



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

REPLY TO  
ATTENTION OF

JUN 24 2015

CECW-PB

MEMORANDUM FOR MAJOR SUBORDINATE COMMANDS

SUBJECT: Implementation Guidance for Section 1046(d) of the Water Resources Reform and Development Act of 2014 (WRRDA 2014)—Reservoir Operations and Water Supply; Future Water Supply

1. In general, Section 1046(d) of WRRDA 2014 amends the Water Supply Act of 1958, 43 U.S.C. 390b (the WSA), to provide that, until January 1, 2016, the Secretary may accept from a State or local interest (the User) a Plan for the conversion of future-use storage to present use within a 10-year timeframe. It provides that the plan shall include a 10-year timetable for conversion of future use storage to present use and a schedule of actions that the User agrees to carry out over a 10-year period, in cooperation with the Secretary to seek new and alternative users of the storage. If the Secretary determines that a Plan meets the requirements of Section 1046(d), the Secretary may recommend, in response to the User's request, that the User be afforded relief from its contractual obligations to pay for such storage, in return for the release of the User's rights to such storage. In addition, such recommendation shall be included in the annual report required by section 7001 of WRRDA 2014. Section 1046(d) provides that nothing in the provision authorizes the Secretary to release a User from a contractual obligation unless specifically authorized by Congress.

2. Definitions.

a. The term "water supply storage agreement" means an agreement entered into between the Corps of Engineers and a User under the WSA. This term does not include assurances given by a State or local interest prior to project authorization.

b. The term "future-use storage" means water supply storage that has not been activated by the User.

c. The term "activate" or its derivatives used in connection with future-use storage means the commencement of utilization of the future-use storage under the water supply storage agreement either by the User withdrawing water from the reservoir or by the User requesting releases from the reservoir, thereby commencing the User's payment obligations.

3. Background.

a. The WSA allows present or anticipated future demands or needs for municipal and industrial water supply to be included in plans for the construction or modification of storage space in Corps of Engineers multiple-purpose reservoir projects. Since the enactment of Section 932 of the Water Resources Development Act of 1986 (WRDA 1986) on November 17, 1986, amending the WSA, Corps water supply storage agreements have required the commencement of

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payment by the User of the costs of storage space upon the storage being made available, although the payment may be amortized over a period of up to thirty years at rates of interest determined by the Secretary of the Treasury. This payment procedure applies whether the storage is to be used in the present or in the future.

b. Prior to enactment of WRDA 1986, however, the WSA provided for an amortization period of up to 50 years, and allowed for a distinction to be made between storage to be used immediately upon availability and future-use storage, such that payment of the costs of future-use storage need not be commenced until such storage is actually utilized. The future-use storage could be activated in a block or in increments, depending on the provisions of the water supply storage agreement. Interest was to be charged for the delay in commencement of the amortization period for future-use storage, although the first ten years after storage availability were to be interest-free. After the initial ten-year interest-free period, unless the User opted to pay the interest as it accrued year by year, the interest owing on the cost of the inactivated future-use storage would continue to compound until repaid. These obligations contained in pre-November 1986 agreements may have become a hardship for some Users as a result of interest accruing over the years, and lack of perceived demand for the storage space.

4. Procedures for Implementing Section 1046(d).

a. Until January 1, 2016, any User with contractual rights to inactive future-use storage may submit a Plan pursuant to Section 1046(d) to the Corps district responsible for the User's water supply storage agreement. The Plan must contain the following information:

(1) a copy of the water supply storage agreement under which the User had contracted for future-use storage;

(2) the User's best estimate concerning the possibility of activating the future-use storage within a 10-year period, along with pertinent timetables; and

(3) the User's best estimate concerning the possibility of seeking new and alternative users of the inactive future-use storage within a 10-year period, along with a schedule of actions that the User agrees to carry out, in cooperation with the Government, to seek such new Users.

