

Reclamation Manual

Directives and Standards

Subject:	Lease of Power Privilege
Purpose:	Establishes direction for the lease of power privilege at previously undeveloped Reclamation sites. This Directive and Standard benefits Reclamation by providing consistent procedures for leasing power privilege to non-Reclamation entities for all Reclamation regions.
Authority:	The Reclamation Act of 1902 (Act of June 17, 1902, 32 Stat. 388); the Town Sites and Power Development Act of 1906 (Act of April 16, 1906, ch. 1631, 34 Stat. 116); the Federal Power Act of 1920 (Act of June 10, 1920, ch. 285, 41 Stat. 1063); the Reclamation Project Act of 1939 (Act of August 4, 1939, ch. 418, 53 Stat. 1187); and other applicable laws, executive orders, judicial decisions, policies, regulations, and acts relating to individual dams or projects.
Approving Official:	Director, Office of Program and Policy Services
Contact:	Power Resources Office, 84-54000

1. **Introduction.** A lease of power privilege (lease) is a contractual right given to a non-Federal entity to use a Reclamation facility for electric power generation consistent with Reclamation project purposes. A lease is an alternative to Federal power development and is used where Reclamation has authority to develop power on any or all features of a Federal project. This authority is usually found in the authorizing legislation for the project but can also be found in Congressional reports and documents. The Town Sites and Power Development Act of 1906 authorized the Secretary of the Interior to lease surplus power or power privileges. The Reclamation Project Act of 1939 extended the contract term to a maximum of 40 years for the sale of power or lease of power privileges, giving preference to municipalities and other public corporations or agencies, and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made pursuant to the Rural Electrification Act of 1936 and any amendments thereof.
2. **Jurisdiction for Hydropower Development.** Requests to develop hydropower at Reclamation facilities will be evaluated under the November 6, 1992, Memorandum of Understanding (MOU) between Reclamation and the Federal Energy Regulatory Commission to address potential jurisdiction issues between the two agencies.
3. **Selection of Lessee.**
 - A. Reclamation will select the lessee through a public process to ensure fair and open competition. Preference in granting a lease will be in accordance with Section 9(c) of the Reclamation Project Act of 1939.

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- B. Reclamation will deny the issuance of a lease for inadequate design information, unsatisfactory environmental analysis or impacts, detrimental impacts to the Reclamation project, or any other legitimate reason as determined by Reclamation.

4. **Development, Operation, and Maintenance.**

- A. The lessee is responsible for any state or Federal environmental planning or certification and for the design, construction, operation, and maintenance of the powerplant facilities and transmission facilities, if required, unless contracted otherwise. Access by Reclamation to its facilities must be maintained at all times during construction, operation, and maintenance of the powerplant facilities.
- B. Reclamation will review and approve all designs, plans, specifications, environmental documentation, and related materials associated with the proposed powerplant facilities. Such reviews will be to the level of detail necessary to ensure environmental compliance and that the structural and operational integrity of the Reclamation project is not impaired by construction, operation, or maintenance of the lessee's powerplant facilities.
- C. Powerplant construction, operation, and maintenance must not interfere with construction, operation, and maintenance of the Reclamation project; jeopardize water rights, water quality, Federal power sales and deliveries, or environmental commitments; or create any safety or security problems. Reclamation will inspect the powerplant and related facilities to the extent necessary to ensure the continued safe operation and structural integrity of Reclamation facilities. Reclamation retains the right to determine if activities impair the purposes of the project, and if such a determination is made, the lessee shall make appropriate modifications within a reasonable time. The lessee will be required to compensate Reclamation and/or other project users for lost generation and other interruptions to operations at Reclamation facilities due to the operations and maintenance of the lessee's facilities.
- D. Physical security of existing facilities shall be maintained by Reclamation, or its designee, during construction, operation, and maintenance activities. The lessee shall not interfere with Reclamation security activities and will be subject to access controls, searches, and background investigations as deemed necessary by Reclamation, to maintain the physical security of Reclamation facilities. The lessee will be responsible for any security costs incurred by Reclamation as a result of the lessee's powerplant. The lessee shall be required to have security practices commensurate with Reclamation security practices.
- E. National Environmental Policy Act (NEPA) and Endangered Species Act (ESA) compliance will be the financial responsibility of the lessee and will be completed prior

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to execution of the lease. Terms and conditions resulting from NEPA and ESA compliance will be incorporated in the lease. The adequacy of NEPA and ESA compliance will be determined by Reclamation.

