



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
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WASHINGTON DC 20310-0108

SEP 11 2009

Honorable Richard C. Shelby
United States Senate
304 Russell Senate Office Building
Washington, DC 20510

Dear Senator Shelby:

Thank you for your letter of August 21, 2009 concerning the Corps of Engineers' update of the water control plans and manuals for the Apalachicola-Chattahoochee-Flint (ACF) River Basin.

In his July 17th decision, addressing the first of two phases of the consolidated In re Tri-State Water Rights Litigation, Judge Magnuson held that the U.S. Army Corps of Engineers' operation of the Buford Dam and Lake Lanier project exceeded the established authority under the project authorization and the Water Supply Act of 1958, because those operations have involved major operational changes and seriously affect originally authorized purposes.


In response to your request for an explanation as to how the Corps will proceed as a result of the court's decision, I can unequivocally commit to you that the Army's updating of the ACF water control plans and manuals will reflect the current state of the law. While the Army is proceeding with the updating process, as urged by the court, it will continue to reassess the updating process in light of the litigation outcome. The updated water control plans and manuals will reflect how the projects in the basin should be operated for authorized purposes only. In accordance with the July 17th decision, the Army is not in a position to reallocate water in Lake Lanier for water supply, absent Congressional action. The Army will not use the process for updating the water control plans and manuals to propose or study any potential reallocation of water inconsistent with the court's ruling.

Moreover, the Army is committed to following the lawful decisions of the Federal judiciary, and is therefore reopening the NEPA scoping process associated with updating the water control plans and manuals, and will revise the determinations made in the Final Scoping Report as necessary.

Please note that I have sent identical responses to the other Congressional signatories to this letter.

I appreciate your continued interest in and support of the Army Civil Works program.

Very truly yours,


Jo-Ellen Darcy
Assistant Secretary of the Army
(Civil Works)