

Reclamation Manual

Directives and Standards

Subject: Land Use Authorizations

Purpose: Provides standard procedures for issuing use authorization documents such as easements, leases, licenses, and permits which allow others to use Reclamation lands and interests in its lands, facilities, and water surfaces.

Authority: A list of relevant authorities is included in paragraph 12 of these directives and standards.

Contact: Land, Recreation, and Cultural Resources Office, D-5300

1. **Scope.** These directives and standards apply to issuance of use authorizations such as easements, leases, and permits/licenses for activities on or across lands or interests in lands and water surfaces under the jurisdiction of Reclamation. They do not address use authorizations conveyed through repayment or water service contracts, recreation management agreements, concession contracts, leases of power privileges, or licenses of power facilities by the Federal Energy Regulatory Commission which are covered elsewhere in the Reclamation Manual (though consideration of the contents of these directives and standards is encouraged). The Reclamation Manual (RM) can be accessed on the Internet at <http://www.usbr.gov/recman/>.
2. **Definitions.** Care must be taken in use of the terms easement, lease, and permit/license in documents. On occasion, the term used on a granting document may have been used incorrectly. It is important to remember that the terms and conditions or content of an instrument determine what type of instrument it is. For example, in interpreting older instruments, it may be determined that documents called "easements" are, in reality, "licenses," or vice versa. Appropriate and accurate use of terms will avoid misunderstandings and conflicts.
 - A. **Easement.** An easement conveys a possessory (control of property without ownership) interest in real property to private parties or public agencies. The recipient of a grant of easement is typically referred to as a grantee. The interest granted entitles the grantee to a specific use or possession of land. Easements are usually, but not always, appurtenant to the land involved ("run with" the title to the land served by the easement) rather than being the personal property of an individual.
 - B. **Lease.** A lease is a use authorization that transfers the rights of possession and/or use of a property from the owner to another, usually for a specified rent or compensation (cash, crop, or other remuneration). The recipient of a lease is typically referred to as a lessee or grantee. The right granted to the lessee is usually subservient to or less than the owner's right.

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- C. **Permit/License.** Permits and licenses are similar in nature. Permits are generally considered a form, or subset, of licenses. They do not convey possessory interest, but grant only permission to use real property under specific, limited conditions. Licenses, including permits, are use authorizations that grant personal, revocable permission or authority for a person or entity to utilize a specific parcel of land for a specific purpose or purposes. Licenses, including permits do not convey any ownership interest in the land and are not generally considered to be appurtenant to a parcel of land, thus are personal in nature. In Reclamation, the term "permit" is generally used to refer to short-term and less intense uses (less than 3 years) and "license" generally is used to refer to longer and more substantial uses. The recipient of a permit/license is typically referred to as a permittee/licensee or grantee.
- D. **Competitive Use Authorization.** Competitive use authorizations are generally used when Reclamation desires to sell resources or authorize land uses for the purpose of fully utilizing or managing the resources. Examples of competitive use authorizations are recreation/concession leases, grazing leases, agricultural leases, and certain communication sites.
- E. **Noncompetitive Use Authorization.** Noncompetitive use authorizations are generally used for granting rights that are of no particular benefit or use to Reclamation, and that no other party would be interested in competing for. Examples of noncompetitive use authorizations are easements, licenses, and permits for such use authorizations as roads, trails, transmission lines, pipelines, telephone lines, waterlines, and individual irrigation facilities.
- F. **Land Use Fees.** A land use fee is compensation due to Reclamation for the value of the use of land or land resources under Reclamation jurisdiction. The land use fee is generally the market value as determined by appraisal or some other appropriate method. Land use fees are considered "incidental revenues" and are distinct and separate from application and administrative fees.
- G. **Administrative Fees.** An administrative fee is compensation due to Reclamation as funding for administrative costs of processing, analyzing, issuing, monitoring, and terminating use authorizations on Reclamation lands. Administrative fees are not considered incidental revenues and are distinct and separate from land use fees.
- H. **Market Value.** Market value, sometimes referred to as fair market value, is generally determined through the real estate appraisal process, as defined in the RM, *Real Estate Appraisal*, LND 05-01.

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3. General Policy and Limitations.

- A. **Authority to Execute Use Authorizations.** Reclamation is authorized to execute use authorizations on lands and water surfaces under its jurisdiction and does not divest itself of its overall management responsibilities by doing so. Contractors and managing partners may not issue any type of use authorization that conveys a real property interest, nor may they lease or dispose of any interest of the United States. Contractors and managing partners may, subject to the approval of the Contracting Officer, issue permits, licenses, or similar use authorizations only to the extent they do not grant an interest in real property. Authority to issue such use authorizations must be specifically delegated to them in a contract, O&M agreement, or partnership agreement. The agreement should explicitly lay out what use authorizations may be issued and what review and approval Reclamation will require.
- B. **Estate or Right Granted.** All use authorizations shall grant the least estate or right that will fulfill the requirements of the grant. Use authorizations that convey a real property interest to others will only be used when some lesser use authorization is not adequate.
- C. **Land Disposal Considerations.** Use authorizations should only be issued after determining that there is a present or future Reclamation need for the land. If not needed for Reclamation purposes or protection of project works, land should be disposed of rather than encumbered with a use authorization. However, issuance of a use authorization may be appropriate on lands determined unneeded where immediate occupancy and use by a third party is necessary and cannot be accommodated in a timely manner through the disposal or withdrawal relinquishment process. (See RM, *Land Disposal*, LND 08-02, for guidance on disposals.)
- D. **Compatibility With Project Purpose(s) and Plans.** The right to use Reclamation lands or facilities by other parties may be granted only when the proposed use is compatible with project purposes and consistent with applicable resource management plans (RMPs).
- E. **Native American Trust Assets and Sacred Sites.**
- (1) Any uses granted must be carried out in a manner that protects Native American trust assets and avoids adverse impacts. When an adverse impact or damage occurs to a Native American trust asset, the grantee shall be responsible for all mitigation or compensation costs.

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- (2) Where a Native American sacred site is located on or near a use location, the grantee must accommodate access to and ceremonial use of the sacred site by Native American religious practitioners, and must avoid adversely affecting the physical integrity of such sacred sites. Often, the location of sacred sites are not known, and/or may not be shared. In these cases, the grantee will be provided direction from the authorized official where access will be allowed and physical affects to the land will be restricted. [See Executive Order (E.O.) 13007, guidance on E.O. 13007 is available through the regional or area office cultural resources staff.]

F. Private/Semi-Private Uses.

- (1) **New Private/Semi-Private Uses.** Reclamation will prohibit any new exclusive private/semi-private use of Reclamation land unless directed otherwise in specific authorizing legislation. Reclamation may only authorize private access roads when no alternative access exists and where compatible with Reclamation project purposes.
- (2) **Existing Private/Semi-Private Uses.** It is Reclamation's policy to retain only those lands required for present and identifiable future project or program purposes (see paragraph 3E). Existing exclusive private/semi-private use of Reclamation land will be eliminated when the use authorization expires unless a formal planning process determines that there is a significant public need and benefit for the exclusive private/semi-private use and the land is not needed for other public or project purposes. Questions to consider in determining when sites are needed for public use or project purposes include:
 - (a) Is the land needed for project purposes such as water development?
 - (b) Is public demand exceeding the carrying capacity of existing recreation facilities?
 - (c) Is private or semi-private use inhibiting public use or enjoyment of land?
 - (d) Do National, State, or local planning documents (such as a Resource Management Plan or Statewide Comprehensive Outdoor Recreation Plan) identify the need for additional activities or facilities that can be met on these lands?
 - (e) Does the economic benefits of public use exceed those of continuing private or semi-private use?
 - (f) Are adjacent public use facilities in need of expansion?

