant to such contract or agreement with Reclamation. The agreement must lay out what uses are authorized and what review and approval Reclamation's Authorized Official will require. At a minimum, the agreement will ensure the uses authorized meet the following conditions:
- (1) the authorized uses do not convey ownership or other interest in the federal real property;
 - (2) the authorized uses are not permanent or for an indefinite period;
 - (3) the authorized uses do not provide for an automatic right of renewal;
 - (4) the authorized uses are fully revocable at the discretion of Reclamation; and
 - (5) all revenues collected for the use of Reclamation land, facilities, and waterbodies are handled in compliance with all statutory, regulatory, and policy requirements.
- C. Water user organizations and managing partners are not authorized to issue any type of use authorization that conveys a real property interest involving Reclamation land, facilities, or waterbodies, nor may they lease or dispose of any interest of the United States.
4. **Use Authorization Application and Administrative Procedures.** The Authorized Official will follow the procedures and requirements of 43 CFR 429.
- A. **Application Requirements.** The applicant is required to submit either the Application for Transportation and Utility Systems and Facilities on Federal Lands (Standard Form (SF) 299), or Bureau of Reclamation Use Authorization Application (Form 7-2540), and a \$100 non-refundable application fee (see Paragraph 5.A. Application Fees). A completed and signed application along with the application fee must be submitted to the Reclamation office with jurisdiction over the land, facility, or waterbody associated with the request for use. (43 CFR 429.12)
- (1) **SF 299.** Use of this form is required for placement, construction, and use of transportation and utility systems and facilities on federal property including Reclamation land, facilities, or waterbodies.
 - (2) **Form 7-2540.** Use of this form is for all other proposed uses of Reclamation land, facilities, and waterbodies not covered by Paragraph 4.A.(1).

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

B. Application Review.

- (1) Reclamation may ask for additional information and details necessary to process the application.
- (2) Reclamation must acknowledge the submittal of a completed application and application fee in writing within 30 calendar days of receipt. (43 CFR 429.13)
- (3) Reclamation will conduct an initial review of the completed application to determine if the requested use is appropriate for further consideration and not likely to interfere with Reclamation's project purposes or operations. (43 CFR 429.16)
- (4) If determined appropriate, the Authorized Official will notify the applicant of acceptance of the application and request remittance, in advance, of the initial estimated administrative costs for further processing of the application.
- (5) The applicant has 90 calendar days to pay the initial estimated administrative costs as a response to indicate they want to move forward with Reclamation processing the application. The file may be closed if this payment is not received within the required time frame.
- (6) Upon receipt of payment of the initial estimated administrative costs, the Authorized Official will continue to process the application with reviews by qualified staff for the relevant disciplines (e.g., land, cultural resources, engineering, O&M, safety, finance, environmental, etc.).
- (7) Reclamation is not required to issue a use authorization and may approve or deny the application after reviewing the proposed use, based on the following criteria (e.g., 43 CFR 429.14):
 - (a) compatibility with authorized project purposes, project operations, safety, and security;
 - (b) extent of environmental impacts (compliance);
 - (c) compatibility with public interests;
 - (d) conflicts with federal policies and initiatives;
 - (e) public health and safety;

