



— BUREAU OF —
RECLAMATION



Managing Agreement Number 20-LC-20-2623

Managing Agreement

Between the United States of America and Napa County for the Administration, Operation, Maintenance and Development of Recreation Uses and Facilities at Lake Berryessa Area Project Lands



Contents

Witnesseth that:.....	3
1. Definitions.....	4
2. Management of the Project Areas	11
3. Terms of Agreement and Termination of Existing Management Agreements and/or Contracts.....	12
4. Administration, Operation, Maintenance and Development	12
6. 5. Funding and Cost Share.....	17
6. Contingent on Appropriations or Allotment of Funds.....	21
7. Fees and Revenues	21
8. Reclamation Use Paramount	21
9. Visitor Services Plan (VSP) / Concession Area Plan.....	23
10. Law Enforcement and Safety	24
11. Risk and Damages / Hold Harmless	24
12. Incident Reporting.....	25
13. Hazardous Materials, Recycling and Waste Reduction.....	25
14. Pest Control	27
15. Waste Removal.....	28
16. Variation in Water Level	28
17. Protection of Natural Resources.....	28
18. Consumptive use of Water by County.....	29
19. Management of Property	30
20. Fire Prevention, Protection, and Suppression	31
21. Third Part Contracts, Permits, and Use Authorization	31
22. Unauthorized Use	36
23. Reservations	37
24. Title to Land, Improvements, Equipment and Restoration	38
25. Review of Administration, Operation, Maintenance, and Development	40
26. Examination of Records	41
27. Recreation Use Data Report.....	41

28.	Miscellaneous Provisions	41
29.	Notice of Cure/Dispute Resolution	42
30.	Modification of Agreement	43
31.	Termination.....	43
32.	Designated Representatives / Notices.....	44
33.	Severability	45
34.	Officials or Employees not to Benefit.....	45
35.	Survivor Clause.....	45
	In Witness Whereof,.....	46
	Exhibit A: Area of Operation and Assigned Land.....	1
	Exhibit B: Environmental Requirements.....	15
	Exhibit C: Equal Opportunity Requirements	21
	Exhibit D: Title VI, Civil Rights Act of 1964	25
	Exhibit E: Nonexpendable Government Property Requirements	27
	Exhibit F: Reclamation Manual.....	29
	Exhibit G: Department of Interior Department Manual Part 512.....	49
	Exhibit H: 43 CFR 423.....	52
	Exhibit I: 43 CFR 429.....	61
	Exhibit J: 43 CFR 430.....	75
	Exhibit K: Assigned Government Property.....	76
	Exhibit L: Improvement Project Procedures.....	79
	Exhibit M: Reclamation and Napa County Managing Partner Agreement Term Sheet of the MPA	88

Managing Agreement Between the United States of America and Napa County for the Administration, Operation, Maintenance and Development of Recreation Uses and Facilities at Lake Berryessa Area Project Lands

THIS AGREEMENT, made as of this _____ day of _____ 2020, pursuant to Act of Congress June 17, 1902 (32 Stat. 388) and acts amendatory thereof and supplementary thereto, collectively known and referred to as Federal Reclamation Laws, particularly Title VI of the Act of October 27, 1974, Pub. L. No. 93-493, and to The Federal Water Project Recreation Act of 1965, Pub. L. 89-72, as amended by the Water Resources Development Act of 1974, Pub. L. 102-575, Title XXVIII by and among the United States of America acting by and through the Regional Director, Bureau of Reclamation Interior Region 10: California-Great Basin, or his duly authorized representative hereinafter styled “Reclamation”, and NAPA COUNTY, acting by and through the Board of Supervisors, hereinafter referred to as "Napa County", in accordance with County Code.

Witnesseth that:

WHEREAS, the United States has constructed Monticello Dam and Lake Berryessa and associated diversion facilities and canals located in Solano, Yolo, and Napa Counties pursuant to the Reclamation Project Act (1939);

WHEREAS, the United States acquired certain lands, hereinafter referred to as “Solano Project Lands” for the purpose of constructing, operating and maintaining the Solano Project, located in Solano, Yolo, and Napa Counties, California;

WHEREAS, the United States may provide certain buildings and facilities owned by the United States for use by Napa County under the terms of this agreement as shown on Exhibit K;

WHEREAS, the United States and Napa County have agreed that entering into a Managing Partner Agreement may provide better opportunities for public recreational enjoyment;

WHEREAS, the United States and Napa County have determined that public/private partnerships can provide the best opportunity for successful development and management of Project Lands for recreational purposes that may require substantial investment; and

WHEREAS, the parties hereto mutually agree to enter into a Management Agreement (Agreement) for the administration, operation, maintenance and development of public recreation facilities, protection of natural and cultural resources, and provision of public health and safety at these areas.

NOW, THEREFORE, it is agreed as follows:

1. Definitions

When used herein unless otherwise distinctly expressed or manifestly incompatible with the intent hereof, the terms

(a) “Administration, Operation, Maintenance, and Development” means acts or processes used to direct management of the transferred area; manage and enhance resources and facilities, law enforcement, emergency response, fire prevention, fire suppression, recreation opportunities and responsibility; and keeping facilities and equipment in good repair and usable working condition. The term maintenance includes the replacement and/or construction of equipment and/or facilities as may be agreed to by the parties hereto through subsequent agreements, plans or use authorizations.

(b) “Appropriation or Allotment of Funds” means any appropriated funds provided to Napa County from the Federal government without regard to the authorization for such funds or the manner in which they were transferred.

(c) “Area of Effect” is the lands and water areas identified in Exhibit A that are assigned for management by Napa County. The Area of Effect may change from time to time as Napa County exercises specific options to expand the Area of Effect as identified in Exhibit A.

(d) “Commercial Filming Fees” means fees collected by Reclamation for use of the Recreation Area such as commercial filming, recording of television productions, feature movies or commercials. Revenues will be collected and expended pursuant Public Law 106-206 (Commercial Filming on Public Lands Act).

(e) “Concession” is a non-Federal commercial business that supports appropriate public recreational uses and provides facilities, goods, or services for which revenues are collected. A concession generally involves use of the Federal Lands and Water and may involve the use or development of real property improvements.

(f) “Concessionaire” or “Concession Contractor” is the entity that Napa County enters into an agreement for the operation of a Concession within the Concession Areas for the purpose of providing visitor services.

(g) “Concession Area Plan” means the plans created by Napa County that apply to the specific Concession Areas, and consistent with Napa County’s Planning Standards.

(h) “Concession Areas” is limited to the boundaries of those concession areas identified in the 2005 Visitor Services Plan that Napa County has agreed to manage in conformance with the terms incorporated by Exhibit M to this agreement.

(i) “Contracting Officer” (CO) means the Reclamation person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings.

(j) “Contracting Officer Representative” (COR) means the Reclamation Government’s principal program representative who provides contract oversight and technical input to the pre-award and post-award phases of contracting.

(k) “Cost Share” means the value of Federal Government contributions that is agreed upon between Reclamation and Napa County and is reasonable and allowable for the proper accomplishment of a project or program. Costs for office space and to support the development of Napa County’s Request for Proposal for concessionaire management shall not be included in the cost share.

(l) “County” means Napa County, Napa County Executive Officer, or its duly authorized representative(s).

(m) “County Authorized Representative” means Napa County’s program representative identified as the principal liaison with Reclamation.

(n) “County Fiscal Year” means that annual period, from July 1 of one calendar year to June 30 of the next calendar year, on which Napa County government bases its budget.

(o) “Deferred Maintenance” means the practice of postponing maintenance activities such as repairs on both real property (i.e. infrastructure) and personal property (i.e. machinery) in order to save costs, meet budget funding levels, or realign available budget monies. This term is different than backlogged maintenance; maintenance that is not specifically postponed.

(p) “EAP” means the Reclamation Emergency Action Plan.

(q) “Emergency” Any incident, whether natural or manmade, that requires responsive action to protect life or property.

(r) “Emergency Official” means the Reclamation employee or official to whom accidents or emergencies are reports, as per the terms of the EAP.

(s) “Equipment” means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit, consistent with 43 CFR 12.

(t) “ESA”, Endangered Species Act of 1973; 7 U.S.C §136 and 16 U.S.C. §1531 et seq.

(u) “Exclusive 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 that are not associated with the official management of a Reclamation Project. This includes, but is not limited to boat docks, residences, trailers, cabin sites, manufactured or mobile homes, structures, roads, or other improvements.

(v) “Federal Fiscal Year” means that annual period, from October 1 of one calendar year to September 30 of the next calendar year, on which the United States government bases its budget.

(w) “Federal Lands and Water” are those land and water areas owned by the United States and managed by the Department of the Interior, Bureau of Reclamation.

(x) “Financial Assistance Agreement” is the appropriate legal instrument to reflect the relationship between the United States Government and a non-Federal partner when the principal purpose of the relationship is to provide Federal assistance to accomplish a mutual public benefit and support, as authorized and defined by law.

(y) “Fire Management Plan” A strategic plan that defines a program to manage wildland and prescribed fires and documents the Fire Management Program in the approved land use plan. The plan is supplemented by operational plans such as preparedness plans, preplanned dispatch plans, prescribed fire plans, and prevention plans.

(z) “Fixed Assets” means any structure, fixture, or capital improvement fixed to the Federal Estate.

(aa) “Good Repair” means maintaining functional use and longevity of facilities and equipment through use of appropriate actions including, but not limited to, controlled maintenance, standard operating procedures, maintenance manuals; meeting Federal, State and applicable local health department standards; meeting public safety needs and standards; and maintaining facilities in a safe, neat, clean, and well-kept condition.

(bb) “Hazardous Material(s)” means any substance which, by reason of being explosive, flammable, poisonous, corrosive, oxidizing, irritating, or otherwise harmful, is likely to cause illness or injury. Hazardous Materials include any other substance regulated as hazardous or toxic under Federal, State, or local law, including but not limited to Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9601 (14) and (33), Clean Water Act, 33 U.S.C. Section 1321 (a) and the Oil Pollution Act, 33 U.S.C. Section 2701 (23).

(cc) “Integrated Pest Management Plan” (IPMP) refers to a plan that is systematic and environmentally compatible to maintain pest populations within economically and environmentally tolerable levels.

(dd) “Maintenance” means the act of keeping fixed assets in good repair. It includes preventive maintenance, normal repairs, replacement of parts and structural components, and other activities needed to preserve the asset so that it continues to provide acceptable services and achieves its expected life. Maintenance excludes activities aimed at expanding the capacity of an asset or otherwise upgrading it to service needs different from, or significantly greater than, those originally intended.

(ee) “Management of the Concession Areas” means to Administer, Operate, Maintain, and Develop that Federal Lands identified in Exhibit A – Area Map, to provide a benefit to the public and to assist Reclamation to meet its authorized Project Purposes including providing public safety and health, recreation, and protection of lands and surface waters associated with the

Concession Areas These purposes include preserving resource values and conditions; provision of visitor management services, recreation opportunities and Recreation Facilities; provision of law enforcement, provision of fire suppression, provision of fire prevention, incident response and emergency services, implementing all applicable components of a Fire Management Plan, and keeping Recreation Facilities and associated equipment in good repair and a usable working condition.

(ff) “Mutually Agree” means all parties’ designated representatives are in agreement on a proposed action. Such agreements will be in writing.

(gg) “NEPA”, means the National Environmental Policy Act 42 USC || 4321, et. Seq.

(hh) “Operations and Maintenance (O&M)” means the functions, duties, and labor associated with the daily operations and normal repairs, replacement of parts and structural components, and other activities needed to preserve an asset so that it continues to provide acceptable services and achieves its expected life.

(ii) “Project Lands” means those lands acquired fee title or withdrawn for the Solano Project under the authority of the Reclamation Project Act of 1939 to fulfill the primary purposes of those Act.

(jj) “Project Facilities” means those water diversion, collection, storage, and carriage facilities, and appurtenant ancillary facilities built under the Solano Project authorizing acts to fulfill the primary purposes of those Acts.

(kk) “Project Operations” means functions, duties and labor associated with those water diversion, collection, storage, and carriage facilities, and appurtenant ancillary facilities built under the Solano Project authorizing acts to fulfill the primary purposes of those Acts.

(ll) “Project Purposes” means those purposes listed in the Reclamation Project Act of 1939 and the Secretary of Interior’s authorization of November 11, 1948 including water for

irrigation, municipal, and industrial purposes, and those stated in the Federal Water Project Recreation Act of 1965, including outdoor recreation and fish and wildlife enhancement, and any future Congressionally authorized purpose.

(mm) “Reclamation” means the United States Department of the Interior, Bureau of Reclamation, or its duly authorized representative(s).

(nn) “Recreation Facilities” means those facilities constructed or installed at the Concession Areas for recreational purposes by the public or for support of such recreational use. Said facilities may include, but are not limited to buildings, launch ramps, visitor centers, and maintenance shops; other structures or amenities including campgrounds, picnic grounds, boat docks and ramps; and infrastructure; consisting of electrical lines, water systems, roads, trails, parking areas, sewer systems, signs, trash facilities, boundary and interior fencing.

(oo) “Recreation Area” all lands within the Project Areas that are managed in conjunction with the Project Areas shown in Exhibit A.

(pp) “Regional Special Agent” is a designated law enforcement officer authorized to enforce federal laws on Reclamation Project Lands in the Bureau of Reclamation Interior Region 10: California-Great Basin.

(qq) “Resource Management Plan(s)” means the plan(s) prepared in accordance with Title XXVIII of Public Law 102-575 and Reclamation’s Resource Management Plan Guidebook.

(rr) Revenues: all receipts derived from entry and other use fees which the managing partner is permitted to collect pursuant to their authority under this Agreement; including, but not limited to fees, charges, tolls, and rents, charged by the managing partner for public recreation use and concessionaire agreements issued or administered by the managing partner.

(ss) “Special Use Fees” means a fee charged to Concessionaires or third parties by Napa County for special uses of the Recreation Area for special events and Concessions, including, but

not limited to fairs, festivals, concerts, group gatherings, weddings, reunions, fishing tournaments and boating events, fundraisers, and all other recreation activities and amenities as described in the Resource Management Plan, which Napa County is permitted to collect pursuant to their authority under this Agreement.

(tt) “Third Party Agreements” means agreements, including Concession Contracts, issued by Napa County to another entity to provide recreation related services and facilities for the Recreation Area other than Commercial Filming and Use Authorizations.

(uu) “Use Authorization” means various land use or resource management documents or instruments including, but not limited to, license agreements, contracts, rights-of-way, easements, leases, permits, and other rights of use issued or granted by Reclamation on, over, across or under the Federal lands and waters pursuant to Title 43 of the Code of Federal Regulations part 429.

(vv) “Use-Authorization Permittee” means the person or entity granted limited authority to use Reclamation lands and water by means of a “Use Authorization”.

(ww) “Water User Organization” means water agency(ies) (Solano County Water Agency and Solano Irrigation District) receiving direct benefit from and responsible for project repayment of the Federal Water Resource Project.

2. Management of the Project Areas

(a) Reclamation hereby transfers to Napa County and Napa County hereby accepts Management of the Concession Area as defined in this agreement for the benefit of the public pursuant to this Agreement.

(b) This transfer of Management of the Concession Areas is subject to any separate Use Authorization between Reclamation, Water User Organization(s), or any separate Use

Authorization granted to the public or third parties, provided that any proposed new Use Authorization will not be granted that will, in the opinion of Reclamation unreasonably interfere with Management of the Concession Areas.

(c) It is possible, however unlikely, that Reclamation may temporarily withdraw all or portions of the Concession Areas at any time during the term of this Agreement if Reclamation determines the withdrawal is necessary for the purpose of meeting Project Purposes or of meeting a specific Congressional action. In such a case, Reclamation will meet with Napa County and any of Napa County's permittees or contractors affected by the action to schedule and manage the withdrawal in ways that minimize impacts to Napa County, its permittees and contractors, and public recreation. Any such withdrawals will be returned to the use of the Concession Areas when the issue requiring the withdrawal has been remediated.

3. Terms of Agreement and Termination of Existing Management Agreements and/or Contracts

(a) The term of this Agreement will be fifty-five (55) years from November 1, 2020, unless terminated sooner as provided herein.

4. Administration, Operation, Maintenance and Development

(a) Napa County will be responsible for the Management of the Concession Areas in accordance with the following:

- a. Visitor services, fire prevention, emergency services, fire services, maintenance and activities by Napa County must be managed in a manner that allows for uninterrupted operation of Project Facilities and Project Lands principally for water supply.
- b. Reclamation acknowledges that Napa County, local agencies and/or stakeholder groups may periodically propose projects or improvements for approval by Reclamation. Such approvals will generally require that:
 - (1) Any proposed project or improvement will meet the requirements and restrictions to development identified in the 2006 VSP/ROD,
 - (2) Natural, historical and cultural resources are adequately protected, and appropriate stewardship provided,
 - (3) No public services or activities are conducted that preclude future alteration or construction of a federal water resource facility,
 - (4) Except for that cost sharing Reclamation has agreed to provide Napa County pursuant to the terms in this MPA, operation and maintenance of the improvement are intended to be cost-neutral to the United States; and in the event of construction, the final disposition of the improvement will be addressed in Section 24.

(b) Napa County will, within the limits of its authority, maintain rules and regulations for public conduct within the Project Areas (see Napa County Code Section 12.08) that Napa County deems necessary and desirable to protect the health and safety of persons using the Project Areas, for the preservation of law and order, acknowledge the needs of surrounding communities, and fully

support Reclamation's resource management and environmental stewardship for the protection of resources, lands and Recreation Facilities. Said rules and regulations will be consistent with regulations promulgated by Reclamation in 43 Code of Federal Regulations, Part 423 and Part 429 (Attachments) and other applicable Federal and State laws, rules, regulations, and policies currently in place or as may be adopted in the future.

(c) Napa County will ensure that land use and administration of the Concession Areas will conform to all applicable Federal laws, rules, regulations, policies, and Executive Orders.

(d) Where variations exist in Federal laws, rules, orders, regulations, and policies, at minimum the Federal standard will apply. Where County policy, law, and/or regulations are more stringent, but do not conflict with Federal policy, law, and/or regulations, Napa County's will be the required standard. The CO will work with the Napa County Executive Officer and/or Napa County Sheriff regarding any potential conflicts of jurisdiction.

(e) The parties to this Agreement will coordinate with the appropriate Water User Organization(s), state or local agencies regarding any administration, operation, maintenance, and development activities pursuant to this Agreement that could affect any management, operation, and maintenance activities of the Water User Organization(s) or Use-Authorization Permittees within any of the subject Recreation Areas.

(f) Napa County will continue to exercise its law enforcement authority within the Concession Areas, as manpower and resources allow, to maintain and preserve law and order, and to protect Recreation Facilities, resources, and Federal Lands and Water from unauthorized use and illegal activity. Napa County may increase the level of law enforcement services within the Concession Areas described in this agreement and in addition to the baseline services provided by the County.

(g) Napa County will coordinate any administration, operation, maintenance, and development activities pursuant to this agreement that could affect any of the management, operation, and maintenance activities of the United States within the subject transferred area. Reclamation-managed facilities at Lake Berryessa include traditional day-use and limited camping. It is Reclamation's expectation that Napa County will provide services such as a variety of lodging opportunities, developed marinas, structured recreational activities, and others that fulfill market demand that complements Reclamation's facilities and services.

(h) Recreation facilities will be developed, operated and maintained on a schedule determined by Napa County. Resources will be protected, and visitor services shall be provided in accordance with the 2006 VSP ROD, Napa County's Concession Area Plan, and other applicable standards for the Concession Areas.

(i) Napa County will comply with the accessibility standards and requirements, specifically the Americans with Disabilities Act (ADA) and the Architectural Barriers Act Accessibility Standard (ABAAS) and any complementary state or local laws specific to disability access on any new construction or alterations of facilities. Napa County may also be subject to additional State and local standards.