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- (g) Can public use and access be reasonably directed to another area?
- (h) Is the scenic quality of the resource being degraded?
- (i) Does private or semi-private use conflict with the preservation of the natural characteristics of the shoreline?
- (j) Is private or semi-private use resulting in negative environmental impacts?
- (k) Is access to shoreline obstructed by private or semi-private use?
- (l) Would the quality of visitor experience be enhanced by reducing or eliminating private or semi-private use?
- (m) Has the area been maintained in a safe, clean condition, and in accordance with the terms of the use authorization?

G. Commercial Telecommunications. General Services Administration (GSA) Bulletin, Federal Property Management Regulations (FPMR) D-242, provides all Federal agencies with the general guidelines and processes for implementation of President Clinton's memorandum of August 10, 1995, entitled *Facilitating Access to Federal Property for the Siting of Mobile Services Antennas*, and implementation of Section 704(c) of the Telecommunications Act of 1996, Public Law 104-194 (47 U.S.C. § 332 note). The Telecommunications Act, in particular, makes a presumption that "requests for the use of property, rights-of-way, and easements by duly authorized providers should be granted absent unavoidable direct conflict with the department or agency's mission, or the current or planned use of the property, rights-of-way, and easements in question."

- (1) **Rejection of Siting Requests.** GSA Bulletin, FPMR D-242, allows Executive departments and agencies to "retain discretion to reject inappropriate siting requests and assure adequate protection of public property. In cases where the antenna siting request has been denied, Executive departments and agencies should allow the service provider to appeal the decision to a higher level of agency authority for review." The bulletin also states that "The siting of telecommunications service provider antennas should not be given priority over other authorized uses of Federal buildings or land" and that "In accordance with the President's memorandum, Executive departments and agencies should charge fees based on market value."
- (2) **Consideration of Environmental and Historic Preservation Issues.** When considering use authorizations that would allow commercial telecommunication facilities to be placed on Reclamation lands, Reclamation will include

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consideration of environmental and historic preservation issues including, but not limited to:

- (a) Public health and safety with respect to the antenna installation and maintenance;
- (b) Aesthetics;
- (c) Effects on historic districts, sites, buildings, monuments, structures, or other objects pursuant to the National Historic Preservation Act and implementing regulations;
- (d) Protection of natural and cultural resources;
- (e) Compliance with the appropriate level of review and documentation as necessary under the National Environmental Policy Act and implementing regulations of each Federal department and agency responsible for the antenna siting project, the Federal Aviation Administration, the National Telecommunications and Information Administration, and other relevant departments and agencies; and/or
- (f) Compliance with the Federal Communications Commissions's guidelines for radio-frequency exposure (ET Docket No. 93-62 entitled *Guidelines for Evaluating the Environmental Effects of Radio-frequency Radiation*, issued August 1, 1996, and any other reconsideration relating to radio-frequency guidelines and their enforcement).

H. Use of Canals, Laterals, Operation and Maintenance Roads, Other Distribution Systems, and Drains. To avoid adversely impacting present/future operation and maintenance of Reclamation project facilities, use of United States canals, operation and maintenance roads, laterals, other distribution systems, and drains by any party other than Reclamation is generally prohibited.

I. Blasting, Excavating, Drilling, or Installing Laterals, Drains, Powerplants, or Utilities. Excavating, blasting, constructing, gas and oil drilling, or installing roads, laterals, drains, powerplants or utilities near, around, or within Reclamation-managed and Federally owned dams, dikes, and canals; diversion works; or other structures that store, divert, or convey water is generally prohibited. These uses have potentially severe impacts on operation, maintenance, and structural safety of these facilities. Any non-Reclamation use on or near these types of structures may also impede Reclamation's ability to perform emergency actions and cause interruption of the use. Any exceptions to this general prohibition require approval by the Area Manager, the Regional Director, or their delegates in consultation with

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the Dam Safety, operation and maintenance, and engineering staff, as appropriate. (See RM, *Decisions Related to Dam Safety Issues*, FAC P02.)

- J. **Fish Habitat Development in Reservoirs.** Fish habitat structures (trees, fencing, concrete blocks, car bodies, etc.) shall not be placed in Reclamation reservoirs unless the design, location, and construction of the structures have been reviewed and approved by Reclamation. Approval will only be granted for those structures which Reclamation determines will not adversely affect operation and maintenance of the project facilities or pose a safety hazard (i.e., to boaters).
4. **Easement.**
- A. **Use of Easement.** An easement usually consists of a long-term or perpetual grant for uses such as public roads. Easements will be used only when some lesser use authorization, such as a lease, license, or permit, is not adequate. The purpose for the easement should be identified in the grant sufficiently to prevent or allow use of the easement for other purposes as appropriate. Solicitor review of easements is recommended prior to issuance.
- B. **Term of Easement.** Generally, easements should only be granted for uses which require an “interest in land” and where such use will not interfere with existing or future project purposes. The term of an easement can vary from a limited number of years to perpetual. The term of the easement should be clearly defined and limited to the minimum time period necessary to accommodate the desired use.
- C. **Revocability.** Generally, easements convey title to a real property interest and may only be revoked with voluntary concurrence of the grantee or through judicial proceedings. If revocation is foreseen as necessary or desirable for project needs or in the event of specific actions by the grantee, then the easement should be carefully constructed to allow for revocation without judicial proceedings.
- D. **Jurisdiction.** Easements may only be granted on lands for which Reclamation has obtained jurisdiction, either by withdrawal or acquisition in fee. Easements can only be issued by Reclamation – not by managing partners or other entities.
- E. **Transferability.** Each grant of easement will specifically state whether it is one of the following:
- (1) **Appurtenant Easement.** An easement interest that attaches to other land and passes along with the title to the other land (i.e., the rights and privileges granted will inure to the benefit of, and be binding upon, the heirs, successors, and assigns of the parties thereto); or

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- (2) **Easement *In Gross*.** An easement *in gross* does not normally benefit any particular piece of property but benefits only the individual grantee for its particular use (i.e., it is not appurtenant to other land, but is a mere personal interest in or right to use the land of another).
 - (a) **Commercial Easements *In Gross*** (generally for utilities and governmental or quasi-governmental authorities) may be assigned or conveyed.
 - (b) **Personal Easements *In Gross*** are not assignable and terminate upon the death of the holder or dissolution of the entity.
- F. **Approval by Water Users.** If a water users' organization is under contract obligation for repayment of a Reclamation project or division thereof, Reclamation will grant easements or rights-of-way for periods of 25 years or longer only upon prior written approval of the governing board of such organization, as stated in 43 CFR § 429 and pursuant to the legal requirements of Section 10 of the Reclamation Project Act (43 U.S.C. § 387).
5. **Agreements to Allow Others to Use a Reclamation Easement – Consent Document.** When any party proposes to cross or use a Reclamation easement, a consent document should be prepared by, or be acceptable to, Reclamation and executed by all parties.
 - A. **Conditions to Protect Reclamation Interests.** The consent document should contain a list of conditions and criteria necessary to:
 - (1) Protect all structures, facilities, and resources from damage;
 - (2) Ensure unrestricted flow and quality of water in the facility or structure;
 - (3) Not diminish the ability to operate and maintain the facility, including access;
 - (4) Protect and provide for the unrestricted use of any Reclamation easement, be it for roads, telephone/communication lines, flood and flowage easements, canals, pipelines, gaging stations, or any other purpose;
 - (5) Prevent an unreasonable burden of liability; and
 - (6) Hold Reclamation harmless as stated in 43 CFR § 429.
 - B. **Underlying Fee Owner Permission.** The consent document shall contain a requirement that, in the event the applicant is not the underlying fee owner, it shall

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be incumbent on the applicant to secure permission of the underlying fee owner for approval to cross or use Reclamation's easement.

