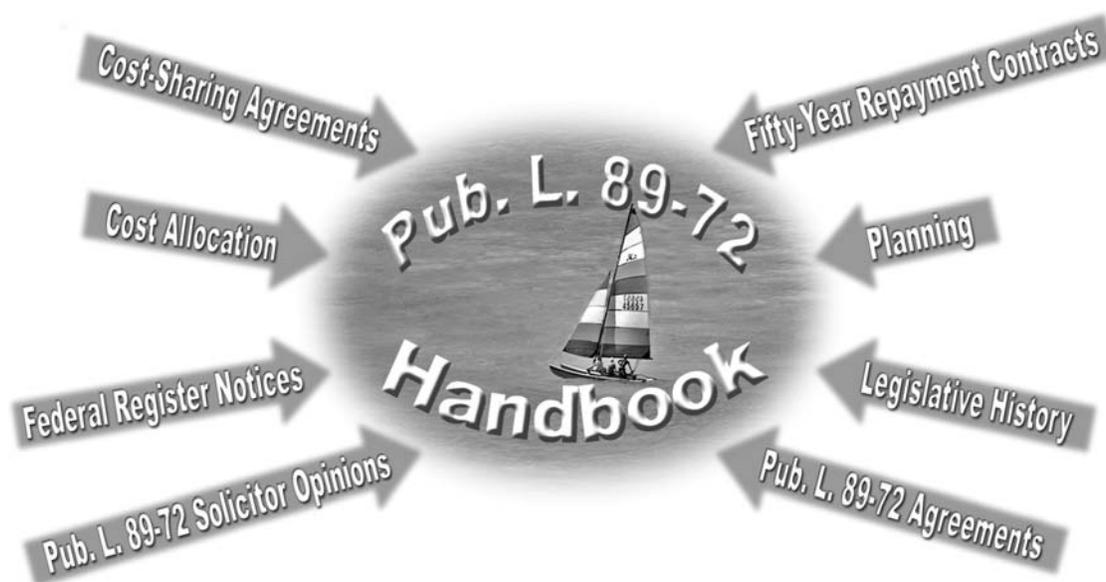


RECLAMATION

Managing Water in the West

Public Law 89-72 Handbook

**Federal Water Project Recreation Act
of 1965, as Amended**



U.S. Department of the Interior
Bureau of Reclamation
Denver, Colorado

May 2009

Mission Statements

The mission of the Department of the Interior is to protect and provide access to our Nation's natural and cultural heritage and honor our trust responsibilities to Indian Tribes and our commitments to island communities.

The mission of the Bureau of Reclamation is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public.

Public Law 89-72 Handbook

Federal Water Project Recreation Act of 1965, as Amended



**U.S. Department of the Interior
Bureau of Reclamation
Denver, Colorado**

May 2009

Preparers

Main Author/Project Manager	Darrell Welch, Policy and Program Services
Editor	Sharon Leffel, TSC, Technical Presentations Office
Cover Graphic	Cindy Gray, TSC, Technical Presentations Office

Contributors

Steve Anderson	Great Plains Regional Office
Rik Arndt	Pacific Northwest Regional Office
Randy Christopherson	Policy and Program Services
Peggy Haren	Policy and Program Services
Fred Landefeld	Oklahoma-Texas Area Office
Fred Liljegren	Upper Colorado Regional Office
Vernon Lovejoy	Policy and Program Services
Bill Martin	Lower Colorado Regional Office
Jon Platt	TSC, Economics and Resource Planning Group
Scott Springer	Mid-Pacific Regional Office
Rick Vinton	TSC, Economics and Resource Planning Group

Abbreviations and Acronyms

CVM	Contingent Valuation Method
DOI	U.S. Department of the Interior
D&S	Directives and Standards
FWCA	Fish and Wildlife Coordination Act
GCAOR/GOTR	Grants and Cooperative Agreements Officer's Representative
GSA	General Services Administration
IDC	interest during construction
NED	National Economic Development
NEPA	National Environmental Policy Act
NOI	Notice of Intent
OM&R	operation, maintenance, and replacement
P&Gs	<i>Economics and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies</i> of March 10, 1983
Pub. L.	Public Law
Reclamation	Bureau of Reclamation
SCORP	State Comprehensive Outdoor Recreation Plan
Secretary	Secretary of the Interior
Stat.	Statutes at Large
TCM	Travel Cost Model/Travel Cost Method
TSC	Technical Service Center
UDV	Unit Day Value
UEM	Use Estimating Model
USFS	U.S. Forest Service

Contents

	Page
Introduction.....	1
Scope of Handbook.....	2
Brief History	4
Public Law 89-72 Legislative History	5
Public Law 89-72 Solicitor Opinions	5
Public Law 89-72 Planning Efforts.....	9
Appraisal-Level Recreation Planning	11
Feasibility-Level Recreation Planning.....	12
Pre-Project Authorization Planning	13
Existing Projects versus New Projects.....	14
With and Without Analysis.....	16
Evaluation of Recreation Use	16
Determination of Needs	17
Estimation of Use.....	18
Measuring Benefits	19
Recreation and Fish and Wildlife Enhancement Repayment under Public Law 89-72.....	20
Separable Recreation and Fish and Wildlife Enhancement Costs	22
Public Law 89-72 Agreements.....	24
Non-Federal Agreements	24
Cost-Share Agreements and Notice of Intent to Award	25
Fifty-Year Repayment Agreements	26
Federal Agreements	27
References.....	29

Attachments

Attachment

A	Public Law 89-72, as Amended – 79 Stat. 213, 214
B	Public Law 89-72 – July 9, 1965
C	Public Law 89-72 Legislative History
D	Public Law 89-72 Solicitor Opinions
E	Non-Federal Agreement
F	Cost-Share Agreement and Notice of Intent to Award
G	50-Year Repayment Agreements
H	U.S. Forest Service Master Interagency Agreement
I	Draft U.S. Forest Service Public Law 89-72 Interagency Agreement
J	Public Law 89-72 Federal Register Notices

Introduction

Water-based recreation is becoming an ever-increasing aspect of Bureau of Reclamation (Reclamation) water resource development and management. Increasing public demand for access to reservoirs and rivers for water-based recreation gives Reclamation an opportunity to provide public outdoor recreation facilities and opportunities at Reclamation's Federal water resource projects. The Federal Water Project Recreation Act of 1965, Public Law (Pub. L.) 89-72, 79 Stat. 213, 214, 16 USC 460*l* et seq., as amended by the Water Resources Development Act of 1974, Pub. L. 102-575, Title XXVIII, 106 Stat. 4690, 16 USC 460*l*-31 – 460*l*-34 are the two primary laws addressed in this handbook. Please note that Section XXVIII of Pub. L. 102-575 is commonly referred to as Title 28; however, the use of the term is limited because this handbook addresses much more than the provisions mentioned specifically in Title 28. Unless noted otherwise, both laws mentioned above are hereafter referred to collectively as Pub. L. 89-72. Pub. L. 89-72 states that, "it is the policy of Congress and the intent of this Act that in investigating and planning any Federal navigation, flood control, reclamation, hydroelectric, or multipurpose water resource project that consideration shall be given to the opportunities, if any, which the project affords for outdoor recreation and for fish and wildlife enhancement. . . ." As a result, recreation and fish and/or wildlife enhancement facilities have been constructed as part of most Reclamation projects since 1965.

At many projects, Congress has authorized Reclamation to seek both qualified non-Federal and Federal agencies to manage facilities, lands, and waterbodies at Reclamation projects for recreation and fish and wildlife purposes. Pub. L. 89-72 gives Reclamation authority to enter into management agreements for managing recreation and fish and wildlife enhancement facilities with non-Federal and Federal partners. Non-Federal and Federal partners are collectively referred to as managing partners. Additionally, the law allows Reclamation to share in the cost of planning, developing, and maintaining recreation and fish and wildlife enhancement facilities with non-Federal partners. To this end, Reclamation has entered into many successful partnerships throughout the 17 Western States. Refer to attachment A for a hard copy of Pub. L. 89-72 with language from both amendments already incorporated. Also refer to attachment B for a hard copy of Pub. L. 89-72 as it was originally passed in 1965 prior to any amendment language.

Scope of Handbook

This handbook is being made available to Reclamation personnel to assist them in carrying out the provisions of Pub. L. 89-72 and the management of recreation and fish and wildlife resources on Reclamation lands and waterbodies by a non-Federal or Federal partner.

