

**DEPARTMENT OF THE INTERIOR****Bureau of Reclamation****43 CFR Part 429**

RIN 1006-AA51

**Use of Bureau of Reclamation Land, Facilities, and Waterbodies****AGENCY:** Bureau of Reclamation, Interior.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Reclamation (Reclamation) proposes a rule on the use of Reclamation land, facilities, and waterbodies. When finalized, the proposed rule will supersede the current rule which was originally published in 1983 and partially revised in April 2006.

**DATES:** Submit comments by October 16, 2007.

**ADDRESSES:** You may submit comments, identified by the number 1006-AA51, by any of the following methods:

—*Use the Federal rulemaking Web site:* <http://www.regulations.gov> and follow the instructions for submitting comments; or

—*By e-mail:*

*LandUseRuleComments@do.usbr.gov.* Please include the number 1006-AA51 in the subject line of the e-mail. If you do not receive a confirmation that we have received your e-mail, contact Mr. Richard Rizzi directly at (303) 445-2900;

—*By mail to:* Bureau of Reclamation, Denver Federal Center, P.O. Box 25007, Denver, CO 80225-0007, Attention: Richard Rizzi, Mail Code: 84-53000.

**FOR FURTHER INFORMATION CONTACT:** Richard Rizzi, Mail Code: 84-53000; Bureau of Reclamation; P.O. Box 25007; Denver, CO 80225. Telephone: (303) 445-2900.

**SUPPLEMENTARY INFORMATION:****I. Background**

The rule, 43 CFR part 429, titled Procedure to Process and Recover the Value of Rights-of-Use and Administrative Costs Incurred In Permitting Such Use (current rule), established the procedures to recover administrative costs associated with processing “rights-of-use” applications and the value of rights-of-use granted by Reclamation to applicants for the use of Reclamation land. Sections of the current rule were modified, in part, in 2006 to correlate with 43 CFR part 423, titled Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies.

This proposed rule addresses activities involving the possession or occupancy of any portion of, and the extraction or disturbance of any natural resources from, Reclamation land, facilities, and waterbodies. Regulations addressing public access to Reclamation property and occasional public activities such as hiking, camping, boating, and hunting, and closures are contained in part 423.

The demand for use of Reclamation land, facilities, and waterbodies for many different kinds of activities has increased dramatically since Reclamation began building Federal water supply, flood control, and hydropower projects over 100 years ago. With increased and varied uses has come confusion among the potential users of our land, facilities, and waterbodies about the process of applying for the various types of uses, the charges and fees associated with such uses, and other concerns. The current rule does not adequately address this confusion nor does it address prohibited and unauthorized uses of Reclamation’s land, facilities, and waterbodies and associated penalties.

The Independent Offices Appropriation Act (IOAA) (31 U.S.C. 9701), September 13, 1982, as amended, sets forth Congress’ intent that any use, permit, or similar thing of value provided by an agency is to be self-sustaining and that agencies may prescribe rules establishing charges for such uses. The 1993 revision of the Office of Management and Budget (OMB) Circular A-25 established Federal policy requiring administrative costs be recovered for Government services and fees for the use or sale of Government goods or resources also be charged. OMB Circular A-25 provides information on the scope and types of activities subject to use fees and the basis on which these fees are established. It also provides guidance for agencies in implementing such fees and charges. The use of Reclamation land, facilities, or waterbodies is a use of Government resources, and as such, the IOAA and OMB Circular A-25 require Reclamation to recover the costs and fees associated with the use of these resources.

Section 10 (43 U.S.C. 373) of the Reclamation Act of June 17, 1902, provides the Secretary of the Interior (Secretary) with the authority to issue rules as necessary for the purposes of carrying out the provisions of the Act. Section 10 (43 U.S.C. 387) of the Reclamation Project Act of 1939 provides the Secretary the authority, in his discretion, to grant leases, licenses, easements, and rights-of-way. These two

Acts provide Reclamation with the general statutory authority to issue rules on authorizing or prohibiting uses of Reclamation land, facilities, and waterbodies.

The rule addresses:

(a) The possession or occupancy of any portion of or the extraction or disturbance of any natural resource from Reclamation land, facilities, and waterbodies;

(b) The procedures to follow when the proposed use involves a Reclamation easement;

(c) The procedures to apply for use of Reclamation land, facilities, and waterbodies;

(d) The criteria Reclamation will use to evaluate applications;

(e) Our statutory requirements and basis for charging application fees, recovering administrative costs, and collecting use fees associated with authorized uses;

(f) Conditions under which application fees, administrative costs, or use fees may be waived or reduced if determined appropriate by Reclamation;

(g) Prohibited uses of Reclamation land, facilities, and waterbodies and how we will resolve unauthorized uses;

(h) The required contractual terms and conditions associated with use authorization contracts; and

(i) The decisions and appeals process applicable to actions taken under this part.

