



Florida Department of Environmental Protection

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Michael W. Sole
Secretary

May 8, 2009

Colonel Byron Jorns
United States Army Corps of Engineers
District Commander
Mobile District
Post Office Box 2288
Mobile, AL 36628-0001

RE: Apalachicola-Chattahoochee-Flint Reservoir Operations

Dear Colonel Jorns:

I am writing, on behalf of the State of Florida, with two urgent requests. First, I ask that you, as District Engineer, review and correct an erroneous Corps of Engineers' staff reinterpretation of the Revised Interim Operating Plan (RIOP) for Jim Woodruff Dam. This recent revision raises great concerns about the objectivity of the implementation of the RIOP. On its face, this newly devised interpretation appears intended to extend the drought operations in the ACF Basin, resulting in undue favor of upstream interests. Second, I ask that you provide clarification in writing on a project listed in the Corps' American Recovery and Reinvestment Act of 2009 - Civil Works Expenditure Plan.

Composite Storage Under the RIOP

Drought operations under the RIOP are triggered when the composite storage falls below Zone 3, and "remain in place until conditions improve such that composite storage reaches a level above the top of Zone 3 (i.e., within Zone 2)." *Supplemental Environmental Assessment* ("EA"), EA-13-15. The project data published on the Corps' Mobile website shows that, on multiple occasions between March 1 and April 15, 2009, composite storage was well into Zone 2. Thus, under the plain language of the RIOP, drought operations should have been suspended until composite storage again reached Zone 4. EA-15.

Rather than following this course, in a recent ACF drought conference call and after the States of Alabama and Florida called the issue to the Corps' attention, Corps staff disclosed that, in determining if drought operations should be discontinued, they had-

without prior notice to, or input from, Florida – decided to limit “composite storage” by (1) dividing such storage into its component “conservation storage” and “flood storage” parts and (2) excluding the latter when determining whether operational changes under the RIOP have been triggered pursuant to the stated “composite storage” benchmarks. On the basis of this new and counterintuitive interpretation which excludes substantial water in storage in the Corps reservoirs, the Corps has not suspended drought operations.

This new interpretation is contrary to the RIOP’s express allowance for *storage in the flood pool to be used as additional conservation storage*, which provides the Corps with increased operational flexibility: “The drought plan includes a temporary waiver from the existing water control plan to allow temporary storage above the winter pool rule curve at the Walter F. George and West Point projects if the opportunity presents itself and/or begin spring refill operations at an earlier date in order to *provide additional conservation storage for future needs ...*” EA-13 (emphasis supplied). Therefore, water, once stored in the flood pool, is considered available as part of conservation storage and utilized to support operations. This view was confirmed by Corps staff during the April 23, 2009 ACF drought conference call, when they explained that they had been holding these lower reservoirs in the flood pool for the last few months, and are now planning to rely on that water to meet ramp-down restrictions designed to prevent unauthorized “take” of Gulf sturgeon in the Apalachicola River.

I believe you are required by the terms of the RIOP to rescind this recent operational interpretation and reinstate normal operations consistent with the plain meaning of the RIOP. This novel reinterpretation presents the appearance that the Corps seeks to avoid suspension of drought operations which would require the Corps to release more water from Lake Lanier. The ongoing drought operations reduce flows faster than called for under the RIOP and deprive the Apalachicola River and Bay of modest protections which are particularly important to Florida because we are well into the riverine spawning season of listed and other species.

American Recovery and Reinvestment Act of 2009 - Civil Works Expenditure Plan

On a second matter, I am pleased that the Corps’ American Recovery and Reinvestment Act of 2009 - Civil Works Expenditure Plan includes \$3,000,000 for the following project in its Operations and Maintenance list for the ACF:

Award Contract to perform mandated Lake Lanier reallocation study, complete ACF WCM and required EIS. These activities are key to proper management of the ACF Basin for project purposes including water supply, recreation, hydropower, flood damage reduction, navigation and fish and wildlife.

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I have great concern, however, with the use of the term "reallocation" in the context of the litigation pending before Judge Magnuson, where Florida and Alabama have vigorously challenged the Corps' authority to reallocate storage. The Corps should not proceed with any reallocation study until the federal court rules on the Corps' authority. That ruling may well repudiate the Corps' recent interpretation. The Corps' focus should remain on completion of the water control plan. As I discussed at the recent meeting with the Water Science and Technology Board, Florida has a strong interest in the rewrite of the water control plan, and in the role that the National Research Council will assume in assisting with that process. Please confirm in writing that the Corps is not proceeding with a reallocation study at this time.

I thank you in advance for your consideration of my requests and look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael W. Sole". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael W. Sole
Secretary