



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

CECW-P

APR 25 2019

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Revised Implementation Guidance for Section 1122 of the Water Resources Development Act (WRDA) of 2018, Limitation on Contract Execution

1. The Assistant Secretary of the Army, Civil Works approved on 18 April 2019 Section 1122 of WRDA 2018. The attached implementation guidance is posted for internal and external use on the U.S. Army Corps of Engineers 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, Ada Benavides, Senior Policy Advisor, Planning and Policy Division, at (202) 761-0415 or [ada.benavides@usace.army.mil](mailto:ada.benavides@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  
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WASHINGTON DC 20310-0108

APR 18 2019

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

SUBJECT: Implementation Guidance for Section 1122 of the Water Resources Development Act of 2018, Limitation on Contract Execution

1. Section 1122 of the Water Resources Development Act of 2018 (WRDA 2018) directs that for any new water supply contract entered into by a local governmental entity at a U.S. Army Corps of Engineers (Corps) non-hydropower reservoir in the Verdigris River Basin, Oklahoma and Kansas during the period beginning on the date of enactment of WRDA 2018 (October 23, 2018) and ending on December 31, 2020, if that local governmental entity was a party to a covered contract entered into before such period it shall be required to pay not more than 110 percent of the contractual rate per acre-foot in effect under the most recent such covered contract. A covered contract is defined in Section 1122(b) as a contract between a local governmental entity and the Secretary of the Army for water supply storage in a non-hydropower lake within the Verdigris River Basin. Section 1122 is enclosed.
2. The definition of covered contract restricts the geographic limit of the effect of Section 1122 to the Verdigris River Basin, Oklahoma (OK) and Kansas (KS). Corps-managed, non-hydropower lakes within the Verdigris River Basin to which Section 1122 applies are: Birch Lake, OK; Copan Lake, OK; Elk City Lake, KS; Fall River Lake, KS; Hulah Lake, OK and KS; Oologah Lake, OK; Pearson-Skubitz Big Hill Lake, KS; Skiatook Lake, OK; and Toronto Lake, KS.
3. Upon receipt of a request from a local governmental entity for water supply storage at one of the lakes listed above, the Tulsa District Commander shall identify the most recent contract entered into by that local governmental entity for water supply storage in any of the non-hydropower lakes listed in paragraph (2) above prior to October 23, 2018, and determine the contractual price per acre-foot for water supply storage in effect in that contract. A rate not to exceed 110 percent of that price shall then be used to determine the cost of storage for all new covered contracts entered into by that local governmental entity pursuant to Section 1122. The District Commander will consider impacts to the authorized flood control project, to include considering current and projected sedimentation estimates and other authorized uses of said reservoir, when evaluating any request for a water storage contract. The District Commander will

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document his or her analysis and provide it as part of the packet of information provided to Headquarters as discussed in Paragraphs 6 and 7.

4. Only a local governmental entity that is a party to an existing covered contract entered into before October 23, 2018 is eligible for this price cap for new covered contracts pursuant to Section 1122. Model agreement provisions and normal Corps procedures shall be used in processing such contracts, including the model agreement terms for payment of operations and maintenance expenses and repair, rehabilitation and replacement costs, except for the pricing of the water supply storage in accordance with Section 1122.

5. In order to qualify for this pricing cap, the covered contract must be signed by both the local entity and the Corps on or prior to December 31, 2020.

6. As of the date of this implementation guidance, only the City of Bartlesville, OK, has requested a contract pursuant to Section 1122, for water supply storage at Copan Lake. The Tulsa District has determined that the most recent prior contract of the City of Bartlesville in the Verdigris River Basin was entered into in 1982 for water supply storage at Hulah Lake, for a price of \$67.38 per acre-foot of storage. Applying the not to exceed 110 percent factor, authorized under Section 1122, yields a rate of \$74.12 per acre-foot of storage to be utilized for the contract with the City for storage at Copan Lake which is less than the rate that would otherwise be applicable under the Water Supply Act of 1958, as amended (43 U.S.C. 390b). The Tulsa District Commander will prepare the new draft agreement within 30 days of completing the analysis of the impacts to the authorized flood control project, said analysis to include considering current and projected sedimentation estimates and other authorized uses of said reservoir, using the current model water supply storage agreement for originally authorized storage, and route it through the Major Subordinate Command (MSC) Commander to the Director of Civil Works (DCW). The DCW shall transmit the draft agreement, the District Commanders analysis of impacts to the authorized flood control project, and any recommendations to the Assistant Secretary of the Army for Civil Works (ASA(CW)) for review and action within 30 days of receipt of the District Commanders transmittal.

7. Should any local governmental entity within the Verdigris River Basin request a water supply storage contract at a non-hydropower Corps reservoir, the Tulsa District Commander shall inform the governmental entity of the pricing cap and the contract execution deadline of December 31, 2020. The District Commander shall provide the local government entity with the District's best estimate of the time required for completing contract preparation, approval and execution, including draft contract reviews by the MSC Commander, Headquarters, and review and action by the ASA(CW). Any proposed contracts shall be forwarded within 30 days of completing the

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analysis of impacts to the authorized flood control project, through the MSC Commander to the DCW. The DCW will transmit the draft agreement, the District Commanders analysis of impacts to the authorized flood control project, and any recommendations to the ASA(CW) for review and action within 30 days of receipt of the District Commanders transmittal.

8. 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.

9. 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](mailto:gib.a.owen.civ@mail.mil) or 703-695-4641.

Enclosure

  
R.D. JAMES  
Assistant Secretary of Army  
(Civil Works)

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

**Water Resources Development Act of 2018, Section 1122 - Limitation on Contract Execution.**

(a) Limitation. For any new covered contract entered into during the period beginning on the date of enactment of this Act and ending on December 31, 2020, any local governmental entity that is a party to a covered contract entered into before such period shall be required to pay not more than 110 percent of the contractual rate per acre-foot in effect under the most recent such covered contract.

(b) Covered Contract. In this section, the term "covered contract" means a contract between a local governmental entity and the Secretary for water supply storage in a non-hydropower lake within the Verdigris River Basin.