**II. Revision of Existing Rules**

On December 20, 1983, Reclamation published 43 CFR part 429 titled Procedure to Process and Recover the Value of Rights-of-Use and Administrative Costs Incurred in Permitting Such Use in the **Federal Register** at 48 FR 56223. Sections of this rule were revised on April 17, 2006, in the **Federal Register** at 71 FR 19802 to better correlate with 43 CFR part 423. The sections that were revised or added were: § 429.1 Purpose, § 429.2 Definitions, § 429.3 Establishment of the value of rights-of-use; § 429.6 Applications for rights-of-use, § 429.12 Applicability, and § 429.13 General Restrictions.

When the public comment period closes on this rule and Reclamation considers comments and incorporates them, where appropriate, the final rule will be published in the **Federal Register**. That final rule, titled Use of Bureau of Reclamation Land, Facilities, and Waterbodies, will supersede the 1983 version and its 2006 modifications in their entirety.

**III. Distribution Table**

The following table indicates each section of the original 1983 rule, as

modified in 2006, and where each was incorporated into or was removed from the rule:

Old section	New section
429.1 .....	429.1.
429.2(a)–(n) .....	429.2.
429.3(a) .....	429.23.
429.3(b) .....	429.33(a) and (c).
429.3(c) .....	429.33(a) and (b).
429.4 .....	429.26.
429.5 .....	Removed.
429.6 .....	429.7(b); 429.12; and 429.14.
429.6(a) .....	429.10.
429.6(a)(1)–(3) ..	Removed. Now contained in Application Forms.
429.6(b) .....	429.16; 429.20–429.22; and 429.26.
429.6(c)(1)–(4) ...	429.26.
429.6(d)(1)–(4) ..	429.13(a) and (b).
429.6(e) .....	429.19; 429.22.
429.6(f) .....	429.23–429.25.
429.6(g) .....	Removed. See Preamble.
429.7(a) .....	429.27–429.30.
429.7(b) .....	429.6.
429.7(c) .....	Removed.
429.7(d) .....	429.28(a)(3).
429.7(e) .....	429.28(a)(1).
429.7(f) .....	Removed.
429.8 .....	429.28(a)(2), (3), and (4).
429.9(a) .....	429.28(a)(1).
429.9(b) .....	429.28(b).
429.10(a) .....	429.34(a) and (b); 429.35(a), (b), and (c).
429.10(b) .....	429.36(a) and (b).
429.11 .....	Removed.
429.12 (a) .....	429.1; 429.3–429.6.
429.12(b) .....	429.4(a).
429.12(c) .....	429.26.
429.12(d) .....	429.4(g).
429.12(e) .....	Removed.
429.13 .....	429.1; 429.3.

#### IV. Procedural Requirements

##### 1. Regulatory Planning and Review (Executive Order (E.O.) 12866)

OMB has determined that this rule is not a significant rule and has not reviewed this rule under the requirements of E.O. 12866. Reclamation has evaluated the impacts of this rule as required by E.O. 12866 and has determined that it is not a significant regulatory action. The results of our evaluation are below:

(a) This rule will not have an effect of \$100 million or more on the economy. It would not adversely affect in any material way the economy, productivity, competition, jobs, environment, public health or safety, or State, local, and tribal governments or communities. Although the current rule covered only Reclamation lands, this rule is expanded to explicitly incorporate uses of Reclamation facilities and waterbodies. This expansion, however, does not adversely affect, in any material way, the aforementioned sectors or governments. Further, the

current rule requires collecting an initial deposit fee of \$200, the recovery of additional administrative costs in excess of the initial deposit fee, and a fee for the use of Reclamation land. This rule reduces the initial deposit fee from \$200 (all but \$50 refundable under specific circumstances in the current rule) to a nonrefundable \$100 fee (referred to now as the “application fee” in the rule). The rule does not change the requirement for full cost recovery of additional administrative costs in excess of the \$100 nonrefundable application fee or the requirement to collect the fee for use of Reclamation land, facilities, and waterbodies. Like the current rule, this rule provides for waivers or reductions of costs and fees under unique circumstances as determined to be appropriate by Reclamation or currently listed in OMB Circular A–25.

(b) This rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule requires the use of the Standard Form (SF) 299, Application for Transportation and Utility Systems and Facilities on Federal Lands, under E.O. 13327. The purpose of E.O. 13327 is to improve broadband deployment across Federal land. This rule also requires the use of Form 7–2540, Bureau of Reclamation Right-of-Use Application Form, for all other requested uses.

(c) This rule does not alter the budgetary effects of entitlements, grants, user fees, concessions, loan programs, water contracts, management agreements, or the rights and obligations of their recipients.

(d) This rule does not raise any novel legal or policy issues. The recovery of administrative fees and charging of application and use fees are required by the IOAA, OMB Circular A–25, and the current rule.

##### 2. Regulatory Flexibility Act

The Department of the Interior (Interior) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule. A small business’s wish to apply to use Reclamation land, facilities, or waterbodies is strictly voluntary. One of the purposes of this rule is to provide small business applicants and others with the requirements they must follow when applying for such a use. An Initial Regulatory Flexibility Analysis is not required and, accordingly, a Small

Entity Compliance Guide is not required.