- C. **Cost Recovery.** When Reclamation enters into or issues a consent document based upon a Reclamation easement interest, it is not appropriate to collect a land use fee. It is appropriate for Reclamation to collect an administrative fee consistent with OMB Circular A-25, as revised. When the applicant is the underlying land owner, recovery of administrative costs can be waived.

6. Lease.

- A. **Use of Lease.** Leases may be used to convey rights for such uses as grazing, agriculture, research, recreation, and concessions. Specific guidance on concession leases is included in RMs, *Concessions Management by the Bureau of Reclamation*, LND 04-01 and LND 04-02 *Concessions Management by Non-Federal Partners*. Leasing of Government-owned buildings is covered under RM Subsection 114S-17, which is a supplement to the Interior Property Management Directives.
- B. **Term of Lease.** The term of a lease should be consistent with any RMP for the area where the lease is to be issued. All leases must contain a defined term and will be limited to the minimum time period necessary to accommodate the desired use, but generally should not exceed 25 years unless unique circumstances exist requiring a longer term. (See paragraph 11H.)
- C. **Assignments.** Assignments of leases may be made for the unexpired period of a lease if approved and signed by Reclamation's authorized official and upon payment of a fee to cover the administrative costs of approving the transfer. Copies of assignments will be distributed in the same manner as the original lease.
- D. **Method of Leasing.** It is the general policy of Reclamation to enter into leases only by competitive means either by sealed bids or public auction. After adequate advertisement for bid, award will be made to the highest bidder. However, leases may be negotiated when, in the opinion of Reclamation's authorized official, such action will be in the best interest of the United States or competitive interest does not appear to be present. Reasons for such actions shall be adequately documented.
- E. **Preference in Leasing.** Any preference in leasing including, but not limited, to project water users, previous lessees, and/or former owners, should be approved by the Area Manager, Regional Director, or their delegates.
- F. **Extensions.** An existing lease may be renewed or extended when Reclamation determines it is appropriate to do so and where provided for by the terms of the existing lease. If payment is not made on or before the date it becomes due, the

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lease will terminate and the right of the lessee to occupy the land will cease without further notice or action. The lease extension or renewal document will be retained with the original use authorization. Copies of the extension will be distributed in the same manner as the original lease. Reclamation is responsible for ensuring the use of the land ceases and that the land is restored in accordance with the terms of the lease.

- G. **Subleases.** Subleases may be allowed only with the written approval of Reclamation's authorized officials and consistent with the terms and provisions of the existing lease. Cattle or other livestock not owned directly by the lessee are not permitted on Reclamation land without prior subleasing approval. (See paragraph 11L.)
- H. **Form of Lease.** No specific lease form or format is required; however, Reclamation Form 7-523 AG, *Lease of Land for Agricultural or Grazing Purposes*, may be used. Further conditions may be added, subject to approval by the Solicitor and Reclamation's authorized official.
- I. **Agricultural and Livestock Land Use Requirements.**
- (1) **Size of Tracts for Agricultural Leases.** Agricultural land for which Reclamation irrigation water is available will be leased in compliance with the Reclamation Reform Act of 1982. The size of tracts leased for agricultural purposes using non-Federal irrigation water should be determined based on sound economic and land use rationale approved by Reclamation's authorized official, consistent with the RMP for the area.
 - (2) **Agricultural and Livestock Practices.** Agricultural and livestock uses allowed on Reclamation lands will be balanced with other uses including recreation, wildlife, water, and protection of natural resources. All use authorizations will incorporate the principles of soil and watershed conservation into the authorizing document. Reclamation will provide oversight on all its lands to ensure that natural resources are properly managed and protected from harm, injury, extinction, or abuse, and that uses are consistent with applicable statutes, regulations, agreements, or contracts.
 - (3) **Grazing Leases.** Grazing lessees should be advised that, at their sole expense and with the approval of Reclamation's authorized official, they may place range improvements upon Reclamation lands. However, such improvements must be constructed and maintained by the lessee and arrangements must be made for their removal at the end of the grazing term. Grazing lessees should be advised that any improvements not removed may become the property of the United States, or they may be removed by the United States at the expense

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of the lessee. Reclamation should ensure it does not guarantee range improvements will be made for the benefit of the lessee nor will Reclamation provide or guarantee a source of water or supplemental forage for livestock.

- (a) **Grazing Plan.** Prior to the issuance of any grazing lease, carrying capacities and a grazing plan must be established and monitored to maintain productive rangelands. The elements of what would constitute a minimum standard grazing plan include:
- (i) A specific and set number of available animal unit months (AUMs) of available forage upon which the lease is based and the user fee is determined;
 - (ii) A prescribed season of use, avoiding situations where year-long use occurs;
 - (iii) Strict prohibitions against any supplemental feeding on native ranges and that all salting be a minimum distance of 500 feet away from shorelines, streams, wetlands, riparian areas, etc.;
 - (iv) A pasture rotation schedule where applicable; and
 - (v) A requirement that the lessee submits an "actual use report" detailing the on/off dates and numbers of livestock at the conclusion of each use period or grazing season.

7. Permit/License.

- A. **Use of Permit/License.** The majority of use authorizations issued will generally be in the form of permits and licenses as applicants seldom need greater (easement) interest, and granting greater land interest is often not in the best public interest. Authorizations for short-term (less than 3 years) or one-time short-duration use authorizations such as for recreation events, material storage, or for other miscellaneous temporary uses or privileges are the types of uses authorized through permits. Construction or placement of transmission or distribution lines, access roads, trails, pipelines, power lines, telephone lines, and other facilities involving installation or construction of longer-term capital improvements (requiring amortization periods over 3 years) are the types of uses authorized through a longer term license. Permits and licenses constitute a contract between the parties.
- B. **Term of Permit/License.** All licenses, including permits, should be limited to a period of 25 years or less. Perpetual terms are discouraged except in limited circumstances where perpetual term is needed to comply with local statutes,

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financing requirements, or the like. In no case will licenses, including permits, be issued for more than the period required for the described purpose. (See paragraph 11H.)

