

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

RIN 1006-AA51

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

SUMMARY: The Bureau of Reclamation (Reclamation) proposes a rule on the use of Reclamation land, facilities, and waterbodies. The proposed rule addresses among other topics the cost recovery of fees for authorized uses involving the possession or occupancy of any portion of, and the extraction or disturbance of any natural resource from Reclamation land, facilities, and waterbodies; how to apply for a use authorization including what application forms to use; and what uses are prohibited and associated consequences. When finalized, the proposed rule will supersede the current rule which was originally published in 1983 and partially revised in April 2006.

DATES: Submit comments by September 16, 2008.

The dates of the informational meetings to be held regarding this proposed rule are listed in the **SUPPLEMENTARY INFORMATION** section of this proposed rule.

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

—*Use the Federal rulemaking Web site:* <http://www.regulations.gov> and follow the instructions for submitting comments. Please use the docket identification number BOR-2008-0004 which has been assigned to this rule when submitting your comments to the rulemaking Web site.

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

The locations of the informational meetings to be held regarding this proposed rule are listed in the **SUPPLEMENTARY INFORMATION** section of this proposed rule.

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

SUPPLEMENTARY INFORMATION:**I. Background**

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

This proposed rule addresses activities involving the possession or occupancy of any portion of, and the extraction or disturbance of any natural resources from, Reclamation land, facilities, and waterbodies. Regulations addressing public access to Reclamation property and occasional public activities such as hiking, camping, boating, and hunting, and closures are contained in 43 CFR part 423.

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

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

and charges. The use of Reclamation land, facilities, or waterbodies is a use of Government resources, and as such, the IOAA and OMB Circular A-25 direct Reclamation to recover the costs and fees associated with the use of these resources.

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

This proposed rule addresses:

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

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

(c) The procedures to apply for use of Reclamation land, facilities, and waterbodies that involves the possession or occupancy of any portion of, or the extraction or disturbance of any natural resource from, Reclamation land, facilities, or waterbodies;

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

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

(f) Conditions under which application fees, administrative costs, or use fees may be waived or reduced if determined appropriate by Reclamation or as currently listed in OMB Circular A-25;

(g) The required terms and conditions associated with use authorizations;

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

(i) The criteria Reclamation will use to evaluate existing authorizations for otherwise prohibited uses of Reclamation land, facilities, and waterbodies; and

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

II. Revision of Existing Rules

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

On July 18, 2007, we published a notice in the **Federal Register** at 72 FR 39530 announcing the availability of the proposed rule for a 90-day public comment period ending on October 16, 2007. We requested that comments be submitted by the public using one of the following methods: posting on the Federal rulemaking web site, through emailing, or mailing to the listed address. As a result of comments received, the proposed rule has been revised and is being provided to the public for further comment through this publication in the **Federal Register**.

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

III. Informational Meetings

Informational meetings regarding the proposed rule will be held in each of our five regions in the 17 western states. These meetings will be informational in nature only. Public comments offered at the meetings will not be recorded or accepted into the official record. You must submit your comments as instructed in the **ADDRESSES** section of this proposed rule. The dates, times, and locations of these meetings listed by Reclamation region follow:

Pacific Northwest Region

Moses Lake, Washington—Wednesday, July 30, 2008, 4 p.m., Big Bend Community College, 7662 Chanute Street NE.

Boise, Idaho—Wednesday, August 20, 2008, 4 p.m., Boise Public Library, 715 South Capitol Boulevard.

For further information regarding the meetings, please contact Diana Cross at telephone number 208-378-5020.

Mid-Pacific Region

Sacramento, California—Monday, August 18, 2008, 6 p.m., Federal Office Building, 2800 Cottage Way.

For further information regarding the meeting, please contact Peter Lucero at telephone number (916) 978-5101.

Lower Colorado Region

Boulder City, Nevada—Tuesday, August 5, 2008, 2 p.m., Lower Colorado Regional Office, Mead Building.

Phoenix, Arizona—Wednesday, August 6, 2008, 2 p.m., Phoenix Area Office, 6150 West Thunderbird Road.

Yuma, Arizona—Thursday, August 7, 2008, 9 a.m., Quartermaster State Historic Park, 201 N. 4th Avenue.

For further information regarding the meetings, please contact Robert Walsh at telephone number (702) 293-8421.

Upper Colorado Region

Grand Junction, Colorado—Wednesday, July 30, 1 p.m., Western Colorado Area Office, 2764 Compass Drive.

Albuquerque, New Mexico—Tuesday, August 12, 2008, 1 p.m., Albuquerque Area Office, 555 Broadway NE.

Salt Lake City, Utah—Monday, August 14, 2008, 1 p.m., Upper Colorado Regional Office, Bennett Federal Building, 125 South State Street.

For further information regarding the meetings, please contact Barry Wirth at telephone number (801) 524-3774.

Great Plains Region

Malta, Montana—Wednesday, August 20, 2008, 7 p.m., Marian Hills Golf Course.

Helena, Montana—Thursday, August 21, 2008, 7 p.m., Helena Regional Airport.

For further information regarding the meetings, please contact Mark Andersen at telephone number (406) 247-7609.

IV. Summary of Changes, Comments, and Responses

This section of the preamble describes changes from the proposed rule published on July 18, 2007, and provides responses to the comments received on that proposed rule by section. Nearly 1,300 comments were submitted by the public during the 90-day comment period. Of those comments, approximately 95 percent related directly to § 429.32, which discusses how we will address existing uses that are otherwise prohibited.

Comments received that are similar in nature have been categorized by subject. Comments and our responses on general issues not related to a specific section of the preamble or text of the proposed

rule are arranged first. This section is followed by comments regarding the preamble of the previously proposed rule and our responses; and lastly, the changes we have made, comments received, and our responses related to specific sections of the text of the previously proposed rule.

General Comments and Responses

Comment: Support was expressed for the proposed changes to the current rule and would like to see more private exclusive use areas converted to public use areas.

Response: Due to the overwhelming reaction received during the comment period, we have reconsidered this issue.

Comment: Appreciation was expressed for the high quality recreation related services provided to the public by our non-Federal managing partners.

Response: We will continue to work with our existing managing partners and seek out additional managing partners, when appropriate, to provide high quality recreation opportunities.

Comment: It appears that the intent of the proposed rule is to phase out all private access to Reclamation waterbodies. This would have an adverse effect on recreational boating and fishing as a whole as well as on the economies of neighboring communities. Amend the rule to strongly favor recreational uses.

Response: We do not intend to phase out the public's use of our waterbodies. Recreational use of these waterbodies will continue under this proposed rule.

Comment: The current rule is adequate and there is no need for revision.

Response: Although some adjustments were made in the revision that was published in 2006, additional revisions are needed to incorporate current Federal regulations and policies concerning the use of Federal land and cost recovery for those uses.

Comment: Clarification is needed to describe which bodies of water or facilities will be subject to authorizations and fees.

Response: All waterbodies and facilities that are directly managed by Reclamation are subject to the authorization requirements and fees specified in the current rule and will continue to be so under the provisions of the proposed rule.

Comment: A number of commenters, including managing partners, expressed concern that they did not receive adequate notice regarding the proposed rule making.

Response: We are providing a 60-day public comment period in conjunction with the publishing of this proposed

rule and sending a copy of this proposed rule to each commenter who previously provided an address in a timely manner. Additionally, informational meetings as listed in the **SUPPLEMENTARY INFORMATION** section of this proposed rule are being conducted during the 60-day comment period.

Comment: All water user organizations operating Reclamation projects under project operation and maintenance contracts should be specifically exempted from this proposed rule.

Response: Under § 429.4(b)(5) of this proposed rule, operation and maintenance activities on Reclamation land, facilities, and waterbodies authorized by contracts with water user organizations or Reclamation contractors do not require a use authorization.

Comment: Reclamation should be maximizing its return for the use of Reclamation lands, facilities, and waterbodies by charging fees appropriately.

Response: The proposed rule will comply with OMB Circular A-25 which directs the recovery of administrative costs and use fees.