(j) Napa County, or its concessionaires, shall be responsible for conducting all work on such facilities, and providing funding for the above management activities, including the full cost of any and all development, replacement, or alterations of Recreation Facilities. Reclamation shall review and approve all improvement plans before construction or implementation begins. Napa County and its concessionaires will ensure all environmental compliance is secured prior to commencement of construction activities. Reclamation retains the requirement to approve all environmental compliance actions (i.e. NEPA and ESA).

(k) Reclamation, along with the Water User Organization(s), state and local agencies, and other applicable Use-Authorization Permittees shall be provided an opportunity to review and comment regarding any development plans that could affect their current or future management, operation, and maintenance activities within any of the Concession Areas. Napa County will ensure, with Reclamation approval, all environmental clearances and permits are secured prior to commencement of construction activities.

(l) In addition to those in-kind services Reclamation has agreed to provide pursuant to Exhibit M, Reclamation may provide technical assistance to Napa County at no cost to Napa County.

(m) Identification of other funding sources: It is Reclamation's policy to minimize reliance on Federal appropriations to finance provision of recreation services and facilities. Beyond the maximum funding Reclamation has agreed to provide pursuant to this MPA, Napa County will identify and obtain potential alternate sources of funding to take the following actions at the Concession Areas:

- a. Fund operational costs,
- b. Properly maintain facilities and infrastructure, and
- c. Provide and enhance services to the public.

(n) Funding sources may include grants, donations, user fees, fees derived from short-term special use permits (issued by Napa County as applicable and authorized), implementation of other Federal fee authorities, and those reimbursements provided for in this MPA.

(o) The parties agree to consider in-kind services within their respective agency authorities that may be mutually beneficial to the overall objectives of this MPA. No in-kind work will be performed without the prior written approval of Napa County Authorized Representative and Reclamation's COR.

(p) Napa County will ensure that personnel are available to accomplish the work agreed to herein.

(q) Cultural resources will be investigated prior to the implementation of any development activities or surface disturbing actions. County personnel will coordinate with Reclamation to ensure that compliance with section 106 of the National Historic Preservation Act (NHPA) (54 USC 306108), and implementing regulations at 36 CFR Part 800, is completed prior to project implementation. The management of cultural resources located within the Project Areas shall be consistent with Reclamation's Cultural Resources Management Policy (LND P01) and Cultural Resources Directives and Standards (LND 02-01).

(r) In the event that human remain or artifacts are found within the Concession Areas Reclamation's Area Manager shall be immediately notified consistent with the Native American Grave Protection and Repatriation Act (25 U.S.C. 3001 et seq.).

(s) Collection of prehistoric, cultural, or historic artifacts from Concession Areas must be approved by Reclamation. The unauthorized excavation of such items is prohibited by the Archaeological Resources Protection Act (ARPA) (16 U.S.C. 470aa et seq.). Planned collections of such items are subject to Reclamation's issuance of a permit pursuant to ARPA. Any archaeological or historical items removed from the Concession Areas, including items collected and turned in by members of the public, shall be assessed by Reclamation to determine whether they constitute federal museum property. If so, they will be managed by Reclamation in a manner consistent with 36 CFR Part 79, The Curation of Federally-Owned and Administered Archaeological Collections.

5. Funding and Cost Share

(a) Reclamation and Napa County recognize that costs for Management of the Project Areas pursuant to this Agreement may exceed the Revenue generated, resulting in an "Operational

Deficit”. Reclamation may, in situations where Napa County’s actual Operation and Maintenance (O&M) costs at the Project Areas exceed Revenues and result in an Operational Deficit, enter into a Financial Assistance Agreement with Napa County to provide O&M funding of no more than fifty percent by way of a Cost Share arrangement as authorized by law. In addition, Reclamation may provide to Napa County, at no cost to the County, administrative space and utilities, and the value of those provisions would not be considered as part of Reclamation’s shared costs. As provided in the Reclamation Recreation Management Act “Reclamation may cost share up to fifty percent of O&M for periodic, short-term situations when cost sharing is determined by Reclamation to be in the best interest of the United States and the public.” O&M Cost Share amounts provided by Reclamation shall be solely for the purposes identified in this MPA.

(b) The parties agree and understand that any Financial Assistance Agreements that arise from this MPA, including that initial Financial Assistance Agreement agreed to in Exhibit M, are subject to the availability of future appropriations. Consistent with Exhibit M and subject to Federal appropriations, Reclamation shall Cost Share the annual Operational Deficit not to exceed the cumulative Federal Ceiling or 50% of operational losses. The cumulative Federal Ceiling for the initial Financial Assistance Agreement in Exhibit M, which is intended to control the first five years of this Managing Partner Agreement, is established at no more than \$1,050,000. The cumulative Federal Ceiling represents the total financial contribution that Reclamation is committing to this Managing Partner Agreement. Napa County may request financial assistance up to the total of the cumulative Federal Ceiling during the first five years of this agreement; according to the schedule and terms identified in Exhibit M.

(c) Award of Cost Share funds by Reclamation will require Napa County, at their own expense, to conduct an annual audit in accordance with the Single Audit Act Amendments of 1996, as may be amended, for each year that funds are received.

(d) Should circumstances preclude a Cost Share by Reclamation, or adequate Napa County appropriations and/or revenues in any particular year, both parties will meet immediately to devise a strategy to address the funding shortfall (including but not limited to those provided for in section (i)).

(e) The following Cost Share formula shall be applied and will be determined annually on a Napa County Fiscal Year basis:

- **Napa County operational costs minus Revenues = Operational Deficit**
- **Operational Deficit divided by 2 = O&M Cost Share (subject to the maximum cost share agreed to by this MPA and/or as amended by mutual agreement of the Financial Assistance Agreement in Exhibit M).**

Reported Cost Share figures will be used by each party, subject to the limits identified in the MPA, for the purposes of requesting budget appropriations for future fiscal years.

(f) Napa County appropriations and Revenues, and when necessary and available Federal appropriations, will comprise the funding mechanism for the operation and maintenance for the Project Areas pursuant to this MPA.

(g) Outside funding sources, when available, may be used to offset the O&M Cost-Share obligation for each party for the purpose of this MPA.

- a. Outside sources of funding are those other than Revenues and Federal or Napa County appropriations.
- b. Not all outside funding sources may be applicable to the O&M Cost Share.
- c. It is recognized by both parties that different sources of outside funding may have specific applications.

(h) Reclamation and Napa County have agreed those in-kind services to be provided by Reclamation in accordance with Exhibit M shall not count towards Reclamation's Cost-Share Obligations.

(i) The parties agree to consider additional in-kind services within their respective agency authorities that may be mutually beneficial to the overall objectives of this MPA. By mutual agreement, the value of any in-kind services or work not identified in Exhibit M in addition to the monetary Cost-Share obligations, may be applied towards the total annual Cost-Share obligations. Application of in-kind services for this purpose will be based upon official financial, staff labor related staff time and duties, or other documentation.

(j) Reclamation and Napa County will:

- a. Convene annually at a time convenient and congruent to Reclamation's acquisition process and the Napa County Fiscal Year to review Napa County's proposed operating plan including any projected operating deficit, and will work together in good faith to review the opportunities and the feasibility of reducing the projected operational deficit through adjustment to the structure of fees charged by Napa County for concession franchise fees or visitor use, identification of additional revenue sources such as special use fees, and reduction in cost elements.
- b. Convene periodically during the calendar year but not less than quarterly to review operational concerns, financial information, evaluate the status of any emerging operational deficit and take reasonable action to minimize the deficit.
- c. Develop an operating plan for the upcoming Napa County Fiscal Year as a basis of the Financial Assistance Agreement's scope of work and financial accountability. For this purpose, Napa County shall provide the use data, financial and other information requested by Reclamation by January 15th of each year.

- d. Create efficiencies through the sharing of resources for the purposes stated in this MPA.

6. Contingent on Appropriations or Allotment of Funds

(a) The expenditure of any funds and the performance of any work by Reclamation or Napa County as provided for by the terms of this Agreement is made contingent on Congress or the Napa County Board of Supervisors (BOS) making the necessary appropriations or the allotment of funds and shall be contingent upon such appropriation or allotment being made. The failure of Congress or the BOS to appropriate funds or the absence of any allotment of funds shall not impose any liability on Reclamation or Napa County. If the appropriations and allocations necessary for either party to carry out this Agreement are not made for any federal or County fiscal year, the parties hereto agree to cooperate to reach a temporary course of action.

7. Fees and Revenues

(a) Fees will be set in accordance with the fee schedule established by Napa County, and Napa County will have the right to collect receipts derived from contracts which it issues and administers for activities within the Concession Areas. Napa County will collect, and retain for use onsite, receipts derived from recreation related fees, permits and contracts which it issues and administers for activities within the Project Areas.

8. Reclamation Use Paramount

(a) The rights of Napa County under this Agreement are subordinate to the prior rights of Reclamation to use any portion of the Project Areas for all current and future Project Purposes. Reclamation reserves the right temporarily or permanently withdraw, close, transfer or reassign all or portions of the Concession Areas at any time during the term of this Agreement if Reclamation determines the withdrawal is necessary for the purpose of meeting Project Purposes or of meeting a specific Congressional action (including but not limited to alterations to reservoir capacity, national security concerns, other future Congressionally authorized purposes or uses, or other major events). Further, Reclamation may close the Concession Areas under Title 43 CFR 423, or any portion thereof, whenever Reclamation determines such restriction is necessary in the interest of Project operation, public safety, or national security. Reclamation's designated representative will give written notice to the County of any such closure, transfer, or reassignment. This notice will be given as soon as practicable after a determination is made and will include the date when the action becomes effective. The County will enforce such action and such enforcement will include coordination and cooperation with Reclamation to the extent that Managing Partner staff support, and resources allow.

(b) In the unlikely case that certain events, conditions, or project modifications require permanent or temporary closure, withdrawal, reassignment, or transfer of any portion of the Project Area, as describe in subsection (a), and if such actions conflicts with Napa County management, Reclamation will give written notice to Napa County. Reclamation retains all and final decision authority on which lands are included in each action. To the fullest extent of the law Reclamation shall coordinate with and cooperate with Napa County to (1) avoid any alteration that would impact any developed portions of the Concession Areas, and (2) address any just compensation that may be sought by a Concessionaire Contractor as a result of any alteration to the Concession Areas stemming from Reclamations prior rights to the Project Areas for Project Purposes. Reclamation

cannot guarantee a right to compensation based on closures, withdrawals, adjustments or reassignments made to the Concession Areas. In connection with any actions undertaken pursuant for public health and safety, Reclamation and the county will discuss implementation of such actions that minimize impacts to concessionaires and public recreation opportunities. No compensation will be considered for any actions undertaken to correct public health and safety deficiencies resulting from Napa County or Concessionaire activities.

(c) No recreation development or fish and wildlife habitat development or enhancement will be constructed within the Concession Areas by the County unless it is specifically approved by Reclamation on a case-by-case basis. Reclamation shall not unreasonably delay or withhold such approval and shall abide by the process set forth in Exhibit L. If any development is constructed by Reclamation, it may be turned over to Napa County for their direct management, if such an arrangement is agreed to in writing by Napa County and the Contracting Officer.

9. Visitor Services Plan (VSP) / Concession Area Plan

(a) Napa County's administration, operation, maintenance, and development of the Project Areas will be consistent with the Reclamation approved 2006 VSP Record of Decision (ROD), the 1992 Reservoir Area Management Plan/ROD, with any future Reclamation Resources Management Plans, and with any Napa County Concession Area Plan for each area. Any authorization given by Reclamation to Napa County for any activity related to the Project Areas shall include a provision requiring compliance with said plans. Any Concession Area Plan must be submitted to the Contracting Officer and approved before implementation. Any such approval shall not be unreasonably withheld. These plans may be revised or a new one developed following typical planning processes if mutually agreed by the parties.

10. Law Enforcement and Safety

(a) The County retains an inherent responsibility for law enforcement within Napa County. Reclamation has proprietary jurisdiction and Napa County Sheriff's deputies have an inherent right to respond and enforce laws across Reclamation lands. As part of the consideration for this MPA, Napa County and Reclamation agree to execute an agreement for enhanced law enforcement services ("ESA") to be provided by the County, acting by and through its Sheriff, in the Project Lands, including the Concession Areas not included in the Area of Effect.

(b) County law enforcement personnel, whether baseline or enhanced, and Reclamation, through the designated Regional Special Agent (RSA), will collaborate in the exchange of law enforcement information related to the Project Areas. The RSA may provide resources and expertise as applicable and necessary to address violations of federal laws.

11. Risk and Damages / Hold Harmless

(a) The parties hereto will each be responsible and liable only for the negligent acts or omissions of their respective employees to the extent provided by law. However, nothing in this contract will be construed to be an admission of fault or liability, and nothing will limit the defenses and immunities legally available to each party against each other and third parties.

(b) Notwithstanding 11(a) above, Napa County agrees to defend, indemnify, and hold harmless the United States, its employees, contractors, agents, and assigns from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death arising from Napa County's activities under this Agreement.

(c) Notwithstanding 11(a) above, the United States and Reclamation agree to hold harmless Napa County, its employees, contractors, agents, and assigns from any loss or damage from any liability on account of personal injury, property damage, or claims for personal injury or death arising from the activities of the United States government, or Reclamation, resulting from this Agreement.

(d) Notwithstanding any other provision of this agreement, neither party to this agreement waives its sovereign immunity by entering into this Agreement and each fully retains immunity and all defenses provided by law which may arise out of the implementation of this agreement and with respect to any claim or cause of action based upon or occurring as a result of the activities contemplated herein.

12. Incident Reporting

Napa County shall investigate or cooperate in the investigation by the agency having jurisdiction, all incidents involving death, serious injury or significant property damage, trespass, or other incidents of a serious nature within the Recreation Area. Napa County shall make a serious incident notification upon knowledge of the incident to Reclamation's and County's designated representatives within one working day. Napa County shall submit a written incident report to Reclamation's designated representative within fourteen (14) calendar days of the verbal notice.

13. Hazardous Materials, Recycling and Waste Reduction

(a) Reclamation is responsible for Hazardous Materials and pollutants resulting from existing conditions on federal land, under the jurisdiction of Reclamation, such as mines and mine tailings or other Hazardous Materials existing on such federal lands which may or may not be associated with lands transferred or under the management of Napa County by this Agreement.

(b) Reclamation shall be responsible for existing hazardous features on the federal lands within the Recreation Area, including but not limited to, abandoned mines, drainage tunnels associated with historic mining and unstable cliffs and slopes resulting from past mining.

(c) Napa County shall be responsible for Hazardous Materials and pollutants resulting from development and operation of Recreation Facilities by Napa County or its agents, concessionaires, or permittees.

(d) Upon discovery of any event which may or does result in contamination or pollution of the Recreation Area, Napa County shall initiate any necessary Emergency measures to protect health, safety and the environment and shall report such discovery and full details of the actions taken to Reclamation's authorized representative. Napa County shall make a serious incident notification to Reclamation's designated representative within one working day of knowledge of the incident. Napa County shall submit a written incident report to Reclamation's designated representative as soon as practicable but no later than fourteen (14) calendar days of the verbal notice.

(e) Napa County agrees to include the provisions contained in paragraph (a) through (d) of this Article in any Concession contracts or other Third Party Agreements it may enter into pursuant to this Agreement.

(f) Reclamation agrees to provide information necessary for Napa County, using reasonable diligence, to comply with the provisions of this Article.

14. Pest Control

- (a) Napa County shall not permit the use of any pesticides on the Recreation Area without prior written approval by Reclamation.
- (b) If funded and as staffing allows, Napa County may assist in the prevention and/or eradication of undesirable plants and animals.
- (c) Programs for the control of undesirable plants and animals in the Recreation Area will incorporate Integrated Pest Management concepts and practices.
- (d) All pesticides used shall be in accordance with the current registration, label direction, or other directives regulating their use and with applicable Reclamation policy, directives and standards. Applicators will meet applicable state training or licensing requirements. Records maintenance shall be in accordance with State requirements.
- (e) Any Equipment, tools and machines used for pesticide application shall be in good repair and suitable for such use.
- (f) Mixing, disposal, and cleaning shall be done where pesticide residues cannot enter storm drains, sewers, or other non-target areas.
- (g) Napa County shall initiate any necessary measures for containment and cleanup of pesticide spills caused by Napa County. Spills shall be reported to the Reclamation's authorized representative with full details of the actions taken. Reporting shall be made on the first working day following discovery.
- (h) Napa County agrees to include the provisions contained in subdivisions (a-g) of this Article in any Concession contracts or Third Party Agreement it may enter into pursuant to this Agreement.

15. Waste Removal

(a) Napa County will provide litter control and trash removal in all areas where public recreation use is permitted. Napa County will properly dispose of all waste, discarded or abandoned items, and debris generated by use of the Concession Areas. Reclamation will cooperate and may assist Napa County in the removal of debris, discarded or abandoned items and waste within the Project Areas in the event of an extraordinary or catastrophic occurrence, as Reclamation's resources allow.

16. Variation in Water Level

(a) Reservoir water levels may vary based on environmental and weather factors as well as reservoir operational requirements. Reclamation reserves the right to vary the reservoir water level as necessary for Project Purposes. Reclamation's designated representative will, to the extent reasonably practicable, provide timely notice to the appropriate County representative of any emergency increases or decreases in water level that would significantly or adversely affect recreational use and related facilities of the Project Areas.

17. Protection of Natural Resources

(a) Napa County acknowledges its obligation to take all reasonable measures on the Concession Areas for the minimization of sedimentation and erosion; protect land and water resources; prevent and suppress fire; protect against introduction and spreading of noxious weeds and other pests detrimental to natural values, agriculture or public health and safety; and will

cooperate in soil and water conservation, and fish and wildlife enhancement practices at the Project Areas.

18. Consumptive use of Water by County

(a) When Napa County, a concessionaire, or other third party furnishes water to the public, it will furnish only suitably treated, wholesome and sanitary water which meets appropriate Federal, State and local health standards. Reclamation does not warrant the quality of the available water supplies as to their suitability either for domestic purposes or for human consumption. Napa County or its concessionaire will be responsible for acquiring, adhering to and maintaining applicable permits for public drinking water supplies as applicable.

(b) Napa County may pursue acquisition of water, water wells, potable water supplies piped in from commercial sources, and/or water rights for consumptive use for recreation purposes within the Project Areas. Such consumptive recreational uses may include, for example, water for operation of bathrooms, showers, firefighting, campgrounds, stables, irrigation, and other recreation related purposes. Said water, water wells, water supplies, or water rights, except for commercial water sources, will be obtained in the name of Napa County or Reclamation and will be retained for use at the Concession Areas for which it was obtained.

(c) Napa County Flood Control and Water Conservation District has diversion rights to 1500 acre-feet of Lake Berryessa surface water annually. It has assigned portions of that right to two local water service providers in the Lake Berryessa area. Napa County may require any concessionaire to receive water service in areas where the local water service providers have capacity and access. Reclamation expects Napa County to receive approval from the Napa County Flood Control and Water Conservation District to make water available to developments in the Area of

Effect through existing water service providers or through assignment of existing Napa County Flood Control and Water Conservation District water rights.

(d) Reclamation has limited diversion rights to 743 acre-feet of Lake Berryessa surface water annually. The purpose of such diversion is the operation and maintenance of Reclamation's directly managed facilities. Should the need arise after the use of Napa County Flood Control and Water Conservation District water rights, Reclamation may be able to make some portion of its water rights available to Napa County for development and operation of Recreation Facilities.

19. Management of Property

(a) As part of executing this agreement, ownership of facilities and improvements (buildings, roads, utilities, miscellaneous structures, etc.) existing at the time of execution of this agreement on the lands covered by the agreement were determined by both parties. Exhibit K details each facility or improvement owned by the United States or its assignees and those owned by Napa County or one of its contractors, sub-contractors or concessionaires.