- C. **Terms and Conditions.** Permits or licenses may, in some cases, be renewed upon expiration; however, in most cases a new permit or license should be prepared. Permits or licenses should be issued with clear language detailing under what conditions the permit or license may be renewed, terminated, amended, assigned or transferred, and/or have the rental rate adjusted, and should also include specific instructions on primary points of contact, service of notices, and administrative resolution of disputes.
 - D. **Commercial Filming and Photography.** The Department of the Interior is currently promulgating regulations to detail how each of several agencies will implement Public Law 106-206. Reclamation will comply with these regulations when completed.
8. **Master Crossing Agreements.** Where an applicant's project will involve numerous crossings of lands and facilities belonging to Reclamation, and the specific locations of those crossings are not known, it may be expedient to negotiate a master agreement to embrace authorities and procedures to be followed at such crossings. Once specific locations are determined, authorization can be requested and provided, in keeping with the master agreement. All authorizations must be approved in writing, and all appropriate administrative costs and land use fees must be collected.
9. **Use Authorization Fees and Financial Management.**
- A. **General.** All use authorizations involving Reclamation acquired or withdrawn lands have a land use value (referred to as "value of rights-of-use" in 43 CFR § 429) and an administrative cost (except where individually waived by an authorized Reclamation official). The monies received by Reclamation for the land use values are also referred to as land use fees and are considered "incidental revenues" and shall be credited in accordance with Reclamation policy and RM, *Crediting of Incidental Revenues*, PEC 03-01. The administrative costs are those direct and indirect costs associated with approving and administering the use authorization. (See paragraph 9B.) Reclamation is responsible for determining, documenting, and collecting the costs associated with the administration of the use authorizations and for collecting the incidental revenues generated from the land use values in accordance with 43 CFR § 429 *Procedure to Process and Recover the Value of Rights-of-Use and Administrative Costs Incurred In Permitting Such Use*, and OMB Circular A-25, as revised.

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- B. Recovery of Administrative Costs.** Additional costs incurred by Reclamation including all direct and indirect costs incurred for appraising (if required), advertising, reviewing, bid opening, issuing, processing, inspecting, environmental and cultural resources compliance, and administering the use authorizations are to be paid by the applicant as required by OMB Circular A-25 and as outlined in Departmental Manual (DM) 346 (chapters 1, 2, 3, and 4). Should the guidelines differ between OMB Circular A-25, as revised, and DM 346, OMB Circular A-25 will take precedence. Administrative costs must be well documented, either through a cost-finding by analytical or sampling method, or through formal cost accumulation in Reclamation's automated accounting system. Administrative costs should be collected in advance of or simultaneously with the rendering of service and be sufficient to recover the full cost to the Federal Government of providing the service. Administrative costs are in addition to land use values. Use authorizations should contain provisions to allow Reclamation to recover the future costs of compliance and monitoring and related administrative costs through the term of the use authorization.
- (1) **Waiver of Administrative Costs.** OMB Circular A-25 only allows not charging for administrative fees when there is no identifiable recipient and the service is considered to primarily benefit broadly the general public. Exceptions are only allowed by OMB Circular A-25 when: (a) the service is "an appropriate courtesy to a foreign government or international organization, or (b) Agency heads recommend exceptions to the OMB." Reclamation officials who propose to waive a use authorization's administrative costs through OMB should document their rationale and are encouraged to provide their respective regional office with a "request for concurrence" letter to be signed and retained in the issuing office's file prior to issuance of the use authorization. Waiver of costs may also be in accordance with 43 CFR § 429.
- C. Competitive Use Authorizations.** Competitive procedures will be used to determine the value of use authorizations when there is likely to be a demand from more than one party, which will result in a greater return to Reclamation unless such competition would be adverse to the public interest. Competitive use authorizations are awarded to the highest acceptable bidder at an amount that reflects the market value of the use granted. Separate administrative costs will not be added to the awarded bid price, but will be included in the minimum acceptable bid price. If the minimum acceptable bid price is not received, a determination can be made to re-advertise.
- (1) **Determination of Market Value.** The market value for competitive use authorizations will be determined by competitive bidding, but awards will not be made for less than the minimum acceptable bid price which includes

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Reclamation's determination of market value plus an estimate of the administrative costs.

(2) **Bidding Procedures.**

- (a) **Minimum Bids.** Minimum acceptable bids, which represent market value plus administrative costs, will be established and documented under procedures outlined for determining market value in the RM, *Real Estate Appraisal*, LND 05-01.
- (b) **Bidding.** Competition will be accomplished by either sealed bid or auction. The award will be made to the highest acceptable bidder, but the award will not be made for less than the minimum acceptable bid price. A determination can be made to re-advertise.
- (c) **Advertisements.** Competitive use authorizations will be advertised. Copies of advertisements will be furnished to the local information media (radio, newspaper, etc.) as a press release and may be posted in the local post office. Distribution of advertisements to the fullest extent possible is encouraged. Copies will be furnished to current lessees, interested parties, adjacent landowners if applicable, and other sources of advertising.
- (d) **Award of Bids.** When sealed bids are used, they will be received at the Reclamation office in accordance with instructions in the advertisement and will be opened as stated in the advertisement. An abstract of the bids received at the date of opening will be prepared in the office where received and opened. Awards will be made to the highest bidder unless there is sufficient reason, in the judgment of the Contracting Officer, for rejecting the highest bidder's proposal. Unsuccessful bidders will be notified promptly with return of their remittance. No bidder will be permitted to meet a high bid when sealed bids are used. In the event of a tie for high bid by two or more bidders, those bidders will be allowed a specified period of time to submit one additional sealed bid at the discretion of the Contracting Officer.

- D. **Noncompetitive Use Authorizations.** Noncompetitive use authorizations are generally issued at not less than market value. In addition to the use fee, all direct and indirect administrative costs are collected. Administrative costs will be recovered in accordance with 43 CFR § 429 and will represent those costs actually expended in granting and administering the use right, both direct and indirect. Under certain conditions, the collection of market value for use authorizations issued noncompetitively can be waived. These conditions are explained in 43 CFR § 429.

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- (1) **Determination of Market Value.** Market value of the right or interest granted under noncompetitive means will be determined and collected in compliance with 43 CFR § 429 and the RM, *Real Estate Appraisal*, LND 05-01. In addition, administrative costs will also be recovered and will represent those costs actually expended in granting the use.
- (2) **Circumstances When Authorizations May Be Issued Non-Competitively.** There are instances when use authorizations normally granted competitively may be granted noncompetitively. These include:
 - (a) When advertising will not result in competition;
 - (b) When advertising costs will be disproportionate to the revenues received;
 - (c) When a right was advertised for competitive bidding, but no acceptable bids were received;
 - (d) When a potential competitor is a public agency providing service to the general public, or for whatever reason competitive bidding would result in an unfair business situation or in the judgement of Reclamation would otherwise not be in the public interest; or
 - (e) When other special conditions exist.
- (3) **Documentation Required.** All use authorizations that would normally be issued competitively but are proposed for execution without competition will require appropriate documentation regarding why competition was not used. Such documentation shall be retained in the file. These use authorizations will not be issued for less than market value plus administrative costs unless appropriately waived or reduced pursuant to regulations and OMB Circular A-25, as revised.

E. Incidental Revenues Received by Water Users and Administering Entities.

Revenue generated from the market value will be credited in accordance with RM, *Crediting of Incidental Revenues*, PEC 03-01. These revenues are Federal monies and must be deposited in the Treasury.

- F. Access to Sacred Sites.** When the applicant for a use authorization is an Native American tribe or individual Native American religious practitioner specifically seeking access to a sacred site, accommodation will be granted to the fullest extent possible as required by E.O. 13007. (See paragraph 3E.)

