

An Overview of Water Supply Storage Contracting, Relevant Statutes and Funding History in Missouri

1.0 Introduction

Missouri contains several large, Federally-operated reservoirs that represent a source of water supply for municipalities and other entities. Contracts for water supply storage within these reservoirs have been executed to meet present and future municipal and industrial demands. Additionally, existing Missouri statutes allow the State to assist in the development of water supply projects in areas where water needs are demonstrated and when funds are appropriated. The purpose of this report is to review the history of water supply contracting, applicable statutes, funding resources and Federal guidance as they relate to the ongoing efforts of the Tri State Water Resource Coalition (Coalition) to meet future water demands of the southwest Missouri region. This report focuses primarily on elements related to water supply storage and does not discuss future infrastructure needs (such as pump stations, water treatment plants, transmission piping, etc.).

2.0 Relevant Statutes

There are two primary statutes that provide authority for the State of Missouri to assist in developing water supplies that involve storage within Federal reservoir projects. The following paragraphs provide a summary of each statute.

2.1 Missouri Water Development Fund (RSMo 256.280 – 256.360)

The purpose of the Missouri Water Development fund is to receive transfers of appropriations from the General Revenue Fund for the purpose of purchasing municipal and industrial water supply storage in public works projects. In addition, this statute provides the authority for the State to enter into contracts with appropriate Federal agencies in order to secure municipal and industrial water supply storage. Acceptable payments from the Water Development Fund include water supply storage costs incurred by project construction (including cost sharing of the project investment cost), annual operation, maintenance and replacement costs, and payment of the interest on the unpaid balance.

The Missouri Water Development Fund has been used to make payments toward the State's water supply storage obligations in Mark Twain Lake (Clarence Cannon – northeast Missouri) from 1998 through the present.

2.2 Multipurpose Water Resource Act (RSMo 256.435 – 256.445).

The purpose of the Multipurpose Water Resources Act (Act) is to ensure adequate, long-term, reliable public water supply storage, treatment and water related facilities in both urban

and rural areas of the State. The Act includes the “Multipurpose Water Resource Program Renewable Water Program Fund” (Multipurpose Fund) that is intended to receive and distribute funds from a variety of sources (public and/or private). The Act authorizes the Missouri Department of Natural Resources (MDNR) to administer moneys appropriated to the Fund through the provision of grants or other financial assistance, and allows for the state to participate with a sponsor in the development, construction or renovation of a water resource project (upon submission and acceptance of a project plan).

To date, no moneys have been appropriated to or distributed from the Fund, although the Fund (and Act) contain flexible authorities and mechanisms for developing regional water resource projects. There has been a recent proposal and discussion to expand the Act to include a Revolving Loan Fund to assist with current and future water resource planning and development projects. This Revolving Loan Fund (which would be contingent upon annual appropriations from the General Assembly, other moneys, and repayment from sponsors) is intended to provide a sustainable revenue source for water resource project planning and development. In concept, a Revolving Fund could serve beneficial to the Coalition’s interest in contracting for water supply storage, if adequate funds are appropriated. As of the writing of this report, no legislation has been filed for review or comment, however, it is suggested that the Coalition maintain close contact with MDNR regarding draft bill language and filing status.

3.0 Existing Water Supply Storage Contracts and Federal Guidance

There are several existing contracts for water supply storage within Federal reservoir projects that represent a precedent and provide insight into the contracting, funding and reallocation process in Missouri.

3.1 Smithville Lake – Plattsburg, MO

In 1972 the US Army Corps of Engineers (Corps) and the City of Plattsburg, MO executed a two-party contract securing water supply storage in Smithville Lake. The contract specified 11,500 acre feet of total water supply storage for municipal and industrial uses, with 2,650 acre feet designated as present use and the remaining 8,850 acre feet designated as future use. The contract stipulates the repayment of costs for water supply storage over a 50-year period. Plattsburg was required to pay principle and interest for the present use storage (no principle or interest payments were due for the future use storage for the first 10 years of the contract) and the pro-rata cost associated with annual operation, maintenance and capital replacement expenditures for the project. The total Project investment cost allocated to the water supply storage volume was \$1.55 million (excluding the annual interest payments on the unpaid balance and operation and maintenance costs), with an interest rate set at 3.649%.

3.2 Smithville Lake – City of Smithville, MO

Similarly, in 1972 the Corps and the City of Smithville, MO executed a two-party contract securing water supply storage in Smithville Lake. The contract specified 8,000 acre feet of total water supply storage for municipal and industrial uses, with 2,000 acre feet designated as present use and the remaining 6,000 acre feet designated as future use. The contract stipulates the repayment of costs for water supply storage over a 50-year period. Smithville was required to pay principle and interest for the present use volume (no principle or interest payments are due for the future use volume for the first 10 years of the contract) and the pro-rata cost associated with annual operation, maintenance and capital replacement expenditures for the project. The total Project investment cost allocated to the water supply storage volume was \$1.1 million (excluding the annual interest on the unpaid balance and operation and maintenance costs), with an interest rate set at 3.649%.

