

Reclamation Manual

Directives and Standards

Subject:	Non-Hydro Renewable Energy (N-HRE) Projects on Bureau of Reclamation Lands, Facilities, and Waterbodies
Purpose:	Provides standard procedures for issuing land use authorization documents that allow non-Federal entities to use Reclamation lands for the siting of N-HRE facilities. The benefits of this Directive and Standard (D&S) are clarification of information associated with screening, processing, and administering use authorizations for N-HRE projects on Reclamation lands to support the N-HRE strategic objective in Reclamation's Sustainable Energy Strategy released November 14, 2013.
Authority:	A list of relevant authorities is included in Paragraph 6 of this D&S
Approving Official:	Senior Advisor, Hydropower
Contact:	Power Resources Office (86-51000)

1. **Introduction.** Reclamation has a long and successful history providing renewable, clean, reliable, and affordable hydropower to its customers. The Department of the Interior issued Secretarial Order 3285, *Renewable Energy Development by the Department of the Interior*, which identifies the production, development, and delivery of renewable energy as one of the Department's highest priorities. This is further illustrated in the Department's *Strategic Plan for Fiscal Years 2014–2018*, and *The Bureau of Reclamation's Sustainable Energy Strategy, Fiscal Years 2013-2017*. Reclamation will continue to improve and enhance its renewable hydropower capabilities, but will also support the development of other N-HRE resources, such as wind, solar, and geothermal. Several Federal statutes provide a legal framework for Reclamation's efforts to increase energy conservation and optimize generation of clean, renewable energy. Those acts include: the Energy Policy Act of 2005 (Pub. L. 109-58); the Energy Independence and Security Act of 2007 (EISA) (Pub. L. 110-140); and the Omnibus Public Land Management Act of 2009 (Pub. L. 111-11, Title IX Bureau of Reclamation Authorizations, Subtitle F – Secure Water). In addition to statutes, Federal administration directives influence program activities. These include the Presidential Executive Order (E.O.) 13693, *Planning for Federal Sustainability in the Next Decade*.
2. **Applicability.**
 - A. This D&S applies to all Reclamation employees that work on activities associated with the potential and actual development of N-HRE projects on Reclamation lands. This D&S applies to issuance of use authorizations such as easements, leases, and permits/licenses for N-HRE projects on or across lands, facilities, and waterbodies under the jurisdiction of Reclamation.
 - B. This D&S does not address use authorized through repayment or water service contracts, recreation management agreements, concession contracts, leases of power

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privileges, or licenses of power facilities by the Federal Energy Regulatory Commission that are covered elsewhere in the Reclamation Manual (RM).

3. Definitions.

- A. **Non-Hydro Renewable Energy (N-HRE).** Energy produced by wind, thermal, photovoltaic solar, geothermal, tidal, or other source or system that does not consume or produce hydrocarbons or radioactive substances, and excludes use of kinetic energy from the fall of water as used in hydro power facilities.
- B. **Other Terms.** All other terms used in this D&S are intended to be interpreted using their common meanings and as defined in regulations or RM parts referenced.

4. Responsibilities.

Responsibilities for proper administration of N-HRE on Reclamation lands will be shared by different levels of the organization as follows:

- A. **Senior Advisor, Hydropower.** The Senior Advisor, Hydropower is responsible for establishing N-HRE Policy, D&S, and guidance.
- B. **Regional Directors.** Regional directors or authorized officials as delegated pursuant to RM *Delegations of Authority*, are responsible for:
 - (1) implementing this D&S;
 - (2) overseeing and coordinating regional N-HRE activities;
 - (3) ensuring area offices conduct appropriate reviews and evaluations of N-HRE sites under their jurisdiction; and
 - (4) reviewing, approving, or denying all plans of development (POD) and use authorizations for use of Reclamation lands, facilities, and waterbodies for N-HRE projects.
- C. **Regional Realty Officers.** Regional realty officers are responsible for:
 - (1) providing technical guidance and oversight of use authorizations associated with N-HRE projects on Reclamation lands, facilities, and waterbodies, consistent with the provisions of 43 CFR Part 429 and the RM D&S, *Land Use Authorizations* (LND 08-01);
 - (2) serving as technical liaisons to area office staff, the regional directors, and others on the review, consideration, administration, and reporting of activities associated with the use of Reclamation lands, facilities, and waterbodies for N-HRE projects; and

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- (3) coordinating with regional power managers and authorized officials to provide a recommendation for approving or denying all PODs and use authorizations for N-HRE development.

D. Regional Power Managers. Regional power managers are responsible for:

- (1) reviewing the POD and advising the approving official, regional realty officers, and resource staff on the impact to Reclamation if the proposed N-HRE project is approved;
- (2) providing guidance and input on the compatibility with Reclamation project purposes, technical feasibility, and appropriate stipulations to ensure public health and safety as well as non-interference with project power and pumping operations; and
- (3) consulting with Power Marketing Administrations (PMA) to ensure proposed N-HRE projects do not negatively impact any PMA obligation.

E. Area Managers. Area managers are responsible for:

- (1) the day-to-day management activities associated with processing applications;
- (2) issuing use authorizations within the scope of their designated authority; and
- (3) monitoring N-HRE use of Reclamation lands, facilities, and waterbodies consistent with the provisions of 43 CFR Part 429, LND 08-01, and other applicable requirements.

