

WRRDA 7001 Submissions Package
U.S. Army Corps of Engineers

Proposal Name: Rend Lake Contract Modification

Submission Date: 09/15/2016

Proposal ID Number: 2f75131d-a7ef-4f2a-8ec5-d71e7a400580

Purpose of Proposal: The United States of America and The State of Illinois (State) entered into Contract D.A.-23-065-CIVENG-65-493 in April 1965 for the construction of Rend Lake Dam and Reservoir. This contract was superseded by contract DACW43-88-C-088. At the time of executing the contract, 17.5 MGD was allocated and 52.5 MGD was unallocated. Currently, the State of Illinois has allocated an additional 6.5 MGD resulting in 24 MGD total allocated. The State of Illinois pays the annual Operation & Maintenance and Major Rehabilitation Costs for the remaining unallocated portion. The Water Resource Development Act (WRDA) 1992 required the Secretary of the Army to conduct a study whether to relieve the State of Illinois of annual payments for unused water supply in Rend Lake. This report was submitted to Congress on July 26, 2010. The report inaccurately reported the State of Illinois had all available water under contract; the report stated "... water is no longer available for reallocation or others uses. Therefore the State of Illinois should resume payments per the existing water supply contract". A meeting between the State and COE St. Louis District in June 2010 allowed the State to clearly object to this language but the COE chose not to make the requested corrections and submitted the inaccurate report to Congress. The allocated amount at Rend Lake has remained steady at 24 MGD for quite a few years. We are not aware of any interest by current or potential new users to utilize this water supply source. The State of Illinois is requesting that contractual payment for Rend Lake under contract DACW43-88-C-088 be reduced to the current Present Use Storage in lieu of total allocation. The Present Use Storage could be determined based on historic water use and reservoir levels. Alternatively, the State would consider accepting the current allocations as the current present use. This would relieve the State of payments derived from all unused or Future Use Storage costs for the Rend Lake

1. Administrative Details

Proposal Name: Rend Lake Contract Modification

by Agency: Illinois Department of Natural Resources

Locations: IL

Date Submitted: 09/15/2016

Confirmation Number: 2f75131d-a7ef-4f2a-8ec5-d71e7a400580

Supporting Documents

File Name	Date Uploaded
October 2010 Corps Report.pdf	09/15/2016
USACE IDNR Meeting Minutes.pdf	09/15/2016
Rend Lake Director Support Letter from Director 9-7-2016.pdf	09/15/2016

2. Provide the name of the primary sponsor and all non-Federal interests that have contributed or are expected to contribute toward the non-Federal share of the proposed feasibility study or modification.

Sponsor	Letter of Support
The State of Illinois(Primary)	The State of Illinois is the sponsor of the Water Storage Space in Rend lake Reservoir per the Contract No: DACW43-88-C0088 which superseded Contract No: DA-23-065-CIVENG-65-493. The State of Illinois has made of \$18,600,000 in payments to the U.S Army Corps of Engineers per these contracts.

3. State if this proposal is for a feasibility study, a modification to an authorized USACE feasibility study or a modification to an authorized USACE project. If it is a proposal for a modification, provide the authorized water resources development feasibility study or project name.

Modification to an Authorized USACE Project : Water Storage Space in Rend Lake Reservoir

4. Clearly articulate the specific project purpose(s) of the proposed study or modification. Demonstrate that the proposal is related to USACE mission and authorities and specifically address why additional or new authorization is needed.

The United States of America and The State of Illinois (State) entered into Contract D.A.-23-065-CIVENG-65-493 in April 1965 for the construction of Rend Lake Dam and Reservoir. This contract was superseded by contract DACW43-88-C-088. At the time of executing the contract, 17.5 MGD was allocated and 52.5 MGD was unallocated. Currently, the State of Illinois has allocated an additional 6.5 MGD resulting in 24 MGD total allocated. The State of Illinois pays the annual Operation & Maintenance and Major Rehabilitation Costs for the remaining unallocated portion. The Water Resource Development Act (WRDA) 1992 required the Secretary of the Army to conduct a study whether to relieve the State of Illinois of annual payments for unused water supply in Rend Lake. This report was submitted to Congress on July 26, 2010. The report inaccurately reported the State of Illinois had all available water under contract; the report stated "... water is no longer available for reallocation or others uses. Therefore the State of Illinois should resume payments per the existing water supply contract". A meeting between the State and COE St. Louis District in June 2010 allowed the State to clearly object to this language but the COE chose not to make the requested corrections and submitted the inaccurate report to Congress. The allocated amount at Rend Lake has remained steady at 24 MGD for quite a few years. We are not aware of any interest by current or potential new users to utilize this water supply source. The State of Illinois is requesting that contractual payment for Rend Lake under contract DACW43-88-C-088 be reduced to the current Present Use Storage in lieu of total allocation. The Present Use Storage could be determined based on historic water use and reservoir levels. Alternatively, the State would consider accepting the current allocations as the current present use. This would relieve the State of payments derived from all unused or Future Use Storage costs for the Rend Lake

5. To the extent practicable, provide an estimate of the total cost, and the Federal and non-Federal share of those costs, of the proposed study and, separately, an estimate of the cost of construction or modification.

	Federal	Non-Federal	Total
Study	\$0	\$0	\$0
Construction	\$0	\$0	\$0

Explanation (if necessary)

The State of Illinois does not require any construction or modification of a COE project. Our request is simply to be relieved of the obligation to pay for future water use storage costs at Rend Lake, which is very unlikely to ever be needed.

6. To the extent practicable, describe the anticipated monetary and nonmonetary benefits of the proposal including benefits to the protection of human life and property; improvement to transportation; the national economy; the environment; or the national security interests of the United States.

The proposal is a modification to the payment structure to the State of Illinois for an Authorized USACE project. As a result there is no changes to the existing benefits of the proposed project.

