

**DEPARTMENT OF THE INTERIOR****Bureau of Reclamation****43 CFR Parts 423 and 429****RIN 1006-AA45****Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies****AGENCY:** Bureau of Reclamation, Interior.**ACTION:** Final rule.

**SUMMARY:** The Bureau of Reclamation is issuing this rule to establish regulations regarding public access to and conduct on all Reclamation projects, waters, and real property subject to the jurisdiction or administration of Reclamation. Reclamation is required by statute to issue this rule in order to maintain law and order and protect persons and property on Reclamation projects. This rule supersedes the existing public conduct rule, and amends other regulatory provisions to ensure consistency.

**DATES:** This rule is effective on April 17, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Larry Todd, Deputy Commissioner, Policy, Administration, and Budget, Bureau of Reclamation, 1849 C Street NW., Washington, DC 20240-0001, telephone 202-513-0682.

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

On November 12, 2001, Congress enacted Public Law 107-69, which provides for law enforcement authority within Reclamation projects and on Reclamation lands. Section 1(a) of this law requires the Secretary of the Interior to "issue regulations necessary to maintain law and order and protect persons and property within Reclamation projects and on Reclamation lands." The Secretary of the Interior delegated this authority to the Commissioner of Reclamation, and this rule replaces the existing statutorily required regulations.

Reclamation is best known to the public by its large dams such as Hoover and Grand Coulee. In fact, Reclamation has constructed and operated major water projects in all of the 17 contiguous western states, including more than 500 dams, 348 reservoirs, and 58 hydroelectric powerplants. These plants produce an average of 42 billion kilowatt-hours annually, making Reclamation the nation's ninth largest utility. Reclamation projects deliver 10 trillion gallons of water to more than 31

million people annually, and provide irrigation water to 10 million acres of farmland producing vegetables, fruits, grains, fiber, and other crops critical to the nation's economy.

In addition, Reclamation reservoirs draw 90 million recreational user visits annually, and Reclamation is responsible for the administration of over 8 million acres of public lands. Because of Reclamation's vital role in providing water, power, agricultural products, and recreational opportunities to the entire nation, the safety and security of Reclamation facilities and the people visiting them is of critical importance.

In addressing security and law enforcement issues on Reclamation projects, this rule inevitably touches on a wide range of public safety, recreation, and resource management topics such as firearms, hunting, boating, diving, archaeological resources, and many others. Therefore, while this rule is primarily focused on the security of the hundreds of Reclamation dams, reservoirs, hydroelectric power plants, and other project facilities, it also addresses a number of related issues concerning public conduct on Reclamation projects. This rule is designed to provide consistent and adequate tools for addressing public conduct while at the same time providing the necessary flexibility to be successfully applied to the wide variety of Reclamation projects and facilities.

In this rulemaking, Reclamation is also making minor amendments to the existing 43 CFR part 429, Procedure to Process and Recover the Value of Rights-of-Use and Administrative Costs Incurred in Permitting Such Use, to make part 429 consistent with 43 CFR part 423. These minor amendments clarify 43 CFR part 429, which addresses uses of Reclamation lands involving possession and occupation, in contrast to 43 CFR part 423 which applies to occasional public uses that do not involve possession or occupation.

This rule does not significantly affect either the administration or the existing public uses of Reclamation facilities, lands, and waterbodies. Rather, this rule provides a tool for administrators and law enforcement personnel in enhancing the safety and security of Reclamation facilities, lands, and waterbodies for the benefit of the public.

**II. Existing Rule Superseded**

On April 17, 2002, Reclamation published 43 CFR part 423, Public Conduct on Bureau of Reclamation Lands and Projects (67 FR 19092, Apr. 17, 2002) as an interim rule. In the preamble to that rule, Reclamation

stated its intent to replace the interim rule with a more comprehensive public conduct rule and set April 17, 2003, as the interim rule's expiration date. In order to provide more time to develop the comprehensive public conduct rule, Reclamation later extended the expiration of the interim rule to April 17, 2005 (68 FR 16214, Apr. 3, 2003), and again to April 17, 2006 (70 FR 15778, Mar. 29, 2005). Reclamation published a proposed public conduct rule (70 FR 54214, Sep. 13, 2005) and asked the public to comment on that proposed rule. This rule incorporates the comments received and satisfies Reclamation's commitment to develop a comprehensive public conduct rule which supersedes the existing 43 CFR part 423.

**III. Comments on the Proposed Rule**

Reclamation received a number of comments on the proposed public conduct rule which was published in the **Federal Register** on September 13, 2005. Following, we have summarized the comments received, along with Reclamation's responses, beginning with general subjects and then specific comments ordered approximately by the section of the rule to which they apply.

**Comment:** The proposed rule would violate Casitas Municipal Water District's contract with the United States by (1) allowing actions that Casitas' rules forbid and vice versa, (2) giving Reclamation the ability to issue permits for actions that Casitas charges for, and (3) allowing permits for the use of water. This rule could be considered a "taking" under the 5th amendment to the Constitution.

**Response:** The Casitas Municipal Water District's contract with Reclamation presents a complex but not highly unusual situation where Reclamation has turned over project operation and maintenance (O&M) to a water user entity. Reclamation has not transferred ownership of project lands and facilities over to Casitas Municipal Water District, only the use of the land necessary for operation and maintenance of the project works.

In all situations where Reclamation works with a managing partner, the water user entity is obligated to comply with all Federal laws and regulations. This proposed regulation addresses activities that take place on or in the vicinity of water, but not the use of the water. This rule should not interfere with other activities explicitly covered by other legal documents.

If on-the-water recreation is specifically addressed in a Federal contractor's water rights permit, repayment contract, or other

management agreement, Reclamation simply may need to reiterate those contract conditions in some formal manner (such as establishing a special use area) to allay the district's concerns. However, California State water right permits containing a recreation element do not require the provision of recreation resources and associated management and regulation. Instead, the water right permits simply advise the permittees that they are not prohibited from utilizing the subject water body for recreation purposes.

For a Federal regulation to effect a taking under the Fifth Amendment, the regulation must deny "all economically beneficial or productive use" of one's property. *See Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015 (1992). In Casitas' situation, Casitas does not own the land covered by part 423. Nor does this regulation deprive Casitas of their economic interests in the Ventura River Project, namely, the water storage, delivery, and use for which the Ventura River Project was constructed. Part 423 is merely regulating public conduct on Reclamation property; it is not regulating water delivery or repayment contracts.

**Comment:** The proposed rule infringes on the State of Wyoming's sovereignty with respect to surface waters. Reclamation has no authority to establish regulations applying to waterbodies in the State of Wyoming. Reclamation must declare Reclamation waterbodies in Wyoming to be Federally navigable in order to assert jurisdiction over them. Otherwise, jurisdiction over Reclamation waterbodies in Wyoming is with the State.

**Response:** Reclamation has proprietary jurisdiction over its facilities and property, including water legally stored in such facilities under state law. Proprietary jurisdiction does not displace the legislative jurisdiction of the State. Reclamation typically obtains a permit from a state agency to store water for purposes of the Reclamation Act of 1902, 43 U.S.C. 371 et. seq., as amended. In some cases, Reclamation may have obtained water rights through the appropriate state agency for the purposes of achieving the goals of the Reclamation Act of 1902 or to achieve the goals of some other congressionally mandated project.

For the purposes of this rule, Reclamation is not claiming legislative jurisdiction over state waterbodies or property and may not do so, as Congress mandated in Public Law 107-69 (now codified at 43 U.S.C. 373b): "Nothing in this section shall be construed or applied to limit or restrict the investigative jurisdiction of any Federal

law enforcement agency, or to affect any existing right of a State or local government, including an Indian tribe, to exercise civil and criminal jurisdiction within a Reclamation project or on Reclamation lands." 43 U.S.C. 373b(f) (emphasis added). However, Reclamation may, under Public Law 107-69, for the purposes of security and protection, close or otherwise regulate an area or an event (such as public events and gatherings) on Reclamation property.

If a conflict exists with a state regulation or law, part 423 would supersede the conflicting regulation or law under the Supremacy Clause of the U.S. Constitution. The public must obey all Federal, State and local laws while visiting Reclamation assets.

**Comment:** While the proposed rulemaking is a significant step in making New Melones recreation areas more family friendly, the park rangers lack peace officer status and therefore enforcement of this rule would depend largely on the City of Angels and Calaveras County. Reclamation should consider giving park rangers peace officer status.

**Response:** Reclamation appreciates this comment and will take it under advisement. However, the law enforcement status of park rangers is outside the scope of this rulemaking.

**Comment:** The right-of-use application form and \$200 fee applicable under 43 CFR part 429 are inappropriate for most recreation uses. A form specific to recreational uses should be developed.

**Response:** This comment relates to Right-of-Use Form 7-2450. It is important to understand that the application fee and the rental charge are not established by that form; it only states what fees are required under 43 CFR part 429. The application fee must equal Reclamation's costs of administering the resultant right-of-use authorizations, as required by 31 U.S.C. 9701 and OMB Circular A-25. Reclamation does not have the authority to arbitrarily waive the application fee required by the regulation. Right-of-Use Form 7-2450 has been recently revised to address recreation and other short-term uses and has received positive public comment.

