

**BILLING CODE:** 3720-58

**DEPARTMENT OF DEFENSE**

**Department of the Army; Corps of Engineers**

**Notice of Intent to Revise Scope of Draft Environmental  
Impact Statement for Updating the Water Control Manuals for  
the Apalachicola-Chattahoochee-Flint River Basin to Account  
for Federal District Court Ruling**

**AGENCY:** Department of the Army, U.S. Army Corps of  
Engineers, DoD.

**ACTION:** Notice of Intent.

**SUMMARY:** Notice is hereby given that the U.S. Army Corps  
of Engineers (Corps), Mobile District, intends to revise  
the scope of the Environmental Impact Statement (EIS) for  
the Water Control Manuals updates for the Apalachicola-  
Chattahoochee-Flint (ACF) River Basin in Alabama, Florida,  
and Georgia, to account for a July 17, 2009 federal court  
ruling. On July 17, 2009, Judge Paul A. Magnuson issued a  
memorandum and order in the case In re Tri-State Water  
Rights Litigation (M.D. Fla. No. 3:07-md-01), addressing  
the Corps' authority to provide water supply benefits  
through its operation of the Buford Dam/Lake Sidney Lanier  
project. The Corps solicits comments from interested

persons regarding significant new information and circumstances introduced by the July 17, 2009, Order related to the scope of the EIS in connection with the water control manual updates. Public comments will be considered in preparation of the Draft EIS and updated water control manuals.

A Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) was published in the **Federal Register** (73 FR 9780) on February 22, 2008. In January 2009, after considering public comments, the Corps published a Final Scoping Report, Environmental Impact Statement, Update of the Apalachicola-Chattahoochee-Flint (ACF) River Basin, in Alabama, Florida, and Georgia, available at <http://www.sam.usace.army.mil/pa/acf-wcm/>. Any comments previously submitted will be reviewed and addressed in any scoping revisions. There is no need to resubmit comments previously provided during the 2008 scoping effort, unless in your opinion the above-cited district court decision necessitates additional comments from you.

**DATES:** The public comment period will commence with publication of this notice, and will end 45 days after its publication. This notice will also be distributed to those who commented during the original scoping period of October-December 2008. This distribution will occur by

mail and/or e-mail on or about the date of this notice. No additional public scoping meetings are planned. Comments on the scope of the EIS, including concerns, issues, or proposed alternatives that should be considered in the EIS, should be submitted in writing to (see **ADDRESSES**) and will be accepted throughout the public comment period. Comments may also be submitted by using the electronic comment form at: [http://www.sam.usace.army.mil/pa/acf-wcm/mail\\_list.htm#form](http://www.sam.usace.army.mil/pa/acf-wcm/mail_list.htm#form).

**ADDRESSES:** To facilitate the Master Water Control Manual update, a support contract has been awarded to Tetra Tech, Inc. for preparation of the EIS and additional scoping. Please mail written comments to Tetra Tech, Inc., 107 Saint Francis Street, Ste 1403, Mobile, AL 36602-9986.

**FOR FURTHER INFORMATION CONTACT:** Questions about the manual update or National Environmental Policy Act (NEPA) process should be directed to: Mr. Brian Zettle, Biologist, Environment and Resources Branch, Planning and Environmental Division, U.S. Army Engineer District-Mobile, Post Office Box 2288, Mobile, AL 36628-0001; Telephone (251) 690-2115; or delivered by electronic facsimile at (251) 694-3815; or email: [brian.a.zettle@usace.army.mil](mailto:brian.a.zettle@usace.army.mil).

You may also request to be included on the mailing list for

public distribution of notices, meeting announcements and documents.

**SUPPLEMENTARY INFORMATION:** The Corps is updating the water control plans and manuals for the ACF Basin. This effort will include an updated Master Water Control Manual, containing plans for the coordinated operation of the five Federal reservoirs within the ACF basin as a system, and updated Water Control Manuals for each of those reservoirs, containing plans for the operation of those projects for their authorized purposes. Collectively, these documents may be referred to as the "water control plans and manuals," "water control manuals," or simply as the "Master Water Control Manual," which includes the project-specific water control manuals. The water control plans and manuals will contain drought plans and action zones to assist Federal water managers in knowing when to reduce or increase reservoir releases and conserve storage in the Federal reservoirs and how to ensure the safety of dams during atypical conditions such as droughts and floods. The draft EIS will assess environmental impacts associated with these updated operating criteria and guidelines.