7. Does local support exist? If 'Yes', describe the local support for the proposal.

Yes

Local Support Description

Local support is neutral on this issue since it does not impact the cost of water used by the end users.

8. Does the primary sponsor named in (2.) above have the financial ability to provide for the required cost share?

Yes

Additional Proposal Information

(This is as uploaded, a blank page will show if nothing was submitted)

October 2010 Corps Report.pdf



REPLY TO
ATTENTION OF:

Operations, Readiness and
Regulatory Division

DEPARTMENT OF THE ARMY
ST. LOUIS DISTRICT CORPS OF ENGINEERS
1222 SPRUCE STREET
ST. LOUIS, MISSOURI 63103-2833

RECEIVED
OFFICE OF WATER RESOURCES
SPRINGFIELD ILLINOIS

OCT 07 2010

AS _____ DIR _____
PCRD _____ PL _____
PLNG _____ 27 SEP 2010

Mr. Marc Miller, Director
Illinois Department of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

Dear Mr. Miller:

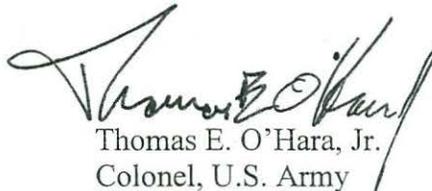
My staff met with your Director of Office of Water Resources, Mr. Gary Clark, on June 28, 2010, to discuss the Report to Congress that was prepared in response to a specific requirement in WRDA 1992, Section 310. That Report was subsequently submitted to Congress on July 26, 2010.

Enclosed please find a copy of the Report as it was submitted to Congress. As required by WRDA 1992, Section 310, the state of Illinois will be expected to renew payments per the signed water supply contract for Rend Lake within six months of the date the Report was submitted to Congress.

The state of Illinois will receive its first bill in October 2011 for the period of February 1 through September 30, 2011. The estimated bill will range between \$310,000 and \$500,000. This billing amount is based on an eight-month prorated period and will vary according to the actual joint use operation and maintenance costs in accordance with the water supply contract at Rend Lake.

Should you have any questions, please contact my Executive Assistant, Ms. Beth Pitrolo at 314-331-8016, or me.

Sincerely,


Thomas E. O'Hara, Jr.
Colonel, U.S. Army
District Commander

Enclosure

A STUDY ON THE STATE OF ILLINOIS
WATER SUPPLY STORAGE CONTRACTS
AT REND LAKE, ILLINOIS

St. Louis District, Corps of Engineers
18 May 2009
Revised: 30 Oct 2009

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1. Executive Summary.

This report is transmitted to inform the ASA(CW) of the Rend Lake Water Supply Contract that the U. S. Army Corps of Engineers has with the State of Illinois. We recommend this report be transmitted to Congress informing them that all water supply storage in Rend Lake is exhausted. Additionally the State of Illinois will be notified to resume payments, estimated at approximately \$500,000, for water with-in 6 months of Congressional notification in accordance with Section 310 of WRDA 1992.

Background:

The State of Illinois signed the first contract for water supply storage for Rend Lake in 1965. In 1976, the State of Illinois requested that the Corps modify the contract to allow them to pay for water storage on a prorated basis. The ASA (CW) subsequently denied the request since water had already being withdrawn from the lake. In 1986, the Water Resources Development Act (WRDA) 1986 (Public Law 99-662) gave the State of Illinois 5 years (1986-91) of prorated payments (27,250 acre feet in use out of 109,000 available). Therefore, the Water Supply Storage Contract was revised to reflect the WRDA 86 legislation. The WRDA 1992 (Public Law 102-580) directed the Secretary of the Army to conduct a study to determine whether to relieve the State of Illinois from the requirement to make annual payments for **unused** water supply in Rend Lake. Payments are suspended until report is submitted to Congress.

The water supply storage that the State of Illinois has under contract will yield approximately 70.0 million gallons per day. When WRDA 1992 was passed, the State of Illinois had 17.5 million gallons per day under contract with a second party. Currently, the State of Illinois has all available water supply storage under contracts and contractual options commitments for water withdrawal and consequently, the water is no longer available for reallocation or other uses. Therefore, the State of Illinois should resume payments per the existing water supply contract.

2. Authority.

Section 310, Public Law 102-580, the Water Resources Development Act of 1992 (WRDA 92) directed the Secretary of the Army to conduct a study to determine whether to relieve the State of Illinois from the requirement to make annual payments for unused water supply in Rend Lake. Section 310 reads as follows:

“SEC 310. REND LAKE, ILLINOIS

(a) STUDY.- - The Secretary shall conduct a study on whether or not to relieve the State of Illinois of the requirement to make annual payments for unused water supply storage in Rend Lake on the Big Muddy River in Illinois.

(b) REPORT.- - The Secretary shall transmit to Congress a report on the results of the study conducted under subsection (a), together with recommendations for any conditions which the Secretary considers to be appropriate if the State of Illinois is to be relieved of the requirement to make the annual payments referred to in

subsection (a).

(c) INTERIM PAYMENTS.- - Until 6 months after the date on which the Secretary transmits to Congress the report under subsection (b), the State of Illinois shall not be required to make any payments under its contract with the United States for use of storage space for water supply in Rend Lake on the Big Muddy River in Illinois.”

3. Definitions.

- a. **Unused Water Supply Storage** - Refers to that water supply storage that is available for other uses because it is either not being withdrawn and/or not under an existing or pending contract with a third party.
- b. **Used Water Supply Storage** - Refers to that water supply storage that is unavailable for other uses because it is either being withdrawn and/or under an existing or pending contract with a third party.
- c. **Future Use** - Language used in water supply contracts to represent that portion of water supply storage that is not or has not been withdrawn.
- d. **Present Use** - Language used in water supply contracts to represent that portion of water supply storage that is or has been withdrawn.