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10. Application and Administration Procedures.

- A. **Application Requirements.** Applications are to be made as specified in 43 CFR § 429.6. No specific use authorization application format is required; however, Reclamation Form 7-2540 should generally be used.
- (1) **100-Kilovolt Transmission Lines.** A use authorization applicant must show that any legally required permits to construct power transmission lines in excess of 100 kilovolts have been secured by the applicant from the appropriate power marketing authority prior to Reclamation issuing a use authorization for such line.
- B. **Approval.** Reclamation should respond within 60 days from receipt of a use authorization request. If a request is denied, the reasons for denial must be explained in writing to the applicant. Reclamation must also advise the applicant of the appeal process pursuant to 43 CFR § 429.10. If a request is to be denied it should be discussed with the Regional Director before action is taken.
- C. **Reviews.**
- (1) **Legal Review.** All use authorization instruments should be issued in a Solicitor's approved format or after receiving Solicitor review and approval.
- (2) **Technical Review.** All use authorization instruments will be reviewed for technical sufficiency by the appropriate qualified staff (e.g., lands, cultural resources, engineering, operation and maintenance, safety, finance, environmental, etc.).
- (3) **Monitoring.** Lands and facilities considered for use authorizations will be reviewed in the field by qualified personnel to ensure that the proposed use is compatible with project and program purposes and other authorized uses. After the use authorization is issued, periodic field reviews will be conducted to monitor the use to ensure it is in compliance with the provisions of the use authorization. (See RM, *Land Resources Management*.)
- (4) **Environmental and Cultural Resources Review.** Reclamation's authorized officials will ensure that the granting of any use authorization is in compliance with the provisions of National Environmental Policy Act (NEPA) (40 CFR § 1500), the National Historic Preservation Act (16 U.S.C. § 470), the various cultural resources acts and Executive Orders, E.O. 11988 Floodplain Management, and E.O. 11990 Protection of Wetlands. (See RMs, *Cultural Resources Management*, LND P01; *Concessions Management*, LND 02-01; *Floodplain Management*, CMP P01 and CMP 01-01; *Wetlands Mitigation and*

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Enhancement, LND P03 and Environmental Management RMs.) Specific and detailed guidance and policy on NEPA are contained in Reclamation's NEPA Handbook. The list above is illustrative only. Other requirements may apply.

D. Distribution of Use Authorizations.

- (1) **Original Use Authorization.** Two original use authorizations should be executed. An original will be retained in the issuing office and the grantee will receive a duplicate original.
- (2) **Finance Office Copy.** A copy of the use authorization, along with a completed Collection Information Form, will be forwarded to the appropriate finance office for retention. This will ensure that the administrative costs and incidental revenues received from that use authorization is credited in accordance with Reclamation and other Federal laws. Refer to the RM, *Use of the Collection Information Form for Incidental Revenues*, PEC 03-02, on the use of the Collection Information Form.
- (3) **Recording Responsibility.** All perpetual use authorizations will be recorded. Recording of all other use authorizations will be at the discretion of the issuing office. When Reclamation determines that a use authorization needs to be recorded, it will record the document and recover those costs from the grantee as part of the administrative costs.
- (4) **Compliance with Bureau of Land Management (BLM) Memorandum of Understanding.** If a long-term (3 years or longer) or perpetual use authorization issued is on Reclamation withdrawn land, a copy will be sent to the appropriate BLM office for notation on the public land records in accordance with the December 1982 interagency agreement, signed March 25, 1983, between Reclamation and BLM, as amended or superseded. Long-term or perpetual use authorizations on acquired land should also be sent to BLM for notation to help prevent incompatible adjoining uses. Reclamation should ensure that periodic reconciliation reviews be made to verify conformity and consistency between Reclamation and BLM land records data.

E. Form of Use Authorization.

No specific contract form or format is prescribed. However, the following guidelines should be followed:

- (1) **Plain Language.** Use authorizations should be written in plain language and be as succinct as possible.
- (2) **Consistency.** Use of standardized, consistent use authorization formats by offices is encouraged.

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- (3) **Attachments.** Use of attachments, exhibits, or appendices is encouraged for items such as site-specific construction and environmental stipulations, engineering standards, complex rental arrangements, legal descriptions, and other similar information which can shorten and simplify the base use authorization.
- (4) **Solicitor Review.** Solicitor should review all new, complex, and perpetual (e.g., easements, long-term leases) use authorizations.
- (5) **Reference to Authorities and Land Status.** Each use authorization must contain a reference to the specific authority or authorities under which it is issued. In addition, the land status of the land (acquired, donated acquired, withdrawn, and improved withdrawn) involved should be stated. If the use authorization involves lands acquired in more than one manner, the land status should be shown in detail for the entire use authorization both to ensure proper statutory application and disbursement of revenues.
- (6) **Land Description.** Each use authorization document must contain a description of the land involved to the greatest level of detail practical. This information is fundamental in ensuring records are properly noted and that Reclamation has the needed authority to grant the use authorization. Generally, use authorizations must contain either a verified aliquot part, tract, or lot description based on the Federal Rectangular Survey System, or a verified metes-and-bounds description with at least one tie to the Rectangular System. In states not covered by the Rectangular System, land descriptions should conform with local standards. In certain cases, such as unsurveyed lands, or for minor and short-term permits, reliance on sketch maps or other imprecise data may be adequate, at the discretion of the authorized officer, but are generally discouraged.

11. Use Authorization Terms and Conditions.

- A. **Severability (Required for all Use Authorizations).** Each use authorization contract shall contain a statement addressing severability of contract terms. This provision is recommended to read:

Each provision of this use authorization shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this use authorization shall be deemed or determined by competent authority to be invalid or prohibited hereunder, such provision shall be ineffective and void only to the extent of such invalidity or prohibition, but shall not be deemed ineffective or invalid as to the remainder of such provision or any other remaining provisions, or of the use authorization as a whole.

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- B. Protection of United States Interests (Required for all Use Authorizations).** All use authorizations shall contain all special conditions or requirements necessary to protect the interests of the United States, and to ensure that the authorized uses are compatible with the Reclamation purposes for which the lands or land rights were withdrawn or acquired. All use authorizations shall also contain appropriate language that extends application of all applicable Federal, State, and local laws and regulations, Executive Orders, and Reclamation policies and directives and standards (to the grantee, licensee, permittee, lessee, etc.).
- C. Hold Harmless Clause (Required for all Use Authorizations).** All use authorizations shall contain the hold harmless clause stated below as per 43 CFR § 429.9. To meet local and special conditions, the Regional Director may, upon advice of the Solicitor, modify this provision.

The grantee hereby agrees to indemnify and hold harmless the United States, its employees, agents, and assigns from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death arising out of the grantee's activities under this agreement.

- D. Termination Clause (Required for all Use Authorizations).** All use authorizations, including perpetual easements, shall contain a clause covering termination for violations of the conditions set out in the instrument, for overriding public or project needs of the land, for incompatible uses, or for other just cause. In some cases, termination may require compensation. Solicitor review and approval is needed regarding termination clauses for easements. This clause is recommended to read:

This [easement, license, permit, lease, etc.] will terminate and all rights of the [grantee, licensee, permittee, lessee, etc.] hereunder will cease, and the [grantee, licensee, permittee, lessee, etc.] will quietly deliver to the United States possession of the premises in like condition as when taken, reasonable wear and damage by the elements excepted:

- (a) *At the expiration of the term as provided by Articles ____; or,*
- (b) *Without notice, upon default in payment to the United States of any installment of rental charges as provided by Article ____; or,*
- (c) *On date, of any year, upon written notice to the [grantee, licensee, permittee, lessee, etc.], served ____ days in advance thereof; or,*

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(d) After failure of the lessee to observe any of the conditions of this [grant, license, permit, lease, etc.], and on the tenth day following service of written notice on the [grantee, licensee, permittee, lessee, etc.] of termination because of failure to observe such condition.

