



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

CECW-P

MAY 07 2019

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Revised Implementation Guidance for Section 1121 of the Water Resources Development Act (WRDA) of 2018, Upper Missouri River Mainstem Reservoir Water Withdrawal Intake Easement Review

1. The Assistant Secretary of the Army, Civil Works approved on 3 May 2019 Section 1121 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, Steven Kopecky, Deputy Chief, Northwestern 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
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WASHINGTON DC 20310-0108

MAY -3 2019

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

SUBJECT: Implementation Guidance for Section 1121 of the Water Resources Development Act of 2018, Upper Missouri River Mainstem Reservoir Water Withdrawal Intake Easement Review

1. Section 1121 of the Water Resources Development Act of 2018 (WRDA 2018) requires the Secretary for a 10 year period beginning on the date of enactment of WRDA 2018 to expedite, to the maximum extent practicable, the review of applications for a covered easement and to develop an application document that non-Federal interests can use to apply for a covered easement. Section 1121 provides that the applicant for a covered easement, as part of the application document the following:

- (1) all permissible locations for the proposed easement;
- (2) the corresponding dimensions of the proposed easement;
- (3) the methods of installation of the water withdrawal intakes; and
- (4) any other information that the Secretary may require to complete the review.

Section 1121 also states that the Secretary, after receiving an application from a non-Federal interest, shall seek to provide written notification to the applicant within 30 days that the application is complete, or identify what additional information is required. Section 1121 requires the Secretary, to the maximum extent practicable, to approve or deny a complete application within 120 days of receipt. Section 1121 is enclosed.

2. Section 1121 defines a "covered easement" as an easement necessary to gain access to Federal land under the control of the Secretary for the placement of water withdrawal intakes in the Upper Missouri Mainstem Reservoirs that does not otherwise involve the alteration or modification of any structures or facilities located on that Federal land, other than those owned by the non-Federal interest.

3. The Deputy Assistant Secretary of the Army for Civil Works, Management and Budget (DASA M&B), working in cooperation with Corps Headquarters, shall obtain all clearances and approvals required from the Office of Management and Budget and the Department of Defense to use Standard Form 299 Application for Transportation and Utility Systems and Facilities on Federal Lands, for entities seeking easements and rights-of-way over federal lands under the U.S. Army Corps of Engineers (Corps) jurisdiction to construct transportation and utility systems and facilities, including, but not limited to, non-Federal interests seeking covered easements. In coordination with the DASA M&B, the Director of Real Estate at Corps Headquarters shall initiate the necessary actions to develop the application document for covered easements within 30

SUBJECT: Implementation Guidance for Section 1121 of the Water Resources Development Act of 2018, Missouri River Mainstem Reservoir Water Withdrawal Intake Easement Review

days of the issuance of this implementation guidance. For purposes of complying with the procedures in DoD 7750.07-M, this implementation guidance may serve as the prescribing document or issuance of proposed use of Standard Form 299.

4. Pending clearance, approval, and publication of the revised Standard Form 299, any person, non-Federal interest, or other entity who requests an easement in connection with the placement of water withdrawal intakes in the Upper Missouri Mainstem Reservoirs and who submits the following information to the Omaha District Commander, shall be deemed to have submitted an application to obtain a covered easement:

- a. Name, address, email address, and phone number of applicant and authorized agent, if any.
- b. Description of the intake structure or facility.
- c. Identification of the purpose, need, and objective for the intake structure or facility.
- d. Justification for placing the structure or facility on government property.
- e. The duration for which the proposed outgrant is requested.
- f. A general description of the location and dimensions of the requested outgrant area to include a preliminary site plan with plan view drawing and map with at minimum 1:12,000 scale showing the section(s), township(s), and range(s) within which the intake structure or facility will be located. Additional detail may be requested by the Corps District, when needed.
- g. A description of basic construction methods and timeline.
- h. All permissible locations for the proposed easement.
- i. Corresponding dimensions of the proposed easement.
- j. Methods of installation of the water withdrawal intakes.