4. Background Information.

a. Rend Lake on the Big Muddy River, Illinois, was authorized by the Flood Control Act of 23 October 1962, Public Law 87-874, 87th Congress, HR No. 13273, in accordance with the Chief of Engineer's recommendation, contained in House Document No. 541, 87th Congress, Second Session. The authorizing Act was then amended by public Law 88-122, 88th Congress, HR No. 4823, approved 9 September 1963. The legislation reads, "Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That the flood control project for Rend Lake, Illinois, authorized in section 203 of the Flood Control Act of 1962, is hereby modified to authorize the Secretary of the Army to credit local interests against their required payment for water supply for any work done by such interests on such project, if he approves such work as being in accordance with the project as authorized." The authorized purposes of the project include flood control on the Big Muddy and Mississippi Rivers, water supply, water quality control, fish and wildlife conservation, recreation, and area redevelopment. Construction was started in June 1965, and the project was placed into operation in May 1972. The project consists of one main earth filled dam with an ungated main and auxiliary spillway and two sub-impoundment dams that impound an approximately 18,900 acre lake. The Corps has completed construction of six major recreation areas.

b. Section 301 of the Water Supply Act of 1958, as amended (43 U.S.C. 390b), established a policy of cooperation in the development of water supplies for domestic, municipal, industrial, and other purposes. This Act provided the legal authority for the U.S. Army Corps of Engineers to include municipal and industrial water storage space in a multi-purpose reservoir project. In return for this, a local sponsor must execute written assurances that it will pay:

(1) A portion of the project cost which represents the allocated costs of the water supply storage, including interest during construction and interest on the unpaid balance.

(2) A portion of the annual operation and maintenance costs of the project.

(3) Major replacement or rehabilitation costs allocated to water supply.

c. A contract for water storage space is then executed between the Government and the local sponsor. While each contract is drafted to reflect the facts of the particular situation, in general terms, a certain amount of water storage space in a project is made available for the use of a sponsor (for the life of the project) in return for the agreement of the sponsor to make the payments listed above. Billings for the State's share of the annual experienced joint-use operation and maintenance expense will be made within 30 days after the beginning of the Federal fiscal year and shall be considered due within 60 days after initial billings. All payments are remitted to the U.S. Treasury and are not used to supplement the individual project's O&M funding.

d. The storage space for water supply in a project may be divided into present use space and future use space. The present use space is that which is currently needed; future use space is that which is set aside for future needs (within 50 years of the execution of the water supply contract). However, once a segment of water storage space moves from future use space to present use space, it remains as present use regardless of whether or not the sponsor continues to utilize all (or a portion) of that space.

e. Thus, the transfer of (for example) 5,000 acre feet of water storage space from future into present use in order to accommodate a short-term need results in a transfer of that space from future to present usage for the life of the contract. This point is important in that it affects the manner in which payments are made under the contract as stated below.

f. Within the portion of the St. Louis District lying in the State of Illinois, there are in existence contracts for water storage space at Carlyle Lake, Lake Shelbyville, and Rend Lake. In total, there is 166,714 acre feet of water storage space available at these three projects; 109,000 acre feet are presently under contract at Rend, 480 acre feet at Lake Shelbyville and 500 acre feet at Carlyle. The remainder of the storage space is reserved for future use.

(1) Carlyle Lake. The United States and the State of Illinois executed a contract, No. DA-23-065-CIVENG-58-208, for water supply storage space. This contract, executed on 1 April 1958 and modified on 13 December 1971, provided the state with approximately 33,000 acre feet of water storage space, lying between elevations 429.5 feet and 445 feet, N.G.V.D. In return for this storage space, the state was obligated to pay a portion of the cost of construction of the project (\$3,635,000 or 7.85 percent of project cost), which it has done; a portion of the annual operation and maintenance costs of the project; and major replacement and rehabilitation costs. A new contract, No. DACW43-88-C-0008, was signed for storage space at Carlyle on 25 March 1986 for the reasons stated below at (g.). All 32,500 acre feet of future use are currently under contract by various municipalities and industries.

(2) Lake Shelbyville. Lake Shelbyville, authorized by the Flood Control Act of 3 July 1958, 85th Congress, First Session, was also designated and constructed with water supply as an authorized project purpose. The United States and the State of Illinois executed a contract, No. DA-23-065-

CIVENG-62-517, for water supply storage space. This contract, executed on 5 April 1962, provided the state with 24,714 acre feet of water between elevations 573.0 and 599.7 feet, N.G.V.D. The state was obligated to pay a portion of the cost of construction of the project (\$4,310,000 or 7.06 percent of project costs), which it has done; a portion of the annual operation and maintenance costs of the project; and major replacement and rehabilitation costs. A new contract, No. DACW43-88-C-0009, was signed for storage space at Shelbyville on 25 March 1986 for the reasons stated below at (g.). Of the 24,714 acre feet available for water supply, only 480 acre feet are in present use.

(3) Rend Lake. Rend Lake, authorized by the Flood Control Act of 23 October 1962, 87th Congress, Second Session, was also designated and constructed with water supply as an authorized project purpose. The United States and the State of Illinois executed a contract, No. DA-23-065-CIVENG-65-493, for water supply storage space. This contract, executed in 1965, provided the state with 109,000 acre feet of water storage space, lying between elevations 391.3 and 405.0 feet N.G.V.D. In return for this storage space, the state was obligated to pay a portion of the cost of construction of the project (\$9,941,000 or 22.24 percent of projected costs), which it has done; a portion of the annual operation and maintenance costs of the project; and major replacement and rehabilitation costs. The O&M activities at Rend Lake that is included in their annual payment calculation include water control and monitoring, dam and other structure maintenance, security, sedimentation studies, and lake administration. A new contract was signed on 21 November 1988 for the reasons stated below at (g.). Of the 109,000 acre feet, 27,250 acre feet were in present use at the time.