##### 3. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule:

(a) Does not have an annual effect on the economy of \$100 million or more. There are no major changes in the costs or fees charged to applicants.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local, or tribal government agencies, or geographic regions. It is anticipated that this rule will not result in significant increases in administrative costs or use fees for any one applicant, but it will clarify for the public the basis for determining such costs and fees.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. The cost to the private sector requesting use of Reclamation land, facilities, or waterbodies is a small fraction of a percent of an individual entity’s total cost of doing business. Under this rule, such requests are made on a voluntary basis.

##### 4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate or a requirement to expend monies on the part of State, local, or tribal governments or communities, or the private sector of \$100 million or more annually. This rule does not have a significant or unique effect on State, local, or tribal governments or communities, or the private sector. Requests from any of these entities to use Reclamation land, facilities, and waterbodies are strictly voluntary. If a requested use is authorized by Reclamation, the recovery of administrative costs and the payment of use fees associated with such use are required by law, OMB Circular, and regulation. There are provisions to allow a reduction or waiver of such costs and fees, at Reclamation’s discretion, when specific criteria are met. Reclamation is not imposing a duty, requirement, or mandate on State, local, or tribal governments or communities, or the private sector to request such uses. Thus, a statement containing information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

#### 5. Takings (E.O. 12630 and E.O. 13406)

Under the criteria in E.O. 12630 and E.O. 13406, this rule does not have any implications of takings of property rights. This rule sets forth the requirements for applying to use Reclamation land, facilities, and waterbodies. It also clarifies the basis for charging application and use fees, and for the recovery of administrative costs under the requirements of the IOAA and OMB Circular A-25. A Takings Implication Assessment is not required.

#### 6. Federalism (E.O. 13132)

Under the criteria in E.O. 13132, the rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The rule is not associated with, nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. A Federalism Assessment is not required.

#### 7. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Does not unduly burden the judicial system;

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

#### 8. Consultation With Indian Tribes (E.O. 13175)

Under the criteria of E.O. 13175, Reclamation has evaluated this rule and determined that it would have no substantial effects on federally recognized Indian Tribes. This rule does not apply to land under the sovereign ownership of federally recognized Indian Tribes.

#### 9. Paperwork Reduction Act

This rule does require information collection from 10 or more applicants and a submission under the Paperwork Reduction Act (PRA) is required. However, the information collection requirements associated with this rule have been previously submitted to OMB for review and have received approval under the requirements of the PRA. The SF 299, Application for Transportation and Utility Systems and Facilities on Federal Lands (used for access across our land, facilities, and waterbodies),

was authorized by OMB No. 1004-0189, expiring on November 30, 2008. OMB also has approved the information collection in this rule (using the Bureau of Reclamation Right-of-Use Application Form 7-2540) and has assigned approval number 1006-0003, expiring on March 31, 2009. We estimate the burden associated with this latter information collection to be 2 hours per application. Reclamation uses the information provided by applicants to determine the nature of the requested use and whether the requested use of our land, facilities, or waterbodies interferes with project operations or project security, or may create other issues. The information provided on the applications is also used to ensure, where appropriate and applicable, the technical and financial resources of the applicant are sufficient to complete the construction of the infrastructure or project.

#### 10. National Environmental Policy Act of 1969

This rule does not constitute a major Federal action and would not have a significant effect on the quality of the human environment. Therefore, this rule does not require the preparation of an environmental assessment or environmental impact statement under the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), and its regulations.

#### 11. Data Quality Act

In developing this rule, there was no need to conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554).

#### 12. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in the E.O. 13211. A Statement of Energy Effects is not required.

#### 13. Clarity of This Regulation

We are required by E.O. 12866 and 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

- Be logically organized;
- Use the active voice to address readers directly;
- Use clear language rather than jargon;
- Be divided into short sections and sentences; and
- Use lists and tables wherever possible.

If you feel we have not met these requirements, please send comments to

Reclamation as instructed in the **ADDRESSES** section above. Please make your comments as specific as possible, referencing specific sections and how they could be improved. For example, “section XXX.XX could be more clearly written”, or “the first sentence in section XXX.XX(a) is too long”, or “the data in section XXX.XX should be placed in a table.”

#### 14. Public Comments

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### List of Subjects in 43 CFR Part 429

Administrative practice and procedures, Public lands, Reclamation, Recreation and recreation areas, Land rights-of-way.

Dated: April 26, 2007.

**Mark Limbaugh,**

*Assistant Secretary, Water and Science.*

**Editorial Note:** This document was received at the Office of the Federal Register on July 12, 2007.

For the reasons stated in the preamble, the Bureau of Reclamation proposes to revise 43 CFR part 429 as follows:

#### **PART 429—USE OF BUREAU OF RECLAMATION LAND, FACILITIES, AND WATERBODIES**

##### **Subpart A—Purpose, Definitions, and Applicability**

Sec.

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**Subpart I—Decisions and Appeals**

- 429.34 Who is the decisionmaker for Reclamation's final determinations?

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- 429.36 May I appeal the Commissioner's decision?
- 429.37 Does interest accrue on monies owed to the United States during my appeal process?

**Authority:** 43 U.S.C. 373; 43 U.S.C. 373b, 43 U.S.C. 387; 43 CFR 21; Pub. Law 108-447, Title VIII; 31 U.S.C. 9701, as amended.

