

### § 429.3

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

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

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

[48 FR 56223, Dec. 20, 1983, as amended at 71 FR 19802, Apr. 17, 2006]

### § 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.

[48 FR 56223, Dec. 20, 1983, as amended at 71 FR 19802, Apr. 17, 2006]

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### § 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 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. 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

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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 requirements of Reclamation in granting the applications right-of-use request.

(4) An agreement to complete or assist in completing Reclamation's requirements towards compliance with cultural resource policies.

(e) The applicant shall pay any excess administrative costs which Reclamation incurs which are in excess to the initial deposit of \$200 required by paragraph (b) of this section prior to the issuance of the right-of-use. All billing for administrative costs shall be well documented by Reclamation.

(f) Prior to the issuance of the right-of-use instrument the applicant shall also pay Reclamation a fair market value of the right and privilege requested for the use of Reclamation's lands.

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This value shall be determined by an appraisal made, as prescribed in § 429.3 of this regulation. Those applicants meeting the provisions of § 429.4 may be excepted from this provision. The decision to grant an exemption under § 429.4 will have the justification well documented.

(g) Information Collection: The information collection requirements contained in § 429.6 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, OMB 1006-003. The information is being collected to assist in the determination for the granting of a right-of-use. The information will be used to assure the appropriateness of such a grant and that the technical and financial resources of the applicant are sufficient to complete the project. Response is required to obtain the right-of-use.

[48 FR 56223, Dec. 20, 1983, as amended at 71 FR 19802, Apr. 17, 2006]

**§ 429.7 Terms and conditions of and for the rights-of-use.**

(a) The right-of-use granting document shall contain all special conditions or requirements which are determined by the Regional Director to be necessary to protect the interest of the United States.

(b) Any grant of a right-of-use for a term of 25 years or longer must have the consent of any involved water user organization pursuant to the legal requirements of 43 U.S.C. 387. Concurrence in and approval of uses for less than a 25-year period may be requested of the water users organization at the discretion of the responsible Regional Director. As a minimum, the water user's organization shall be notified of the right-of-use application prior to its being granted.

(c) Reclamation's land-use stipulation appearing in § 429.8 shall be included in all perpetual right-of-way easements granted, excepting grants to other Federal agencies.

(d) Temporary rights-of-use instruments shall contain a termination clause in the event the applicants use becomes, or may become, an interference with the Reclamation's use of the land.

(e) Except for grants of rights-of-use to Federal agencies, the use instru-

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ments shall contain a hold harmless clause found in § 429.9.

(f) The applicant must show that any legally required permits to construct power transmission lines in excess of 100 kilovolt have been secured by the applicant from the appropriate power marketing authority prior to Reclamation's granting a right-of-way for such line.

**§ 429.8 Reclamation land-use stipulation.**

There is reserved from the rights herein granted, the prior rights of the United States acting through the Bureau of Reclamation, Department of the Interior, to construct, operate, and maintain public works now or hereafter authorized by the Congress without liability for severance or other damage to the grantee's work; provided, however, that if such reserved rights are not identified in at least general terms in this grant and exercised for works authorized by the Congress within 10 years following the date of this grant, they will not be exercised unless the grantee, or grantee's successor in interest is notified of the need, and grants an extension or waiver. If no extension or waiver is granted, the Government will compensate, or institute mitigation measures for any resultant damages to works placed on said lands pursuant to the rights herein granted. Compensation shall be in the amount of the cost of reconstruction of grantee's works to accommodate the exercise of the Government's reserved rights. As alternatives to such compensation, the United States, at its option and at its own expense, may mitigate the damages by reconstructing the grantee's works to accommodate the Government facilities, or may provide other adequate mitigation measures for any damage to the grantee's property or right. The decision to compensate or mitigate is that of the appropriate Regional Director.

**§ 429.9 Hold harmless clause.**

(a) The following clause shall be a part of every land-use document issued by Reclamation:

The grantee hereby agrees to indemnify and hold harmless the United