g. Modifications to Illinois Water Supply Contracts. All three contracts for water supply in Illinois have been renegotiated and re-signed. Under the old contracts, the state was obligated to pay on an annual basis a portion of the annual operation and maintenance costs of each project as one of the obligations under the contract. The portion of the O&M annual cost represented the estimated portion of the lake's storage allocable to water supply. The percentages were Carlyle, 8.62 percent; Shelbyville, 7.74 percent; and Rend, 39.01 percent.

h. The formula used for calculation of the state's O&M payment each year was thus:

<u>Carlyle</u>	8.62% x Annual O&M Costs
<u>Shelbyville</u>	7.74% x Annual O&M Costs
<u>Rend</u>	39.01% x Annual O&M Costs

i. In 1976, the State of Illinois, acting through the Illinois Department of Transportation, requested that these contracts be modified. Specifically, the request was that they be modified to allow for deferment of payments for water supply until first use of water for water supply purposes and that, thereafter, the state pay a pro rata share of allocations to water supply as increments of water are used. In a 26 August 1977 memorandum, the Assistant Secretary of the Army (Civil Works) issued an opinion authorizing the Corps to negotiate modifications to the contracts. Accordingly, the District negotiated proposed new contracts with the State of Illinois for the Carlyle Lake and Lake Shelbyville Projects and forwarded these through Corps channels to the Office of the Assistant Secretary of the Army (Civil Works) for review and approval. The contracts were the subject of an extensive review at that level and on 25 March 1986, the Assistant Secretary of the Army (Civil Works) executed the new contracts.

j. The formula for the state's annual O&M payments to the Government under the new contracts is thus:

$$\begin{array}{l} \text{Carlyle} \quad 8.62\% \times \text{Annual O\&M Costs} \times \frac{190 \text{ acre feet in present use}}{33,000 \text{ acre feet}} \\ \text{Shelbyville} \quad 7.74\% \times \text{Annual O\&M Costs} \times \frac{631 \text{ acre feet in present use}}{24,714 \text{ acre feet}} \end{array}$$

k. The request to similarly modify the 1965 Rend Lake contract was denied by the Assistant Secretary of the Army (Civil Works), since water use had already been initiated at that project at that time. However, special legislation at the Federal level was enacted in 1986 to provide the State of Illinois with some relief from O&M payments.

l. On 17 November 1986, Public Law 99-662 was enacted and Section 1137 reads as follows:

“SEC. 1137, REND LAKE.

The Secretary shall amend the contract between the State of Illinois and the United States for use of storage space for water supply in Rend Lake on the Big Muddy River in Illinois to relieve the State of Illinois of the requirement to make annual payments for that portion of the maintenance and operation costs applicable to future water supply storage as is consistent with the Water Supply Act of 1958 (Public Law 85- 500). The relief provided by the preceding sentence shall apply for five years after the date of enactment of this Act or until the storage space is used, whichever first occurs, and shall apply in such proportion as the storage is used for water supply purposes.”

m. The result of this legislation is that for a five-year period (17 November 1986 – 16 November 1991), the formula for the state's annual O&M payments under the Rend Lake water supply contract was:

$$39.01\% \times \text{Annual O\&M Costs} \times \frac{27,250 \text{ acre feet (present use)}}{109,000 \text{ acre feet (total space)}}$$

n. The state's annual O&M payments thus dropped to approximately one-fourth of what they were under the 1965 contract. At the end of the five year period, (16 November 1991) the annual O&M bills reverted to 39.01% of annual O&M costs. The new contract, signed on 21 November 1988, reflects the changes described above.

o. History of Payments by the State of Illinois at Rend Lake. The first water space contract at Rend Lake, which preceded the modification authorized by Public Law 99-662, was signed in 1965. The first bill was sent on 10 December 1971 for \$209,153.68. The table below shows the billing and payment history. Beginning with the bill sent to the State for Fiscal Year 1973, the State began running into arrears on its payments. Between FY73 and FY86 the State accumulated a debt of \$1,631,652 under this contract. (See table below of the billings and collections under the Rend contracts). The five year relief period granted by Public Law 99-662 began in 1987. During the subsequent five years, when the required annual O&M payments were substantially reduced, the State paid all of the current bills and paid off the existing debt. For FY92, the bill jumped to \$383,146.00. The five years of relief provided

by Public Law 99-662 covered only a portion of FY92, and for the remainder of the FY the State's bill was calculated at the 39.01% rate. The entire bill was paid in full. The bill for FY93, sent out on 8 April 1994, was \$409,146.76. The state paid \$34,095.52 on 2 June 1994, without explanation as to why this amount was paid. Although Section 310 of Public Law 102-580 stated that the State is not required to make any payments under the water storage contract until six months after the date on which the Secretary transmits to Congress the report described in Section (b) of the Section, the District believed that bills should still be sent to the State to keep it apprised of the amount of the debt.

