

**EXHIBIT E.**

**GUIDANCE ON PREPARATION OF  
DEVIATIONS FROM APPROVED WATER  
CONTROL PLANS  
(CESPD R 1110-2-8)**

DEPARTMENT OF THE ARMY  
SOUTH PACIFIC DIVISION CORPS OF ENGINEERS  
333 Market Street  
San Francisco, California 94105-2195

CESPD-MT-E

REGULATION  
No. 1110-2-8

12 September 2002

Engineering and Design  
GUIDANCE ON THE PREPARATION OF DEVIATIONS  
FROM APPROVED WATER CONTROL PLANS

1. **PURPOSE.** This document establishes the protocol for reporting deviations from approved Water Control Plans for water control projects within the South Pacific Division. It defines coordination, review, and approval procedures between the Division and District offices. Approval from Division must be obtained from all deviations (reference e., paragraph 6.b.)<sup>1</sup>

2. **APPLICABILITY.** The following is applicable to all South Pacific Division Districts and field-operating activities having civil works responsibilities.

3. **REFERENCES.** Authority and guidance can be found in:

- a. ER 200-2-2 (33 CFR 230), 4 March 1988, subject: Procedures for Implementing NEPA.
- b. ER 1105-2-100, 22 April 2000, subject: Guidance for Conducting Civil Works Planning Studies.
- c. ER 1110-2-240 (33 CFR 222.5), 8 October 1982, subject: Water Control Management.
- d. ER 1110-2-241 (33 CFR 208.1), 24 May 1990, subject: Use of Storage Allocated for Flood Control and Navigation at Non-Corps Projects.
- e. ER 1110-2-1400, 30 September 1993, subject: Reservoir Water Control Centers.
- f. ER 1110-2-8156, 31 August 1995, subject: Preparation of Water Control Manuals.
- g. ER 1165-2-501, 30 September 1999, subject: Civil Works Ecosystem Restoration Policy.

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<sup>1</sup> This regulation supercedes CESP-D-ET-EW Regulation, Subject: Guidance On The Preparation Of Deviations From Approved Water Control Plans dated 1 August 1999.

- h. EP 1165-2-502, 30 September 1999, subject: Ecosystem Restoration – Supporting Policy Information.
- i. EM 1110-2-3600, 30 November 1987, subject: Management of Water Control Systems.
- j. CESPD R 1110-2-8, August 1999, subject: Guidance on the Preparation of Deviations From Approved Water Control Plans.

#### 4. OVERVIEW.

a. Water Control Plans are prepared for all Corps projects and non-Corps projects within Federal flood control space. For Corps projects, the Water Control Plan is all encompassing in that it covers regulation of the project over the entire regime of pool elevations and conditions. The Corps' responsibility regarding non-Corps reservoirs is defined by Section 7 of the Flood Control Act of 1944 (58 Stat 890), which directs the Secretary of the Army to prescribe regulations for the use of storage allocated for flood control or navigation at all reservoirs constructed wholly or in part with Federal funds.

b. Water Control Plans define the regulation criteria and guidelines that govern how and when water will be stored and released from a project. The process of formulation and eventual approval of the Water Control Plan is a complex and time-consuming process because the plan must account for diverse goals (flood control, the environment, water quality, recreation, water supply, hydropower, etc.) and situations (e.g. normal, flood, drought, and emergency operations). Formulation of these plans requires a comprehensive knowledge of such diverse items as: project goals, project history, authorizing legislation, Corps policies and regulations, how a project interacts with other reservoirs within a basin, the role of other water interests/agencies, the effects to the general public in relation to environmental and aesthetic considerations, basin meteorology and hydrology, changing conditions (e.g. sedimentation, channel capacity, scour, etc.), and the physical capabilities of project features, such as outlet works, spillways, flood routing characteristics, etc.). Prior to approval and implementation, the proposed Water Control Plan is released for public review and comment. The public review process normally occurs concurrently with the NEPA public review process.

c. Deviations from approved Water Control Plans occur because every possible circumstance cannot be accounted for in a Water Control Plan. The competing goals and complex interactions of interested groups/agencies can cause even seemingly inconsequential deviations from an approved plan to lead to unforeseen environmental and legal complications. This regulation serves to assist a District in preparing their deviation requests. It outlines a minimum set of considerations that need to be addressed when making a recommendation to deviate from an approved Water Control Plan.

d. Deviations from approved Water Control Plans are intended, therefore, to address unforeseen and unique circumstances. They are not intended as a means for identifying or

initiating new opportunities to re-operate or reallocate storage in response to new and changing public needs.

