



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

CECW-P

JUL 06 2017

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS

SUBJECT: Implementation Guidance for Section 1116 of the Water Resources Development Act (WRDA) 2016, Water Supply Conservation

1. References.

- a. Section 1116 of WRDA 2016 (Enclosure 1).
- b. Table of States Where Drought Emergencies Were Declared or Were In Effect During The One Year Period Ending On December 16, 2016 (Enclosure 2).
- c. Engineering Regulation (ER) 1110-2-1156, Safety of Dams, Policy and Procedures, 31 March 2014.
- d. ER 1110-2-240, Water Control Management, 30 May 2016.
- e. ER 1110-2-1400, Reservoir Water Control Management, 30 May 2016.
- f. ER 1165-2-502, Delegation of Review And Approval Authority For Post-Authorization Decision Documents, 31 March 2014.

2. Section 1116 authorizes the Secretary of the Army to conduct an evaluation of water supply conservation measures at U.S. Army Corps of Engineers (Corps) projects that are consistent with the authorized purposes of a water resources development project, and to enter into agreements with non-federal interests to carry out conservation measures approved by such evaluations, in a state in which a drought emergency was declared or was in effect during the one year period ending on 16 December 2016 (the date of enactment of WRDA 2016). Such measures could include: Stormwater capture; releases for ground water replenishment or aquifer storage and recovery; releases to augment water supply at another storage facility; or other conservation measures that enhance use of a Corps project for water supply. Non-federal interests must pay the separable costs associated with the evaluation, implementation, operation and maintenance of such measures, which payments may be accepted and expended by the Corps to cover costs.

3. Section 1116 also provides that it is not to be construed to modify or alter non-federal obligations under agreements pursuant to the Water Supply Act of 1958, as CECW-P

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amended (43 U.S.C. 390b), or the Section 6 of the Flood Control Act of 1944 (33 U.S.C. 708). Subsection (e) further provides that Section 1116 does not affect the authorized purposes of a Corps project or Corps agreements and water control plans under other authorities. For purposes of this guidance, a drought emergency is considered to have been in effect in a state during the time specified in Section 1116 (16 December 2015 to 16 December 2016) if there was a declaration of drought emergency by the state government during that time period, whether that declaration covered all or a part of the state.

4. The definition of “non-federal interest” for purposes of Section 1116 shall be the same as that for Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b) as set out in subsection 221(b): “(1) a legally constituted public body (including a federally recognized Tribe; and, as defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), a Native village, Regional Corporation and Village Corporation); or (2) a nonprofit entity with the consent of the affected local government, that has full authority and capability to perform the terms of its agreement and to pay damages, if necessary, in the event of failure to perform.”

5. The definition of “separable costs” for purposes of Section 1116 are the costs of conducting the evaluation of the water supply conservation measures, including preparation of the updated and revised water control manual, the costs of performing the technical analyses to determine/assess the viability of such proposed revisions, environmental documentation, public notification and associated coordination, and, where applicable, the incremental costs to the project for implementation, operation, and maintenance of these measures.

6. Upon the request of a non-federal interest located in one of the states where drought emergencies were declared or were in effect during the one year period ending on 16 December 2016 (Enclosure 2), for evaluation of water supply conservation measures under this section, the district commander may negotiate a Memorandum of Agreement (MOA) outlining the scope of the evaluation and providing for the receipt of non-federal funds from the non-federal interest to cover the costs of the evaluation. The district commander should use the template MOA posted to the USACE Agreements website, under “Agreement Templates.” The template MOA may be modified as appropriate to address case-specific circumstances. Following district counsel review and concurrence that the negotiated MOA is acceptable, the district commander may approve and sign the MOA. No Congressional notification is required under Section 1116. If the non-federal interest is providing funds that it received from another federal agency, it must provide written confirmation from that federal agency that the funds are authorized to be used for the Section 1116 evaluation.

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7. Note that Section 1116(e)(6) prevents evaluation of a water conservation measure that would supersede or modify any amendment to an existing multistate water control plan, including those water control plans along the Missouri River and in the Apalachicola-Chattahoochee-Flint and Alabama-Coosa Tallapoosa basins (comprising parts of Georgia, Alabama and Florida, although Florida does not meet the requirement of Section 1116 since a drought emergency was not declared or in effect during the one year period ending on 16 December 2016).

