



April 21, 2017

U.S. Army Corps of Engineers
ATTN: CECC-L
441 G Street, N.W.
Washington, D.C. 20314 441 G Street, NW
Washington, DC 20314

RE: COE-2016-0016 – Use of Army Corps of Engineers Reservoir Projects for Domestic, Municipal & Industrial Water Supply

Dear Sir or Madam,

Thank you for the opportunity to provide comments on the proposed rule, “Use of U.S. Army Corps of Engineers Reservoir Projects for Domestic, Municipal and Industrial Water Supply” as published in the *Federal Register* on December 16, 2016. The State of Oklahoma appreciates the U.S. Army Corps of Engineers’ (USACE) effort to provide clarification of the definition of surplus water in the Flood Control Act of 1944 and the Water Supply Act of 1958.

The rule, while short in nature, provides a vast, yet somewhat vague picture, of the USACE’s authority as it relates to when surplus waters may be available for domestic, municipal and industrial water supply. The USACE’s efforts to streamline and clarify definitions across the two water supply statutes only clouds the line between state water allocation rights and federal authority to issue contractual water storage agreements. Our concerns focus on four specific areas.

One of the State’s concerns with the rule is section (b)(2)(i) of the rule as published on page 91589 of the *Federal Register*. This section defines the term “surplus water” to include situations where the originally authorized purpose(s) of the water “have not fully developed.” The concern with this definition rests in the potential intrastate affect on water storage and tribal water rights. With this sweeping definition, it could allow the USACE’s authority to go beyond its responsibility to provide specified entities with storage for water authorized for a certain purpose. USACE’s authority would then encroach upon state allocation rights, essentially usurping control over state water supplies. The USACE should honor the long standing, clear history of deferring to states on water management and allocation, taking into consideration unique water laws of each state, to ensure proper authority is reserved to both the states and the Federal Government.

The State is also concerned that if the USACE interprets the rule to include natural flows as surplus water it could have damaging effects on Oklahoma’s rights to use and allocate water within the state. The USACE does not have authority to assume control over natural flows of the state and issue storage contracts or easements for non-project waters, only to issue storage space for the

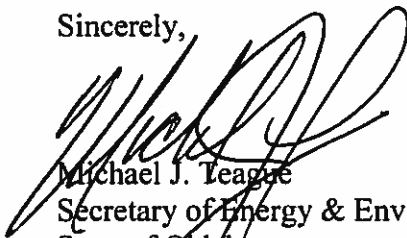
water allocated by the state. Under this proposed definition of surplus, water that naturally flows into Lake Texoma and is authorized for use in Oklahoma could be reallocated to users in Texas. If USACE continues to include natural flows in the surplus definition, Oklahoma's water supply could be in danger. We urge the USACE to further consider this issue before promulgating the final rule.

As pointed out above, heeding the boundaries of federal and state authority is key to ensuring that any action or determination on water supply is justified. It would be an advantageous partnership for the USACE to truly coordinate with states in the beginning of the determination process rather than post-determination as currently described in the proposed rule. By including states on the front end of the process, before the notice and comment period, many detrimental effects could be avoided. States can provide an invaluable experience and knowledge regarding the waters within their state boundaries.


Finally, we are concerned with the presumably inequitable treatment of the Missouri River Basin as it relates to pricing. The fact that one basin should be treated differently than others is arbitrary. This provision in the rule should either be removed or applied nationwide to ensure fair and equitable treatment of all basins.

Again, we appreciate the USACE's efforts to provide clarity to the statutes; however, the USACE must refrain from using this rule as a catalyst for subverting states' primacy over water allocation or other activities that are inherently state responsibilities. We appreciate your consideration of these concerns, and we look forward to working in partnership with the USACE to protect the waters of Oklahoma.

Sincerely,



Michael J. Teague
Secretary of Energy & Environment
State of Oklahoma



Julie Cunningham
Executive Director
Oklahoma Water Resources Board