- F. Reclamation will not be responsible for the economic and technical feasibility of the lessee's powerplant facility. The lessee must agree to indemnify the United States for any injury, loss, or damage resulting from actions under the lease and any negligent act or omission of the lessee in connection with its performance under the lease. The lessee shall have no claim against the United States for loss of generation caused by the normal or extraordinary operation and maintenance of the Reclamation project including, but not limited to, the quantity, quality, or timing of water delivered by the Reclamation project. The lessee will be required to modify operations if future legislation modifies the project purposes.
5. **Water User Involvement.** Under circumstances where a water user or Federal power customer organization has operation and maintenance contracts associated with the existing Federal project, but is not a participant in the proposed lease, the lease will include their involvement, as appropriate. The lessee shall share in the cost of operation, maintenance, and replacement of the existing Federal facilities that benefit the proposed installed power facility.
6. **Title.** Title to the Federal facility remains with the United States. Title to the proposed installed powerplant facilities is with the lessee unless legislated or contracted otherwise. Title to any modifications to the Federal facility shall remain with the United States. The lease shall include language giving the government the first right to purchase or take over the lease should the lessee fail or need to sell the facilities to which they have title. Transfers of leases must be approved by Reclamation. It is likely that the development will be constructed on land owned by Reclamation; therefore, land easements will be addressed in the lease.
7. **Role of Power Marketing Administration.** At Reclamation projects where a power marketing administration has responsibility for repayment of a portion of the project, that agency must be given the opportunity to purchase the generation from the facility developed under a lease at a cost-based rate. Such cost-based rate may include a reasonable rate of return on investment to the lessee. Prior to leasing, the potential lessee must coordinate with the power marketing administration to determine its interest in purchasing the power generated under the lease.
8. **Reclamation Expenses.** The lessee shall provide, in advance of expenditures, the necessary funding to cover all Reclamation costs related to the development, construction, operation, maintenance, and security of the lessee's power facilities and any related administrative costs.

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9. Lease Payments to the United States.

- A. Lease payments to the United States shall be consistent with Section 9(c) of the Reclamation Project Act of 1939, so as to represent an equitable amount charged for the use of the Reclamation facility. In addition, the lessee shall share in the cost of operation, maintenance, replacement, and security of any existing Federal facilities that benefit the lessee's power facility unless otherwise provided by law.
 - B. Unless otherwise provided by law, lease payments paid by the lessee to Reclamation shall be deposited in the Reclamation Fund and credited toward repayment of the Federal project/program on which the lease is issued in accordance with Section 5 of the Town Sites and Power Development Act of 1906. In the event the Federal project/program repayment obligation has been met, the lease payments will be deposited in the Reclamation Fund as a statutory credit to the respective Reclamation project unless otherwise provided by law.
10. **Timeframes.** The lessee will have up to 2 years from the date of written notification as the selected potential lessee to accomplish NEPA compliance and enter into a lease. The lessee will then have up to 2 years from the date of execution of the lease to complete the designs and specifications and an additional year to begin construction. Such timeframes may be adjusted for just cause resulting from actions and/or circumstances that are beyond the control of the lessee.
11. **Regional Guidelines.** For further guidance, Regional offices may develop guidelines consistent with this Directive and Standard for hydropower development under a lease.
12. **Waivers.** Waivers (previously called, "Variances") from this Directive and Standard will not be allowed without review by the Senior Executive responsible for the respective functional area. Procedures for requesting a waiver are provided in Reclamation Manual Directive and Standard, *Request for Waiver from a Reclamation Manual Requirement and Approval/Disapproval of the Request*, RCD 03-03.