5. Upon receipt of an application for a covered easement, the District Office of Real Estate shall conform to the following review timeframes:

- a. Within 30 days of the receipt of an application, the responsible District Real Estate Contracting Officer shall determine whether the application is complete, or if not complete, what additional information is necessary, and shall notify the applicant of that determination in writing within five business days, copy furnished to the District Commander. The notification to the applicant should indicate whether

the request is one that could potentially be authorized pursuant to a surplus water determination and agreement under Section 6 of the Flood Control Act of 1944, 33 U.S.C. § 708 or a Water Supply Storage Agreement under the Water Supply Act of 1958, 43 U.S.C. §390b, and if such determination or Water Supply Agreement is not currently in place. The approval authority for all Water Supply Agreements is the Assistant Secretary of the Army for Civil Works (ASA(CW)).

b. To the maximum extent practicable, the responsible District Real Estate Contracting Officer shall approve or deny a completed application for a covered easement within 60 days of receipt, provided that any requisite surplus water determination and Water Supply Storage Agreement is already in place for water withdrawals for domestic, industrial, or municipal use. Any approval shall indicate the depth of the intake structure, which should be at the maximum depth possible, and shall consider potential drought conditions.

c. For applications that are expected to require more than 60 days for processing, including any requests requiring a separate determination of surplus water, a surplus water agreement, or a separate Water Supply Storage Agreement, the responsible District Real Estate Contracting Officer shall notify the applicant and provide an estimate of the time required for a decision on the covered easement application, copy furnished to the District Commander.

6. For withdrawals of surplus water that the Department of the Army has authorized pursuant to Section 6 of the Flood Control Act of 1944, 33 U.S.C. § 708, which includes the surplus water determination and approval of the Surplus Water Agreement, the responsible District Real Estate Contracting Officer may issue a covered easement to provide access to the Corps' Upper Missouri River Mainstem Reservoir to make the withdrawals, copy furnished to the District Commander. Such easements shall be limited to the duration of the applicable surplus water determination and agreement. If a covered easement application has been submitted, in connection with surplus water withdrawals from the Upper Missouri Mainstem Reservoirs that have the requisite surplus water determinations and agreements executed, the District Commander, to the maximum extent practicable and consistent with applicable law, regulations, and guidance, shall make a decision within 60 days.

7. For withdrawals of water from storage pursuant to a water supply storage agreement under the Water Supply Act of 1958, 43 U.S.C. § 390b, an easement shall be issued only in conjunction with an executed water supply storage agreement.

8. To the extent applicable, the review process for applications for covered easements shall comply with the policy and procedural guidance contained in Army Regulation 405-80, Corps Engineering Circular 1165-2-220, dated 10 September 2018, and all other laws, regulations, and guidance that are in effect at the time the application is submitted to the District Commander, including but not limited to compliance with the National Environmental Policy Act of 15 1969 (42 U.S.C. 4321 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

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9. 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.

10. 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.



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

Enclosure

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

Water Resources Development Act of 2018, Section 1121 - Upper Missouri Mainstem Reservoir Water- Withdrawal Intake Easement Review

- (a) **IN GENERAL.** During the 10-year period beginning on the date of enactment of this Act, the Secretary shall, to the maximum extent practicable, expedite the review of applications for a covered easement.
- (b) **PROCESS.** In carrying out this section, the Secretary shall develop an application to obtain a covered easement that requires an applicant for a covered easement to submit information that includes
- (1) all permissible locations for the proposed easement;
 - (2) the corresponding dimensions of the proposed easement;
 - (3) the methods of installation of the water withdrawal intakes; and
 - (4) any other information that the Secretary may require to complete the review.
- (c) **RESPONSE.** Not later than 30 days after the date on which the Secretary receives an application under subsection (b), the Secretary shall seek to provide to the applicant a written notification that states
- (1) whether the application is complete; and
 - (2) if the application is not complete, what information is needed for the application to be complete.
- (d) **DETERMINATION.** To the maximum extent practicable, not later than 120 days after the date on which the Secretary receives a complete application for a covered easement, the Secretary shall approve or deny the application for the covered easement.
- (e) **COVERED EASEMENT DEFINED.** In this section, the term "covered easement" means an easement necessary to access Federal land under the control of the Secretary for the placement of water withdrawal intakes in the Upper Missouri Mainstem Reservoirs that does not otherwise involve the alteration or modification of any structures or facilities located on that Federal land, other than those owned by the non-Federal interest.
- (f) **LIMITATIONS.** Nothing in this section affects any obligation to comply with the provisions of any Federal law, including
- (1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
 - (2) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).