



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

CECW-P/CEMP-CR

JUL 12 2017

MEMORANDUM FOR COMMANDER, SOUTHWESTERN DIVISION

SUBJECT: Water Resources Development Act of 2016, Implementation Guidance for Section 1321(c), Pensacola Dam and Reservoir, Grand River, Oklahoma

1. This memorandum provides implementation guidance for Section 1321(c) of the Water Resources Development Act (WRDA) of 2016. Section 1321(c) directs the Secretary to convey to the Grand River Dam Authority (GRDA), an agency of the State of Oklahoma, without consideration, all right, title, and interest in and to any land in which the federal government has a property interest acquired in connection with the Pensacola Dam project, together with any improvements on the land. Section 1321(c) of WRDA 2016 is enclosed.

2. For purposes of this Section the identified terms shall be defined as follows:

a. Flood control purposes shall mean the management and maintenance of the easements in a manner so as to maintain the water storage capacity necessary to accommodate the flood control pool so there is no net loss of water storage capacity within the easement boundaries, as well as to retain the ability to flow water on the easements.

b. Public purposes shall mean ownership of the easements by any federal, state or municipal government entity using the easements for flood control purposes of the federal, state, or municipal entity.

c. Non-public use shall be the conveyance of one or more easement tracts to a non-public entity for other than flood control purposes.

A conveyance under this Section shall be subject to a condition that if the property ceases to be managed for flood control or other public purposes, as defined above, and is conveyed to a nonpublic entity, the GRDA, as part of the conveyance, shall pay to the United States the fair market value for the interest, as determined solely by the Secretary at the time of conveyance to the nonpublic entity. This condition shall reflect state law and be in the deed(s) to GRDA, with a condition that it shall run with the land and any subsequent conveyance by GRDA will also contain the condition.

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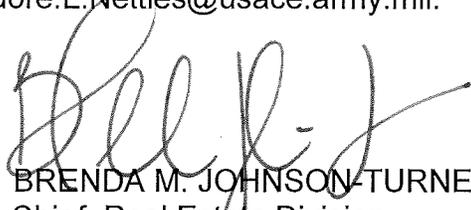
SUBJECT: Implementation Guidance for Section 1321(c) of the Water Resources Development Act of 2016 (WRDA 16), Pensacola Dam and Reservoir, Grand River, Oklahoma

4. CESWT-RE shall complete a Disposal Report. The Disposal Report must include the following: written reports sufficient to satisfy the requirements of the National Environmental Policy Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and other applicable environmental and historic preservation laws; and a title report. The Disposal Report must also identify any terms and conditions necessary to protect the interests of the United States, to include indemnification and hold harmless language to address future flood control operations pursuant to the Flood Control Act of June 28, 1938 (52 Stat. 1215, chapter 795), as amended by Section 3 of the Act of August 18, 1941 (55 Stat. 645, chapter 377). The indemnification and hold harmless language shall be in the transfer deeds which must also be executed by the GRDA and run with the land.
5. If any interest in the real property conveyed ceases to be managed for flood control purposes, the Tulsa District shall review the operation of the project for which the flowage easements were acquired to assure that the affected properties are no longer subject to project-induced flooding that rises to the level of a taking under the Fifth Amendment of the U.S. Constitution.
6. To carry out a conveyance under Section 1321(c), CESWD-PDR will submit a disposal package to CEMP-CR for review and approval. The disposal package will include a CESWT-OD disposal approval memorandum, concurred in by the Chief, Engineering Division, a Determination Approving Disposal of Real Property prepared by Real Estate for the Chief of Operations and Regulatory signature, and a quitclaim deed or quitclaim deeds for disposal tracts executed by the grantee and prepared for the Director of Real Estate signature. The district shall advise the GRDA that HQUSACE will have final approval of the conveyance documents and terms of disposal. The deed and disposal package shall be reviewed by district and division offices and approved by CEMP-CR, which will coordinate with CECC-R.
7. The GRDA is not required to pay monetary consideration (i.e., fair market value for the easements or improvements thereon) for the conveyance. GRDA shall be responsible for payment of all costs and administrative expenses associated with any transfer carried out under section 1321(c).

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SUBJECT: Implementation Guidance for Section 1321(c) of the Water Resources Development Act of 2016 (WRDA 16), Pensacola Dam and Reservoir, Grand River, Oklahoma

8. 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](mailto:Ada.Benavides@usace.army.mil). Real Estate questions can be directed to Theodore Nettles, Real Estate Specialist, Real Estate Division, at (202) 761-5542 or [Theodore.L.Nettles@usace.army.mil](mailto:Theodore.L.Nettles@usace.army.mil).



Encl BRENDAM. JOHNSON-TURNER  
Chief, Real Estate Division  
Directorate of Military Programs



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

**SEC. 1321. CONVEYANCES.**

(c) PENSACOLA DAM AND RESERVOIR, GRAND RIVER, OKLAHOMA.—

(1) IN GENERAL.—Notwithstanding the Act of June 28, 1938 (52 Stat. 1215, chapter 795), as amended by section 3 of the Act of August 18, 1941 (55 Stat. 645, chapter 377), and notwithstanding section 3 of the Act of July 31, 1946 (60 Stat. 744, chapter 710), the Secretary shall convey, by quitclaim deed and without consideration, to the Grand River Dam Authority, an agency of the State of Oklahoma, for flood control purposes, all right, title, and interest of the United States in and to real property under the administrative jurisdiction of the Secretary acquired in connection with the Pensacola Dam project, together with any improvements on the property.

(2) FLOOD CONTROL PURPOSES.—If any interest in the real property described in paragraph (1) ceases to be managed for flood control or other public purposes and is conveyed to a nonpublic entity, the transferee, as part of the conveyance, shall pay to the United States the fair market value for the interest.

(3) NO EFFECT.—Nothing in this subsection—

(A) amends, modifies, or repeals any existing authority vested in the Federal Energy Regulatory Commission; or

(B) amends, modifies, or repeals any authority of the Secretary or the Chief of Engineers pursuant to section 7 of the Act of December 22, 1944 (33 U.S.C. 709).