The notices provided by this article will be served by certified mail addressed to the respective post office addresses given in Article _____ and the mailing of any such notice properly enclosed, addressed, stamped, and certified, will be considered service. If the termination under Article _____ (c) or Article _____ (d) should be effective at a date prior to the date of the termination of the then current lease or extension, for which prepayment of rental will have been made, an appropriate refund or part of the rental for such then current [grant, license, permit, lease, etc.] or extension will be made.

If this [grant, license, permit, lease, etc.] is terminated under Article _____ (d), the United States reserves the right to bar the [grantee, licensee, permittee, lessee, etc.] from the authorization to use acquired or withdrawn public land on the _____ Project for a period of time, as determined by the Area Manager.

- E. Officials Not To Benefit (Required for all Use Authorizations).** Per provisions of 41 U.S.C. § 22, the following clause shall be included in all use authorizations issued by Reclamation:

No Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon.

- F. Illegal Use (Required for all Use Authorizations).** The following clause shall be included in all use authorizations:

Any activity deemed to be illegal on Federal lands will be cause for immediate termination of the use authorization.

- G. Hazardous Materials (Generally Required for all Use Authorizations).** The following language shall be included in new, renewed, renegotiated, assigned, and amended use authorizations with the exception of use authorizations where no possibility for contamination or pollution exists:

(a) The [grantee, licensee, permittee, lessee, etc.] may not allow contamination or pollution of Federal lands, waters or facilities and for which the [grantee, licensee, permittee, lessee, etc.] has the responsibility for care, operation, and maintenance by its employees or agents and shall take reasonable precautions to prevent such contamination or pollution by third parties. Substances causing contamination or

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pollution shall include but are not limited to hazardous materials, thermal pollution, refuse, garbage, sewage effluent, industrial waste, petroleum products, mine tailings, mineral salts, misused pesticides, pesticide containers, or any other pollutants.

(b) The [grantee, licensee, permittee, lessee, etc.] shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies and directives and standards, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, or disposed of on or in Federal lands, waters or facilities.

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

(d) Upon discovery of any event which may or does result in contamination or pollution of Federal lands, waters or facilities, the [grantee, licensee, permittee, lessee, etc.] shall initiate any necessary emergency measures to protect health, safety and the environment and shall report such discovery and full details of the actions taken to the Contracting Officer. Reporting may be within a reasonable time period. A reasonable time period means within twenty-four (24) hours of the time of discovery if it is an emergency or by the first working day if it is a non-emergency. An emergency is any situation that requires immediate action to reduce or avoid endangering public health and safety or the environment.

(e) Violation of any of the provisions of this Article, as determined by the Contracting Officer, may constitute grounds for termination of this contract. Such violations require immediate corrective action by the [grantee, licensee, permittee, lessee, etc.] and shall make the [grantee, licensee, permittee, lessee, etc.] liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.

(f) The [grantee, licensee, permittee, lessee, etc.] agrees to include the provisions contained in paragraphs (a) through (e) of this Article in any subcontract or third-party contract it may enter into pursuant to this contract.

(g) Reclamation agrees to provide information necessary for the [grantee, licensee, permittee, lessee, etc.] using reasonable diligence, to comply with the provisions of this Article.

H. Periodic Rental Rate Review (Required if Use Authorizations Involve Periodic Rental Fees). There shall be a provision in use authorizations which involve

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periodic rental fees that allows Reclamation, at its discretion, to periodically review long-term uses for the purpose of increasing or decreasing the rental rate based on current market conditions. This provision is recommended to read:

The annual rental fee will be reviewed and adjusted periodically (but no more frequently than annually); however, in no event shall the interval between the reviews exceed five (5) years. Redetermination of the market value, if any, by the United States will be based on an appraisal report, taking into consideration the then current land values, exclusive of improvements constructed by the [grantee, licensee, permittee, lessee, etc.].

- I. **Reclamation Land Use Stipulation (Required for Perpetual Use Authorizations Unless Granted to Another Federal Agency).** The following stipulation shall be included in perpetual use authorizations, except those granted to other Federal agencies, as stated in 43 CFR § 429.8.

There is reserved from the rights herein granted, the prior rights of the United States acting through the Bureau of Reclamation, Department of the Interior, to construct, operate, and maintain public works now or hereafter authorized by the Congress without liability for severance or other damage to the grantee's work; provided, however, that if such reserved rights are not identified in at least general terms in this grant and exercised for works authorized by the Congress within ten (10) years following the date of this grant, they will not be exercised unless the grantee, or grantee's successor in interest is notified of the need, and grants an extension or waiver. If no extension or waiver is granted, the Government will compensate, or institute mitigation measures for any resultant damages to works placed on said lands pursuant to the rights herein granted. Compensation shall be in the amount of the cost of reconstruction of grantee's works to accommodate the exercise of the Government's reserved rights. As alternatives to such compensation, the United States, at its option and at its own expense, may mitigate the damages by reconstructing the grantee's works to accommodate the Government facilities, or may provide other adequate mitigation measures for any damage to the grantee's property or right. The decision to compensate or mitigate is that of the appropriate Regional Director.

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

- (1) When a structure is built or erected by a grantee for their own convenience, the use authorization will provide for the removal of the structure and restoration of the site upon termination of the use authorization at their expense. Removal of structures and restoration of the site will be performed under the direction of Reclamation. The use authorization will also provide

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that the structures may be left in place at the option of Reclamation and agreement by the grantee, at which time the structure becomes the property of the United States. The issuing office is then to include the structure(s) on Reclamation's property inventory.

This clause is recommended to read:

Upon the expiration, termination, or revocation of this [grant, license, permit, lease, etc.], if all rental charges and damage claims due Reclamation have been paid, the [grantee, licensee, permittee, lessee, etc.] shall remove all structures, equipment, or other improvements made by it from the premises at no cost to the United States. Upon failure to remove any such improvements within sixty (60) days of expiration, termination, or revocation, any remaining improvements shall, at the option of the United States, be removed or become the property of the United States. The [grantee, licensee, permittee, lessee, etc.] shall pay all expenses of the United States, or its assigns, related to removal of such improvements.

- (2) The above notwithstanding, (a) should Reclamation determine that there is a project or public need for specific structures and/or equipment to remain in place, the [grantee, licensee, permittee, lessee, etc.] shall be compensated the market value of such improvements as determined by an appraisal prepared by the Secretary; and/or (b) any improvements that may be a historic property as described in 36 CFR § 60, shall be inventoried and evaluated to determine its eligibility to be listed on the National Register of Historic Places. If the improvement qualifies, then Reclamation shall conduct consultation required by Section 106 of the National Historic Preservation Act prior to demolition or taking ownership of the improvement.

