



Florida Department of Environmental Protection

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Charlie Crist
Governor

Jeff Kottkamp
Lt. Governor

Michael W. Sole
Secretary

Dear Friends;

I am pleased to report that on July 17 Federal Court Judge Paul Magnuson issued a 97 page Memorandum and Order resolving major, and longstanding, issues in the consolidated litigation over the management of the waters of the Apalachicola-Chattahoochee-Flint (ACF) River Basin. In his order, Judge Magnuson examined the legislative and administrative history relating to Lake Lanier and the evolution of the U. S. Army Corps of Engineers' management of the dam in the last twenty plus years and concluded that the Corps has exceeded its authority. Among many important findings, the Judge found:

- After thoroughly reviewing the legislative history and the record, the Court reached the inescapable conclusion that water supply is not an authorized purpose of Lake Lanier.
- The Corps's reallocation of the lake to support water supply constitutes a major structural or operational change and seriously affects the project's authorized purposes, which renders its actions illegal.

In the end, the Court explained its decision in clear terms:

- Congress authorized and paid for the Buford Dam, and gave the Corps authority to operate the dam. Congress specified, however, that the Corps's authority was not without limits. If the Corps believes that it must operate the project in a manner contrary to Congress's initial authorization of the project, it must so inform Congress and secure Congress's permission to do so. Congress has made no exceptions for situations such as the present, when the need for the change is great: the Water Supply Act does not provide that "changes shall be made only upon the approval of Congress unless it is inconvenient to do so." Congress reserved to itself the power to change the purposes for federal projects such as the Buford Dam project. The executive branch simply may not circumvent that authority. Congressional approval of the reallocation of storage in Lake Lanier is required.

Judge Magnuson recognized that it will take time to obtain the required Congressional authorization for changes to the operations of Lake Lanier. Therefore, he stayed further litigation related to the Corps' lack of authority for its operations for three years to allow the parties to obtain Congress's approval for the operational changes that the water supply providers request. During the stay water withdrawals may not be increased, absent the agreement of all parties. The order states that it will take effect at

the end of the three years, unless the Corps obtains Congressional authorization *or some other resolution is reached.*

Florida has long maintained that the Corps and Georgia cannot allocate the water within Lake Lanier for water supply purposes without Congressional approval. Judge Magnuson's ruling reaffirms that position. Governor Crist and I are delighted to have reached this milestone in Florida's efforts to protect the Apalachicola River and Bay and to preserve the region's quality of life. Governor Crist has reiterated that Florida is ready to negotiate, in good faith, a fair equitable sharing of the waters in the basin. We believe the three states should resume the effort to reach an agreement outside of the court system that will be beneficial for all.

While eventually, this issue will need some congressional action, it is my strong belief that such action should not be taken without the essential input and dialogue needed by all three states to reach a fair and equitable solution. As such, Governor Crist looks forward to pursuing these discussions with the goal of finding the solutions necessary to properly advise future Congressional action.

Please contact me if I can be of any assistance as we strive to resolve this longstanding dispute.

Sincerely,

Mike Sole

Michael W. Sole
Secretary