Comment: Reclamation wants to eliminate all recreational and residential uses and replace them with grazing or agricultural permits at Nelson Reservoir in Montana.

Response: Nelson Reservoir is known to provide valuable public recreational opportunities. We have no plans to eliminate all recreational and residential uses at Nelson Reservoir and replace them with grazing or agricultural permits.

Comment: Specific requirements addressing riparian zone protection should be included in all grazing permits.

Response: Terms required in all use authorizations issued by Reclamation are listed under § 429.28 of the proposed rule. Additional terms and conditions or requirements are determined on a case-by-case basis to meet local, environmental compliance, and other legal requirements as stated under § 429.29 of the proposed rule.

Comment: It is unclear as to how this rule will affect non-Federal managing partners and their ability to continue to administer the Reclamation land and facilities that have been transferred to them at reservoirs for recreation and related purposes.

Response: Paragraph 429.4(b) specifically excludes sites managed by non-Federal managing partners from the requirements associated with issuing recreational use authorizations that do not violate Subpart H of these

regulations (e.g., allow for new private exclusive recreational or residential uses). Depending on the agreement between Reclamation and the non-Federal entity, the entity may also be authorized to issue use authorizations under Paragraph 429.5.

Comment: The mandated placement of fencing between private property and the lakeshore at Lake Cascade, Idaho, will have a negative affect on adjacent homeowners and many people who recreate in the area.

Response: Any operational or management plans for fencing at Lake Cascade, Idaho, are not mandated by or directly related to this proposed rule.

Preamble Comments and Responses

Only those sections of the preamble to the proposed rule that received comments are discussed in this section.

IV. Procedural Requirements

Comment: This section should include a meaningful analysis of Reclamation's intent for proposing Subpart H of the proposed rule.

Response: The reason we are including Subpart H is because it is our responsibility to notify the public of uses that are prohibited on Reclamation land, facilities, and waterbodies; thus the primary purpose of Subpart H. Based on the comments received in 2007, we have revised our approach with regard to existing private exclusive recreational and residential use, while maintaining the prohibition on any new such uses.

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

Comment: Under paragraph (a) this is a significant rule which under E.O. 12866 will have an effect of \$100 million or more on the economy due to additional financial burdens being placed on the public.

Response: The proposed rule actually lessens some of the impacts placed on the economy. As an example, the application fee is reduced from \$200 to \$100 in the proposed rule. The total amount of fees and charges we annually collect for uses of Reclamation land, facilities, and waterbodies is well under \$100 million.

Comment: Paragraph (b) states that this rule would not create a serious inconsistency or otherwise interfere with actions of another Federal agency. Other Federal agencies, however, seemingly continue to allow for private exclusive recreational or residential uses.

Response: Each Federal agency has authorities, regulations, and policies that are unique to their mission and

responsibilities and will necessarily result in differing practices for the management of lands and resources. How we address private exclusive recreational and residential uses has no impact on how other Federal agencies address that issue.

2. Regulatory Flexibility Act

Comment: Because this rule expands use fees and authorizations to include navigable waterbodies and facilities, many associated small businesses will be required to submit reports to the agency to comply with the fee determining process.

Response: The current rule requires that applicable use fees be paid for authorized uses of Reclamation waterbodies and facilities pursuant to OMB Circular A-25; the proposed rule does not expand on that requirement. Additionally, the proposed rule does not impose a reporting or recordkeeping requirement on small businesses.

3. Small Business Regulatory Enforcement Fairness Act

Comment: The expansion of fees and cost recovery to facilities and waterbodies could result in increased costs or prices for consumers, individual industries, etc.

Response: Section 429.1 of the current rule requires that applicable fees and cost recovery be assessed for the authorized use of Reclamation lands as well as facilities and waterbodies. The proposed rule does not expand on that requirement.

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

Comment: Reclamation's determination that this proposed rule would have no implications for takings of private property rights is invalid.

Response: This rule applies only to Reclamation land, facilities, and waterbodies. Any private personal property lawfully placed on Reclamation land, facilities, or waterbodies is there only by our permission through a use authorization. No real property rights are conveyed for Reclamation land, facilities, and waterbodies through such a use authorization. Additionally, Reclamation is not responsible for maintaining the value of private personal property, particularly when the authorized uses are not in compliance with the terms of the existing use authorization.

10. National Environmental Policy Act of 1969 (NEPA)

Comment: This action does have a significant effect on the quality of the human environment because of the

impacts it would have on development in major urban areas. There is a need for an environmental assessment or environmental impact statement pursuant to NEPA.

Response: The proposed rulemaking is a categorically excluded action pursuant to Department of the Interior Departmental Manual 516, Chapter 2, Appendix 1, Exclusion 1.10. As applications for specific use authorizations are evaluated under the proposed rule, the appropriate Reclamation office will determine the type of NEPA analysis that is warranted for the specific use requested.

13. Clarity of This Regulation

Comment: In general, the proposed rule is vague, confusing, and/or inconsistent in content.

Response: Changes have been made to the previously proposed rule to clarify sections that were specifically identified by commenters as unclear. We have also made editorial changes to improve the readability of the proposed rule.

Changes, Comments, and Responses Related to the Text of the Proposed Rule

Subpart A—Purpose, Definitions, and Applicability

Comment: The effects of §§ 429.3, 429.4, and 429.5 on non-Federal managing partners are not clear and appear to be contradictory. Section 429.3(d) states that grazing, farming, and other agricultural uses require an authorization under this part. Section 429.4(b), however, states that activities at sites managed by non-Federal managing partners under Public Law 89–72 do not require authorization under this part. Additionally, § 429.5 states that only Reclamation is authorized to issue use authorizations under this part.

Response: Section 429.4(b) lists uses that are not subject to this proposed rule and specifically includes “recreational activities at sites managed by non-Federal managing partners under Public Law 89–72, titled Federal Water Project Recreation Act, July 9, 1965, as amended” Therefore §§ 429.3(d) and 429.5 would not apply to our non-Federal managing recreation partners for recreational related uses.

Section 429.1 This section describes the purpose of 43 CFR part 429.

To be consistent with changes made at § 429.32, we added paragraph (f) to this section that describes how we will address existing permitted uses which are otherwise prohibited, including the criteria for approval or denial of requests to renew or transfer these permits. The paragraphs following were

appropriately renumbered. Minor editorial changes were made to this section as compared to the previously proposed rule.

Section 429.2 This section establishes the definitions for terms that are used in part 429.

We made changes to this section as compared to the previously proposed rule by adding definitions for the following terms: *easement, managing partner, part 21 of this title and public needs*. We also broadened the definition of *water user organization*.

Comment: The definition for private exclusive recreational or residential use is ambiguous and should more clearly explain what the extended period of time is that creates such a use.

Response: The inclusion of a time component does create confusion and would wrongly imply that certain exclusive uses could be allowable for a limited time without a use authorization. We have now removed the reference to “extended periods of time.” Normal recreational activities, including camping for up to 14 days within a 30 day period, are specifically exempted by section 429.4(a). We have also provided examples of the most common instances of private exclusive recreational and residential use in the definition itself.

Comment: The definitions in the proposed rule for *Reclamation land* and *Reclamation facility* should be amended to restore the words from the current rule under § 429.6. This change would limit the applicability of the proposed rule to those lands and facilities that are in the control and custody of Reclamation; and would recognize that although Reclamation lands continue to be owned by the United States, they are managed by and placed in the custodial control of the water user organizations with whom Reclamation holds contracts.

Response: This proposed rule applies to all land and facilities under our jurisdiction. It is our responsibility to manage these lands in the best interest of the United States and in compliance with applicable Federal statutes, regulations, and policies.

Section 429.3 This section describes the types of uses of and activities on Reclamation land, facilities, and waterbodies that typically require a use authorization under part 429.

We made only minor editorial changes to this section as compared to the previously proposed rule. It should be noted that part 5 of this title addresses some types of filming and photography on certain areas under the jurisdiction of the Department of the Interior. However, part 5 of this title is

specific to other agencies within the Department of the Interior not including Reclamation.