**Comment:** Three commenters expressed concern that the rule was unclear about the roles and authorities of non-Federal partners. One of those commenters recommended adding the phrase "and agencies" to the definition of "Authorized Official" so the powers of authorized officials can be delegated to agencies.

**Response:** Reclamation agrees with these comments and has revised the definition of "Authorized Official" to show that Federal, state, local, and tribal officials and agencies can be designated as authorized officials. As discussed elsewhere in this preamble, other changes to the rule have been made to clarify the roles and authorities of non-Federal partners.

**Comment:** Recommendation to utilize states' definitions of "fishing," "hunting," and "trapping," "trespass," "vessel," and "wildlife."

**Response:** Reclamation does not intend to infringe upon a state's ability to control wildlife, including fish, or those attempting to take wildlife or fish. Each state may have a different definition for fishing, hunting, trapping, and wildlife, and to adopt each state's definition for each term is excessive and counterproductive. Each state is free to determine appropriate regulations for protecting its resources, environment and people.

For the term "trespass," each state is free to enforce its own laws and regulations on Reclamation property. Most Reclamation reservoirs are surrounded by real property where dams, offices, power houses and other facilities are located. These properties are Federal property, but not in the guise of exclusive Federal jurisdiction. Instead, the majority of Reclamation's property is held under proprietary jurisdiction. Proprietary jurisdiction provides that Reclamation enjoys the same rights as any member of the public who owns property. Each state certainly may determine what constitutes trespass as well as methods of enforcement.

For the term "vessel," Reclamation derives the definition for vessel from 46 U.S.C. 2101, the U.S. Coast Guard's definition at 33 CFR 187.7 and from the U.S. Army Corps of Engineers' definition at 36 CFR 327.3. Reclamation is not attempting to impede or interfere with a state's capability in regulating vessels. Most states' definitions for the term "vessel" are also derived from the U.S. Coast Guard's. Each state is free to title and license each vessel as it deems necessary.

**Comment:** Recommendation to not use the term "delimited" in the Cultural Resources definition.

**Response:** Reclamation agrees with this comment and has revised the definition of "Cultural Resources."

**Comment:** Recommendation to establish specific decibel limits for "unreasonable noise" in the definition of "disorderly conduct."

**Response:** Reclamation believes that establishing specific decibel limits on a Reclamation-wide basis would not be

appropriate, in particular because noise limitations are already in place on many Reclamation facilities and waterbodies. Reclamation does not believe specific decibel limits are necessary in order to subject the offender to possible sanctions. Noise limitations may be established under state or local law, or through establishment of special use areas under subpart E of this rule. Nothing in the rule prevents a state from enforcing noise levels set by that state's legislature or a state agency.

*Comment:* Recommendation to change the definition of "explosive" to remove the term from its own definition.

*Response:* Reclamation agrees with this comment and has revised the definition of "Explosive."

*Comment:* Recommendation to change the definition of "fishing" to specifically include catch-and-release fishing.

*Response:* Reclamation does not agree with this comment, primarily because fishing is a state-regulated activity. We have not changed the definition of "fishing" contained in the proposed rule.

*Comment:* The term "non-Federal entity" should be defined and a full discussion of non-Federal entities' leasehold responsibilities and authorities should be included.

*Response:* In this rule, the term "non-Federal entity" is used in reference to the non-Federal managing partners with whom Reclamation has entered into agreements to manage land, water, and/or public activity on Reclamation projects. Reclamation has numerous contracts with such managing partners and this rule does not significantly alter their roles and responsibilities under those individual contracts.

The responsibilities of each managing partner under the various contracts are best addressed on an individual basis at the state or local level. A full discussion in this rule of the requirements of those contracts would be excessive and unnecessary. However, as discussed elsewhere in this preamble, Reclamation has made changes in the rule to clarify the roles, responsibilities, and authorities of non-Federal entities.

*Comment:* Recommendation to change the language of section 423.14 for consistency with section 423.11(a), in order to clarify that signage and/or gates are not necessarily required to establish closed areas.

*Response:* Reclamation agrees with this comment and has revised sections 423.11(a) and 423.14.

*Comment:* Recommendation to change section 423.16(a)(2) to clarify that an owner or lessee's right to cross

closed Reclamation land not be granted without written authorization.

*Response:* Reclamation agrees with this comment and has revised section 423.16(a) to clarify that exemptions from closures must be in writing.

*Comment:* Notices of closures and special use areas on "Reclamation waterbodies" that are not contained in state statutes, regulations, and brochures may not be readily available to the public, causing such notices to be an inadequate means of informing the public of restrictions and in any event, and are unenforceable and unlawful if they are more restrictive than state statutes and regulations.

*Response:* In subparts B and E of 43 CFR part 423, Reclamation indicates how it will inform the public of closures and special use areas. These methods include **Federal Register** notices, signs, newspaper notices, and the use of other media such as the Internet, brochures, and handouts. If a closed area or special use area is published in the **Federal Register**, that notice serves as constructive notice and "is sufficient to give notice of the contents of the document to a person subject to or affected by it." 44 U.S.C. 1507. See *Lyng v. Payne*, 476 U.S. 926, 943 (1986).

Furthermore, Reclamation has the authority to enforce more restrictive measures than those imposed by a state under the Supremacy Clause, U.S. Const. art. VI, Paragraph 2. See *Edgar v. Mite Corp.*, 457 U.S. 624, 631 (1982).

*Comment:* Section 423.23 would result in watercraft docked or anchored on a waterbody to be presumed abandoned after 24 hours.

*Response:* Reclamation does not agree with this comment, because section 423.38(i) of the rule provides that all mooring and storage of vessels for over 24 hours must be in special use areas. The rules of such special use areas would take precedence over section 423.23. With respect to existing special use areas where mooring and storage of vessels is currently allowed, sections 423.61(d) and 423.64 provide that they may remain in effect without the need for further action by an authorized official under certain circumstances.

*Comment:* Recommendation that section 423.29 of the proposed rule be revised to add a "knowing" requirement so that accidental introduction of plant or animal material into Reclamation lands or waterbodies would not constitute a violation.

*Response:* Reclamation agrees with the intent of this comment. However, it is not necessary to add a knowing requirement to section 423.29(b) because Public Law 107-69 requires a violation to be knowing and willful.

Whether intentional or accidental, the introduction of species into our lands and waterbodies could have serious environmental consequences and we want to encourage public diligence regarding the unauthorized introduction of species.

*Comment:* Section 423.29(f) would prohibit the use of sonar devices to locate fish. An exception should be provided.

*Response:* Reclamation agrees with this comment and has revised section 423.29(f) to apply only on Reclamation lands.

*Comment:* Section 423.33 should be clarified to allow campers to move from one Reclamation project to another and start the clock running on a new 14-day period.

*Response:* Reclamation agrees with this comment and has revised section 423.33(b) accordingly.

*Comment:* Recommendation that section 423.38(g) of the proposed rule be revised to not completely foreclose the use of vessels as places of habitation or residence.

*Response:* Reclamation believes the general rule should be that vessels should not be used as places of habitation or residence. However, section 423.38(f) of the rule provides for overnight occupation of a vessel under certain specific circumstances. Also, under the appropriate circumstances, special use areas may be established that would address this issue.

With respect to existing special use areas where habitation of vessels is currently allowed, sections 423.61(d) and 423.64 provide that they may remain in effect without the need for further action by an authorized official under certain circumstances. Therefore, the rule language has not been changed in response to this comment.

*Comment:* One state agency commented that Reclamation had no authority to regulate aircraft landing or taking off from waters within that state.

*Response:* In view of the terrorist attacks of September 11, 2001, and the enactment of Pub. L. 107-69, Reclamation is very serious about regulating aircraft around Reclamation facilities, particularly Reclamation's National Critical Infrastructures. Reclamation does not need to recount the devastation caused by terrorists' use of aircraft. Due to the potential threat from aircraft, Reclamation must be aware of aircraft in the vicinity of Reclamation facilities and have the ability to protect assets in areas where an aircraft may land or takeoff. In terms of controlling aircraft, Reclamation is not limiting a state's authority. Furthermore, Reclamation stresses the

importance of following state regulations concerning aircraft in sections 423.41(a) and (c).

**Comment:** Recommend a fuller description of what a special use area is and more fully describe the roles, responsibilities, and authorities of non-Federal partners in designating and determining the rules in special use areas.

**Response:** Reclamation believes the lack of clarity with respect to special use areas in the proposed rule was primarily a result of the definition of the term "authorized official" which we have revised. Non-Federal entities may be authorized officials if so designated by the Commissioner, with specified and limited authorities as provided within the Commissioner's designation. Such a designation may or may not include authority to propose the establishment of special use areas, and may also address the authority to establish special use areas in emergency situations.

