OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION'S MANAGEMENT OF EXCLUSIVE USE RECREATION AREAS

Report No.: WR-FL-BOR-0007-2010 February 2011

OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

Memorandum

February 24, 2011

To: Richard Rizzi
Manager, Land Resources Division

From: Michael P. Colombo
Regional Manager

Subject: Follow-up – Bureau of Reclamation's Management of Exclusive Use Recreation Areas
Report No. WR-FL-BOR-0007-2010

In December 2008, the Federal government issued Title 43 Code of Federal Regulations Part 429, "Use of Bureau of Reclamation Land, Facilities, and Waterbodies." Part 429 allows for the conditional continuation of residential exclusive use that currently exists on recreation lands administered by the U.S. Department of the Interior's Bureau of Reclamation (USBR). Conditional continuation depends on whether the residential exclusive use activity within a given recreation area successfully fulfills two requirements: at least once every 20 years the activity is determined to be compatible with public need and project purposes, and at least once every 5 years the activity passes compliance reviews specific to environmental, health and safety, and financial elements.

Since the mid-1990s, the U.S. Department of the Interior's Office of Inspector General (OIG) has reviewed USBR's management of residential exclusive use activities and identified issues regarding both the restriction of the public's access to recreation lands and the resulting presence of environmental and health and safety risks. In May 1995, our audit "Recreation Management Activities at Selected Sites, Bureau of Reclamation" (Report No. 95-I-870) found that USBR had limited success in its attempts to eliminate or reduce residential exclusive use as it had yet to establish definitive guidelines for determining what constituted public need. We recommended that USBR develop guidelines that could be used when determining whether continued residential exclusive use was justified.

The objective of this follow-up to our May 1995 audit was to identify actions taken by USBR in response to our recommendation. We looked to identify whether those actions reduced the impact of residential exclusive use occurring on USBR land and whether USBR was providing sufficient oversight of residential exclusive use activities. We identified that 275 cabins and 42 mobile homes currently exist on USBR-managed recreation areas. (See Attachment 3 for a listing of this residential exclusive use.) USBR was unable to provide data on those recreation areas managed by its non-Federal partners as this information is not reported. In addition, USBR is both inconsistent in conducting compatibility determinations and unable to meet the regulatory controls established in Part 429 for those compatibility determinations. This

is due to a lack of guidance as to what constitutes compliant residential exclusive use authorizations.

This report contains four recommendations, which, if implemented, will serve to help USBR fully comply with those oversight responsibilities required by Part 429 and strike a balance between the private, exclusive use of public recreation lands and the public need and benefit for the use of these lands.

Please provide us with your written response to this report, number WR-FL-BOR-0007-2010, within 30 days. The response should provide information on actions taken or planned to address the recommendations, as well as target dates and titles of the officials responsible for implementation. Please address your response to:

Mr. Michael P. Colombo, Regional Manager
Western Region for Audits, Inspections, and Evaluations
U.S. Department of the Interior
Office of Inspector General
2800 Cottage Way, Ste. E-2712
Sacramento, CA 95825

If you have any questions regarding this memorandum or the subject report, please do not hesitate to contact me at 916-978-5653.

Attachments (4)

Background

The Bureau of Reclamation's (USBR) 308 recreation areas have an estimated annual visitation rate of 90 million visitors. Among the U.S. Department of the Interior's (Interior) other land management agencies, USBR is responsible for administering and interpreting the natural and recreational resources of its public land. While USBR does not have a fully mandated recreation authority, the Reclamation Recreation Management Act of 1992 (P.L. 102-575) charges USBR to ensure the protection, comfort, and well-being of the public. This includes public safety, with respect to the use of USBR lands, and the protection of resources.

Starting in 1995, Interior's Office of Inspector General (OIG) reviewed USBR's management of residential exclusive use activities and identified issues related to both the public's restricted access to recreation lands and the presence of environmental and health and safety risks.

