

## Water Supply Rule: U.S. Army Corps of Engineers Announces Withdrawal



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The Assistant Secretary of the Army for Civil Works directed on January 21st the United States Army Corps of Engineers (“Corps”) to withdraw a proposed rule titled:

*Use of U.S. Army Corps of Engineers Reservoir Projects for Domestic, Municipal & Industrial Water Supply, also known as the Water Supply Rule (“Rule”)*

The *Rule* had been proposed during the latter stages of the prior Administration in 2016 and was also known as the “Water Supply Rule.”

The Department of the Army had issued the proposed *Rule* with the stated intent of clarifying Corps’ policies governing the use of reservoir projects for domestic, municipal and industrial water supply. This would be undertaken by defining key terms under the:

- Flood Control Act of 1944
- Water Supply Act of 1958

The Corps has traditionally utilized these two statutory authorities at different times to accommodate water supply uses in its 100 reservoirs nationwide.

The Corps stated it would use prior court decisions, legislative provisions and other developments related to the implementation of these statutes in establishing the definitions. The Corps intended to enhance its ability to cooperate with state and local interest in the development of water supplies in the connection with the operation of the federal reservoirs.

The Corps has traditionally set forth its water supply policies and practices in an internal publication titled *Engineer Regulation 1105-2-100, Planning Guidance Notebook* (April 22, 2000). It had expressed concern that this guidance had not been updated to reflect subsequent legal opinions, judicial decisions and legislation.

Opposition to the *Rule* argued that it would federalize water authority reserved for the states.

The January 21st news release states that issues raised by states, tribes and other stakeholders included:

- Inconsistent pricing methodologies
- Reallocation approval levels
- Agreement approval levels
- Difficulty obtaining real estate instruments

The Corps will now determine how best to:

. . . address water supply issues in order to address stakeholder concerns by simplifying, clarifying and streamlining provisions and processes to achieve better consistency and address long-standing policy issues.

A copy of the news release can be downloaded [here](#).