3.3 Mark Twain Lake – Clarence Cannon Wholesale Water Commission/State of Missouri

In 1988 the Corps, the Clarence Cannon Wholesale Water Commission (CCWWC), and the State of Missouri executed a three-party contract securing water supply storage in Mark Twain Lake for present and future use. The available water supply storage (20,000 acre feet) is equal to 16 million gallons per day (MGD) of use. The contract stipulates the repayment of the costs of the water supply over a 50-year period. The interest rate is set at 3.22% and payments are due annually. CCWWC has contracted for 5MGD (present use) and the State of Missouri has retained the remaining 11 MGD for future use. CCWWC is paying principle and interest based on the use of 5 MGD and State of Missouri is paying only interest on the 11 MGD of future storage. Both CCWWC and the state pay a pro-rata share of annual operating and maintenance costs (O&M) for Mark Twain Lake.

Currently the state pays \$364,448 in interest annually based on the 11 MGD of storage retained for future use. In recent years, the state's share of the annual O&M costs has fluctuated between a high of \$470,501 in 2011 to a low of \$70,824 in 2008 (both interest and O&M are paid upon receiving an annual appropriation from the General Revenue Fund to the Water Development Fund, contained within the Missouri Department of Natural Resources budget).

When the contract ends in 2038, the state will owe a full principle payment of \$11,318,268 if no additional water is being used. CCWWC has recently completed an expansion of their treatment plant to treat an additional 5 MGD for a total capacity of 10 MGD. Once CCWWC begins to use more than 5 MGD, the state's share of the payment will be reduced proportionally.

3.4 Stockton Lake – City Utilities of Springfield, MO

In 1993 the Corps and the Board of Public Utilities of the City of Springfield, MO executed a two-party contract securing water supply storage in Stockton Lake. The contract specified 50,000 acre feet of water supply storage added (reallocated) for municipal and

industrial uses. The contract allowed the storage space to be used in two stages: 25,000 acre feet of storage for immediate use and the additional 25,000 acre feet of storage when required by user demand, or by the year 2016. The contract also includes a provision to “limit the potential adverse impact to hydropower generation” and established an annual withdrawal volume limit (equivalent to 15 MGD for the initial 25,000 acre feet of storage and 30 MGD for the entire 50,000 acre feet of storage). The contract stipulates the repayment of costs for water supply storage over a 30-year period and includes annual interest payments on the unpaid balance, and the pro-rata cost associated with annual operation, maintenance and capital replacement expenditures for the project. The total Project investment cost allocated to the water supply storage volume (50,000 acre feet) was approximately \$9.26 million, and the interest rate was 6.125%.

3.5 Federal Guidance

It is important to note two changes to the Corps’ water supply storage contracting authority following the passage of the 1986 Water Resources Development Act (WRDA). First, the distinction and allowance for present use and future use storage (and the subsequent repayment structure as discussed in the Smithville Lake and Mark Twain Lake contracts) was removed. Second, the repayment period for a post-1986 WRDA water storage contract was shortened from 50 years to 30 years. While these changes appear to limit flexibility, the 1993 contract with City Utilities of Springfield includes the allowance for staged storage – bringing on additional allocated storage (and associated costs) when demand dictates, or at a specified future date. This contract provision sets an important precedent and should be considered when negotiating future water supply storage contracts.

Next, Section 1046(d) of the 2014 Water Resources Reform and Development Act (2014 WRRDA) amends the 1958 Water Supply Act by allowing contract holders (Users) the ability to convert future use storage (in their pre-1986 WRDA contracts) to present use storage and to seek new or alternative users of the storage. This allowance affords relief from contractual obligations to pay for such storage, in return for the release of the User’s rights to such storage. While this provision does not directly affect a future Coalition water supply storage contract, it does provide a precedent for seeking contractual relief if future water demands are not realized.

4.0 Funding History

The following section provides an overview of funding mechanisms historically used for planning and development of water resources projects in Missouri. It should be noted that this does not include a discussion of the State Revolving Fund Loan and Grant program administered by the Financial Assistance Center within the Missouri Department of Natural Resources (the state SRF provides loans and grants for water infrastructure projects for existing

facilities but does not fund the purchase of water supply storage or the construction of public water supply reservoirs).

