

# Reclamation Manual

## Directives and Standards

<b>Subject:</b>	Private Exclusive Recreational or Residential Use
<b>Purpose:</b>	Provides standard procedures to address private exclusive uses associated with provisions of existing use authorization documents. This Directive and Standard (D&S) establishes a minimum set of consistent Bureau of Reclamation procedures to ensure the requirements of <i>Use of Bureau of Reclamation Land, Facilities, and Waterbodies</i> , Subpart H of 43 Code of Federal Regulations (CFR) part 429, are met.
<b>Authority:</b>	Reclamation Act of 1902 (ch. 1093, 32 Stat. 388; 43 USC 391 et seq.) as amended and supplemented; Reclamation Project Act of 1939 (ch. 418, 53 Stat. 1187; 43 USC 485 et seq.); Federal Water Project Recreation Act of 1965 (Pub. L. 89-72; 79 Stat. 213, 214; 16 USC 460l et seq.), as amended; Reclamation Recreation Management Act of 1992 (Pub. L. 102-575, Title XXVIII; 106 Stat. 4690; 16 USC 460l-31-460l-34), as amended; Law Enforcement Authority at Bureau of Reclamation Facilities, 2001 (Pub. L. 107-69; 115 Stat. 593; 43 USC 373b); 43 CFR 21, <i>Occupancy of Cabin Sites on Public Conservation and Recreation Areas</i> ; 43 CFR 21, <i>Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies</i> ; 43 CFR 429, <i>Use of Bureau of Reclamation Land, Facilities, and Waterbodies</i> ; and Reclamation project specific authorities.
<b>Approving Official:</b>	Director, Dam Safety and Infrastructure
<b>Contact:</b>	Asset Management Division (86-67200)

1. **Introduction.** The intent of this D&S is to establish and incorporate procedures to address private exclusive recreational and residential use (private exclusive use) in a manner consistent with the provisions of 43 CFR 429. This includes exclusive use identification, compatibility determinations, and associated reporting to document compliance reviews and findings. Reclamation Manual (RM) D&S, *Land Use Authorizations* ([LND 08-01](#)), applies to the issuance of use authorizations such as easements, licenses, leases, permits, and consent documents for activities on or across or interests in lands and water surfaces under the Reclamation's jurisdiction.
2. **Applicability and Prohibitions.** This D&S applies to Reclamation staff with the responsibility to review private exclusive use activities.
  - A. Reclamation prohibits any use resulting in new private exclusive use of Reclamation land, facilities, or waterbodies (43 CFR 429.31(b)). Existing private exclusive uses authorized as of January 5, 2009 are not considered new. These private exclusive uses

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will be administered under 43 CFR 429 and *Occupancy of Cabin Sites on Public Conservation and Recreation Areas* (43 CFR 21).

- B. Department of the Interior “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. **Existing Private Exclusive Use Compatibility Determinations.** A review of whether existing private exclusive use and related improvements are compatible with public needs and authorized project purposes is required at least once every 20 years (except where 43 CFR 21 requires a more frequent review). The Authorized Official will utilize the following criteria to determine whether lands are needed for authorized project purposes and if the private exclusive use is creating any public safety or security issues.
- A. **Authorized Project Purposes.** The Authorized Official will determine if the private exclusive use is needed for: an existing or proposed water-related development project or delivery system, project construction, O&M plans, or associated O&M transfer agreements. If this land is no longer needed for project purposes see RM, D&S, *Land Disposal* ([LND 08-02](#)).
- B. **Public Needs.** The Authorized Official will determine if public recreation demand exceeds the carrying capacity of existing facilities using a recreation planning process (e.g., a recreation resource management plan (RMP), commercial services plan, Water and Land Recreation Opportunity Spectrum, and recreation capacity/demand documents) to evaluate proposed recreation facilities, opportunities, and programs while considering water resource needs and project purposes.
- (1) In accordance with RM D&S, *Recreation Program Management* ([LND 01-03](#)), the Authorized Official will conduct public involvement and outreach during the RMP, or related planning processes, to ensure the public has an opportunity to be involved in planning and decision-making. This is in addition to the requirement to “notify in writing all potentially affected holders of existing authorizations for private exclusive [...] use regarding the opportunities for public participation when any action is proposed that could lead to an incompatibility determination” (43 CFR 429.32(a)(2)).
  - (2) If public facilities, adjacent to private exclusive uses, need to expand to accommodate planned or proposed public uses, the Authorized Official will seek input and involvement of all parties in the compatibility determination of recreation resource needs and the development of recreation programs.
  - (3) If private exclusive use is inhibiting the expansion of existing public recreational use to meet the increasing demand in current planning documents (e.g., RMPs,

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Statewide Comprehensive Outdoor Recreation Plans, etc.), detail the need for additional activities or facilities in the compatibility determination.