Even though the provisions of Pub. L. 89-72 and the direction provided in Reclamation Manual Directive and Standard (D&S), *Implementation of the Cost Sharing Authorities for Recreation and Fish and Wildlife Enhancement Facilities*, LND 01-01, are mandatory, the guidance presented herein is to be considered discretionary and is solely intended to clarify and interpret the provisions of Pub. L. 89-72 and LND 01-01. The direction provided in Pub. L. 89-72 and LND 01-01 must still be followed when Reclamation is entering into cost-sharing agreements for planning, developing, operating, and maintaining recreation and fish and wildlife enhancement facilities on Reclamation lands and waterbodies. The primary value of this handbook is the many attachments that are provided.

Since fish and wildlife development on Reclamation lands can occur concurrently with recreation development and is oftentimes jointly funded, cost allocation and repayment information has been included as part of this handbook. The aforementioned laws provide a framework for how the construction costs and operation, maintenance, and replacement (OM&R) of recreation and fish and wildlife enhancement facilities should be paid.

In addition, since planning is an important aspect of Pub. L. 89-72 (i.e., feasibility planning), an extensive discussion on planning has been included in the handbook as well as information for implementing certain provisions of Pub. L. 89-72 for both proposed and existing Reclamation projects. Please note, however, that the planning information focuses more on recreation rather than fish and wildlife enhancement (e.g., the “Pre-Project Authorization Planning” section describes only how to calculate the economic benefits of recreation using the *Economics and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies* [P&Gs] of March 10, 1983). The P&Gs are important aspects of implementing the provisions of Pub. L. 89-72 because they assist Reclamation personnel in calculating and implementing the cost-sharing provisions of Pub. L. 89-72.

The guidance provided in this handbook deals primarily with planning, developing, and maintaining the recreation and fish and wildlife resources and OM&R transfer to a non-Federal partner. The transfer of management should be accompanied by a long-term management agreement¹ and, in some instances, a

¹ Pursuant to Reclamation Manual D&S, *Recreation Program Management*, LND 01-03, a long-term management agreement cannot exceed 25 years without a waiver from Policy and Program Services.

cost-share agreement that outlines, among other things, the non-Federal funding contributions within the limitations established by Pub. L. 89-72 or project-specific authority. In addition, this handbook will briefly discuss two types of management transfers to another Federal agency:

1. OM&R transfer via a long-term management agreement for managing public use facilities and opportunities on Reclamation lands and waterbodies.
2. Jurisdictional transfer in which Reclamation lands and public use facilities are permanently transferred from Reclamation to another Federal agency. This type of transfer should include the transfer of recreation and fish and wildlife enhancement assets to the receiving agency. Refer to the section below entitled “Federal Agreements” for further information on the transfer of assets to another Federal agency.

Normally, Reclamation does not retain any management responsibilities in a jurisdictional transfer. However, if Reclamation wished to retain any such responsibilities, an appropriate agreement would need to be executed between the two agencies to address such retained responsibilities.

This handbook is a compilation of narrative text supplemented by examples of documents to assist Reclamation personnel in implementing the provisions of Pub. L. 89-72. (**Note:** Some portions of the attachments may not be as legible as preferred, but until better copies are obtained, they must suffice). This handbook, including all attachments, will be available to download at Reclamation’s Recreation Intranet Web site <<http://intranet.usbr.gov/recreation/>>. Examples of the attachments that can be used in implementing the provisions of Pub. L. 89-72 are:

- Legislative history that can assist in identifying how Congress interpreted certain provisions of Pub. L. 89-72 as it was written.
- Pub. L. 89-72 Solicitor Opinions that can be used in interpreting certain provisions of Pub. L. 89-72.
- Non-Federal management agreements that can be used in drafting agreement language.
- Cost-share agreements that can guide Reclamation personnel in preparing financial assistance agreements.
- Fifty-year repayment contracts that can be used when a non-Federal partner cannot provide concurrent spending for recreation development.

Public Law 89-72 Handbook
Federal Water Project Recreation Act of 1965, as Amended

- Federal agreements that can guide Reclamation in drafting agreements for either a jurisdictional or a regular management transfer.
- Federal Register Notices that can accompany a jurisdictional transfer to another Federal agency.

Brief History

Since the enactment of Pub. L. 89-72 in 1965, Reclamation has provided up to 50 percent of the costs for planning and developing recreation facilities with non-Federal partners in which Reclamation has entered into a long-term management agreement. The Water Resources Development Act of 1974, Pub. L. 93-251, 88 Stat. 33, amended Pub. L. 89-72 by changing the Federal cost-share requirements for fish and wildlife enhancement facilities from up to 50 percent to exactly 75 percent. The non-Federal partner was required to (1) provide the remaining planning and development funds, (2) pay all of the costs of OM&R, and (3) manage the area for public recreational and/or fish and wildlife purposes. For reservoirs constructed before 1965, the Federal contribution for the development of recreation and fish and wildlife facilities was originally limited to \$100,000 for each reservoir.

Congress determined that some provisions of Pub. L. 89-72 were outdated because of the increases in demand for outdoor recreation and changes in the economic climate for managing partners. Therefore, Pub. L. 89-72 was amended in 1992 by Title XXVIII (Title 28) of Pub. L. 102-575. Section 2804 of Title 28 actually amended some provisions of Pub. L. 89-72, while Section 2805 addressed several issues related to the management of Reclamation lands. There were two primary Title 28 amendments to Pub. L. 89-72. One changed Reclamation's OM&R cost-sharing authority from zero to up to 50 percent. The other change eliminated the \$100,000 construction cost-share cap in Section 7 for Reclamation projects that were authorized before 1965. All of the other provisions of the 1965 act remain in full force and effect.

Over the years, Pub. L. 89-72 has been amended several times to address changes in the Fish and Wildlife Coordination Act (FWCA) of 1958, 72 Stat. 563; Land and Water Conservation Act of 1965, 78 Stat. 897; Pub. L. 93-251 of the 1974 act mentioned above; and Pub. L. 102-575 of the 1992 act highlighted above. Please note that Law Enforcement Authority at Bureau of Reclamation Facilities (Pub. L. 107-69, 115 Stat. 593) amended Pub. L. 102-575 to provide for the security of dams, facilities, and resources under the jurisdiction of Reclamation. However, this handbook is only concerned with the recreation and fish and wildlife aspects of Pub. L. 89-72.

Since the passage of Pub. L. 89-72 in 1965 and absent a managing partner or project-specific authority, Reclamation's authority to construct new recreation improvements on its own is limited to minimum basic facilities. Pursuant to Pub. L. 89-72, minimum basic facilities are defined as guardrails, turnarounds at the ends of existing roads, sanitary facilities necessary to protect the health and safety of the public, and modifications necessary to provide access for persons with disabilities.

Public Law 89-72 Legislative History

Reviewing the legislative history of Pub. L. 89-72 can provide valuable insight as to why certain provisions of the original 1965 legislation were drafted and what the intent of Congress was in drafting the legislation as it was written. Attachment C contains the following legislative history for Pub. L. 89-72:

- Senate Report No. 89-149 – April 7, 1965.
- House of Representatives Report No. 89-254 – April 27, 1965.
- House of Representatives Report No. 89-254 – April 27, 1965 (reprint).
- House of Representatives Conference Report No. 89-538 – June 22, 1965.
- Congressional Record (1965) – Index for and Debates of Senate 1229 and House 5269.
- 16 U.S.C.A. §§ 460l-12 – 460l-21 (as amended).

Public Law 89-72 Solicitor Opinions

Since Pub. L. 89-72 was enacted in 1965, Reclamation has requested and received several Solicitor Opinions regarding how certain sections of the law should be interpreted. As necessary, the available opinions contained in this handbook can be used to guide Reclamation staff in implementing certain sections of the law. See attachment D for the full text of the 23 opinions. Following is a chronological list of the available Solicitor Opinions dating from August 12, 1965, to January 27, 1995, and a brief summary of the contents of each opinion.

1. Memorandum of Office of the Regional Solicitor, Portland, to Bonneville Power Administrator and Regional Heads, Interior Agencies, August 12, 1965. Provides an overview of the different sections of Pub. L. 89-72.