Comment: Section 429.4 is not needed since the uses that require authorization are listed in § 429.3. Only individuals who are seeking an authorization will be using this rule.

Response: If there are common uses that do not require authorization, it is important that we notify the public in this proposed rule.

Section 429.4 This section lists the types of uses of and activities on Reclamation land, facilities, and waterbodies that do not require authorization under part 429.

We made editorial changes to this section as compared to the previously proposed rule.

Comment: Paragraph (a) of this section states the types of activities that do not require authorization under this part which raises a concern regarding the well-being and safety of managing water user organization employees as they are performing their operation and maintenance duties on a daily basis. This paragraph seems to allow the general public access to all facilities. Such accessibility will not only increase operation and maintenance costs as a result of increased wear on roadways, but also dumping, vandalism, and opportunities for accidents.

Response: Access to lands, facilities, and waterbodies under our jurisdiction is administered under 43 CFR part 423. Water user organizations should work through their local Reclamation office to establish closures for areas or facilities such as canals, laterals, or water pipelines that are unsafe or not appropriate for general public access as established under Subpart B of 43 CFR part 423.

Comment: Paragraph (b)(5) of this section which suggests that Reclamation contracts for water supply or water operations do not require Reclamation authorization is directly contradictory to § 429.5 which states that water user associations have no authority to permit uses of Reclamation property.

Response: Paragraph (b)(5) of this section states that Reclamation contracts for water supply or water operations do not require a use authorization. Under paragraph (b)(6) of this section water user associations are not required to obtain use authorizations for their contractual operation and maintenance activities on Reclamation land, facilities, or waterbodies.

Comment: There is no need to list the uses that do not need authorization since we have listed those that do under § 429.3.

Response: We have provided information in this section specifying what common uses do not require authorization for clarification and as notification to the general public and our managing partners.

Comment: Clearly list what activities are authorized on Reclamation land. Be specific to water conveyance facilities.

Response: We have listed uses requiring an authorization at § 429.3. These uses must be authorized when they are on Reclamation land, facilities, or waterbodies which includes water conveyance facilities.

Comment: Clarify what activities managed by other Federal agencies or Interior bureaus are exempted from authorization under this part.

Response: Activities managed by other Federal agencies on Reclamation land, facilities, or waterbodies must be covered by an agreement or authority as specified in paragraph (b) of this section. For example, some recreation sites on Reclamation lands along the Colorado River are managed by the National Park Service through statutory authority.

Comment: Differentiating between how lands are managed directly by Reclamation or by other Federal agencies or bureaus will create disparate treatment.

Response: Each Federal agency has its own missions and authorities. These divergent missions and authorities will necessarily result in differing practices for the management of lands and resources.

Comment: The 14-day limit for camping should be increased.

Response: Reclamation's 14-day limit in any 30-day period is established under 43 CFR part 423.33(b). This proposed rule does not address that limitation.

Section 429.5 This section addresses who is authorized under part 429 to issue use authorizations.

We have made changes to this section as compared to the previously proposed rule to state that recreation managing partners and water user organizations whose existing contracts with Reclamation allow them to do so may issue some limited use authorizations to third parties for activities on Reclamation land, facilities, and waterbodies provided those limited use authorizations meet the requirements listed in this section. It should be noted that all revenues collected for the use of Reclamation land, facilities, and waterbodies must be handled in compliance with all statutory, regulatory, and policy requirements.

Comment: Water user organizations are specifically prohibited by this

section from authorizing the use of project lands and as a result existing use authorization that they have issued may be nullified.

Response: Water user organizations who have assumed responsibility for operation and maintenance of Reclamation land, facilities, or waterbodies pursuant to a contract with Reclamation may issue limited use authorizations to third parties for activities on Reclamation land, facilities, or waterbodies when all of the requirements listed in § 429.5 have been met.

Comment: The proposed rule contradicts the terms of existing contracts between Reclamation and water user organizations for operation and maintenance of Reclamation projects.

Response: Water user organizations who have assumed responsibility for operation and maintenance of Reclamation land, facilities, or waterbodies pursuant to a contract with Reclamation may issue limited use authorizations to third parties for activities on Reclamation land, facilities, or waterbodies when all of the requirements listed in § 429.5 have been met.

Comment: The proposed rule would adversely affect water user organizations' ability to issue grazing permits and collect subsequent revenues from those permits creating a financial burden on the water user organizations and their farmers.

Response: As noted above, we have made modifications that may allow for use authorizations to be issued by water user organizations. Financial issues can be impacted by project-specific laws, but in all cases revenues should be handled in accordance with all applicable statutes, regulations, and policies.

Section 429.6 This section details when water user organizations must approve Reclamation's use authorizations.

This section has been changed compared to the previously proposed rule to reflect provisions found in section 10 of the Reclamation Project Act of 1939 (43 U.S.C. 387) and to express the need for compatibility between use authorizations and a managing water user organization's ability to operate and maintain the facilities for which they have contractual operation and maintenance responsibility.

Comment: Retain the language in the current rule or add language to the proposed rule that clearly states that water user organizations will continue to be alerted to uses that might interfere

with their operation and maintenance of Reclamation project lands.

Response: We have made changes to this section to re-incorporate some of the language in the current rule and to more clearly express the need for compatibility between requested uses and water user organizations' ability to manage the facilities for which they have contractual operation and maintenance responsibility.

Subpart B—Proposed Uses Involving Reclamation Easements

Section 429.7 This section discusses the use of land not owned by Reclamation, but where Reclamation holds easements.

We have made changes to paragraphs (a), (b), and (c) of this section compared to the previously proposed rule. These changes are intended to improve the clarity of this subpart and not to change its intent or purpose.

Comment: Reclamation should be required to issue a consent document if the use does not unreasonably interfere with its easement. Doing so would increase the revenues being collected.

Response: Reclamation lacks the authority to require users of private lands to pay use fees to Reclamation for the use of those private lands. When issuing a consent document is determined to be compatible with the intended project purposes for which the easement was obtained, all other appropriate and applicable fees are collected as required by regulation and policy.

Section 429.8 This section discusses whether fees are required for the use of Reclamation easements.

We made only minor editorial changes to this section as compared to the previously proposed rule. We received no comments on this section.

Subpart C—Requesting Authorizations To Use Reclamation Land, Facilities, and Waterbodies

Section 429.9 This section explains what you should do before filing an application.

We made no changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.10 This section describes what application forms to use and how to determine which application form is appropriate to use.

We made no changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.11 Where the use authorization application forms can be found is provided in this section.

We made no changes to this section as compared to the previously proposed rule.

Comment: The forms as currently drafted do not include enough specificity regarding the required information to be submitted with an application. The current rule at § 429.6 is clearer and more detailed in listing what is required.

Response: This comment will be taken into consideration as we review Reclamation's Right-of Use Form 7–2540 for possible adjustments this year.

Section 429.12 The appropriate location for filing an application is listed in this section.

We made no changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.13 This section tells how long the application review process will take.

We made minor editorial changes to this section as compared to the previously proposed rule.

Comment: Seven days should be an adequate amount of time to acknowledge receipt of an application and a determination to either accept or deny the request should be made within fourteen days.

Response: While we will strive to respond to all applicants as quickly as possible, there are certain times of the year when the volume of applications exceeds our staff resources. Consequently we may not be able to respond within seven days. In order to meet the time frames suggested by this comment at such peak times, we would have to increase our staffing resources which would lead to higher fees for all applicants. We believe the approach we have selected is in the best interest of all parties.

Section 429.14 The criteria Reclamation will consider when reviewing applications is described in this section.

We made minor editorial changes to this section for clarity.

Comment: The criteria used in reviewing applications are too broad and cannot be applied fairly and impartially.

Response: We review each use application as it is submitted on a case-by-case basis considering the criteria under § 429.14. As stated on the submitted application forms, we may request additional information as necessary to assist us in making a determination as to whether the proposed use of Reclamation land, facilities, or waterbodies is appropriate.