K. Use Authorizations Subject to Permits Required by Other Entities (May be Required by Third Parties). In some cases there are legal or other requirements that make it necessary for the grantee to obtain permits or approval from third parties before they can proceed with using the land as authorized by Reclamation. These include, but are not necessarily limited to, the following:

- (1) **Federal Agencies, State, Tribal, County, and Other Local Authorities.** Where certain uses are regulated by other Federal, State, Tribal, county, or other local authorities, Reclamation use authorizations will only be issued subject to the grantee also obtaining the necessary permits or clearances, including environmental permits (e.g., Section 404 of Clean Water Act Permit).

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- (2) **Easement Lands.** When the United States only owns an easement, Reclamation's authority to allow other uses on the easement lands may be limited. Consents issued on easement lands by Reclamation must be issued subject to the underlying landowner's rights. (See paragraph 5.)

L. **Subleases, Assignments, and Third-Party Rent Revenue (Generally Required).** Determination of administrative fees and land use rental charges due from use authorization holders is discussed in paragraph 9 of this directive and standard. In some cases, use authorization holders may be in a position to request authority to sublease, rent, or assign use to third parties under their use authorization. Generally, the use authorizations should prohibit subleasing or assignment of the use authorization to third parties by the holder without Reclamation's prior review and approval.

- (1) **Use Authorizations at Less Than Market Value.** Generally, where a use authorization is issued with a waiver or reduction of market value rental, the use authorization should prohibit subleasing or assignment of the use authorization to third parties by the holder.
- (2) **Use Authorizations at Market Value.** Where full market value is paid to Reclamation, and if deemed appropriate by Reclamation, use authorizations may allow for subleasing, renting, or assignment to third parties by the holder. In all cases, such activities, and any revenue derived therefrom by the holder, should be subject to review and approval by Reclamation. This may be accomplished by requiring case-by-case Reclamation approval, or by clearly establishing parameters of any subleasing, renting, or assignment activities in the use authorization. Reclamation should ensure that any charges to third parties are reasonable. In cases where significant revenues may be expected, such as for uses at a topographically unique and advantageous communication site, Reclamation should seriously consider use authorization provisions to provide for Reclamation participation in any future revenues.
- (3) **Assignments.** Use authorizations should require any assignments to be reviewed and approved by Reclamation. In the case of licenses and permits, no possessory interest has been granted, and no holder nor third-party assignee should consider the use authorization to be a real property interest having a market value. At Reclamation's discretion, to deal with specific situations, the use authorization may include provisions prohibiting the holder from receiving revenues from third parties in payment for agreement to assign the use authorization. As a practical matter, enforcement of such a provision may be difficult, and, given the liability incurred by Reclamation by its inclusion, use of such provisions should include close coordination and review of the solicitor.

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- M. Bonding (Required if Damage or Loss Possible).** In cases where the United States stands to lose or be damaged in the event of default on the part of a use authorization holder, Reclamation will require the applicant to furnish a bond or other security of sufficient amount to cover the potential loss or damage. This provision is recommended to read:

The holder shall provide a bond in the amount of \$ _____, to be maintained until all construction activities of this project and restoration of the disturbed areas have been completed and accepted in writing by Reclamation. Upon completion, or partial completion, of these restoration requirements, Reclamation, may terminate or allow partial reduction of the amount of the bond requirement.

Note: Consideration should also be given to requiring a bond, proof of insurance, or other security where the United States stands to lose or be damaged in the event of injury resulting from the use authorized.

- N. Unrestricted Access (Generally Required).** The following stipulation will be included in all use authorization with the exception of unusual circumstances such as high security, law enforcement, or Department of Defense facilities:

The United States reserves the right of its officers, agents, and employees at all times to have unrestricted access and ingress to, passage over, and egress from all of said lands, to make investigations of all kinds, dig test pits and drill test holes, to survey for and construct reclamation and irrigation works and other structures incident to Federal Reclamation Projects, or for any purpose whatsoever. Reclamation will make every reasonable effort to keep damages to a minimum.

- O. Withdrawn Lands Encumbered by Use Authorizations Returned to BLM.** If withdrawn lands encumbered by third-party interests are returned to BLM administration, the disposition of interests is governed by 43 CFR § 2370. In such cases, Reclamation should coordinate with BLM to comply with this regulation.

- P. Civil Rights Clauses - Nondiscrimination in Authorizations Involving Federally Assisted Programs of the Department of the Interior (Required as Noted).** The following clauses shall be included in all use authorizations where there is Federal financial assistance, as defined for each Basis, below:

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

The [grantee, licensee, permittee, lessee, etc.] hereby agrees as follows:

(a) To comply with Title VI (Section 601) of the Civil Rights Act of July 2, 1964 (78 Stat. 241) which provides that "No person in the United States shall,

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on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance," and to be bound by the regulations of the Department of the Interior for the effectuation thereof, as set forth in 43 CFR § 17.

(b) To obligate its subcontractors, subgrantees, transferees, successors in interest, or any other participants receiving Federal financial assistance hereunder, to comply with the requirements of this provision.

(a) For the purposes of this part, Federal financial assistance as defined by 43 CFR §17.12 includes (i) grants and loans of Federal funds, (ii) grants or donations of Federal property and interests in property, (iii) the detail of Federal personnel, (iv) the sale or lease of, or the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration or at a consideration which is reduced for the purpose of assisting the recipient or in recognition of the public interest to be served by such sale or lease to the recipient, and (v) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(2) Nondiscrimination on the Basis of Disability.

The [grantee, licensee, permittee, lessee, etc.] hereby agrees

(a) To comply with Section 504 of the Rehabilitation Act of 1973, Public Law 93-112, as amended which is designed to eliminate discrimination on the basis of disability in any program or activity receiving Federal financial assistance.

(b) To obligate its subcontractors, subgrantees, transferees, successors in interest, or any other participants receiving Federal financial assistance hereunder, to comply with the requirements of this provision.

(a) For the purposes of this part, Federal financial assistance as defined by 43 CFR §17.202 means any grant, cooperative agreement, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Department of the Interior provides or otherwise makes available assistance in the form of:

- (i) Funds;
- (ii) Services of Federal Personnel; or

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- (iii) Real and personal property or any interest in or use of such property, including: easements; transfers or leases of such property for less than market value or for reduced consideration; and proceeds from a subsequent transfer or lease of such property if the Federal share of its market value is not returned to the Federal Government.

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

The [grantee, licensee, permittee, lessee, etc.] hereby agrees as follows:

(a) To comply with the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, et seq., and the general age discrimination regulations at 45 CFR § 90 which are designed to prohibit discrimination on the basis of age in programs and activities receiving Federal financial assistance, as set forth in 43 CFR §17.

(b) To obligate its subcontractors, subgrantees, transferees, successors in interest, or any other participants receiving Federal financial assistance hereunder, to comply with the requirements of this provision.

(a) For the purposes of this part, Federal financial assistance as defined by 43 CFR §17.303 means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which Reclamation provides or otherwise makes available assistance in the form of:

- (i) Funds;
- (ii) Services of Federal Personnel; or
- (iii) Real and personal property or any interest in or use of property, including: transfers or leases of property for less than market value or for reduced consideration, and proceeds from a subsequent transfer or lease of property if the Federal share of its market value is not returned to the Federal Government.