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- (f) availability of other reasonable alternatives; and
 - (g) best interests of the United States.
- (8) If, in processing the application, the initial estimated administrative costs are found to be insufficient, Reclamation will, in writing, request remittance of the additional amount needed from the applicant in advance of or simultaneously with processing of the application.
- C. **Approval and/or Denial of Request for Use Authorization.** The approval of an application and issuance of a use authorization is at Reclamation's discretion.
- (1) If approved, Reclamation will only authorize the least estate, right, or possessory interest needed to accommodate the approved use.
 - (2) If a request is denied, the reasons for denial must be explained in writing to the applicant. An application request recommended for denial must be discussed by qualified staff with the Authorized Official before action is taken.
 - (3) The Authorized Official makes any final determination associated with an action taken under this rule and will send that final determination in writing to the applicant by mail. The Authorized Official's final determination will take effect upon the date of the final approved use authorization or final determination letter.
- D. **Appeal.** In accordance with 43 CFR 429, Subpart I, Decisions and Appeals, those directly affected may appeal by writing to the Commissioner within 30 calendar days after the postmark date of the Authorized Official's determination letter. Subsequently, the applicant may appeal the Commissioner's decision to the Director, Office of Hearing and Appeals, Department of the Interior.
5. **Financial Management.** The monies received by Reclamation for the application fees and use fees are incidental revenues, as defined under Reclamation Manual (RM) Policy, *Incidental Revenues* (PEC P03), and shall be credited in accordance with RM D&S, *Crediting Requirements for Incidental Revenues* (PEC 03-01). Administrative costs shall be received in advance and expended in accordance with Paragraph 5.B of this section. Application fees, administrative costs, and use fees may be waived at the discretion of the Authorized Official (see 43 CFR 429.26, Subpart F - Reductions or Waivers of Application Fees, Administrative Costs, and Use Fees).
- A. **Application Fees.** Applicants must submit a nonrefundable application fee of \$100 to cover costs associated with the initial review of the application. The initial review will determine if the requested use is appropriate for consideration and not likely to interfere with Reclamation project purposes or operations.

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- B. Administrative Costs.** Administrative costs are O&M costs. After the initial review and before further consideration of the request, Reclamation must collect in advance its estimated administrative costs associated with the use authorization. Funds are to be advanced from the applicant for O&M of Reclamation lands, facilities, and waterbodies. In accordance with the Interior Department Appropriation Act for 1928 (Act of January 12, 1927; 44 Stat. 957; 43 USC § 397a); and 43 CFR 429.17; Office of Management and Budget (OMB) Circular A-25; and the Department of the Interior Accounting Handbook Chapter 6.4, Cost Recovery/User Charges, the applicant's advanced payment shall be covered into the Reclamation fund and be available for expenditure for the purposes for which advanced in like manner as if said funds had been specifically appropriated for said purposes.
- (1) The Authorized Official will collect estimated administrative costs from the applicant in advance of or simultaneously with the rendering of service. These charges will be based on a documented estimate of actual costs expected to be incurred and will be sufficient to recover the full cost to the Federal Government of providing the service.
 - (2) If actual costs exceed the initial estimate, additional funds must be collected prior to incurring further costs. If actual costs are less than the initial estimate, the remaining funds will be refunded to the applicant.
 - (3) Administrative costs must be well-documented through formal cost accounting in Reclamation's Federal Business Management System (FBMS).
- C. Use Fees.** Fees for use authorizations can be determined by valuation or competitive bidding. Use fees may be adjusted as deemed appropriate by Reclamation to reflect current conditions as provided in the use authorization. Use fee determinations must be prepared by qualified staff and approved by the Regional Realty Officer (RRO) in accordance with RM D&S, *Real Property Appraisal* (LND 05-01).
- (1) **Noncompetitive Use Authorizations.** Appraisals or waiver valuations to determine market value will be performed to establish use fees. RM D&S, *Real Property Appraisal* (LND 05-01) establishes Reclamation's requirements for determining use fees.
 - (a) Appraisals prepared to establish use fees must be prepared by or through the Appraisal and Valuation Services Office (AVSO) in compliance with, Uniform Standards of Professional Appraisal Practice (USPAP), this D&S, and applicable authorities, as they apply to the appraisal assignment.

