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December 10, 2001

James Campbell
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Bob Kerr
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Atlanta, GA 30334

Gentlemen:

On November 13, I expressed my interest in entering a period where the federal agencies were more “active” – and not just “reactive.” I mentioned six key issues, and I asked the States to afford the federal agencies an opportunity to outline why and how these six issues are key issues. I appreciate the willingness of the ACT Committee to embrace, immediately, that overture and I appreciate the Committee’s willingness to schedule the December 13th public session in Montgomery. That action is tangible evidence of your commitment, as well as ours, to be as constructive and creative as we can be toward achieving the important goal set by the Compact.

My idea of embarking on a more active role for the federal agencies starts with providing more than technical expertise. Although the technical expertise has played a crucial role in the Compact process up to now (and will continue to play that role), the federal agencies also have a broader perspective that offers greater benefits to the dialogue. That broader federal perspective arises from the constant responsibility to manage a variety of federal programs. In the course of managing those federal programs, the agencies are responsible for recognizing and addressing a variety of issues – key areas of interest. In technical expertise discussions, the States might see the results of these key areas of interest but might not see, or have an opportunity to understand fully, why the areas are significant to the federal agencies.

Although other issues exist, both from the States’ perspective as well as ours, our current impressions focus on key interrelated areas. Those key areas are I) Compensation, II) Congressional Federal Project Authorizations, III) Operational Practicability and Flow and Reservoir Levels, IV) Adaptive Management, and V) Public Participation During Implementation. In this letter’s attachment there is a discussion of each area. First, the federal legal and program framework is discussed and, second,

specific suggestions are made keeping in mind Alabama's July 6, 2001 Draft Allocation Formula Proposal. We hope to allow you to see what we would consider, based on both technical expertise and management of federal programs, if we were approached to conceptualize a basinwide allocation formula. If these are issues that we would consider in a basinwide approach, it seems reasonable for you to assume that they are issues we would also consider in evaluating formula proposals.

Obviously, we are providing current impressions - they may change as events change or new information comes to bear. We will not suggest whether a particular proposal, in whole or in part, is fatally flawed nor will we address the merits of specific flow targets or reservoir levels. To do so would presume a stage which the States' proposals have not reached, and a level of understanding of modeling and review which we do not now have. We will not predict concurrence or nonconcurrence - we can make no final conclusions. It is premature to do so. I have a responsibility under the Compact to make a concurrence or nonconcurrence decision later and to do so only after various legal and public reviews, including NEPA. Our current impressions are conditioned on what those reviews may reveal and new information we might later have. Furthermore, we will not speak to whether current language is consistent with or poses a violation, or potentially a violation, of federal law. What I can say is that if, based on our current impressions, these key areas of interest are resolved through dialogue, then the ACT proposal would be promising.

These then are our current impressions. By looking at these topics through our eyes, we hope the States will better understand the Federal perspective. Even more, it may be that, in looking at the challenge through the eyes of another, the States may find new ways to close the remaining gaps among themselves – gaps which may seem significant if viewed only from the perspective of today but which may be workable from a broader perspective. I believe our current impressions will be useful to you and to the public and I look forward to this new period of formula development.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lindsay Thomas".

Lindsay Thomas

Attachment

CC:

Governor Siegelman

Governor Barnes

Governor Bush

Trey Glenn, AL

Richard Hanan, AL

Buddy Cox, AL

Harold Reheis, GA

Clay Long, GA

David Struhs, FL

Doug Barr, FL

Teri Donaldson, FL

Peter Conroy, Alternate Federal Commissioner

Jim Brookshire, US Department of Justice

Federal Points-of-Contact

Remarks for December 13, 2001 Meeting

Within the contours indicated by the opening remarks of the Federal Commissioner, we offer these current impressions.

I. Compensation

A. Federal Framework. As written, implementation of the ACT water allocation formula would have an adverse impact on the presently authorized hydropower and flood control purposes at both Carters Lake and Lake Allatoona Federal reservoir projects. These impacts result from the revision of guide curves so that they reduce the magnitude of the flood control pool at certain times of the year, the reallocation of reservoir storage from conservation storage to water supply, the specification of reservoir operational procedures that limit or constrain the amount or timing of hydropower production, the release of water for the purpose of meeting downstream flow targets at times when the value of hydropower is low, or the release of water for the sole purpose of meeting a downstream flow target. Title 16 U.S.C. 825 and COE Engineer Regulation 1105-2-100 specify the requirement to compensate the Federal government for the adverse effects of project modifications on hydropower.