(b) Napa County's responsibilities for managing, operating and maintaining the Project Areas shall include maintaining in Good Repair the buildings and facilities provided by the United States for Napa County use as defined in Article 1 above.

(c) Reclamation personal property is property provided at Reclamation's expense for performance of this Agreement including, but not limited to, property provided by the following methods:

- a. Reclamation furnished personal property is property that is transferred from Reclamation's inventory or purchased directly by Reclamation and delivered

into Napa County's custody for performance of this Agreement. Title to Reclamation furnished personal property remains with Reclamation.

(d) Napa County will meet the basic requirements prescribed in Exhibit E of this Agreement to establish and maintain control over Reclamation personal property in its possession.

(e) Napa County will return to Reclamation all Reclamation-owned personal property that becomes excess to the performance requirements of this Agreement.

20. Fire Prevention, Protection, and Suppression

(a) Reclamation and Napa County acknowledge that fire management is critical to the protection of public lands and provides for the health and safety of the visiting public. Both parties will cooperate and coordinate to address fire prevention, fire management and vegetation management issues that affect both the Area of Effect and adjacent Federal lands.

(b) Napa County is responsible for fire prevention, suppression, hazard fuel management and fire management planning for Federal owned lands within the Concession Areas. This will include but is not limited to; development of Fire Management Plans, fuel management and reduction project planning and implementation pursuant to federal policies/plans and the responsibility for fire suppression within the Area of Effect. Napa County will keep Reclamation apprised of its fire prevention, protection, and suppression efforts on a timely basis.

21. Third Part Contracts, Permits, and Use Authorization

Napa County shall not issue any Use Authorization or any other form of permission to use the Project Areas except as expressly provided.

(a) Napa County may issue and administer third party permits or Concession contracts to persons or associations for the purpose of providing appropriate and necessary services, goods, and facilities for the use of the visiting public consistent with the intent and conditions of this Agreement and in accordance with any current or future planning documents. Napa County shall submit all such contracts and permits to Reclamation for its review and approval before issuance. Reclamation shall not unreasonably delay or withhold such approval. The contracts and permits shall contain language subjecting the rights and privileges thereunder to all terms, conditions, exceptions, and reservations in this Agreement. Any contract or permits issued shall contain language to recognize the right of paramount use by Reclamation and Water User Organization(s) of the Concession Areas for Project Purposes, and shall defend, hold harmless, and indemnify Reclamation its officers, agents, employees, contractors, and assigns from any loss or damage and from any liability on account of injury, damage or death due to construction, operation and maintenance activities related to Project Purposes. Napa County will require all contractors, concessionaires and permittees operating within the Concession Areas to carry adequate liability and property damage insurance. Said insurance will be of sufficient amount to cover, as a minimum, Napa County's liability under its governmental liability statutes and will be consistent with the services and facilities provided and the potential for injury or damage to life and property. Reclamation will be named as additional insured parties on all such insurance, and a certificate of insurance will be provided to Napa County by the contractor to ensure that the insurance is in effect.

(b) No Concession contract or third party permit issued by Napa County as provided in subsection (a) above shall purport to transfer or convey any interest in the land, water or any public

or project facilities; and, the right given to Napa County to enter into such contracts and permits shall not be construed as a right to grant or convey an interest in the land, water, or any public or project facilities. No assignment or transfer of a Concession contract or permit or interest therein, whether as security or otherwise, shall be effective until such assignment or transfer has been reviewed and approved in writing by Napa County and Reclamation. All Concession contracts issued by Napa County must comply with Reclamation's Concession Management Policy and Directives and Standards, attached as Exhibit F as well as 43 CFR 430 attached as Exhibit J.

(c) Concession contracts and permits issued by Napa County shall also provide that in the event of the termination of this Agreement, such contract or permit shall simultaneously terminate. All concession contracts must state that Reclamation will not stand instead for the managing partner should the management agreement expire or be terminated. In the event of termination of this Agreement and at Reclamation's discretion, Reclamation may issue a new Concession contract or permit that is in compliance with the Concessions Management Policy and Directives and Standards. In the event this Agreement is terminated, Napa County shall pay to Reclamation the pro-rated unexpended portion of any fees or rents paid to Napa County by such concessionaires, contractors, or permittees after damages or other compensation due concessionaires.

(d) The term for a Concession contract or permit may not extend beyond the term of this Agreement. In general, the term of such contracts or permits should be as short as possible and based on economic factors, conditions, and any new investment, as determined by a financial feasibility evaluation. Reclamation will work with Napa County to determine reasonable lengths of term based on the factors stated above.

(e) Concessionaires, contractors and permittees shall be required to comply with all applicable provisions of Federal, State, and local laws, rules and regulations, Executive Orders, and Reclamation Policies, in force now or as may be promulgated or changed in the future.

(f) In accordance with Title 43 CFR part 429, Napa County shall not issue, or allow to be issued, directly or through the actions of its concessionaires or permittees, new permits or other forms of agreements that allow for the development of privately owned exclusive uses, as defined in 43 CFR 429.2 and including such as, but not limited to, cabin sites; mobile homes or travel trailer sites; private boat docks; ski clubs; boat clubs; or, the issuance of livestock grazing permits. This MPA allows for a maximum length of stay in any facility by any member of the public recreating within a campground, park model, or similar structure on Reclamation lands not to exceed 30 consecutive days. Use of campsites, park models, or similar structures in excess of the time limitations of 43 CFR 423 may only be authorized from October 1 to April 1. Employees, in their official capacity working for the concession or County, are not constrained by this length of stay. At no time are any persons allowed to establish residency upon Reclamation lands nor shall any person establish the appearance of residency on Reclamation lands.

(g) Concession contracts and permits shall provide that, in the event of the termination of this Agreement, Reclamation will not stand in the stead of Napa County as grantor for the remainder of the term of said contracts or permits. In the event of such Agreement termination and at Reclamation's discretion, Reclamation may issue new concession contracts to existing concessionaires that are in compliance with the Concessions Management Policy and Directives and Standards or other applicable policies, rules, and regulations. Reclamation will not issue new contracts or permits if the concessionaires or permittees are in default of any term or condition of County issued contracts or permits.

(h) Napa County may enter into basic service contracts without prior review and written approval of Reclamation. Such contracts are limited to essential services for normal maintenance, including, but not necessarily limited to, trash removal and disposal, toilet pumping, or general grounds maintenance.

(i) Only Reclamation may issue Use Authorizations for land use and resource management within Project Area. Reclamation may delegate authority to Napa County for short term special use permits (Special use activities that will last less than one week). No permanent easements or leases will be granted by Napa County for any activities occurring in the Project area. Reclamation reserves the right to issue Use Authorizations within the Concession Areas.

(j) Reclamation will provide within 90 days of MPA execution, a list of existing third-party agreements and contracts to Napa County. Reclamation will provide a list annually of all third-party agreements and contracts to Napa County.

(k) Reclamation will, prior to approval of any Use Authorization provide Napa County with a copy of any Use Authorization application for review and comment. Napa County shall review any such application and make written comment to Reclamation. Reclamation will consider the written comments of Napa County during the approval process and, if appropriate, incorporate them into the Use Authorization. Reclamation shall include in each Use Authorization reasonable measures to protect Recreation Facilities. Reclamation will also include the responsibility to repair damages which may occur to public use of Recreation Facilities and a provision where by the grantee defends, indemnifies, and holds harmless Reclamation, Napa County, its employees, agents, and assigns from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death arising out of the land use granted by Reclamation.

(l) As permitted by 43 CFR Part 429 and other applicable law or regulation, administrative fees incurred by Reclamation and Napa County for miscellaneous costs associated

with the review of Use Authorization applications and ongoing administrative expenses incurred may be charged and collected separately by Reclamation and/or the County.

(m) Napa County agrees to include provisions containing the requirements identified in Articles 13, 14, and 24 of this Agreement in any subcontract or third-party contract it may enter into pursuant to this Agreement.

(n) The County and any concession contractor(s) may select an operating name for components of their recreation and concessions areas, including specific recreation sites (i.e., campgrounds, day use facilities, marina, etc.), pending written approval by Reclamation, which they intend to officially title that concession service. However, Napa County and concession contractor do not have ownership of the name or the authority to retain that name at the termination or expiration of the concession contract or this Agreement. Reclamation will determine whether the name will remain; and if so, the name will be used at no cost by Reclamation and by a succeeding operator.

22. Unauthorized Use

(a) Napa County will take all reasonable measures necessary to identify, investigate, and resolve incidents of unauthorized land, resource, or recreation facility use, or unauthorized encroachment within the Concession Areas. This includes any legal actions necessary to prevent or prosecute such unauthorized use provided that any such action by Napa County cannot bind the United States in a manner either for the payment of money or any other form or commitment. Reclamation hereby delegates to Napa County the right to bring action in Napa County's name in order to protect each party's interests and carry out their responsibilities in connection therewith. Resolution of boundary disputes shall be the responsibility of the affected parties. Napa County

will notify Reclamation's designated representative of boundary disputes or unauthorized incidents within 10 calendar days of discovery.

23. Reservations

(a) Napa County's management of the Concession Areas is subject to the following conditions and reservations:

- a. Existing land uses, rights, or interests within the Reservoir Areas and lawfully held by Reclamation or entities not party to this Agreement.
- b. The right of Reclamation, its assigns, employees, contractors and agents, to enter upon the Concession Areas on official business without charge, for the purpose of enforcing, protecting, and exercising the rights of Reclamation and the United States, and also to protect the rights of those not party to this Agreement.
- c. The right of Reclamation, and its agents, employees, assigns, contractors, lessees, or permittees, to remove from the Concession Areas, any and all materials necessary for the construction, operation, and maintenance of Project works and facilities. All such removal activities shall not encroach on developed sites without mutual agreement of the parties hereto.
- d. The right of Reclamation and its agents, assigns, permittees, or lessees to prospect for, extract, and carry on the management of oil, gas, coal, and other minerals, and the right to issue leases or permits to prospect for oil, gas, or other minerals under the Act of February 25, 1920 (41 Stat. 437), and

amendatory acts, the Act of August 4, 1939 (53 Stat. 1187), as amended, and the Act of August 7, 1947, (61 Stat. 913).

- e. Except in emergency situations, Reclamation's designated representative will give written notice to Napa County's designated representative 30 calendar days prior to the exercise of the above rights.
- f. Notwithstanding any other provision, the United States warrants that it has the legal right to allow the public to access the Reservoir Area.
- g. All Reclamation Federal lands covered by this agreement shall be closed to off-road (cross-country) vehicle use, unless, opened through a Reclamation-approved planning process. Public motorized travel on existing, designated roads may be allowed, unless otherwise posted, as closed to protect project resources and health and human safety.

24. Title to Land, Improvements, Equipment and Restoration

(a) Permanent structures and improvements within Concession Areas constructed on the Federal Lands and Water which were funded, or partially funded, by the United States shall remain the property of the United States.

(b) Napa County will keep a current and accurate property record/inventory of all Recreation Facilities, structures and improvements installed or constructed within the Reservoir Areas and all equipment purchased with federal Appropriations or Allotment of Funds for use at the Reservoir Areas pursuant to this Agreement.

(c) Property, equipment, and supplies acquired with federal Appropriations or Allotment of Funds pursuant to this Agreement will be managed in accordance with Exhibit E.

(d) Napa County shall keep a current and accurate inventory of any structures and improvements installed or constructed solely at its own expense or at the expense of its contractors, concessionaires and permittees and shall provide Reclamation such inventory within 30 days of completion of such installation or construction, in order for Reclamation's inventory records to be maintained accordingly.

(e) Upon termination of this Agreement, Reclamation may purchase, at the Cost Less Depreciation value, those facilities determined necessary for the future operation and maintenance of the Reservoir Areas, provided the facilities were constructed and financed by Napa County its contractors, concessionaires, or permittees.

(f) Upon termination of this Agreement or such longer period as may be determined by Reclamation to be reasonable, Napa County, its contractors, concessionaires or permittees, shall at their sole cost or expense, salvage and/or remove Recreation Facilities that were exclusively financed, constructed or installed by Napa County, its contractors, concessionaires or permittees, which are determined by Reclamation to be unnecessary for continued Management of the Reservoir Areas. After the expiration of such period, the title to all remaining County financed, constructed or installed Recreation Facilities shall vest in the United States should Reclamation make the determination that they are necessary for continuing to provide services to the public.

(g) Napa County, its contractors, concessionaires and permittees shall restore the land occupied by such removed Recreation Facilities to its original condition as determined to be satisfactory to Reclamation.

(h) Upon failure of Napa County, its contractors, concessionaires, and permittees to perform removal or restoration requirements Napa County shall be responsible for removal and/or

payment of all expenses incurred by the United States or its assigns, related to the removal of such improvements and restoration of said lands.

(i) Except for its environmental and other express obligations of this MPA, Reclamation provides these Concession Areas as-is with no implied warranty of any kind.

25. Review of Administration, Operation, Maintenance, and Development

(a) The Parties will meet annually or more often if requested by either party to review the operation of the MPA.

(b) Every 10-years or more often if requested by either party, a Reclamation managed review and evaluation will be conducted. During the 10-year cycle, an internal review and evaluation by Central California Area Office will occur first followed by an external review by the Bureau of Reclamation Interior Region 10: California-Great Basin that is scheduled within a reasonable timeframe that allows for correction of identified deficiencies. These types of reviews and evaluations will include, among other things, a review of business practices, O&M activities, visitor services, approved planning documents, management agreements, security plans, law enforcement requirements, health and safety requirements to include life safety items, etc. Within 90 days of the review and evaluation, a final review and evaluation report will be prepared and sent to the regional office, Reclamation's Dam Safety and Infrastructure Office, review participants, and Napa County.

(c) All concession agreements issued by Napa County will require Reclamation and Napa County to conduct annual concession reviews and evaluations. The review should identify problems, solutions, and a timetable for resolving the problems in a written report. Napa County

must ensure that any operational or administrative deficiencies noted by the review are corrected in accordance with the established timetable.

26. Examination of Records

(a) Napa County agrees that Reclamation shall have the right to examine and to access any pertinent books, documents, papers, and records of Napa County and/or third party entities involving transactions related to this Agreement at any time and for any reason.

27. Recreation Use Data Report

(a) Annually, Napa County will furnish to Reclamation's designated representative an annual summary of recreation related visitor uses at each Concession Area each year. The timeframe for reporting will be determined by Reclamation. Reclamation will provide the appropriate forms for this report, which is currently titled "Recreation Use Data Report". Reclamation will advise the County each year on these reporting requirements.

28. Miscellaneous Provisions

(a) Napa County, its contractors, concessionaires or permittees shall comply with the Environmental Requirements set forth in Exhibit B attached hereto and incorporated herein.

(b) Napa County, its contractors, concessionaires or permittees shall comply with the Equal Opportunity requirements set forth in Exhibit C and Title IV of the Civil Rights Act of 1964 set forth in Exhibit D attached hereto and incorporated herein.

(c) Napa County, its contractors, concessionaires or permittees, shall perform this Agreement consistent with Federal, State and local laws, regulations and policies pertaining to universal accessibility.

(d) Napa County, its contractors, concessionaires or permittees, shall perform this Agreement consistent with Reclamation's Federal Indian trust responsibilities as set forth in Exhibit G, entitled "Departmental Manual Part 512, Chapter 2, Departmental Responsibilities for Indian Trust Resources", attached hereto and incorporated herein.

(e) Napa County, its contractors, concessionaires, or permittees, relative to this agreement, shall be subject to Executive Order 13658, Establishing a Minimum Wage for Contractors.

(f) Reclamation at the request of Napa County, shall provide information on property boundaries and Use Authorization on Reclamation lands within the Project Areas.

(g) The parties hereto understand and agree that the various terms and conditions within this Agreement apply to the Agreement as a whole and are not to be narrowly defined within the specific article under which a given term or condition is located.

(h) Each party hereto will provide to the other parties any additional reports or information which may be reasonably requested.

29. Notice of Cure/Dispute Resolution

(a) Reclamation and Napa County may provide notice of any non-compliance with the terms and conditions of this Agreement. Notification of non-compliance shall be in writing, giving a 90-day period of time in which, the non-compliant act or omission shall be corrected. If either party fails to Mutually Agree to satisfactorily correct any substantial or persistent non-compliance

within the specified time, the following remedies are available: Reclamation may close all or part of the Project Areas, Reclamation or Napa County may temporarily suspend Management of the Project Areas, or terminate the Agreement after notice in writing of such intent, in accordance with Article 31.

(b) In the event Reclamation and Napa County cannot mutually agree on a proposed action within 90 calendar days, a longer period may be Mutually Agreed to by the parties hereto, to address any notice of non-compliance.

(c) Notwithstanding the foregoing, neither party to this agreement waives its sovereign immunity by entering into this MPA. Each party fully retains at all times all legal immunities, defenses, arguments, and claims or causes of action resulting from any issue arising from the implementation of this MPA. Further, entering into the above dispute resolution process does not waive any remedy available in law or equity.

30. Modification of Agreement

(a) This Agreement may be modified, amended, or superseded at any time during its term as Mutually Agreed by the parties hereto.

31. Termination

(a) This Agreement will terminate and all rights and obligations of the parties under this Agreement will cease under the following conditions:

- a. Upon expiration of the term of this Agreement, as provided in Article 3; or
- b. Upon receipt of a written notice of noncompliance, efforts to resolve have not been mutually reached by either party under the terms of Article 29 and a

written notice of termination has been received by Reclamation or the County; or

- c. If Napa County BOS notifies Reclamation of the County's decision to terminate for convenience, this Agreement shall terminate on a certain date at least 120 days after the date of notice, or at another Mutually Agreed date in order to minimize impact to public recreation at Lake Berryessa. Any termination shall be subject to the terms of Section 24 of this Agreement.
- d. If the Napa County BOS chronically fails to provide adequate funding to enable the County to carry out its obligations under this Agreement, Reclamation may give written notice that this Agreement shall terminate on a certain date at least 120 days after the date of notice.

32. Designated Representatives / Notices

(a) The parties hereto agree the designated representatives for administration of this Agreement are as follows, or as may be further delegated in writing by the following:

- a. Reclamation - Area Manager, Central California Area Office, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630.
- b. Napa County, (Contact Info)
- c. Any written notice, demand, or request, as required or authorized by this Agreement, will be properly given if delivered by hand, or by mail, postage prepaid, to the other party as above listed. All parties hereto are responsible for notifying all affected parties of any subsequent change of address,

organizational changes, responsibility adjustments, and other related changes, as they take place.

33. Severability

(a) Each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this Agreement shall be deemed or determined by competent authority to be invalid or prohibited hereunder, such provision shall be ineffective and void only to the extent of such invalidity or prohibition, but shall not be deemed ineffective or invalid as to the remainder of such provision or any other remaining provision, or this Agreement as a whole.

34. Officials or Employees not to Benefit

(a) No member or delegate of Congress, and no officer, agent or employee of the Executive, Legislative, or Judicial Branch of the Federal government, or official or employee of the County shall be admitted to any share or part of this Agreement, or to any benefit other than as a member of the general public that may arise here from.

35. Survivor Clause

(a) Terms and conditions that require action by Napa County or its contractors, concessionaires, permittees, agents or assigns may survive the termination of this Agreement when they are deemed by Reclamation for the benefit of the United States.

36. In Witness Whereof,

the parties hereto have executed this Agreement as of the first date written above.