4.1 Water Development Fund

As discussed in Section 3.3, the Water Development Fund is currently used to make payments toward the State’s obligation for water supply storage in Mark Twain Lake. Since 1998, annual transfers (appropriations) from the General Revenue fund to the Water Development Fund have been made in order to make payment. Annual payments average approximately \$500,000, with higher payments (ranging from approximately \$700,000 - \$825,000) being made due to several years of increased O&M costs associated with flood damage repair to Clarence Cannon Dam. Since 2009, this annual request for General Revenue Fund transfer has been included within the budget of the Missouri Department of Natural Resources and is subject to approval by the Missouri General Assembly.

4.2 Direct Appropriations from the General Revenue Fund

Recently, two General Revenue Fund appropriations for water supply development projects were included within Capital Improvement budget bills (listed below verbatim from the budget bills).

East Locust Creek Reservoir Project – Land Acquisition

97th General Assembly – 1st Session, House Bill 19 (Capital Improvements, FY2014)

Section 19.017. To the Department of Natural Resources

For funding expenditures related to surface water improvements

From General Revenue Fund. \$4,000,000

Little Otter Creek Reservoir Project – Permitting Assistance

97th General Assembly – 2nd Session, House Bill 21 (Capital Improvements, FY2015)

Section 21.155. To the Department of Natural Resources

For surface water improvements and construction of a water reservoir

in a county of the third classification with a township form of government and with more than nine thousand but fewer than ten thousand inhabitants and with a city of the fourth classification with more than three hundred but fewer than four hundred inhabitants as the county seat

From General Revenue Fund. \$200,000

4.3 Missouri Depart of Natural Resources – Water Resources Center

The Water Resources Center within the Missouri Department of Natural Resources receives annual budget appropriations, in part, to assist with regional water supply development projects. These funds have been used historically to assist water commissions and other organizations throughout the state initiate water resource planning projects, to leverage Federal funds, and to establish partnerships with appropriate local and Federal entities. The use of these funds fills a current gap for project planning expenses and advances projects toward other funding mechanisms (such as the SRF) that focus on final design and construction. Since 2009, annual budget appropriations of between \$250,000 - \$400,000 have been dedicated to planning assistance for regional water resources projects.

5.0 Considerations

The following considerations are offered as suggestions when pursuing a contract(s) and funding for water supply storage projects in southwest Missouri:

5.1 Negotiate a flexible water supply storage contract

The Coalition should seek to negotiate a water supply storage contract, within the authorities of the US Army Corps of Engineers, with provisions that allow for:

- Storage to be defined for use in multiple stages that align with the timing of anticipated regional demand and/or to address identified areas (sub regions) of most urgent need in a priority order;
- Extended time for making the first payment toward the water supply storage contract (i.e. 24 months from the effective contract date), to allow the Coalition to seek state and/or Federal funding assistance and for the Joint Municipal Utility Commission to promote the project/seek additional members; and,
- The ability to prepay a portion or all of the total Project Investment Cost, to allow for reduced annual interest payments on the unpaid balance.

In addition, the Coalition should consider drafting language for consideration in future Federal WRDA legislation that extends similar relief provided (by the 2014 WRRDA) for unused storage and payment obligations (if necessary) to future water supply storage contracts.

5.2 Funding

The Coalition should develop a detailed strategy (if not already completed) that identifies all potential funding options and includes a timeline for executing a water supply storage contract(s), a repayment schedule for the water supply storage and any necessary legislative actions. The strategy should include frequent project advocacy and updates for the Governor's Office, key members of the General Assembly, MDNR, regional leadership and

economic development organizations, and Missouri's Congressional delegation. Simultaneously, the Coalition should consider seeking funding assistance (for water supply storage) through the following options:

- An appropriation(s) from the Missouri General Revenue Fund for payment toward the water supply storage obligation. The timing of the request(s) should align with key contract elements (such as the effective contract date, timing of the first payment and any future milestones such as adding additional staged-storage). The request could include use of the Water Development Fund (within the authorities of MDNR), the Multipurpose Fund (if active) or an appropriation within a separate budget bill (similar to the appropriations within the Capital Improvements bill).
- Utilize the bonding authority of the Southwest Missouri Joint Municipal Water Utility Commission to make payment toward the water supply storage obligation.
- Determine if the Coalition' project may be eligible for funding through the EPA's newly formed Water Infrastructure Innovation and Finance Act (WIFIA) program. Information about WIFIA can be found [here](#). WIFIA is intended to fund larger water resources projects including consolidation of regional drinking water and wastewater facilities. It is unclear if contracting for water supply storage is an eligible project for WIFIA funding, but the program should be evaluated for this and future infrastructure needs.
- Begin an advocacy campaign and identify private-sector partners that may contribute directly to the Coalition or to the Multipurpose Fund specifically for water supply development and future water assurance in the southwestern Missouri region.