8. ER 1110-2-1156, Chapter 24, concerning dam safety considerations for water supply changes at Corps projects, prohibits the implementation of permanent water supply changes that would raise water levels behind any dams that have Dam Safety Action Classification (DSAC) ratings of 1, 2, or 3, although waivers to allow for the study of such measures or the temporary adoption of such measures may be requested from the USACE Dam Safety Officer. The district must seek a waiver to conduct an evaluation of water supply conservation measures at a dam with a DSAC of 1, 2, or 3 prior to execution of the MOA to accept non-federal funds. The MOA may not be executed and the evaluation may not be undertaken if a waiver is not granted.

9. Revisions of water control plans to incorporate water supply conservation measures will be processed and approved in accordance with ER 1110-2-240 and ER 1110-2-1400. After completion of the evaluation by the district commander, the evaluation will be submitted to the MSC Commander with the recommendations of the district commander concerning the nature and advisability of the evaluated water supply conservation measures. The MSC Commander may approve the adoption of such measures, after review and comment by CECW-CE in accordance with ER 1110-2-240 and ER 1110-2-1400, paragraph 10.

10. Upon approval of one or more water supply conservation measures, the district commander may negotiate a further MOA for acceptance of non-federal funds to implement, operate and maintain these measures. Pursuant to Section 1116, the non-federal interest shall pay 100 percent of separable costs associated with such implementation, operation, and maintenance, which payments shall be accepted and expended by the district in accordance with the MOA. The district will submit the draft MOA package through the MSC for approval by the Director of Civil Works. Signature authority may be delegated to the district commander upon approval of the draft MOA. All MOA and water conservation measure review and approval authorities conferred by this implementation guidance shall be exercised in accordance with the responsibilities delegated in ER 1165-2-502.

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11. 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

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SEC. 1116. WATER SUPPLY CONSERVATION.

(a) **IN GENERAL.**—In a State in which a drought emergency has been declared or was in effect during the 1-year period ending on the date of enactment of this Act, the Secretary is authorized—

- (1) to conduct an evaluation for purposes of approving water supply conservation measures that are consistent with the authorized purposes of water resources development projects under the jurisdiction of the Secretary; and
- (2) to enter into written agreements pursuant to section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b) with non-Federal interests to carry out the conservation measures approved by such evaluations.

(b) **ELIGIBILITY.**—Water supply conservation measures evaluated under subsection (a) may include the following:

- (1) Stormwater capture.
- (2) Releases for ground water replenishment or aquifer storage and recovery.
- (3) Releases to augment water supply at another Federal or non-Federal storage facility.
- (4) Other conservation measures that enhance usage of a Corps of Engineers project for water supply.

(c) **COSTS.**—A non-Federal interest shall pay only the separable costs associated with the evaluation, implementation, operation, and maintenance of an approved water supply conservation measure, which payments may be accepted and expended by the Corps of Engineers to cover such costs.

(d) **STATUTORY CONSTRUCTION.**—Nothing in this section may be construed to modify or alter the obligations of a non-Federal interest under existing or future agreements for—

- (1) water supply storage pursuant to section 301 of the Water Supply Act of 1958 (43 U.S.C. 390b); or
- (2) surplus water use pursuant to section 6 of the Act of December 22, 1944 (58 Stat. 890, chapter 665; 33 U.S.C. 708).

(e) **LIMITATIONS.**—Nothing in this section—

- (1) affects, modifies, or changes the authorized purposes of a Corps of Engineers project;
- (2) affects existing Corps of Engineers authorities, including its authorities with respect to navigation, flood damage reduction, and environmental protection and restoration;
- (3) affects the Corps of Engineers ability to provide for temporary deviations;
- (4) affects the application of a cost-share requirement under section 101, 102, or 103 of the Water Resources Development Act of 1986 (33 U.S.C. 2211, 2212, and 2213);
- (5) supersedes or modifies any written agreement between the Federal Government and a non-Federal interest that is in effect on the date of enactment of this Act;
- (6) supersedes or modifies any amendment to an existing multistate water control plan, including those water control plans along the Missouri River and those water control plans in the Apalachicola-Chattahoochee-Flint and Alabama-Coosa-Tallapoosa basins;
- (7) affects any water right in existence on the date of enactment of this Act; or
- (8) preempts or affects any State water law or interstate compact governing water.