Napa County

United States of America
Department of the Interior

By _____

By _____

DIANE DILLON, Chair, Napa County
Board of Supervisors

Ernest Conant, Regional Director, Bureau of
Reclamation, Interior Region 10: California-
Great Basin

Exhibit A: Area of Operation and Assigned Land

A. Phased Incorporation

The Area of Effect of the Managing Partner Agreement will change over time as different Concession Areas are incorporated into the County's management and operation. For areas that are not currently incorporated into the County's management and operation, Reclamation will continue to manage them through concession contracts or by other management instruments until such a time as the County assumes management and operation responsibilities. Each of the Concession Areas has its own schedule of incorporation as follows:

Steele Canyon: Steele Canyon will become part of the Area of Effect effective on November 1, 2020, prior to that date, Steele Canyon Recreation Area will be operating under a concession contract administered by Reclamation. That contract will expire on October 31, 2020. That contract may be terminated early by mutual agreement between Reclamation and the concession contractor. To facilitate Napa County's solicitation of future business opportunities, Napa County and the Lake Berryessa Field Office will coordinate Napa County access to the Steele Canyon site prior to October 31, 2020.

Spanish Flat: Spanish Flat will become part of the Area of Effect effective on November 1, 2020, prior to that date, Spanish Flat Recreation Area will be operating under a concession contract administered by Reclamation. That contract will expire on October 31, 2020 in order to provide the concession contractor an opportunity to close out the operation and to remove

assets. That contract may be terminated early by mutual agreement between Reclamation and the concession contractor. To facilitate Napa County's solicitation of the future business opportunities, Napa County and the Lake Berryessa Field Office will coordinate Napa County access to the Steele Canyon site prior to October 31, 2020.

Monticello Shores: Monticello Shores will become part of the Area of Effect effective on November 1, 2020. To facilitate Napa County's solicitation of the future business opportunities, Napa County and the Lake Berryessa Field Office will coordinate Napa County access to the Steele Canyon site prior to October 31, 2020.

Markley Cove: Markley Cove will become part of the Area of Effect at a date to be determined if the following prerequisites are completed by January 1, 2030:

- Successful negotiation of a Concession Agreement between Napa County and FX10.
- Review and approval of the successfully negotiated Concession Agreement between Napa County and FX10 by Reclamation.
- Written agreement between FX10 and Reclamation to mutually agree to Termination of Contract 17-LC-20-1053, effective upon the execution of the successfully negotiated Concession Agreement between Napa County and FX10.

Should the conditions above not be met, Reclamation will continue to manage Markley Cove through concession contract and Markley Cove will not be included in the Area of Effect of the Managing Partner Agreement.

Pleasure Cove: Pleasure Cove will become part of the Area of Effect at a date to be determined if the following prerequisites are completed by January 1, 2030:

- Successful negotiation of a Concession Agreement between Napa County and Berryessa SMI.

- Review and approval of the successfully negotiated Concession Agreement between Napa County and Berryessa SMI by Reclamation.
- Written agreement between Berryessa SMI and Reclamation to mutually agree to Termination of Contract 10-LC-20-0113, effective upon the execution of the successfully negotiated Concession Agreement between Napa County and Berryessa SMI.

Should the conditions above not be met, Reclamation will continue to manage Pleasure Cove through concession contract and Pleasure Cove will not be included in the Area of Effect of the Managing Partner Agreement.

Berryessa Point: Reclamation, acting by and through the Regional Director, and Napa County, acting by and through the Board of Supervisors, may agree to include Berryessa Point into the Managing Partner Agreement at a future date. Until such time, Reclamation will continue to manage the Recreation Area to meet the requirements of the 2006 VSP ROD.

Putah Canyon: Reclamation, acting by and the Regional Director, and Napa County, acting by and through the Board of Supervisors, may agree to include Putah Canyon into the Managing Partner Agreement. Until such time, Reclamation will continue to manage the Recreation Area to meet the requirements of the 2006 VSP ROD.

B. Legal Description of Concession Areas

1. Steele Canyon

Beginning at a point in the center of former State Highway No 37, now a county road; said point North 07 degrees 21 minutes East 883.9 feet from the south quarter corner of Section 33, Township Eight (8), North, Range Three (3) West of the Mount Diablo Meridian; running thence from said point of beginning South 07 degrees 21 minutes

West to the southwesterly boundary of said State Highway No. 37; thence northerly along said last mentioned boundary to the center of the channel of Steele Creek; thence down the center of the channel of Steele Creek to the first crossing elevation 350 near the junction of Capell Creek; thence northerly and easterly along the 350 foot contour 12,300 feet, more or less, to the center of a large draw entering Monticello Reservoir from the East and South; thence easterly along the center of said draw to a point on the boundary of a parcel of land acquired by the United States of America for Monticello Reservoir; thence along the boundary of said United States of America parcel as follows: North 64 degrees 22 minutes West 1363.8 feet, South 30 degrees 49 minutes West 388.2 feet to the South quarter corner of Section 21, Township Eight (8) North, Range Three (3) West, Mount Diablo Meridian; thence South 01 degrees 19 minutes East 2789.1 feet, South 30 degrees 11 minutes East 726.8 feet, South 07 degrees 14 minutes West 3452.5 feet, South 37 degrees 32 minutes East 704.2 feet, South 07 degrees 21 minutes East 1116.6 feet South 36 degrees 26 minutes East 1639.6 feet, South 26 degrees 46 minutes East 1259.3 feet and south 66 degrees 30 minutes West 465.7 feet to the centerline of former State Highway No. 37; thence northwesterly along said centerline to the point of beginning.

2. Spanish Flat

Beginning at a point on the westerly boundary of the land acquired by the United States of America for Monticello Reservoir, now known as Lake Berryessa, said point is North 59° 38' East 1434.8 feet from the northwest corner of Section Twenty (20), township Eight (8) North, range Three (3) West, Mount Diablo Meridian; running thence from said point of beginning North 22° 46' West along said westerly boundary 200.0 feet; thence leaving said boundary North 67° ___' East 600.00 feet; thence North 88 30' West 730.

Feet to the first crossing of elevation 350; thence southerly along the 350 feet contour to a point that is South 56° 00' East 1400.0 feet and South 78° 25' East 400.0 feet, more or less, from the intersection of the northerly boundary of Section Twenty nine (29), township Eight (8) North, Range Three (3) West of the mount Diablo Meridian with the westerly boundary of said land of the United States of America; thence North 56° 00' West 1400.0 feet; thence North 78° 15' West 400.0 feet more or less to the aforesaid intersection of the northerly boundary of Section 29 with the westerly boundary of said land of the United States of America; said intersection is North 89° 55' East 2959.5 feet from the northwest corner of said Section 29; thence along the aforesaid westerly boundary of land of the United States of America as follows: North 12° 39' West 1649.7 feet, North 27° 43' West 3103.5 feet, North ___ 56' East 527.1 feet; South 56° 37' East 1090.3 feet; North 61° 44' East of 75.6 feet and North 28° 15' West 1742.7 feet to the point of beginning.

3. Berryessa Point

Beginning at a point on the westerly boundary of the parcel of land acquired by the United States of America for the Monticello Reservoir, now known as Lake Berryessa; said point is North 72 degrees 39 feet East 3753.0 feet from post L.P. 10 of the Rancho Las Putas as shown on the Plat of said Rancho, filed September 24, 1867 in the Office of the County Recorder, Napa County; running thence from said point of beginning North 61 degrees 32 feet East 1850 feet, more or less to the first crossing of elevation 350; thence southeasterly along the 350 foot contour to the center of Smittle Creek; thence southwesterly along the center of Smittle Creek to an angle point in the aforesaid westerly boundary of the land of the United States of America; said point is North 62 degrees 54 feet West 1616.7 feet from post L.P. 8 of the Rancho Las Putas; thence North 04 degrees 56 feet

East 2383.8 feet along said westerly boundary to a point; said point is South 28 degrees 28 feet East 711.2 feet from the point of beginning; thence North 28 degrees 28 feet West 711.2 feet along said westerly boundary to the point of beginning. Excluded from this area is a rescinded area:

- **Berryessa Point Temporary Rescission Area**

The approximate area rescinded is described as follows:

An area with a starting point at the East edge of the existing launch ramp, extending to the furthest Eastern end of the peninsula, surrounding the width and length of the peninsula to a point due North from the starting point. Total area is approximately 93,750 square ft. or 2.152 acres. The area will be rescinded until further notice from Reclamation.



Figure B - 1: Berryessa Point Temporary Rescission Area

4. Monticello Shores

Beginning at a point on the westerly boundary of the parcel of land acquired by the United States of America for the Monticello Reservoir, now known as Lake Berryessa; said point is North 05° 58' East 1981.0 feet from post L.P. 13 of the Rancho Las Putas as shown on the Plat of said Rancho, filed September 24, 1867 in the Office of the County Recorder, Napa County; running thence from said point of beginning North 25° 47' West 50.0 feet, more or less along said westerly boundary to the center of a draw; thence northeasterly along the center of said draw to the first crossing of elevation 350; thence southeasterly along the 350 foot contour to a point that is North 61° 32' East 1550 feet, more or less from a point on the aforesaid westerly boundary of the land of the United States of America; said last mentioned point is North 66° 33' East 3696.9 feet from post L.P. 10 of the Rancho Las Putas; thence South 61° 32' West 1550 feet, more or less to said westerly boundary; thence along said boundary as follows: North 28° 28' West 1050.0 feet, North 57° 52' West 3046.4 feet, and North 22° 00' West 3283.8 feet to a point; said point is South 84° 01' East 1533.4 feet from the Point of Beginning; thence North 84° 01' West along said westerly boundary 1533.4 feet to the point of beginning.

The Area of Monticello Shores will also include the 11.5 Acre parcel adjacent to the above described area that is identified as parcel 27 on Reclamation's record of acquired lands in Township 9 North 4 West of the Mount Diablo Principal Meridian. This parcel is colored differently in the included map.

5. Putah Canyon

Beginning at the east quarter (E 1/4) corner of section 16, thence Township 9 North, Range 4 West, Mount Diablo Meridian; running thence from said point of beginning North 00 degrees 21 minutes East along the westerly boundary of the Rancho Las Putah 1650 feet more or less to the centerline of Putah Creek; thence easterly along the centerline of Putah Creek to its confluence with the centerline of Pope Creek; thence westerly along the centerline Of said Pope Creek to the center line of the County Road known as the Knoxville Road; thence Northerly along the centerline of said road to the centerline of the relocated County Road town as the Pope Canyon Road; thence westerly along the centerline of said Pope Canyon Road to the Bureau of Reclamation right-of-way line; thence northerly along said right-of-way line 250 feet more or less to the Easterly boundary of said section 16; thence along said Easterly boundary North 00 degrees 21 minutes East 1700 feet more or less to the point of beginning. EXCLUDING THEREFROM the above mentioned County Road. Excluded from this area is a rescinded area:

- **Putah Canyon Temporary Rescission Area**

The approximate area rescinded is described as follows:

A fenced area at the Northwest corner of the main parking lot and an area at the Northwest corner extending East to the waterline, and perpendicular from the same starting point extending South to the waterline. The area will be rescinded until further notice from Reclamation.

Total area is approximately 75,357 square feet or 1.72 acres.



Figure B - 2: Putah Canyon Temporary Rescission Area

C. Maps of Concession Areas

EX 9

The lands legally described in the preceding Section are further indicated on the following map(s). The boundaries displayed on the following pages are approximate boundaries based upon the preceding legal description.