**Subpart A—Purpose, Definitions, and Applicability****§ 429.1 What is the purpose of this part?**

The purpose of this part is to notify the public that any possession or occupancy of any portion of, and the extraction or disturbance of, any natural resources from Reclamation land, facilities, or waterbodies are prohibited without written authorization from Reclamation, unless excepted as listed in § 429.4 of this part. This part describes:

- (a) How to apply to Reclamation for a use authorization to allow your activity on Reclamation land, facilities, and waterbodies;
- (b) How we review and process your application, including the criteria for approval or denial of your application;
- (c) The requirement for collection of application and use fees and the recovery of administrative costs;
- (d) How we determine and collect costs and fees;
- (e) Prohibited uses on Reclamation land, facilities, and waterbodies;
- (f) The process and penalties associated with resolution of unauthorized uses; and
- (g) How to appeal an action or determination made under this part.

**§ 429.2 What definitions are used in this part?**

The following definitions are used in this rule:

*Administrative costs* means all costs incurred by Reclamation in processing your application and all costs associated with evaluating, issuing, monitoring, and terminating your use authorization on Reclamation land, facilities, and waterbodies. Administrative costs are distinct and separate from application and use fees and typically include, but are not limited to:

- (1) Determining the use fee;
- (2) Evaluating and documenting environmental and cultural resources compliance;
- (3) Performing engineering review;
- (4) Contract preparation; and
- (5) Personnel and indirect costs directly associated with these actions.

*Applicant* means you as any person or entity (such as a private citizen, business, non-governmental

organization, or public entity, Tribe, or foreign government) who submits an application requesting use of Reclamation land, facilities, and waterbodies.

*Application* means either Form 7-2540 or SF 299. The choice of application form is dependent on the type of use requested.

*Application fee* means a \$100 nonrefundable charge, which you must submit with your application to cover the costs of our initial review of your request. Application fees are distinct and separate from administrative costs and use fees.

*Commissioner* means the senior executive of the Bureau of Reclamation, Department of the Interior.

*Consent document* means a use authorization listing conditions which will prevent unreasonable interference with our easement rights.

*Cultural resource* means any prehistoric, historic, architectural, sacred, or traditional cultural property and associated objects and documents that are of interest to archaeology, anthropology, history, or other associated disciplines. Cultural resources include archaeological resources, historic properties, traditional cultural properties, sacred sites, and cultural landscapes that are associated with human activity or occupation.

*Environmental compliance* means complying with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, its regulations, and other related laws.

*Form 7-2540* means the Bureau of Reclamation Right-of-Use Application form required for all proposed uses of Reclamation land, facilities, and waterbodies, except those associated with construction and/or placement of transportation, communication, and utility systems and facilities.

*Grantee* means you as the recipient or holder of a use authorization regardless of the contractual format.

*Interior* means the United States Department of the Interior.

*Part 423 of this chapter* means Title 43 of the Code of Federal Regulations, part 423, which is titled Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies.

*Possession or occupancy and possess or occupy* mean to control, use, or reside on Reclamation land, facilities, or waterbodies.

*Private exclusive recreational or residential use* means any such use that excludes other appropriate public uses or users for extended periods of time or which creates the perception of such exclusion. This includes, but is not

limited to, boat docks, cabin sites, residences, trailers, manufactured or mobile homes, structures, roads, or other improvements as determined by Reclamation.

*Public Entity* means States, political subdivisions or agencies thereof; public and quasi-governmental authorities and agencies; and agencies of the Federal Government.

*Reclamation* means the Bureau of Reclamation, United States Department of the Interior.

*Reclamation facility* means any facility under our jurisdiction. The term includes, but is not limited to: buildings, canals, dams, ditches, drains, fish and wildlife facilities, laterals, powerplants, pumping plants, recreation facilities, roads, switchyards, transmission and telecommunication lines, and warehouses.

*Reclamation land* means any land under the jurisdiction of, or administered by, Reclamation and may include, but is not limited to:

- (1) All land acquired by Reclamation through purchase, condemnation, exchange, or donation for Reclamation project and water related purposes;
- (2) All land withdrawn by Reclamation from the public domain for Reclamation project or water related purposes; and
- (3) All interests in land acquired by Reclamation, including easements and rights exercised by the United States under the 1890 Canal Act (43 U.S.C. 945).

*Reclamation law* means the Reclamation Act of June 17, 1902 (32 Stat. 388, 43 U.S.C. 371, *et seq.*), and all Acts which supplement or amend the 1902 Act.

*Reclamation project* means any land, facilities, or waterbodies used for water supply, water delivery, flood control, hydropower, or other authorized purposes including fish, wildlife, and recreation administered by Reclamation under Federal reclamation laws.

*Reclamation waterbodies* means any body of water situated on Reclamation land and under Reclamation jurisdiction. Examples of Reclamation waterbodies include, but are not limited to, reservoirs, lakes, and impoundments.

*Regional Director* means any one of the five representatives of the Commissioner, or their delegates, who are responsible for managing their respective region's land, facilities, and waterbodies and for the decisions made under this part.

*Standard Form (SF) 299* means the form titled Application for Transportation and Utility Systems and Facilities on Federal Lands used when requesting permission for construction

and/or placement of transportation, communication, and utility systems and facilities.