An authorized official, whether Federal or non-Federal, planning to designate a special use area in a non-emergency situation must submit the proposal through Reclamation's review and approval process. Because any special use area proposal will be thoroughly reviewed by Reclamation, and because a wide range of needs and circumstances exists within

Reclamation's various projects, this rule does not establish detailed parameters regarding what an authorized official may propose. In addition, while not required to do so, Reclamation may consult with a state or state agency in establishing a special use area.

**Comment:** Recommend clarification of part 429 requirement for permission to remove natural resources in order to allow removal of legally harvested wildlife and unprotected wildlife.

**Response:** Reclamation agrees with this comment and has revised section 429.1 accordingly.

Although not the result of specific public comments, our review of those comments prompted certain other minor changes to the proposed rule, as follows:

1. Section 423.3 was not clear that the Supremacy of Federal law over state and local law applies generally, not just in situations where operational control over Reclamation facilities, lands, or waterbodies has been transferred to a non-Federal entity. Therefore, Reclamation has moved the language of section 423.3(c)(2) to a separate section, 423.3(f).

2. Because Reclamation lands can be closed to off-road-vehicle use under 43 CFR part 420, references to that part

have been added to sections 423.10 and 423.11.

3. Section 423.12(b) has been rewritten to clarify the distinction between emergency and non-emergency situations.

4. Section 423.28 of the proposed rule prohibited the placement of memorials and the scattering and burial of human and animal remains on Reclamation facilities, lands, and waterbodies, but with allowance for such activities to take place by permit or in special use areas. Reclamation received no comments on this provision, but has determined that any allowance for burials, scattering of ashes, and placement of memorials is inconsistent with the practices of other bureaus, in particular the Bureau of Land Management. Furthermore, such an allowance could result in Reclamation becoming responsible for long-term management of burial sites, a practice inconsistent with Reclamation's mission. Also, Reclamation has determined that no cemeteries open to interments exist on Reclamation lands. Therefore, we have determined that it is appropriate to change the provisions creating possible exceptions to the prohibition on burials, scattering of ashes, and placement of memorials. These changes will not have significant impacts, and sections 423.28 and 423.60 have been revised accordingly.

5. Section 423.29(d) of the proposed rule regarding the use and possession of wood was overly restrictive with respect to wood brought or gathered for allowable fires. Also, live trees are a natural resource, the harvest of which is appropriately governed by 43 CFR part 429, not part 423. Therefore, section 423.29(d) has been revised accordingly.

6. Section 423.30 of the proposed rule has been rewritten for better clarity concerning the possession and use of weapons. Reclamation asks all readers to note the distinction between Reclamation facilities, where weapons are entirely prohibited, and Reclamation lands and waterbodies, where the possession and use of weapons is allowed under certain circumstances under both sections 423.30 and 423.32. Also, a definition of "firearms" has been added and the definition of "weapons" has been revised.

#### IV. Procedural Matters

##### *Determination To Make This Rule Effective Immediately.*

Normally, a final rule becomes effective 30 days after its publication date in the **Federal Register**. However, because the existing public conduct rule will expire on April 17, 2006, a 30-day

delay would result in a period during which no public conduct rule would be in effect on Reclamation facilities, lands, and waterbodies. Such a period without a rule in place addressing public conduct on Reclamation lands and projects would result in a serious disruption in the protection of Reclamation facilities and property, with accompanying confusion to employees and the public. This disruption and confusion would be contrary to public and national security interests. For these reasons, the Bureau of Reclamation has determined good cause exists to waive the requirement of publication 30 days in advance of the effective date. As allowed by 5 U.S.C. 553(d)(3), this rule is effective immediately because it is in the public interest to not delay implementation of this rule.

##### *National Environmental Policy Act (NEPA)*

Reclamation has analyzed this rule in accordance with the criteria of the NEPA and Department Manual 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required. The rule is categorically excluded from NEPA review under 40 CFR 1508.4 and Departmental Manual 516 DM 2, Appendix 1, paragraph 1.10.

##### *Executive Order 12866, Regulatory Planning and Review*

This document is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

(1) This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule would have little monetary impact because it only addresses standards for public conduct on Reclamation lands, facilities, and waterbodies. Generally speaking, the principal effect of the rule is to enable law enforcement personnel to enforce existing mandates at Reclamation facilities through the imposition of criminal penalties for violations. Because very few new mandates are imposed by this regulation, it will have little tangible effect on current practices, and therefore only minor economic impacts.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Other Federal agencies

have limited jurisdiction to address public conduct on Reclamation lands and facilities. Where other Federal agencies have such jurisdiction, this rule generally does not apply.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule provides Reclamation with the legal authority to protect Reclamation's ability to provide uninterrupted services to the project beneficiaries from terrorism, as well as preserve and protect their contractual rights and entitlements under Federal reclamation laws.

(4) This rule does not raise novel legal or policy issues. The requirements set forth in this rule would not significantly alter existing policies, protocols, and mandates.

#### *Regulatory Flexibility Act*

The Department of the 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.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. This rule would have little monetary impact because it only addresses public access to and the possible consequences of public conduct on Reclamation facilities, lands, and waterbodies.

#### *Small Business Regulatory Enforcement Fairness Act*

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

(1) Will not have an annual effect on the economy of \$100 million or more. One of Reclamation's major goals as a water resource agency is to assure its customers, primarily farmers, that project water deliveries will continue to be supplied on an uninterrupted basis. The Small Business Administration (SBA) defines "small business" for many industries, including farming. A farm, according to SBA regulations (13 CFR part 121), is a small business if it has annual receipts of less than \$500,000. The vast majority of some 140,000 farms receiving Reclamation irrigation water can be classified as "small entities" under the Small Business Administration definitions. This rule will help ensure a reliable water supply to those farms.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. The rule will have

a negligible impact on local and regional costs or prices, but the ability of Reclamation to enforce public conduct restrictions on Reclamation lands, facilities, and waters may in fact help to stabilize the existing economic conditions located in the local project area.

(3) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule only addresses public access to and the possible consequences of public conduct on Reclamation facilities, lands, and waterbodies.

#### *Unfunded Mandates Reform Act of 1995*

This rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector of more than \$100 million per year. Moreover, the rule does not have a significant or unique effect on state, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

#### *Executive Order 12630, Takings*

In accordance with Executive Order 12630, this rule does not have significant takings implications. Thus, a takings implication assessment is not required. This rule only addresses public access to and the possible consequences of public conduct on Reclamation facilities, lands, and waterbodies.

#### *Paperwork Reduction Act*

This rule does not require any information collection under the Paperwork Reduction Act. Therefore, an OMB Form 83-I is not required.

#### *Executive Order 13132, Federalism*

In accordance with Executive Order 13132, this rule does not have Federalism implications. A Federalism assessment is not required. The rule will not affect the roles, rights, and responsibilities of states in any way. Moreover, the rule will not result in the Federal Government taking control of traditional state responsibilities, nor will it interfere with the ability of states to formulate their own policies. In addition, the rule will not affect the distribution of power, the responsibilities among the various levels of government, nor preempt state law.

#### *Executive Order 12988, Civil Justice Reform*

In accordance with Executive Order 12988, the Department's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Executive Order.

#### *Executive Order 13211, Energy Impacts*

In accordance with Executive Order 13211, this rule will not have a significant adverse effect on the supply, distribution, and use of energy. Therefore, a Statement of Energy Effects is not required.

#### **List of Subjects**

43 CFR Part 423

Law enforcement, Public conduct, Reclamation lands, and Reclamation projects.

43 CFR Part 429

Public lands—rights-of-way; Reporting and recordkeeping requirements.

Dated: April 6, 2006.

**Mark Limbaugh,**

*Assistant Secretary—Water and Science.*

■ For the reasons stated in the preamble, the Bureau of Reclamation revises 43 CFR part 423 and amends 43 CFR part 429 as follows:

■ 1. Revise part 423 to read as follows:

### **PART 423—PUBLIC CONDUCT ON BUREAU OF RECLAMATION FACILITIES, LANDS, AND WATERBODIES**

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

Sec.