On July 17, 2009, Judge Paul A. Magnuson issued a memorandum and order in the Tri-State Water Rights litigation available at

[http://www.sam.usace.army.mil/pa/acf-wcm/pdf/071709court\\_ruling.PDF](http://www.sam.usace.army.mil/pa/acf-wcm/pdf/071709court_ruling.PDF).

The court's ruling has introduced new information and circumstances that bear upon certain determinations reflected in the Corps' January 2009 Final Scoping Report, to the extent that those determinations included operating the Lake Lanier/Buford Dam project to support present or increased levels of municipal and industrial water supply withdrawals.

The court determined that the Corps has exceeded its authority under the project authorization and the Water Supply Act of 1958 by operating the Buford Dam/Lake Lanier project to accommodate present levels of withdrawals for water supply. The court's order states that "absent Congressional authorization or some other resolution of this dispute" within three years of July 17, 2009, "the operation of Buford Dam will return to the 'baseline' operation of the mid-1970s. Thus, the required off-peak flow will be 600 cfs [cubic feet per second] and only Gainesville and Buford will be allowed to withdraw water from the lake." The order states that until that time, "the parties may continue to operate at current water-supply withdrawal levels but should not increase those withdrawals absent the agreement of all other parties to this matter."

As a result of this ruling, the Corps is revising the scope of the EIS and water control manual updates in the following respects:

a. In updating the ACF water control plans and manuals, which are expected to be implemented in approximately three years, i.e., in July 2012, the Corps will consider only operations that are within existing authority. The Corps previously announced its intent to update the plans and manuals "to reflect current operations." Because the court has held that the Corps lacks authority to continue to support present levels of water supply withdrawals at Lake Lanier or to reallocate storage to accommodate those or additional withdrawals, and because the court has ordered that most withdrawals from Lake Lanier must cease in 2012, the Corps will update the plans and manuals for operating the Lake Lanier project in a manner that reflects the court's order. Thus, the Corps will not continue to accommodate the present level of withdrawals beyond July 2012, nor will the Corps consider a reallocation of storage for water supply at Lake Lanier as part of the process for updating the ACF water control plans and manuals. Should the States and other interested parties to In re Tri-State Water Rights Litigation reach an agreement that involves reallocation of storage for water

supply, the Corps would be prepared to submit that agreement to the Army and higher Executive Branch authorities for consideration and possible referral to Congress. Should Congress enact legislation authorizing additional water supply at Lake Lanier, the Corps would update its operations, plans and manuals accordingly.

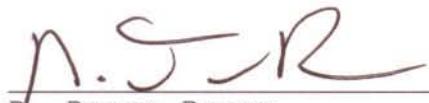
b. Pursuant to the court's order, as of July 17, 2012, the updated manuals will reflect that water supply withdrawals from Lake Lanier will be limited to the amounts authorized by relocation agreements with the Cities of Gainesville and Buford, Georgia. Those agreements, which were executed at the time of the reservoir's construction, authorize withdrawals of 8 million gallons per day (mgd) for Gainesville and 2 mgd for Buford, a combined 10 mgd.

c. Pursuant to the court's order, as of July 17, 2012, the updated manuals will reflect that "the required off-peak flow [at Buford Dam] will be 600 cfs." Currently, peak hydropower demand at Buford Dam typically occurs on weekdays from 0500-0900 and 1500-2200 between October 1 and March 31, and on weekdays from 1300-1900 between April 1 and September 30. When the Corps is not generating hydropower to meet this peak demand, the Corps will not release more than 600 cfs from Buford Dam to support water supply withdrawals.

All other aspects described in the notice of intent published in the **Federal Register** (73 FR 9780) on February 22, 2008 remain the same. To satisfy its obligations under NEPA, the Corps will evaluate present circumstances as part of its EIS, while acknowledging that it currently lacks authority to continue to accommodate present levels of water supply at Lake Lanier beyond July 17, 2012.

Additional information on the ACF River Basin and the Master Water Control Manual Update process will be posted on the Mobile District web page as it becomes available:  
<http://www.sam.usace.army.mil>.

Date:



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R. Daren Payne  
Lieutenant Colonel, Corps of Engineers  
Acting District Commander