Comment: Add an additional criterion that would require the proposed activity

receive the consent of any affected water user organization.

Response: Although we have not incorporated this comment into the criteria under § 429.14, we have made changes to § 429.6 to more specifically address this issue.

Section 429.15 This section discusses whether Reclamation is required to issue use authorizations.

We changed this section by adding a statement to the effect that all use authorizations must meet required criteria prior to issuance.

Comment: Reclamation should not have the authority to issue authorizations at its discretion. Reclamation should be required to have a justification for declining an application.

Response: We issue use authorizations at our discretion in order to protect the interests of the United States, as all use authorizations must be compatible with the purposes for which the Reclamation managed lands are being administered.

Subpart D—Application Fees and Administrative Costs

Section 429.16 The amount of the application fee and when to pay the fee is described in this section.

We made minor editorial changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.17 This section explains under what circumstances administrative costs will be collected.

We made no changes to this section as compared to the previously published rule. We received no comments on this section.

Section 429.18 This section explains when administrative costs will be due and payable.

We made minor editorial changes to this section as compared to the previously published rule.

Comment: The administrative costs associated with the application process are not well-defined.

Response: Administrative costs are determined on a case-by-case basis depending on the staff time required to evaluate and process the application, and to monitor, and terminate the use authorization when necessary. The definition of *administrative costs* in § 429.2 provides a listing of the most common elements associated with administrative costs. In addition, § 429.20 provides that upon written request an explanation of the administrative costs for a particular application will be provided.

Section 429.19 This section describes what the process is when the

initial estimate for administrative costs is insufficient.

We made no changes to this section as compared to the previously published rule. We received no comments on this section.

Section 429.20 This section describes how to request a detailed explanation of the administrative costs.

We made no changes to this section as compared to the previously published rule. We received no comments on this section.

Section 429.21 This section describes what occurs if the administrative costs are overpaid.

We made minor editorial changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.22 This section discusses whether future administrative costs can be charged after a use authorization is issued by Reclamation.

We made changes in paragraph (b) of this section to more clearly state how use authorization holders will be notified of additional required fees and payments due.

Comment: The language in this section is ambiguous and arbitrary because it does not provide businesses with a fair basis upon which to predict costs. Fees for monitoring costs and the adjustment of fees to meet current conditions could have adverse effects on existing operations.

Response: We cannot anticipate all administrative type costs in the future. Thus, we must have the ability to collect additional administrative costs when necessary.

Subpart E—Use Fees

Section 429.23 How Reclamation determines use fees is described in this section.

We made no changes to this section as compared to the previously proposed rule.

Comment: The valuation basis for determining fees is not adequately defined and should be more fully developed and researched.

Response: The valuation process is established in our Directives and Standards, LND 05–01 Real Property Appraisal, which may be found on our Internet site.

Section 429.24 This section explains when use fees should be paid.

We made minor editorial changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.25 This section describes the length of time allowed to both submit a use fee payment and accept the offered use authorization.

We made minor editorial changes to this section as compared to the previously published rule. We received no comments on this section.

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

Section 429.26 This section describes under what conditions Reclamation may waive or reduce costs or fees.

We made changes to paragraph (a) of this section to better define how a determination for fee waiver or reduction is made.

Comment: This section is confusing and arbitrary. The conditions under which a waiver can be granted are too broad and not well defined. Most applicants would qualify to apply for a waiver or a reduction in fees.

Response: The table found under paragraph (a) of this section specifically lists under what situations we may determine that it is appropriate to reduce or waive fees.

Comment: No change should be made to the language in the current rule regarding fee waivers or reductions.

Response: We are making changes to this section to comply with the Independent Offices Appropriation Act (IOAA) (31 U.S.C. 9701), September 13, 1982, as amended and the 1993 revision of the Office of Management and Budget (OMB) Circular A–25. The IOAA sets forth Congress' intent that any use, permit, or similar thing of value provided by an agency is to be self-sustaining and that agencies may prescribe rules establishing charges for such uses. OMB Circular A–25 established Federal policy which requires administrative costs be recovered for Government services, and fees for the use or sale of Government goods or resources also be charged.

Comment: This section should be eliminated and no fee waivers should be allowed.

Response: Under certain circumstances, fee waivers may be allowed under the current rule and section 6 of OMB Circular A–25.

Comment: Allowing fee waivers or reductions would limit the revenues currently being generated and returned to Reclamation and in some instances water user organizations.

Response: Section 6 of OMB Circular A–25 allows for a reduced fee or waiver under certain circumstances.

Subpart G—Terms and Conditions of Use Authorizations

Section 429.27 This section describes the general information that is contained in each use authorization.

We made no changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.28 Terms and conditions that apply to all use authorizations from Reclamation are outlined in this section.

We made minor editorial changes in this section as compared to the previously proposed rule.

Comment: We disagree with paragraph (a)(3) of this section which requires terms in every use authorization allowing Reclamation to unilaterally terminate a use authorization.

Response: It is our responsibility to properly manage the land under our jurisdiction. On occasion we may need to terminate a use authorization and even do so unilaterally. However, such instances are rare and limited to very unusual circumstances which we have specified in this section.

Section 429.29 This section describes additional terms and conditions or requirements that will be included in a use authorization.

We made minor editorial changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.30 This section explains whether a use authorization can be transferred or assigned to another individual or entity.

We made minor editorial changes to this section as compared to the previously proposed rule. We received no comments on this section.

Subpart H—Terms and Conditions of Use Authorizations

Section 429.31 This section describes what the prohibited uses are on Reclamation land, facilities, and waterbodies.

We made minor editorial changes to this section as compared to the previously proposed rule.

Comment: A state transportation agency opposes paragraph (b)(1)(v) of this section. The agency is concerned that this section will be in direct opposition to their policies and will deny property owners access to existing easements.

Response: For property owners that currently have authorization to access their existing easements, this proposed rule does not include any changes. Those who are crossing Reclamation lands without authorization will need to follow the procedures to obtain authorization. The documentation of these access situations will benefit and protect all parties.

Section 429.32 How Reclamation will address existing uses which are otherwise prohibited is discussed in this section.

We have revised the approach with regards to existing private exclusive recreational and residential uses that were not previously addressed by 43 CFR part 21. Specifically, under the July 2007 proposed rule such uses would have eventually had to be removed. Under the revised rule, such uses can remain if certain criteria are met, and they will be treated in a manner very similar to that outlined in 43 CFR part 21.

Under § 429.32(b)(1), we have added additional criteria to which all existing authorized private exclusive recreational and residential uses of Reclamation land, facilities, and waterbodies, including those defined under 43 CFR part 21, are subject.

The overall majority of comments received relate to this section of the proposed rule. Most of these commenters hold existing use authorizations for cabin sites or other recreational or residential uses, including boat docks, on Reclamation land, facilities, or waterbodies.

Comment: Many commenters are concerned that their existing use authorizations for private exclusive recreational and residential uses will not be renewed upon expiration.

Response: We will renew private exclusive recreational and residential use authorizations provided that the requirements of this proposed rule are met. Some cabin sites are also governed by 43 CFR part 21, and those regulations (which govern all Department of the Interior agencies, not just Reclamation) are not affected by this rulemaking; however, because the monitoring and enforcement procedures in this proposed rule are actually based on the existing rules in 43 CFR part 21, this dual regulatory coverage should have little practical impact. Such renewals will be for a period not to exceed 20 years and will be subject to periodic reviews that could potentially result in an early termination.

Comment: Holders of existing use authorizations for private exclusive uses stated that they have invested a significant amount of money in improvements located on Reclamation land, facilities, or waterbodies, and do not want to lose that investment.

Response: A use authorization for private exclusive recreational or residential use does not vest an interest in Reclamation land, facilities, or waterbodies with the holder of the use authorization. Any physical improvements made by the holder of the

use authorization should be done so with the understanding that the ownership of the land, facilities, or waterbodies will continue to remain with the United States.