REND LAKE
WATER STORAGE SPACE CONTRACT; BILLING & COLLECTION DATE

FY	Date of Billing	Amount Billed	Collected	Carry Over Unpaid
1972	12/10/71	209,153.68	209,153.80	0
1973	11/02/72	172,247.79	100,000.00	72,247.00
1974	11/05/73	241,297.52	241,297.00	0
1975	11/25/74	238,703.59	238,703.59	0
1976	05/18/76	191,700.00	150,000.00	41,700
1977	12/02/76	492,800.00	131,325.00	361,475.00
1978	11/07/77	147,137.00	361,475.00	147,137.00
1979	03/09/79	815,525.00	350,000.00	465,525.00
1980	01/10/80	1,106,730.00	400,000.00	706,730.00
1981	12/01/80	905,774.00	400,000.00	505,774.00
1982	03/10/82	877,229.00	0	877,229.00
1983	03/10/83	1,560,135.00	0	1,560,135.00
1984	06/20/84	1,767,483.00	304,348.00	1,463,135.00
1985	01/14/86	1,690,685.00	527,550.00	1,163,135.00
1986*	03/04/87	1,631,652.00	300,000.00	1,331,652.00
FIVE YEAR PERIOD OF RELIEF PROVIDED BY PUBLIC LAW 99-662				
1987	03/18/88	1,189,010.00	532,627.00	656,383.00
1988	11/30/88	347,131.03	347,131.03	0
1989	03/02/90	118,865.00	118,865.00	0
1990	03/27/91	104,463.00	104,463.00	0
1991	12/13/91	87,993.00	87,993.00	0
RESUMPTION OF NORMAL BILLINGS				
1992**	02/03/93	383,146.00	383,146.00	0
1993	04/08/94	409,146.00	34,095.52	0
FIFTEEN YEAR RELIEF PROVIDED BY PUBLIC LAW 102-580				
1994	N/A***	438,786.87	N/A***	N/A***
1995	N/A***	413,699.08	N/A***	N/A***
1996	N/A***	118,667.86	N/A***	N/A***
1997	N/A***	719,270.17	N/A***	N/A***
1998	N/A***	470,731.44	N/A***	N/A***
1999	N/A***	530,786.88	N/A***	N/A***
2000	N/A***	518,225.66	N/A***	N/A***

2001	N/A***	825,127.03	N/A***	N/A***
2002	N/A***	554,856.17	N/A***	N/A***
2003	N/A***	577,821.00	N/A***	N/A***
2004	N/A***	529,576.50	N/A***	N/A***
2005	N/A***	537,633.98	N/A***	N/A***
2006	N/A***	465,028.47	N/A***	N/A***
2007	N/A***	543,451.55	N/A***	N/A***
2008	N/A***	726,617.23	N/A***	N/A***

* For 17 days of FY86, which preceded the effective date of Public Law 99-662, the State was billed in the normal manner.

** For 17 days of FY92, which included the end of the five year period of relief, the State was billed in the manner provided by Public Law 99-662.

***Per Public Law 102-580, the State of Illinois has not been and will not be billed until 6 months after the required report has been submitted to Congress.

ADDITIONAL NOTE: Because the State had exactly 25% of the available water storage space in present use at the time, the billings for each of those five years of relief (FY 87-91) would, in the absence of the legislative relief, have been four times the amounts billed in those years.

REND LAKE WATER SUPPLY STORAGE USAGE

YEAR WATER SUPPLY PLACED UNDER CONTRACT	WATER SUPPLY STORAGE USER	USED WATER SUPPLY STORAGE		REMAINING UNUSED WATER SUPPLY STORAGE	
		Acre Feet	MGD	Acre Feet	MGD
1988	Rend Lake Conservancy District	27,250	17.5	81,750	52.5
2006	Power Holding, LLC	12,457	8.0	69,293	44.5
2007	Adena Resources, LLC	10,121	6.5	59,172	38
2007*	Rend Lake Conservancy District	27,250	17.5	31,922	20.5
2008	Franklin Energy Associates, LLC	23,357	15	8,565	5.5

*Contract is currently pending.

p. Post WRDA 92 Conditions. Per guidance from HQ (reference d.), a “short letter report summarizing history and status of the current water supply contract, and policy decisions and reasons for not relieving the State of Illinois of its financial responsibilities” was drafted and forwarded to HQ (reference e and f) on 26 October 1994. The report contained the history of the water supply contracts between the Corps and the State of Illinois, how the payments are calculated, and the history of payments as required by the Rend Lake Water Supply Contract.

q. In response to a letter from then Senator Carol Mosely-Braun (IL) indicating that the State of Illinois was willing to relinquish its rights to a portion of future use storage in exchange for a reduction in payment, Assistant Secretary of the Army, John H. Zirschky, in a 1995 memorandum, directed the Corps to discuss with the State the possibility of having the State assume some of the Corps' operations and maintenance responsibilities to offset the loss of payment for the unused water supply storage and to inform him of those options (reference g). The Corps has explored the alternative of credit for in-kind services with the State of Illinois several times which has resulted in multiple iterations of the report to Congress as required by WRDA 92.

r. There are no direct impacts to the O&M of Rend Lake due to nonpayment of the water supply contract. All payments are deposited directly in the General Fund of the Treasury.

5. Current Conditions (Rend Lake).

a. At the time WRDA 1992 was written, the State of Illinois was utilizing approximately 27,250 acre feet of the 109,000 acre feet that was under contract. At a 2007 water summit meeting with the State of Illinois, it was disclosed that the remaining 81,750 acre feet of unused water supply storage had been placed under either a signed or pending contract with third-party interests and that there were additional parties who were on a waiting list if any of the existing contracts fail to materialize. When asked if the State was willing to give up any of their water supply allocation, the answer was no. The State of Illinois was contacted to confirm their water storage use data and to confirm their position on work in-kind. In December 2007, MVS met with the IDNR Director of Water Resources Gary Clark and his staff. At the meeting, IDNR provided a summary of the water use.

b. At the December meeting IDNR restated their position on work in kind as previously provided by letter requesting (reference p.) to receive water storage payment credit for the recreation and stewardship expenses they were currently performing at Corps leased and licensed areas on federal lands. They were advised that the work in kind needed to be additional work not already being done to receive credit. The following is a summary of the current Rend Lake water use provided by IDNR:

IDNR Office of Water Resources – February 7, 2008

Rend Lake Water Supply Allocation – Fact Sheet

Per Contract NO: DACW43-88-C-0088 9/23/88

Article 1 par. B, page 3 states in part “the State shall have the right to utilize an undivided 68.125% (estimated to contain an average yield of 70,000,000 g.p.d.) of usable joint use storage space in the project between elevations 391.3 msl and 405.0 msl . . . estimated to contain 160,000 acre feet. This storage space is to be used to impound water for present and anticipated future demand or need for municipal and industrial water supply.”

