

Reclamation Manual

Directives and Standards

Subject:	Concessions Management by Non-Federal Partners
Purpose:	Establishes minimum approval standards for all new, modified, or renewed concession contracts issued by non-Federal partners at the Bureau of Reclamation's recreation areas, for the benefit of ensuring successful visitor services opportunities on Reclamation lands and waterbodies.
Authority:	Reclamation Act of 1902 (43 U.S.C. 391 et seq.), as amended and supplemented; Reclamation Project Act of 1939 (43 U.S.C. 485 et seq.); Federal Water Project Recreation Act of 1965 (Pub. L. 89-72; 16 U.S.C. 460l, et seq.), as amended; Water Resources Development Act of 1974 (Pub. L. 93-251; 42 U.S.C. 1962); Reclamation Recreation Management Act of 1992 (Pub. L. 102-575, Title XXVIII); Occupancy of Cabin Sites on Public Conservation and Recreation Areas (43 CFR part 21); Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies (43 CFR part 423); Use of Bureau of Reclamation Land, Facilities, and Waterbodies (43 CFR part 429)
Approving Official:	Director, Policy and Administration (POLICY)
Contact:	Asset Management Division, 84-57000

1. **Introduction.** Reclamation Manual (RM) Policy, *Recreation Management*, LND P04, and RM Directives and Standards (D&S), *Recreation Program Management*, LND 01-03, provide mandatory provisions for a wide variety of recreation activities. Reclamation's water resource projects may include concession facilities and opportunities to provide visitor services to the public. Reclamation's authorized non-Federal managing partners may seek qualified concessionaires to manage facilities, lands, and waters at Reclamation projects in response to public demand for land and water-based recreation opportunities. Non-Federal managing partners are hereinafter also referred to as managing partners for the purpose of this D&S.
2. **Applicability.** This D&S applies to the planning, development, and management of concessions by managing partners on lands and waterbodies under the jurisdiction of Reclamation. RM Policy, *Recreation Program Management*, LND P04 and RM D&S, *Recreation Program Management*, LND 01-03, provide mandatory provisions for a wide variety of recreation activities. New concession contracts issued by managing partners must comply with these Policies and D&S's. Existing concession contracts issued by managing partners must, at the first opportunity, be brought into compliance with these Policies and D&S's. If a concession contract is amended or terminated because of contract default or for other reasons and a subsequent concession contract is issued by the managing partner, the subsequent concession contract must be in compliance with these D&S's.

Reclamation Manual

Directives and Standards

3. Definitions.

- A. **Concession.** A concession is a non-Federal commercial business that supports appropriate public recreation uses and provides facilities, goods, or services for which revenues are collected. A concession involves the use of the Federal estate and usually involves the development of real property improvements.
- B. **Federal Estate.** The Federal land and water areas under the primary jurisdiction of the Department of the Interior, Bureau of Reclamation.
- C. **Fixed Assets.** Fixed assets are any structures, fixtures, or capital improvements permanently attached to the Federal estate.
- D. **Improvement.** An addition to real property that increases its value or utility or that enhances its appearance.
- E. **Management Agreement.** A management agreement is a binding contract between Reclamation and a partner to provide public recreation opportunities and concession services on the Federal estate.
- F. **Non-Federal Partner.** A non-Federal partner is a non-Federal public entity that manages recreation and other resources through a contractual agreement with Reclamation.
- G. **Private Exclusive Recreational or Residential Use.** Any use that involves structures or other improvements used for recreational or residential purposes to the exclusion of public uses and are not associated with the official management of a Reclamation project. This includes those uses described in 43 CFR part 429 and the uses currently defined in 43 CFR part 21. Examples of private exclusive recreational and residential use include, but are not limited to, boat docks, piers, moorings, cabin sites, residences, trailers, manufactured or mobile homes, structures, roads, and sites for such activities as hunting, fishing, camping, and picnicking that attempt to exclude general public access.
- H. **Total Benefits to the Government.** Total benefits include:
- (1) **Direct Returns.** These are fees generated by authorized concession contracts and paid directly to the managing entity or to the United States Treasury.
 - (2) **Direct Benefits.** These are fees paid into a contractually designated special account for resource and capital improvements that directly benefit the public in the area of operations where the fees are collected.
 - (3) **Indirect Benefits.** These are services performed by the concessionaire that benefit the public or improvements made to the Federal estate by the concessionaire.