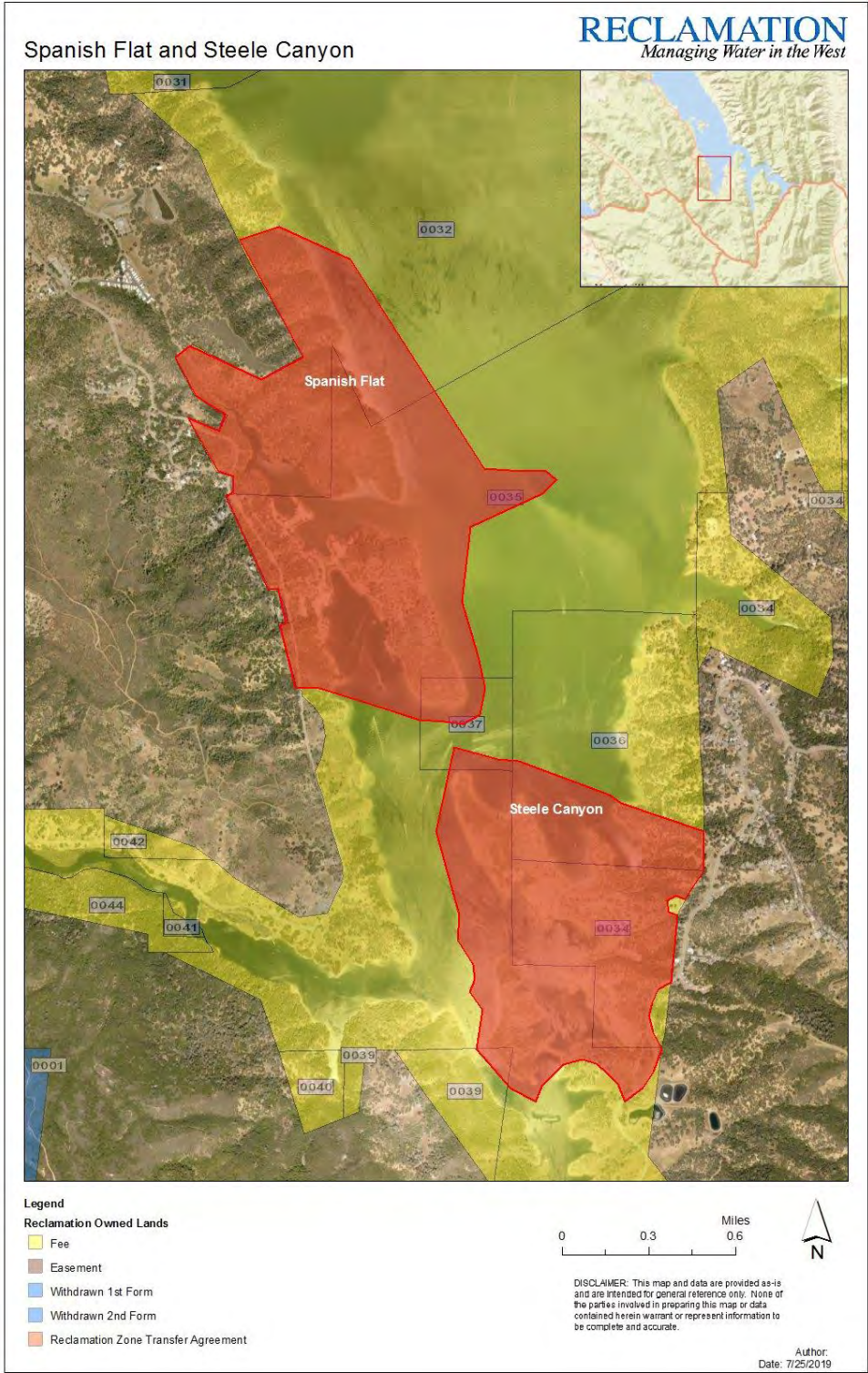


Figure B - 31: Steele Canyon and Spanish Flat Recreation Areas Boundaries

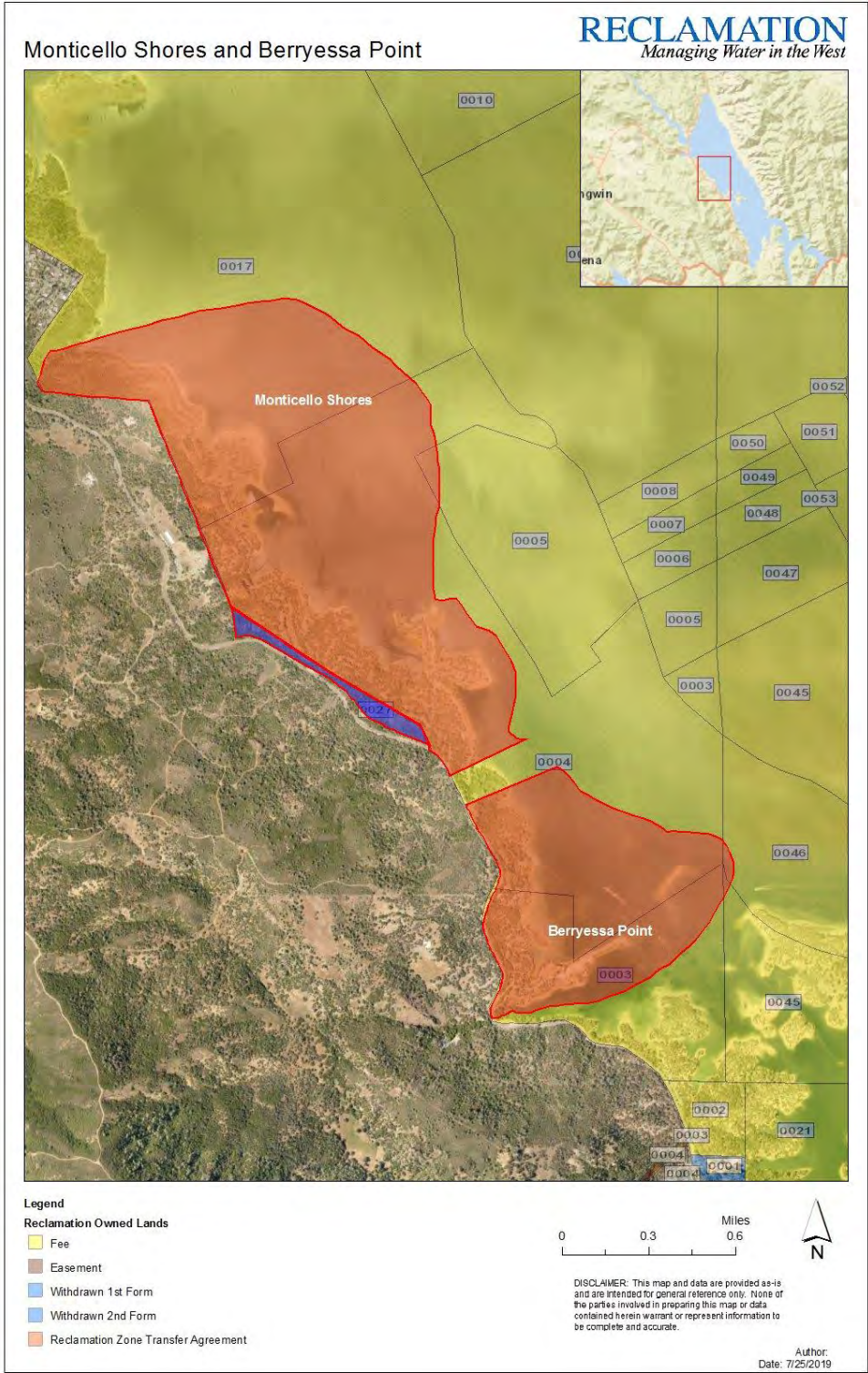


Figure B - 4: Monticello Shores and Beryessa Point Recreation Areas Boundaries

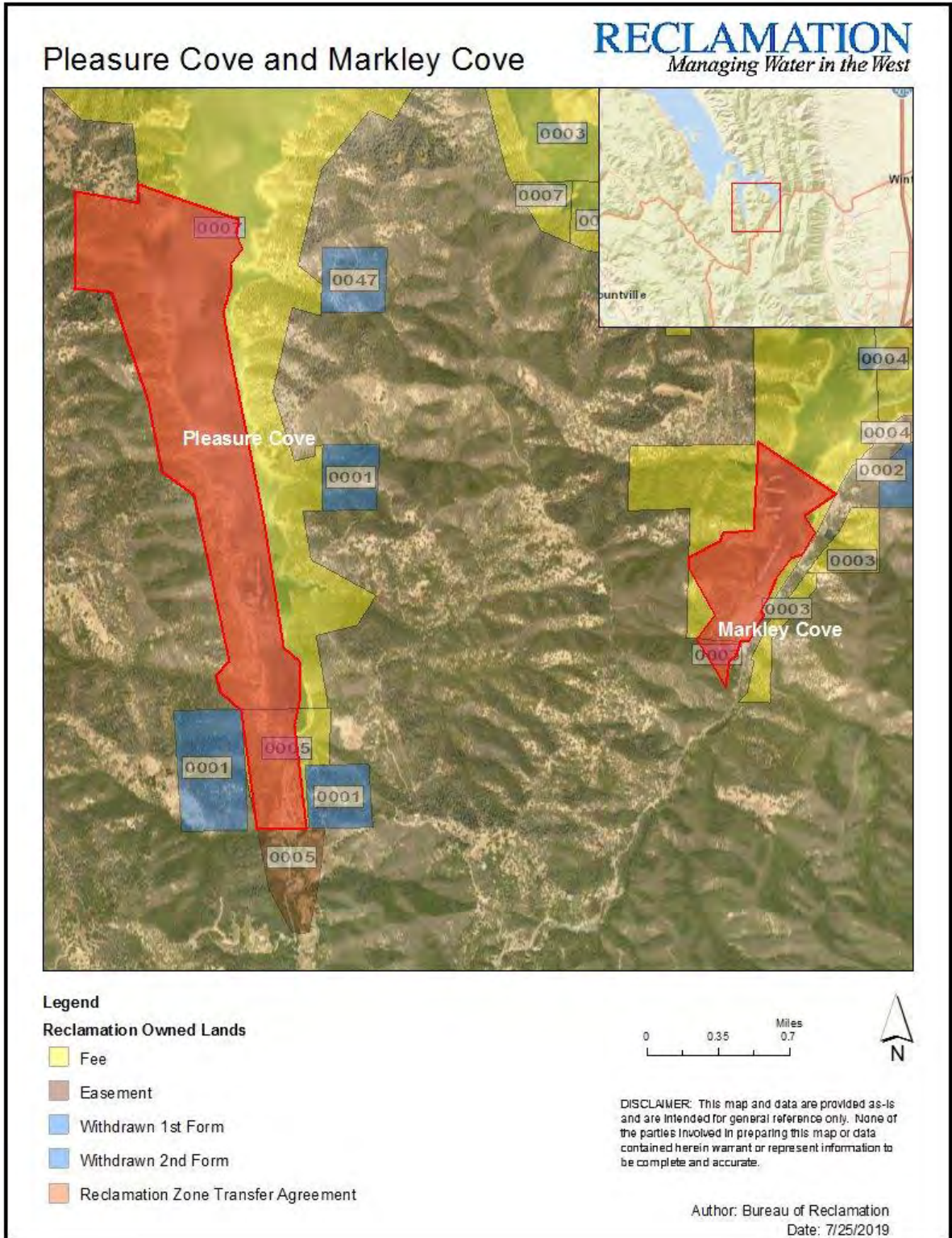
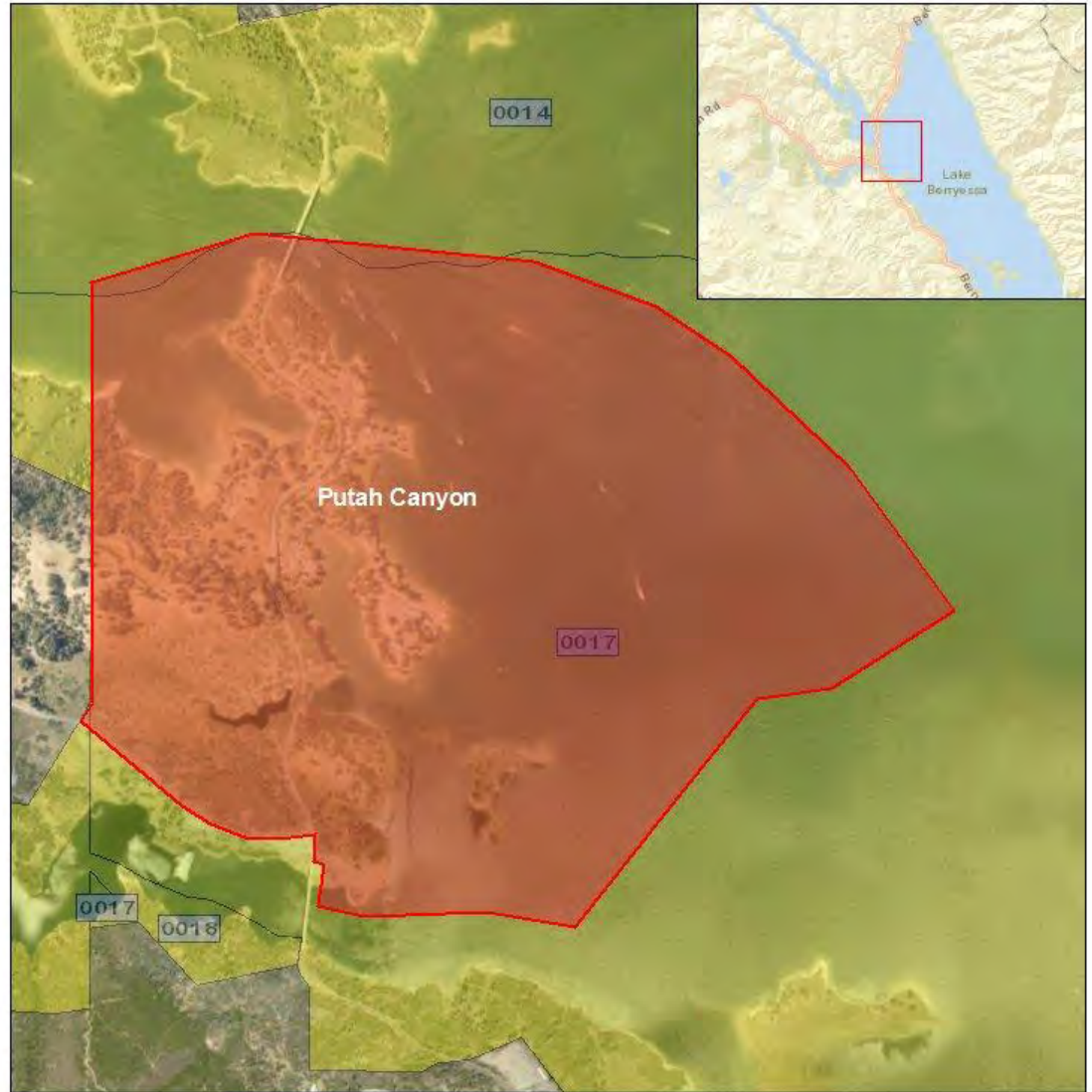


Figure B - 5: Markley Cove and Pleasure Cove Boundaries

Putah Canyon

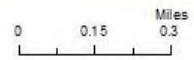
RECLAMATION
Managing Water in the West



Legend

Reclamation Owned Lands

- Fee
- Easement
- Withdrawn 1st Form
- Withdrawn 2nd Form
- Reclamation Zone Transfer Agreement



DISCLAIMER: This map and data are provided as-is and are intended for general reference only. None of the parties involved in preparing this map or data contained herein warrant or represent information to be complete and accurate.

Author: Bureau of Reclamation
Date: 7/25/2019

Figure B - 6: Putah Canyon Recreation Area Boundary

EX 14

Exhibit B: Environmental Requirements

1. Napa County shall operate, maintain, and manage all structures, facilities and lands to minimize environmental consequences. Consideration will be given to alleviating potential harmful effects on landscape, soils, water, wildlife, cultural resources, timber, population, or other resources. Prior to any action which would modify the environment beyond those currently covered by existing National Environmental Policy Act (NEPA) documents, Napa County will submit any necessary environmental reports as directed by Reclamation. No such modifications of the environment shall be undertaken without prior written approval of Reclamation.
2. Violation of any of the provisions of this Exhibit may constitute grounds for termination of this Agreement. Such violations require immediate corrective action by Napa County or its concessionaire and shall make Napa County or its concessionaire liable for the cost of full and complete remediation and/or restoration of any Federal resources or facilities that are adversely affected as a result of the violation.
3. Napa County agrees to include the provisions contained in this Exhibit in any concessionaire, subcontractor, or third-party contract it may enter into pursuant to this Agreement.
4. Reclamation agrees to provide information necessary for Napa County using reasonable diligence, to comply with the provision of this Exhibit. A timetable of estimated review times for various environmental compliance actions is included as table B-1.
5. Napa County shall comply fully with all applicable Federal laws, orders, and regulations, and the laws of the State of California concerning the pollution of streams, Recreation, ground water, or water courses.
6. In accordance with the National Historic Preservation Act of 1966 and Executive Order 11593, cultural resources will be given full consideration in any proposed actions initiated by Napa County beyond those approved in existing plans and documents. Cultural resources (including archaeological, historical, structural, and Native American resources) that may be impacted will be adequately considered and, if necessary, any identified adverse effects will be mitigated or minimized prior to development. If, during construction or development, cultural resources are

exposed, activities in the surrounding area will be halted while the resource is evaluated. Reclamation will be notified immediately and will provide direction on how to proceed in compliance with 36 CFR 800.13. The cost of any recovery work, if necessary, and any required consultation between Reclamation and the State Historic Preservation Officer will be borne by Napa County. Napa County will provide Reclamation with copies of any cultural resource reports concerning the identification, evaluation, and treatment of cultural resources within the Concession Areas. Any cultural resources sites identified by Napa County during its management activities will be recorded on the appropriate County site record forms and copies provided to Reclamation. No surface disturbing operations can proceed until the requirements of the article have been met. This provision will be included in all construction contracts.

7. The Endangered Species Act of 1974 will be given full consideration in all activities.
8. Napa County shall insure that recognized standards and proper uses are achieved on the lands covered by this Agreement. Land use planning and administration of the Federal Land will conform to all applicable Federal laws, regulations, and Executive Orders. Following is an incomplete list of some of these:
 - a. Executive Order 11990, Protection of Wetlands.
 - b. Executive Order 11988, Floodplain Management.
 - c. Safe Drinking Water Act of 1974, (Public Law 93-523, U.S.C. 300, 88 Stat.1660).
 - d. Federal Land Policy and Management Act of 1976, (Public Law 94-579, 43 U.S.C. 1701).
 - f. Executive Orders 11664 and 11989 for Off-Road Use.
 - g. National Trails System Act, (Public Law 95-43, 16 U.S.C. 1241 Et seq.).
 - h. Fish and Wildlife Coordination Act, (Public Law 85-624, 16 U.S.C., 661, 662).
 - i. Antiquities Act of 1906, (34 Stat. 225, 16 U.S.C., 431).
 - j. National Historic Preservation Act of 1966 (NHPA), (Public Law 89-665, 80 Stat. 915, 16 U.S.C. 470) as amended by Public Laws 91-243, 93-54, 94-422, 94-458, and 96-515).
 - m. Archaeological Resources Protection Act of 1979, (Public Law 95-95, 93 Stat. 721).
 - n. Archaeological and Historic Preservation Act (Public Law 93-291).
 - o. Native American Grave Protection and Repatriation Act (25 U.S.C. 3001 et seq.).
 - p. Executive Order 11593, Protection and Enhancement of the Cultural Environment
 - q. National Environmental Policy Act(NEPA), (Public Law 91-190, 83 Stat. 852).
 - r. Endangered Species Act, (Public Law 93-205, 16 U.S.C. 1531 et seq.).
 - s. Executive Order 12088, Federal compliance with Pollution Control Standards.
 - t. The Clean Air Act, (Public Law 88-206, as amended, 42 U.S.C., 7401 et seq).
 - u. Clean Water Act of 1978, (Public Law 95-217, 33 U.S.C., 1288 et seq.).

- v. Resource Conservation and Recovery Act (RCRA), (Public Law 94-580).
- w. Comprehensive Environmental Response, Compensation and Liability Act of
- x. 1980 (CERCLA or Superfund), Public Law 96-510.
- y. 43 Code of Federal Regulation, Part 420 (off-road vehicle use on Bureau of
- z. Reclamation lands).
- aa. 36 Code of Federal Regulation, Part 800, Protection of Historical and Cultural
- bb. Properties.
- cc. Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended (7
- dd. U.S.C. P.L. 100-460, 100-464, to 100-526 and 100-532).
- ee. Rehabilitation Act of 1973, Section 504, as amended (29 U.S.C. 700, et seq., P.L.
- ff. 93-516 and P.L. 95-602).
- gg. Architectural Barriers Act of 1968, as amended (ABA) (42 U.S.C. 4151-4157,
- hh. P.L. 90-480).
- ii. Uniform Federal Accessibility Standards (UFAS) (49 CFR 31528), August 7, 1984.
- jj. Reclamation Project Act of 1939 (42 U.S.C., 185)
- kk. Reclamation Development Act (Title VI), Public Law 93-493)

Table B- 1: Approximate Processing Times for Regulatory Permits, Environmental Compliance, and Technical Review

If the project involves	The following may apply	Approximate Processing Time
Environmental Compliance for all Project Development	National Environmental Policy Act (NEPA) (Environmental Impact Study, Environmental Assessment)	365 Days
Creation of potable water or wastewater facility	California Department of Public Health Regional Water Quality Control Board (Waste Discharge Permit of National Pollution) Napa County Planning, Building and Environmental Services Environmental Health Department	365 Days
Soil Erosion or pollutant	National Pollution Discharge Elimination System – Section 402 Napa County Public Works Department	365 Days
Effects to plants or wildlife	Endangered Species Act - U.S. Fish and Wildlife Service Species of Special Concern - California Dept. of Fish & Wildlife Critical Habitat Designation – California Dept. of Fish & Wildlife	90 Days
Ground disturbance, ground hardening, ground covering, grading, grubbing, etc.	National Historic Preservation Act (NHPA) – Section 106 & Section 110 State Historic Preservation Office Archaeological Resources Protection Act Antiquities Act	90 Days
Accessibility - ADA / ABA structures or compliance	Americans with Disabilities Act Napa County Planning, Building and Environmental; Services Department	180 Days
Shoreline and dredge/fill work	Clean Water Act – Section 404 - U.S. Army Corps of Engineers Rivers and Harbors Act – Sections 9 & 10 – U.S. Army Corps of Engineers Clean Water Act - Regional Water Quality Control Board – Section 401	180 Days
Construction or placement of objects in, on, or above water or a water conveyance	Clean Water Act – U.S. Army Corps of Engineers Rivers and Harbors Act – U.S. Army Corps of Engineers	180 Days

Project over 1 acre	Storm Water Pollution Protection Plan Clean Water Act – Regional Water Quality Control Board – Section 401	180 Days
Construction, including repair, maintenance, enhancement of existing facilities	County building codes and permits Utility permits Soil, Perk/mantle tests, geotechnical reports Reclamation approved site plans, plan views, plumbing and electrical schematics, stamped engineering drawings, elevations	Minimum 28 Days

Exhibit C: Equal Opportunity Requirements

During the performance of this Agreement, Napa County agrees as follows:

1. Napa County will not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, or national origin. Napa County will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, age, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Napa County agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the United States setting forth the provisions of this Equal Opportunity clause.

2. Napa County will, in all solicitations or advertisements for employees placed by or in behalf of Napa County, state that all qualified applicants will receive consideration for employment without regard to race, color, age, religion, sex, or national origin.

3. Napa County will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the United States, advising the labor union or workers representative of Napa County's

commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. Napa County will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. Napa County will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant, thereto, and will permit access to its books, records, and accounts by the United States and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of Napa County's noncompliance with the Equal Opportunity clause of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended, in whole or in part, by the United States and Napa County may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rules, regulations, or order of the Secretary of Labor, or as otherwise provided by law.

7. Napa County will include the provisions of paragraphs 1) through 6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of

Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. Napa County will take such action with respect to any subcontract or purchase order the United States may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event Napa County becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the United States, Napa County may request the United States to enter into such litigation to protect the interests of the United States.

CERTIFICATION OF NONSEGREGATED FACILITIES

The term segregated facilities means: any waiting rooms, work areas, restrooms and washrooms, restaurants or eating areas, time clocks, locker rooms, storage areas, dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habitat, local custom, or otherwise. Napa County certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. Napa County agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. Napa County agrees that (except where it has obtained identical certification from proposed subcontractors for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontractors exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certification in its files.

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Exhibit D: Title VI, Civil Rights Act of 1964

1. Napa County agrees that it will comply with Title VI of the Civil Rights Act of July 2, 1964 (78 Stat. 241), and all requirements imposed by or pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no person in the United States shall, on the grounds of race, color, sex, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which Napa County receives financial assistance from the United States and hereby gives assurance that it will immediately take any measures to effectuate this Agreement.

2. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to Napa County by the United States, this assurance obligates Napa County; or in the case of any transfer of such property or structure is used for a purpose involving the provision of similar service or benefits. If any personal property is so provided, this assurance obligates Napa County for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates Napa County for the period during which the Federal financial assistance is extended to it by the United States.

3. This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended after the date hereof to Napa County by the United States, including installment payments after such date on account of arrangements for Federal financial assistance which were approved

before such date. Napa County recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall reserve the right to seek judicial enforcement of this assurance. This assurance is binding on Napa County, its successors, transferees, and assignees.

Exhibit E: Nonexpendable Government Property Requirements

1. Nonexpendable government property is equipment which is complete in itself and does not ordinarily lose its identity or become a component part of another piece of equipment when put into use. Nonexpendable Government property includes the following:

- a. Any single item, having a useful life of 1 year or more, which is acquired at a cost of, or valued at \$5000 or more;
- b. Sensitive items identified in Article 5 below, regardless of acquisition cost;
- c. All office furnishings and furniture.

2. For each item of nonexpendable United States property, Napa County is required to maintain an individual item record which will adequately satisfy the requirements set forth in Article 19 of this Agreement. In establishing and maintaining control over United States' property, Napa County will include, at the minimum, the following information in their property accounting system:

- a. Contract number
- b. Name of item
- c. Manufacturer's name
- d. Manufacturer's model number
- e. Manufacturer's serial number
- f. Acquisition document reference and date

- g. Guarantee and warranty lapse date
- h. Location
- i. Unit price

3. Accessory and component equipment that is attached to, part of, or acquired for use with a specific item or equipment must be recorded on the record of the basic item. Any accessory or component item that is not attached to, part of, or acquired for use with a specific item of equipment must be recorded separately. Useable accessory or component items that are permanently removed from items of Government property must also be separately recorded.

4. The unit price of each item of government property must be contained in Napa County's property control system. Napa County's quantitative inventory record must contain the unit prices. The supplementary records containing this information must be identified and recognized as a part of the unit price of the item (less discount).

5. Firearms, museum property, motor vehicles and heavy equipment are sensitive items of nonexpendable property which shall be included in Napa County's property accountability system, even if the original acquisition cost is under \$5000.

Exhibit F: Reclamation Manual

LND P-02

Begins on the Following Page

Reclamation Manual

Policy

Subject:	Concessions Management
Purpose:	Sets forth the policy for planning, development, management, and operation of concessions at Reclamation projects.
Authority:	Reclamation Act of 1902, as amended and supplemented; the Reclamation Project Act of 1939; and the Federal Water Project Recreation Act of 1965, as amended.
Approving Official:	Commissioner
Contact:	Policy and Administration (POLICY), Asset Management Division (84-57000)

1. **Introduction.** Reclamation's multi-purpose water resource projects typically include outdoor recreation areas and opportunities which may also include concession facilities and opportunities. As recreation areas and facilities may be managed by Reclamation, other Federal Agencies, or a non-federal Managing Partner, the planning, development, management, and operation of concessions will facilitate a variety of recreation opportunities to meet the public's demand.
2. **Applicability.** This Policy applies to Reclamation's employees, managing partners, and concessionaires involved in the planning, development, and management of concessions on lands and waterbodies within the jurisdiction of Reclamation.
3. **Definitions.**
 - A. **Concession.** A concession is a non-Federal commercial business that supports appropriate public recreation uses and provides facilities, goods, or services for which revenues are collected. A concession involves the use of the Federal estate and usually involves the development of real property improvements.
 - B. **Federal Estate.** The Federal land and water areas under the primary jurisdiction of the Department of the Interior, Bureau of Reclamation.
 - C. **Improvement.** An addition to real property that increases its value or utility or that enhances its appearance.
4. **Responsibilities.** Responsibilities for proper administration of the concessions management program shall be shared by the following:
 - A. **Commissioner.** Responsible for ensuring that Reclamation's partner managed concession program is in compliance with this Policy, Directives and Standards (D&S)

Reclamation Manual

Policy

LND 04-02, and all applicable Federal laws, regulations, accessibility design standards, and Departmental policy.