Allocation under Contract – Water Supply in Current Use

Rend Lake Conservancy District - 17.5 MGD (Contract RL-65-1, 3rd Amendment)

Allocations under Contract - Water Supply not in Current Use

- Power Holdings, LLC** 8 MGD*
- June 27, 2006 contract date Coal Gasification Plant
 - WS withdrawal required by Dec. 31, 2009 Jefferson County
- Contact: Robert Gilpin
(630/859-2690)
- Adena Resources, LLC** 6.5 MGD*
- Sep. 21, 2007 contract date 2 Longwall Mines (Pond Creek and Sugarcamp)
 - Coal Mine Permit by July 1, 2008 for Pond Creek Mine Williamson and Franklin Counties
- Contact: Joe Farinelli
(618/993-0650)
- Franklin Energy Associates, LLC** 15 MGD*
- January 1, 2008 contract date Coal Mine and Coal Gasification/ Liquids Fuels Facility
 - Coal Mine Permit by Dec. 31, 2010 Franklin County
 - Air Permit by Dec. 31, 2011 Contact: Bruce Addington
(606/928-0450)

A contract amendment (Number 4) for an additional allocation of 17.5 MGD (total of 35 MGD) was sent to the Rend Lake Conservancy District (RLCD) on September 17, 2007.

Total allocation being considered for the RLCD = 35 MGD

Total allocation currently to INDUSTRY = 29.5 MGD*

* These contracts require meeting varying performance standards in order to maintain the Allocation Contract or the amount of water supply initially allocated. Performance standards are different under each contract. For example, at least one of these contracts included requirements to meet initial withdrawal dates, obtain required permits (air and/or mine), or meet facility construction dates. The allocated water supply amounts for the coal mining operations were conditioned on meeting certain production standards.

Also note: While it was originally estimated that 70 MGD would be available, at this time there is 64.5 MGD under existing or pending contract. The State believes that it has contracted for all of the water

within its water storage rights, despite the original estimate of 70 MGD. Therefore, the State and the Corps consider that 100% of the available water storage space is currently under contract and is being used and unavailable for other consumptive purposes.

6. Alternatives and Recommendations.

a. The background information provided above, coupled with the history of payments by the State of Illinois, would appear to indicate that the state is not willing to surrender its water rights, but is still interested in having the Rend Lake water storage contract modified so that annual O&M payments are not made for water storage space until that water is placed into present use.

b. The State was successful in having the Carlyle and Shelbyville contracts modified in that manner. After permission was denied to similarly modify the Rend Lake contract, special legislation was passed by Congress to grant the State such relief for a five year period. The 26 August 1977 decision by the Assistant Secretary of the Army (Civil Works) that the Rend Lake contract could not be modified stated that "With regard to the Rend Lake contract where water deliveries have been made under the contract, we find no congressional sanction which would permit modification. On the contrary, the legislative history indicates that Congress intended that such contracts not be modified. Therefore, I cannot concur with your proposed action for the Rend contract." For the purposes of this Study, it is assumed that the 1977 decision is not subject to further review.

c. Unless a decision is made to renegotiate the Rend Lake water supply contract to conform it to the Carlyle and Shelbyville contracts, the Army Corps of Engineers does not believe, from a policy standpoint, that the State should be relieved from its obligation to make the annual Operation and Maintenance payments. The State made a legally binding commitment to make such payments when the federal government agreed to include water supply as a project purpose over 35 years ago.

d. When the State of Illinois fell into arrears on its payments under the Rend Lake contract between FY 1979 and 1986, the District and CEMVD explored various legal remedies for the collection of the debt and gave serious consideration to the following alternatives:

(1) Terminate the State's rights under the contract.

(2) Sue the State in Federal District Court in order to enforce the terms of the contract, and

(3) Offset against the debt, monies owed the State by the United States, such as the 75% of all revenues generated by the District's leasehold program in Illinois, as authorized by Title 33 of the United States Code, section 701C-3. It was determined that the administrative offset of a debt owed the United States by a State is no longer authorized by virtue of the enactment of Section 10 of the Debt Collection Act of 1982, Public law 97-365.)

(4) Negotiate an acceptable payment schedule, to include an assessment of interest. (However, neither the Water Supply Act of 1958, nor the contract, include a requirement for the collection of interest on late payments, and no other statutory requirement for such collection of interest was found).

e. Because the Rend Lake water storage space serves the needs of approximately 50 municipalities in the Southern Illinois area, the first alternative, termination, was rejected. The agency proposed to the then Governor of Illinois that payments be resumed, that a payment schedule be negotiated, and that the debt be eliminated. The Governor, in turn, confirmed the State's willingness to work with the Federal government to the best of its ability. No agreement, however, could be reached. The stalemate continued until the special legislation of 1986.

f. Since the passage of Section 310 of Public Law 102-580, an additional alternative of using work in kind to offset the contract cost for unused storage has been discussed (reference j above). It is the desire of the State to use existing work on other Federal lands in Illinois to offset their Rend Lake unused water supply costs. This alternative was rejected once it was determined that all of Rend Lake's water supply allocation is currently under an existing or pending contract therefore there is no unused storage. Additionally, there is no provision in the contract for water storage at Rend Lake for the payment of the State's monetary obligations by work-in-kind; nor is there any enabling statute that would authorize the Corps to collect payments under water storage contracts by work-in-kind. Therefore, the alternative of payment by work-in-kind is not practical; it is not authorized under the present contract; and the Corps has no statutory authority to collect payment in that manner.

g. Section 310 of WRDA 1992 reads in part as follows: "The Secretary shall conduct a study on whether or not to relieve the State of Illinois of the requirement to make annual payments for unused water supply storage in Rend Lake on the Big Muddy River in Illinois." This is now a moot point based upon the water supply allocation information provided by the IDNR above, all available water supply storage is currently under an existing or pending contract.