*Unauthorized use* means use of Reclamation land, facilities, and waterbodies without proper authorization.

*Use authorization* means a written contract that defines the terms and conditions under which we will allow you to use Reclamation land, facilities, and waterbodies. Use authorizations can take the form of easements, leases, licenses, permits, and consent documents. This contract is also referred to as a "right-of-use" in part 423 of this chapter.

*Use fee* means the amount due to Reclamation for the use of Federal land, facilities, or waterbodies under our jurisdiction or control. Use fees are distinct and separate from application fees and administrative costs.

*Valuation* means the method used to establish the fee for a use authorization by appraisal, waiver valuation, or other sound or generally accepted business practice.

*We, us, or our* mean the Bureau of Reclamation.

*You or I* mean an applicant, grantee, or unauthorized user.

#### **§ 429.3 What types of uses require an authorization under this part?**

Possession or occupancy, or extraction or removal of natural resources from Reclamation land, facilities, or waterbodies require a use authorization in accordance with this part 429. Typical uses of or activities on Reclamation land, facilities, or waterbodies regulated by this part include, but are not limited to:

- (a) Commercial filming and photography;
- (b) Commercial guiding and outfitting;
- (c) Commercial or organized sporting events;
- (d) Grazing, farming, and other agricultural uses;
- (e) Infrastructure, such as transportation, telecommunications, utilities, and pipelines;
- (f) Organized recreational activities, public gatherings, and other special events;
- (g) Removal of, or exploration for, sand, gravel, and other mineral resources;
- (h) Timber harvesting, or removal of commercial forest products or other vegetative resources; and
- (i) Any other uses covered by Executive Orders, Departmental and Reclamation policies, or otherwise deemed appropriate by Reclamation, subject to the exclusions listed in § 429.4.

#### **§ 429.4 What types of uses do not require authorization under this part?**

(a) Individual, non-commercial use of our land, facilities, and waterbodies for occasional activities such as hiking, camping for periods of 14 days or less, sightseeing, picnicking, hunting, swimming, boating, and fishing, consistent with applicable laws, regulations and policies. Public conduct associated with these activities is governed by part 423 of this chapter;

(b) Activities at sites managed by non-Federal managing partners under Public Law 89-72, titled Federal Water Project Recreation Act, July 9, 1965; or activities managed by other Federal agencies or Interior bureaus by agreement or other authority;

(c) Activities at sites directly managed by Reclamation where fees or fee schedules are established for general public recreation use;

(d) Uses authorized under concession contracts on Reclamation land, facilities, and waterbodies;

(e) Reclamation contracts for water supply or water operations;

(f) Operation and maintenance activities on Reclamation land, facilities, and waterbodies authorized by contracts with water user organizations or Reclamation contractors;

(g) Agreements and real property interests granted for the replacement or relocation of facilities, such as highways, railroads, telecommunication, or transmission lines or infrastructure governed by Section 14 of the Reclamation Project Act of August 4, 1939 (43 U.S.C. 389). Payments to equalize land values may still be required and administrative costs may still be recovered;

(h) Activities authorized under other specific statutes or regulations.

#### **§ 429.5 Who is authorized to issue use authorizations under this part?**

Only Reclamation is authorized to issue use authorizations under this part. Reclamation water user organizations and other non-Federal entities operating Reclamation projects under project operation and maintenance contracts may not issue use authorizations under this part, unless specifically authorized by statute or regulation.

#### **§ 429.6 When must water user organizations approve use authorizations?**

Water user organizations under contract obligation for repayment of the project or division must approve use authorizations for easements and rights-of-way for periods in excess of 25 years. This requirement does not apply to any other type of use authorizations; however, such approval is frequently sought to avoid potential conflicts.

## Subpart B—Proposed Uses Involving Reclamation Easements

### § 429.7 Can I use land not owned by Reclamation where Reclamation has an easement?

(a) Perhaps, provided your proposed use does not unreasonably interfere with Reclamation's easement.

(b) You must request and receive a consent document from the local Reclamation office using either SF 299 or Form 7-2540 in accordance with subpart C of this part. If we determine that your requested use will not unreasonably interfere with Reclamation's easement, a consent document may be issued to you. The consent document will contain the conditions with which you must comply to ensure your use will not unreasonably interfere with Reclamation's easement.

(c) If you are not the owner of the land, you must also secure the permission of the landowner for your requested use of the area covered by Reclamation's easement.

### § 429.8 Is there a fee for uses involving a Reclamation easement?

We will not charge a use fee for a consent document. However, depending upon the complexity of your requested use and issues associated with it, we may charge an application fee and administrative costs, unless waived in accordance with subpart F of this part.

## Subpart C—Requesting Authorization to Use Reclamation Land, Facilities, and Waterbodies

### § 429.9 What should I do before filing an application?

Before filing an application, it is important that you contact the local Reclamation office to discuss your proposed use. This discussion can help expedite your application process.

### § 429.10 What application form should I use?

You must use one of the following application forms depending on the nature of your requested use:

(a) Use SF 299 to request a use authorization for the placement, construction, and use of energy, transportation, water, and telecommunication systems and facilities on or across all Federal property including Reclamation land, facilities, or waterbodies.