Comment: The holders of use authorizations are better stewards of the land than Reclamation. They invest many hours in not only keeping their own authorized use area cleaned up, but also cleaning up adjacent areas.

Response: We recognize that many holders of use authorizations are responsible caretakers. As the manager of those Federal lands, however, we have the ultimate responsibility for those Federal lands, and we must make certain that they are managed in the best interests of the United States.

Comment: It is ambiguous and unclear as to when 43 CFR part 21 applies. Specifically list which segments of 43 CFR part 21 will be followed or specify that it will be followed in its entirety.

Response: We have decided to use the requirements in 43 CFR part 21 to develop the requirements that will apply to all existing private exclusive recreational and residential use authorizations. This should result in consistent treatment of uses regardless of whether the part 21 regulations technically apply. For example, personal cabin sites were subject to the part 21 regulations if they were authorized directly by Reclamation, but similar sites were exempt from these regulations if the area was managed under a concession contract. Now, both types of sites will be subject to this proposed rule which mimics the procedures previously established in part 21. The cabin sites directly authorized by Reclamation remain under 43 CFR part 21 as well.

Comment: Section 429.32(a) states that renewal requests for cabin sites administered under 43 CFR part 21 will be reviewed by the Commissioner and approved where appropriate. The term appropriate sends a foreboding message and is ambiguous.

Response: The responsibility for renewing use authorizations for recreational or residential uses has been returned to the appropriate field office under this proposed rule.

Comment: Clearly define under what rare exceptions waivers would be granted by the Commissioner for renewals of recreational or residential uses of Reclamation land.

Response: The requirement for a waiver in order to renew an existing private exclusive recreational or residential use authorization has been removed from this proposed rule.

Comment: Non-profit organizations that hold use authorizations for activities such as summer youth camps should not be subject to the same regulations and fee requirements as for-profit organizations.

Response: Section 429.26(a) of the proposed rule and the table that follows describe under what circumstances we may determine that it is appropriate to reduce or waive fees. Item 5 of the table specifically applies to non-profit or educational entities when the use provides a general public benefit.

Comment: If private boat docks are eliminated as a result of this proposed rule, public boat docks which are not always conveniently located and are over used will receive increased pressure.

Response: Provided that existing authorized boat docks meet the requirements, this proposed rule would not prevent the use authorization from being renewed.

Section 429.33 This section describes the consequences for using Reclamation land, facilities, and waterbodies without authorization.

We made changes to paragraphs (b), (e), and (f) of this section for clarification purposes only. In addition, we added a new paragraph under (b) to specify how the interest rate to be applied to the use fee for unauthorized uses will be determined.

Comment: Existing commercial outfitters and/or concessionaires should have a preferential right of renewal for their authorizations. Other Federal agencies and Department of the Interior bureaus utilize this method.

Response: Through Reclamation policies and directives, we have instituted a process of fair and open competition with regard to concession and similar contracts.

Comment: There is no valid reason for capping the fees that can be collected for unauthorized use to 6 years.

Response: We have removed the 6 year cap on collecting use fees for unauthorized uses of Reclamation land, facilities, and waterbodies. The applicable statute of limitations will be applied based on the circumstances associated with each unauthorized use.

Subpart I—Decisions and Appeals

Comment: The appeal process follows a path within the Department of the Interior. A fair appeal process would include a representative small group rather than a supervisor to supervisor system.

Response: The appeals process includes a two tier approach. First a review by a Reclamation office other than the office that made the final

determination. Next, if the appellant still disagrees with that decision, the matter can be reviewed by an outside agency should the appellant choose to pursue the issue. We believe this is a fair process.

Section 429.34 The decisionmaker for Reclamation's final determinations is listed in this section and provides when that decision will be effective.

We made minor editorial changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.35 This section explains if and when an appeal can be made to a final determination.

We made no changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.36 This section describes if and when a Commissioner's decision can be appealed. The process for and timeliness of such an appeal is also discussed in this section.

We made minor editorial changes to this section as compared to the previously proposed rule. We received no comments on this section.

Section 429.37 This section discusses what happens to monies owed to the United States during an appeal process.

We made minor editorial changes to this section as compared to the previously proposed rule. We received no comments on this section.

V. Distribution Table

The following table indicates each section of the original 1983 rule, as modified in 2006, and where each was incorporated into the proposed rule or not included as the case may be.

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

Old section	New section
429.7(e)	429.28(a)(1).
429.7(f)	Removed.
429.8	429.28(a)(2), (3), and (4).
429.9(a)	429.28(a)(1).
429.9(b)	429.28(b).
429.10(a)	429.34(a) and (b); 429.35(a), (b), and (c).
429.10(b)	429.36(a) and (b).
429.11	Removed.
429.12(a)	429.1; 429.3–429.6.
429.12(b)	429.4(a).
429.12(c)	429.26.
429.12(d)	429.4(g).
429.12(e)	Removed.
429.13	429.1; 429.3.

VI. Procedural Requirements

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

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

(a) This rule will not have an effect of \$100 million or more on the economy. It would not adversely affect in any material way the economy, productivity, competition, jobs, environment, public health or safety, or State, local, and tribal governments or communities. The original rule covered only Reclamation lands. It was modified in 2006 to explicitly incorporate uses of Reclamation facilities and waterbodies. The proposed rule requires collecting an initial, nonrefundable deposit of \$100 (referred to as the “application fee”), the recovery of additional administrative costs in excess of the initial application fee, and a fee for the use of Reclamation land. It should be noted that this rule reduces the initial application fee from \$200 (\$150 refundable under specific circumstances) to a nonrefundable \$100 application fee. The rule does not change the requirement for full cost recovery of additional administrative costs in excess of the \$100 nonrefundable application fee or the requirement to collect the fee for use of Reclamation land, facilities, and waterbodies. Like the current rule, this rule provides for waivers or reductions of costs and fees under unique circumstances as determined to be appropriate by us in compliance with OMB Circular A–25.

(b) This rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Since this rule is specific to Reclamation land,

facilities, and waterbodies, any impact on another agency would be minimal. Nevertheless, nothing in this rule precludes us from cooperating with other agencies on proposed actions that may impact or require the use of Reclamation’s land, facilities, and waterbodies. An example of our working with other agencies is this rule’s requirement to use Standard Form (SF) 299, Application for Transportation and Utility Systems and Facilities on Federal Lands, under E.O. 13327. The purpose of E.O. 13327 is to promote the efficient and economical use of America’s real property assets. This proposed rule also requires the use of Form 7–2540, Bureau of Reclamation Right-of-Use Application Form, for all other requested uses.

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

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

2. Regulatory Flexibility Act

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

3. Small Business Regulatory Enforcement Fairness Act

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

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

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State,

local, or tribal government agencies, or geographic regions. It is anticipated that this rule will not result in significant increases in administrative costs or use fees for any one applicant, but it will clarify for the public the basis for determining such costs and fees.

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

4. Unfunded Mandates Reform Act

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

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

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

6. Federalism (E.O. 13132)

Under the criteria in E.O. 13132, the rule does not have any federalism implications to warrant the preparation

of a Federalism Assessment. The rule is not associated with, nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. A Federalism Assessment is not required.

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

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

- (a) Does not unduly burden the judicial system;
- (b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

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

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

9. *Paperwork Reduction Act*

This rule does require information collection from 10 or more applicants and a submission under the Paperwork Reduction Act (PRA) is required. However, the information collection requirements associated with this rule have been previously submitted to OMB for review and have received approval under the requirements of the PRA. The SF 299, Application for Transportation and Utility Systems and Facilities on Federal Lands (used for access across our land, facilities, and waterbodies), was authorized by OMB No. 1004–0189, expiring on November 30, 2008. OMB also has approved the information collection in this rule (using the Bureau of Reclamation Right-of-Use Application Form 7–2540) and has assigned approval number 1006–0003, expiring on March 31, 2009. We estimate the burden associated with this latter information collection to be 2 hours per application. We use the information provided by applicants to determine the nature of the requested use and whether the requested use of our land, facilities, or waterbodies interferes with project operations or project security, or may create other issues. The information provided on the applications is also

used to ensure, where appropriate and applicable, the technical and financial resources of the applicant are sufficient to complete the construction of the infrastructure or project.