## 5. DEFINITIONS.

*a. Emergency Deviations.* An emergency deviation from an approved Water Control Plan is one that is required due to an emergency situation. An emergency situation is defined herein as a situation in which there is a potential for injury, loss of life, threat to the project, or other serious hazards; but furthermore, also demanding immediate action, such that time constraints render impractical notification to the division. Depending upon the need for immediate action, an emergency situation could include: drowning and other accidents, assistance to local authorities responding to an emergency (e.g. police and fire departments), failure of operations facilities, chemical spills, treatment plant failures, and other temporary pollution or water quality problems. Water control actions necessary to abate the problem are taken immediately unless such action would create equal or worse conditions.

*b. Planned Deviations.* Planned deviations cover all other deviations not addresses by an emergency deviation.

6. OFFICE OF RECORD. The originating District's water control management office will be responsible for maintaining all relevant records documenting the deviation.

## 7. GENERAL INFORMATION FOR PREPARING ALL DEVIATIONS.

*a. Approval of Deviations.* Approval for all deviations must be obtained from the Division Commander or delegated representative prior to their implementation. As noted in paragraph 5.a, an emergency deviation situation may warrant an immediate action, delegated to the Leader, Water Management Team or his designated representative. The Leader of the Water Management Team shall consult with the Chief of Engineering and Construction and appropriate SPD staff and subsequently advise the Director, Military and Technical Services Directorate of the temporary change. Approval may be made by telephone, E-mail, or FAX.

*b. Preparation of Deviations.* Processing of a deviation request originates at the District water control management office. The District Commander may delegate signature authority for requesting deviations from approved water control plans to the appropriate functional division head or designated representative. Consultation with the District staffs, including engineering, planning, environmental, economics, operations, construction and legal must take place.

*c. Costs and Charges for Preparing Deviations.* Deviations from approved Water Control Plans require a similar level of scrutiny as applied to permanent changes to a water control plan. Any District charges incurred for processing a deviation are to be assessed and collected from the agency/entity requesting the deviation. The District should estimate the cost to process the deviation and provide that estimate to the requesting agency/entity. The District must collect the funds (in a revolving fund advance account under Support for Others) prior to processing the deviation request. Examples of costs for which the requesting entity would be responsible include costs for any required reviews or studies concerning associated hydrologic, water

control, legal, real estate, and environmental matters. After the deviation work is completed, any amount of funds left over in the account would be paid back to the requesting entity.

*d. Fees for Water Supply Deviations.* Deviations that result in Corps project flood control space being used for water supply purposes must address reimbursement by the sponsor to the Federal government for use of the flood control space. The district's deviation request package must include an economic analysis that determines a value for the reallocated flood control space. Section 7 projects will not require the economic analysis, as water supply charges are under the authority of the project owner.

*e. Time to Prepare Deviations.* District offices should also inform potential agencies/entities that the lead time required to assemble the necessary information required to evaluate a deviation request may be on the order of months (normally due to the required environmental analysis and the public review process). Thus, the request to the District should be made well in advance of the proposed initiation date for the deviation. The requesting agency/entity should also be made aware that approval of the deviation request would depend upon such things as a review of the impacts (e.g., environmental, hydrologic, legal, etc.).

