



Georgia's

State Water Plan

Judge Magnuson Ruling : Phase II

Middle Chattahoochee Council

CM 7 September 14, 2010

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Phase I (ruling July 17, 2009)

- Water Supply was not an originally authorized purpose of Lake Lanier
- Water supply from Lanier exceeded Corps' authority
- Ruling will not go into effect until July 2012

Phase II (July 21, 2010)

- Focus on the flow over Jim Woodruff Dam
- Endangered Species Act (ESA)
- NEPA (National Environmental Policy Act)

ESA

- Florida argued for more water for Sturgeon and two species of mussels

Verdict

ESA claims are without merit and
must be dismissed.

NEPA

- Corps violated its obligations under NEPA by:
 1. Implementing the initial 2006 IOP prior to seeking FWS advise
 2. Second, others argued that the Corps should have prepared an EIS for the 2006 IOP or the 2008 IOP.

Verdict

NEPA claims are prudentially moot.
Basically, it makes little practical sense for the Corps to develop an EIS for a plan that is destined to be replaced within two years.

NEPA

“The Corps’s rather cavalier attitude toward its duties under NEPA is distressing, to say the least.

The Court is troubled by the Corps’s refusal to take responsibility for its utter failure to conduct any sort of environmental analysis whatsoever on the plan by which it has operated the ACF basin for more than 20 years.”

- Judge Paul Magnuson in Phase 2 Ruling issued on July 21, 2010.

Trust is lacking

“ Had the Corps been less recalcitrant over the past 20 years, it is possible that such a step (preparing a water control plan) might have forestalled this phase of the litigation altogether. But given the contentious history in the ACF Basin, it is not surprising that no party is willing to trust the Corps to do its job in accordance with the law.”

- Judge Paul Magnuson in Phase 2 Ruling issued on July 21, 2010.

Reasonable alternatives should be considered...

“Nor will this Court, or future courts considering the Corps’s actions, look favorably on the Corps’s stubborn insistence on excluding from its analysis all reasonable alternatives in the ACF basin. For instance, an EIS that does not at least consider the effects of current and future water supply is....for all intents and purposes, a useless document.”

- Judge Paul Magnuson in Phase 2 Ruling issued on July 21, 2010.

Analysis is needed

“The Georgia parties are correct that all decision makers would benefit from the comprehensive analysis of a range of potential activities in the ACF basin, and it is likely that the Corps’s failure to conduct such an analysis would be an abuse of the Corps’s discretion under the [Administrative Procedure Act] APA.”

- Judge Paul Magnuson in Phase 2 Ruling issued on July 21, 2010.