Reclamation Manual

Directives and Standards

4. **Responsibilities.** As stated in RM Policy, *Concessions Management Program*, LND P02, Reclamation shall ensure that partner managed concessions activities do not conflict with authorized project purposes. Reclamation is responsible for ensuring that personnel involved in concessions management have completed training commensurate with their concessions management responsibilities. Following are responsibilities for administration of the partner managed concessions program:
- A. **Commissioner.** Responsible for ensuring that Reclamation's partner managed concession program is in compliance with LND P02, this D&S, and all applicable Federal, laws, regulations, accessibility design standards, and Departmental policy.
 - B. **Reclamation Leadership Team.** Provides support by ensuring that appropriate staff and funding are available to fully implement Reclamation's partner managed concessions program.
 - C. **POLICY.** Responsible for administering Reclamation's partner managed concessions program; providing interagency and intra-agency coordination; establishing and updating the partner managed concessions policy, D&S, and guidance; reviewing draft concession contracts and draft Requests for Proposals (RFPs), as requested by the Regional Directors; participating in field reviews and evaluations, as requested; and coordinating or otherwise providing necessary concessions management training opportunities for Reclamation offices. POLICY shall evaluate and approve regional office deviation requests related to this D&S. See RM D&S, *Request for Deviation from a Reclamation Manual Requirement and Approval or Disapproval of the Request*, RCD 03-03.
 - D. **Area Managers.** Responsible for the review of draft, partner managed concession contracts. Area managers, or their designees, shall submit the draft concession contracts to the Regional Director for review and concurrence no later than 90 days prior to the scheduled execution.
 - E. **Regional Directors.** Responsible for implementing this D&S, review, and concurrence of partner managed concession contracts to ensure that the interests of the United States are protected. Partner managed contracts may be submitted for POLICY review and comment at the discretion of the Regional Director.
 - F. **Non-Federal Partners.** Reclamation may transfer to non-Federal partners the responsibility to develop and manage public recreation areas and concession services. Transferred areas are managed by a partner under Federal authorities, the partner's authorities, specific contracts, and agreements with Reclamation. Well-planned and managed concessions on the Federal estate are of mutual interest to Reclamation and its partners. Reclamation is responsible for continuous management oversight of managing partners and their concessions operations.

Reclamation Manual

Directives and Standards

5. Managing Partner Agreements.

- A. **Third-Party Concession Agreements.** Third-party concession agreements are agreements between the managing partner and another entity to provide concession related services and facilities.
- (1) **Agreement Standards.** Any concession contract, including a contract renewal or modification, issued by the managing partner must meet the requirements of the Concessions Management D&S.
 - (2) **Contract Approval.** Before issuing or renewing a non-Federal concession contract, the contract must be approved by Reclamation.
 - (3) **Stand In Stead Conditions.** All concession contracts must state that Reclamation will not stand instead for the managing partner should the management agreement expires or be terminated. At Reclamation's discretion, Reclamation may issue a new concession contract that is in compliance with RM, *Concessions Management by Reclamation*, LND 04-01. .
- B. **Review and Evaluation.** All management agreements will require Reclamation to conduct annual concession operation reviews and evaluations. Reclamation may also conduct unplanned reviews, as necessary. If a review identifies operational or administrative deficiencies in the operation of a concession, a timetable must be established by the area office to correct these deficiencies.
- C. **Exclusive Use.** Reclamation prohibits any use that would result in new private exclusive recreational or residential use of Reclamation land, facilities, or waterbodies pursuant to 43 CFR 429.31(b). Private exclusive use that is within the terms and conditions of an existing use authorization, as specified in 43 CFR 429.32, is not considered new private exclusive use. Existing private exclusive use will be administered pursuant to 43 CFR part 429 and 43 CFR part 21, as applicable.
- D. **Disposition of Fees.** Unless State or local laws direct how concession fees paid to the partner will be used, the following will apply: (1) fees will be returned to the area to provide for operation, maintenance, and replacement of recreation facilities and new facility development; (2) any excess fees (profit) will be returned to Reclamation and disposed of according to RM, *Crediting of Incidental Revenues*, PEC 03-01.
- E. **Statistical Data.** Each year, the managing partner will be required to provide Reclamation with the information specified in Reclamation's Recreation Use Data Report. Other information may be required, as necessary. This information will provide an accurate inventory of facilities. The report will also contain other data about the managing partner's recreation and concession operations on the Federal estate.

