

THE CORPS' CONUNDRUM: RECONCILING CONFLICTING STATUTORY REQUIREMENTS IN THE ACF RIVER BASIN

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REFERENCE: *Proceedings of the 2005 Georgia Water Resources Conference*, held April 25-27, 2005, at the University of Georgia. Kathryn J. Hatcher, editor, Institute of Ecology, The University of Georgia, Athens, Georgia.

Abstract: There are five Corps of Engineers' dams located in the ACF River Basin between Buford Dam (Lake Lanier) and Jim Woodruff Lock and Dam (Lake Seminole). Each of these dams was constructed pursuant to specific statutory mandates. Several of these mandates are in conflict. An existing rule of statutory construction is that conflicts between statutory requirements are resolved in favor of the most recently enacted legislation. This study applies this rule of statutory construction to the Corps of Engineers' conflicting mandates and concludes that the Corps does not have the authority to operate Buford Dam (Lake Lanier) in a manner that adversely impacts the purposes enumerated in the legislation authorizing the construction of West Point Dam (West Point Lake).

I. Introduction

It is an apocryphal story, perhaps, but it is applicable nonetheless. Mark Twain was delivering a lecture in Utah. During the lecture, a Mormon acquaintance argued with him regarding polygamy. After a long and rather heated debate, the Mormon finally asked Twain if he could cite a single passage of Scripture that forbade polygamy. "Certainly," Twain is said to have replied. "[Matthew 6:24] – No man can serve two masters." (Utermeyer 1946)

The Corps of Engineers, in its management of the waters of the ACF River Basin, has multiple masters including the Rivers and Harbors Act of 1945, the Rivers and Harbors Act of 1946, the Water Supply Act of 1958 and the Flood Control Act of 1962. Given increasing demands for the waters of the ACF River Basin and the restrictions on water use contained in applicable statutes, it is not possible for the Corps to fulfill all of its statutory obligations. In essence, by attempting to serve multiple masters, the Corps is not fulfilling the intent of the one master whose approval is paramount: Congress.

This paper, which addresses management conflicts that have arisen in the ACF River Basin because of conflicting and inconsistent statutory requirements, focuses on Buford Dam (Lake Lanier) and West Point Dam (West Point Lake). The statutory authority of the Corps to construct and operate these facilities is discussed in the following two sections. A means of resolving these conflicts and inconsistencies based on the principles of statutory construction is presented in Section IV. Conclusions are presented in Section V.

II. Buford Dam (Lake Lanier)

Initial authorization for construction of Buford Dam and Lake Lanier was contained in section 2 of the Rivers and Harbors Act of 1945, 59 Statutes at Large 17. This authorization was amended by the Rivers and Harbors Act of 1946, 60 Statutes at Large 635, which adopted by reference a report of Lt. Gen. R.A. Wheeler, Chief of Engineers. The purposes for which Buford Dam and Lake Lanier were authorized are referenced in Lt. Gen. Wheeler's report. (U.S. House of Representatives, 1947)

The two purposes for which Buford Dam (Lake Lanier) was authorized were flood control and hydroelectric generation. These were the only two purposes to which project costs were allocated. This contrasts with three downstream dams where costs were allocated either entirely to navigation (George W. Andrews Lock and Dam) or were divided between navigation and hydroelectric generation (Walter F. George Lock Dam and Jim Woodruff Lock and Dam). (Sherk, 2000)

As "adjunct" or secondary benefits, Buford Dam (in conjunction with the Woodbury Dam, one of the three headwaters dams to have been constructed on the Flint

River) was to provide flows needed to reduce the amount of dredging required to maintain a nine-foot deep channel in the Apalachicola River. Though the legislative history indicates that Buford Dam was to provide benefits for downstream navigation, it also indicates that Congress gave no priority to the use of Lake Lanier's waters for such purposes. Furthermore, Congress did not allocate any portion of the costs of the project to navigation benefits. (Sherk, 2000)

Another adjunct benefit was water supply. The report of Lt. Gen. Wheeler suggested that the waters stored in Lake Lanier could be utilized to provide water for Atlanta. This was not included as an authorized project purpose, however, and no portion of the costs of the project were allocated to water supply benefits. (Sherk, 2000)