Under the provisions of Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s) and other Acts, power developed at projects under the jurisdiction of the Chief of Engineers, which is not required in the operation of such projects, shall be delivered to the Department of Energy (Southeastern Power Administration (SEPA)) for marketing. SEPA is, in turn, required by law to transmit and dispose of power and energy so as to encourage the most widespread use at the lowest possible rates to consumers, consistent with sound business principles. Rates for sale of power to recover the allocated costs are established by SEPA and approved by the Federal Energy Regulatory Commission.

Compensation is an important and necessary part of a complete allocation formula. This issue must be addressed to assure that the proper formal process and procedure is followed in identifying all the parties who will be impacted and in determining the measure of impact and the appropriate level of restitution. These procedures will determine who must pay and how such payment will be determined.

At the same time that we cannot overlook the obligation for compensation, we must also be aware of the need that appropriate congressional authorizations must be obtained. Project repayment costs are developed and assigned based on authorized purposes receiving certain benefits from the projects and paying allocated costs based upon the benefits received in utilizing the entire designated conservation pool of a project. Any restriction which does not allow the project purposes to utilize freely the entire conservation pool must be accompanied by a Congressional re-authorization. The costs which were allocated to the hydropower purpose represent a major portion of the construction cost for these projects. It is SEPA's responsibility to ensure the Government expenditures allocated to the hydropower purpose are repaid to the United States Treasury. In addition, SEPA must pay hydropower's allocated portion of each project's annual operating (O&M) costs. It would not be fair or equitable to expect an authorized

purpose to pay originally allocated costs or annual O&M if the purpose no longer receive the benefits from the project envisioned when Congress authorized the project.

Compensation issues which are among the most important to SEPA are:

(1) Compensation for Water Withdrawals / Reallocation of Storage

Water withdrawals have a significant impact to the authorized hydropower purpose. They reduce generating capacity and energy production of a project which, in turn, impacts SEPA's ability to repay allocated costs. It is imperative to account accurately for all withdrawals, and to assure that the proper regulations and procedures are followed when permitting withdrawals, reallocating storage, and collecting revenue for withdrawals and storage.

(2) Compensation for Zones with generation restrictions.

Anything adversely impacting the operation of a project, such as the creation of zones which reserves storage at a project by restricting generation, is a compensation issue.

(3) Compensation for operational restrictions/reductions in capacity and energy. SEPA considers any restriction a compensation issue when it impacts SEPA's ability to utilize the peaking resource to meet SEPA customers' generation requirements.

It is essential, if the **benefits** to the hydropower purpose are reduced, either through reallocation of storage, creation of zones with generation restrictions, operational restraints, or other reductions to capacity and energy, that the **costs** allocated to hydropower be appropriately reduced.

B. Specific Suggestions. Carters Lake and Lake Allatoona are two Federal projects in the ACT Basin where operational changes could impact compensation. In order to provide clearly for full compensation of all adverse effects of the formula on hydropower, a basinwide water allocation would clearly recognize that compensation will be owed the Federal Government for:

- Creation of zones with generation restrictions,
- Changes in amount or timing of hydropower production due to implementation of reservoir operational procedures specified in the formula, and
- Reallocation of storage for water supply or other purpose of the formula such as downstream water supply requirements or for achieving downstream flow targets.

The formula would also recognize that an agreement on compensation will be required prior to implementation of formula provisions.

Within the contours indicated by the opening remarks of the Federal Commissioner, we offer these current impressions.

II. Congressional Federal Project Authorizations.

A. Federal Framework. In the ACT Basin, there are several pieces of authorizing legislation. Section 2 of the River and Harbor Act of 1945 authorized the initial and ultimate development of the Alabama-Coosa River for navigation, flood control, power development, and other purposes. The River and Harbor Act of 1945 was modified by Public Law 83-436 to authorize private interests (Alabama Power Company) to construct a series of dams on the Coosa River for the purpose of generating hydropower and providing flood control subject to licensing requirements under the Federal Power Act. The authorizing legislation and purposes for Lake Allatoona and Carters Lake are as follows.