h. In view of all the above information, the recommendation is that the existing contract be retained without change. It is further recommended that this Study be approved and submitted to the Congress in accordance with the requirements of Section 310 so that payments may be resumed by the State of Illinois.

i. Section 310 of WRDA 1992 reads in part as follows: "Until 6 months after the date on which the Secretary transmits to Congress the report under subsection (b), the State of Illinois shall not be required to make any payments under its contract with the United States for use of storage space for water supply in Rend Lake on the Big Muddy River in Illinois." Based upon this language, it is the recommendation of the U.S. Army Corps of Engineers that the State has been relieved of the payments that would have otherwise been paid since the enactment of WRDA 1992, and did not incur a debt to the Federal Government during the years since 1992.

j. The recommendations contained herein reflect the information available at this time and current Departmental policies governing formulation of individual projects. They do not reflect program and budgeting priorities inherent in the formulation of a national Civil Works construction program nor the perspective of higher review levels within the Executive Branch. Consequently, the recommendations may be modified before they are transmitted to the Congress as proposals for authorization and implementation funding. However, prior to transmittal to the Congress, the sponsor, the States, interested Federal agencies, and other parties will be advised of any modifications and will be afforded an opportunity to comment further.

Additional Proposal Information

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USACE IDNR Meeting Minutes.pdf

June 28, 2010 Meeting w/ COE St. Louis District

Purpose: To discuss the COE plan for transmittal of the “report to Congress” (WRDA 92) that will trigger O&M charges to the IDNR for water supply storage at Rend Lake. OWR also wishes to discuss the COE billing (last fall) to the IDNR for Dam Safety Program Assurance costs at Lake Shelbyville.

Background on Rend Lake Billings:

- Between 1966 and 1992, the State paid the upfront capital construction cost of \$9,858,000 and water supply O&M costs from 1972-1991, amounting to \$5,163,000, making for a total of cash and in-kind payments made by the State of \$15,482,902, attributable to water supply storage at Rend Lake.
- The Water Supply Act of 1958 provided for a distinction between “present use” and “future use” that allowed Illinois to pay for O&M costs for only the proportion of water “in use” at Lake Shelbyville (no use) and Carlyle Lake (no use), and thus allowing for renegotiation of the USA/Illinois contracts.
- The Corps would not consider the 1958 Act provisions for Rend Lake since water supply was already being put to use by the Rend Lake Conservancy District and could open up renegotiations for other contracts in the country. In 1985, an unpaid O&M State debt of \$1,163,135 led to repayment negotiations with the Corps and WRDA 1986, which provided a 5-year period (1986-1991) when the State would only have to pay for water in use (RLCD use was 17.5 mgd of the available 70 mgd).
- In the early 1990’s numerous actions by our congressional delegation (Poshard, Simon, Dixon), including proposals to relinquish the State’s unused water supply, resulted in specific language under WRDA 1992, directing the Secretary of the Army to conduct a study to determine whether to relieve the State of annual payments for unused (i.e. 75%) water supply storage at Rend Lake. Until the Secretary transmits this report to Congress, the State is not required to make annual payments for the used or unused water supply storage.
- In 1995, Senator Carol Moseley-Braun requests a copy of the draft report to Congress, requests relief from the costs of the unused water supply, and makes the proposal to relinquish the unused portion. While the Corps did not believe the proposal to be adequate to offset the loss in O&M, they did offer to discuss options to payment, such as the State assuming Corps responsibilities to offset the loss, at either Rend Lake or elsewhere in the State.
- Since 1995, the IDNR and the Corps have had numerous discussions concerning in-kind work etc. In December 2007, Jim Lynch (Rend Lake Corps Manager) sends a draft letter to OWR, indicating the forwarding of the report to Congress, since the water supply storage in Rend Lake was being placed in current demand through contracts and options by the DNR, thus assuming the issue resolved.
- This prompted an IDNR/Corps meeting on January 30, 2008, where options were discussed to change the lake pool elevation to avoid adverse impacts from drought and water supply. We also discussed the need to keep as many options on the table as a means to pay O&M on any unused water supply, since the demands were still only projections of need and the water supply has not been put to use. These options include the need to keep the in-kind services option open and to explore the option of reauthorization of a portion of water supply storage for another project purpose, such as fish and wildlife conservation or recreation.

Lake Shelbyville Dam Safety Program Assurance Costs (\$51,677.99) were billed to the State in October 2009 resulting from the Corps \$731,982.81 geotechnical study of the dam. These costs are not tied to present use and the State had no knowledge of this study. The bill has not been paid. There may be

additional phases of study and potentially repairs/rehabilitation work if conditions warrant. OWR has twice requested a meeting on this matter to discuss the severity of problems at the dam and the rationale by the Corps in placing this study in this category, rather than in rehabilitation or repair (w/State proportionate costs based on present use only). The Corps has never responded to our requests.

Implications at Rend upon the report transmittal to Congress

WRDA 92, Section 310(c) - "*Until 6 months after the date on which the Secretary transmits to Congress the report under subsection (b), the State of Illinois shall not be required to make any payments*"

Thus, the IDNR will be required to make O&M payments beginning 6 months after the report goes to Congress. If this occurs, e.g. on July 1, 2010, then the following percentages of Corps expenses incurred after January 1, 2011 (exclusive of recreation and land management costs) would be incurred by the State.