10. *National Environmental Policy Act of 1969*

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

11. *Information Quality Act*

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

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

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

13. *Clarity of This Regulation*

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

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

If you feel we have not met these requirements, please send comments to Reclamation as instructed in the **ADDRESSES** section of this proposed rule. Please make your comments as specific as possible, referencing specific sections and how they could be improved. For example, “section XXX.XX could be more clearly written”, or “the first sentence in section XXX.XX(a) is too long”, or “the data in section XXX.XX should be placed in a table.”

14. *Public Comments*

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment

to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Informational meetings regarding the proposed rule are being hosted by Reclamation in each Region. The dates, times, and locations of these meetings are listed in the **SUPPLEMENTARY INFORMATION** section of this proposed rule. These meetings will be informational in nature only. Public comments will not be recorded or accepted into the official record at the meetings. In order to be considered, your comments must be submitted to Reclamation as instructed in the **ADDRESSES** section of this proposed rule.

List of Subjects in 43 CFR Part 429

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

Dated: July 14, 2008.

Kameran L. Onley,
Acting Assistant Secretary—Water and Science.

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

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

Subpart A—Purpose, Definitions, and Applicability

Sec.

- 429.1 What is the purpose of this part?
- 429.2 What definitions are used in this part?
- 429.3 What types of uses are subject to the requirements and processes established under this part?
- 429.4 What types of uses are not subject to the requirements and processes established under this part?
- 429.5 Who is authorized to issue use authorizations under this part?
- 429.6 When must water user organizations also approve use authorizations?

Subpart B—Proposed Uses Involving Reclamation Easements

- 429.7 Can I use land where Reclamation holds an easement?
- 429.8 Is there a fee for uses involving a Reclamation easement?

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

- 429.9 What should I do before filing an application?
- 429.10 What application form should I use?
- 429.11 Where can I get the application forms?
- 429.12 Where do I file my application?
- 429.13 How long will the application review process take?

- 429.14 What criteria will Reclamation consider when reviewing applications?
- 429.15 Is Reclamation required to issue a use authorization?

Subpart D—Application Fees and Administrative Costs

- 429.16 How much is the application fee and when should it be paid?
- 429.17 When will Reclamation collect administrative costs?
- 429.18 When do I have to pay the administrative costs?
- 429.19 What happens if the initial estimate for administrative costs is insufficient?
- 429.20 Can I get a detailed explanation of the administrative costs?
- 429.21 If I overpay Reclamation's administrative costs, can I get a refund?
- 429.22 Can Reclamation charge me additional administrative costs after I receive a use authorization?

Subpart E—Use Fees

- 429.23 How does Reclamation determine use fees?
- 429.24 When should I pay my use fee?
- 429.25 How long do I have to submit my payment for the use fee and accept the offered use authorization?

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

- 429.26 When may Reclamation reduce or waive costs or fees?

Subpart G—Terms and Conditions of Use Authorizations

- 429.27 What general information appears in use authorizations?
- 429.28 What terms and conditions apply to all use authorizations?
- 429.29 What other terms and conditions may be included in my use authorization?
- 429.30 May use authorizations be transferred or assigned to others?

Subpart H—Prohibited and Unauthorized Uses of Reclamation Land, Facilities, and Waterbodies

- 429.31 What uses are prohibited on Reclamation land, facilities, and waterbodies?
- 429.32 How will Reclamation address currently authorized existing private exclusive recreational or residential uses?
- 429.33 What are the consequences for using Reclamation land, facilities, and waterbodies without authorization?

Subpart I—Decisions and Appeals

- 429.34 Who is the decisionmaker for Reclamation's final determinations?
- 429.35 May I appeal Reclamation's final determination?
- 429.36 May I appeal the Commissioner's decision?
- 429.37 Does interest accrue on monies owed to the United States during my appeal process?

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

Subpart A—Purpose, Definitions, and Applicability

§ 429.1 What is the purpose of this part?

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

- (a) How to apply to Reclamation for a use authorization to allow your activity on Reclamation land, facilities, and waterbodies;
- (b) How Reclamation reviews and processes your application, including the criteria for approval or denial of your application;
- (c) The requirement for collection of application and use fees and the recovery of administrative costs;
- (d) How Reclamation determines and collects costs and fees;
- (e) Prohibited uses on Reclamation land, facilities, and waterbodies;
- (f) How Reclamation will address existing authorized uses which are otherwise prohibited, including the criteria for approval or denial of requests to renew these use authorizations;
- (g) The process and penalties associated with resolution of unauthorized uses; and
- (h) How to appeal an action or determination made under this part.

§ 429.2 What definitions are used in this part?

The following definitions are used in this part:

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

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

Applicant means you as any person or entity (such as a private citizen, business, non-governmental organization, public entity, Indian tribe, or foreign government) who submits an application requesting use of

Reclamation land, facilities, and waterbodies.

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

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

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

Consent document means a written agreement or notification listing conditions which will prevent unreasonable interference with our easement on non-Reclamation land.

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

Easement refers to an interest in land that consists of the right to use or control the land for a specific purpose, but does not constitute full ownership of the land.

Environmental compliance means complying with the requirements of the National Environmental Policy Act; the Endangered Species Act; the Clean Water Act; the Clean Air Act; the Comprehensive Environmental Response, Compensation, and Liability Act; applicable regulations associated with these statutes; and other related laws and regulations.

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

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

Interior means the United States Department of the Interior.

Managing Partner means a Federal or non-Federal public entity that manages land, facilities, or waterbodies through a management agreement with Reclamation entered pursuant to the Federal Water Project Recreation Act, as amended.

Part 21 of this title means Title 43 of the Code of Federal Regulations part 21, which is titled Occupancy of Cabin Sites on Public Conservation and Recreation Areas.

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

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

Private exclusive recreational or residential use means any use that involves structures or other improvements used for recreational or residential purposes to the exclusion of public uses or which create the perception of such exclusion and are not associated with the official management of a Reclamation project. This includes, but is not limited to, boat docks, cabin sites and associated improvements (including those currently defined in part 21 of this title), residences, trailers, manufactured or mobile homes, structures, roads, or other improvements as determined by Reclamation.

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

Public needs mean the recreational requirements of the general public at areas where existing authorized private exclusive recreational or residential uses are present.

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

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

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

(1) All land acquired by Reclamation through purchase, condemnation, exchange, or donation for Reclamation project and water related purposes;

(2) All land withdrawn by Reclamation from the public domain for Reclamation purposes; and

(3) All interests in land acquired by Reclamation, including easements and rights exercised by the United States under the 1890 Canal Act (43 U.S.C. 945).

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

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

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

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

Standard Form (SF) 299 means the form titled Application for Transportation and Utility Systems and Facilities on Federal Lands used when requesting permission for construction and/or placement of transportation, communication, or utility systems and facilities.

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

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

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

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

Water User Organization means any legal entity established under State law that has entered into a contract with the United States pursuant to the Federal reclamation laws.

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

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

§ 429.3 What types of uses are subject to the requirements and processes established under this part?

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

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

§ 429.4 What types of uses are not subject to the requirements and processes established under this part?

(a) Individual, non-commercial use of Reclamation land, facilities, or waterbodies for occasional activities such as hiking, camping for periods of 14 days or less during any period of 30 consecutive days, sightseeing, picnicking, hunting, swimming, boating, and fishing, consistent with applicable laws, regulations and policies. Public conduct associated with these activities is governed by part 423 of this chapter;

(b) While not subject to other requirements and processes established under this part, the following types of uses must be in compliance with the requirements in Subpart H:

(1) Recreational activities at sites managed by non-Federal managing partners under Public Law 89-72, titled Federal Water Project Recreation Act, July 9, 1965;

(2) Activities managed by other Federal agencies or Interior bureaus by agreement or under other authority;

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

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

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

(6) Authorized operation and maintenance activities on Reclamation land, facilities, and waterbodies undertaken by water user organizations, or their contractors, or by Reclamation contractors;

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

(8) Activities specifically authorized under other Federal statutes or regulations.