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- (b) Appraisals for use authorizations are subject to the provisions contained in 43 CFR 429 and OMB Circular A-25. Use fees are separate and in addition to fees collected to recover Reclamation's administrative costs, including those associated with the development of the fee(s).
 - (c) Waiver valuations must be developed by qualified staff utilizing fee schedules established by others or by proven valuation methods approved by the RRO. (LND 05-01)
- (2) **Competitive Use Authorizations.** Competitive procedures will be used to determine the value of use authorizations when there is likely to be demand from more than one party, resulting in a greater return to Reclamation, unless such competition would negatively affect the public interest. Competition will be accomplished by either sealed bid or auction.
- (a) **Bidding Procedures.** Competitive use authorizations are awarded to the highest acceptable bidder at or above minimum accepted bids for an amount that reflects the market value of the use granted. Separate administrative costs will not be added to the awarded bid price; they will be included in the minimum acceptable bid price as a predetermined line item. If the minimum acceptable bid price is not received, the Authorized Official will make a determination to discontinue, re-advertise, or otherwise offer a noncompetitive use authorization.
 - (b) **Minimum Bids.** Minimum acceptable bids, which represent market value plus administrative costs, will be established and documented under procedures outlined for determining market value in LND 05-01.
 - (c) **Advertisements.** Competitive use authorizations will be advertised. Distribution of advertisements to the fullest extent possible is encouraged. Copies will be furnished to current lessees, interested parties, adjacent landowners (if applicable), and other advertising resources.
 - (d) **Award of Bids.** When sealed bids are used, they will be received at the Reclamation office in accordance with instructions in the advertisement and will be opened as stated in the advertisement. An abstract of the bids received at the date of opening will be prepared in the office where received and opened. Awards will be made to the highest bidder unless there is sufficient reason, in the judgment of the Authorized Official, RRO, or delegate, for rejecting the highest bidder's proposal. Unsuccessful bidders will be notified promptly with return of their remittance. No bidder will be permitted to meet a high bid when sealed

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bids are used. In the event of a tie for high bid by two or more bidders, those bidders will be allowed a specified period of time to submit one additional sealed bid at the discretion of the Authorized Official, RRO, or delegate.

6. **Types of Use Authorizations and General Conditions.** With the exception of a consent document, a use authorization is a legal and binding document which allows occupancy, use, rights, or privileges on Reclamation land, facilities, or waterbodies. The use authorization is granted for a specific use of the land for a specific period of time. Appropriate and accurate use of terms will avoid misunderstandings and conflicts. Use authorization documents for short-term or one-time short duration use such as, but not limited to, recreation events, material storage, sand and gravel extraction, and similar uses, may use abbreviated formats as appropriate. Use authorizations involving construction or placement of transmission or distribution lines, access roads, trails, pipelines, power lines, telephone lines, and other facilities involving installation or construction of improvements to remain in place over longer periods must be more detailed and of sufficient content to thoroughly and explicitly cover terms, conditions, limitations, and contract performance requirements (see Appendix B for Terms and Conditions for use authorizations).
- A. **Noncompetitive Use Authorizations.** Noncompetitive use authorizations will generally not be issued for less than market value. In addition to the use fee, all direct and indirect administrative costs are collected. Under certain conditions, the collection of market value for noncompetitive use authorizations can be waived. These conditions are explained in 43 CFR 429, Subpart F. Any use authorization issued non-competitively which would normally be issued after competitive bidding and is not covered by one of the circumstances below, must be documented to explain the rationale for not using competition. Circumstances when use authorizations may be issued non-competitively include situations where:
- (1) advertising will not result in competition;
 - (2) advertising costs will be disproportionate to the revenues received;
 - (3) a right was advertised for competitive bidding, but no acceptable bids were received;
 - (4) a potential competitor is a public agency providing service to the general public;
 - (5) for whatever reason competitive bidding would result in an unfair business situation;
 - (6) in the judgement of Reclamation would otherwise not be in the public interest; or
 - (7) other special conditions exist.

