

# Reclamation Manual

Directives and Standards

## **TEMPORARY RELEASE**

(Expires 09/30/2017)

<b>Subject:</b>	Review of Certain Land Use Authorizations
<b>Purpose:</b>	Provides standard procedures to address private exclusive uses associated with provisions of existing use authorization documents. The benefit of this Temporary Reclamation Manual Release (TRMR) Directive and Standard (D&S) is to establish a minimum set of consistent Bureau of Reclamation procedures to ensure the requirements of Subpart H of 43 Code of Federal Regulations (CFR) part 429 are met.
<b>Authority:</b>	Reclamation Act of 1902 (ch. 1093, 32 Stat. 388; 43 USC 391 et seq.) as amended and supplemented; Reclamation Project Act of 1939 (ch. 418, 53 Stat. 1187; 43 USC 485 et seq.); Federal Water Project Recreation Act of 1965 (Pub. L. 89-72; 79 Stat. 213, 214; 16 USC 460l et seq.), as amended; Reclamation Recreation Management Act of 1992 (Pub. L. 102-575, Title XXVIII; 106 Stat. 4690; 16 USC 460l-31-460l-34), as amended; Law Enforcement Authority at Bureau of Reclamation Facilities, 2001 (Pub. L. 107-69; 115 Stat. 593; 43 USC 373b); 43 CFR part 21, <i>Occupancy of Cabin Sites on Public Conservation and Recreation Areas</i> ; 43 CFR part 423, <i>Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies</i> ; 43 CFR part 429, <i>Use of Bureau of Reclamation Land, Facilities, and Waterbodies</i> ; and Reclamation project specific authorities
<b>Approving Official:</b>	Director, Policy and Administration (POLICY)
<b>Contact:</b>	Asset Management Division, 84-57000

1. **Introduction.** Reclamation Manual (RM) D&S, *Land Use Authorizations* (LND 08-01), applies to the 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. The intent of this TRMR D&S is to establish and incorporate procedures to address private exclusive uses in a manner consistent with the exclusive use provisions of 43 CFR part 429. This includes exclusive use identification, compatibility determinations, and associated reporting to adequately document compliance reviews and findings.
2. **Applicability.** This TRMR D&S applies to Reclamation staff with responsibility for review of private exclusive use activities associated with land use authorizations on lands or interests in lands and waterbodies under the jurisdiction of Reclamation.

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#### 3. Definitions.

- A. **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.
- B. **Use Authorization.** A document that defines the terms and conditions under which Reclamation will allow the use of its lands, facilities, and waterbodies. Use authorizations can take the form of easements, leases, licenses, permits, and consent documents.

#### 4. Responsibilities. All Reclamation offices will ensure that use authorizations and related activities do not conflict with the primary purpose(s) of the authorized Reclamation project. Following are specific responsibilities:

- A. **Director, POLICY.** POLICY is responsible for administering the lands program; providing interagency and intra-agency coordination; establishing lands Policy, D&S, and guidance; participating in private exclusive use reviews and evaluations, as requested; and coordinating or providing related training opportunities.
- B. **Regional Directors.** Regional directors are responsible for implementing this D&S, oversight and coordination of the regional lands program, and ensuring that area offices conduct appropriate reviews and evaluations of private exclusive authorizations under their jurisdiction.
- C. **Area Managers.** Area managers are responsible for administering the lands program within their jurisdiction. Area managers will be responsible for conducting reviews and evaluations of private exclusive use authorizations within the jurisdiction of the area office.

#### 5. Private 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.

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6. **Existing Private Exclusive Use Compatibility Determinations and Inspection Standards.** A review of whether existing private exclusive use and related improvements are compatible with public needs and authorized project purposes, project operations, safety, and security are required at least once every 20 years, except where 43 CFR part 21 requires a more frequent review. At a minimum, the responsible regional or area office shall utilize the following criteria to determine whether lands are needed for authorized project purposes, including operation and maintenance (O&M) or other public needs, and if the private exclusive use is creating any public safety or security issues.
- A. **Authorized Project Purposes.** Determine if the subject land is needed for project purposes including an existing or proposed water-related development project or delivery system that has been identified in project planning documents, project construction, O&M plans, or associated O&M transfer agreements.
- B. **Public Needs.** Determine if public recreation demand exceeds the carrying capacity of existing recreation facilities as identified in an appropriate recreation planning process, including but not limited to, a recreation resource management plan (RMP), commercial services plan, Water and Land Recreation Opportunity Spectrum, and recreation capacity/demand documents that evaluate proposed recreation facilities, opportunities, and programs in consideration of water resource needs and project purposes.
- (1) Pursuant to Paragraph 39 of RM D&S, *Recreation Management Program* (LND 01-03), Reclamation offices are required to conduct an appropriate level of public involvement and outreach during the RMP or related planning processes to ensure the public is allotted sufficient opportunity to be involved in the planning and decision-making. This is in addition to the requirement included in 43 CFR 429.32(a)(2) to notify in writing all potentially affected holders of existing use authorizations for private exclusive use of the opportunities for public participation.
  - (2) If private or semi-private use is inhibiting expansion of existing public recreational use to meet increasing recreation demand identified in current planning documents (e.g., RMPs, Statewide Comprehensive Outdoor Recreation Plans, etc.), identify the need for additional activities or facilities.
  - (3) If adjacent public use facilities are in need of expansion to accommodate planned or proposed public uses, the responsible Reclamation office will seek input and involvement of all parties who are interested in the assessment of recreation resource needs and the development of recreation programs.