STATES WHERE DROUGHT EMERGENCIES WERE DECLARED OR WERE IN EFFECT DURING THE ONE YEAR PERIOD ENDING ON DECEMBER 16, 2016

State	Counties
Alabama	All
Arizona	All
California	All
Georgia	Banks, Barrow, Bartow, Butts, Carroll, Catoosa, Chattooga, Cherokee, Athens-Clarke, Clayton, Cobb, Coweta, Dade, Dawson, DeKalb, Douglas, Fannin, Fayette, Floyd, Forsyth, Fulton, Gilmer, Gordon, Gwinnett, Habersham, Hall, Haralson, Harris, Heard, Henry, Jackson, Lamar, Lumpkin, Meriwether, Monroe, Morgan, Murray, Newton, Oconee, Paulding, Pickens, Pike, Polk, Rockdale, Spalding, Troup, Union, Upson, Walker, Walton, White and Whitfield
Idaho	Blaine, Butte, Clearwater, Custer, Fremont, Jefferson, Lewis, Lincoln, Teton
Kansas	Barber, Barton, Butler, Chase, Chautauqua, Cherokee, Cheyenne, Clark, Cloud, Coffey, Comanche, Cowley, Crawford, Decatur, Dickinson, Douglas, Edwards, Elk, Ellis, Ellsworth, Finney, Ford, Gove, Graham, Grant, Gray, Greeley, Greenwood, Hamilton, Harper, Harvey, Haskell, Hodgeman, Jewell, Kearny, Kingman, Kiowa, Labette, Lane, Lincoln, Logan, Lyon, Marion, McPherson, Meade, Mitchell, Montgomery, Morris, Morton, Neosho, Ness, Norton, Osage, Osborne, Ottawa, Pawnee, Phillips, Pratt, Rawlins, Reno, Republic, Rice, Rooks, Rush, Russell, Saline, Scott, Sedgwick, Seward, Sheridan, Sherman, Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wallace, Washington, Wichita, Wilson
Massachusetts	Worcester, Middlesex, Essex, Suffolk, Norfolk
New Hampshire	Grafton, Hillsborough, Merrimack, Rockingham, Stafford
New York	Allegany, Cattaraugus, Cayugo, Chautaugua, Chemung, Cortland, Erie, Genesee, Livingston, Monroe, Niagara, Onondaga, Ontario, Orleans, Oswego, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne, Wyoming, Yates
North Carolina	Alexander, Avery, Burke, Caldwell, Catawba, Cleveland, Gaston, Lincoln, Watauga
Oregon	Baker, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake,

	Lane, Linn, Malheur, Marion, Morrow, Sherman, Umatilla, Union, Wasco, Wheeler
Pennsylvania	Carbon, Lehigh, Monroe, Northampton
Texas	Archer, Armstrong, Bandera, Baylor, Bosque, Briscoe, Burnet, Callahan, Carson, Childress, Clay, Collin, Collingsworth, Colorado, Comal, Comanche, Cottle, Crosby, Dallam, Dallas, Denton, Dickens, Donley, Eastland, Edwards, El Paso, Erath, Floyd, Foard, Garza, Gillespie, Gray, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hidalgo, Hood, Hudspeth, Hunt, Hutchinson, Irion, Jack, Johnson, Kendall, Kerr, Kimble, King, Knox, Lamb, Lampasas, Lipscomb, Llano, Matagorda, McCulloch, McLennan, Medina, Mills, Moore, Motley, Ochiltree, Oldham, Palo Pinto, Parker, Parmer, Potter, Real, Roberts, Rockwall, San Saba, Shackelford, Sherman, Somervell, Stephens, Stonewall, Tarrant, Throckmorton, Tom Green, Travis, Uvalde, Walker, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wise, Young
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