The establishment of private exclusive-use cabins began around the 1950s with USBR approving or simply acquiescing to the issuance of permits by State and local managing agencies. While USBR's actions intended to control development, the permitting system was not well managed. By the mid-1960s private exclusive use dwellings on USBR lands had become controversial, and the Secretary of the Interior proposed phasing out such uses over the next 20 years. The regulations subsequently adopted in 1967 at 43 C.F.R. Part 21, "Occupancy of Cabin Sites on Public Conservation and Recreation Areas," were intended to facilitate this phase-out process.

As identified within our report, "Recreation Management Activities at Selected Sites, Bureau of Reclamation" (Report No. 95-I-870), Part 21 was not effective at phasing out exclusive use because the provisions for removal were conditioned on USBR first making a determination that there was a "public need" for use of sites dedicated to exclusive use. As no guidance was provided for determining public need, USBR's efforts to eliminate private use ultimately failed. Therefore, in 1995 we recommended that USBR develop definitive guidelines for determining what constituted public need and use these guidelines in reviewing exclusive use authorizations to determine whether continued private use was justified.

Response to OIG Recommendation and Current Extent of Residential Exclusive Use

In response to those recommendations made within our 1995 audit, USBR adopted stronger policy and directives (directives) beginning in 1998 that prohibit new private exclusive uses and clearly intend to eliminate existing private exclusive use after the expiration of current obligations. For example, within USBR's Land Use Authorizations (LND 08-01) directive, upon expiration of an authorization, private exclusive uses are to be eliminated unless a formal planning process identifies significant public need and benefit for the use, and the land is not needed for other public or project purposes. This directive identifies 13 questions to be considered within the formal public need planning process.

In 2008, USBR began implementing regulations codified at 43 C.F.R. Part 429, "Use of Bureau of Reclamation Land, Facilities, and Waterbodies," which authorize the continuance of

all authorized existing private recreational or residential exclusive uses so long as it is deemed "compatible with public needs and authorized project purposes." (43 C.F.R. § 429.32). Per Part 429, while no new private exclusive use will be authorized, USBR must review existing authorizations for this compatibility determination at least once every 20 years. USBR must also conduct compliance reviews specific to environmental requirements, public health and safety requirements, and financial obligations to USBR every 5 years or within 6 months of expiration of a use authorization. USBR may terminate private exclusive use authorizations that fail to successfully meet these reviews.

In June 2010, USBR provided a list of six USBR-managed recreation areas where residential exclusive use activity exists. These recreation areas have 42 mobile homes and 275 cabins and are located within two regions: the Great Plains and the Pacific Northwest. Attachment 3 contains a listing of residential exclusive use identified by USBR as occurring on recreation areas it directly manages. USBR was unable to provide data on those recreation areas managed by its non-Federal partners as this information is not reported. The decrease in reported residential exclusive use activity from the time of our 1995 audit is primarily due to the transfer of management of the Heart Butte Reservoir (Lake Tschida) from USBR to a non-Federal partner and the legislatively-mandated transfer by sale of USBR land located at the Canyon Ferry Reservoir to the private permit holders.

The sole example of significant removal of residential exclusive use activity by USBR occurred at the Mid Pacific Region's Lake Berryessa. In a June 2006 Federal record of decision resulting from an extensive public process, Lake Berryessa began removing all of its nearly 1,500 mobile homes from the recreation area. To remove the mobile homes, USBR used nearly $7 million in American Recovery and Reinvestment Act of 2009 (ARRA) funds to demolish and cleanup abandoned property. Remediation of hazardous materials resulting from these sites was initiated with additional removal and site clean-up efforts funded through ARRA. In some instances, monitoring, additional testing, and clean-up may be required for years to come.

Compatibility Determinations

While the continued existing authorized residential exclusive use depends on USBR's compatibility determination, USBR is not consistent or transparent in its completion of these determinations. Only half of the USBR officials interviewed indicated that they had conducted a formal compatibility determination for their recreation areas. The requirement for a formal compatibility determination was identified by USBR's Land Use Authorizations (LND 08-01) directive issued in January 2002. USBR's Land Resources Division (LRD), which develops policy and directives specific to USBR land and its uses, acknowledged that the degree of effort in completing the compatibility determinations was not consistent based on the scope of the project need. Thus, Part 429 requires that the public be involved through mechanisms such as public meetings to comment on resource management plan development, recreation demand analysis studies, and project feasibility studies.