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- C. **Public Safety.** Reclamation and its partners are responsible for appropriate measures to protect the health and safety of the public, and identify and provide reasonable safeguards against known hazards. The authorized official shall establish safety procedures to address 43 CFR part 423 and the related RM D&S, specifically *Occupational Safety and Health Directive – General* (SAF 01-01).
- D. **Security.** Reclamation’s security program is administered pursuant to 43 CFR part 423. Enforcement of state and local laws are the responsibility of Reclamation or a managing partner, if one exists, and is generally addressed in any long-term management agreements. In addition, Reclamation can close an area for security reasons or limit specific activities by designating an area as a special use area with restrictions pursuant to 43 CFR part 423.
7. **Compatibility Documentation.** The responsible area or regional office will prepare a report on its findings concerning the compatibility of the authorized private exclusive use with project purposes and public needs. In that report, findings associated with whether the private exclusive use is creating any public safety or security issues will also be addressed.
- A. This report will be in addition to the requirements included in 43 CFR 429.32(a)(3) addressing notification via the Federal Register of determinations that the existing private exclusive use is not compatible with public needs, and the report will be prepared before any such notice is issued.
- B. Copies of the report will be provided to the regional office, if applicable, and POLICY for review and comment. A minimum of 30 calendar days will be provided for such review before the report is made available to the public and any Federal Register notice is issued.
8. **Compliance Reviews.** Following is a minimum set of inspection standards for compliance reviews required by 43 CFR part 429. Reclamation is required to review all private exclusive use on Reclamation lands at least every 5 years to ensure compliance with certain established criteria pursuant to 43 CFR 429.32.
- A. **General.** Reviews and evaluations of recreation areas must be comprised of local and/or external review teams comprised of technical specialists that are qualified to assess the conditions and issues associated with the exclusive use facilities. Technical specialists will include, as appropriate with regard to the private exclusive use to be reviewed, electrical and civil engineers, accessibility coordinators, water quality specialists, and health, safety, sanitation, and food service professionals, as well as specialists that have life safety code credentials. Inspections shall be conducted in accordance with the applicable Federal, state, and local laws and regulations.

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- B. **Environmental Requirements.** Inspections are required to check for compliance with all applicable Federal, state, and local laws and regulations pertaining to potential environmental hazards, including, but not limited to, fuel storage, hazardous materials/proper storage, sewage disposal systems, etc. Reclamation will obtain and retain on file, reference copies of all inspection reports prepared by regulatory agencies.
- C. **Public Health and Safety (H&S) Requirements.** Public H&S codes are administered by the United States Public Health Service (USPHS), and the Occupational Safety and Health Administration. USPHS or local H&S agencies are also available to assist and accompany Reclamation staff on H&S inspections. H&S inspections shall include, but are not limited to, compliance with water supply/operation, electrical codes, fire codes/protection, smoke detection systems, fire extinguishers, combustible/flammable liquid storage, etc. These items shall also be inspected for compliance with established safety and occupational health regulations and the applicable local, state, and national codes.
- D. **Current Financial Obligations to Reclamation.** Reclamation shall review the appropriate accounting records and reports maintained by Reclamation's regional finance offices to ensure current payment of the required fees, as specified in the applicable use authorization.
9. **Compliance Inspection Documentation.**
- A. In addition to providing a written report documenting the results of the compliance review documentation to the holder of the use authorization as specified in 43 CFR 429.32(c), that written report will be maintained by the responsible area or regional office as per established records retention requirements (see RM D&S, *Information Management* (RCD 01-01)). In addition, copies of the written report will be provided to the regional office, if applicable, and POLICY.
- B. If deficiencies are identified during a compliance review, a follow-up report addressing actions taken will be prepared within 30 calendar days after the deadline that was established in the original written report to address those deficiencies. Copies of such follow-up reports will be provided to all Reclamation offices that were provided the original written report on the compliance review, and maintained by the originating Reclamation office as per established records retention requirements.

## 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: \_\_\_\_\_