Public Law 89-72 Handbook
Federal Water Project Recreation Act of 1965, as Amended

2. Memorandum of Associate Solicitor, Water and Power, to Commissioner of Reclamation, September 9, 1965. Deals with application of Section 7(a) of Pub. L. 89-72 to previously constructed reservoirs.
3. Memorandum of Associate Solicitor, Water and Power, to Commissioner of Reclamation, September 27, 1965. Followup memorandum to No. 2 above, which deals with application of Section 7(a) of Pub. L. 89-72 to previously constructed reservoirs.
4. Memorandum of Associate Solicitor, Water and Power, to Commissioner of Reclamation, March 11, 1966. Deals with Section 7(a) of Pub. L. 89-72 and the management at the same unit by two or more non-Federal managing partners.
5. Memorandum of the Solicitor to Commissioner of Reclamation, Director, Bureau of Sport Fisheries, and Wildlife and Director, Bureau of Outdoor Recreation, September 19, 1966. Deals with repayment obligations of non-Federal public bodies under Section 2(b) of Pub. L. 89-72.
6. Memorandum of Associate Solicitor Hogan to Commissioner of Reclamation, February 28, 1967. Addresses disposition of recreation revenues generated at Reclamation reservoirs where land has been transferred to the U.S. Forest Service (USFS).
7. Memorandum of Associate Solicitor Meyer to Associate Solicitor, Reclamation and Power, March 8, 1968. Addresses funding from other sources such as the Land and Water Conservation Fund and Pub. L. 89-72 on the same project as long as the developments are well defined.
8. Memorandum of Acting Associate Solicitor, Reclamation and Power, to Regional Solicitor, Portland, September 11, 1969. Addresses the application of the provisions of Section 6(e) of Pub. L. 89-72 to nonreservoir local protection projects (i.e., section 6(e) does not apply like those authorized under the Flood Control Act of 1936).
9. Memorandum of Associate Solicitor Morthland to Commissioner of Reclamation, July 1, 1971. Addresses construction of facilities only after an agreement is signed, except for areas within a National Recreation Area.
10. Memorandum from Regional Solicitor to Regional Director, Bureau of Reclamation, February 22, 1979. Addresses construction and future management of recreation and fish and wildlife mitigation and enhancement at New Melones Reservoir in California.

Public Law 89-72 Handbook
Federal Water Project Recreation Act of 1965, as Amended

11. Memorandum of the Field Solicitor, Billings, to Regional Director, Water and Power Resources Service, Billings, MT, July 10, 1980. Analyzes the difference between Reclamation and the U.S. Army Corps of Engineers basic authorities; what constitutes a capital improvement under Pub. L. 89-72; and the relocation of capital improvements.
12. Memorandum of Assistant Solicitor, Branch of Water and Power, Division of Energy and Resources, to Commissioner, Water and Power Resources Service, September 11, 1980. Addresses the funding of golf courses and tennis courts within the provisions of Pub. L. 89-72.
13. Solicitor Martz Opinion, M-36931, dated January 19, 1981. Reviews grant versus cooperative agreement or procurement contract as the legal instrument to be used in funding construction of facilities.
14. Memorandum of Associate Solicitor Good to Field Solicitor, Amarillo, December 16, 1981, in regards to Closed Basin Division, San Luis Valley Project, Colorado. Deals with the crediting of land or interests therein donated against an obligation under a repayment contract pursuant to Pub. L. 89-72.
15. Memorandum from Associate Solicitor, Energy and Resources, to Acting Commissioner, Bureau of Reclamation, August 23, 1984, and supporting documents dated October 4, 12, and 15, 1984. Addresses obtaining a rights-of-way over Reclamation withdrawn lands within a national forest.
16. Memorandum of Regional Solicitor, Rocky Mountain Region, to Chief, Division of Water and Land Technical Services, Engineering and Research Center, Bureau of Reclamation, March 26, 1986. Provides clarification of Pub. L. 89-72 and minimum basic facilities.
17. Memorandum of Assistant Solicitor, Branch of Water and Power, Division of Energy and Resources, to Regional Solicitor, Pacific Southwest Region, August 15, 1986. Deals with the transfer of jurisdiction over Federal Reclamation project lands to the Secretary of Agriculture.
18. Memorandum of Assistant Solicitor, Branch of Water and Power, Division of Energy and Resources, to Commissioner, BOR, July 17, 1987. Addresses the authority of Reclamation to enter into cost-share agreements and to manage turnbacks.

Public Law 89-72 Handbook
Federal Water Project Recreation Act of 1965, as Amended

19. Memorandum of the Assistant Solicitor, Branch of Water and Power, Division of Energy and Resources, to Chief, Finance Branch, Division of Coordination and Finance, Office of Administration, Bureau of Reclamation, through Chief, Division of Program Coordination and Finance, Office of Administration, Bureau of Reclamation, October 26, 1988. Deals with disposition of recreation fees from Reclamation projects into the Reclamation Fund as opposed to the Land and Water Conservation Fund.
20. Memorandum of Richard K. Aldrich, Field Solicitor, Pacific Northwest Region (Billings), to Regional Director, Bureau of Reclamation, Billings, January 4, 1991. Addresses four Pub. L. 89-72 issues, including the finding that any Pub. L. 89-72 interest obligation must be repaid with cash rather than by constructing “extra” facilities.
21. Memorandum of Field Solicitor, Richard K. Aldrich, Pacific Northwest Region (Billings), to Regional Director, Bureau of Reclamation, Billings, June 3, 1991. Deals with Section 504 of the Rehabilitation Act and Pub. L. 89-72.
22. Memorandum from Solicitor, Intermountain Region, to Regional Director, Bureau of Reclamation, Upper Colorado Region, January 27, 1995. Addresses the cost-sharing requirements for facilities provided for under Pub. L. 89-72 and Pub. L. 102-575 and in particular Sections 2(a), 7, and 3(b) and (c).
23. Memorandum of the Assistant Solicitor, Barbara Geigle, Branch of Water and Power, Division of Land and Water Resources, to Acting Commissioner, Bureau of Reclamation, May 16, 2006. Analyzes the effects of the Federal Lands Recreation Enhancement Act of 2004 on Reclamation’s recreation programs.

Following is a brief description of four Solicitor Opinions for which no hard copies are available:

1. Memorandum of Acting Solicitor Weinberg, August 13, 1965. Deals with Pub. L. 89-72 not granting the Secretary of the Interior (Secretary) authority to construct and operate recreation facilities and lands for recreation purposes and that such authority must be contained in the authorizing legislation; however, the Secretary continues to have the authority under the FWCA to construct fish and wildlife enhancement facilities and the intrinsic authority to construct minimum health and safety facilities.

2. Memorandum of the Associate Solicitor Meyer, September 23, 1966. Deals with computing the 50-percent cost share required by Sections 7(a) and 3(b) and the non-Federal partner's contribution of lands and facilities if title thereto is transferred to the United States.
3. Memorandum of Field Solicitor, Boulder City Nevada, to Regional Environmental Officer, Boulder City, Nevada, March 24, 1978. Addresses operation and maintenance of mitigation structures under the FWCA, 43 U.S.C. part 661, et seq. and the amendment of Section 6(b) of the Pub. L. 89-72. Section 6(b) amended the FWCA.
4. Memorandum of Assistant Solicitor Mauro to Assistant Secretary, Land and Water Resources, February 26, 1980. Deals with the preparation of feasibility report pursuant to Section 8 of Pub. L. 89-72 with respect to any water resource project.

Public Law 89-72 Planning Efforts

As stated in the introduction to this handbook, Pub. L. 89-72 states that, “. . .in investigating and planning any Federal navigation, flood control, reclamation, hydroelectric, or multipurpose water resource project, full consideration shall be given to the opportunities, if any, which the project affords for outdoor recreation and fish and wildlife enhancement. . ..” As a result, recreation and fish and wildlife enhancement facilities can be, and often are, constructed as part of a Reclamation project.

Generally, Reclamation has used the guidelines and principles contained in Pub. L. 89-72 and the P&Gs when planning for and providing outdoor recreation facilities and opportunities on project lands during the pre-project authorization phase of development. However, planning documents that may have a recreation or fish and wildlife component can come in many forms and can occur as a pre-project authorization activity (e.g., appraisal, feasibility, or plan formulation studies) or a post-project authorization activity (e.g., capital improvement, resource management, wildlife habitat, or recreation master plans). Of course, the level and type of planning should always be commensurate with anticipated recreation and fish and wildlife facility development and the availability of information that is required to make informed decisions.