Compliance Reviews

Part 429 establishes a requirement for compliance reviews specific to environmental, health and safety, and financial obligation for authorizations of exclusive use. Both the regulation and USBR directives, however, are silent on what constitutes compliant residential exclusive use authorizations. For example, USBR's Recreation Program Management (LND 01-03) directive issued in January 2009 simply refers back to Part 429, which is also silent on activities that are to be involved when describing how USBR offices will conduct compliance reviews According to USBR's LRD, the directives do not contain an established review and evaluation format so as to allow each office to tailor individual formats to the specific issues and concerns of the evaluation areas. To allow transparency and consistency nationwide within the determination process, however, there should be a standard set of activities for all offices to follow. USBR has offered other guidance that may be adapted such as its "Concessions Management Guidelines," which addresses the concessions review program. This guidance includes evaluation standards and recommended evaluation forms that, once adapted, may be used to assist field personnel in review and evaluation of residential exclusive use activity. Consistent guidance is also necessary as USBR does not have the expertise on staff in all offices to conduct inspections. Some offices have had to hire contractors or request assistance of local government entities.

Compliance reviews on financial obligations also need specific guidance. Simply identifying that an authorization holder is current in their lease payment is not sufficient in terms of USBR oversight. Factors such as the fee rate applied and the presence of authorization instruments are also critical in determining whether authorization holders are in fact current in their obligations to USBR. In some cases, when recreation areas are managed by a non-Federal partner, lack of USBR oversight may cause fee rates to not be current. For example, there were two specific instances in which USBR increased fee rates after management of the recreation area was returned from a non-Federal partner.[1] Rates were increased upon return because they were not based on current fair market value.[2] These non-Federal managing partners applying outdated fee rates in these two instances denied the public over $500,000 in compensation annually for the restricted use of their lands. In another example, an operator at one of Canyon Ferry Reservoir's concessions acknowledged that it functioned without formal agreements between the operator and the tenants of its 31 mobile homes. Thus, while the operator sends annual bylaws, fee charges, and bills for health and safety inspections to tenants, there is no documented consent by the tenants.

Other Matters

In May 2010, USBR brought its Recreation Use Data Report (RUDR) system online to track recreation data for all USBR managed Federal lands, including those lands managed by

[1] Management of Canyon Ferry Reservoir was returned to USBR in 1993; management of Conconully Lake and Reservoir was returned to USBR in 2002.

[2] Rates are to be based on fair market value as a means for private individuals to provide the public with compensation for the restricted use of federal lands. The federal government's use of fair market value in calculating the value of public lands is used as the courts early adopted, and have retained, the concept of market value as the measure of just compensation to fulfill the United States Constitution's Fifth Amendment requirement in the case of a Taking. Per Part 429, this value may be adjusted as deemed appropriate by USBR to reflect current conditions.

USBR's non-Federal partners and concessionaires. According to Reclamation, while the RUDR system is meant to provide a comprehensive look at recreation data, the system also is meant to provide Reclamation with an identified universe of private exclusive use activities. As this is the first year of system implementation, the LRD recognizes that they will need to update and adapt the system and forms as time progresses to accommodate any necessary changes.

While USBR does not intend RUDR to be a financial system, the system does identify the most commonly charged fees for entrance, use, visitor center, or use authorizations. USBR instructs its managing partners that they may choose to identify other fees not addressed by these previous categories. Thus, whether the fees specific to and paid by residential exclusive use sites are identified depends upon who completes the form and whether they choose to identify the fee. Given Part 429's compliance review focus on financial obligations, such information may be beneficial when looking at the universe of residential exclusive use activities occurring on USBR land.

Recommendations

To ensure that USBR is able to fully meet those management controls required by Part 429, we recommend that USBR:

1. Ensure that compatibility determinations are conducted and documented in a consistent and transparent manner, identifying the extent of public involvement and those actions taken by USBR in response to this input.

2. Clearly identify a minimum set of standard features to be inspected for those compliance reviews required by Part 429, as well as how findings should be documented so as to ensure deficiencies are appropriately addressed and corrected.

