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## Army Corps of Engineers sticks finger in Atlanta's eye

6:00 am November 30, 2009, by Bob Barr

The US Army Corps of Engineers, not often known for swift action, seems suddenly to have sprouted winged feet. Unfortunately for the Atlanta metropolitan area, the Corps' new-found efficiency appears designed to stab the area in the back. In a decision announced shortly before Thanksgiving, the lieutenant colonel heading the Corps' Mobile District, which oversees the Apalachicola-Chattahoochee-Flint (ACF) River Basin, decided to kowtow to the federal judge whose July 17<sup>th</sup> order threatens to shut off Lake Lanier as a source of water for most of the greater Atlanta area in three years.

The Army suddenly has decided that its previously-announced revisions to the applicable Environmental Impact Statement (EIS), which process had been ongoing for nearly two years already, must now be quickly revised to accommodate the federal judge's draconian ruling. The Corps also decided that its Master Water Control Manual for the ACF Basin, which it had not in the past viewed as an urgent undertaking, must now be quickly modified so as to be able to close the spigot for Atlanta immediately on July 17, 2012, the third anniversary of the court's order.

All these – and related – decisions by the Army presume that every aspect of Judge Paul Magnuson's order was correct and will stand up on appeal. This, however, ignores the fact that major legal questions about the correctness of the court's ruling have been identified already in Georgia's pending appeal.

The Army's precipitous decision came also despite the fact that the three states (Georgia, Alabama and Florida) are engaged in comprehensive negotiations to settle the water war that has dragged on for a decade and a half. Georgia Governor Sonny Perdue disagreed strongly with the decision by the Corps, which weakens Georgia's hand in the high-stakes dispute, even as Alabama Sen. Richard Shelby publicly gloated over it.

In the wake of another federal court order, issued November 18<sup>th</sup> in Louisiana, the Corps of Engineers needs all the friends it can get. In a highly unusual ruling, US District Judge Stanwood Duval ruled that the Corps is liable for damages to homes and businesses caused by flooding of the Corps-constructed Mississippi River-Gulf Outlet (MRGO). In his exhaustive, 156-page ruling, Duval was particularly blunt in highlighting the agency's gross mismanagement of the waterway; concluding the Corps was in fact responsible for "catastrophic loss of life and property in unprecedented proportions" and for wasting billions of taxpayer dollars.

The government is certain to appeal the New Orleans ruling, which is a major indictment of an agency long-bedeveled by broad and vague responsibilities and suffering under onerous bureaucratic layers. The jurisdiction of the Army Corps of Engineers, for instance, encompasses not only deciding what can be done with the tiniest "waterway" within any US territory, but extends also to enforcing federal "wetlands" laws.

Deciding what constitutes a "wetland" brings Corps' personnel into frequent dispute with local governments attempting to build or expand municipal facilities. The agency's broad reach causes equally heated arguments with individual property owners, who might be seeking to undertake something as insignificant as repairing a

small boat dock on a Corps-managed lake such as Lake Lanier. These are tasks far removed, for example, from the storied achievements of the Corps during the D-Day invasion of Normandy in 1944.

Trying to please all beneficiaries of a major, federally-chartered lake certainly is a difficult task. However, the Corps' often unbending reliance on its statutory jurisdiction, coupled with the fact that as a military unit, it is not directly accountable to the private sector, gains it view lasting friends.

Embracing a federal judge's order, even before it has been made final through the normal appellate process, may curry favor with the federal judiciary, but it ill serves the citizens to whom the Corps of Engineers is ultimately supposed to be accountable.

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