*f. Coordinating with Division Staff.* Preparation of a deviation package is a time consuming and costly undertaking, and incomplete or inadequate package can delay approval. District personnel are encouraged to coordinate any questions or concerns about potential deviations and to discuss any atypical situations with their Division counterparts early in the process and before the package submittal. All technical review will be conducted at the District level and will provide a review certification. In an emergency situation, a formal quality certification will most likely not be required. Appendix D lists the Division staff with which deviation-related issues are to be coordinated. Division will provide updates to Appendix A as needed.

*g. Non-Corps Projects.* Deviation requests for non-Corps (Section 7) projects must be prepared with the approval of the project owner. This is required because project owners are responsible for assuring that the project is operated as prescribed in the Water Control Plan developed in concert with the Corps' flood control interest. The owner is also ultimately responsible for dam safety at the project and for funding the project.

*h. Environmental Requirements.* Each deviation request shall include a summary of the environmental effects of the proposed deviation and a statement of how the proposal is in compliance with pertinent environmental requirements, including but not limited to the National Environmental Policy Act (NEPA), Endangered Species Act, the Clean Water Act, and the Clean Air Act and Section 176 Conformity Determination. NEPA documentation requirements ordinarily are met by an Environmental Assessment (EA) of the proposed action with a Finding of No Significant Impact (FONSI) signed by the District Commander. If an existing Environmental Impact Statement/Record of Decision or EA/FONSI accurately covers the action, and if there have been no environmental changes since that documentation, this can be cited. Supporting environmental documents shall be included in the deviation request package when it is submitted. Typically these will include an EA, a signed FONSI, a Biological Assessment, and a final Biological Opinion or a letter from Fish & Wildlife or National Marine and Fishery

Service concurring that there is not likely to be adverse effect on listed species. Sometimes other documents, such as 404(b)(1) evaluation are required. In the case of emergency deviation, the emergency provisions and requirements of the various environmental laws should be followed.

*i. Required Information/Analysis.* Table 1 outlines the information and analysis that are required in a deviation request package that is submitted to Division.

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TABLE 1  
Information and Analysis Required in a Deviation Request Package

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- a. Copy of sponsor's/project owner's letter requesting a deviation.
  - b. A description of the deviation.
  - c. Its effects on the operational objectives or project purposes.
  - d. A description of the potential flood threat over the period of the deviation.
  - e. The current and predicted maximum reservoir storage and elevation.
  - f. Documentation that the proposed deviation is in compliance with all pertinent environmental laws.
  - g. The effect on other agencies and individual interest.
  - h. The coordination that has taken place with other agencies.
  - i. Alternative measures that could be taken.
  - j. Recommendation/rationale on whether a permanent change to the Water Control Plan for this situation is warranted.
  - k. A District legal opinion.
  - l. Any recommended fees or reimbursements to the Federal Government.
  - m. Any other information that may be pertinent to the deviation request.
  - n. The District Commander's recommendation.
  - o. Quality Control Certification
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## 8. PREPARING EMERGENCY DEVIATIONS

a. Emergency deviations are the only type of deviation that do not require prior approval from Division, and must only be used if events warrant an immediate emergency action, such that time constraints render impractical notification to the Division. However, even in an emergency situation, the District shall notify the Division of the action as soon as possible, and shall comply with all applicable requirements.

b. A record of the emergency deviation shall be developed at the district office and transmitted to the Division office within a day of the action taken.

c. Procedures for emergency deviations:

(1) Take the necessary action.

(2) Contact Division as soon as possible (See Appendix A for telephone numbers) to describe the action taken and the cause (NOTE: The order of (1) and (2) may be reversed depending on the nature of the emergency). Continuation of the deviation will require Division approval.

(3) The District shall provide written conformation to the Division office within 7 days of the deviation. The correspondence shall include the items outlined in Table 1 (as applicable).

(4) The Division shall respond within 3 days of the district's notification of the emergency deviation.