Reclamation Manual

Directives and Standards

6. **Concessions Planning.** Concession development will adhere to the concessions principles listed in RM, *Concessions Management* (LND P02), will be based on appropriate plans developed by the partner or Reclamation, and will be approved by the Regional Director or delegate. Reclamation can provide direction and assistance in the process, as necessary, to accomplish effective commercial services planning.
7. **Concessions Contracting.** The following items will be addressed in all new and renewed concessions contracts issued by managing partners.
 - A. **Sale and Transfer.** The sale and transfer of existing concessions must be approved according to the management agreement and reported to Reclamation in a timely manner.
 - B. **Contract Language.** The partner will develop and use contract language that complies with all applicable Federal laws, rules, regulations, and Executive Orders. Reclamation can provide examples of standard contract structure and language.
 - C. **Minimum Wage Contract Clause.** All concessions contracts issued, modified, or amended after January 1, 2015 must include the Minimum Wage Contract Clause specified in Appendix A of this D&S, pursuant to Executive Order 13658, *Establishing Minimum Wage for Contractors*.¹
 - D. **Length of Term.** The term for a concession may not exceed the term of the management agreement between Reclamation and the partner. In general, terms should be as short as possible and based on the new investment required as determined by a financial feasibility evaluation.
 - E. **Subconcessions.** All subconcessions must meet the terms and conditions of the prime concession contract. The partner must approve all subconcessions and notify Reclamation in advance of any authorization that needs Reclamation approval. Generally, subconcessions are discouraged in order to keep operations under single management.
 - F. **Concessions Building and Improvement Program.** All designs and construction must comply with applicable Federal, State, and local environmental and historic preservation laws and regulations and building code requirements. In areas where no State or local construction standards exist, Reclamation may provide appropriate standards. Where required and before construction, building permits must be obtained from local authorities by the concessionaire. All facilities will be harmonious in form, line, color, and texture with the surrounding landscape.

¹Contact POLICY's Asset Management Division for guidance related to Executive Order 13658.

Reclamation Manual

Directives and Standards

- G. Operation and Maintenance Plan.** Concessionaires will prepare an annual operation and maintenance plan, which must be approved by the partner. The concession contract must clearly state what the plan will contain. Reclamation can provide examples of such plans for the partner and the concessionaire.
- H. Reimbursement for Fixed Assets.**
- (1) A right to reimbursement may exist when a concessionaire places Reclamation-approved fixed assets on the Federal estate. Title to fixed assets must be established in the concession contract. Reimbursement of a concessionaire for fixed assets is the responsibility of the partner. The method for determining the amount of reimbursement and the method of payment will be specifically addressed in the concession contract between the partner and the concessionaire.
 - (2) In the event the partner's agreement with Reclamation expires or is terminated without a commitment by both Reclamation and the partner to enter into another agreement, all the concessionaires' fixed assets and personal property must be removed from the Federal estate unless Reclamation decides to issue a new concessions contract and retain the fixed assets. [See paragraph 4A(3).] The partner will be responsible for ensuring that the concession area is returned in a condition satisfactory to Reclamation.
 - (3) It must be clearly stated that no financial obligation or risk will reside in the Federal Government for reimbursement for fixed assets or personal property as a result of the partner awarding a concession contract. All new concession contracts issued by the partner will address rights for reimbursement to the concessionaire for fixed assets. Interests in a concessionaire's fixed assets may not extend beyond the term of the management agreement. In addition, the concession contract must provide appropriate language regarding interests in fixed assets and methods of reimbursement, if any, to the concessionaire by the partner.
- I. Area of Operation.** Each concession contract will authorize and define only the physical area necessary to conduct the business activities allowed by the contract. Concession boundaries must be surveyed by the partner and easily recognizable by the visiting public.
- J. Additional Facilities or Services.** Any proposal for expansion of facilities or services must be reviewed by Reclamation and approved by the partner before the expansion takes place.
- K. Exclusive Use.** Reclamation prohibits any use that would result in new private exclusive recreational or residential use of Reclamation land, facilities, or waterbodies pursuant to 43 CFR 429.31(b). Private exclusive use that is within the terms and conditions of an existing use authorization, as specified in 43 CFR 429.32, is not

Reclamation Manual

Directives and Standards

considered new private exclusive use. Existing private exclusive use will be administered pursuant to 43 CFR part 429 and 43 CFR part 21, as applicable.