Pre-project planning of all recreation and fish and wildlife enhancement facilities and services should be based on the principles contained in P.L. 89-72, as amended, and the P&Gs unless otherwise directed by specific statutes and regulations or the *Reclamation Manual*. The guidance provided in this section deals primarily with project planning activities associated with Pub. L. 89-72 and the P&Gs. More detailed guidance on recreation post-project planning

Public Law 89-72 Handbook
Federal Water Project Recreation Act of 1965, as Amended

activities can be found in the *Recreation Program Management Handbook*.

Note: The *Recreation Program Management Handbook* deals specifically with Reclamation's recreation program. Activities associated specifically with fish and wildlife planning will have to be obtained from other sources.

As part of any cost-share endeavor with a non-Federal partner, it is important that Reclamation protect investments in any facility development and maintenance activities. Therefore, an integral part of any Pub. L. 89-72 cost-share agreement should include an appropriate planning process that evaluates existing resource conditions and future public or fish and wildlife needs or obligations. A planning process should be followed regardless of who manages the resource and whether or not future construction is being cost shared with a partner or funded entirely by a partner or funder directly by Reclamation. When initiating the planning process, planners should review and use the appropriate tools listed below to assist in the planning process:

- Coordinate with other Federal, State, or local public recreation entities in order to consider those public recreation initiatives in the immediate geographic area.
- Ensure, through analysis of resources, that the process considers long-term impacts on the environment and Reclamation's project purposes.
- Ensure, through public involvement, that proposed development and management of recreation facilities and opportunities meet public expectations and visitor needs.
- Review Reclamation's *Recreation at Bureau of Reclamation Projects, Report to the Commissioner* and *An Assessment of the Bureau of Reclamation's Non-Federal Recreation Management Partners*.
- Ensure that Reclamation partners have the recreation expertise and experience, financial resources, and qualified staff to be a successful partner.
- Use Reclamation's *Resource Management Plan Guidebook* when recreation is part of a comprehensive resource planning document.
- Use Reclamation's *Water Recreation Opportunity Spectrum Guidebook* to inventory the current recreation opportunities and to evaluate alternatives and proposed actions.
- Use Reclamation's *Estimating Future Recreation Demand: A Decision Guide for the Practitioner* to determine future public demand.

- Use Reclamation's *Outdoor Recreation Business Plan Guidebook* procedures to develop a business plan that will assist managers in planning, developing, organizing, and implementing various resources to meet an organization's goals and objectives.
- Use Reclamation's *Recreation Facilities Design Guidelines, Sign Guidebook for Public Outdoor Recreation Use Areas*, and other more appropriate guidance documents when planning for facility construction.

The above-mentioned Reclamation-produced guidance documents are available at Reclamation's Recreation Internet Web site at <<http://www.usbr.gov/recreation/>> under the "Publications" link.

Reclamation planners should strive to ensure that proposed facilities and services will:

- Meet the physical,² environmental,³ facility,⁴ and social⁵ carrying capacity constraints of the resources.
- Be constructed in an appropriate location and of adequate size for the area and anticipated use.
- Use designs and operation procedures that minimize OM&R costs.
- Provide a range of resource-compatible recreation opportunities for diverse populations and all income levels.
- Support or enhance Federal resources.
- Meet current accessibility requirements for persons with disabilities.

Appraisal-Level Recreation Planning

Reclamation often conducts appraisal-level studies that are intended to survey the nature of a defined area's water and related resource problems and needs to determine the existence of a variety of conditions that might be necessary to justify a future feasibility investigation and possible congressional authorization.

² Physical carrying capacity can be defined as the area that is available to a recreationist for a specific recreation activity.

³ Environmental (or ecological) carrying capacity can be defined as the effects that a level of recreation use will have on resources such as vegetation, fish, wildlife, soils, water, and air.

⁴ Facility carrying capacity can be defined as the ability of an existing facility to accommodate the current level of recreation use.

⁵ Social carrying capacity can be defined as the effects that resource users have on one another.

**Public Law 89-72 Handbook
Federal Water Project Recreation Act of 1965, as Amended**

The recreation resources should be an integral part of any appraisal-level study. Appraisal-level planning does not have to be cost shared; however, non-Federal contributions can be credited as matching funds for subsequent feasibility study costs.

Prior to initiating an appraisal-level study, Reclamation should prepare a plan of study that will focus the efforts of the study team on issues that are important in determining whether or not there is potential Reclamation involvement in further studies. Generally, all that is required in an appraisal-level study concerning recreation resources is the collection and analyses of existing information that is pertinent to the decisionmaking process. When appropriate, recreation planners should be part of the interdisciplinary study team that has been assembled. As part of the appraisal-level study, recreation planners should, among other things, identify:

- Potential recreation-related problems or needs.
- Whether or not recreation problems or needs are local or Federal.
- The availability of recreation opportunities and demand in the study area.
- Any legal or institutional constraints related to recreation.
- Recreation resources needing protection and/or relocation or that require significant amounts of water or other land resources.
- Preliminary costs associated with recreation development, protection, or relocation.

The study team should accomplish specific tasks identified in the plan of study. The recreation planner should develop conceptual solutions to meet the identified recreational needs and focus on solution(s) that would supplement other team members' investigations and findings and that lead to either support or deny further feasibility studies.

Feasibility-Level Recreation Planning

Feasibility-level investigations and planning is a decision process that leads to possible congressional authorization of a Federal program for the management or development of water and related resources to meet local, regional, and national needs. Again, recreation should be an integral part of any feasibility planning process, and a recreation planner should be part of the interdisciplinary team. Feasibility planning can occur without an appraisal-level planning process; however, the same types of requirements of an appraisal study should also be part of any feasibility study. If there is one viable solution that requires Federal

involvement, a feasibility study can move directly into plan formulation. Any feasibility or plan formulation study should be integrated with National Environmental Policy Act (NEPA) activities and result in an integrated planning report/final environmental statement. During feasibility and/or plan formulation, recreation planners will have to collect and analyze additional data that are needed to assist in developing and considering a full range of alternatives.

Feasibility-level planning looks at the resource capabilities (soils, geology, slope, vegetation, etc.) as well as the recreation resources and the demand for opportunities such as camping, picnicking, swimming, fishing, water skiing, boating, and sailing that exist for a given project area. In regard to recreation, feasibility is a reconnaissance-level analysis of the recreation opportunities and resource capabilities of a given project area. The feasibility analysis helps to make a determination if further consideration is warranted. If a project is determined to be feasible, further study and analysis is usually recommended.

During advance planning on authorized projects, recreation evaluations are analyzed and, where necessary, updated using a methodology consistent with that used to derive the information for authorization. Project plans may be modified to a limited extent; however, such modifications must recognize cost ceilings, the purposes for which the project was authorized, and reimbursement requirements. During feasibility-level planning investigations, site analysis and planning for recreational facilities should cover, at a minimum:

- Capability of the site to accommodate the use anticipated.
- The costs of installing facilities.
- Physical and natural site factors that may modify anticipated visitor use estimates and associated costs.

During advance planning, drawings of plans for recreational facilities and opportunities should be developed to show:

- Public use and camping areas.
- Layouts of roads and utilities related to recreation.
- Other facilities such as hiking and self-guided trails, public overlooks, and visitor centers.

Pre-Project Authorization Planning

The P&Gs were established to ensure proper and consistent planning by Federal agencies in the formulation and evaluation of water and related land resource

implementation studies. Recreation and fish and wildlife are an integral part of the P&G planning process. P&Gs apply to the U.S. Army Corps of Engineers, Tennessee Valley Authority, Natural Resources Conservation Service, and Reclamation. P&Gs state that, “The Federal objective of water and related land resources planning is to contribute to national economic development (NED) consistent with protecting the Nation’s environment, pursuant to national environmental statutes, applicable executive orders, and other Federal planning requirements.”

Although the P&Gs are used most often during pre-authorization of a project, the guidance provided in the P&Gs may also apply to post-authorization implementation studies if determined necessary. It should be noted that Reclamation often conducts reauthorization feasibility planning studies at existing Reclamation projects for a variety of reasons (e.g., to increase water supply in the project area, protect endangered fish and wildlife species, to meet Reclamation’s Indian Trust responsibilities, etc.). Therefore, recreation and fish and wildlife enhancement should be included in both pre-authorization and reauthorization planning studies.

