

## Bureau of Reclamation, Interior

## § 429.5

(h) *Administrative costs* means all direct or indirect costs including appraisal costs if required, incurred by Reclamation in reviewing, issuing, and processing of rights-of-use requests or the assisting of others in their rights-of-use matters, calculated in accordance with the procedures established by Departmental Manual 346, "Cost Recovery," Chapters 1, 2, 3, and 4.

(i) *Grantor or Permitter* means the Bureau of Reclamation, U.S. Department of the Interior.

(j) *Grantee or User* means the agency, firm, partnership, or individual who requested and to whom is granted the right-of-use.

(k) *Documentation of administrative costs*. This documentation shall mean documentation in accordance with the provisions of part 346, chapters 1, 2, 3, and 4 of the Departmental Manual. Administrative costs will be documented through the accurate recording and accounting of costs associated with a right-of-use. This documentation shall include both direct and indirect costs, such as:

(1) Personnel costs.

(i) Direct labor.

(ii) Fringe benefits.

(iii) Additional benefits.

(2) Material costs, printing costs, and other costs related directly with a specific right-of-use.

(3) Exclusions.

(i) Management overhead.

(ii) Normal costs not directly associated with the specific right-of-use.

(1) *Secretary* shall mean the Secretary of the Interior.

### § 429.3 Establishment of the value of rights-of-use.

(a) The value of a right-of-use shall be determined by Reclamation. The appraised value of a right-of-use shall be established by a Reclamation staff or contract appraiser in accordance with Reclamation Instructions for *Land Appraisal*. The appraisal shall be for the fair market value for the requested right or privilege, and result from the diminution of value of the remainder using the before and after appraisal approach, or any other method generally approved within the real estate appraising profession for such valuation.

(b) If the applicant has been or is currently using the right-of-use area without authorization, and if it can be determined that the unauthorized use of Federal Lands was unintentional and not due to carelessness or neglect on the part of the applicant, then the value of a right-of-use shall not include the value of any prior unauthorized use by the applicant of the Reclamation land.

(c) If the applicant's prior unauthorized use can be determined to be intentional on his part or to be a result of his carelessness or neglect, then the value of such previous use shall be determined as assessed to the user in addition to the appraised value of the right-of-use.

### § 429.4 Request by other governmental agencies and nonprofit organizations for rights-of-use.

Rights-of-use requested by nonprofit organizations or nonprofit corporations may be provided with no charge being made for the value of these rights-of-use when it is determined that the use will not interfere with the authorized current or planned use of the land by Reclamation. Rights-of-use requested by other Federal or other governmental agencies will be granted with fair market value reimbursement unless, a reasonable opportunity exists for the exchange of rights-of-use privileges, and there exists an interagency agreement providing for such exchange. Other agencies and nonprofit organizations will be required to reimburse Reclamation for all administrative costs which are deemed to be excessive to normal costs for granting similar rights-of-use request. All billings for administrative costs will be well documented (§ 429.2(k)). All requests will provide the information required in § 429.6(a), and (b).

### § 429.5 Request by others for assistance.

The agency requesting assistance from Reclamation in acquiring a right-of-use shall be required to reimburse Reclamation for any administrative costs deemed to be in excess of the average normal for the specific service or assistance (§ 429.2(h)) and would not normally be foreseen and covered in

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the Reclamation regular appropriation requests. Any billing for these excessive costs shall be well documented (§ 429.2(k)).

### § 429.6 Applications for rights-of-use.

The applicant for a right-of-use over land or estate in land, in the custody and control of Reclamation, must make application to the Regional Director of the region in which the land is located or to the affected field office. The addresses for the seven Regional Directors are located in § 429.11. A right-of-use will not be granted when it is determined that the proposed right-of-use will interfere with the functions of Reclamation or its ability to maintain its facilities.

(a) The application does not have to be in any particular form but must be in writing. The application must contain at least the following items:

(1) A detailed description of the proposed use of Reclamation's lands.

(2) A legal description of either aliquot parts or metes and bounds, or as an absolute minimum, a description of the route or area of use desired on Reclamation's lands, and as accurate delineation of the use area on a map as it is possible to provide without making a survey.

(3) A map or drawing showing the approximate location of the requested right-of-use.

(b) An initial deposit fee of \$200 must accompany the initial application. If, after a preliminary review of the application Reclamation determines the granting of a right-of-use is incompatible with present or future uses of the land and the right-of-use cannot be granted, \$150 of the \$200 fee will be returned. The remaining \$50 of the \$200 fee will be retained by Reclamation regardless of its disposition of the right-of-use request. No refund will be made for any deposits if the applicant refuses to accept the right-of-use after it is prepared and offered. Applicants will be required to pay any administrative costs which are in excess of the \$200 deposit for the preparation of right-of-use as well as the value to the right granted. Any administrative costs less than \$150 will result in an appropriate refund to the applicant or may be applied to the value of the right-of-use at the

discretion of the applicant. This shall apply equally to requested rights-of-use which are offered by Reclamation and are rejected by the applicant, as to those which the applicant accepts. Any billing for administrative costs shall be well documented. (§ 429.2(k).) At the discretion of the Regional Director, applications made by other Federal agencies need not be accompanied by either of the above deposits or fees.

(c) All fees and costs may be waived or reduced at the discretion of the Regional Director, when:

(1) It is determined that the applicant for the right-of-use will soon be, or is in the position of granting a right-of-use to the United States, and an opportunity for a reciprocal agreement exists, providing an agreement between Reclamation and the applicant is on file permitting such an exchange of uses.

(2) The initial deposit and the administrative costs would exceed the value of the interests and rights to be granted. The \$50 minimum fee will usually be retained.

(3) The holder provides without charges, or at a reduced charge, a valuable service to the general public or to the programs of the Department of the Interior; or

(4) The right-of-use is a result of a service requested by the Federal Government or a governmental agency.

(d) The applicant also may, at the discretion of the Regional Director, be required to furnish, or agree to furnish, the following additional material before Reclamation grants a right-of-use:

(1) A legal land description and/or a map or plat of the requested right-of-use. The description map or plat should relate to Reclamation's land boundaries.

(2) Detailed construction details, construction specifications, engineering drawings, power flow diagrams, one-line diagrams, and any other plans and specifications which may be applicable.

(3) Statements, reports, or other documents already prepared or which normally will be prepared by the applicant which may be used by Reclamation to satisfy the requirements of the National Environmental Policy Act (42 U.S.C. 4321 through 4347) or other legal