III. West Point Dam (West Point Lake)

On July 31, 1957, the Committee on Public Works of the U.S. House of Representatives by resolution asked the Board of Engineers for Rivers and Harbors to conduct a study of the Chattahoochee River. One of the questions to be addressed by the Board of Engineers was whether "it is advisable at this time to authorize construction of a multiple-purpose reservoir" in the vicinity of West Point, Georgia. (U.S. House of Representatives, 1962)

The Board of Engineers for Rivers and Harbors issued its report on May 5, 1962. In this report, the Board recommended construction of West Point Dam (West Point Lake) for five purposes: (1) hydroelectric power, (2) flood control, (3) fish and wildlife recreation, (4) general recreation, and (5) navigation. These purposes are the same uses listed by both Col D.A. Raymond, the District Engineer, and by the Board of Engineers. (U.S. House of Representatives, 1962)

On August 31, 1962, Lt. Gen. W.K. Wilson, Jr., the Chief of Engineers, issued his report on the proposed project. Although Lt. Gen. Wilson concurred in the findings of the Board of Engineers for Rivers and Harbors, he recognized the need to increase outdoor recreation opportunities. As a result, Lt. Gen. Wilson added \$1,800,000 to the proposed project in order to increase recreational opportunities, stating that "balanced basic recreational development should be included as an integral part of the project plan." (U.S. House of Representatives, 1962)

The West Point Dam (West Point Lake) project was authorized by Congress with enactment of the Flood Control Act of 1962, 76 Statutes at Large 1182. There is no question but that West Point Lake was intended to be a multiple-purpose reservoir. It is equally clear that Congress intended fish, wildlife and recreational uses to be high priority uses. This is seen both in the language of the reports cited above and in the allocation of project benefits and costs. For example, when Congress authorized the West Point Dam (West Point Lake) project, the expected benefits from fish, wildlife, and recreation were almost twelve times the benefits expected from navigation. Expressed in 1962 dollars, the total annual benefits expected from fish, wildlife and recreation were \$588,000 while the total annual benefits expected from navigation were only \$50,000. (U.S. House of Representatives, 1962)

The high priority afforded fish, wildlife, and recreational uses can also be seen regarding the allocation of West Point Dam (West Point Lake) project costs. Again in 1962 dollars, total project costs allocated to fish, wildlife and recreation were \$9,611,000. By way of comparison, total project costs allocated to flood control were \$10,353,000 while total project costs allocated to navigation were only \$833,000. (U.S. House of Representatives, 1962)

IV. Resolving Statutory Conflicts and Inconsistencies

It is a well-established rule of statutory construction that "the latest expression of the legislative will prevails, the statute last passed will prevail over a statute passed prior to it." (Singer, 1993) Before applying the rule, however, it is necessary to attempt to reconcile the statutory conflicts and inconsistencies.

With regard to the ACF River Basin, the Corps is obligated to attempt to reconcile the statutory purposes contained in the Rivers and Harbors Acts of 1945 and 1946, the Water Supply Act of 1958 and the Flood Control Act of 1962. This mandate would require the Corps to operate Buford Dam (Lake Lanier) for hydroelectric and flood control purposes (as authorized by the Rivers and Harbors Acts of 1945 and 1946) and for water supply purposes (as authorized by the Water Supply Act of 1958) in a manner that would not result in adverse impacts on the authorized purposes of West Point Dam (West Point Lake): (1) hydroelectric power, (2) flood control, (3) fish and wildlife recreation, (4) general recreation and (5) navigation.

To the extent that the Corps is not capable of reconciling the conflicting statutory requirements, the established rule of construction would limit the Corps' discretion under the Rivers and Harbors Acts of 1945 and 1946 and the Water Supply Act of 1958. The Corps would not have the discretion to operate Buford Dam (Lake Lanier) in a manner that would be inconsistent with the requirements of the Flood Control Act of 1962.

V. Conclusions

The Corps of Engineers has a substantial amount of discretion in fulfilling its statutory responsibilities. However, this discretion is not without limit. The Corps does not have the authority to change the requirements of federal law nor may it change the purposes for which various federal facilities have been authorized.

In the ACF River Basin, this means that the Corps does not have the discretionary authority to operate Buford Dam (Lake Lanier) in a manner that would impact adversely the purposes for which West Point Dam (West Point Lake) was authorized in 1962. As demands for water in the ACF River Basin continue to increase, the capability of the Corps to operate Buford Dam in a manner that will not adversely impact West Point Lake diminish accordingly.

References

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