5. **Process.** Non-Federal N-HRE development is an acceptable, discretionary use of Reclamation lands, facilities, and waterbodies provided it is compatible with authorized Reclamation project purposes, is in the best interests of the public, and is consistent with appropriate resource management and environmental considerations for the area. Reclamation reserves the right to refuse any use authorization which may be incompatible with the Federally-authorized purposes of Reclamation projects or interferes with Reclamation's rights or operations. Use authorizations are not assignable interests unless approved by Reclamation's authorized official. Use authorizations and associated fees are prescribed, in part, in 43 CFR Part 429 and LND 08-01.

A. Use Authorization Requirements for N-HRE Projects. Use authorization process requirements in addition to existing regulation requirements are as follows:

- (1) **POD.** A detailed POD shall be submitted with all N-HRE project applications; a conceptual plan will be rejected. The POD must be of sufficient detail to provide the information necessary to perform impact analysis on environmental, water operations, power generation and pumping operations, and transmission resources.

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- (2) **Ownership.** Ownership of the Reclamation lands authorized for use by non-Federal entities for N-HRE remains with the United States. Title to an installed N-HRE facility is held by the use authorization holder.
- (3) **Liability.** All liability for the construction, operation, maintenance, and decommissioning of the N-HRE project, including any losses or damages incurred by Reclamation resulting therefrom, will remain with use authorization holder.
- (4) **Bonding Requirements.** Reclamation's authorized official will ensure that all N-HRE projects proposed on Reclamation lands, facilities, and waterbodies provide evidence of sufficient bonding to protect the interests of the United States and ensure compliance with the terms of conditions of the use authorization. Paragraph 11.M. of LND 08-01 provides recommended bonding provision language.

B. **Discretionary Guidance.** Discretionary guidance regarding use authorizations for N-HRE projects can be found in Reclamation's publication: *Guidebook – Use Authorizations for Non-Hydro Renewable Energy on Reclamation Lands.*¹

6. 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, as amended or modified:
- (1) The Reclamation Act, June 17, 1902, as amended and supplemented (32 Stat. 388; 43 USC 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 USC 501).
 - (3) Sections 10 and 14 of the Reclamation Project Act of 1939, August 4, 1939 (53 Stat. 1196; 43 USC 387).
 - (4) Federal Water Project Recreation Act, July 9, 1965 (Pub. L. 89-72) as amended (79 Stat. 218; 16 USC 460l-12 to 460l-21).
 - (5) Reclamation Recreation Management Act of 1992, Title XXVIII, Sections 2801 to 2806, October 30, 1992 (Pub.L. 102-575; 106 Stat. 4692; 16 USC 460l-33).
 - (6) Mineral Materials Act of 1947, July 31, 1947 (Pub. L. 80-291; 61 Stat. 681; 30 USC 603).

¹Available at: https://www.usbr.gov/power/NHRE/Guidebook_NHRE_on_Rec_Lands.pdf

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- B. In addition to the aforementioned authorities, the following influence the application of Reclamation's use authorizations, and are provided for reference use; they are not represented to include all such documents that might influence or guide Reclamation's authorization to non-Federal entities for N-HRE:
- (1) Energy Policy Act, August 8, 2005 (Pub. L. 109-58; 42 USC 13201).
 - (2) Energy Independence and Security Act, December 19, 2007 (Pub. L. 110-140; 152 USC 17001).
 - (3) Omnibus Public Land Management Act, March 30, 2009 (Pub. L. 111-11; 123 USC 991).
 - (4) National Historic Preservation Act, October 15, 1966 (Pub. L. 89-665; 16 USC 470).
 - (5) Native American Graves Protection and Repatriation Act, November 16, 1990, (Pub. L. 101-601; 25 USC 3001).
 - (6) National Environmental Policy Act, January 1, 1969 (Pub. L. 91-190; 42 USC 4321).
 - (7) Endangered Species Act, December 28, 1973 (Pub. L. 93-205; 16 USC 1531).
 - (8) Comprehensive Environmental Response, Compensation, and Liability Act, December 11, 1980 (Pub. L. 96-510; 42 USC 9601).
 - (9) Use of Bureau of Reclamation Land, Facilities, and Waterbodies (43 CFR Part 429).
 - (10) E.O. 11200, February 25, 1965, 30 FR 2645, *Establishment of Recreation User Fees*.
 - (11) E.O. 13007, May 24, 1996, 61 FR 26771, *Indian Sacred Sites*.
 - (12) E.O. 13693, March 19, 2015, *Planning for Federal Sustainability in the Next Decade*.
 - (13) OMB Circular A-25, as amended July 8, 1993, *User Charges*.
 - (14) General Services Administration Bulletin FMR 2007-B2.
 - (15) Secretarial Order 3285, March 11, 2009, *Renewable Energy Development by the Department of the Interior*.
 - (16) Department Manual 346 DM, *Cost Recovery*.

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- (17) RM, *Delegations of Authority*.
- (18) RM D&S, *Charges for Use of Federal Assets* (PEC 01-01).
- (19) RM D&S, *Crediting of Incidental Revenues* (PEC 03-01).
- (20) RM D&S, *Use of the Collection Information Form for Incidental Revenues* (PEC 03- 02).
- (21) RM D&S, *Land Use Authorizations* (LND 08-01).
- (22) RM D&S, *Lease of Power Privilege (LOPP) Processes, Responsibilities, Timelines, and Charges* (FAC 04-08).

RECLAMATION MANUAL TRANSMITTAL SHEET

Effective Date: _____

Release No. _____

Ensure all employees needing this information are provided a copy of this release.

Reclamation Manual Release Number and Subject

Summary of Changes

NOTE: This Reclamation Manual release applies to all Reclamation employees. When an exclusive bargaining unit exists, changes to this release may be subject to the provisions of collective bargaining agreements.

Filing instructions

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Filed by: _____

Date: _____