- Lake Allatoona. Lake Allatoona was authorized by the Flood Control Act of 1941 (PL 77-228, 55 Stat 638). The authorized project purposes for the reservoir are: flood control; hydroelectric power; and, navigation. Other purposes for which the reservoir is operated are: recreation; water quality; water supply; and, fish and wildlife.
- Carters Lake. Carters Lake was authorized by the River and Harbor Act of 1945 (PL 79-14, 59 Stat 10). The authorized project purposes for the reservoir are: flood control; hydroelectric power; and, navigation. Other purposes for which the reservoir is operated are: recreation; water quality; and, water supply.

The Corps of Engineers projects on the Alabama River south of Montgomery, Alabama, Claiborne Lock and Dam, Millers Ferry Lock and Dam, and Robert F. Henry Lock and Dam, are operated for the purposes of navigation, hydroelectric power, recreation, and fish and wildlife.

The COE currently operates these projects to satisfy the multiple purposes by balancing resource use through regulating the project releases to conserve as much water as possible and by maximizing all project functions consistent with the project authorization. Implementation of a basin-wide water allocation formula will require that Congress consider the changed priorities against the backdrop of the project authorizations included in the authorities cited above. Project modifications or changes in project operations would likely serve a different mix of purposes than when the projects were originally authorized.

B. Specific Suggestions. The current ACT formula proposal and the ACT Compact state that Federal agencies have, in implementation of the formula, an obligation to the maximum extent practicable to exercise their powers, authority, and discretion in a manner consistent with the allocation formula so long as the exercise of such powers, authority, and discretion is not in conflict with federal law. Within existing authorities and discretion there may be some provisions of the formula that the COE may

implement to a limited degree immediately after the formula is adopted. Once required implementation studies are complete and Congress has authorized required project modifications, the formula may then be implemented to a greater extent.

Implementation of the water allocation formula will require or may potentially require:

- Reallocation of storage to water supply,
- Reallocation of storage for meeting downstream flow targets or water withdrawal requirements,
- Reduction in navigation channel depths to be maintained,
- Mitigation for reduction in flood control storage due to changes in reservoir guide curves, and
- Compliance with Federal environmental statutes, such as the National Environmental Policy Act, Fish and Wildlife Coordination Act, and Endangered Species Act.

The current ACT draft formula anticipates seeking Congressional authorization. Section 1.6 of the proposal could be modified to acknowledge that, if Congress does not authorize reallocation of storage for water supply in response to Georgia's initiative required by Section 1.2, item (b), Georgia will request that the Corps conduct appropriate studies in accordance with applicable laws and policies and make recommendations in a report to Congress regarding necessary modifications in project authorization or other actions required to fully implement the formula. In the event that Georgia should be successful in obtaining Congressional authorization of reallocation without a report having been submitted to Congress, a study would be necessary to define the modifications to the project required to implement the provisions of the formula. The language in Section 1.2 (Performance) could be modified to acknowledge the need for studies prior to implementing the formula. Such a study would be conducted and a report prepared in accordance with COE regulations and policies.

Within the contours indicated by the opening remarks of the Federal Commissioner, we offer these current impressions.

III. Operational Practicability and Flow and Reservoir Levels.

A. Federal Framework. Water allocation proposals can be framed generally in terms of goals and targets or specifically in terms of detailed operating guidelines governing operations at reservoirs. The operational feasibility of a proposal, however, is limited by the ability to project hydrological implications. In general, the more detailed a water allocation proposal the more it risks the prospect that accuracy and responsiveness of a modeling analysis will be greater than can be achieved in “real time”. Further, in any event, a model cannot accurately reflect the unknown hydrologic conditions of the future. In addition to modeling and predictive limitations, detailed instructions in an allocation formula raise operational demands which may have unintended consequences. Accordingly, the more specific the guidelines contained in the proposal the less flexibility the COE has to operate the projects for the multiple Congressionally authorized purposes.