423.1 Purpose.

423.2 Definitions of terms used in this part.

423.3 When does this part apply?

#### **Subpart B—Areas Open and Closed to Public Use**

423.10 What areas are open to public use?

423.11 What areas are closed to public use?

423.12 How will Reclamation notify the public of additional closed areas?

423.13 How will Reclamation establish periodic and regular closures?

423.14 How will Reclamation post and delineate closed areas at the site of the closure?

423.15 How will Reclamation document closures or reopenings?

423.16 Who can be exempted from closures?

423.17 How will Reclamation reopen closed areas?

#### **Subpart C—Rules of Conduct**

423.20 General rules.

423.21 Responsibilities.

423.22 Interference with agency functions and disorderly conduct.

423.23 Abandonment and impoundment of personal property.

423.24 Trespassing.

423.25 Vandalism, tampering, and theft.

423.26 Public events and gatherings.

423.27 Advertising and public solicitation.

423.28 Memorials.

423.29 Natural and cultural resources.

423.30 Weapons, firearms, explosives, and fireworks.

423.31 Fires and flammable material.

423.32 Hunting, fishing, and trapping.

423.33 Camping.

423.34 Sanitation.

423.35 Animals.

423.36 Swimming.

423.37 Winter activities.

423.38 Operating vessels on Reclamation waters.

423.39 Standards for vessels.

423.40 Vehicles.

423.41 Aircraft.

423.42 Gambling.

423.43 Alcoholic beverages.

423.44 Controlled substances.

#### **Subpart D—Authorization of Otherwise Prohibited Activities**

423.50 How can I obtain permission for prohibited or restricted uses and activities?

#### **Subpart E—Special Use Areas**

423.60 How special use areas are designated.

423.61 Notifying the public of special use areas.

423.62 Documentation of special use area designation or termination.

423.63 Reservations for public use limits.

423.64 Existing special use areas.

#### **Subpart F—Violations and Sanctions**

423.70 Violations.

423.71 Sanctions.

**Authority:** Public Law 107–69 (November 12, 2001) (Law Enforcement Authority) (43 U.S.C. 373b and 373c); Public Law 102–575, Title XXVIII (October 30, 1992) (16 U.S.C. 4601–31 through 34); Public Law 89–72 (July 9, 1965) (16 U.S.C. 4601–12); Public Law 106–206 (May 26, 2000) (16 U.S.C. 4601–6d); Public Law 59–209 (June 8, 1906) (16 U.S.C. 431–433); Public Law 96–95 (October 31, 1979) (16 U.S.C. 470aa–mm).

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

##### **§ 423.1 Purpose.**

The purpose of this part is to maintain law and order and protect persons and property within Reclamation projects and on Reclamation facilities, lands, and waterbodies.

##### **§ 423.2 Definitions of terms used in this part.**

**Aircraft** means a device that is used or intended to be used for human flight in the air, including powerless flight, unless a particular section indicates otherwise.

**Archaeological resource** means any material remains of past human life or

activities which are of archaeological interest, as determined under 43 CFR part 7, including but not limited to pottery, basketry, bottles, weapons, projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human remains, or any portion of any of the foregoing items. Archaeological resources are a component of cultural resources.

**Authorized official** means the Commissioner of the Bureau of Reclamation and those Federal, state, local, and tribal officials, and agencies to which the Commissioner has delegated specific and limited authorities to enforce and implement this part 423.

**Camping** means erecting a tent or shelter; preparing a sleeping bag or other bedding material for use; parking a motor vehicle, motor home, or trailer; or mooring a vessel for the intended or apparent purpose of overnight occupancy.

**Cultural resource** means any man-made or associated 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.

**Disorderly conduct** means any of the following acts:

- (1) Fighting, or threatening or violent behavior;
- (2) Language, utterance, gesture, or display or act that is obscene, physically threatening or menacing, or that is likely to inflict injury or incite an immediate breach of the peace;
- (3) Unreasonable noise, considering the nature and purpose of the person's conduct, location, time of day or night, and other factors that would govern the conduct of a reasonably prudent person under the circumstances;

(4) Creating or maintaining a hazardous or physically offensive condition; or

(5) Any other act or activity that may cause or create public alarm, nuisance, or bodily harm.

**Explosive** means any device or substance that can be ignited or detonated to produce a violent burst of gas and/or other materials, including, but not limited to, blasting caps and detonable fireworks and pyrotechnics. This definition does not include fuel and ammunition when properly transported and used.

**Firearm** means a device that expels a projectile such as a bullet, dart, or pellet by combustion, air pressure, gas pressure, or other means.

**Fishing** means taking or attempting to take, by any means, any fish, mollusk, or crustacean found in fresh or salt water.

**Geophysical discovery device** means any mechanism, tool, or equipment including, but not limited to, metal detectors and radar devices, that can be used to detect or probe for objects beneath land or water surfaces.

**Historic property** means any prehistoric or historic district, site, building, structure, or object included on, or eligible for inclusion on, the National Register of Historic Places, including artifacts, records, and material remains related to such a property or resource.

**Hunting** means taking or attempting to take wildlife by any means, except by trapping or fishing.

**Museum property** means personal property acquired according to some rational scheme and preserved, studied, or interpreted for public benefit, including, but not limited to, objects selected to represent archaeology, art, ethnography, history, documents, botany, paleontology, geology, and environmental samples.

**Natural resources** means assets or values related to the natural world, such as plants, animals, water, air, soils, minerals, geologic features and formations, fossils and other paleontological resources, scenic values, etc. Natural resources are those elements of the environment not created by humans.

**Off-road-vehicle** means any motorized vehicle (including the standard automobile) designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or natural terrain. The term excludes all of the following:

(1) Nonamphibious registered motorboats;

(2) Military, fire, emergency, or law enforcement vehicles when used for emergency purpose;

(3) Self-propelled lawnmowers, snowblowers, garden or lawn tractors, and golf carts while being used for their designed purpose;

(4) Agricultural, timbering, construction, exploratory, and development equipment and vehicles while being used exclusively as authorized by permit, lease, license, agreement, or contract with Reclamation;

(5) Any combat or combat support vehicle when used in times of national defense emergencies;

(6) "Official use" vehicles; and  
(7) Wheel chairs and carts designed and used for transporting persons with disabilities.

*Operator* means a person who operates, drives, controls, has charge of, or is in actual physical control of any mode of transportation or other equipment.

*Permit* means any written document issued by an authorized official pursuant to subpart D of this part 423 authorizing a particular activity with specified time limits, locations, and/or other conditions.

*Person* means an individual, entity, or organization.

*Pet* means a domesticated animal other than livestock. ("Livestock" is any hooved animal used for agricultural, riding, pulling, or packing purposes.)

*Public use limit* means any limitation on public uses or activities established by law or regulation.

*Real property* means any legal interest in land and the water, oil, gas, and minerals in, on, and beneath the land surface, together with the improvements, structures, and fixtures located thereon.

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

*Reclamation facilities, lands, and waterbodies* means Reclamation facilities, Reclamation lands, and Reclamation waterbodies.

*Reclamation facility* means any facility constructed or acquired under Federal reclamation law that is situated on Reclamation lands and is used or occupied by Reclamation under a lease, easement, right-of-way, license, contract, or other arrangement. The term includes, but is not limited to, any of the following that are under the jurisdiction of or administered by Reclamation: Dams, powerplants, buildings, switchyards, transmission lines, recreation facilities, fish and wildlife facilities, pumping plants, and warehouses.

*Reclamation lands* means any real property under the jurisdiction of or administered by Reclamation, and includes, but is not limited to, all acquired and withdrawn lands and lands in which Reclamation has a lease interest, easement, or right-of-way.

*Reclamation project* means any water supply, water delivery, flood control, or hydropower project, together with any associated facilities for fish, wildlife, recreation, or water treatment constructed or administered by Reclamation under the Federal reclamation laws [the Act of June 17, 1902 (32 Stat. 388, chapter 1093; 43 U.S.C. 371 et seq.), and Acts

supplementary thereto and amendatory thereof.

*Reclamation waterbody* means any body of water situated on Reclamation lands or under Reclamation jurisdiction.

*Refuse* means any human or pet waste, litter, trash, garbage, rubbish, debris, contaminant, pollutant, waste liquid, or other discarded materials.

*Sacred site* means any specific, discrete, or narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the land managing agency of the existence of such a site.

*Special use area* means an area at or within a Reclamation facility, or an area of Reclamation lands or waterbodies, in which special rules for public conduct apply that may differ from those established in subpart C of this part 423. A special use area must be established by an authorized official as provided in subpart E of this part 423.

*State and local laws* means the laws, statutes, regulations, ordinances, codes, and court decisions of a state and of the counties, municipalities, or other governmental entities which are enabled by statute and vested with legislative authority.

*Traditional cultural property* means a discretely defined property that is eligible for inclusion on the National Register of Historic Places because of its association with cultural practices or beliefs of a living community that:

- (1) Are rooted in that community's history; and
- (2) Are important in maintaining the continuing cultural identity of the community.

*Trapping* means taking, or attempting to take, wildlife with a snare, trap, mesh, wire, or other implement, object, or mechanical device designed to entrap, ensnare, or kill animals, including fish.

*Trespass* means:

- (1) Unauthorized possession or occupancy of Reclamation facilities, lands, or waterbodies;
- (2) Personal entry, presence, or occupancy on or in any portion or area of Reclamation facilities, lands, or waterbodies that have been closed to public use pursuant to subpart B of this part 423;
- (3) Unauthorized extraction or disturbance of natural or cultural resources located on Reclamation facilities, lands, or waterbodies;

(4) Unauthorized conduct of commercial activities on Reclamation facilities, lands, or waterbodies;

(5) Holding unauthorized public gatherings on Reclamation facilities, lands, or waterbodies; or

(6) Unauthorized dumping or abandonment of personal property on Reclamation facilities, lands, or waterbodies.