## 9. PREPARING PLANNED DEVIATIONS.

a. The District shall inform Division within 2 days of receiving a request for a proposed deviation.

b. At least 7 days prior to the proposed action, the District shall transmit a deviation request package to the Division office. The deviation request package shall include the items in Table 1. This package may be initially transmitted electronically.

c. The Division shall review the proposal and approve or disapprove the District's deviation request within 5 days, assuming a complete package with all required documentation has been received. Early, detailed, coordination and transmittal of documents to Division may reduce the processing time.

d. The District and Division shall follow-up with formal correspondence within 3 days of their electronically transmitted request (District) and approval/disapproval (Division).

## 10. SPECIAL CIRCUMSTANCES.

Per reference 3.c, Water Control Plans are subject to continuing and progressive study in order to keep them current. Should a new re-operation or reallocation opportunity be identified for a Corps project, then it should be addressed under authority of Section 216 of Public Law 911-611, an Initial Appraisal Report can be conducted with O&M funding to determine whether or not a study, if deemed appropriate, among other things, could initiate the process to incorporate the new opportunity in the project's Water Control Plan. Re-operation or reallocation studies for non-Corps projects would need to be initiated by the project owner.

  
for ROBERT L. DAVIS  
BG, USA  
Commanding  
COL, EN  
DEFCOR

### 1 Appendix

APP A – CESPD Phone list for Coordination of Water Control Plan Deviations

APP B - Quality Control Certification

### DISTRIBUTION:

Electronic Copy Available

**APPENDIX A**

**CESPD Phone List for  
Coordination of Water Control Plan Deviations**

Note: Initial District notification to the Division shall be made to Water Management.

**Water Management**

**Office**

Donald Bergner	(415) 977-8101
Boni Bigornia	(415) 977-8102
Terry Mendoza	(415) 977-8106
Tom Wang	(415) 977-8120
Frank Khroun	(415) 977-8111
Ed Sing	(415) 977-8117

**Internal SPD Coordination with Respective District Support Team Members**

**Legal**

(SPN/SPA)	Mary Gillespie	(415) 977-8214
(SPL/SPK)	Dan Dykstra	(415) 977-8211

**Planning & Environmental**

(SPL/SPN)	Les Tong	(415) 977-8170
(SPA)	Jim Conley	(415) 977-8108
(SPK)	Clark Frentzen	(415) 977-8164

**Real Estate**

(SPL/SPN)	Marilyn Rodriguez	(415) 977-8188
(SPK/SPN)	Richard Guthrie	(415) 977-8186

**Operations**

(SPL/SPN)	George Domurat	(415) 977-8050
(SPK)	Phil Turner	(415) 977-8058
(SPA)	Jonathan Yip	(415) 977-8057

**Program Management**

(SPN)	Jeannie Hritz	(415) 977-8228
(SPK)	Marcelo Pascua	(415) 977-8232
(SPA)	Hoa Ly	(415) 977-8229



**APPENDIX B**

**DISTRICT ENGINEER'S QUALITY CERTIFICATION**

**COMPLETION OF QUALITY CONTROL ACTIVITIES**

The District has completed the review/analysis of the water control deviation from the Approved Water Control Plan for (Project Name and Location). Certification is hereby given that all quality control activities appropriate to the level of risk and complexity inherent in this analysis have been completed.

**GENERAL FINDINGS**

Compliance with clearly established policy principles and procedures, utilizing clearly justified and valid assumptions, data and the reasonableness of the results. The undersigned recommends certification of the quality control certification for this deviation request.

\_\_\_\_\_  
*(Signature)*  
*Chief, Responsible Functional Element*

\_\_\_\_\_  
*(Date)*

**CERTIFICATION OF LEGAL REVIEW\***

The request for a water control deviation from the approved Water Control Plan report for indicate name of project, has been fully reviewed by the Office of Counsel, and is approved as legally sufficient.

\_\_\_\_\_  
*(Signature)*  
*District Counsel*

\_\_\_\_\_  
*(Date)*

**QUALITY CERTIFICATION**

All issues and concerns resulting from technical review of the water control deviation have been resolved. This deviation is recommended for approval.

\_\_\_\_\_  
*(Signature)*  
*District Commander*

\_\_\_\_\_  
*(Date)*