Authorities for allocation of storage and regulation of projects owned and operated by the Corps of Engineers are contained in legislative authorization acts and referenced project documents. In the ACT Basin, there are several pieces of authorizing legislation. Section 2 of the River and Harbor Act of 1945 authorized the initial and ultimate development of the Alabama-Coosa River for navigation, flood control, power development, and other purposes. In 1954 the River and Harbor Act of 1945 was modified by Public Law 83-436, which authorized private interests (Alabama Power Company) to construct a series of dams on the Coosa River for the purpose of generating hydropower and providing flood control subject to licensing requirements under the Federal Power Act.

As stated previously, the current ACT formula proposal and the ACT Compact state that Federal agencies have, in implementation of the formula, an obligation to the maximum extent practicable to exercise their powers, authority, and discretion in a manner consistent with the allocation formula so long as the exercise of such powers, authority, and discretion is not in conflict with federal law. Within existing authorities and discretion there may be some provisions of the formula that the COE may implement to a limited degree immediately after the formula is adopted. Once required implementation studies are complete and after Congress has authorized required project modifications, the formula may then be implemented to a greater extent.

B. Specific Suggestions. The current ACT proposal provides detailed guidelines regarding operations of the Federal reservoir projects. Further, the States have developed an HEC-5 model that demonstrates operation of the Federal projects to satisfy the requirements of the allocation formula. The modeled concept of how the two federal projects may be operated to meet the state line target may not be possible in “real time.” From an operational perspective, and considering flow times from the projects to the to the state-line, the “real time” operation may have to be accomplished differently.

Alternatively, a formula could specify operational goals such as reallocation of storage to water supply, interbasin transfer limitations, and specified minimum stateline flows and allow the COE the flexibility to develop operational procedures to satisfy, to the greatest extent practicable, all authorized project purposes. Eliminating detailed operational guidelines could avoid unintended consequences.

The language of the proposal in sections 2.1 and 2.2 could be simplified as follows: “The COE shall operate Allatoona Reservoir and Dam and Carters Reservoir and Reregulation Dam in the manner necessary to satisfy the water supply and minimum flow requirements specified herein together with the other authorized project purposes. The COE, following Congressional authorization of implementation measures recommended by the report required by Section 1.6, shall develop and adopt a Water Control Plan, which would include a Drought Contingency Plan as required by ER 1110-2-1941, for the implementation of the terms of this Agreement and for the operation of Federal reservoirs consistent with this Agreement and as authorized by Congress. The Water Control Plan shall be developed in full consultation with the Signatory Parties and the ACT Commission and in accordance with applicable COE regulations and policies. This Water Control Plan may provide for the maximum production of hydropower consistent with meeting the water supply and minimum flow requirements and may be periodically revised to account for changes required to improve compliance with the provisions of this Agreement. The Drought Contingency Plan developed as part of the Water Control Plan will be coordinated with the Drought Plan developed by the ACT Committee to insure consistency. In carrying out the ACT water allocation formula, the COE will periodically modify its Water Control Plan (with appropriate compliance with COE regulations pertaining to obtaining public participation and with all environmental requirements) in consultation with the ACT Commission to meet the allocation formula operating criteria to the extent required by the Compact and consistent with federal law, including Congressional authorizations of any Federal multi-purpose project.”

Within the contours indicated by the opening remarks of the Federal Commissioner, we offer these current impressions.

IV. Adaptive Management

A. Federal Framework. “Adaptive Management” like, “market analysis” in business, is a process which enables an agency to make adjustments in its management plans based upon evaluations of monitoring results. In the classic adaptive management program, an agency assesses a management problem, designs a management plan to address that problem, implements the plan, monitors the effects of the plan, evaluates the information gathered, and makes adjustments to the plan, if needed. Implementation of adaptive management programs is particularly advantageous in the management of natural resources because, typically, so little is known beforehand about the consequences of our actions on the many components of complex ecosystems. Uncertainties in our ability to predict the effects of a water allocation formula on the ACT basin’s water quality, ecology, and biodiversity would favor an adaptive management process that enables the appropriate parties to adjust how the formula is implemented to meet future conditions and avoid potential issues of controversy.