Examples of such uses are:

- (1) Canals;
- (2) Communication towers;
- (3) Fiber-optics cable;
- (4) Pipelines;
- (5) Roads;

- (6) Telephone lines; and
  - (7) Utilities and utility corridors.
- (b) Use Form 7-2540 to request any other type of use authorization. Examples of such uses are:
- (1) Commercial filming and photography;
  - (2) Commercial guiding and outfitting;
  - (3) Commercial or organized sporting events;
  - (4) Grazing, farming, and other agricultural uses;
  - (5) Organized recreational activities, public gatherings, and other special events;
  - (6) Removal of, or exploration for, sand, gravel, and other mineral materials;
  - (7) Timber harvesting, or removal of commercial forest products or other vegetative resources; and
  - (8) Any other uses deemed appropriate by Reclamation.
- (c) Application forms may not be required where Reclamation solicits competitive bids.

### § 429.11 Where can I get the application forms?

Both forms can be obtained from any Reclamation office or from our official internet Web site at <http://www.usbr.gov>. These forms contain specific instructions for application submission and describe information that you must furnish. However, when you submit either form to your local Reclamation office for review, the form must contain your original signature as the applicant.

### § 429.12 Where do I file my application?

File your completed and signed application, including the \$100 nonrefundable application fee, with the Reclamation office having jurisdiction over the land, facility, or waterbody associated with your request. Reclamation office locations may be found on <http://www.usbr.gov>, the official Reclamation internet web site.

### § 429.13 How long will the application review process take?

- (a) We will acknowledge in writing our receipt of your completed and signed application and application fee within 30 calendar days of receipt. Reclamation may request additional information needed to process your application, such as legal land descriptions and detailed construction specifications.
- (b) The processing time depends upon the complexity of your requested use, issues associated with it, and the need for additional information from you.
- (c) Should your requested use be denied at any time during the review

process, we will notify you in writing of the basis for the denial.

### § 429.14 What criteria will Reclamation consider when reviewing applications?

Reclamation will consider the following criteria when reviewing applications:

- (a) Compatibility with authorized project purposes, project operations, safety, and security;
- (b) Environmental, natural and cultural resource impacts;
- (c) Compatibility with Reclamation land use plans;
- (d) Conflicts with Federal policies and initiatives;
- (e) Public health and safety;
- (f) Availability of other reasonable alternatives; and
- (g) Best interests of the United States and impacts to other parties.

### § 429.15 Is Reclamation required to issue a use authorization?

No. The issuance of a use authorization is at Reclamation's discretion. Not all requests will be authorized. If issued, we will provide only the least estate, right, or possessory interest needed to accommodate the approved use.

## Subpart D—Application Fees and Administrative Costs

### § 429.16 How much is the application fee and when should it be paid?

You must remit a nonrefundable payment of \$100 to cover costs associated with our initial review of your application, unless it is waived pursuant to subpart F of this part. This review will determine if your requested use appears to be appropriate and not likely to interfere with Reclamation project purposes or operations.

### § 429.17 When will Reclamation collect administrative costs?

Reclamation will collect, in advance, its administrative costs for processing your application, except as provided under subpart F of this part.

### § 429.18 When do I have to pay the administrative costs?

- (a) Following the initial review, we will notify you in writing whether your application appears to be appropriate for further processing. At this time, we will give you an initial estimate of administrative costs required to continue processing your application.
- (b) You must pay these initial, estimated administrative costs in advance before we can continue to process your application, unless you are granted a waiver of administrative costs under subpart F of this part. If payment

is not received within 90 days after we provide the estimate to you, we may close your file. If this occurs and you later wish to proceed, you must submit both a new application and another \$100 nonrefundable application fee.

**§ 429.19 What happens if the initial estimate for administrative costs is insufficient?**

If the initial estimate to cover Reclamation's administrative costs is found to be insufficient, Reclamation will notify you in writing of the additional amount needed. You must pay the amount requested before Reclamation will continue processing your application.

**§ 429.20 Can I get a detailed explanation of the administrative costs?**

Yes, you are entitled to receive an explanation of all administrative costs relevant to your specific application. You must request this information in writing from the Reclamation office where you submitted your application.

**§ 429.21 If I overpay Reclamation's administrative costs, can I get a refund?**

If, in reviewing your application, we use all the monies you have paid, you will not receive a refund regardless of whether you receive a use authorization. If the money we collect from you exceeds our administrative costs, we will refund the excess amount

consistent with Reclamation's financial policies.

**§ 429.22 Can Reclamation charge me additional administrative costs after I receive a use authorization?**

(a) After you receive your use authorization, we may charge you for additional administrative costs we incur for activities such as:

(1) Monitoring your authorized use over time to ensure compliance with the terms and conditions of your use authorization; and

(2) Periodic analysis of your long-term use to adjust your use fee to reflect current conditions.

(b) If we do not receive your payment within 90 days after we provide you with the estimate, we may take action to terminate your use authorization.