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

Unless otherwise provided by law or regulation, only Reclamation or another Federal agency acting for Reclamation under delegated authority is authorized to issue use authorizations that convey an interest in Reclamation land, facilities, or waterbodies. Recreation managing partners under the Federal Water Projects Recreation Act, 16 U.S.C. 4601, *et seq.*, and water user organizations who have assumed responsibility for operation and maintenance of Reclamation land, facilities, or waterbodies pursuant to a contract with Reclamation may issue limited use authorizations to third parties for activities on Reclamation land, facilities, or waterbodies when all of the following apply:

(a) The recreation managing partner or water user organization is authorized to do so under its contract with Reclamation;

(b) Such limited use authorizations do not convey ownership or other interest in the Federal real property;

(c) The uses authorized are not permanent or for an indefinite period;

(d) The limited use authorization does not provide for an automatic right of renewal at the third party's option;

(e) The limited use authorization is fully revocable at the discretion of Reclamation; and

(f) All revenues collected for the use of Reclamation land, facilities, and waterbodies are handled in compliance with all statutory, regulatory, and policy requirements.

§ 429.6 When must water user organizations also approve use authorizations?

(a) Use authorizations for easements and rights-of way for periods in excess

of 25 years are also subject to approval from water user organizations under contract obligation for repayment of the project or division and for those water user organizations who have assumed responsibility for operation and maintenance. This requirement does not apply to any other type of use authorizations.

(b) At the discretion of the responsible Regional Director, concurrence for uses of less than 25 years may be requested of the appropriate water user organization. At a minimum, the appropriate water user organizations will be notified of all use authorizations prior to their issuance to avoid potential conflicts between the requested use authorization and the water user organizations' need to operate and maintain the facilities for which they have contractual responsibility.

Subpart B—Proposed Uses Involving Reclamation Easements

§ 429.7 Can I use land where Reclamation holds an easement?

(a) To prevent conflicts where Reclamation holds an easement on land owned by others, you should submit an application for the proposed use. If after review of the application, Reclamation determines that your requested use would not unreasonably interfere with Reclamation's easement, a consent document may be issued to you. The consent document will contain the conditions with which you must comply to ensure that your use will not unreasonably interfere with Reclamation's use of its easement.

(b) In accordance with subpart C of this part, you should submit either SF 299 or Form 7-2540 to the local Reclamation office to request a consent document.

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

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

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

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

§ 429.9 What should I do before filing an application?

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

§ 429.10 What application form should I use?

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

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

- (1) Canals;
- (2) Communication towers;
- (3) Fiber-optics cable;
- (4) Pipelines;
- (5) Roads;
- (6) Telephone lines; and
- (7) Utilities and utility corridors.

(b) Use Form 7-2540 to request any other type of use authorization. Examples of such uses are:

- (1) Commercial filming and photography;
 - (2) Commercial guiding and outfitting;
 - (3) Commercial or organized sporting events;
 - (4) Grazing, farming, and other agricultural uses;
 - (5) Organized recreational activities, public gatherings, and other special events;
 - (6) Removal of, or exploration for, sand, gravel, and other mineral materials;
 - (7) Timber harvesting, or removal of commercial forest products or other vegetative resources; and
 - (8) Any other uses deemed appropriate by Reclamation.
- (c) Application forms may not be required where Reclamation solicits competitive bids.

§ 429.11 Where can I get the application forms?

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

must contain your original signature as the applicant.

§ 429.12 Where do I file my application?

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

§ 429.13 How long will the application review process take?

(a) Reclamation will acknowledge in writing your completed and signed application and application fee within 30 calendar days of receipt. Reclamation may request additional information needed to process your application, such as legal land descriptions and detailed construction specifications.

(b) The processing time depends upon the complexity of your requested use, issues associated with it, and the need for additional information from you.

(c) Should your requested use be denied at any time during the review process, Reclamation will notify you in writing of the basis for the denial.

§ 429.14 What criteria will Reclamation consider when reviewing applications?

Reclamation will consider the following criteria when reviewing applications:

- (a) Compatibility with authorized project purposes, project operations, safety, and security;
- (b) Environmental compliance;
- (c) Compatibility with public interests;
- (d) Conflicts with Federal policies and initiatives;
- (e) Public health and safety;
- (f) Availability of other reasonable alternatives; and
- (g) Best interests of the United States

§ 429.15 Is Reclamation required to issue a use authorization?

No. The issuance of a use authorization is at Reclamation's discretion. At a minimum, the criteria listed at § 429.14 must be considered prior to issuance of any use authorizations. Not all requests will be authorized. If issued, Reclamation will provide only the least estate, right, or possessory interest needed to accommodate the approved use.

Subpart D—Application Fees and Administrative Costs

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

You must remit a nonrefundable application fee of \$100 to cover costs

associated with our initial review of your application, unless the payment is waived pursuant to subpart F of this part. This initial review will determine if your requested use is appropriate for consideration and not likely to interfere with Reclamation project purposes or operations.

§ 429.17 When will Reclamation collect administrative costs?

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

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

(a) Following the initial review, you will be notified in writing whether your application appears to be appropriate for further processing. At that time, Reclamation will give you an initial estimate of administrative costs required to continue processing your application.

(b) You must pay these initial, estimated administrative costs before Reclamation can continue to process your application, unless you are granted a waiver of administrative costs under subpart F of this part. If payment is not received within 90 days after the estimate is provided to you, Reclamation may close your file. If this occurs and you later wish to proceed, you must submit both a new application and another \$100 nonrefundable application fee.

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

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

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

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

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

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

made to you consistent with Reclamation's financial policies.

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

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

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

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

(b) If your additional payment is not received by Reclamation within 90 days after notification to you in writing of the additional administrative costs, Reclamation may take action to terminate your use authorization.

Subpart E—Use Fees

§ 429.23 How does Reclamation determine use fees?

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

§ 429.24 When should I pay my use fee?

(a) If Reclamation offers you a use authorization, you must pay the use fee in advance, unless you are granted a waiver under subpart F of this part.

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

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

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

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

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

(a) As determined appropriate by Reclamation and approved and

documented by the applicable Regional Director, Reclamation may waive the application fee, or waive or reduce charges for administrative costs or the use fee as indicated by a ✓ in the following table:

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

¹ Not Applicable.

² Set by Bid.

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

Subpart G—Terms and Conditions of Use Authorizations

§ 429.27 What general information appears in use authorizations?

Each use authorization will contain:

- (a) An adequate description of the land, facilities, or waterbodies where the use will occur;
- (b) A description of the specific use being authorized together with applicable restrictions or conditions that must be adhered to;
- (c) The conditions under which the use authorization may be renewed, terminated, amended, assigned or transferred, and/or have the use fee adjusted; and
- (d) Primary points of contact and other terms and conditions.

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

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

- (1) The grantee agrees to indemnify the United States for, and hold the United States and all of its

representatives harmless from, all damages resulting from suits, actions, or claims of any character brought on account of any injury to any person or property arising out of any act, omission, neglect, or misconduct in the manner or method of performing any construction, care, operation, maintenance, supervision, examination, inspection, or other activities of the grantee.

(2) The United States, acting through Reclamation, Department of the Interior, reserves rights to construct, operate, and maintain public works now or hereafter authorized by the Congress without liability for severance or other damage to the grantee's activities or facilities.

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

- (i) The use has become incompatible with authorized project purposes or a higher public use is identified;
- (ii) Termination is necessary for operational needs of the project; or
- (iii) There has been a natural disaster, a national emergency, a need arising from security requirements, or an immediate and overriding threat to the public health and safety.