Although there are no federal laws explicitly requiring the states to craft an allocation formula that is amenable to adaptive management, there are numerous federal natural resources programs resting on federal law that are based upon adaptive management models. Some federal laws will come into play during the implementation of the ACT basin water allocation formula. Thus, if included in the formula, the monitoring and evaluation components of an adaptive management program would enable the states and federal government to coordinate their implementation of the formula with pertinent federal laws and make mid-course adjustments as necessary. For example, the Environmental Protection Agency engages in a 5-year review process with respect to its NPDES permits, 40 CFR Part 126. Water quality standards under the Clean Water Act are reviewed periodically, 40 CFR 131. In the management of its reservoirs, the Corps of Engineers has operational flexibility to adjust to changing conditions in order to meet authorized purposes. Whenever the Fish and Wildlife Service issues a biological opinion in an endangered species consultation with another federal agency, it always includes a provision that requires both agencies to reinstate consultation if either learns of unanticipated impacts or relevant new information, 50 CFR 402.16.

These are but a few of the examples of natural resource adaptive management programs executed by various branches of the federal government. Many of these programs will be implemented in a manner that is parallel to the states’ water allocation formula. Thus, it is doubly important that the formula meshes with and is complementary to these federal programs and the federal discretion which they involve. A water allocation formula that would preclude or overly constrain adjustments in management would greatly increase the likelihood that federal agencies will not be able to implement all elements of that formula in order to comply with other applicable federal laws. A formula that instead defines broad but measurable objectives, and provides for a process of adaptive management to develop the specific means of achieving those objectives

consistent with other laws, stands a much better chance of full implementation over the course of the 30-year plus time frames that have been proposed. Thus, adaptive management would not impede the function of the Commission, but would measurably enhance its ability to manage water within the basin.

The basic format of an adaptive management program is already present within the allocation formula, as contained in the sections on Periodic Review (1.10), Water Supply (2.1), Use Limitations (2.5), ACT Basin Commission Structure (5.2), Drought Plan (5.3B), Monitoring and Reporting (5.3C), and the Scientific Advisory Panel (5.5). The following proposals (combined with V. Public Participation below) are not intended to alter the allocation formula. Rather the intent is to expand upon the formula's existing provisions and create an adaptive management program in which the activities and functions of the ACT Commission, state governments, and federal agencies are fully integrated.

Within the contours indicated by the opening remarks of the Federal Commissioner, we offer these current impressions.

V. Public Participation During Implementation

A. Federal Framework. There are many federal programs that have 5 year or shorter review periods to insure that regulated activities are consistent with statutory authorizations and new technology or other factors are considered. In the case of NPDES permits and Water Quality Standards, these must be reviewed and modified in accordance with statutory requirements and implementing regulations.

For example, typical Federal review periods for water resource activities involve up to 5 year cycles:

- NOAA National Marine Sanctuary Management Plans
- NOAA National Estuarine Research Reserve Management Plans
- Clean Water Act NPDES Permits, 33 USC §1342
- EPA/STATE CWA Basin Cycles Continual Planning Process, 33 USC §1313(e), including TMDL development 33 USC §1313(d).
- Clean Water Act Dredge and Fill Permits, 33 USC § 1344

Other programs have shorter review periods:

- Clean Water Act 33 USC §13139(c) Triennial Water Quality Standard reviews

Public participation is, in some instances, required or provided at several decision nodes: the scope of content to define issues to be reviewed; information and data provided during technical evaluation; and comments on generated reports and findings prior to final publication and or action. Under most statutory provisions, public participation is required to give affected parties the opportunity to review and comment on actions that may affect their interests. It also provides decision makers with important information that is relevant to their regulatory decisions.

Public participation is consistent with the requirements of the ACT Compact.

- Compact language requires that the Commission meet once every year [Section VI(e)].
- Compact language requires all meeting to be open to the public [Section VI(f) & XI].
- Compact language requires the adoption of procedures to ensure public participation in the development, review, and approval of any subsequent modifications to the initial allocation formula [Section XI].

To insure consistency and allow for the use of information gathered, the ACT Formula could consider providing 5-year review periods.