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- B. Competitive Use Authorizations.** Competitive use authorizations are those issued under competitive bidding processes outlined in Paragraph 5. Competitive processes are most appropriate for determining final and full market value for use authorizations for land, facilities, or water bodies for which limited capacity is available and for which multiple entities desire to secure the use authorization in an open market situation.
- C. Consent Document.** To prevent conflicts where Reclamation holds an easement on land owned by others, an application submitted with sufficient detail for analysis of the proposed use is for the benefit of all parties. If, after review of the application, Reclamation determines the requested use would not unreasonably interfere with Reclamation's rights, a consent document will be issued when appropriate. To the extent allowed by the rights granted to Reclamation, the consent document or notification will list the conditions necessary to ensure that the use will not unreasonably interfere and therefore protect Reclamation's use of its easement. (43 CFR 429.7) Reclamation will not charge a use fee for a consent document. (43 CFR 429.8)
- D. General Conditions for Certain Use Authorizations.**
- (1) **Non-Hydro Renewable Energy (N-HRE) Projects on Reclamation Land, Facilities, and Waterbodies.** This type of development is an acceptable, discretionary use of Reclamation land, facilities, and waterbodies provided it is compatible with authorized Reclamation project purposes, is in the best interests of the public, and is consistent with 4.B.(7) of this D&S. ¹
- (a) **Requirements for N-HRE Projects.** In addition to existing regulation requirements, a detailed plan of development (POD) shall be submitted with all N-HRE project applications; a conceptual plan will be rejected. The POD must be of sufficient detail to provide the information necessary to perform impact analysis on environmental resources, water operations, power generation and pumping operations, and transmission resources.
- (i) Regional power managers must review the POD and advise the Authorized Official, RRO, and resource staff on N-HRE project compatibility with Reclamation project purposes, technical feasibility, and appropriate stipulations to ensure public health and safety as well as non-interference with project power and pumping operations. Regional power managers must also consult with Power

¹ Standards and procedures authorizing non-federal hydropower resource development on Reclamation projects through a lease of power privilege are defined in RM D&S, *Lease of Power Privilege (LOPP) Processes, Responsibilities, Timelines, and Charges* (FAC 04-08).

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Marketing Administrations (PMA) to ensure no negative impacts to PMA obligations.

- (ii) RROs must coordinate with regional power managers and Authorized Officials to provide a recommendation for approving or denying all N-HRE PODs and use authorizations. Regional Directors must review, approve, or deny PODs and use authorizations (*RM Delegations of Authority* section 4.K(4)(c)).
 - (iii) Title to an installed N-HRE facility is held by the use authorization holder.
- (b) **Discretionary Guidance.** Discretionary guidance regarding use authorizations for N-HRE projects can be found in Reclamation's publication: *Guidebook – Use Authorizations for Non-Hydro Renewable Energy on Reclamation Lands*.²
- (2) **Communications Facility Installations.** Radio and communications sites constructed and/or operated by others require a use authorization. Close coordination with radio, security, and facility operations personnel will ensure efficient and safe permitting and operation of these sites on Reclamation land, facilities, and waterbodies. Executive Order 13821, January 8, 2018, *Streamlining and Expediting Requests to Locate Broadband Facilities in Rural America*, and *Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless* (Mobile Now Act, 47 USC Ch. 14) provide requirements and direction for identifying suitable locations and efficient permitting of communications facility installations. RM D&S Radio Communications Program (IRM 04-01) establishes the requirements and coordination for planning, design, acquisition, installation, management, disposal of equipment, and infrastructure associated with radio communication systems.
- (a) **Requirements for Communications Facility Installations.** In addition to existing regulation requirements, use of wireless communications equipment is contingent upon the possession of a valid Federal Communications Commission (FCC) or National Telecommunications and Information Administration (NTIA) use authorization.
 - (i) The operation of the communications facility must be in strict compliance with applicable requirements of the FCC or NTIA. A copy of each applicable use authorization must be maintained at all times by the Permittee for each transmitter being operated. The

² https://www.usbr.gov/power/NHRE/Guidebook_NHRE_on_Rec_Lands.pdf

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Permittee must provide the Authorized Official when requested with current copies of all use authorizations for equipment in or on facilities covered by this Permit.

