



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

REPLY TO
ATTENTION OF

JUL 6 2015

CECW-PB/CECW-NWD

MEMORANDUM FOR Commander, Northwestern Division (CENWD-PDD)

SUBJECT: Implementation Guidance for Section 1046(c) of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) -- Reservoir Operations and Water Supply; Surplus Water Storage

1. Section 1046(c)(1) of WRRDA 2014 provides that the Secretary shall not charge a fee for surplus water under a contract entered into pursuant to Section 6 of the Flood Control Act of 1944, 33 U.S.C. § 708 (Section 6), if the contract is for surplus water stored in the Upper Missouri Mainstem Reservoirs. This provision expires 10 years after the date of enactment of WRRDA 2014. By its terms, Section 1046(c)(1) does not affect the authority of the Secretary of the Army under 10 U.S.C. § 2695 to accept funds or cover administrative expenses relating to certain real property transactions, and does not affect the application of Section 6 to surplus water stored outside of the Upper Missouri Mainstem Reservoirs. Copies of Section 1046(c) of WRRDA 2014 and Section 6 of the Flood Control Act of 1944 are enclosed.
2. For the ten-year period ending June 10, 2024, no charges shall be assessed for withdrawals of surplus water from the Corps' Missouri River Mainstem Reservoirs under any agreements pursuant to Section 6. Such agreements shall contain provisions acknowledging the suspension of charges pursuant to WRRDA 2014, Section 1046(c)(1), and, to the extent that such agreements may have effect beyond June 10, 2024, such agreements shall also contain provisions for termination or modification in order to incorporate pricing terms consistent with statutory or regulatory requirements that may apply after that date.
3. The suspension of charges under Section 1046(c)(1) does not apply to any charges that may be assessed under applicable law or regulation in connection with the granting of real property instruments, processing of regulatory permit applications, or other actions ancillary to surplus water withdrawals pursuant to Section 6 agreements.
4. The suspension of charges under Section 1046(c)(1) does not apply to Section 6 agreements for surplus water withdrawals from any Corps reservoir outside the Missouri River Mainstem System. Pricing for Section 6 agreements outside the Missouri River Mainstem System shall follow the policies set forth in applicable regulations and guidance.

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5. Section 1046(c)(2) of WRRDA 2014 provides for rescission of \$5,000,000 of the amounts made available to the Secretary to carry out activities under the heading "OPERATION AND MAINTENANCE" under the heading "CORPS OF ENGINEERS-CIVIL" that remained unobligated as of June 10, 2014, and that have not been designated by Congress as being for emergency requirements pursuant to Section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, 2 U.S.C. § 901(b)(2)(A)(i). CECW-I will carry out revocations from projects, programs, and activities as necessary to support the \$5,000,000 rescission.

Encl


THEODORE A. BROWN, P.E.
Chief, Planning and Policy
Directorate of Civil Works

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Water Resources Reform and Development Act of 2014, Public Law 121, 113th Congress, 2nd Session, approved June 10, 2014.

SEC. 1046. RESERVOIR OPERATIONS AND WATER SUPPLY.

[...]

(c) SURPLUS WATER STORAGE.—

(1) IN GENERAL.—The Secretary shall not charge a fee for surplus water under a contract entered into pursuant to section 6 of the Act of December 22, 1944 (commonly known as the “Flood Control Act of 1944”) (33 U.S.C. 708) if the contract is for surplus water stored in the Upper Missouri Mainstem Reservoirs.

(2) OFFSET.—

(A) IN GENERAL.—Subject to subparagraph (B), of any amounts made available to the Secretary to carry out activities under the heading “OPERATION AND MAINTENANCE” under the heading “CORPS OF ENGINEERS–CIVIL” that remain unobligated as of the date of enactment of this Act, \$5,000,000 is rescinded.

(B) RESTRICTION.—No amounts that have been designated by Congress as being for emergency requirements pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(A)(i)) shall be rescinded under subparagraph (A).

(3) LIMITATION.—The limitation provided under paragraph (1) shall expire on the date that is 10 years after the date of enactment of this Act.

(4) APPLICABILITY.—Nothing in this subsection—

(A) affects the authority of the Secretary under section 2695 of title 10, United States Code, to accept funds or to cover the administrative expenses relating to certain real property transactions; or

(B) affects the application of section 6 of the Act of December 22, 1944 (commonly known as the “Flood Control Act of 1944”) (33 U.S.C. 708) to surplus water stored outside of the Upper Missouri Mainstem Reservoirs.

[...]

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33 U.S.C. § 708. SALE OF SURPLUS WATERS FOR DOMESTIC AND INDUSTRIAL USES; DISPOSITION OF MONEYS.

The Secretary of the Army is authorized to make contracts with States, municipalities, private concerns, or individuals, at such prices and on such terms as he may deem reasonable, for domestic and industrial uses for surplus water that may be available at any reservoir under the control of the Department of the Army: Provided, That no contracts for such water shall adversely affect then existing lawful uses of such water. All moneys received from such contracts shall be deposited in the Treasury of the United States as miscellaneous receipts.