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# U.S. Army Corps of Engineers Reservoir Projects – Domestic/Municipal/Industrial Water Supply: Proposed Rulemaking

## Arkansas Environmental, Energy, and Water Law Blog

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The United States Army Corps of Engineers (“Corps”) published in the December 16<sup>th</sup> Federal Register a proposed rulemaking which would:

... update and clarify its policies governing the use of its reservoir projects for domestic, municipal and industrial water supply pursuant to Section 6 of the Flood Control Act of 1944 and the Water Supply Act of 1958 (“WSA”).

See 81 Fed. Reg. 91556.

A number of Corps reservoirs are found in the State of Arkansas.

The Corps is seeking public comment on:

1. Corps’ interpretation of key provisions of Section 6 in the WSA
2. Corps’ proposed policies to more clearly and effectively provide for use of its reservoirs within the authority conferred by the previously referenced statutes

The Corps states it has utilized these authorities at different times since their enactment in 1944 and 1958 to accommodate water supply uses at more than 100 Corps reservoirs nationwide. These authorities are stated to have never been the subject of formal, notice-and-comment regulations. Instead, the Corps’ existing water supply policies and practices are stated to be set forth in an internal publication titled:

*Engineer Regulation 1105-2-100, Planning Guidance Notebook (APR 22, 2000)*

The Corps states that the guidance:

... has not been updated to reflect recent legal opinions, judicial decisions, and legislation affecting Section 6 and the WSA, does not fully articulate the Corps’ understanding of the differing Congressional intent behind the two statutes, and does not clearly define the Corps facilities to which the statutes apply, or the types of water uses, that can be accommodated under Section 6 and the WSA.

The proposed rulemaking is an attempt by the Corps to explain and improve its interpretations and practices under the statutes and seek comment from all interested stakeholders on those interpretations and practices. Its intent is also stated to be to enhance cooperation of state and local interest in the

development of water supplies in connection with the operation of its reservoirs for federal purposes as authorized by Congress and:

- Facilitate water supply uses of Corps reservoirs by others as contemplated under applicable law
- Avoid interfering with the lawful uses of water by any entity when the Corps exercises its discretionary authority under Section 6 of the WSA.

The proposed rule only applies to reservoir projects operated by the Corps. As a result, it does not apply to projects operated by other federal or non-federal entities and does not impose requirements on any other entity, alter existing contractual arrangements at Corps reservoirs or require operational changes at any Corps reservoir.

[A copy of the Federal Register can be downloaded here.](#)