- (ii) The Permittee must, at its sole expense, take all necessary actions to comply with all applicable FCC radio frequency (RF) exposure regulations and requirements, and must take reasonable precautions so that neither workers nor the public are subject to RF exposures above the FCC specified levels.
- (3) **Non-Public Bridges and Crossings Constructed for Authorized Use by Others.** A non-public bridge or crossing owned by Reclamation for use by others is required to have a use authorization or other contractual obligation. (RM Temporary Reclamation Manual Release (TRMR). *Bridge Inventory and Inspection Program* (FAC TRMR-98))
- (4) **Cultural Resources Permitting.** Reclamation's Federal Preservation Officer coordinates Reclamation's Cultural Resources Management (CRM) Program with many responsibilities carried out by regional and area offices as defined in RM D&S, *Cultural Resources Management*, (LND 02-01) and as delegated in RM Delegations of Authority paragraph 3.K(2) Cultural Resources Management. CRM permitting includes archaeological investigations covered under the Archaeological Resources Protection Act (ARPA) (see RM D&S, *Administration of the Archaeological Resources Protection Act*, (LND 02-04) and Paleontological Resources Preservation Act (PRPA) permits. ARPA and PRPA permits are considered use authorizations that require close coordination and communication with land program staff at the appropriate office and the Regional Archaeologist or other delegated CRM professional as defined in LND 02-01 and LND 02-04.
- (5) **Dam Safety Analysis.** When the use authorization involves changing operations, authorizing construction, or allowing drilling activities at dams with high or significant hazard potential, coordination with the Dam Safety Office is required. The Chief, Dam Safety Office will ensure evaluations are performed and documented to address the impacts of the use authorization on the existing potential failure modes and ensure it will not create any new failure modes of concern. The evaluations will be funded by the applicant.
7. **Private Exclusive Recreational and Residential Use.** Reclamation prohibits any use which would result in new private exclusive recreational or residential use of Reclamation land, facilities, or waterbodies pursuant to 43 CFR 429.31(b). Private exclusive use within the terms and conditions of an existing use authorization, as specified in 43 CFR 429.32, is not considered new private exclusive use. Existing private exclusive use will be

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administered pursuant to 43 CFR 429 and 43 CFR 21, as applicable, and RM D&S, *Private Exclusive Use* (LND 08-04).

8. Distribution, Filing, and Recording of Use Authorizations.

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

9. General.

- A. **Reference to Authorities and Land Status.** Each use authorization must contain a reference to the specific authority or authorities under which it is issued. Generally, all use authorizations will be pursuant to the Reclamation Act of 1902 and the Reclamation Project Act of 1939, as well as specific local project or other applicable acts. In addition, the land status (acquired, donated acquired, or withdrawn) must be stated. If the use authorization involves land acquired in more than one manner, the land status must be shown in detail for the entire use authorization to ensure proper statutory application and disbursement of revenues.
- B. **Authorized Use Area Description.** Each use authorization must contain a description of the use area involved to the greatest level of detail practical. This information is fundamental in identifying the location and ensuring Reclamation has the needed authority to grant the use authorization.
- C. **Monitoring.** After a use authorization is issued, staff determined qualified by the Authorized Official will perform periodic field reviews to ensure compliance with the provisions of the use authorization.
- D. **Least Estate or Right is to be Granted.** All use authorizations will grant the least estate, right, or possessory interest needed that will fulfill the requirements of the use authorization.
- E. **Disposal Considerations.** Use authorizations will only be issued after determining there is a present or future Reclamation need for the land. If not needed for

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Reclamation purposes or protection of Project land, facilities and waterbodies, the property shall be disposed rather than encumbered with a use authorization. However, issuance of a use authorization may be appropriate on land determined unneeded where immediate occupancy and use by a third party is necessary and cannot be accommodated in a timely manner through the disposal or withdrawal relinquishment process. RM D&S, *Land Disposal* (LND 08-02); RM D&S, *Identification of Unneeded Land* (LND 08-03); (LND 05-01).

10. **Appendices.**

- A. Appendix A – Definitions
- B. Appendix B – Terms and Conditions
- C. Appendix C – Related References

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

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: _____