- B. **Reclamation Leadership Team.** Provides support by ensuring that appropriate staff and funding are available to fully implement Reclamation's partner managed concessions program.
- C. **POLICY.** Responsible for administering the concessions management program, both direct and partner managed.
 - (1) **Direct Managed.** Responsible for coordinating with regional, area, and field offices concerning concessions planning efforts and contract requirement; establishing and updating concessions management RM Policy and D&S and guidance; reviewing and approving all concessions-related Requests for Proposals (RFPs) and all new, amended, or interim concession contracts in consultation with the Department's Office of the Solicitor, and participating in field reviews and evaluations, as requested.
 - (2) **Partner Managed.** Responsible for providing interagency and intra-agency coordination; establishing and updating the partner managed concessions policy, D&S, and guidance; reviewing draft concession contracts and draft RFP's, as requested by the Regional Directors; participating in field reviews and evaluations, as requested; and coordinating or otherwise providing necessary concessions management training opportunities for Reclamation offices. POLICY shall evaluate and approve regional office deviation requests related to D&S LND 04-02. See RM D&S, *Request for deviation from a Reclamation Manual Requirement and Approval or Disapproval of the Request*, RCD 03-03.
- D. **Regional Directors.**
 - (1) **Direct Managed.** Responsible for implementing LND 04-01, overseeing and coordination the direct-managed concessions program, and ensuring that the area offices conduct appropriate reviews and evaluations of concession operations under their jurisdiction. Regional directors will review and transmit draft concession contracts, determine the need for RFP's, amendments, and proposed D&S deviation requests to POLICY for approval. Regional directors shall execute such contract actions following POLICY'S review and approval.
 - (2) **Partner Managed.** Responsible for implementing LND 04-02, review and concurrence of partner managed concession contracts to ensure that the interests of the United States are protected. Partner managed contracts may be submitted for POLICY review and comment at the discretion of the Regional Director.

Reclamation Manual

Policy

- E. **Area Managers.**
- (1) **Direct Managed.** Responsible for the day to day management activities associated with administering the concessions management program. Area managers, or their designees, shall prepare draft concessions contracts and submit such contracts to their respective regional director and POLICY for approval and subsequent execution. Area managers, or their designees, are responsible for conducting reviews and evaluations of concession operations.
 - (2) **Partner Managed.** Responsible for the review of draft, partner managed concession contracts. Area managers, or their designees, shall submit the draft concession contracts to the Regional Director for review and concurrence no later than 90 days prior to the scheduled execution.
- F. **Non-Federal Partners.** Reclamation may transfer to non-Federal partners the responsibility to develop and manage public recreation areas and concession services. Transferred areas are managed by a partner under Federal authorities, the partner's authorities, specific contracts, and agreements with Reclamation. Well-planned and managed concessions on the Federal estate are of mutual interest to Reclamation and its partners. Reclamation is responsible for continuous management oversight of managing partners and their concessions operations.
5. **Policy.** Concessions Management Policy
- A. **Stewardship.** Reclamation and its managing partners will ensure that concessions are planned, developed, and managed to meet public needs, are compatible with the natural and cultural resources, and provide a variety of services which are consistent with authorized project purposes.
 - B. **Authorization of Concessions.** Based on the principles contained in this policy, Reclamation will authorize concessions which establish or continue to provide necessary and appropriate facilities and services.
6. **Concessions Principles.** The following principles guide the planning, development, and management of concessions:
- A. Concessions will provide quality recreation facilities and services accessible to persons with disabilities, and appropriate visitor goods and services at reasonable rates.
 - B. Concession operations will provide for the protection, conservation, and preservation of natural, historical, and cultural resources.
 - C. Commercial facilities and services will be planned and developed through a commercial services planning and public involvement process, in cooperation with other public agencies.

Reclamation Manual

Policy

- D. Concessionaires will be provided with opportunities for a reasonable profit and may be compensated for Reclamation-approved improvements that will remain the property of the United States.
 - E. Reclamation will ensure fair competition in the awarding of concessions contracts and will not allow preferential rights of renewal.
 - F. New private recreation and residential exclusive use, as defined in 43 CFR 429.2, is prohibited on Reclamation lands. Existing private recreation and residential exclusive use will be administered as provided in 43 CFR part 21; 43 CFR part 429; LND 04-01; LND 04-02; and RM D&S, *Land Use Authorizations*, LND 08-01.
 - G. Concessions will comply with applicable Federal, State, and local laws.
7. **Supporting Directives and Standards and Guidelines.** Implementation of the Concessions Management Policy is accomplished through the use of the Reclamation Manual Directives and Standards, and Guidelines.
- A. Concessions Management by the Bureau of Reclamation, LND 04-01.
 - B. Concessions Management by Non-Federal Partners, LND 04-02.
 - C. Concessions Management Guidelines.

LND 04-02

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Reclamation Manual

Directives and Standards

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

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

Reclamation Manual

Directives and Standards

3. Definitions.

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

Reclamation Manual

Directives and Standards

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

Reclamation Manual

Directives and Standards

5. Managing Partner Agreements.

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

Reclamation Manual

Directives and Standards

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

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

Reclamation Manual

Directives and Standards

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

Reclamation Manual

Directives and Standards

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

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

Reclamation Manual

Directives and Standards

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

Reclamation Manual

Directives and Standards

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

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

Reclamation Manual

Directives and Standards

Attachment 1: Contract Clause

MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (JANUARY 2015)

(a) *Definitions.* As used in this clause—

"United States" means the 50 states and the District of Columbia.

"Worker"—

(1) Means any person engaged in performing work on, or in connection with, a contract covered by Executive Order 13658, and

(i) Whose wages under such contract are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV),

(ii) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541,

(iii) Regardless of the contractual relationship alleged to exist between the individual and the employer

(2) Includes workers performing on, or in connection with, the contract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c).

(3) Also includes any person working on, or in connection with, the contract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(b) *Executive Order Minimum Wage rate.* (1) The Contractor shall pay to workers, while performing in the United States, and performing on, or in connection with, this contract, a minimum hourly wage rate of \$10.10 per hour beginning January 1, 2015.

(2) The Contractor shall adjust the minimum wage paid, if necessary, beginning January 1, 2016 and annually thereafter, to meet the Secretary of Labor's annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on www.wdol.gov (or any successor Web site) and on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute. The applicable published E.O. minimum wage is incorporated by reference into this contract.

Reclamation Manual

Directives and Standards

(3)(i) The Contractor may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only if labor costs increase as a result of an increase in the annual E.O. minimum wage, and for associated labor costs and relevant subcontract costs. Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(ii) Subcontractors may be entitled to adjustments due to the new minimum wage, pursuant to paragraph (b)(2). Contractors shall consider any subcontractor requests for such price adjustment.

(iii) The Contracting Officer will not adjust the contract price under this clause for any costs other than those identified in paragraph (b)(3)(i) of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.

(4) The Contractor warrants that the prices in this contract do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(5) A pay period under this clause may not be longer than semi-monthly, but may be shorter to comply with any applicable law or other requirement under this contract establishing a shorter pay period. Workers shall be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued.

(6) The Contractor shall pay, unconditionally to each worker, all wages due free and clear without subsequent rebate or kickback. The Contractor may make deductions that reduce a worker's wages below the E.O. minimum wage rate only if done in accordance with 29 CFR 10.23, Deductions.

(7) The Contractor shall not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.

(8) Nothing in this clause shall excuse the Contractor from compliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the E.O. minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

(9) The Contractor shall pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

Reclamation Manual

Directives and Standards

(10) The Contractor shall follow the policies and procedures in 29 CFR 10.24(b) and 10.28 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

(c)(1) This clause applies to workers as defined in paragraph (a). As provided in that definition—

(i) Workers are covered regardless of the contractual relationship alleged to exist between the contractor or subcontractor and the worker;

(ii) Workers with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) are covered; and

(iii) Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

(2) This clause does not apply to—

(i) Fair Labor Standards Act (FLSA)-covered individuals performing in connection with contracts covered by the E.O., *i.e.* those individuals who perform duties necessary to the performance of the contract, but who are not directly engaged in performing the specific work called for by the contract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such contracts;

(ii) Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to—

(A) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a).

(B) Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b).

(C) Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. 213(a)(1) and 29 CFR part 541).

(d) *Notice.* The Contractor shall notify all workers performing work on, or in connection with, this contract of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, the Contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers whose wages are governed by the FLSA, the Contractor shall post notice,

Reclamation Manual

Directives and Standards

utilizing the poster provided by the Administrator, which can be obtained at www.dol.gov/whd/govcontracts, in a prominent and accessible place at the worksite. Contractors that customarily post notices to workers electronically may post the notice electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

(e) *Payroll Records.* (1) The Contractor shall make and maintain records, for three years after completion of the work, containing the following information for each worker:

- (i) Name, address, and social security number;
- (ii) The worker's occupation(s) or classification(s);
- (iii) The rate or rates of wages paid;
- (iv) The number of daily and weekly hours worked by each worker;
- (v) Any deductions made; and
- (vi) Total wages paid.

(2) The Contractor shall make records pursuant to paragraph (e)(1) of this clause available for inspection and transcription by authorized representatives of the Administrator. The Contractor shall also make such records available upon request of the Contracting Officer.

(3) The Contractor shall make a copy of the contract available, as applicable, for inspection or transcription by authorized representatives of the Administrator.

(4) Failure to comply with this paragraph (e) shall be a violation of 29 CFR 10.26 and this contract. Upon direction of the Administrator or upon the Contracting Officer's own action, payment shall be withheld until such time as the noncompliance is corrected.

(5) Nothing in this clause limits or otherwise modifies the Contractor's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.

(f) *Access.* The Contractor shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.

(g) *Withholding.* The Contracting Officer, upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the Contractor under

Reclamation Manual

Directives and Standards

this or any other Federal contract with the same Contractor, sufficient to pay workers the full amount of wages required by this clause.

(h) *Disputes.* Department of Labor has set forth in 29 CFR 10.51, Disputes concerning contractor compliance, the procedures for resolving disputes concerning a contractor's compliance with Department of Labor regulations at 29 CFR part 10. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. These disputes include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the Department of Labor, or the workers or their representatives.

(i) *Antiretaliation.* The Contractor shall not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.

(j) *Subcontractor compliance.* The Contractor is responsible for subcontractor compliance with the requirements of this clause and may be held liable for unpaid wages due subcontractor workers.

(k) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (k) in all subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

(End of clause)

Exhibit G: Department of Interior Department Manual Part 512

Department of the Interior Departmental Manual

Effective Date: 12/01/95

Series: Intergovernmental Relations

Part 512: American Indian and Alaska Native Programs

Chapter 2: Departmental Responsibilities for Indian Trust Resources

Originating Office: Office of American Indian Trust

512 DM 2

1. **Purpose.** This Chapter establishes the policies, responsibilities, and procedures for operating on a government-to-government basis with federally recognized Indian tribes for the identification, conservation, and protection of American Indian and Alaska Native trust resources to ensure the fulfillment of the Federal Indian Trust Responsibility.

2. **Policy.** It is the policy of the Department of the Interior to recognize and fulfill its legal obligations to identify, protect, and conserve the trust resources of federally recognized Indian tribes and tribal members, and to consult with tribes on a government-to-government basis whenever plans or actions affect tribal trust resources, trust assets, or tribal health and safety.

3. Responsibilities.

A. **Heads of bureaus and offices** are responsible for identifying any impact of Departmental plans, projects, programs or activities on Indian trust resources. Department officials shall:

(1) Establish procedures to ensure that the activities of Departmental organizations impacting upon Indian trust resources are explicitly addressed in planning, decision, and operational documents;

(2) Ensure that bureaus and offices consult with the recognized tribal government whose trust resource, asset, or health and safety is potentially affected by the proposed action, plan, or activity;

(3) Remove procedural impediments to working directly and effectively with tribal governments;

(4) Provide drafts of all procedures or amendments to procedures developed pursuant to this Chapter to the Office of American Indian Trust for review and comment; and,

(5) Designate a senior staff member to serve as liaison between the bureau or office and the Office of American Indian Trust.

B. **Office of American Indian Trust** is responsible for ensuring compliance with the procedures and requirements under this Chapter. The Office of American Indian Trust will serve as the Department's liaison and initial point of contact on all matters arising under this Chapter. All procedures and amendments to procedures shall be submitted by Departmental

bureaus and offices to the Office of American Indian Trust for review and comment. After such review and comment, the procedures and amendments to procedures will be transmitted to the Assistant Secretary - Indian Affairs for final approval.

C. **Assistant Secretary - Indian Affairs** is responsible for approving bureau and office procedures, or amendments thereto, developed pursuant to this Chapter.

4. **Procedures.**

A. **Reports.** As part of the planning process, each bureau and office must identify any potential effects on Indian trust resources. Any effect must be explicitly addressed in the planning/decision documents, including, but not limited to, Environmental Assessments, Environmental Impact Statements, and/or Management Plans prepared for the project or activity. The documentation shall:

- (1) Clearly state the rationale for the recommended decision; and
- (2) Explain how the decision will be consistent with the Department's trust responsibility.

B. **Consultation.** In the event an evaluation reveals any impacts on Indian trust resources, trust assets, or tribal health and safety, bureaus and offices must consult with the affected recognized tribal government(s), the appropriate office(s) of the Bureau of Indian Affairs, the Office of the Solicitor, and the Office of American Indian Trust. Each bureau and office within the Department shall be open and candid with tribal government(s) during consultations so that the affected tribe(s) may fully evaluate the potential impact of the proposal on trust resources and the affected bureau(s) or office(s), as trustee, may fully incorporate tribal views in its decision-making processes. These consultations, whether initiated by the tribe or the Department, shall be respectful of tribal sovereignty. Information received shall be deemed confidential, unless otherwise provided by applicable law, regulations, or Administration policy, if disclosure would negatively impact upon a trust resource or compromise the trustee's legal position in anticipation of or during administrative proceedings or litigation on behalf of tribal government(s).

12/01/95 #3049

Replaces 05/23/95 #3040

Exhibit H: 43 CFR 423

Begins on the next page

List of Subjects in 43 CFR Part 423

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

Dated: December 2, 2008.

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

■ For the reasons stated in the preamble, 43 CFR part 423 is revised to read as follows:

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

Subpart A—Purpose, Definitions, and Applicability

Sec.

- 423.1 Purpose.
423.2 Definitions of terms used in this part.
423.3 When does this part apply?

Subpart B—Areas Open and Closed to Public Use

- 423.10 What areas are open to public use?
423.11 What areas are closed to public use?
423.12 How will Reclamation notify the public of additional closed areas?
423.13 How will Reclamation establish periodic and regular closures?
423.14 How will Reclamation post and delineate closed areas at the site of the closure?
423.15 How will Reclamation document closures or reopenings?
423.16 Who can be exempted from closures?
423.17 How will Reclamation reopen closed areas?
423.18 Use of Closures

Subpart C—Rules of Conduct

- 423.20 General Rules.
423.21 Responsibilities.
423.22 Interference with agency functions and disorderly conduct.
423.23 Abandonment and impoundment of personal property.
423.24 Trespassing.
423.25 Vandalism, tampering, and theft.
423.26 Public events and gatherings.
423.27 Advertising and public solicitation.
423.28 Memorials.
423.29 Natural and cultural resources.
423.30 Weapons, firearms, explosives, and fireworks.
423.31 Fires and flammable material.
423.32 Hunting, fishing, and trapping.
423.33 Camping.
423.34 Sanitation.
423.35 Animals.
423.36 Swimming.
423.37 Winter activities.
423.38 Operating vessels on Reclamation waters.
423.39 Standards for vessels.
423.40 Vehicles.
423.41 Aircraft.
423.42 Gambling.
423.43 Alcoholic beverages.
423.44 Controlled substances.

Subpart D—Authorization of Otherwise Prohibited Activities

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

Subpart E—Special Use Areas

- 423.60 How special use areas are designated.
423.61 Notifying the public of special use areas.
423.62 Reservations for public use limits.
423.63 Existing special use areas.

Subpart F—Violations and Sanctions

- 423.70 Violations.
423.71 Sanctions.

Authority: Public Law 107-69 (November 12, 2001) (Law Enforcement Authority) (43 U.S.C. 373b and 373c); Public Law 102-575, Title XXVIII (October 30, 1992) (16 U.S.C. 4601-31 through 34); Public Law 89-72 (July 9, 1965) (16 U.S.C. 4601-12); Public Law 106-206 (May 26, 2000) (16 U.S.C. 4601-6d); Public Law 59-209 (June 8, 1906) (16 U.S.C. 431-433); Public Law 96-05 (October 31, 1979) (16 U.S.C. 470aa-mm).

Subpart A—Purpose, Definitions, and Applicability

§ 423.1 Purpose.

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

§ 423.2 Definitions of terms used in this part.

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

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

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

Camping means erecting a tent or shelter; preparing a sleeping bag or other bedding material for use; parking a motor vehicle, motor home, or trailer; or mooring a vessel for the intended or

apparent purpose of overnight occupancy.

Closed means a prohibition to all public access.

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

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

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

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

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

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

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

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

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

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

- (1) Nonamphibious registered motorboats;
- (2) Military, fire, emergency, or law enforcement vehicles when used for emergency purpose;
- (3) Self-propelled lawnmowers, snowblowers, garden or lawn tractors, and golf carts while being used for their designed purpose;
- (4) Agricultural, timbering, construction, exploratory, and development equipment and vehicles while being used exclusively as authorized by permit, lease, license, agreement, or contract with Reclamation;
- (5) Any combat or combat support vehicle when used in times of national defense emergencies;
- (6) "Official use" vehicles; and
- (7) Wheelchairs and carts designed and used for transporting persons with disabilities.

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

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

Person means an individual, entity, or organization.

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

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

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

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

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

Reclamation facility means any facility constructed or acquired under Federal reclamation law that is situated on Reclamation lands and is used or occupied by Reclamation under a lease, easement, right-of-way, license,

contract, or other arrangement. The term includes, but is not limited to, any of the following that are under the jurisdiction of or administered by Reclamation: dams, powerplants, buildings, switchyards, transmission lines, recreation facilities, fish and wildlife facilities, pumping plants, and warehouses.

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

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

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

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

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

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

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

Traditional cultural property means a discretely defined property that is eligible for inclusion on the National Register of Historic Places because of its

association with cultural practices or beliefs of a living community that:

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

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

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

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

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

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

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

§ 423.3 When does this part apply?

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

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

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

(3) Certain exceptions apply on Reclamation facilities, lands, and waterbodies administered by other

Federal agencies, as further addressed in paragraph (d) of this section; and

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

(b) This part does not apply to:

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

(2) An employee or agent of the Federal, State, or local government, or other political subdivision, when the employee or agent is carrying out official duties; or

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

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

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

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

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

Subpart B—Areas Open and Closed to Public Use

§ 423.10 What areas are open to public use?

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

§ 423.11 What areas are closed to public use?

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

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

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

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

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

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

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

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

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

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

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

(5) National security; or

(6) Other reasons in the public interest.

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

§ 423.13 How will Reclamation establish periodic and regular closures?

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

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

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

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

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

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

§ 423.15 How will Reclamation document closures or reopenings?

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

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

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

§ 423.16 Who can be exempted from closures?

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

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

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

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

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

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

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

§ 423.17 How will Reclamation reopen closed areas?

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

§ 423.18 Use of closures.

Closures are to be used only where all public access is to be prohibited. Special use areas are to be used to restrict specific activities as set forth in Subpart E of this part 423.