Per USA/Illinois Contract dated September 23, 1988, State portion would be:

- 22.24% of Major Replacement/Major Rehabilitation Costs
- 39.01% of Annual Operation and Maintenance Costs

Scenario 1: Assuming O&M costs only, average State costs based on years 2004-2007 = **\$449,077**

Scenario 2: Add in State portion of ARRA Total O&M costs

(Civil Works Expenditure Plan dated August 19, 2009) at Rend Lake = \$19,343,000. It is not known what portion of these costs would be excluded as recreation and land management costs, nor is it known what federal fiscal year these costs would be assigned. This scenario is intended to describe the potential implication of ARRA stimulus funding as now being incurred at Lake Shelbyville and Carlyle Lake. (State portion = 39.01% of \$19,343,000 = \$7,545,704)

Costs assignable under Water Supply Contracts with Available Water Supply = 70 mgd

- Rend Lake Conservancy District = 17.5 mgd
- Adena Resources = 6.5 mgd
- Power Holdings = 8.0 mgd

Total Assignable under current contracts = 32 mgd / 70 mgd = 45.71 percent of State bill.

Under Scenario 1 Average O&M only, **IDNR portion** would be 54.29% of 449,077 = **\$243,784**

OWR Concerns:

- Timing and budgeting issues are of course important for our own fiscal and budgeting purposes, in addition to properly informing the entities under contract that this billing may come.
- The State water supply allocation contracts are "performance" driven. Failure to meet performance standards may result in the curtailment of the water allocation or complete loss of the contract, thereby giving the responsibility for billing payment back to the State. The Corps infers this demand growth has removed the opportunity for the IDNR to conduct work-in-kind for future use water supply storage. We cannot agree to this due to the highly speculative nature of these industrial contracts. In the last two years Franklin Energy lost their rights to 15 mgd, the RLCD has not been willing to contract to the 35 mgd they determined needed, and Power Holdings lost 2 mgd, with plan fruition highly questionable.

Primary Sponsor Letter of Support

(As uploaded)

Rend Lake Director Support Letter from Director 9-7-2016.pdf



Illinois Department of Natural Resources

One Natural Resources Way Springfield, Illinois 62702-1271
www.dnr.illinois.gov

Bruce Rauner, Governor
Wayne A. Rosenthal, Director

September 7, 2016

Honorable Jo-Ellen Darcy
Assistant Secretary of the Army
108 Army Pentagon
Washington, D.C. 20310-0108

Dear Ms. Darcy:

The State of Illinois is requesting that the U.S. Army Corps of Engineers modify the contract between the Corps and the State of Illinois (DACW43-88-C-088) to relieve the State of Illinois of obligations to pay for water that is not currently being used in Rend Lake. This modification would result in a consistent payment scheme for all three Corps water supply lakes (Rend, Shelbyville and Carlyle) in Illinois.

Construction of the multi-purpose Rend Lake project was authorized by the Federal Flood Control Act of 1962. Rend Lake provides flood reduction on the Big Muddy River; incidental flood flow reduction to the Mississippi River; a secure water supply for the region; and recreation opportunities. Construction of Rend Lake was initiated in 1965, completed in 1971 and water withdrawals began in 1972. The total construction cost was \$44,700,000 of which the State of Illinois contributed \$9,941,000 between in-kind services and cash payments.

Currently the State of Illinois is under agreement with the Corps of Engineers to pay 39.01% of the annual experienced joint use costs for operation and maintenance exclusive of recreation and land management costs. Joint use costs are defined as the costs of features used for any two or more project purposes. The agreement states that the State has a right to 70 millions of gallons per day (MGD) of water; however, only 24.0 MGD is currently allocated. The State of Illinois has allocated 17.5 MGD to the Rend Lake Conservancy District (RLCD) which supplies water to 300,000 people in 60 communities and 6.5 MGD to Adena Resources which uses the water for the operation of their coal mines. The initial study for Rend Lake assumed that the water supply would be completely allocated by 2005; however, only 34% of the 70 MGD is currently allocated.

In the early 1990's numerous actions by the Illinois Congressional Delegation (Poshard, Simon, Dixon), including proposals to relinquish the State's unused water supply, resulted in specific language in Water Resources Development Act (WRDA) 1992, directing the Secretary of the Army to conduct a study to determine whether to relieve the State of annual payments for unused (i.e. 75%) water supply storage at Rend Lake. The language of WRDA 1992 stated that the State is not required to make annual payments for the used or unused water supply storage until the Secretary transmits this report to Congress. The Corps transmitted the report to Congress on July 26, 2010; however, the report erroneously stated that all water supply storage in Rend Lake had been allocated by the State so there was no need to consider relieving the State from the obligation of annual payments for the unused water supply storage at Rend Lake.

Six months after the transmittal to Congress, the Corps began billing the State for operation and maintenance at Rend Lake based on full allocation of 70 MGD. Since 2010, the State has continued to make payments for water that goes unused each year. In FY2015, the State was required to expend \$665,000 for water that was not allocated or used. The Corps' estimated bill to the State for Rend Lake water supply in FY2016 calls for the same level of payment; thus over the last two fiscal years Illinois will be expending over \$1.3 million for unused water! There have been no new local entities interested in utilizing this water supply source in the past 5 years, nor do we anticipate any new interest in the next 10 years. The existing water supply users are not anticipating a future increase in water need over the next 10 years. This is largely a result of conservation initiatives that have been undertaken and continued lack of growth in the region.

The State of Illinois is requesting that contract DACW43-88-C-088 be modified so that the State is only obligated to pay for the amount of water that is currently being used by RLCD and Adena Resources. This would relieve the State of payments required for unused water at Rend Lake. This modification would result in consistent billing procedures for all three Federal water supply lakes in Illinois, and would enable a more efficient and effective use of the Department's limited resources. The State's request does not require any construction or modification of a Corps' project. Our request is simply to be relieved of the obligation to pay for future water use storage costs at Rend Lake, which is very unlikely to ever be needed

I sincerely appreciate your consideration of this request. If you have any questions my point of contact is Daniel Injerd, Director, Office of Water Resources. He can be reached at 312-793-5746.

Sincerely,



Wayne A. Rosenthal
Director

CC: Lawrence Patterson