(4) Reclamation may, at any time and at no cost or liability to the United States, unilaterally terminate any use authorization if Reclamation determines that the grantee has failed to use the use authorization for its intended purpose.

Further, failure to construct or use for any continuous 2-year period may constitute a presumption of abandonment of the requested use and cause termination of the use authorization.

(5) Reclamation may, at any time and at no cost or liability to the United States, unilaterally terminate any use authorization if the grantee fails to comply with all applicable Federal, State, and local laws, regulations, ordinances, or terms and conditions of any use authorization, or to obtain any required permits or authorizations

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

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

Reclamation may include additional terms, conditions, or requirements that address environmental law compliance, the protection of cultural and natural resources, other interests of the United States, and local laws and regulations.

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

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

must contact the Reclamation office that issued your use authorization prior to taking such action.

Subpart H—Prohibited and Unauthorized Uses of Reclamation Land, Facilities, and Waterbodies

§ 429.31 What uses are prohibited on Reclamation land, facilities, and waterbodies?

(a) Reclamation prohibits any use that would not comply with part 423 of this chapter.

(b) Reclamation prohibits any use that would result in new private exclusive recreational or residential use of Reclamation land, facilities, or waterbodies.

(1) Examples include, but are not limited to, the following:

(i) Cabins, mobile homes, residences, outbuildings, and related structures, and associated landscaping, patios, decks, and porches;

(ii) Boat houses, docks, moorings, piers, and launch ramps;

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

(iv) Sites for such activities as hunting, fishing, camping, and picnicking (other than transitory uses allowed under part 423 of this chapter) that attempt to exclude general public access; and

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

(2) Buildings and structures used by concessionaires or managing partners to facilitate their operations or that are made available by them for the general, non-exclusive use of the public are not prohibited. Examples include, but are not limited to the following:

(i) Boat docks available for short-term use by the public;

(ii) Marina slips available for rent by the public;

(iii) Publicly available boat ramps;

(iv) Houseboats available for short-term rent by the public;

(v) Stores and restaurants;

(vi) Employee housing; and

(vii) Rental cabins, hotels, campgrounds, and other short-term lodging facilities.

§ 429.32 How will Reclamation address currently authorized existing private exclusive recreational or residential uses?

(a) The administration and potential renewal of use authorizations, existing as of January 1, 2008, for private exclusive recreational or residential uses of Reclamation land, facilities, and waterbodies, as defined in this part, will

be administered in accordance with the following requirements. Renewal requests may only be approved when all criteria are met.

(1) Compatibility with authorized project purposes, project operations, safety, and security;

(2) Compatibility with public needs;

(3) Environmental compliance;

(4) Public health and safety; and

(5) Current in financial obligations to Reclamation.

(b) Reclamation will review all existing private exclusive recreational or residential uses for compliance with the required criteria at least once every 5 years. Reclamation will provide the holder of the use authorization with a written report of the results of the compliance review. The report will state whether the existing use meets the required criteria listed in this section and will list any deficiencies that can be corrected. A minimum of 90 days will be provided to make corrections identified in the report. Failure to correct the deficiencies within the time provided in the report will result in termination of the use authorization.

(c) A determination by Reclamation that existing private exclusive recreational or residential uses are not compatible with public needs, made under paragraph (a)(2) of this section, will only be finalized through a public process involving one or more public meetings. Examples of such public processes include resource management plan development, recreation demand analysis studies, and project feasibility studies. Determinations that existing private exclusive recreational or residential uses are not compatible with public needs will be published in the **Federal Register**. If a determination of incompatibility with public needs is made, affected use authorizations may be extended up to 5 years from the date of publication in the **Federal Register** if the Regional Director determines that such extension is necessary to the fair and efficient administration of this part.

(d) In addition to the periodic reviews described above, Reclamation will review the existing private exclusive recreational or residential uses for compliance with the required criteria at least 6 months prior to the expiration date of the existing use authorization. Reclamation will provide the holder of the use authorization with a written report of the results of the compliance review results. The report will state whether the existing use meets the required criteria under this section as applicable and will list any deficiencies that must be corrected prior to a renewal of the use authorization. A minimum of 90 days will be provided prior to the

expiration of the permit to make corrections identified in the report.

(e) Any renewal of use authorizations for existing private exclusive recreational or residential uses of Reclamation land, facilities, and waterbodies will not exceed 20 year terms. Any such renewals will be subject to the periodic reviews described in subsection (b), and these reviews could potentially result in the termination of the use agreement prior to the end of the term of years.

(f) Upon non-renewal or termination of a use authorization for an existing private exclusive recreational or residential use of Reclamation land, facilities, and waterbodies, the grantee will remove any improvements from the site within 90 days from the date of termination or non-renewal of the use authorization. The grantee will return the property as near as possible to its original undisturbed condition. Any property not removed within 90 days may be removed by Reclamation at the expense of the prior grantee.

(g) Renewal decisions of use authorizations for existing private exclusive recreational or residential uses located on Reclamation land, facilities, and waterbodies will be made by the Regional Director.

(h) Requests for the renewal, transfer, extension, or reissuance of use authorizations for private exclusive recreational or residential uses that expired prior to the effective date of this part or are subsequently not renewed or terminated under the procedures of this section will be considered requests for uses prohibited under § 429.31 and will not be approved. Conversely, requests for the renewal, transfer, extension, or reissuance of use authorizations for private exclusive recreational or residential uses that were in existence on the effective date of these regulations and that are in compliance with all requirements of the applicable use authorization at the time a request is made will not be considered requests for uses prohibited under § 429.31, with transfers and assignments of such use authorizations being subject to the requirements of § 429.30.

(i) Unauthorized existing private exclusive recreational or residential uses will be administered under §§ 429.31 and 429.33 and part 423 of this chapter.

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

(a) Unauthorized use of Reclamation land, facilities, or waterbodies is a trespass against the United States. You may be subject to legal action including

criminal prosecution if your actions violate part 423 of this chapter. A criminal conviction could result in a fine and/or imprisonment for up to 6 months in accordance with 43 U.S.C. 373b(b).

(b) Reclamation may seek to collect the following:

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

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

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

(4) The use fee that would have applied had your use been authorized from the date your unauthorized use began;

(5) Interest accrued on the use fee from the date your unauthorized use began as specified in paragraph (b)(4) of this section; and

(6) The interest charge rate shall be the greater of either the rate prescribed quarterly in the **Federal Register** by the Department of the Treasury for application to overdue payments or the interest rate of 0.5 percent per month. The interest charge rate will be determined as of the due date and remain fixed for the duration of the delinquent period.

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

(d) If appropriate, you will receive a final determination letter detailing the applicable costs and fees, as set forth under paragraph (b) of this section, which must be paid to Reclamation for your unauthorized use. Payment must be made within 30 days of receipt of this letter unless Reclamation extends this deadline in writing. Failure to make

timely payment may result in administrative or legal action being taken against you.

(e) Reclamation may determine that issuing a use authorization to you for an existing unauthorized use is not appropriate; and may deny future use applications by you because of this behavior. As noted at § 429.15, use authorizations are always issued at Reclamation's discretion.

(f) If, however, your unauthorized use is deemed by Reclamation to be an unintentional mistake, consideration may be given to issuing a use authorization provided that you qualify and meet the criteria at § 429.14; and, in addition to the normal costs, you agree to pay the following:

(1) The use fee that would have been owed from the date your unauthorized use began; and

(2) Interest accrued on the use fee from the date your unauthorized use began as specified in paragraph (f)(1) of this section.

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

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

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

Subpart I—Decisions and Appeals

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

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

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

§ 429.35 May I appeal Reclamation's final determination?

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

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

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

§ 429.36 May I appeal the Commissioner's decision?

(a) Yes, you may appeal the Commissioner's decision by writing to the Director, Office of Hearing and Appeals (OHA), U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203.

(b) For an appeal to be timely, OHA must receive your appeal within 30 calendar days from the date of the Commissioner's decision. Rules that govern appeals to the OHA are found at part 4, subpart G, of this title.

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

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

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