



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

CECW-P

OCT 19 2017

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS

SUBJECT: Implementation Guidance for Section 1174 of the Water Resources Development Act (WRDA) 2016, Conversion of Surplus Water Agreements

1. Section 1174 directs the Secretary of the Army to provide to a non-federal entity that has a water supply agreement with the Government an opportunity to convert the agreement to a permanent storage agreement in accordance with Section 301 of the Water Supply Act of 1958, as amended (43 U.S.C. 390b), with the same payment terms as those incorporated in the agreement, if: (i) the agreement has a duration of 30 years or more; (ii) the agreement was predicated on water that was surplus to a purpose of the project, which purpose had ceased to be authorized as of December 16, 2016 (the date of enactment of WRDA 2016); and (iii) the agreement provided for the complete payment by the non-federal entity of the actual investment costs of storage to be used. Section 1174 is enclosed.

2. In any case where a water supply agreement meets these criteria, upon the request of the non-federal party to the agreement, the district will forward for division and HQUSACE review and Assistant Secretary of the Army for Civil Works (ASA(CW)) approval an amendment to the agreement citing Section 1174 and the Water Supply Act and incorporating permanent rights to storage at the same payment terms that are incorporated in the agreement. Article 8, "Permanent Rights to Storage," in the Model Format For Originally Authorized Water Supply Storage Agreements posted on the USACE Agreement website should be used as a template for the proposed amendment language.

3. As of the date of this guidance, HQUSACE is aware of only two agreements that would fall within Section 1174, the Contract with the Tarrant County Water Control and Improvement District No.1, for surplus water from Benbrook Lake, Texas, dated June 21, 1991, effective as of the date of approval by the ASA(CW) on October 29, 1991, and the Contract with the City of Grapevine, Texas for water storage space in Grapevine Lake, Texas, dated January 26, 1981, effective as of the date of approval by the Acting ASA(CW) on February 27, 1981.

4. The Benbrook Lake and Grapevine Lake agreements in question involve the provisional use of navigation storage for water supply at the respective projects, which were authorized as part of the overall Trinity River and Tributaries Project. The Trinity River Project was authorized by Section 2 of the Rivers and Harbors Act of 1945, P.L. 79-14, and Section 301 of the Rivers and Harbors Act of 1965, P.L. 89-298, and

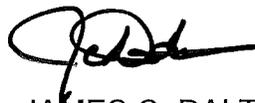
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encompassed the construction of reservoirs, flood control works, and an inland navigation channel from the Gulf coast to Fort Worth. The components of the inland navigation channel have been deauthorized, as indicated in the Corps' Federal Register notices of project deauthorizations of June 26, 2003 (68 FR 38022) and March 25, 2016 (81 FR 16147). The deauthorization of the inland navigation channel means that there is no longer any navigation purpose to the storage at Benbrook Lake and Grapevine Lake.

5. Through the proposed amendments of the Benbrook Lake and the Grapevine Lake agreements, the rights of the Tarrant County Water Control and Improvement District and the City of Grapevine, respectively, to utilize storage space previously designated as navigation storage will be made permanent, and the current agreement language requiring renegotiation upon deauthorization of the navigation purpose deleted. The duration of the amended contracts will be for the life of the respective projects, subject to the fulfillment of the non-federal responsibilities under the contracts.

6. Questions regarding this implementation guidance should be directed to Ada Benavides, Senior Policy Advisor, Planning and Policy Division, at (202) 761-0415 or Ada.Benavides@usace.army.mil.



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

Encl

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SEC. 1174. CONVERSION OF SURPLUS WATER AGREEMENTS.

For the purposes of section 6 of the Act of December 22, 1944 (58 Stat. 890, chapter 665; 33 U.S.C. 708), in any case in which a water supply agreement with a duration of 30 years or longer was predicated on water that was surplus to a purpose and provided for the complete payment of the actual investment costs of storage to be used, and that purpose is no longer authorized as of the date of enactment of this section, the Secretary shall provide to the non-Federal entity an opportunity to convert the agreement to a permanent storage agreement in accordance with section 301 of the Water Supply Act of 1958 (43 U.S.C. 390b), with the same payment terms incorporated in the agreement.