



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

CECW-P

APR 08 2019

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Revised Implementation Guidance for Section 1138 of the Water Resources Development Act of 2018 (WRDA 2018), Surplus Water Contracts and Water Storage Agreements

1. The Assistant Secretary of the Army Civil Works approved on 22 March 2019 Section 1138 of WRDA 2018. The attached implementation guidance is posted for internal and external use on the Corps official WRDA website:
<http://www.usace.army.mil/Missions/Civil-Works/Project-Planning/Legislative-Links/>.
2. Please ensure wide dissemination of this guidance. Questions regarding this implementation guidance should be directed to the Headquarters POC, Steven Kopecky, Deputy Chief, Northwestern Division Regional Integration Team, at (202) 761-4527 or steven.kopecky@usace.army.mil.

A handwritten signature in blue ink, appearing to read "J. Dalton".

JAMES C. DALTON, P.E.
Director of Civil Works

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DEPARTMENT OF THE ARMY
ASSISTANT SECRETARY OF THE ARMY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108

22 MAR 2019

MEMORANDUM FOR THE COMMANDING GENERAL, U.S. ARMY CORPS OF ENGINEERS

SUBJECT: Implementation Guidance for Section 1138 of the Water Resources Development Act of 2018, Surplus Water Contracts and Water Storage Agreements

1. Section 1138 of the Water Resources Development Act of 2018 (WRDA 2018) amends Section 1046(c) of the Water Resources Reform and Development Act of 2014 (WRRDA 2014 (128 Stat. 1254) to prohibit the Secretary from assessing a water storage fee with respect to any water storage in the Upper Missouri Mainstem Reservoirs for 12 years from the date of enactment of WRRDA 2014 (June 10, 2014). Section 1138 also extends the limitation on charges for surplus water under Section 1046(c) of WRRDA 2014 for the same 12-year period. Section 1046(c) of WRRDA of 2014, as amended by Section 1138 of WRDA 2018 is enclosed.
2. The U.S. Army Corps of Engineers (Corps) is prohibited, for a period ending June 10, 2026, from charging a fee for surplus water or water storage under a contract entered into pursuant to Section 6 of Flood Control Act of 1944 (33 U.S.C. 708) or the Water Supply Act of 1958 (43 U.S.C. 390) if the contract is for surplus water or water supply storage in the Upper Missouri Mainstem Reservoirs. Any proposed contracts for surplus water or water storage in the Upper Missouri Mainstem Reservoirs shall be forwarded through the Northwestern Division to the Director of Civil Works (DCW). Within 30 days of receipt of the proposed agreement the DCW will transmit the proposed contract and any recommendations to the Assistant Secretary of the Army for Civil Works for review and action.
3. Except as provided above, the July 6, 2015 implementation guidance for Section 1046(c) remains in effect (enclosed).
4. This guidance shall be transmitted to the appropriate Corps Division and District Commanders and posted to the Corps' WRDA website within five business days of receipt (written or electronic) from this office. Guidance shall be transmitted and posted as is and without additional guidance attached.
5. Questions regarding this implementation guidance should be directed to Gib Owen, Office of the Assistant Secretary of the Army for Civil Works, at gib.a.owen.civ@mail.mil or 703-695-4641.

Enclosures

R.D. James
Assistant Secretary of the Army
(Civil Works)

cc: MG Scott Spellmon, Deputy Commanding General, Civil and Emergency Operations
James Dalton, Director of Civil Works

SECTION 1046(C) OF THE WATER RESOURCES REFORM AND DEVELOPMENT ACT OF 2014 (128 STAT. 1254), AS AMENDED

SURPLUS WATER STORAGE

(1) **IN GENERAL.** The Secretary shall not

(A) charge a fee for surplus water under a contract entered into pursuant to section 6 of the Act of December 22, 1944 (commonly known as the "Flood Control Act of 1944") (33 U.S.C. 708) if the contract is for surplus water stored in the Upper Missouri Mainstem Reservoirs; or

(B) assess a water storage fee with respect to any water storage in the Upper Missouri Mainstem Reservoirs.

(2) **OFFSET.**

(A) **IN GENERAL.** Subject to subparagraph (B), of any amounts made available to the Secretary to carry out activities under the heading "OPERATION AND MAINTENANCE" under the heading "CORPS OF ENGINEERS-CIVIL" that remain unobligated as of the date of enactment of this Act, \$5,000,000 is rescinded.

(B) **RESTRICTION.** No amounts that have been designated by Congress as being for emergency requirements pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(A)(i)) shall be rescinded under subparagraph (A).

(3) **LIMITATION.** The limitation provided under paragraph (1) shall expire on the date that is 12 years after the date of enactment of this Act.

(4) **APPLICABILITY.** Nothing in this subsection

(A) affects the authority of the Secretary under section 2695 of title 10, United States Code, to accept funds or to cover the administrative expenses relating to certain real property transactions; or

(B) affects the application of section 6 of the Act of December 22, 1944 (commonly known as the "Flood Control Act of 1944") (33 U.S.C. 708) to surplus water stored outside of the Upper Missouri Mainstem Reservoirs.