

Georgia Department of Natural Resources

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Memorandum

To: Regional Water Council Chairpersons

From: Carol A. Couch



RE: Overview of Judge Magnuson's July 17, 2009 Ruling

The purpose of this memorandum is to provide an overview of Judge Magnuson's July 17, 2009 ruling, how Georgia is responding and how the ruling impacts the work of the regional water planning councils.

Overview of Ruling

- Judge Magnuson ruled that water supply was not an originally authorized purpose of Lake Lanier under the legislation that created Lake Lanier, but instead that Congress intended for water supply to be an "incidental" benefit of releases for hydropower and other purposes. The Judge ruled that the Corps is constrained in meeting water supply needs by the Water Supply Act, which does not allow reallocations of storage that "seriously affect" other project purposes or cause "major operational change."
- Judge Magnuson concluded that current water supply levels exceed the Corps' authority under the Water Supply Act, and, therefore, that Congressional approval is needed for the Corps to meet current water supply levels.
- Judge Magnuson's decision does not state what level of water supply the Corps can meet without further Congressional action. That is, while he believes current levels go beyond the Corps' authority, it is unclear what lesser amount is permissible.
- Judge Magnuson's order provides that its restrictions on water use from Lake Lanier will not go into effect for three years. This is based upon his acknowledgement that local governments rely on Lake Lanier, and that time is needed for Congress to authorize water supply as a purpose for Lake Lanier. So, there is no immediate threat to Georgia's water supply.

Response by the State of Georgia

Governor Perdue is leading a four-pronged strategy:

1. Appeal: Georgia will appeal; several areas in the ruling are vulnerable. An appeal would be heard by the United States Court of Appeals for the Eleventh Circuit.
2. Negotiations: Georgia's preferred approach in dealing with the disputes over Lake Lanier always has been negotiation with the federal interests and downstream states. Governor Perdue has sent Governors Riley and Crist 40 proposed dates to meet. Gov. Riley has indicated that nineteen of these dates are acceptable. There has been no response from Gov. Crist.
3. Contingency planning: I have been directed to prepare contingency plans for water supply and to develop alternatives that will be necessary during reauthorization studies. Lake Lanier is the most economical and environmentally friendly way to provide adequate water supply. Contingency plans include an analysis of the existing metro plan and focuses on term-near cost effective actions and projects.
4. Congressional reauthorization: What is needed now is a coordinated and sustained effort in the Congress to obtain legislation that affirms that Lake Lanier is to be put to the economically and environmentally beneficial use of providing for municipal and industrial water supply needs.

Moreover, Georgia intends to continue to do the planning and take all actions necessary (legislative, administrative, and legal, at the federal, state, and local levels) to ensure that the reasonable needs of its people are met for the future. Any interstate agreements must be a fair deal between the states and for the region's of Georgia.

Impacts of the ruling on the work of the Regional Water Councils

- The work of the regional water councils is as important as ever.
- As we have previously discussed, the work includes:
 - Providing a regional vision desired for the future
 - Understanding the capacities of the water resources
 - Forecasting future water needs
 - Identifying gaps or shortfalls between resource capacities and future needs
 - Selecting management practices to ensure that there is sufficient water and assimilative capacity to sustainably meet future needs
 - Compiling the above information into a recommended regional water plan
- Through these efforts, the water resources, needs, and necessary management practices will be better understood by each region and by neighboring regions. The Regional Water Councils will provide essential and critical input and information for use by the Governor and me as we implement his four-pronged response.