Existing Projects versus New Projects

The basic cost-share and OM&R concepts of Pub. L. 89-72 are the same for both existing and proposed Reclamation projects. However, there are some legal requirements and provisions that are unique to proposed projects, which are found primarily in Sections 2 and 3 of Pub. L. 89-72. These unique proposed project requirements and provisions include, among other things, the following:

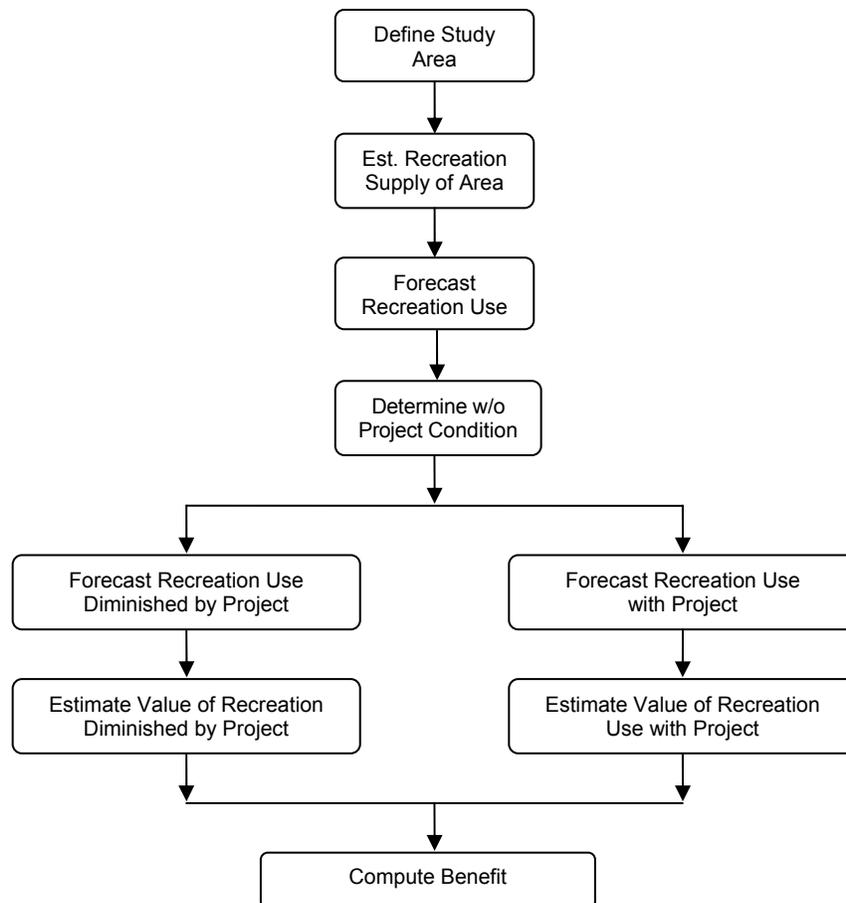
- Letters of intent.
- Using recreation and fish and wildlife benefits when determining total project benefits.
- Reducing the non-Federal repayment obligation for multipurpose project facilities.

Pursuant to Pub. L. 89-72, to include benefits from and/or allocate multipurpose/joint costs to recreation and fish and wildlife, planning studies must include a letter of intent from a non-Federal public body. The letter must indicate their willingness to administer the recreation and/or fish and wildlife facilities and to assume responsibility for payment of reimbursable costs within limits as stated previously. An executed Pub. L. 89-72 agreement must be in place before any construction of recreation or fish and wildlife enhancement facilities commences.

In the event that a new multipurpose Reclamation water project or a reauthorization of an existing project is proposed, many Reclamation disciplines

other than recreation would be involved in implementing the provisions of Pub. L. 89-72, including economists, biologists, geologists, soil scientists, hydrologists, construction engineers, NEPA specialists, finance specialists, field solicitors, etc. Implementing the recreation guidance in the P&Gs will allow outdoor recreation planners and recreation economists to evaluate the beneficial and adverse effects of recreation projects on NED.

The level of effort expended in the nine steps of recreation benefit estimation is dependent on the nature of the project or development, the state-of-the-art methodologies employed in estimating, and whether or not further effort will be required for the justification process. The nine steps in the recreation benefit estimation process are reflected in the diagram below.



Area and field offices should refer to the P&Gs to determine if it is appropriate to conduct this type of evaluation before recreation design and construction begins. Because of the complexity of calculating the recreation NED, it is recommended that a recreation economist be secured to conduct the NED evaluation as well as other technical evaluations outlined throughout this handbook. Recreation economists with the necessary expertise are available in the Economics and Resource Planning Group (86-68270) of Reclamation's Technical Service Center in Denver, Colorado, and possibly in each respective regional office.

With and Without Analysis

The evaluation of a proposed recreation project should be based on predicted future recreational use of the area "with" the various project alternatives and also "without" the project. The "without" project evaluation estimates the recreation resource capacity and use of the study area and all the sites that provide activities similar to or would influence use of those provided by the project. The "with" project evaluation would forecast recreation use for each project alternative, value of that projected use, and take into account any recreation use that would be eliminated by the project.

Consideration must also be given to changes in use at, or displacement from, other similar recreation facilities within the recreation market area caused by recreationists switching use to the new facility. Economic, social, and environmental conditions are not static, and changes will occur even without a plan. Only the new or additional changes that can be anticipated as a result of a proposed plan can be evaluated as beneficial or adverse effects when compared to conditions without the plan.

However, in some cases, an additional evaluation may be useful when an existing recreation opportunity derived or associated with special or unique environmental and scenic qualities related to undeveloped conditions would be eliminated by a proposed project or a project alternative. In such a case, the kinds of recreation opportunities available "without" and "with" a project are to some degree different. To the extent that the quality aspects or uniqueness of the recreation experience cannot be captured or represented by the monetary benefit values utilized, descriptive analyses should be made and included in the planning document.

Evaluation of Recreation Use

In general, the evaluation of recreation use involves the determination of needs and the estimation of public use as related to conditions without the project and

with each project alternative in the recreation market area. Refer to Reclamation's *Estimating Future Recreation Demand: A Decision Guide for the Practitioner* for additional information on estimating recreation use and demand.

Determination of Needs

The purpose of a needs analysis is to determine if there is or will be unsatisfied outdoor recreation demand in the recreation market area of the program or project. The planner first identifies the recreation market area for the program or project area under consideration. Estimating the market area demand for recreational opportunities involves consideration of two basic elements: (1) present and projected population and (2) present and projected per capita participation rates for selected activities. The former data are available in Department of Commerce publications and can be supplemented by State and local reports. Information on per capita participation can be extrapolated from periodic national surveys, such as the National Survey of Fishing and Hunting and the Survey of Outdoor Recreation Activities, or State and local surveys where applicable. These data can be projected into the future, applying participation rate increase factors related to the activities under consideration. By multiplying population and per capita participation rates for selected time periods, the planner can devise a general magnitude of demand for recreational opportunities during specific timeframes. Since recreation is, for the most part, produced publicly and distributed in the absence of a viable market mechanism, the demand figure generated by this process does not necessarily reflect the kind and amount of recreational opportunities that would be participated in at various prices for those opportunities. A check on the derived estimates of demand can be found in the appropriate State Comprehensive Outdoor Recreation Plan (SCORP) prepared by the States pursuant to the Land and Water Conservation Fund Act of 1965 (P.L. 88-578) and in applicable comprehensive river basin studies.

No commonly accepted method has yet been developed to estimate the supply of resources and facilities in future years, though it is reasonable to expect some changes to occur. However, this issue is usually addressed in SCORPs. Section 6 of Pub. L. 89-72 requires the Secretary to document how proposed Pub. L. 89-72 developments conform to and are in accordance with SCORPs. The planner should analyze the area's history of land use patterns and recreation investments, review appropriate water resource and State plans, and consult with local, State, and Federal agencies to obtain estimates of recreation demand and to determine their expected recreation investment schedules in the future. The capability of these resources and facilities to provide recreational opportunities is determined by applying use criteria and capacity standards. These criteria and standards are available from local, State, and Federal agencies and, while not identical, have

some general uniformity. The planner should choose those criteria and standards that are most consistent with the SCORPs and with any physical limitations known to exist in the area being studied.

Estimation of Use

In the recreation evaluation process, project- or program-associated recreation use is first estimated for the initial or base year of the period of analysis. Several methods are available for estimating use.