*Vehicle* means every device in, upon, or by which a person or property is or may be transported or drawn on land, whether moved by mechanical, animal, or human power, including but not limited to automobiles, trucks, motorcycles, mini-bikes, snowmobiles, dune buggies, all-terrain vehicles, trailers, campers, bicycles, and those used exclusively upon stationary rails or tracks; except wheelchairs used by persons with disabilities.

*Vessel* means any craft that is used or capable of being used as a means of transportation on or under water or ice, including but not limited to powerboats, cruisers, houseboats, sailboats, airboats, hovercraft, rowboats, canoes, kayaks, ice yachts, or personal watercraft. A seaplane on Reclamation waters is considered a vessel for the purposes of § 423.38 of this part. Inner tubes, air mattresses, and other personal flotation devices are not considered vessels.

*Weapon* means a firearm or any other instrument or substance designed, used, or which can be used to cause or threaten to cause pain, injury, or death.

*Wildlife* means any non-domestic member of the animal kingdom and includes a part, product, egg, offspring, or dead body or part thereof, including but not limited to mammals, birds, reptiles, amphibians, fish, mollusks, crustaceans, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity.

*You* means a person or entity on Reclamation facilities, lands, or waterbodies.

#### § 423.3 When does this part apply?

(a) This part and all applicable state and local laws apply to all persons on Reclamation facilities, lands, and waterbodies, with the following exceptions:

(1) Certain exceptions apply to Federal, state, local, and contract employees, as further addressed in paragraph (b) of this section.

(2) Certain exceptions apply to non-Federal entities, as further addressed in paragraph (c) of this section;

(3) Certain exceptions apply on Reclamation facilities, lands, and waterbodies administered by other Federal agencies, as further addressed in paragraph (d) of this section;

(4) Certain exceptions apply on Reclamation facilities, lands, and waterbodies subject to treaties and Federal laws concerning tribes and Indians, as further addressed in paragraph (e) of this section; and

(5) This part does not apply on Hoover Dam; on any structure, building, or property appurtenant thereto; or on the surrounding Reclamation facilities and lands. Public conduct at Hoover Dam is governed by 43 CFR part 421.

(b) This part does not apply to:

(1) Federal, state, and local law enforcement, fire, and rescue personnel in the performance of their official duties on Reclamation facilities, lands, and waterbodies;

(2) An employee or agent of the Federal government when the employee or agent is carrying out official duties; or

(3) An employee or agent of an entity that has entered into a contract or agreement with Reclamation to administer, operate, maintain, patrol, or provide security for Reclamation facilities, lands, and waterbodies, when the employee or agent is working within the scope of the defined activities described in the contract or agreement.

(c) If a non-Federal entity has assumed responsibility for operating, maintaining, or managing Reclamation facilities, lands, or waterbodies through a contract or other written agreement, public conduct in and on those Reclamation facilities, lands, and waterbodies will be regulated by this part 423 as well as any regulations established by the entity, the terms of the entity's contract with Reclamation, and applicable Federal, state, and local law.

(d) Public conduct on Reclamation facilities, lands, and waterbodies administered by other Federal agencies under statute or other authority will be governed by the regulations of those agencies rather than this part 423. However, Reclamation retains the right to take necessary actions to safeguard the security and safety of the public and such Reclamation facilities, lands and waterbodies.

(e) This part applies on all Reclamation facilities, lands, and waterbodies that are subject to Treaties with, and Federal laws concerning the rights of, federally recognized Tribes, and individual Indians who are members thereof, to the extent that this part is consistent with those Treaties and Federal laws.

(f) This part 423 and other Federal laws will govern over any conflicting regulations of a non-Federal entity.

## Subpart B—Areas Open and Closed to Public Use

### § 423.10 What areas are open to public use?

All Reclamation facilities, lands, and waterbodies are open to lawful use by the public unless they are closed to public use under this subpart B of this part 423, or as provided by 43 CFR part 420, Off-Road Vehicle Use.

### § 423.11 What areas are closed to public use?

The following Reclamation facilities, lands, and waterbodies, or portions thereof, are closed to public use:

(a) Those that were closed to public use as of April 17, 2006, as evidenced by fencing, gates, barriers, locked doors, road closures, signage, posting of notices, or other reasonably obvious means, as provided in § 423.14;

(b) Those that are closed after April 17, 2006 under § 423.12;

(c) Those that are closed periodically and regularly under § 423.13; and

(d) Those that are closed to off-road vehicle use pursuant to 43 CFR part 420.

### § 423.12 How will Reclamation notify the public of additional closed areas?

(a) *Non-emergency situations.* In non-emergency situations, an authorized official must provide 30 days advance public notice before closing all or portions of Reclamation facilities, lands, or waterbodies. The notice must include publication in a newspaper of general circulation in the locale of the Reclamation facilities, lands, or waterbodies to be closed. Non-emergency situations covered by this section include:

(1) Protection and security of Reclamation facilities and of Reclamation's employees and agents;

(2) Protection of public health and safety, cultural resources, natural resources, scenic values, or scientific research activities;

(3) Safe and efficient operation and maintenance of Reclamation projects;

(4) Reduction or avoidance of conflicts among visitor use activities;

(5) National security; or

(6) Other reasons in the public interest.

(b) *Emergency situations.* In emergency situations where delay would result in significant and immediate risks to public safety, security, or other public concerns, an authorized official may close all or portions of Reclamation facilities, lands, or waterbodies without advance public notice.

### § 423.13 How will Reclamation establish periodic and regular closures?

Reclamation facilities, lands, or waterbodies that are closed periodically and regularly, regardless of the date of the initial closure, must be noticed as provided in § 423.12(a) only once, and at any time the schedule of closure is changed.

### § 423.14 How will Reclamation post and delineate closed areas at the site of the closure?

Before or at the time of closing all or portions of Reclamation facilities, lands, or waterbodies to public use, the responsible authorized official must indicate the closure by:

(a) Locked doors, fencing, gates, or other barriers;

(b) Posted signs and notices at conspicuous locations, such as at normal points of entry and at reasonable intervals along the boundary of the closed area; or

(c) Other reasonably obvious means including, but not limited to, onsite personal contact with a uniformed official.

### § 423.15 How will Reclamation document closures or reopenings?

(a) The authorized official must document the reason(s) for establishing any closure or reopening that occurs after April 17, 2006. The official must do this before the closure or reopening, except in the situations described in § 423.12(b). In such situations, the authorized official must complete the documentation as soon as practicable.

(b) Documentation of a closure must cite one or more of the conditions for closure described in § 423.12 of this part.

(c) Documentation of closures or reopenings will be available to the public upon request, except when the release of this documentation could result in a breach of national security or the security of Reclamation facilities.

### § 423.16 Who can be exempted from closures?

(a) You may be exempted from a closure, subject to any terms and conditions established under paragraph (c) of this section, by written authorization from the authorized official who effected or who is responsible for the closure, if you are:

(1) A person with a license or concession agreement that requires you to have access to the closed Reclamation facilities, lands, or waterbodies;

(2) An owner or lessee of real property, resident, or business in the vicinity of closed Reclamation facilities, lands, or waterbodies who cannot reasonably gain access to your property,

residence, or place of business without entering and crossing such closed Reclamation facilities, lands, or waterbodies; or

(3) A holder of a permit granting you an exemption from the closure issued under subpart D of this part 423 by the authorized official who effected or who is responsible for the closure.

(b) You may request exemption from a closure by writing to the authorized official who effected or who is responsible for the closure. You need not do so if you have such an exemption in effect on April 17, 2006.

(c) An authorized official may establish terms and conditions on any exemption from a closure, or terminate such exemption, for any of the reasons listed in § 423.12.

#### **§ 423.17 How will Reclamation reopen closed areas?**

An authorized official may reopen to public use any Reclamation facilities, lands, and waterbodies, or portions thereof. The authorized official may do this at any time with advance or subsequent public notice, except as required by other statute or regulation, and must document the reopening as provided in § 423.15.

### **Subpart C—Rules of Conduct**

#### **§ 423.20 General rules.**

(a) You must obey all applicable Federal, state, and local laws whenever you are at or on any Reclamation facilities, lands, or waterbodies.

(b) You must comply with all provisions of this subpart C whenever you are at or on any Reclamation facilities, lands, or waterbodies, except as specifically provided by:

(1) A permit issued by an authorized official under subpart D of this part 423;

(2) A contract with Reclamation or agency managing Reclamation facilities, lands, and waterbodies;

(3) The rules established by an authorized official in a special use area under subpart E of this part 423; or

(4) A right-of-use issued under 43 CFR part 429.

#### **§ 423.21 Responsibilities.**

(a) You are responsible for finding, being aware of, and obeying notices and postings of closed and special use areas established by an authorized official under subpart B and subpart E of this part 423.

(b) You are responsible for the use of any device, vehicle, vessel, or aircraft you own, lease, or operate on Reclamation facilities, lands, or waterbodies. You may be issued a citation for a violation of regulations applicable to the use of any device,

vehicle, vessel, or aircraft as provided in this part as the owner, lessee, or operator.