- L. **Reclamation Rights.** All concession contracts must be subject to the rights of Reclamation and its agents to use the subject lands and waters for project purposes.
- M. **Termination of Concession Contract.** Concession contracts will acknowledge the right of Reclamation to terminate, for cause, any concession contract authorized by a managing partner.
- N. **Total Benefits.** The partner will establish and recover fair benefits, including direct return and direct and indirect benefits, for the uses, rights, and privileges granted by a concession contract. For disposition of fees, see paragraph 4D.
- O. **Rates and Merchandise.** Rates charged by concessionaires for services, food, lodging, and merchandise will be based on charges for comparable facilities, services, and merchandise provided by the private sector in similar situations. The partner must approve the rates requested by concessionaires.
- P. **Concessions Safety Program.** Concessionaires are responsible for providing and ensuring a safe and healthful environment for both the visiting public and employees by developing, implementing, and administering health, safety, and educational programs to ensure that concession areas are managed in compliance with Federal, State, and local laws, rules, and regulations.
- Q. **Environmental Compliance.** Concession contracts will address all activities with potential environmental impacts resulting from the release of hazardous materials to the environment including, but not limited to, the following: pesticides, herbicides, sewage effluents, petroleum products, and liquid waste (gray water). Concessionaires are required to follow all applicable Federal, State, and local laws, rules, and regulations related to hazardous substance use, storage, and disposal. Application for and acquisition of all required certifications and permits are the responsibility of the concessionaire.
- R. **Food Sanitation.** Concessionaires' food services will comply with Federal, State, and local food handling and sanitation regulations.
- S. **Advertising and Signs.** The Reclamation logo or name, along with the managing partner logo or name, will be displayed at all concession entrances used by the public. Outdoor signs or other forms of advertising on the Federal estate must be approved by Reclamation before they are displayed.

Reclamation Manual

Directives and Standards

- T. **Sale of Personal Property.** The sale of personal property other than the approved concessions inventory is prohibited on the Federal estate. No party will be permitted to sell personal property, including vehicles, manufactured or mobile homes, house trailers, travel trailers, boats, or personal water craft, on the Federal estate.
- U. **Utility Services Provided by Reclamation.** The fee charged for utility services provided by Reclamation will be based on the recovery of full operating and replacement costs for utility capital investments and comparable utility rates. Utility services include, but are not limited to, electricity, power, water, waste disposal, gas, and communication systems.
- V. **Insurance Program.** Concessionaires must have and maintain an appropriate insurance policy that will indemnify the United States and meet applicable State requirements. All liability policies will provide that the insurance company will have no right of subrogation against the United States and must provide that the United States is named as an additional insured. The partner may establish similar requirements itself, but it must provide Reclamation with a copy of the insurance certificate that identifies the above conditions.
- W. **System of Recordkeeping.** Financial reports and records necessary for management and oversight of concessions must be maintained and available to the partner and to Reclamation upon request. At a minimum, each concessionaire will complete Reclamation's Annual Financial Report form(s).
7. **Concessions Administration.**
- A. **Annual Review and Evaluation.** All concession agreements issued by the managing partner will require Reclamation and the partner to conduct annual concession reviews and evaluations. The review should identify problems, solutions, and a timetable for resolving the problems in a written report. The managing partner must ensure that any operational or administrative deficiencies noted by the review are corrected in accordance with the established timetable.
- B. **Nonprofit Organizations.** In certain circumstances, it may be suitable for cooperative associations or nonprofit organizations to sell goods or provide visitor services to meet the goals and objectives of both Reclamation and the partner. These associations and organizations must be approved by the partner if the cooperating association operates within a concession or elsewhere on the Federal estate. The cooperating association will be responsible for maintaining its accounting system, and the system cannot be combined with a concessionaire's annual financial report. Nonprofit organizations will also be given very clear instructions identifying the type of business they are authorized to conduct and the types of goods and services they may provide. All organizations must provide written proof of their nonprofit status to Reclamation and the partner.

Reclamation Manual

Directives and Standards

- C. **Employment of Reclamation Personnel or Family Members².** Reclamation employees or family members may not be owners, partners, board members, corporate officers, general managers, or employees of any business providing commercial services on the Federal estate, nor may they have any financial interest in such a company. Ownership of stock shares traded in a recognized open market is not considered a financial interest under these D&S. Reclamation employees are further prohibited from using their public office for private or family gain. A Reclamation employee involved in preparing specifications, awarding a contract, or administering a concession may not be involved in that activity if the employee or a family member is involved in any phase or operation of that concession. Any Reclamation employee or family member responsible for any phase of a concession contract will be excused from duties related to the concession contract if the employee or a family member is involved in competing for the contract or if the Reclamation employee may benefit financially from the awarding of the contract.

²Guidance on this issue should be obtained from an ethics counselor in the servicing Reclamation Personnel/Human Resources Office.

RECLAMATION MANUAL TRANSMITTAL SHEET

Effective Date: _____

Release No. _____

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

Reclamation Manual Release Number and Subject

Summary of Changes

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

Filing instructions

Remove Sheets

Insert Sheets

All Reclamation Manual releases are available at <http://www.usbr.gov/recman/>

Filed by: _____

Date: _____