3. Monitor the RUDR system for significant variations in specific recreation features to identify whether a more frequent compatibility determination is required in compliance with provisions of the existing regulations. Such features may include annual visitation rates and inventory of recreation facilities, designated areas, and opportunities.

4. Complete a review on a cyclical basis, such as at least once every 3 years, of the RUDR form and system to identify where improvements are needed (e.g., identifying use authorization fees and their basis assessed for residential exclusive use sites).

Scope and Methodology

Scope

The follow-up focused on residential exclusive use activity existing on recreation areas directly managed by USBR. Although we initially attempted to identify all such activity occurring on USBR recreation areas, USBR was unable to provide data on those recreation areas managed by its non-Federal partners as this information is not historically reported. We believe that the work performed provides a reasonable basis for our conclusions and recommendations.

Methodology

We conducted our review from June 2010 through December 2010. We performed our follow-up in accordance with the President's Council on Integrity and Efficiency "Quality Standards for Inspections." Accordingly, we included such tests of records and other procedures that were considered necessary under the circumstances. To accomplish our objective, we conducted the following activities:

- Reviewed applicable legislation and regulation specific to USBR's roles and responsibilities relating to recreation and exclusive use activities, as well as USBR policy, standards, and directives. The Department of the Interior's Strategic Plan (2007-2012) and Financial Report (fiscal year 2009) were likewise reviewed for similar reasons.
- Determined the universe of residential exclusive use activity occurring on USBR-directly managed recreation areas. USBR was unable to provide data on those recreation areas managed by its non-Federal partners as this information is not historically reported.
- Interviewed USBR officials from the Land Resources Division, which develops policy and directives specific to USBR land and its uses, to identify applicable policy. Field officials and concessionaire operators from various recreation areas were also interviewed to determine how policy was implemented. (See Attachment 4 for offices visited or contacted.)
- Reviewed forms of public input such as the Federal Register and Records of Decision.
- Reviewed a sample of environmental and health and safety compliance inspections.

Residential Exclusive Use Identified by the Bureau of Reclamation

Residential Exclusive Use Identified by USBR: Comparison of 1995 to 2010						
Region	**Recreation Area**	**1995**		**2010**		**Authorization Instrument**
		Cabins	**Mobile Homes**	**Cabins**	**Mobile Homes**	
Pacific North-west	Conconully Lake	100	0	81	0	License
	Owyhee Reservoir	72	0	61	0	Lease
Great Plains	Fresno Reservoir	24	0	24	0	Permit
	Canyon Ferry	265	43	0	42	Concession
	Nelson Reservoir	108	0	106	0	Permit
	Seminoe Reservoir	0	0	3	0	Permit
Subtotal (as initially reported by USBR)				**275**	**42**	
Great Plains	Lake Tschida*	112	117	110	114	Permit
Mid Pacific	Lake Berryessa*	0	1496	0	0	Concession
Grand Total		**681**	**1656**	**385**	**156**	

*Not identified within USBR's initial 2010 reporting.

Offices Contacted or Visited

Office or Recreation Area	Office Location of Person Contacted
Conconully Lake and Reservoir, Pacific Northwest Region	Ephrata, Washington
Owyhee Reservoir, Pacific Northwest Region	Yuma, Arizona
Canyon Ferry Reservoir, Great Plains Region*	Helena, Montana
Lake Tschida, Great Plains Region	Bismark, North Dakota
Lake Berryessa, Mid Pacific*	Folsom, California
Land Resources Division	Denver, Colorado

* = Physical site visit.

Report Fraud, Waste, and Mismanagement

Fraud, waste, and mismanagement in Government concern everyone: Office of Inspector General staff, Departmental employees, and the general public. We actively solicit allegations of any inefficient and wasteful practices, fraud, and mismanagement related to Departmental or Insular Area programs and operations. You can report allegations to us in several ways.

By Internet: www.doioig.gov

By Phone: 24-Hour Toll Free: 800-424-5081
Washington Metro Area: 703-487-5435

By Fax: 703-487-5402

By Mail: U.S. Department of the Interior
Office of Inspector General
Mail Stop 4428 MIB
1849 C Street, NW.
Washington, DC 20240