Q. Future Year Funding Commitments (Required when United States Provides Funding Extending Beyond Current Fiscal Year). The following clause shall be included in all use authorizations issued by Reclamation whenever such authorizations contain provisions for the United States to provide funding which extends beyond the current fiscal year:

Where the operations of this contract extend beyond the current fiscal year, it is understood that this contract is made contingent upon Congress making the

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necessary appropriation for expenditures thereunder after such current year has expired. In case such appropriation as may be necessary to carry out this contract is not made, the United States is hereby released from all liability due to the failure of the Congress to make such appropriation

- R. Covenant Against Contingent Fees (Required if Awarded Using Procedures Other Than Sealed-Bid).** Pursuant to 41 U.S.C. § 254, every contract awarded using procedures other than sealed-bid procedures shall contain a suitable warranty as determined by the agency head. All Reclamation use authorizations, if negotiated pursuant to 41 U.S.C. § 252 *Purchases and contracts for property(c)*, will contain the following clause:

The [grantee, licensee, permittee, lessee, etc.] warrants that no person or agency has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agencies maintained by the [grantee, licensee, permittee, lessee, etc.] for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this agreement without liability or in its discretion to require [grantee, licensee, permittee, lessee, etc.] to pay, in addition to the [grant, license permit, lease, etc.] price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

- S. Discovery of Cultural Resources (Required Where Potential for Discovery Exists).** The following clause shall be included in all use authorizations where there is potential for discovery of cultural resources:

The [grantee, licensee, permittee, lessee, etc.] shall immediately provide an oral notification to Reclamation's authorized official of the discovery of any and all antiquities or other objects of archaeological, cultural, historic, or scientific interest on Reclamation lands. The [grantee, licensee, permittee, lessee, etc.] shall follow up with a written report of their finding(s) to Reclamation's authorized official within forty-eight (48) hours. Objects under consideration include, but are not limited to, historic or prehistoric ruins, human remains, funerary objects, and artifacts discovered as a result of activities under this authorization. The [grantee, licensee, permittee, lessee, etc.] shall immediately cease the activity in the area of the discovery, make a reasonable effort to protect such discovery, and wait for written approval from the authorized official before resuming the activity. Protective and mitigative measures specified by Reclamation's authorized official shall be the responsibility of the [grantee, licensee, permittee, lessee, etc.].

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- (1) When Reclamation's authorized official is notified of a cultural resources discovery, he/she shall immediately notify the appropriate cultural resources professional.

T. Pest Control (Required Where Potential Exists for Pesticide Use). The following clauses will be included in use authorizations where the potential exists for pesticides to be used:

(a) The [grantee, licensee, permittee, lessee, etc] shall not permit the use of any pesticides on Federal lands without prior written approval by Reclamation. The [grantee, licensee, permittee, lessee, etc.] shall submit to Reclamation for approval an Integrated Pest Management Plan (IPMP) thirty (30) days in advance of pesticide application.

(b) All pesticides used shall be in accordance with the current registration, label direction, or other directives regulating their use (State Department of Agriculture, Department of Ecology, OSHA, etc.) and with applicable Reclamation policy and directives and standards. Applicators will meet applicable State training or licensing requirements. Records maintenance shall be in accordance with State requirements. Records maintenance shall be in accordance with State requirements and such records shall be furnished to Reclamation not later than five (5) working days after any application of a pesticide.

(c) Any equipment, tools, and machines used for pesticide application shall be in good repair and suitable for such use. Equipment shall be calibrated prior to the spraying season and as deemed necessary by Reclamation.

(d) Mixing, disposal, and cleaning shall be done where pesticide residues cannot enter storm drains, sewers, or other non-target areas.

(e) The [grantee, licensee, permittee, lessee, etc.] shall initiate any necessary measures for containment and clean up of pesticide spills. Spills shall be reported to the Contracting Officer with full details of the actions taken. Reporting may be within a reasonable time period. A reasonable time period means within twenty-four (24) hours of the spill if it is an emergency or by the first working day if it is a non-emergency. An emergency is any situation that requires immediate action to reduce or avoid endangering public health and safety or the environment.

(f) Aerial application of pesticides is prohibited without prior written consent by Reclamation's designated representative.

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(g) *The [grantee, licensee, permittee, lessee, etc.] agrees to include the provisions contained in paragraphs (a) through (f) of this Article in any subcontract or third-party contract it may enter into pursuant to this contract.*

12. Authorities.

A. Reclamation's authority to issue and collect revenues for use authorizations include, but are not limited to, the following Reclamation and other Federal statutes and Public Laws, as amended or modified:

- (1) The Reclamation Act, June 17, 1902, as amended and supplemented, 32 Stat. 388; 43 U.S.C. § 391, et seq.
- (2) Section 4, Subsection I of the Second Deficiency Appropriation Act for 1924 (Fact Finders' Act), December 5, 1924 (43 Stat 703; 43 U.S.C. § 501) .
- (3) Sections 10 and 14 of the Reclamation Project Act of 1939, August 4, 1939 (53 Stat. 1196; 43 U.S.C. § 387).
- (4) Federal Water Project Recreation Act, July 9, 1965, Public Law 89-72, as amended (79 Stat. 218; 16 U.S.C. § 460l-12 to 460l-21).
- (5) Reclamation Recreation Management Act of 1992, Public Law 102-575, Title XXVIII, Sections 2801 to 2806, October 30, 1992 (106 Stat. 4692; 16 U.S.C. § 460l-33).
- (6) Mineral Materials Act of 1947, Public Law 80-291 (61 Stat. 681; 30 U.S.C. § 603).

B. In addition to the aforementioned authorities, the following Public Laws, Executive Orders, Federal Regulations, the Departmental Manual, and the Reclamation Manuals influence the application of Reclamation's use authorizations:

- (1) E.O. 11200, February 25, 1965, 30 FR 2645, *Establishment of Recreation User Fees*
- (2) E.O. 13007, May 24, 1996, 61 FR26771, on *American Indian Sacred Sites*.
- (3) National Historic Preservation Act of 1966 (16 U.S.C. § 470).
- (4) Native American Graves Protection and Repatriation Act, November 16, 1990, Public Law 101-601 (25 U.S.C. § 3001).

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- (5) OMB Circular A-25, as amended July 8, 1993, User Charges.
- (6) *Procedure to Process and Recover the Value of Rights-of-use and Administrative Costs Incurred in Permitting Such Use* (43 CFR § 429.1 to 429.11).
- (7) Department of the Interior, 346 DM, *Cost Recovery*, provides basic Departmental cost recovery policy governing charges for services provided the non-Federal sector under specific legislative authority.
- (8) RM, *Charges for Use of Federal Assets*, PEC 01-01, provides instructions on assessing fees for Government services and for the sale or use of Federal property or resources not covered by repayment contracts, water service contracts, or the sale of surplus power.
- (9) RM, *Crediting of Incidental Revenues*, PEC 03-01, provides the statutory requirements for the disposition of revenues generated by the incidental uses (such as use authorizations) of Reclamation lands and facilities.
- (10) RM, *Use of the Collection Information Form for Incidental Revenues*, PEC 03-02, requires the use of a Collection Information Form for each grant, license, permit, lease, etc., to properly identify the source and disposition of the revenues from land use activities.
- (11) Telecommunications Act of 1996, Public Law 104-194 (47 U.S.C. Section § 332 note).
- (12) GSA Bulletin FPMR D-242.