- C. **Public Safety.** Reclamation is responsible for administering measures to protect the health and safety of the public and to identify and provide reasonable safeguards against known hazards. The Authorized Official will establish safety procedures to address RM D&S's, Department Manual requirements, and local health and safety codes.
  - D. **Public Conduct.** The Authorized Official will implement *Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies* (43 CFR 423) to maintain law and order and to protect persons and property on and within Reclamation's projects, facilities, lands, and waterbodies. Enforcement of state and local laws are the responsibility of Reclamation. If there is a managing partner, the long-term management agreements address enforcement.
4. **Compatibility Documentation.** The Authorized Official will prepare a report on the compatibility findings of authorized private exclusive use with project purposes and public needs. Findings associated with private exclusive use potentially causing public safety or security issues will be addressed.
- A. A minimum of 30 calendar days will be provided for regional office and Asset Management Division review and comment before the report is made available to the public and/or a Federal Register notice is issued.
  - B. Any report "determinations that existing private exclusive [...] uses are not compatible with public needs will be published in the Federal Register" (43 CFR 429.32(a)(3)).
5. **Compliance Reviews Inspection Standards.** Reclamation is required to review all private exclusive use at least every 5 years to ensure compliance with established criteria (43 CFR 429.32). The following is a minimum set of inspection standards for compliance reviews.
- A. **General.** Reviews of recreation areas must use local or external teams composed of technical specialists which assess the conditions and issues associated with the private exclusive use facilities. Technical specialists include electrical and civil engineers, accessibility coordinators, water quality specialists, and health, safety, sanitation, and food service professionals. Inspections are conducted in accordance with the federal, state, and local laws and regulations.
  - B. **Environmental Requirements.** Inspections are required to check for compliance with all federal, state, and local laws and regulations pertaining to potential environmental hazards including fuel storage, hazardous materials/proper storage, sewage disposal systems, etc. Reclamation will obtain and retain reference copies of inspection reports prepared by regulatory agencies.

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### C. **Public Health and Safety (H&S) Requirements.**

- (1) Public H&S codes are administered by government entities including municipalities, counties, special districts, states, and the Occupational Safety and Health Administration. Local H&S agencies are available to assist and accompany Reclamation staff on inspections.
- (2) H&S inspections will include, but are not limited to, compliance with water supply/operation, electrical codes, fire codes/protection, smoke detection systems, fire extinguishers, combustible/flammable liquid storage, etc. Inspections will check for compliance with established safety and occupational health regulations and the applicable local, state, and national codes.

- D. **Current Financial Obligations to Reclamation.** Reclamation will review the accounting records and finance reports to ensure current payment of the required fees, as specified in the use authorization.

### 6. **Compliance Inspection Documentation.**

- A. A report documenting the compliance review results will be maintained by the Authorized Official following record retention requirements in RM D&S *Information Management* ([RCD 05-01](#)). The report will be provided to the grantee (43 CFR 429.32(d)) and the regional and Dam Safety and Infrastructure Land and Recreation Program staff.
  - B. If deficiencies are identified, a follow-up report addressing actions taken will be prepared within 30 calendar days of the deadline established in the original report. Follow-up reports will be provided to Reclamation offices that received the original report and maintained by the originating office (RCD 05-01).
7. **Extraordinary Circumstances.** To address and resolve extraordinary circumstances, including but not limited to, (e.g., innocent trespass, newly discovered trespass due to survey or deed errors, legacy uses historically allowed by water user organizations, unresolved ongoing occupancies, or authorization of uses pending final disposal of unneeded lands, or other similar situations) Reclamation will review and determine if authorization pursuant to 43 CFR 429 is appropriate. If a use authorization is issued under extraordinary circumstances it must be reviewed by the Regional Realty Officer.
8. **Definitions.**
- A. **Authorized Official.** Regional directors or their delegates as referenced in the RM *Delegations of Authority* Paragraph 4.K.(4).
  - B. Please see 43 CFR 429.2 for additional definitions.

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9. **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: \_\_\_\_\_