

Tri-State Water Supply Litigation: Is it different this time?

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In July 2009, federal Judge Magnuson issued a draconian ruling that declared water supply was not an authorized purpose of Lake Lanier and that “incidental” water supply from the Lanier/Chattahoochee River above Atlanta was limited to the year 1975 withdrawal levels. He gave Alabama, Georgia, and Florida three years to work out a deal and get Congress to approve it – a task that, heretofore, has proved elusive.

Georgia appealed Magnuson’s ruling, and ACEC and GAWP filed a “Friend of the Court” brief in support of Georgia’s appeal. The ACEC/GAWP brief concluded that the judge had, in effect, made his own erroneous calculation of how much was available from Lanier operations for water supply purposes (230 mgd). The judge failed to properly account for the return of treated wastewater to the system, as well as tributary flows to the River between Buford Dam and Atlanta (at Peachtree Creek). In addition he used an incorrect calculation methodology (“critical yield” data instead of historical use data). In 1986, the Corps calculated (using proper methods and based on data available at that time) that 327 mgd was available. New data and management techniques may allow an ever larger value.

Consistent with the ACEC/GAWP brief, the Circuit Court did remand key issues to the Corps, but with specific instructions that they consider the following in their reconsideration:

1. “Water supply for the metropolitan Atlanta area” is clearly established as an authorized purpose of Lake Lanier.
2. “Congress contemplated that the Corps would be authorized to calibrate operations (at Lanier) to balance (competition) between water supply use and power use.”
3. “Congress also explicitly provided that the “estimated present need” of the Atlanta area for water supply be satisfied at the expense of “maximum power value””.
4. “Congress contemplated that water supply may have to be increased over time as the Atlanta area grows.”

Finally, the Court wrote “we expect the Corps to have arrived at a well-reasoned, definitive, and *final* judgment as to its authority” (emphasis added) to allocate water in accord with the Court’s findings; and this must be done “at the end of a one-year period” (i.e., June 28, 2012).

The Circuit Court’s ruling is a sweeping repudiation of Magnuson’s order. It sends a strong message to the Corps for a prompt reanalysis that seems favorable to Georgia. It also sends a message to Alabama and Florida to engage in serious negotiations on a final resolution of the longstanding dispute.