**Subpart E—Use Fees**

**§ 429.23 How does Reclamation determine use fees?**

The use fee is based on a valuation or by competitive bidding. Use fees may be adjusted as deemed appropriate by Reclamation to reflect current conditions, as provided in the use authorization.

**§ 429.24 When should I pay my use fee?**

(a) If we offer you a use authorization, you must pay the use fee in advance, unless we grant you a waiver under subpart F of this part.

(b) Your use authorization will clearly state the use fee. Should periodic payments apply, your use authorization will also describe when you should pay those periodic use fees.

**§ 429.25 How long do I have to submit my payment for the use fee and accept the offered use authorization?**

You have 90 days to sign and return the use authorization and required fees, otherwise we may consider the offer to be rejected by you and your file may be closed. If this occurs and you later wish to proceed, you must submit a new application and another \$100 nonrefundable application fee. You may not commence your use of Reclamation's land, facilities, or waterbodies until Reclamation has issued a use authorization to you. A use authorization will only be issued upon receipt by Reclamation of all required costs and fees, and the use authorization signed by you.

**Subpart F—Reductions or Waivers of Application Fees, Administrative Costs, and Use Fees**

**§ 429.26 When may Reclamation reduce or waive costs or fees?**

(a) At its sole discretion, Reclamation may waive the application fee, or waive or reduce administrative costs or the use fee as indicated by a ✓ in the following table:

Situations where costs and fees may be reduced or waived 3 if determined appropriate by reclamation	Application fee	Administrative costs	Use fee
(1) The use is a courtesy to a foreign government or if comparable fees are set on a reciprocal basis with a foreign government .....	✓	✓	✓
(2) The use is so minor or short term that the cost of collecting fees is equal to or greater than the value of the use .....	✓	✓	✓
(3) The use will benefit the general public with no specific entity or group of beneficiaries readily identifiable .....	✓	✓	✓
(4) Applicant is a public entity or Tribe .....	✓	✓	✓
(5) Applicant is a non-profit or educational entity and the use provides a general public benefit .....	✓	✓	✓
(6) Applicant is a rural electric association or municipal utility or cooperative .....	✓	✓	✓
(7) The use directly supports United States' programs or projects .....	✓	✓	✓
(8) The use secures a reciprocal land use of equal or greater value to the United States .....	✓	✓	✓
(9) Applicant for a consent document is the underlying owner of the property subject to Reclamation's easement .....	✓	✓	1
(10) The use is issued under competitive bidding .....	✓	✓	2

<sup>1</sup> Not applicable.

<sup>2</sup> Set by Bid.

(b) When a statute, executive order, or court order authorizes the use and requires specific treatment of administrative cost recovery and collection of use fees associated with that use, that requirement will be followed by Reclamation.

**Subpart G—Terms and Conditions of Use Authorizations**

**§ 429.27 What general information appears in use authorizations?**

Each use authorization will contain:

(a) An adequate description of the land, facilities, or waterbodies where the use will occur;

(b) A description of the specific use being authorized together with

applicable restrictions or conditions that must be adhered to;

(c) The conditions under which the use authorization may be renewed, terminated, amended, assigned or transferred, and/or have the use fee adjusted; and

(d) Primary points of contact and other terms and conditions.

**§ 429.28 What terms and conditions apply to all use authorizations?**

(a) By accepting a use authorization under this part, you agree to comply with and be bound by the following terms and conditions during all construction, operation, maintenance, use, and termination activities:

(1) The grantee 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 any use authorization.

(2) A reservation in favor of the United States, acting through Reclamation, Department of the Interior, of the prior rights 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.

(3) Reclamation may, at any time and at no cost or liability to the United States, unilaterally terminate the use authorization if Reclamation determines that:

(i) The use has become incompatible with authorized project purposes or a higher public use is identified;

(ii) Termination is necessary for operational needs of the project; or

(iii) There has been a natural disaster, a national emergency, a need arising from security requirements, or an immediate and overriding threat to the public health and safety.

(4) Reclamation may, at any time and at no cost or liability to the United States, unilaterally terminate any use authorization if Reclamation determines that the grantee has failed to use the use authorization for its intended purpose. Further, failure to construct or use for any continuous 2-year period may constitute a presumption of abandonment of the requested use and cause termination of the use authorization.

(5) Failure to comply with all applicable Federal, State, and local laws, regulations, ordinances, or terms and conditions of any use authorization, or to obtain any required permits or authorizations, may result in termination of the use authorization.

(b) To meet local and special conditions, the Regional Director, upon advice of the Solicitor, may modify these terms and conditions with respect to the contents of the use authorization.

**§ 429.29 What other terms and conditions will be included in my use authorization?**

Reclamation will include additional terms and conditions or requirements that are determined necessary to meet

local, environmental, cultural resource, and other legal requirements and conditions to protect the interests of the United States.

**§ 429.30 May use authorizations be transferred or assigned to others?**

Your use authorization may not be transferred or assigned to others without prior written approval of Reclamation, unless specifically provided for in your use authorization. Should you wish to transfer or assign your use authorization to another individual or entity, please contact the Reclamation office that issued your use authorization.