Within the contours indicated by the opening remarks of the Federal Commissioner, we offer these current impressions.

**B. Adaptive Management (IV) & Public Participation During Implementation (V)
Specific Suggestions**

Based on our current impressions, the following annotations on the July 6, 2001 Draft Allocation Formula Agreement are provided to address issues identified under the concepts of adaptive management and public participation. In italics and prior to each proposed edit, an explanation is provided as background.

1. *There is concern that 10 years is a long time before the first review and for the subsequent reviews of the formula are conducted. As noted, experience in the permitting and other regulatory programs has led the federal agencies to focus on a 5-year or less review period as a reasonable scope of time (e.g. to review and possibly modify permits, water quality standards (triennial review) or assess compliance with the ESA). This interval will also provide additional information to be used by the states and the federal government to use in making timely regulatory decisions.*

The other strikeout is tied to changes to the Scientific Advisory Panel discussed below. These changes are consistent with the approach discussed in Subsection 5.5.

1.10 - Periodic Review

On or before the ~~tenth and twentieth anniversaries~~ five anniversary of the Effective Date and each subsequent 5-year period thereafter, the ACT Basin Commission, after receiving such reports and recommendations from the ACT Basin Committee and the Scientific Advisory Panel ~~on such matters as have been referred to them by the Commission~~, shall publish a report discussing the implementation and effectiveness of this Agreement. Such report shall be made available to the public. At a minimum, the ACT Basin Commission shall conduct at least one public hearing within each of the States of Alabama and Georgia, soliciting public comments on each report and this Agreement. Such public hearings shall be conducted by the ACT Basin Commission or its designated representatives. The ACT Basin Commission shall respond in writing to all comments regarding ~~the~~ each report and shall publish a final report, which shall include the written response to all comments, within 120 days of the conclusion of the public hearings. ~~Thereafter, the~~ The Commission may publish additional reports and provide the public an opportunity to review and comment upon such reports.

2. *The use of the term “reasonable” as a modifier for how water use or consumption decisions will be made during implementation of the formula needs further explanation. How will reasonable be applied, specifically which state laws would apply, how will decisions be judged to be reasonable? Does the state law concept of reasonable use include consideration of natural processes?*

For your reference, the July 6, 2001 formula original language is provided below for convenience (emphasis added with bold italics).

2.5 – Use Limitations

A. Permits

1. Each State recognizes the sovereignty and right of the other State to use the Water Resources within the ACT Basin in such State in any manner that it deems appropriate subject only to applicable laws and to the limitations set forth in Sections 2 and 3 of this Agreement. Each State further recognizes the responsibility of the other State to enact appropriate laws and regulations governing the use, conservation, and preservation of Water Resources within the ACT Basin in such State, and the Signatory Parties agree to implement and maintain responsible procedures governing the use, conservation, and preservation of Water Resources within the ACT Basin in such State, including procedures governing the consumption of Water Resources within each State. Each State acknowledges that use or consumption of Water Resources of the ACT Basin within such State must be *reasonable* under applicable State law. The ACT Basin Commission may make recommendations for the Water Resources of the ACT Basin for the purposes of, but not limited to, minimizing adverse impacts of floods and droughts and improving water quality, water supply, and conservation as may be deemed necessary by the Commission.

2. After the Effective Date, no Person shall be allowed to make any Withdrawal from any Stream or Reservoir in the ACT Basin without securing the necessary permit or authorization (other than contracts, which are addressed in Paragraph B of Subsection 3.1) under applicable state and federal laws; provided, however, that any Person making any Withdrawal as of the Effective Date without the necessary permit or authorization shall apply for the necessary permit or authorization within two (2) years after the Effective Date. Nothing herein shall be construed as negating any penalties as provided for by state law for failure to obtain such permits or authorizations.

3. *In C.2, reference is made to all new or expanded withdrawals being consistent with applicable state laws and regulations. However, it is our understanding that Alabama does not regulate water users through a withdrawal-permitting program nor have any laws or regulations regarding in-stream criteria. How would these provisions then be meaningfully implemented?*

For your reference, the July 6, 2001 formula original language is provided below for convenience (emphasis added with bold italics).

