Water Supply Storage and Reallocation Policies Related to Corps Projects

As the U.S. Army Corps of Engineers prepares to undertake a rulemaking, the following principles serve to guide the implementation of reservoir reallocations and other water supply storage policies.

Section 6 of the Flood Control Act of 1944 (33 U.S.C. § 708) and the Water Supply Act of 1958, as amended, (43 U.S.C. § 390b), set forth the primary Federal interest governing the role of the U.S. Army Corps of Engineers (Corps) as it relates to water supply. Based on the premise that states and non-Federal entities bear the primary responsibility for the development and management of their water supplies, the governing laws provide the framework for the role of the Corps in developing water supplies, and related construction, operation, maintenance, and modification of Federal reservoir projects.

Existing laws and regulations define and explain how the Corps may allow the use of its reservoirs for municipal and industrial water supply, for withdrawals of surplus water, for agricultural water supply, for emergency water during severe droughts, and to assist states and local interests in their water supply planning processes. In each instance, the terms and conditions of the relationship between the Corps and the non-Federal stakeholder are typically established in a water storage contract.

Section 6 of the 1944 Flood Control Act authorizes the Secretary of the Army to enter into agreements with third parties for surplus water. The Corps’ regulations (ER 1105-2-100, §3-8.b(4)) indicate a surplus water agreement is appropriate on a temporary basis when the non-Federal sponsor does not wish to purchase the storage. For purposes of these agreements, the regulations identify surplus water as:

- “water stored in a Department of the Army reservoir that is not required because the authorized use for the water never developed or the need was reduced by changes that occurred since authorization or construction”; or

- “water that would be more beneficially used as a municipal or industrial water than for the authorized purposes over some specified time period.”
The Water Supply Act of 1958 authorizes the Corps to implement “modifications” of its reservoirs to provide for water supply. However, modifications that “would seriously affect” the Congressionally authorized purposes of the project or that “would involve major structural or operational changes” require Congressional approval.

NWC’s Guiding Principles for water supply storage and reallocations are as follows:

- Water rights are determined by the states, and water supply is generally the responsibility of state and local governments.

- The Corps may provide storage space in its reservoirs in accordance with federal law, which provides that the Corps is entitled to receive compensation for the use of reservoir storage for water supply. The terms and conditions of the storage allocation are typically set forth in a contract between the Corps and the non-federal stakeholder.

- Water management serves multiple purposes, including navigation, flood risk management and damage reduction, water supply, water quality, conservation, hydroelectric power generation and recreation.

- Decisions pertaining to the reallocation of storage within an existing reservoir should be founded upon principles of cost-benefit analysis and other societal goals. Reallocations to a new purpose, where allowed under applicable laws, should provide greater benefits compared to existing purposes. In addition, adverse impacts to the existing reservoir stakeholders should be mitigated by the beneficiary of the reallocation.

- In making decisions related to reallocation of storage within existing reservoirs, the sunk costs associated with original construction should be addressed in accordance with sound economic and equitable principles.

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