One standard approach is the use of a regional Use Estimating Model (UEM). UEMs are based on data gathered at an existing site or on a cross section of existing sites, with the resulting statistical coefficients used to estimate use at a proposed site. Factors in a UEM generally include the distance between the population and recreation site, demographic and socioeconomic trends in the area, and alternative recreation opportunities available.

Other procedures may be used as long as the analyses can be shown to be valid and reliable. When procedures such as travel cost methods or contingent valuation (survey) methods are used, estimates of use may be incorporated into procedures for estimating the monetary value of recreation.

To date, the comparable project or program method appears to have been accepted and used by more recreation planners than any other for estimating initial recreation use. This method involves applying recreation use information from an existing comparable project or program to the project or program under study. Since the choice of a comparable project or program is a prime ingredient in the eventual prediction of recreation use, great care must be exercised in its selection. A number of factors should be considered when selecting the comparable project or program: the physical characteristics of the area, the existing project operation or program management, the type and extent of recreation development, and the location and accessibility of the project or program area with respect to population centers and other competing areas. Also, it is most important that reliable recreation use data be available for the comparable project or program, including information on the origin of the visitor and the activities they participate in at the site.

Estimates of recreation use at the project or program area are projected to future years, preferably in 5-year intervals. In formulating projections of recreation use, the following factors are frequently considered:

- Population projections.
- Estimated per capita participation in specific recreational activities.

- Relationships between resident and nonresident use.
- Potential recreational opportunities provided by the project or program.
- Carrying capacity of the resources involved.
- Alternative recreational opportunities.

Factors affecting the choice of a per capita participation rate include:

- Number and distribution of the population in the project or program area.
- Socioeconomic characteristics of the population, including disposable income, occupation, education, age, and mobility.
- Population's leisure time and recreational habits, as indicated by trends in hunting and fishing license sales, sales of recreational equipment, and trends in total recreation demand.

Measuring Benefits

Net project benefits are computed as the gross value of recreation use provided by the project minus the value of recreation use replaced or diminished by the project in the study area. Benefits should be measured over the period of analysis, but forecasts should not go beyond 50 years for the “with” and “without” project conditions. Future benefits should be discounted to their present value (the first year in which recreation benefits are provided) and then amortized to an average annual value over the life of the project at the designated Federal planning interest rate.

Recreation benefits are measured in terms of willingness to pay. Willingness to pay includes entry and use fees actually paid for the recreation site plus any unpaid value (surplus) enjoyed by consumers. Reclamation has typically used three methods to calculate approximately what the public is willing to pay for participating in outdoor recreation activities (i.e., Travel Cost Model/Travel Cost Method [TCM], Contingent Valuation Method [CVM], and Unit Day Value [UDV]). The TCM uses the cost of traveling to a recreation area and the associated expenses foregone for the experience. Some recreation economists consider it to be the most accurate. The CVM, in which surveys (Office of Management and Budget clearance for the survey is needed) are completed determining the users' willingness to pay, is also considered a superior method. The UDV method uses established subjective criteria to determine the value of a recreation activity and has most frequently been used by Reclamation in the past. Each of these methods has its specific capabilities as well as limitations (i.e., inability to respond to small changes in recreation quality, costs attributed

to multipurpose activities and trips, and the inability to measure substitution from other recreation sites), and careful consideration, along with consultation, should be given to each one before a methodology is selected.

A more detailed explanation of the benefit evaluation methods mentioned above is contained in the P&Gs, Appendices 1-3 to Section VIII; the *Economics Guidebook*; and in Technical Memorandum Number EC-2000-02, "Impact of Fluctuating Reservoir Elevation on Recreation Use and Value," February 2000, Reclamation. Other recreation economic considerations in a planning effort, such as guidance on recreation cost allocations and repayment, are found in applicable portions of Pub. L. 89-72, as amended; this handbook; and other applicable laws, rules, and regulations.

Recreation and Fish and Wildlife Enhancement Repayment under Public Law 89-72

Only the provisions of Pub. L. 89-72 related to separable recreation and fish and wildlife costs are discussed in this handbook. Under the provisions of Pub. L. 89-72, the non-Federal share of separable recreation and/or fish and wildlife enhancement facility costs must be met by one or more of the following options:

- Upfront lump sum payment such as the use of general fund appropriations, bond sales, etc.
- Provision of lands.
- Provision of facilities.
- Repayment with interest within 50 years beginning with the date of first use of the recreation or fish and wildlife facilities.

The first three above-mentioned options are considered to be "concurrent spending" by the non-Federal partners. Concurrent spending options do not require calculation of interest during construction (IDC). Please note that IDC has traditionally been a factor during the initial construction of a Reclamation water project and is not usually a factor for construction of additional facilities at existing projects (i.e., a Pub. L. 89-72 cost-sharing agreement to construct recreation and fish and wildlife enhancement facilities at existing projects).

Whenever a non-Federal partner is not able to provide "concurrent spending" for its development cost-share obligation from the United States and has borrowed a portion of its development costs from the Federal Government, the reimbursable share of project costs allocated to recreation and/or fish and wildlife enhancement,

Public Law 89-72 Handbook
Federal Water Project Recreation Act of 1965, as Amended

including IDC, must be repaid by the non-Federal partner with interest over a 50-year period. Interest should begin on the date that facilities are first used by the non-Federal partner. The interest rate should be equal to that for other interest-bearing functions of Federal water projects as provided for under Pub. L. 89-72. This requirement has been interpreted to mean that the current interest rate for municipal and industrial supply under the Water Supply Act of 1958 is also applicable to reimbursable construction costs for recreation and fish and wildlife enhancement. Refer to the table below for an example showing how the non-Federal partner’s repayment obligation is determined. **Note:** Random numbers have been used to denote the IDC used in the table below. The 50 percent and the 25 percent shown in the table are the actual cost-share amounts and not the IDC.

Pub. L. 89-72 non-Federal separable cost reimbursement

	Recreation	Fish and wildlife enhancement
Allocated costs (\$)		
Separable construction costs	500,000	250,000
IDC (if applicable)	40,000	20,500
Reimbursable costs (\$)		
	50 percent	25 percent
Construction costs	250,000	62,500
IDC (if applicable)	20,000	5,125

Initially, a distinction between fish and wildlife enhancement and fish and wildlife mitigation should be made. Fish and wildlife enhancement would be the adoption of means or measures for development and improvement of wildlife resources in a project area, whereas mitigation is the means or measures needed to prevent loss of, damage to, and/or restoration of adversely affected wildlife resources in a project area. The use of the phrase “conservation of wildlife resources” is also interpreted as relating to a mitigation effort in a project area. The recovery of enhancement costs is covered under the provisions of Pub. L. 89-72, while mitigation costs are considered project costs according to the FWCA, and are to be distributed among project purposes the same as other project-specific costs. Typically, the FWCA report for each project identifies fish and wildlife enhancement versus mitigation requirements.

Separable Recreation and Fish and Wildlife Enhancement Costs

Section 2.(a)(3) of Pub. L. 89-72 addresses separable recreation and fish and wildlife costs and joint recreation and fish and wildlife costs. Pub. L. 89-72 defines the separable cost for each project purpose as the capital cost of the same project with the purpose omitted. In plain English, the separable recreation and fish and wildlife costs are the public use facilities (campgrounds, grills, picnic tables, sunshades, boat ramps, trails, sanitary facilities, etc.) and habitat facilities (brush piles, habitat islands, nesting platforms or boxes, development of upland game or fish habitat, wildlife ponds, etc.). In this instance, the “purpose” would include separable costs for project facilities that serve the recreation and fish and wildlife enhancement purposes.