b. Upon its receipt of a Plan, the district shall transmit the Plan by e-mail to the Corps' Water Management and Reallocation Studies Planning Center of Expertise (PCX). The PCX, in coordination with the appropriate Corps Division, shall review all submitted Plans for completeness. The PCX and the Division may request additional information to be submitted by the User to complete a Plan in accordance with the criteria in the preceding paragraph. In addition, the PCX and the Division shall supplement each Plan with the following information, to be contained in a Fact Sheet:

(1) the authority for the reservoir project as a whole;

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(2) an estimate of the revenues that the Government would forgo if the User were relieved of its obligations to pay for the future-use storage;

(3) possible alternative authorized uses for the storage should Congress authorize the release to the Government of the User's rights to the storage (this should include a short description of the documentation that would be needed to implement the possible alternative uses, including necessary environmental analyses, as well as an estimate of the necessary funding for such documentation); and

(4) an estimate of the costs of any operational changes that would be necessary to convert the future-use storage in question to alternative uses by the Government.

c. The PCX and the Division shall use their best efforts to limit the period for review of each Plan and the formulation of the accompanying Fact Sheet to 30 days, but may take longer if necessary. The Division will then transmit each Plan and Fact Sheet to the appropriate Regional Integration Team (RIT).

d. Within 30 days of receipt of the Plan and Fact Sheet, the RIT will obtain the comments of the appropriate HQUSACE offices, and the recommendations of the HQUSACE Planning and Policy Division, after which the Plan and Fact Sheet shall be transmitted to the ASA(CW).

5. ASA(CW) Decision. The ASA(CW) will provide to the User a written decision on whether the ASA(CW) recommends release of the affected storage rights that would afford the User relief from its contractual obligations to pay the Corps for future-use storage. The ASA(CW) may also include recommendations to Congress on whether the User should be relieved from payment of its contractual obligations for past accrued interest for such storage. If the ASA(CW) recommends release of future water storage rights, that recommendation shall also be included in the annual report required by Section 7001 of WRRDA 2014.

6. Congressional Action. Further Congressional action is required to release any User from its contractual obligations to pay for future-use storage or from payment of its contractual obligations for past accrued interest for such storage.



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**Water Resources Reform and Development Act of 2014, Public Law 121, 113<sup>th</sup> Congress, 2<sup>nd</sup> Session, approved June 10, 2014, Section 1046(d) amending 43 U.S.C. 390b by renumbering subsections and adding new subsection (c) as follows:**

**Water Supply Act of 1958, as amended, 43 U.S.C. 390b.**

[ . . . ]

(c) Release of future water storage.

(1) Establishment of 10-year plans for the utilization of future storage.

(A) In general. For the period beginning 180 days after the date of enactment of this paragraph and ending on January 1, 2016, the Secretary may accept from a State or local interest a plan for the utilization of allocated water storage for future use under this Act.

(B) Contents. A plan submitted under subparagraph (A) shall include--

(i) a 10-year timetable for the conversion of future use storage to present use; and

(ii) a schedule of actions that the State or local interest agrees to carry out over a 10-year period, in cooperation with the Secretary, to seek new and alternative users of future water storage that is contracted to the State or local interest on the date of enactment of this paragraph.

(2) Future water storage. For water resource development projects managed by the Secretary, a State or local interest that the Secretary determines has complied with paragraph (1) may request from the Secretary a release to the United States of any right of the State or local interest to future water storage under this Act that was allocated for future use water supply prior to November 17, 1986.

(3) Administration.

(A) In general. Not later than 180 days after receiving a request under paragraph (2), the Secretary shall provide to the applicable State or local interest a written decision on whether the Secretary recommends releasing future water storage rights.

(B) Recommendation. If the Secretary recommends releasing future water storage rights, the Secretary shall include that recommendation in the annual plan submitted under section 7001 of the Water Resources Reform and Development Act of 2014.

(4) Savings clause. Nothing in this subsection authorizes the Secretary to release a State or local interest from a contractual obligation unless specifically authorized by Congress