**Subpart H—Prohibited and Unauthorized Uses of Reclamation Land, Facilities, and Waterbodies****§ 429.31 What uses are prohibited on Reclamation land, facilities, and waterbodies?**

Reclamation prohibits any use that would:

(a) Not comply with part 423 of this chapter; or

(b) Result in new private exclusive recreation or residential use of Reclamation land, facilities, or waterbodies, or the perception thereof. Such prohibited uses include, but are not limited to:

(1) Cabins, residences, outbuildings, and related structures, and associated landscaping, patios, decks, and porches;

(2) Boat houses, docks, moorings, and launch ramps;

(3) Floating structures or buildings, including moored vessels used as residences or business sites;

(4) Private sites for such activities as: hunting, fishing, camping, and picnicking (other than transitory uses allowed under part 423 of this chapter); and

(5) Access to private land, facilities, or structures when other reasonable alternative access is available or can be obtained.

**§ 429.32 How will Reclamation address existing uses which are otherwise prohibited?**

(a) Existing use authorizations for private cabin sites or substantial improvements, as defined by part 21 of this title, will be administered in accordance with that part. Any renewals will be reviewed by the Commissioner's Office and approved, where appropriate.

(b) Other private exclusive recreational or residential uses of Reclamation land, facilities, and waterbodies may exist. When authorizations for these uses expire, Reclamation generally will not renew them. Rare exceptions may be authorized and use authorizations

issued with the approval of the Commissioner's Office.

(c) Prohibited existing uses which are not authorized under paragraphs (a) and (b) of this section will be administered under § 429.33.

**§ 429.33 What are the consequences for using Reclamation land, facilities, and waterbodies without authorization?**

(a) Unauthorized use of Reclamation land, facilities, or waterbodies is a trespass against the United States. You may be subject to legal action including criminal prosecution as described in part 423 of this chapter. A criminal conviction could result in a fine and/or imprisonment for up to 6 months in accordance with 43 U.S.C. 373b(b).

(b) Reclamation may seek to collect the following:

(1) All administrative costs incurred by Reclamation in resolving the unauthorized use;

(2) All costs of removing structures, materials, improvements, or any other real or personal property;

(3) All costs of rehabilitation of the land, facilities, or waterbodies as required by Reclamation.

(4) The use fee that would have applied had your use been authorized from the date your unauthorized use began, up to a total of 6 years; and

(5) Interest accrued on the use fee from the date your unauthorized use began, up to a total of 6 years.

(c) As an unauthorized user, you will receive a written notice in which Reclamation will outline the steps you need to perform to cease your unauthorized use.

(d) If appropriate, you will receive a final determination letter detailing the applicable costs and fees, as set forth under (b) above, which must be paid to Reclamation for your unauthorized use. Payment must be made within 30 days unless we extend this deadline in writing. Failure to make timely payment may result in administrative or legal action being taken against you.

(e) Reclamation will generally not issue a use authorization to you for an existing unauthorized use, and we may deny any other future use applications because of this behavior. As noted at § 429.15, use authorizations are always discretionary, and we are never required to issue one.

(f) If, however, your unauthorized use is deemed by Reclamation to be an unintentional mistake, we will consider issuing a use authorization provided that you qualify and, in addition to the normal costs, you agree to pay the following:

(1) The use fee that would have been owed from the date your unauthorized use began, up to a total of 6 years; and

(2) Interest accrued on the use fee from the date your unauthorized use began, up to a total of 6 years.

(g) Under no circumstances will your unauthorized use or payment of monies to the United States in association with an unauthorized use either:

(1) Create an interest or color of title against the United States; or

(2) Establish any right or preference to continue the unauthorized use.

#### **Subpart I—Decisions and Appeals**

##### **§ 429.34 Who is the decisionmaker for Reclamation's final determinations?**

(a) The appropriate Reclamation Regional Director makes any final determinations associated with actions taken under this rule and will send that final determination in writing to you by mail.

(b) The Regional Director's final determination will take effect immediately upon the date of the determination letter.

##### **§ 429.35 May I appeal Reclamation's final determination?**

(a) Yes, if you are directly affected by such a determination, you may appeal in writing to the Commissioner within 30 calendar days after the date of the Regional Director's determination letter.

(b) You have an additional 30 calendar days after the postmark of your written appeal to the Commissioner within which to submit any additional supporting information.

(c) The Regional Director's determination will remain in effect until the Commissioner has reviewed your appeal and provided you with that decision, unless you specifically request a stay and a stay is granted by the Commissioner.

##### **§ 429.36 May I appeal the Commissioner's decision?**

(a) Yes, you may appeal the Commissioner's decision to the Secretary of the Interior by writing to the Director, Office of Hearing and

Appeals (OHA), U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203.

(b) For an appeal to be timely, OHA must receive your appeal within 30 calendar days from the date of the Commissioner's decision. Rules that govern appeals to the OHA are found at part 4, subpart G, of this title, except for the accrual of nonpayment or underpayment of monies due to the United States under § 429.33(e).

##### **§ 429.37 Does interest accrue on monies owed to the United States during my appeal process?**

Interest on any nonpayment or underpayment, as provided in § 429.33(e), continues to accrue during an appeal of a Regional Director's final determination, an appeal of the Commissioner's decision to OHA, or during judicial review of final agency action.

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