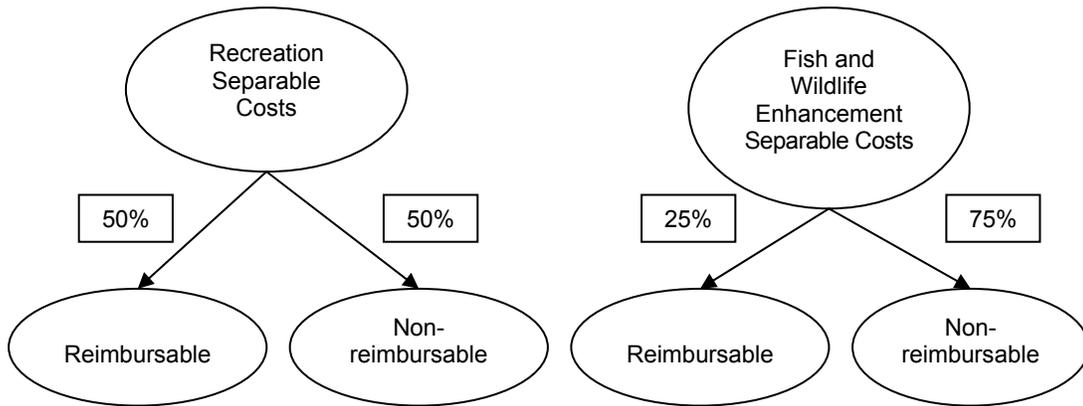
Pub. L. 89-72 defines “joint costs” as the difference between the capital cost of the entire multipurpose project and the sum of the separable costs for all project purposes.” In plain English, the joint recreation and fish and wildlife costs are the portion of the multipurpose project facility costs (usually dam and reservoir only) that have been allocated to recreation and/or fish and wildlife. These joint cost allocations are percentages that are normally based on the recreation and fish and wildlife economic benefits in proportion to total project benefits.

The reimbursability of separable and joint recreation and fish and wildlife costs is addressed in Section 2.(a)(3) of Pub. L. 89-72 where it states that “not more than 50 percent of the separable costs and all the joint costs of the project allocated to recreation and exactly 75 percent allocated to fish and wildlife enhancement (both separable and joint) shall be borne by the United States and be non-reimbursable.”

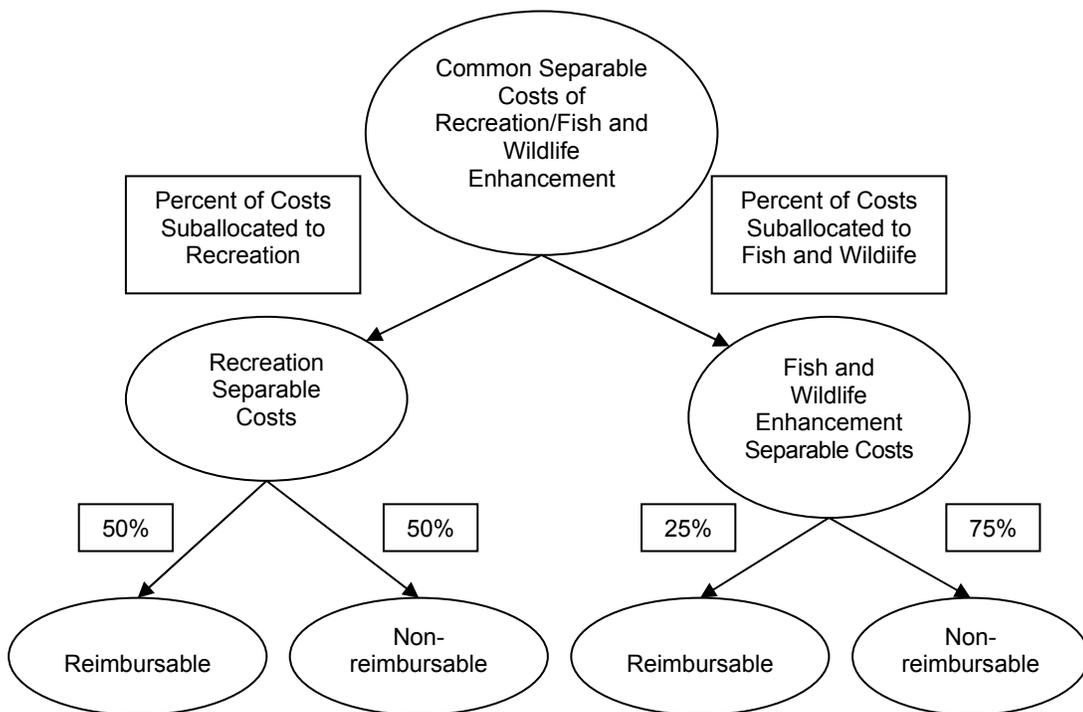
To determine the appropriate recreation and fish and wildlife enhancement costs to be repaid, it is necessary to first determine if a facility is either a recreation or a fish and wildlife enhancement facility. The recreation and fish and wildlife enhancement facility separable costs are subject to different cost-sharing provisions as stated in Section 2 of Pub. L. 89-72. A non-Federal public body is required to repay at least 50 percent of the separable construction costs and at least 50 percent of the separable OM&R costs allocated to recreation. For the fish and wildlife enhancement component, a non-Federal public body is required to pay 25 percent of the separable development costs and at least 50 percent of the separable OM&R costs. The cost-share provisions for development/construction are shown in the diagram on the following page.

There may be instances when it is difficult to determine if a facility is to be used entirely for recreation purposes or fish and wildlife purposes where the cost-share percentages are calculated as indicated above. In these instances, the cost of a facility may be suballocated. For facilities where both recreation and fish and wildlife activities are intermingled and interrelated, it may be necessary to suballocate the costs of such facilities into the two repayment categories.

**Public Law 89-72 Handbook
Federal Water Project Recreation Act of 1965, as Amended**



Reclamation typically uses the use of facilities method to suballocate such intermingled and interrelated costs. Refer to attachment G for an example of an agreement that deals with this type of suballocation process. The suballocation process is shown in the diagram below.



**Public Law 89-72 Handbook
Federal Water Project Recreation Act of 1965, as Amended**

Although it has not been commonly used in the past, Reclamation does allow the suballocation of recreation and fish and wildlife enhancement costs. Under this concept, if an enhancement facility will provide benefits to both “general recreationists” and “fishermen and/or hunters,” the facility costs may be split on an estimated prorated use basis between the 50-percent recreation account and the 75/25-percent fish and wildlife account. As an example, if a \$100,000 boat ramp were projected to be used 60 percent of the time by fishermen and 40 percent of the time by general boaters, then the cost-share obligations, based on a suballocation, would be computed as follows:

	Reclamation	Non-Federal
Recreation account		
\$100,000 x 40%	\$20,000	\$20,000
= \$40,000	(50%)	(50%)
Fish and wildlife account		
\$100,000 x 60%	\$45,000	\$15,000
= \$60,000	(75%)	(25%)
Total	\$65,000	\$35,000
	(65%)	(35%)

Please note that the preceding table is only an example to show how the costs of recreation and fish and wildlife enhancement might be suballocated based on use of facilities. When recreation and fish and wildlife facilities are intermingled and interrelated, a negotiation process will have to be undertaken with the cost share partner to determine exactly how costs are to be suballocated and ultimately how the costs are shared between the Federal Government and the non-Federal partner.

Public Law 89-72 Agreements

Non-Federal Agreements

As of this printing, Reclamation has 66 non-Federal managing partners that manage 159 developed recreation and wildlife management areas at its Federal water resource projects. There are three basic “action sections” in Pub. L. 89-72: Sections 2, 3, and 7. Section 2 applies to Reclamation projects constructed after 1965 in which Reclamation was able to find an “upfront” recreation and/or fish and wildlife partner. Section 3 applies to Reclamation projects constructed after 1965 in which Reclamation was not able to find an upfront partner. Section 7 applies to Reclamation projects constructed before 1965 either with or without a recreation and/or fish and wildlife partner. The law only provides cost-share

opportunities for “non-Federal public bodies”; it does not provide cost sharing for other Federal agencies. Section 7 does have provisions to transfer OM&R of recreation and/or fish and wildlife facilities on Reclamation land to other Federal agencies primarily, if not exclusively, for pre-1965 Reclamation projects. The only way that Reclamation could have “full development” at post-1965 projects is with a non-Federal partner. Otherwise, Reclamation could only construct “minimum basic facilities” under the provisions of Section 3.

In the past, the term length of many Pub. L. 89-72 agreements with non-Federal partners has ranged from 25 to 50 years. The 50-year agreements were typically called lease agreements and were required whenever a non-Federal partner agreement included a 50-year Pub. L. 89-72 repayment obligation with Reclamation (refer to the section below entitled “Fifty-Year Repayment Agreements” for additional information). However, Reclamation Manual D&S, *Recreation Program Management*, LND 01-03, states that “long-term recreation management agreements will be for 25 years unless a waiver is obtained from Policy and Program Services.” LND 01-01 discusses the suggested length of a fish and wildlife agreement without a waiver (i.e., 25 years). There are many factors that need to be considered before determining the most appropriate length of a Pub.L. 89-72 agreement. If both Reclamation and a non-Federal partner agree that a 50-year agreement is desirable, a waiver requesting a 50-year agreement with justification must be forwarded to Policy and Program Services for approval pursuant to LND 01-03.