Subpart C—Rules of Conduct

§ 423.20 General rules.

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

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

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

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

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

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

§ 423.21 Responsibilities.

(a) You are responsible for finding, being aware of, and obeying all applicable laws and regulations, as well as notices and postings of closed and special use areas established by an

authorized official under Subpart B and Subpart E of this part 423.

(b) You are responsible for the use of any device, vehicle, vessel, or aircraft you own, lease, or operate on Reclamation facilities, lands, or waterbodies. You may be issued a citation for a violation of regulations, including non-compliance with limitations, restrictions, closures, or special use areas applicable to the use of any device, vehicle, vessel, or aircraft as provided in this part as the owner, lessee, or operator.

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

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

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

§ 423.22 Interference with agency functions and disorderly conduct.

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

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

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

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

(e) The following acts constitute disorderly conduct and are prohibited:

(1) Fighting, or threatening or violent behavior;

(2) Language, utterance, gesture, display, or act that is obscene, physically threatening or menacing, or that is likely to inflict injury or incite an immediate breach of the peace;

(3) Unreasonable noise, considering the nature and purpose of the person's

conduct, location, time of day or night, and other factors that would govern the conduct of a reasonably prudent person under the circumstances;

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

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

§ 423.23 Abandonment and impoundment of personal property.

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

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

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

(i) After a period of 24 hours;

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

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

(2) If personal property is presumed abandoned, an authorized official may impound it, store it, and assess a reasonable impoundment fee.

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

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

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

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

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

§ 423.24 Trespassing.

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

Trespass includes any of the following acts:

(a) Unauthorized possession or occupancy of Reclamation facilities, lands, or waterbodies;

(b) Personal entry, presence, or occupancy on or in any portion or area of Reclamation facilities, lands, or waterbodies that have been closed to public use pursuant to Subpart B of this part 423;

(c) Unauthorized extraction or disturbance of natural or cultural resources located on Reclamation facilities, lands, or waterbodies;

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

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

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

§ 423.25 Vandalism, tampering, and theft.

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

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

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

§ 423.26 Public events and gatherings.

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

§ 423.27 Advertising and public solicitation.

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

§ 423.28 Memorials.

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

§ 423.29 Natural and cultural resources.

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

(b) You must not introduce wildlife, fish, or plants, including their reproductive bodies, into Reclamation lands and waterbodies.

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

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

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

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

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

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

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

§ 423.30 Weapons, firearms, explosives, and fireworks.

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

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

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

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

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

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

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

§ 423.31 Fires and flammable material.

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

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

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

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

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

§ 423.32 Hunting, fishing, and trapping.

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

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

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

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

§ 423.33 Camping.

(a) You may camp on Reclamation lands, except that you must comply with any restrictions, conditions, limitations, or prohibitions on camping established by an authorized official in a special use area under Subpart E of this part 423.

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

(c) You must not attempt to reserve a campsite for future use by placing equipment or other items on the campsite, or by personal appearance,

without camping on and paying the required fees for that campsite daily;

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

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

§ 423.34 Sanitation.

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

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

(c) You must not place or construct a toilet or latrine such that its lowest point is lower than the high water mark of any Reclamation waterbody, or within 150 feet horizontally of the high water mark of any Reclamation waterbody.

§ 423.35 Animals.

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

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

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

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

(2) Confined at a location designated by an authorized official, who may assess a reasonable impoundment fee that must be paid before the impounded animal is released to its owner.

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

(1) Captive wild or exotic animals (including, but not limited to, cougars, lions, bears, bobcats, wolves, and snakes), except as allowed by a permit

issued under Subpart D of this part 423; and

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

§ 423.36 Swimming.

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

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

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

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

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

(5) As otherwise delineated by signs or other markers.

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

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

§ 423.37 Winter activities.

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

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

(c) You must comply with all other posted restrictions.

§ 423.38 Operating vessels on Reclamation waters.

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

(b) You must not operate a vessel, other watercraft, or seaplane in an area closed to the public.

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

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

person, property, natural resource, or cultural resource.

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

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

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

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

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

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

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

§ 423.39 Standards for vessels.

(a) All vessels on Reclamation waters must:

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

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

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

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

§ 423.40 Vehicles.

(a) When operating a vehicle on Reclamation lands and Reclamation

projects, you must comply with applicable Federal, State, and local laws, and with posted restrictions and regulations. Operating any vehicle through, around, or beyond a restrictive sign, recognizable barricade, fence, or traffic control barricade, is prohibited.

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

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

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

§ 423.41 Aircraft.

(a) You must comply with any applicable Federal, State, and local laws, and with any additional requirements or restrictions established by an authorized official in a special use area under Subpart E of this part 423, with respect to aircraft landings, takeoffs, and operation on or in the proximity of Reclamation facilities, lands, and waterbodies. Pilots are responsible for awareness of all applicable laws, regulations, requirements, and restrictions. This paragraph does not apply to pilots engaged in emergency rescue or in the official business of Federal, State, or local governments or law enforcement agencies, or who are forced to land due to circumstances beyond the pilot's control.

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

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

(d) Except in extreme emergencies threatening human life or serious property loss, you must not use non-standard boarding and loading procedures to deliver or retrieve people, material, or equipment by parachute, balloon, helicopter, or other aircraft.

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

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

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

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

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

§ 423.42 Gambling.

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

§ 423.43 Alcoholic beverages.

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

§ 423.44 Controlled substances.

You must not possess, consume, deliver, or be under the influence of, controlled substances included in schedules I, II, III, IV, or V of part B of the Controlled Substance Act (21 U.S.C. 812) on Reclamation facilities, lands, or waterbodies, unless the controlled substance was legally obtained through a valid prescription or order.

Subpart D—Authorization of Otherwise Prohibited Activities

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

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

or to protect the health, safety, or security of persons, Reclamation assets, or natural or cultural resources.

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

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

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

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

Subpart E—Special Use Areas

§ 423.60 How special use areas are designated.

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

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

(2) From time to time revise the boundaries of a previously designated special use area and revise or terminate previously imposed schedules of visiting hours; public use limits; and other conditions, restrictions, allowances, or prohibitions on a use or activity.

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

(1) The protection of public health and safety;

(2) The protection and preservation of cultural and natural resources;

(3) The protection of environmental and scenic values, scientific research, the security of Reclamation facilities, the avoidance of conflict among visitor use activities; or

(4) Other reasons in the public interest.

(c) An authorized official establishing a special use area must document in writing the determination described in paragraph (b) of this section. Such documentation must occur before the action, except in emergencies or situations of immediate need as described in § 423.61(c), in which case the documentation is required within 30 days after the date of the action. Reclamation will make documents produced under this section available to the public upon request except where such disclosure could compromise national or facility security, or human safety.

§ 423.61 Notifying the public of special use areas.

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

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

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

(b) *How notice must be made.* Reclamation must notify the public at least 15 days before the action takes place by one or more of the following methods:

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

(c) *When notice may be delayed.* Notice under this section may be delayed in an emergency or situation of immediate need where delaying designation, revision, or termination of a special use area would result in significant risk to:

- (i) National security;
- (ii) The safety or security of a Reclamation facility, Reclamation employees, or the public; or
- (iii) The natural or cultural environment.

(2) If the exception in paragraph (c)(1) of this section applies, Reclamation must comply with paragraph (b) of this section within 30 days after the effective date of the designation.

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

(d) *When advance notice is not required.* Advance notice as described in paragraph (b) of this section is not required if all the following conditions are met:

- (1) The action will not result in a significant change in the public use of the area;
- (2) The action will not adversely affect the area's natural, esthetic, scenic, or cultural values;
- (3) The action will not require a long-term or significant modification in the resource management objectives of the area; and
- (4) The action is not highly controversial.

§ 423.62 Reservations for public use limits.

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

§ 423.63 Existing special use areas.

Areas where rules were in effect on April 17, 2006 that differ from the rules set forth in Subpart C are considered existing special use areas, and such differing rules remain in effect to the extent allowed by Subpart A, and to the extent they are consistent with § 423.28. For those existing special use areas, compliance with §§ 423.60 through 423.62 is not required until the rules applicable in those special use areas are modified or terminated.

Subpart F—Violations and Sanctions

§ 423.70 Violations.

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

- (1) Any closure orders established under Subpart B of this part 423;
 - (2) The regulations in Subpart C of this part 423;
 - (3) The conditions established by any permit issued under Subpart D of this part 423; and
 - (4) The regulations established by an authorized official in special use areas under Subpart E of this part 423.
- (b) Violating any use or activity prohibition, restriction, condition, schedule of visiting hours, or public use limit established by or under this part 423 is prohibited.

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

§ 423.71 Sanctions.

Under section 11(a) of Public Law 107-69, you are subject to a fine under chapter 227, subchapter C of title 18 United States Code (18 U.S.C. 3571), or can be imprisoned for not more than 6 months, or both, if you violate:

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

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R6-ES-2008-008; 92220-1113-0000; C6]

RIN 1018-AW35

Endangered and Threatened Wildlife and Plants; Reinstatement of Protections for the Gray Wolf in the Western Great Lakes and Northern Rocky Mountains in Compliance With Court Orders

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) are issuing this final rule to comply with three court orders which have the effect of reinstating the regulatory protections under the Endangered Species Act of 1973, as amended (ESA), for the gray wolf (*Canis lupus*) in the western Great Lakes and the northern Rocky Mountains. This rule corrects the gray wolf listing at 50 CFR 17.11 to reinstate the listing of wolves in all of Wisconsin and Michigan, the eastern half of North Dakota and South Dakota, the northern half of Iowa, the northern portions of Illinois and Indiana, the northwestern portion of Ohio, the northern half of Montana, the northern panhandle of Idaho, the eastern third of Washington and Oregon, and in north-central Utah as endangered, and reinstate the listing of wolves in Minnesota as threatened. This rule also reinstates the former designated critical habitat in 50 CFR 17.95(a) for gray wolves in Minnesota and Michigan, special regulations in 50 CFR 17.40(d) for the gray wolf in Minnesota, and special rules in 50 CFR 17.84 designating the gray wolf in the remainder of Montana and Idaho and all of Wyoming as nonessential experimental populations.

Exhibit I: 43 CFR 429

Begins on the next page.



Bureau of Reclamation, Interior

Pt. 429

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 part 21; Public Law 108-447, Title VIII; 31 U.S.C. 9701, as amended.

SOURCE: 73 FR 74335, Dec. 5, 2008, unless otherwise noted.

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 non-refundable 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 into 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 that are not associated with the official management of a Reclamation project. This includes, but is not limited to the following:

(1) Cabin sites and associated improvements (including those currently defined in part 21 of this title); mobile homes, residences, outbuildings, and related structures; and associated landscaping, patios, decks, and porches;

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

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

(4) 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

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

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, the following:

(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 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, li-

censes, 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 Reclamation.

You, your, I, me, or my 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 the following:

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

- (1) Boat docks available for short-term use by the public;
- (2) Marina slips available for rent by the public;
- (3) Publicly available boat ramps;
- (4) Houseboats available for short-term rent by the public;
- (5) Stores and restaurants;
- (6) Employee housing; and
- (7) Rental cabins, hotels, campgrounds, and other short-term lodging facilities.

(c) 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 of this part:

- (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. 4501 *et seq.*, and water user organizations who have assumed responsibility for operation and maintenance of Reclamation land, facilities, or waterbodies, and provide a copy of the use authorization to the local Reclamation office, 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;

(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. This requirement does not apply to any other type of use authorizations.

(b) 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.

(c) At the discretion of the responsible Regional Director, concurrence of the appropriate water user organizations not addressed in paragraph (a) of this section may be requested.

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.

cable Regional Director, the application fees may be waived, and charges for administrative costs or use fees may be waived or reduced as indicated by a ✓ in the following table:

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 and approved and documented by the appli-

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 it comparable fees are set on a reciprocal basis with a foreign government	✓	✓	✓
(2) The use is an 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 issuer fees	✓	✓	✓
(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 co-operative	✓	✓	✓
(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 agreement	✓	✓	(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.

ferred, and/or have the use fee adjusted; and

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

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 trans-

§ 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 termination of the use authorization 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, terminate any use authorization in the event of a natural disaster, a national emergency, a need arising from security requirements, or an immediate and overriding threat to public health and safety.

(4) Reclamation may, at any time and at no cost or liability to the United States, terminate any use authorization for activities other than existing authorized private exclusive recreational or residential use as defined under § 429.2 if Reclamation determines that any of the following apply:

(i) The use has become incompatible with authorized project purposes, project operations, safety, and security;

(ii) A higher public use is identified through a public process described at § 429.32(a)(1); or

(iii) Termination is necessary for operational needs of the project.

(5) Reclamation may, at any time and at no cost or liability to the United States, 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 within the timeframe specified in the terms of the use authorization may constitute a presumption of abandonment of the requested use and cause termination of the use authorization.

(6) Reclamation may, at any time and at no cost or liability to the United States, 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 or as provided under subpart H of this part for existing private exclusive recreational and residential uses. 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 as of the effective date of this part. Improvements that are within the terms and conditions of an existing authorization will not be considered new private exclusive recreational or residential use.

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

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.

(a) Existing private exclusive recreational or residential uses must be compatible with public needs and with authorized project purposes, project operations, safety, and security. A review of whether existing private exclusive recreational or residential uses is compatible with public needs and authorized project purposes, project operations, safety, and security will be made at least once every 20 years, except where part 21 requires a more frequent review.

(1) Reclamation will only make final determinations regarding the compatibility of existing private exclusive recreational or residential uses with public needs or project purposes 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.

(2) Reclamation will notify in writing all potentially affected holders of existing authorizations for private exclusive recreational or residential use regarding the opportunities for public participation when any action is proposed that could lead to an incompatibility determination.

(3) Determinations that existing private exclusive recreational or residential uses are not compatible with public needs will be published in the FEDERAL REGISTER.

(4) 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.

(b) Reclamation will conduct a compliance review of all existing private exclusive recreational or residential uses at least once every 5 years to determine if the following criteria are being met:

(1) Environmental requirements;

(2) Public health and safety requirements; and

(3) Current in financial obligations to Reclamation.

(c) Reclamation will provide the holder of the use authorization with a written report of the results of the compliance review by certified mail, return receipt requested. The report will state whether the existing use meets the required criteria listed in paragraph (b) of 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.

(d) In addition to the compliance reviews described above, Reclamation will initiate a review of the existing private exclusive recreational or residential uses for compliance with the required criteria listed in paragraph (b) of this section 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 by certified mail, return receipt requested. 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. In addition, this report will serve as a reminder that it is time to seek renewal of the use authorization and provide information on the process that needs to be followed.

(e) Reclamation must be notified in advance by certified mail, return receipt requested, of any transfers of use authorizations for existing private exclusive recreational or residential uses.

(f) 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 paragraphs (a) and (b) of this section and these reviews could potentially result in the termination of the use agreement prior to the end of the term of years.

(g) 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.

(h) 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. If the Regional Director determines that deficiencies identified under paragraph (d) of this section cannot be corrected prior to the expiration date of the use authorization, the use authorization may be extended for a period not to exceed 6 months.

(i) Requests for the renewal, extension, or reissuance of use authorizations for private exclusive recreational or residential uses that expired and were not renewed prior to the effective date of this part and were not renewed 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, 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. Re-

quests for renewal, extension, or reissuance of use authorizations for private exclusive recreational or residential uses must be made by submitting Form 7-2540 as stated under § 429.10(b) and in compliance with subpart D of this part.

(j) 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) 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 (a)(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.

(b) 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.

(c) If appropriate, you will receive a final determination letter detailing the applicable costs and fees, as set forth under paragraph (a) 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.

(d) 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.

(e) 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.

(f) 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.

(g) Under part 423 of this chapter, unauthorized use of Reclamation land, facilities, or waterbodies is a trespass against the United States. You may be subject to legal action including criminal prosecution as specified under § 423.71.

Subpart I—Decisions and Appeals

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

(a) The appropriate Regional Director, or the Regional Director's designee, makes any final determination associated with an action 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 final determination letter.

§ 429.35 May I appeal Reclamation's final determination?

(a) Yes, if you are directly affected by a final determination, you may appeal by writing to the Commissioner within 30 calendar days after the postmark 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 final 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 mailing of the Commissioner's decision. Rules that govern appeals to OHA are found at part 4, subparts B and C, of this title.

(c) Notwithstanding the provisions of § 4.21(a) of this title, the Commissioner's decision will take effect upon issuance and remain in effect unless you specifically request a stay and a stay is granted under § 4.21(b) of this title.

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

Except for any period in the appeal process during which a stay is then in effect, interest on any nonpayment or underpayment, as provided in § 429.33(a), 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.

Exhibit J: 43 CFR 430

PART 430—RULES FOR MANAGEMENT OF LAKE BERRYESSA

Authority:

Title VII, Pub. L. 93-493, 88 Stat. 1494.

§ 430.1 Concessioners' appeal procedures.

The procedures detailed in title 43 CFR part 4, subpart G, are made applicable to the concessioners at Lake Berryessa, Napa County, California, as the procedure to follow in appealing decisions of the contracting officer of the Bureau of Reclamation, Department of the Interior, or his authorized representatives on disputed questions concerning termination for default or unsatisfactory performance under the concession contracts.

[40 FR 27658, July 1, 1975]

Exhibit K: Assigned Government Property

Government property listed on the tables below is assigned for the purposes of this management agreement. The property is assigned for the use of Napa County during the term of the management agreement. Reclamation recognizes that Napa County development may result in the removal of these items, and Reclamation does not expect or require a replacement of these improvements or facilities at the expiration or termination of the management agreement.

Table K - 1: Description of Reclamation Improvements at Putah Canyon

Facilities totals and conditions listed below may alter before the inclusion of the Recreation Area into the Area of Effect.

Item	Putah Canyon
Roads	1,481,040 SF
Water	Water well installed with water spigots
Launch Ramp	East Side: 6 lanes - W = 145 feet x L = 275 feet (approx. additional 15 feet under water); West Side: 1 lane - W = 30 feet x L = 161 feet
Structures	Temporary Entrance Station
Courtesy Docks	2 at east side ramp
Picnic Tables	118
BBQ's	118
Fire Rings	98
Launch Docks	2
Vault Toilets	2

Table K - 2: Description of Reclamation Improvements at Spanish Flat

Facilities totals and conditions listed below may alter before the inclusion of the Recreation Area into the Area of Effect.

Item	Spanish Flat
Roads	41,676 SF of road base (ground up road)
Water	2 Water spigots connected to Spanish Flat Water District
Launch Ramp	No
Structures	Temporary Entrance Station
Picnic Tables	65
BBQ's	65
Fire Rings	55
Launch Docks	None
Vault Toilets	2

Table K - 3: Description of Reclamation Improvements at Steele Canyon

Item	Steele Canyon
Roads	3.8 miles paved, .5 unpaved, 150,000 sq. ft parking lots
Water	Water spigots that can be connected to Napa Berryessa Resort Improvement District water service
Launch Ramp	6 lanes - W = 200 feet x L = 275 feet (approx. portions under water);
Structures	Temporary Entrance Station
Courtesy Docks	2
Picnic Tables	95
BBQ's	95
Fire Rings	85
Launch Docks	2
Vault Toilets	2

Table K - 4: Description of Reclamation Facilities at Field Office Assigned to County Use

The facilities listed below are assigned for the use of Napa County during the first five years of this Managing Partner Agreement. Upon the conclusion of the first five years, the facilities will be returned to Reclamation minus reasonable wear and tear.