C. Withdrawal Limitations

2. In all areas of the ACT Basin, Persons with permits or authorizations for Existing Withdrawals shall be allowed to make Withdrawals equal to the quantities of water for which they have Existing Withdrawal permits or authorizations and under whatever conditions existed in those permits or authorizations. No New or Expanded Withdrawal, for the purpose of Off-Stream Storage, shall reduce the Daily Flow at the point of the New or Expanded Withdrawal to less than 25% of the AADF (calculated at the time that the intake is or was constructed) at the point of the New or Expanded Withdrawal. All

New or Expanded Withdrawals directly from a Stream shall be ***consistent with applicable State laws and regulations regarding in-stream flow criteria***. This Paragraph C.2 of this Subsection 2.5 shall not apply to Withdrawals from Reservoirs.

4. *The non-voting members of the ACT Committee need to include additional federal representation to insure that the federal government can provide full and timely comments on issues raised. The second paragraph could be edited to allow the Federal Commissioner to appoint additional representatives as needed to address issues that are in front of the Committee.*

5.2 – ACT Committee Structure

Upon the Effective Date, an ACT Committee shall be established in accordance with this Section. The ACT Committee shall be composed of voting and non-voting members. The voting members shall consist of one member and one alternate member appointed by the Governor of the State of Alabama, and one member and one alternate member appointed by the Governor of the State of Georgia. Each State shall have one vote. All decisions and actions of the ACT Committee shall require unanimous approval. In a voting member's absence, the alternate member shall be considered the voting member for that State and shall cast the State's vote and shall otherwise exercise the same power and authority as the voting member representing that State.

The non-voting members shall include a representative of the USGS, a representative of the COE, a representative of the APCO, and ~~a representative~~ other representatives appointed by the Federal Commissioner. The ACT Committee may, by unanimous vote, select other Persons to meet with the ACT Committee from time to time or on a regular basis, but, the invitation to such Person shall not be intended as a recognition of any asserted interest of that Person and may be withdrawn at any time. No actions taken by the ACT Committee or its members shall be construed as actions of the ACT Basin Commission under the ACT Compact, except as expressly delegated to the ACT Committee by this Agreement or by future actions of the ACT Basin Commission.

The ACT Committee shall be chaired by the voting member representing the State whose Governor is then serving as the Chair of the ACT Basin Commission, and the term of the Chair of the ACT Committee shall correspond with the term of the Chair of the ACT Basin Commission.

5. *The drought plan is an integral part of the Compact and the allocation formula. The plan will clearly modify any allocation of water within the Allocation Agreement. It will have to be reviewed under NEPA, most likely as a supplement to the planned EIS for the Allocation Agreement. Under the proposed formula, the Federal Commissioner does not have a review or concur/non-concur role. The edits below acknowledge that the Drought Plan is a critical part of the Formula. They also reflect the record of the comments received during the drought plan as a deliverable to the Basin Commission. This will provide a clearer record of the Plan and allow the Federal Commissioner to complete a NEPA analysis and review of the plan in a timely manner.*

B. Drought

1. Drought Plan

The ACT Committee shall, within two years of the Effective Date, develop and submit to the ACT Basin Commission for approval a Drought Plan for the ACT Basin including a record of comments received during the development of the Drought Plan. Upon approval, the Commission shall submit the Drought Plan to the Federal Commissioner for review and concurrence/non-concurrence consistent with the review criterion of the Water Compact (Article VII (a)). Until a Drought Plan has been approved by the ACT Basin Commission, with Federal Commissioner concurrence, and becomes effective, the Interim Drought Plan set forth in this Subsection ~~5.2~~ 5.3 shall apply.