A management agreement primarily outlines each partner’s duties and responsibilities and establishes a relationship that addresses the public demand for recreational uses and services and/or fish and wildlife enhancement facilities for a specified period of time. Please note that, in some instances and only with project specific authority, Reclamation has funded 100 percent of the planning and development of recreation fish and wildlife enhancement facilities and negotiated a funding level, if any, of OM&R with the non-Federal managing partner pursuant to the provisions of Pub. L. 89-72. Attachment E provides an example of a 25-year Pub. L. 89-72 agreement with a non-Federal partner that does not require a repayment obligation by the partner.

Cost-Share Agreements and Notice of Intent to Award

Once a non-Federal partner and Reclamation have signed a long-term recreation and/or fish and wildlife enhancement agreement and agreed on cost sharing for planning, developing, and maintaining recreation and fish and wildlife enhancement facilities, any and all actions related to the provisions of Pub. L. 89-72 may be implemented in accordance with the terms and conditions of the agreement. The agreement should include a paragraph to address modifications that may be necessary during the term of the agreement. A financial assistance agreement, such as a cooperative agreement, is required

before funds can legally be transferred between Reclamation and a non-Federal partner. Financial assistance agreements are generally for a period of no more than 5 years and require some level of monitoring and oversight by Reclamation. The length of a financial assistance agreement should accommodate funding and construction scheduling of both cost-share partners. **Note:** Reclamation is only authorized to cost share with a non-Federal entity for activities associated with Pub. L. 89-72.

However, prior to entering into a financial assistance agreement with an existing non-Federal partner, Reclamation offices should work with their respective acquisitions office in preparing a Notice of Intent (NOI) to Award in order to provide public notice of Reclamation's intention to fund certain project activities without full and open competition. The NOI is used when an existing partner has already entered into an agreement with Reclamation; it is not an instrument to solicit new partners. Reclamation and other U.S Department of the Interior (DOI) agencies were directed by the DOI to take this measure in order to provide transparency in the way its agencies conduct business. As part of this process, Reclamation must advertise the NOI for 14 calendar days on Grants.gov. An existing managing partner that has a long-term management agreement for the area is not required to respond to the NOI. Refer to attachment F for a NOI template that can be used by Reclamation to comply with the above requirements. To aid Reclamation personnel in completing the NOI, a completed NOI example is provided that shows you the type of information that should be included. The information that is generated for the NOI can be used to create the statement of work that is needed for the cooperative agreement (i.e., it is basically a cut-and-paste exercise). **Note:** Prior to initiating the NOI process, it would be prudent to check with your Reclamation grants officer to ensure that you have the latest version of the NOI for processing.

Refer to LND 01-01 for the prerequisite requirements for entering into partnerships that require cost sharing between Reclamation and a non-Federal partner. These agreements outline, among other things, funding levels for each entity, facilities to be developed, and timetables for completion. Care should be taken to account for differences in fiscal years of managing partners. Refer to attachment F for an example of a Pub. L. 89-72 financial assistance cost-share agreement.

Fifty-Year Repayment Agreements

If a non-Federal partner does not provide "concurrent spending" for its development cost-share obligation from the United States via a lump sum payment, provision of lands, and/or provisions of facilities, the reimbursable share of project costs allocated to recreation and/or fish and wildlife enhancement must be repaid with interest over a 50-year period beginning with the date of first use of the facilities. As stated, a waiver for a 50-year agreement would have to be

obtained from Policy and Program Services. The interest rate will be equal to that for other interest-bearing functions of Federal water projects as provided for under Pub. L. 89-72. Refer to the section above entitled “Recreation and Fish and Wildlife Enhancement Repayment under Public Law 89-72” for a detailed discussion of how the costs of recreation and fish and wildlife are allocated to project beneficiaries. Also refer to attachment G for two examples of Pub. L. 89-72 agreements and supporting documents that include a 50-year repayment obligation by a non-Federal partner.

Repayment may be extended beyond 50 years if the payments based on the projected fee schedule fall short of full repayment due to variable and unknown attendance factors. Therefore, repayment by the non-Federal entity may be limited to the use of entrance fees and user fees or charges collected at the entity-administered project facilities if the fee schedule and the portion of fees dedicated to repayment are established on a basis calculated to achieve repayment within the 50-year period. Review of the repayment schedule and renegotiation are subject to review at intervals of not more than every 5 years. Refer to the Solicitor Opinion dated September 19, 1966, in attachment D for a discussion of this topic.

Federal Agreements

There are circumstances in which it is more appropriate for Reclamation to enter into an agreement with another Federal agency as opposed to a non-Federal entity. Four Federal agencies (i.e., National Park Service, USFS, U.S. Fish and Wildlife Service, and Bureau of Land Management) currently (2009) manage 84 areas at Reclamation water projects. The transfer of management to another Federal agency has been accomplished through either an OM&R transfer or as a result of a jurisdictional transfer. Reclamation should consider a jurisdictional transfer when areas or facilities are:

- To be included in or proposed for inclusion within a National Recreation Area.
- Appropriate for administration by the USFS as part of the National Forest System.
- Appropriate for administration by a Federal agency as part of the public lands classified for retention in Federal ownership.
- Appropriate for administration by a Federal agency in connection with an authorized Federal program for the conservation and development of fish and wildlife.

Public Law 89-72 Handbook
Federal Water Project Recreation Act of 1965, as Amended

When it is determined that the jurisdiction of certain areas or facilities should be transferred to another Federal agency, Reclamation would normally not retain any agency responsibilities for the management of lands and facilities. If Reclamation were to retain any management responsibilities, the terms and conditions of such retained responsibilities should be included in the jurisdictional transfer agreement. For jurisdictional transfers to the USFS, the transfer agreement should be in accordance with the provisions of the Master Interagency Agreement (No. 86-SIE-004) between Reclamation and the USFS. Refer to attachment H for a copy of the Master Interagency Agreement with the USFS. A supplemental management agreement between Reclamation and the USFS should be prepared to address specific terms and conditions unique to each project. Refer to attachment I for an example of a draft supplemental agreement with the USFS.

When Reclamation and another Federal agency, or Congress, determine that a jurisdictional transfer of recreation and/or fish and wildlife areas on Reclamation lands is appropriate, several administrative actions are required. Reclamation should prepare a Federal Register Notice announcing the transfer of jurisdiction to another Federal agency subsequent to the finalization of an agreement. It is important that Reclamation clearly states in the Federal Register Notice all the rights and privileges it wishes to retain in order to properly manage Reclamation's Federal water project. Refer to attachment J for examples of two Federal Register Notices transferring jurisdiction to another Federal agency. The examples are slightly different; therefore, it is recommended that field offices use language from both notices, as necessary, when preparing a notice for the *Federal Register*.

Administrative actions should also include the transfer of recreation and fish and wildlife assets to the appropriate receiving agency. This is accomplished by completing Reclamation's Property Voucher, Form 7-763, and the General Services Administration (GSA) Standard Form 122. Form 7-763 is available on Reclamation's Intranet Web site at <<http://intra.usbr.gov/forms/7forms.html>>. Standard Form 122 can be downloaded by accessing GSA's Web site at <<http://www.gsa.gov/Portal/gsa/ep/formslibrary.do?formType=SF>>.

There may be instances in which Reclamation wishes to simply transfer OM&R activities to another Federal agency as opposed to a transfer of jurisdiction. The transfer of OM&R should be accomplished through an interagency agreement pursuant to the Economy Act of 1932, as amended, and be structured similar to a management agreement with a non-Federal partner.

References

Economics and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies, March 10, 1983.

General Investigations Planning Guidebook, 1982, *Guidebook of the Processes and Requirements for Resource Management Investigations*, Bureau of Reclamation, Denver, Colorado.

Pub. L. 89-72 is the Federal Water Project Recreation Act of 1965 (Pub. L. 89-72; 79 Stat. 213, 214; 16 USC 460*l* et seq.), as amended.

Pub. L. 102-575 is the Reclamation Recreation Management Act of 1992 (Pub. L. 102-575, Title XXVIII; 106 Stat. 4690; 16 USC 460*l*-31-460*l*-34), as amended.