(c) You are responsible for the use and treatment of Reclamation facilities, lands, and waterbodies, and the cultural resources, wildlife, and other natural resources located thereon, by you and those for whom you are legally responsible. This presumption is sufficient to issue a citation to you for violation of provisions of these regulations by you or by those for whom you are legally responsible.

(d) The regulations governing permits, other use authorizations, and fees on Reclamation lands that are found in subpart D of this part 423 apply to your use of Reclamation facilities, lands, and waterbodies.

(e) You must furnish identification information upon request by a law enforcement officer.

#### **§ 423.22 Interference with agency functions and disorderly conduct.**

(a) You must not assault, threaten, disturb, resist, intimidate, impede, or interfere with any employee or agent of Federal, state, or local government engaged in an official duty.

(b) You must comply with any lawful order of an authorized government employee or agent for the purpose of maintaining order and controlling public access and movement during law enforcement actions and emergency or safety-related operations.

(c) You must not knowingly give a false report or other false information to an authorized government employee or agent.

(d) You must not interfere with, impede, or disrupt the authorized use of Reclamation facilities, lands, or waterbodies or impair the safety of any person.

(e) Disorderly conduct is prohibited.

#### **§ 423.23 Abandonment and impoundment of personal property.**

(a) You must not abandon personal property of any kind in or on Reclamation facilities, lands, or waterbodies.

(b) You must not store or leave unattended personal property of any kind.

(1) Unattended personal property is presumed to be abandoned:

(i) After a period of 24 hours;

(ii) At any time after a posted closure takes effect under subpart B of this part 423; or

(iii) At any time for reasons of security, public safety, or resource protection.

(2) If personal property is presumed abandoned, an authorized official may

impound it, store it, and assess a reasonable impoundment fee.

(3) The impoundment fee must be paid before the authorized official will return the impounded property to you.

(c) An authorized official may impound or destroy unattended personal property at any time if it:

(1) Interferes with safety, operation, or management of Reclamation facilities, lands, or waterbodies; or

(2) Presents a threat to persons or Reclamation project resources.

(d) An authorized official may dispose of abandoned personal property in accordance with the procedures contained in title 41 CFR and applicable Reclamation and Department of the Interior policy.

#### **§ 423.24 Trespassing.**

You must not trespass on Reclamation facilities, lands, and waterbodies.

#### **§ 423.25 Vandalism, tampering, and theft.**

(a) You must not tamper or attempt to tamper with, move, manipulate, operate, adjust, or set in motion property not under your lawful control or possession including, but not limited to, vehicles, equipment, controls, recreational facilities, and devices.

(b) You must not destroy, injure, deface, damage, or unlawfully remove property not under your lawful control or possession.

(c) You must not drop, place, throw, or roll rocks or other items inside, into, down, or from, dams, spillways, dikes, or other structures and facilities.

#### **§ 423.26 Public events and gatherings.**

You must not conduct public assemblies, meetings, gatherings, demonstrations, parades, and other events without a permit issued pursuant to subpart D of this part 423. Public gatherings that involve the possession or occupancy of Reclamation facilities, lands, and waterbodies are governed by 43 CFR part 429.

#### **§ 423.27 Advertising and public solicitation.**

You must not engage in advertising or solicitation on Reclamation facilities, lands, or waterbodies except as allowed under a valid contract with Reclamation, or as allowed by a permit issued pursuant to subpart D of this part 423.

#### **§ 423.28 Memorials.**

You must not bury, deposit, or scatter human or animal remains, or place memorials, markers, vases, or plaques on Reclamation facilities, lands, or waterbodies. This section does not apply to the burial of parts of fish or

wildlife taken in legal hunting, fishing, or trapping.

#### **§ 423.29 Natural and cultural resources.**

(a) You must not destroy, injure, deface, remove, search for, disturb, or alter natural resources or cultural resources, including abandoned buildings or structures, on or in Reclamation facilities, lands, or waterbodies except in accordance with § 423.29(g) and other applicable Federal, state, and local laws.

(b) You must not introduce wildlife, fish, or plants, including their reproductive bodies, into Reclamation lands and waterbodies without a permit issued pursuant to subpart D of this part 423.

(c) You must not drop, place, throw, or roll rocks or other items inside, into, at, or down, caves, caverns, valleys, canyons, mountainsides, thermal features, or other natural formations.

(d) You may bring firewood to or gather dead wood on Reclamation lands for fires as allowed under § 423.31. You must not damage or remove any live tree or part thereof except with proper authorization under 43 CFR part 429.

(e) You must not walk on, climb, enter, ascend, descend, or traverse cultural resources on Reclamation lands, including monuments or statues, except as specifically allowed in special use areas designated by an authorized official under subpart E of this part 423.

(f) You must not possess a metal detector or other geophysical discovery device, or use a metal detector or other geophysical discovery techniques to locate or recover subsurface objects or features on Reclamation lands, except:

(1) When transporting, but not using, a metal detector or other geophysical discovery device in a vehicle on a public road as allowed under applicable Federal, state, and local law; or

(2) As allowed by a permit issued pursuant to subpart D of this part 423.

(g) You may engage in renewable natural resource gathering activities such as picking berries and mushrooms, collecting antlers, and other similar activities as regulated by this part 423 and other applicable Federal, state, and local laws.

#### **§ 423.30 Weapons, firearms, explosives, and fireworks.**

(a) You may possess firearms, ammunition, bows and arrows, crossbows, or other projectile firing devices on Reclamation lands and waterbodies, provided the firearm, ammunition, or other projectile firing device is stowed, transported, and/or carried in compliance with applicable Federal, state, and local law, with the following exceptions:

(1) You must not have a weapon in your possession when at or in a Reclamation facility.

(2) You must comply with any prohibitions or regulations applicable to weapons in a special use area established by an authorized official under subpart E of this part 423.

(b) You must not discharge or shoot a weapon unless you are:

(1) Using a firearm or other projectile firing device lawfully for hunting or fishing as allowed under § 423.32, or at an authorized shooting or archery range; and

(2) In compliance with applicable Federal, state, and local law.

(c) You must not use or possess explosives, or fireworks or pyrotechnics of any type, except as allowed by a permit issued pursuant to subpart D of this part 423, or in special use areas so designated by an authorized official under subpart E of this part 423.

#### **§ 423.31 Fires and flammable material.**

(a) You must not leave a fire unattended, and it must be completely extinguished before your departure.

(b) You must not improperly dispose of lighted smoking materials, including cigarettes, cigars, pipes, matches, or other burning material.

(c) You must not burn materials that produce toxic fumes, including, but not limited to, tires, plastic, flotation materials, or treated wood products.

(d) You must not transport gasoline and other fuels in containers not designed for that purpose.

(e) You must comply with all applicable Federal, state, and local fire orders, restrictions, or permit requirements.

#### **§ 423.32 Hunting, fishing, and trapping.**

(a) You may hunt, fish, and trap in accordance with applicable Federal, state, and local laws, and subject to the restrictions of § 423.30, in areas where both of the following conditions are met:

(1) The area is not closed to public use under subpart B of this part 423; and

(2) The area has not been otherwise designated by an authorized official in a special use area under subpart E of this part 423.

(b) You must comply with any additional restrictions pertaining to hunting, fishing, and trapping established by an authorized official in a special use area under subpart E of this part 423.

#### **§ 423.33 Camping.**

(a) You may camp on Reclamation lands, except that you must comply

with any restrictions, conditions, limitations, or prohibitions on camping established by an authorized official in a special use area under subpart E of this part 423.

(b) You must not camp on Reclamation lands at any single Reclamation project for more than 14 days during any period of 30 consecutive days, except as allowed by a permit issued under 43 CFR part 429;

(c) You must not attempt to reserve a campsite for future use by placing equipment or other items on the campsite, or by personal appearance, without camping on and paying the required fees for that campsite daily;

(d) You must not camp on or place any equipment at a campsite that is posted or otherwise marked as "reserved" or "closed" by an authorized official without a valid reservation for that campsite, except as allowed by a permit issued under subpart D of this part 423; and

(e) You must not dig in or level any ground, or erect any structure other than a tent, in a designated campground.

#### **§ 423.34 Sanitation.**

(a) You must not bring or improperly dispose of refuse on Reclamation facilities, lands, and waterbodies. Both the owner and the person bringing or disposing refuse may be issued a citation for violating this provision.

(b) Campers, picnickers, and all other persons using Reclamation lands must keep their sites free of trash and litter during the period of occupancy and must remove all personal equipment and clean their sites before departure.

(c) You must not construct a latrine within 200 yards of any Reclamation waterbody, or within 200 yards of the high water mark of any reservoir.

#### **§ 423.35 Animals.**

(a) You must not bring pets or other animals into public buildings, public transportation vehicles, or sanitary facilities. This provision does not apply to properly trained animals assisting persons with disabilities, such as seeing-eye dogs.

(b) You must not abandon any animal on Reclamation facilities, lands, or waterbodies, or harass, endanger, or attempt to collect any animal except game you are attempting to take in the course of authorized hunting, fishing, or trapping.