Item	Field Office
Office Space	Approximately 720 sq. ft.
Locker Room	Approximately 120 sq. ft.
Outside Covered Storage	Approximately 400 sq. ft.
Shop/Storage Room	Approximately 220 sq. ft.
Outside Trailer parking	5 spaces
Boat Slips	4 Slips
Dorm Accomodation	1 Dorm Room

Exhibit L: Improvement Project

Procedures

1. Introduction

This exhibit presents procedures for the administration of building projects (construction, rehabilitation, improvements, and repair and maintenance projects) within Reclamation area. Project planning and design are presented first, followed by guidelines for project supervision. All projects undertaken require a coordinated effort between Napa County and Reclamation. This exhibit applies to the building of improvements, including new structures or facilities, rehabilitations, and the repair and maintenance (“R&M projects”) of existing facilities that change the nature, appearance, or value of existing facilities. Day to day facility operations, custodial, and preventive maintenance and maintenance needed for facility operations are not considered R&M projects subject to these procedures. Repair and maintenance is not to be considered a project subject to these procedures when the activity does not change the nature, appearance, or value of existing concession facilities. All projects must be proposed, approved, and accomplished under these procedures. In the event of any inconsistency between this exhibit and the main body of the Managing Partner Agreement (MPA), the main body of the MPA shall prevail.

All project activities shall be directed and managed as presented in a Concession Area Plan (CAP). In addition to these activities, the CAP shall present a schedule of project development and implementation, as presented below under Item B, Project Planning and Design, paragraph 1.

Projects may be required to be reviewed under the National Environmental Policy Act (NEPA) of 1969, as amended as well as other environmental and cultural compliance laws. Projects within historic and culturally significant areas may require certain building management methods established under the National Historic Preservation Act of 1966, as amended. All construction shall comply with codes and building requirements adopted by Napa County, including without limitation and where applicable, the Americans with Disabilities Act requirements. All facilities shall be harmonious in form, line, color, and texture with the surrounding landscape.

Napa County is responsible for all aspects of project development and implementation. The role of Reclamation is to provide authorization and oversight. Napa County and Reclamation staff must work closely together to successfully complete construction projects in a manner that achieves the goals and objectives of Napa County and of Reclamation.

2. Project Planning and Design

Napa County will be provided with copies of Reclamation’s Recreation Facilities Design Guidelines and Sign Guidelines to assist in meeting the conditions of this section. It is also noted

that as part of this overall process the County's agents will need to receive all appropriate and required building and other required permits from Napa County as required by State and County law or regulation. If Reclamation requirements in this section exceed the requirements of Napa County or vice versa the requirements followed must at a minimum meet the Federal Standard.

1. Submit a Concession Area Plan (CAP)

Some projects require significant lead time for planning and design before construction. The purpose of the plan is to identify the need and scope of projects to allow adequate time to prepare for project commencement. Before approval to proceed with any project is granted by Reclamation, Napa County must submit a CAP for implementation.

The CAP shall address the proposed development, upgrade or replacement of facilities and should include all intended development projects. CAP Projects must include a project concept description and anticipated NEPA and section 106 planning and compliance established in collaboration with Reclamation staff.

2. Notify Reclamation of Intent-to-Proceed

Napa County shall formally notify Reclamation's representative of intent to proceed with any facility planning or design. To assist Reclamation in sequencing and scheduling necessary support staff, the projects must be identified in the CAP at a minimum of one calendar year before the project is to begin.

3. Identify a Project Coordinator

Napa County's project coordinator must be identified for each project. This person should have the authority to obligate project expenditures and hire and direct consultants, contractors, and concession management support staff.

4. Prepare a Proposed Project Statement

Prepare a proposed project statement (PS) to be submitted to the area manager for review. PS's should be developed collaboratively with Reclamation. If the building of improvements is to be conducted by an agent under a third party agreement with Napa County (i.e. a concessionaire) that third party can be assigned the task of developing the PS by Napa County.

- a) Goal and Product.—The primary goal of the PS is to clearly identify the project concepts and scope in sufficient detail to carry the project through to completion.

- b) Project Statement Content.—The PS shall include the following at a minimum: project description; justification; scope of work, including NEPA and NHPA section 106 planning and compliance; proposed schedule; milestones of Reclamation design review; and third party project inspection and certification. The elements of the PS will function as check points of accountability and will vary in frequency and scope, depending upon the nature, complexity, and scope of the proposed project.
- c) Professional Services and Construction. For any project requiring professional services, such services shall be acquired from appropriate registered technical professionals. Licensed contractors shall perform all project work unless otherwise approved in writing by the area manager. Registered technical professionals shall perform project inspection or facility certification or any other service needed for project implementation.
- d) Reclamation Operations.—Any aspect of the proposed project where the scope of work interfaces with Reclamation operations, such as utility service connections or road maintenance operations, must be clearly identified in the PS.
- e) New Development Design. — All designs, layouts, and footprints for new development will be determined with the professional assistance and techniques of appropriate registered technical professionals (e.g., design specialists and landscape architects knowledgeable in the development of campgrounds, marinas, docks, wastewater treatment, infrastructure, maintenance, and operational support facilities). Reclamation’s Sign Guidelines should be used when planning for new or replacement signs.

5. Submit Project Statement for Reclamation Review

The proposed PS shall be submitted by means of written correspondence from Napa County to Reclamation’s Representative. A PS approved by the Area Manager constitutes official authority for Napa County to continue further project development to the level specified in written correspondence from the area manager. Napa County may obtain authority to complete a project when sufficient planning and design have been completed to meet the interests of Reclamation.

6. Establish a Project File

A file of all project documents shall be held by Napa County or its concessionaire as a chronological audit trail of all project decision making activity for each project from concept development to completion and Reclamation acceptance. Each project shall be identified with a project number. All documents entered into the file should have the project identification number clearly displayed on it as part of document identity.

Project File Contents.—The contents of a typical project file is presented in the following sections:

- a) Project Statement. —The approved PS, scope of work, and a copy of the notice-to-proceed letter authorizing planning and design that was sent to the concessionaire by the area manager should be filed in this section.
- b) Planning. --This section should contain documents pertaining to any project planning. Typical documents include those produced for NEPA and NHPA; section 106, compliance. Also contained in this section should be any concept design, preliminary design, or schematic design correspondence and documents. When the area manager grants approval for any of the above stages of project development, correspondence from the area manager should be filed in this section.
- c) Assessment. —This section should contain a record of any assessment performed during project implementation. Soil, vegetation, flood plain, structural, and electrical assessments should be filed in this section. Any other existing site or facility investigative reports and all quality assurance documents such as third-party project inspection, testing, and certification should also be filed in this section.
- d) Design. —This section should contain a record of documents produced and decisions made during the design phase of a project. The design phase typically occurs when project activity has shifted from conceptual discussion to organizing detailed direction provided to a contractor for construction. Correspondence from the area manager providing design approval should be in this section.
- e) Project Work. —This section should contain a record of decisions made during project work. The letter from the area manager granting notice-to-proceed with the project should be in this section. All contractor proposals, change-orders, design modification documents, daily construction activity records, weekly meeting minutes, etc., should be in this section. Documentation should be organized according to subcontractor activity or standard specification enumeration. The final documents filed in this section should be Reclamation correspondence sent to the concessionaire providing project acceptance and closeout.
- f) Photo Documentation.—Photo documentation, including before-and-after photos, records of any special situations or conditions requiring changes and documentation, should be kept. Photographic documentation is usually required for modifications to “listed” historic structures or activities occurring within Historical Districts. To be most useful, photos should be filed with the documents they support.

7. Completion of Resource Compliance Documents

During development of the PS, responsibility for compliance work will be established. Napa County or its concessionaire must request the participation of Reclamation staff early in project planning to ensure uninterrupted project implementation. Development of compliance documentation must occur as soon as possible. Every effort shall be made to perform compliance document preparation tasks concurrently with project planning and design.

- a) Ground Disturbance. —Wherever ground disturbance will occur, submittal of drawings that show area and depth of proposed ground disturbance will be required. Submittal of this document early in project planning is recommended. All project documents that include soil disturbance shall have the following specification included within them:

Petroglyphs, artifacts, burial grounds or remains, and structural features and ceremonial, domestic, and archeological objects of any nature, whether historic or prehistoric, found within the project area are the property of, and will be removed only by, the Government. Should the operations uncover or its employees find any archeological remains, the contractor shall suspend operations at the site of discovery, notify the Government immediately of the findings, and continue operations in other areas. Included with the notification shall be a brief statement of the location and details of the findings.

- b) Archeological Monitoring.—Monitoring project activity is a requirement of cultural compliance when significant ground disturbance occurs during project work. Any cultural resource monitoring required shall be performed under the direction of Reclamation. Reclamation shall be notified sufficiently in advance of the need for a monitor and will assist in making arrangements for the services of an archeological monitor at the expense of the concessionaire if Reclamation is unable to provide the expertise.
- c) National Environmental Policy Act Compliance.—NEPA compliance document approval is required before any construction or R&M project occurs for any project that has an impact on the environment. Projects requiring compliance will be identified by Reclamation early during project planning. The actual review period length may vary widely depending on the nature, scope, and complexity of the project elements that relate to resource compliance. Projects that have an insignificant effect on Reclamation resources usually require a “categorical exclusion” determination. Projects having a significant effect on Reclamation resources or that are not part of other NEPA compliance documentation may require a longer period of implementation.

8. Submit Project Documents for Review and Approval

Napa County or its concessionaire shall submit project documents to establish project activity for review and approval by the area manager. Approved project documents establish the full scope of the project and the quality of work to be performed by the concessionaire. The scope of the documents required will be identified in the PS. The scope and detail of the documents will vary depending on the nature and complexity of the project. "Manufacturer's cut-sheets" may be all that is required for some R&M projects, and for others, complete detailed drawings and specifications may be required. Napa County or its concessionaire is responsible for the technical accuracy and completeness of all project documents and shall provide the technical review as needed to ensure compliance with all applicable Federal, State, and local statutes, codes, regulations, and appropriate industry standards. Any exception to this will be by written authorization from the area manager.

9. Submit a Project Estimate and Schedule

An estimate of the total project price and completion schedule shall be submitted to the area manager before work begins. The project estimate and schedule are based on the best information available that was identified during project planning and design.

3. Project Management Procedures

1. Identify a Project Supervisor

A project supervisor shall be identified and vested with the authority to direct the construction contractor on behalf of Napa County or its concessionaire. Reclamation will direct its communication concerning the nature and progress of project activity to this person. The project supervisor shall have full responsibility for ensuring that all construction complies with the approved project documents and specified code compliance. Reclamation will not take any responsibility for project management.

2. Submit a Total Project Price for Review

All projects completed shall include submittal of a total project price in writing to the area manager for review.

3. Notice-to-Proceed with a Project

A Notice-to-Proceed with a project will be issued when all submittals requested by the area manager have been reviewed and approved. The Notice-to-Proceed must be received by Napa County or its concessionaire in writing before any project work occurs.

4. Hold a Pre-Project Conference with the Contractor

Napa County or its concessionaire shall arrange and facilitate a pre-project conference as needed or as requested by Reclamation with the contractor. The purpose of the conference is to provide Reclamation the opportunity to meet the contractor and confirm that the contractor has full understanding and knowledge of all work to be performed. In addition, the conference provides the opportunity to confirm established communication linkages between Napa County, its concessionaire, the contractor, and Reclamation. Any questions the contractor may have regarding any matter of the project or anything about area access, rules, and regulations may also be discussed.

5. Submit Project Activity Reports (as Required)

A record of project activity shall be provided by the contractor on all approved projects. The scope and frequency of performing this documentation shall be identified upon submittal of project documents for Reclamation approval. Napa County, or the county through its concessionaire, is responsible for the accuracy and completeness of all design and completed projects.

- a) Content.—Project activity reports shall summarize project activity recording important observations and decisions. The reports shall identify any changes to the approved project documents either by change order or as a result of any other variance from approved project documents.
- b) Regulatory Code Compliance and Project Inspection (as Required).— Inspection reports specifically addressing regulatory code compliance and adherence to project documents will be required during certain stages of the work. Independent industry certified inspectors or registered technical professional subject area experts shall perform all inspections and project component certification. Inspection reports shall be prepared that include all findings and results of code compliance inspection. Sections and paragraphs of applicable codes shall be referenced when deficiencies are noted. Recommendations presenting remediation shall accompany line item deficiencies in the report. All Inspection reports must be submitted before the project is accepted by the area manager.

6. Submit Requests for Changes in Approved Project Documents

The area manager's approval will be required before any significant changes are made to the project scope during the completion of projects. Napa County or its concessionaire shall provide Reclamation with written notification immediately upon identifying the need for a change in project scope that affects any of the items listed below. The written notification shall include a request to change the approved project documents. The request will be complete with justification and

explanation of the effect of the change on all other aspects of project design and work. Requests for any significant changes in the approved project documents shall be reported in project activity reports, and any documentation requested will be attached. Requested Changes in approved project scope that need to be made after the work has started will require review and approval of the area manager. Some examples might include the following:

- Changes affecting natural, cultural, or historic resources.
- Changes in designated visual appearance.
- Changes in the interface with Reclamation utility or road facility maintenance operations.
- Changes in project scope as required for facility improvement projects.
- Proposed changes that involve natural or cultural or historic resources may require a significant period of review, depending on the complexity of the concern.

7. Submittal of Change Orders for Review and Approval

When one or more of the five factors listed in (6) above exists, Napa County or its concessionaire shall submit, for the review and approval of the area manager, documentation justifying the proposed changes.

8. Reclamation Project Inspection

A representative of the area manager will inspect the project periodically. These inspections are not in lieu of or in any way a substitute for project inspection required by the PS. Ensuring safe, accountable project activity and providing the contractor with direction to fulfill the full scope of approved work is the responsibility of Napa County or the County through its concessionaire.

9. Project Supervision Documents

Project drawings and specifications must be kept on the project site, complete with any design or project modifications, including project documents approved where required by professional architects and/or engineers, in a well-organized form.

10. Substantial Completion Inspection and Occupancy

Joint inspection by Reclamation and Napa County will occur upon notification that the project is substantially complete. A “punch list” of work items will be formulated and performed to “closeout” the project. The area manager will accept the project when the “punch-list” items are completed. Napa County will be notified in writing by the area manager. facility is not to be occupied until authorized in writing by the area manager.

11. Project Completion Report

Upon completion of any project, Napa County or the County through its concessionaire shall submit a project completion report as directed by Reclamation. The completion report shall include the total project cost; before-and-after photo documentation; warranties; operation and maintenance manuals, if required; all inspection and certification reports; and “as-constructed” drawings. (See item 12, below.) The level of documentation requested may also include photo documentation provided during construction to record significant unforeseen site and construction conditions that necessitated changes to approved project documents and the approved total construction price.

12. “As-Constructed” Drawings

The “as-constructed” drawings included with the project completion report for all projects shall be:

- a. Full-size, archival quality, prepared in accordance with Reclamation management policies and must be submitted before the project is accepted by Reclamation.
- b. At least two half-size sets of drawings shall also be provided.
- c. Electronic versions in AutoCad or other drafting software as determined by Reclamation in discussion with the construction contractor.

13. Request Project Acceptance and Closeout by the Area Manager

The concessionaire shall request project acceptance by the area manager either at the time of submittal of the Project Completion Report or at any time thereafter. Project acceptance will be contingent upon fulfillment of all requested project completion work tasks and submittal of all project documentation in accordance with these guidelines and as requested by Reclamation

Exhibit M: Reclamation and Napa County Managing Partner Agreement Term Sheet of the MPA

Where there are conflicts between the main text of the MPA and this Exhibit, the terms of the MPA shall prevail.

- The Managing Partner Agreement (MPA) is for Napa County (County) to take over responsibilities of recreation management at Lake Berryessa for up to 7 concession areas. The term of the MPA is 55 years.
- The term of the MPA assumes the County will seek development opportunities beyond basic campgrounds and includes a full array of recreational services including marinas.
- Reclamation agreed to provide financial assistance to the County during the early phases of the recreation management while the County brings on partners to develop some of the concession areas. Reclamation will provide financial assistance for the initial 5 years of the MPA. Financial assistance will be provided under the cost share authorities and requirements of Public Law 89-72 as amended (50% of losses). Reasonable adjustments to the annual financial assistance amounts may be made as mutually agreed. The funding levels were determined under the assumption that the County will take management of three sites (Steele, Monticello and Spanish Flat) and make a good faith effort in regard to exercising the option to bring the existing concessionaires at Markley Cove and Pleasure Cove under the MPA. The funding provided will be in the following order:
 - Year 1 of the MPA – Reclamation will provide up to \$150,000.00 to offset the County’s operating cost of recreation management at Lake Berryessa.
 - Year 2 of the MPA – Reclamation will provide up to \$250,000.00 to offset the County’s operating cost of recreation management at Lake Berryessa.
 - Year 3 of the MPA – Reclamation will provide up to \$250,000.00 to offset the County’s operating cost of recreation management at Lake Berryessa.
 - Year 4 of the MPA – Reclamation will provide up to \$250,000.00 to offset the County’s operating cost of recreation management at Lake Berryessa.
 - Year 5 of the MPA – Reclamation will provide up to \$150,000.00 to offset the County’s operating cost of recreation management at Lake Berryessa.
- Effective at the signing of the MPA, Reclamation will provide ½ FTE of a Recreational Planner to provide technical support through the Request for Proposal (RFP), bid selection, and award process to Napa County team during the first few years of County recreation management at Lake Berryessa. This will be at no cost to Napa County and will not be deducted from or considered a part of the agreed upon financial assistance.
- Reclamation will provide office spaces and utilities to the County team for the first 5 years of the MPA. Office space will consist of one office, unfurnished. Utilities will include electrical service, water, wastewater, and telephone line. This will be at no cost to the County and will not be deducted from or considered a part of the agreed upon financial assistance.

- Under the MPA, Napa County will be responsible and for the following based on the agreed upon date for each site:
 - Recreation management for up to 7 concession areas, including solicitation of business opportunities, negotiation and execution of contracts, quality assurance monitoring, and, as necessary, corrective actions to bring contractors into compliance. (Steele Canyon, Monticello Shores, and Spanish Flat will be included November 1, 2020. Pleasure Cove, and Markley Cove will be included upon County exercising an option on or before November 2030. Berryessa Point and Putah Canyon will be optional sites if the County decides to include them into their portfolio through a subsequent mutual agreement with Reclamation.
 - Fire Management – The County will be responsible for the development and implementation of a fire management plan, including any agreements necessary for fire suppression and for fuel management for the areas managed by Napa County under the MPA.
 - Law Enforcement – The County will be responsible for providing Law Enforcement for the areas managed by the County under the MPA. Reclamation will fund a minimum of one law enforcement officer through an Enhanced Services Agreement for 5 years for enhanced law enforcement services to federally manager areas. The Enhanced Services Agreement will be brought to the Board of Supervisors for approval at the same time as the Managing Partner Agreement.
 - Hazardous Materials & Waste management – the County will be responsible and for overseeing concessionaire use of hazardous materials and generating hazardous waste including all necessary permitting as well as managing any errors that arise. Reclamation retains responsibility for cleaning up any existing issues.
 - Water and WasteWater – The County will be responsible for providing potable water and manage wastewater, wastewater permits, wastewater, and water quality violations within areas managed by the County under the MPA.
- Timeline – Phasing the concession sites under the MPA by the County.
 - Phase 1 – (November 1, 2020) The County will take over recreation management responsibility for Steele Canyon, Monticello Shores, and Spanish Flat.
 - Phase 2 – By or before November 1, 2030, The County will determine whether it will exercise an option to take over the recreation management responsibility for Pleasure Cove and Markley Cove.
 - Phase 3 – The County may take over the recreation management responsibility for Berryessa Point and Putah Canyon.
- Termination
 - Reclamation will reserve the rights to terminate the MPA in the event of a national emergency, if the County fails to provide appropriate recreation activities or meet its commitments under this agreement or under provisions listed in the MPA.
 - County shall have the right to terminate for convenience its rights and obligations in connection with any concession areas without a concessionaire upon 90 days’ notice.
- Liability

- The liability and insurance requirements of all parties will be documented in the MPA document. County will subsequently enforce liability and insurance requirements on concessionaires.