(c) Any unauthorized, unclaimed, or unattended animal on Reclamation lands may be:

(1) Removed in accordance with Federal law, and applicable state and local laws; and

(2) Confined at a location designated by an authorized official, who may

assess a reasonable impoundment fee that must be paid before the impounded animal is released to its owner.

(d) The following animals are prohibited and are subject to removal in accordance with Federal law, and applicable state and local laws:

(1) Captive wild or exotic animals (including, but not limited to, cougars, lions, bears, bobcats, wolves, and snakes), except as allowed by a permit issued under subpart D of this part 423; and

(2) Any pets or animals displaying vicious or aggressive behavior or posing a threat to public safety or deemed a public nuisance.

#### **§ 423.36 Swimming.**

(a) You may swim, wade, snorkel, scuba dive, raft, or tube at your own risk in Reclamation waters, except:

(1) Within 300 yards of dams, power plants, pumping plants, spillways, stilling basins, gates, intake structures, and outlet works;

(2) Within 100 yards of buoys or barriers marking public access limits;

(3) In canals, laterals, siphons, tunnels, and drainage works; or

(4) At public docks, launching sites, and designated mooring areas.

(b) You must display an international diver down, or inland diving flag in accordance with state and U.S. Coast Guard guidelines when engaging in any underwater activities.

(c) You must not dive, jump, or swing from dams, spillways, bridges, cables, towers, or other structures.

#### **§ 423.37 Winter activities.**

(a) You must not tow persons on skis, sleds, or other sliding devices with a motor vehicle or snowmobile, except that you may tow sleds designed to be towed behind snowmobiles if joined to the towing snowmobile with a rigid hitching mechanism, and you may tow disabled snowmobiles by any appropriate means.

(b) You must not ice skate, ice fish, or ice sail within 300 yards of dams, power plants, pumping plants, spillways, stilling basins, gates, intake structures, or outlet works.

#### **§ 423.38 Operating vessels on Reclamation waters.**

(a) You must comply with Federal, state, and local laws applicable to the operation of a vessel or other watercraft on Reclamation waters, and with any restrictions established by an authorized official.

(b) You must not operate a vessel in an area closed to the public.

(c) You must observe restrictions established by signs, buoys, and other regulatory markers.

(d) You must not operate a vessel, or knowingly allow another person to operate a vessel, in a reckless or negligent manner, or in a manner that endangers or is likely to endanger a person, property, natural resource, or cultural resource.

(e) You must not operate a vessel when impaired or intoxicated under the standards established by applicable state and local law.

(f) You must not occupy a vessel overnight, except where otherwise designated under applicable Federal, state, or local law, or where otherwise designated by an authorized official in a special use area.

(g) You must not use a vessel as a place of habitation or residence.

(h) You must not place or operate a vessel on a Reclamation waterbody for a fee or profit, except as allowed by contract or permit issued pursuant to subpart D of this part 423.

(i) You must remove your vessels from Reclamation lands and waters when not in actual use for a period of more than 24 hours, unless they are securely moored or stored at special use areas so designated by an authorized official.

(j) You must not attach or anchor a vessel to structures such as locks, dams, regulatory or navigational buoys, or other structures not designed for such purpose.

(k) You must display an international diver down, or inland diving flag in accordance with state and U.S. Coast Guard guidelines when operating a vessel involved in any underwater activities.

(l) You may engage in towing activities, including but not limited to waterskiing and tubing, only during daylight hours and subject to any applicable Federal, state, and local law.

#### **§ 423.39 Standards for vessels.**

(a) All vessels on Reclamation waters must:

(1) Be constructed and maintained in compliance with the standards and requirements established by, or promulgated under, Title 46 United States Code, and any applicable state and local laws and regulations;

(2) Have safety equipment, including personal flotation devices, on board in compliance with U.S. Coast Guard boating safety requirements and in compliance with applicable state and local boating safety laws and regulations; and

(3) If motorized, have and utilize a proper and effective exhaust muffler as defined by applicable state and local laws. Actions or devices which render

exhaust mufflers ineffective are prohibited.

(b) Owners or operators of vessels not in compliance with this § 423.39 may be required to remove the vessel immediately from Reclamation waterbodies until items of non-compliance are corrected.

#### **§ 423.40 Vehicles.**

(a) When operating a vehicle on Reclamation lands and Reclamation projects, you must comply with applicable Federal, state, and local laws, and with posted restrictions and regulations. Operating any vehicle through, around, or beyond a restrictive sign, recognizable barricade, fence, or traffic control barricade, is prohibited.

(b) You must not park a vehicle in violation of posted restrictions and regulations, or in a manner that would obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property, or natural feature. Vehicles so parked are subject to removal and impoundment at the owner's expense.

(c) You must not operate any vehicle, or allow another person to operate a vehicle in your control, in a careless, negligent or reckless manner that would endanger any person, property, natural resource, or cultural resource.

(d) In addition to the regulations in this part, the regulations governing off-road-vehicle use in 43 CFR part 420 apply.

#### **§ 423.41 Aircraft.**

(a) You must not takeoff or land an aircraft on Reclamation lands or waterbodies except in special use areas so designated by an authorized official. This paragraph does not apply to pilots engaged in emergency rescue or in the official business of Federal, state, or local governments or law enforcement agencies, or who are forced to land due to circumstances beyond the pilot's control.

(b) You must not operate any aircraft while on or above Reclamation facilities, lands, and waterbodies in a careless, negligent, or reckless manner so as to endanger any person, property, or natural feature.

(c) This section does not provide authority to deviate from Federal or state regulations, or prescribed standards, including, but not limited to, regulations and standards concerning pilot certifications or ratings and airspace requirements.

(d) Except in extreme emergencies threatening human life or serious property loss, you must not use non-standard boarding and loading

procedures to deliver or retrieve people, material, or equipment by parachute, balloon, helicopter, or other aircraft.

(e) Operation of aircraft on or over Reclamation lands and waterbodies is at the risk of the aircraft owner, pilot, and passenger(s).

(f) You must comply with all applicable U.S. Coast Guard rules and § 423.38 when operating a seaplane on Reclamation waterbodies.

(g) You must securely moor any seaplane remaining on Reclamation waterbodies in excess of 24 hours at mooring facilities and locations designated by an authorized official. Seaplanes may be moored for periods of less than 24 hours on Reclamation waterbodies, except in special use areas otherwise designated by an authorized official, provided:

(1) The mooring is safe, secure, and accomplished so as not to damage the rights of the Government or the safety of persons; and

(2) The operator remains in the vicinity of the seaplane and reasonably available to relocate the seaplane if necessary.

(h) Commercial operation of seaplanes from Reclamation waterbodies is prohibited.

(i) You must not operate a seaplane on Reclamation lands and waterbodies between sunset and sunrise.

(j) You must comply with any further restrictions on the operation of aircraft in the proximity of specific Reclamation facilities, lands, or waterbodies established by an authorized official.

(k) You must not operate model aircraft except as allowed in special use areas established by an authorized official under subpart E of this part 423.

#### **§ 423.42 Gambling.**

Commercial gambling in any form, or the operation of gambling devices, is prohibited on Reclamation facilities, lands, and waterbodies unless authorized by applicable treaties or Federal, state, and local laws or regulations.

#### **§ 423.43 Alcoholic beverages.**

You must not possess or consume alcoholic beverages in violation of Federal, state, or local law, or the rules of a special use area established by an authorized official under subpart E of this part 423.

#### **§ 423.44 Controlled substances.**

You must not possess, consume, deliver, or be under the influence of, controlled substances included in schedules I, II, III, IV, or V of part B of the Controlled Substance Act (21 U.S.C. 812) on Reclamation facilities, lands, or

waterbodies, unless the controlled substance was legally obtained through a valid prescription or order.

#### **Subpart D—Authorization of Otherwise Prohibited Activities**

##### **§ 423.50 How can I obtain permission for prohibited or restricted uses and activities?**

(a) Authorized officials may issue permits to authorize activities on Reclamation facilities, lands, or waterbodies otherwise prohibited or restricted by §§ 423.16(a)(3), 423.26, 423.27, 423.29(b), 423.29(f), 423.30(c), 423.33(d), 423.35(d)(1), and 423.38(h), and may terminate or revoke such permits for non-use, non-compliance with the terms of the permit, violation of any applicable law, or to protect public health or safety or natural or cultural resources.

(b) You may apply for permission to engage in activities otherwise prohibited or restricted by the sections listed in paragraph (a) of this section. You may apply to the authorized official responsible for the area in which your activity is to take place, and this authorized official may grant, deny, or establish conditions or limitations on this permission.

(c) You must pay all required fees and properly display applicable permits, passes, or receipts.

(d) You must not violate the terms and conditions of a permit issued by an authorized official. Any such violation is prohibited and may result in suspension or revocation of the permit, or other penalties as provided in subpart F of this part 423, or both.

(e) You must, upon request by a law enforcement officer, security guard, or other government employee or agent acting within the scope of their official duties, display any permit authorizing your presence or activity on Reclamation facilities, lands, and waterbodies.

#### **Subpart E—Special Use Areas**

##### **§ 423.60 How special use areas are designated.**

(a) After making a determination under paragraph (b) of this section, an authorized official may:

(1) Establish special use areas within Reclamation facilities, lands, or waterbodies for application of reasonable schedules of visiting hours; public use limits; and other conditions, restrictions, allowances, or prohibitions on particular uses or activities that vary from the provisions of subpart C of this part 423, except § 423.28; and

(2) From time to time revise the boundaries of a previously designated special use area and revise or terminate

previously imposed schedules of visiting hours; public use limits; and other conditions, restrictions, allowances, or prohibitions on a use or activity.

(b) Before taking action under paragraph (a) of this section, an authorized official must make a determination that action is necessary for:

- (1) The protection of public health and safety;
- (2) The protection and preservation of cultural and natural resources;
- (3) The protection of environmental and scenic values, scientific research, the security of Reclamation facilities, the avoidance of conflict among visitor use activities; or
- (4) Other reasons in the public interest.

##### **§ 423.61 Notifying the public of special use areas.**

When establishing, revising, or terminating a special use area, Reclamation must notify the public as required by this section.

(a) *What notices must contain.* The notice must specify:

- (1) The location of the special use area; and
- (2) The public use limits, conditions, restrictions, allowances, or prohibitions on uses and activities that are to be applied to the area or that are to be revised or terminated.

(b) *How notice must be made.*

Reclamation must publish the notice required by paragraph (a) of this section in the **Federal Register** at least 15 days before the action takes place. Reclamation must also notify the public by one or more of the following methods:

- (1) Signs posted at conspicuous locations, such as normal points of entry and reasonable intervals along the boundary of the special use area;
- (2) Maps available in the local Reclamation office and other places convenient to the public;
- (3) Publication in a newspaper of general circulation in the affected area; or
- (4) Other appropriate methods, such as the use of electronic media, brochures, and handouts.

(c) *When notice may be delayed.*

(1) Notice under this section may be delayed in an emergency where delaying designation, revision, or termination of a special use area would result in significant risk to:

- (i) National security; or
- (ii) The security of a Reclamation facility, Reclamation employees, or the public.

(2) If the exception in paragraph (c)(1) of this section applies, Reclamation

must comply with paragraph (b) of this section within 30 days after the effective date of the designation.

(3) Failure to meet the **Federal Register** notice deadlines in paragraphs (b) or (c)(2) of this section will not invalidate an action, so long as Reclamation meets the remaining notification requirements of this section.

(d) *When notice is not required.* Notice under this section is not required if all the following conditions are met:

(1) The action will not result in a significant change in the public use of the area;

(2) The action will not adversely affect the area's natural, esthetic, scenic or cultural values;

(3) The action will not require a long-term or significant modification in the resource management objectives of the area; and

(4) The action is not highly controversial.

#### **§ 423.62 Documentation of special use area designation or termination.**

(a) The authorized official must document the reasons for designating a special use area and the restrictions, conditions, public use limits, or prohibitions that apply to that area. In the case of the termination of a previously established restriction, condition, public use limit, or prohibition, the authorized official must make a written determination as to why the restriction is no longer necessary.

(b) Documentation of the designation or termination of a special use area must occur before the action, except in the emergency situations described in § 423.61(c). In the latter case, the documentation is required within 30 days after the date of the designation.

(c) Reclamation will make documents produced under this section available to the public upon request except where such disclosure could compromise national or facility security, or human safety.

#### **§ 423.63 Reservations for public use limits.**

To implement a public use limit, an authorized official may establish a registration or reservation system.

#### **§ 423.64 Existing special use areas.**

Areas designated and formally documented for special uses, public use limits, or other restrictions, on April 17, 2006 will remain so designated without the need for compliance with §§ 423.60 through 423.63, except with respect to termination or modification of the special uses, public use limits, or other restrictions.

### **Subpart F—Violations and Sanctions**

#### **§ 423.70 Violations.**

(a) When at, in, or on Reclamation facilities, lands, or waterbodies, you must obey and comply with:

(1) Any closure orders established under subpart B of this part 423;

(2) The regulations in subpart C of this part 423;

(3) The conditions established by any permit issued under subpart D of this part 423; and

(4) The regulations established by an authorized official in special use areas under subpart E of this part 423.

(b) Violating any use or activity prohibition, restriction, condition, schedule of visiting hours, or public use limit established by or under this part 423 is prohibited.

(c) Any continuous or ongoing violation of these regulations constitutes a separate violation for each calendar day in which it occurs.

#### **§ 423.71 Sanctions.**

Under section (1)(a) of Public Law 107-69, you are subject to a fine under chapter 227, subchapter C of title 18 United States Code (18 U.S.C. 3571), or can be imprisoned for not more than 6 months, or both, if you violate:

(a) The provisions of this part 423; or  
(b) Any condition, limitation, or prohibition on uses or activities, or of public use limits, imposed under this part 423.

### **PART 429—PROCEDURE TO PROCESS AND RECOVER THE VALUE OF RIGHTS-OF-USE AND ADMINISTRATIVE COSTS INCURRED IN THE PERMITTING OF SUCH USE**

■ 2. Revise the authority citation for part 429 to read as follows:

**Authority:** 43 U.S.C. 373 (32 Stat. 390); 43 U.S.C. 387 (53 Stat. 1196), as amended by 64 Stat. 463, c. 752 (1950); Department of the Interior Manual Part 346, Chapters 1, 2, 3, and 4; 43 U.S.C. 501; Independent Offices Appropriation Act (31 U.S.C. 483a); and Budget Circular A-25, as amended by transmittal memorandums 1 and 2 of Oct. 22, 1963, and April 16, 1974.

■ 3. Revise § 429.1 to read as follows:

#### **§ 429.1 Purpose.**

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 facilities, lands, or waterbodies are prohibited without written authorization from Reclamation, except for the legal harvest or collection of fish, wildlife, or plant material in conformance with applicable Federal, state, and local laws. Written

authorizations must meet the requirements of the Independent Offices Appropriation Act (31 U.S.C. 483a) and Office of Management and Budget Circular A-25, as amended; both of which require that Reclamation recover both the fair market value of rights-of-use granted to applicants and the administrative costs associated with the issuing of rights-of-use on facilities, lands, and waterbodies administered by Reclamation. This part also refers to costs incurred by Reclamation when, at the request of other agencies and parties, Reclamation gives aid and assistance in rights-of-use matters.

■ 4. In § 429.2, paragraphs (c) and (d) are revised and new paragraphs (m) and (n) are added to read as follows:

#### **§ 429.2 Definitions.**

\* \* \* \* \*

(c) *Regional Director* means any one of the Reclamation Regional Directors designated by the Commissioner to act in specified rights-of-use actions. The Regional Directors may re-delegate portions of their authorities for granting rights-of-use to officers and employees of Reclamation.

(d) *Rights-of-use* means rights-of-way, easements, permits, licenses, contracts, or agreements issued or granted non-competitively by Reclamation that authorize the possession or occupation of and the extraction or disturbance of natural resources on Reclamation facilities, lands, and waterbodies.

\* \* \* \* \*

(m) *Possession or occupancy* and *possess or occupy* both mean to have in one's actual control or to use, hold, or reside in or on Reclamation facilities, lands, or waterbodies, including to use or hold such facilities, lands, or waterbodies in a manner or for a purpose that only temporarily restricts or precludes other public uses.

(n) *Reclamation land or lands* means facilities, lands, and waterbodies under Reclamation's administrative control or jurisdiction.

■ 5. In § 429.3(c), remove the word "apprised" and add in its place "appraised."

■ 6. In § 429.6, remove the second sentence of the introductory text.

■ 7. Remove and reserve § 429.11.

■ 8. Add §§ 429.12 and 429.13, to read as follows:

#### **§ 429.12 Applicability.**

(a) This part 429 applies to any possession or occupancy of Reclamation facilities, lands, or waterbodies.

(b) This part 429 does not apply to the use of Reclamation lands for transitory activities such as hiking, camping,

sightseeing, picnicking, hunting, swimming, boating, fishing, and other personal recreational pursuits. These activities are governed by 43 CFR part 423, Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies.

(c) This part does not apply to leasing Reclamation lands for grazing, agriculture, or any other purposes where a greater return will be realized by the United States through a competitive bidding process.

(d) This part does not apply to interests issued or granted for the replacement or relocation of facilities belonging to others under section 14 of the Reclamation Project Act of August 4, 1939, 43 U.S.C. 389.

(e) This part does not apply to archaeological resources or archaeological resources management activities that are governed by the Archaeological Resources Protection Act (Pub. L. 96-95), 43 CFR part 7, and 43 CFR part 423.

#### **§ 429.13 General restrictions.**

You must not possess or occupy, or extract or remove natural resources from Reclamation facilities, lands, or waterbodies unless you obtain a right-of-use in accordance with this part 429 or under other written agreement with Reclamation.

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