The Drought Plan, which may incorporate all or part of the Interim Drought Plan, may include without limitation:

- Procedures for identifying the onset and progression of drought stages, using any appropriate combinations of Flow, rainfall, soil moisture, and Reservoir level indicators;
- A tiered process of notices and mitigating actions; ~~and~~
- Procedures for identifying the recession and termination of drought stages; and
- Procedures for protecting natural resources and public uses

6. *We agree that providing an electronic data base for public access is the most efficient means to provide this information in a timely manner. However, we believe the data base should include all data obtained. Recognizing the inherent costs associated with this type of program, we have suggested a requirement to seek funding to support the monitoring program. We need a definition or explanation of “reasonable and practicable” as used in C.2. to better understand the basis for not monitoring and reporting. As part of providing meaningful information to the Committee, the Commission, and the public, we have recommended sending the monitoring information to the SAP for the development of an annual monitoring report.*

C. Monitoring and Reporting

1. As of the Effective Date, the ACT Committee shall create an electronic database that shall be accessible by the public. The electronic database shall ~~may~~ include data obtained by the ACT Committee pursuant to Paragraph C.2 of this Subsection ~~5.2~~. 5.3.

2. As of the Effective Date, the ACT Committee shall use best efforts to secure funding from governmental or other sources of funding to carry out a program of monitoring within the ACT Basin. To the extent reasonable and practicable, the ACT Committee shall monitor and report the following:

7. *Allows reports to be sent in more often than once a year if necessary. Also provides for a comparison of withdrawals to the 2030 demand assumptions to track how consumption compares with the assumed withdrawals.*

C.2.f. Withdrawal and Return data obtained from each State.

By the end of the second quarter of each calendar year at a minimum, each State shall provide to the ACT Committee information for the preceding four quarters (compiled on a monthly basis) summarizing for the preceding calendar year all ~~Municipal and Industrial~~ Surface Water Withdrawals and Returns in excess of 0.10 MGD within the ACT Basin and a comparison to the annual 2030 demand assumptions used in the modeling, and all Interbasin Transfers from the ACT Basin to another Basin, ~~unless otherwise specified among other specifications identified~~ by the ACT Basin Commission. Additionally, each State shall provide to the ACT Commission the location (defined by latitude and longitude) of each Withdrawal and Return and shall update this information as necessary. In the event the ACT Basin Commission determines that drought conditions exist ~~in~~ anywhere within the ACT Basin, the ACT Commission may require that the States provide the information described in this Paragraph C.2.f of this Subsection ~~5.2~~ 5.3 on a more frequent basis.

8. *Clarifies where the data should be obtained.*

C.2.g. Available wildlife and biota data ~~that may~~ will be obtained from any qualified sources, including USFWS or ~~from any~~ other federal or State ~~wildlife or environmental~~ resource agencies, to ~~provide information~~ build a database on species and habitats within the ACT Basin and establish long-term trend information on the natural resources of the system.

9. *Adds an annual data reporting requirement that must be done by the Scientific Advisory Panel and reported to the Committee. This will allow all data collected to be readily available in a report format for Committee and public review. It also includes a public review and comment role for all reports generated by the Scientific Advisory Panel. We have also included an additional matter for review by the Scientific Advisory Panel. This last requirement tiers off of the data reporting requirement in C.2.g., expanding on the collection and analysis of wildlife and biota data to provide a basis for determining if ecological impacts are occurring as a result of the ACT formula implementation, thus allowing adaptive management.*

5.5 - Scientific Advisory Panel

A Scientific Advisory Panel shall be formed and shall consist of nine experts in the fields of hydrology, water quality, and biology. Three Panel members shall be experts in hydrology, three in water quality, and three in biology. Each member will serve a three-year term. The two Governors and the Federal Commissioner will each select three Panel members, one from each field of expertise. A Chairperson will be elected by the Panel

members each year. Panel members will not be entitled to compensation by the ACT Basin Commission.

The Scientific Advisory Panel shall develop and submit to the Committee annual reports summarizing and including all data collected under subsection 5.3(C)(2), and review, consider, study, and make recommendations to the ACT Committee on such matters as are referred to the Scientific Advisory Panel by the ACT Basin Commission. Such matters may include:

- developing a list of ACT Basin performance indicators;
- reviewing monitoring data, reports, and status of ACT Basin performance indicators;
- recommending to the ACT Committee modifications to monitoring and reporting requirements; and
- preparing and submitting to the ACT Committee an annual report summarizing the foregoing.

The Scientific Advisory Panel shall synthesize Wildlife and Biota data collected under C.2.g above to determine if existing programs are sufficient to identify ecological impacts that result from implementation of the ACT Allocation Formula. If the Scientific Advisory Panel determines that existing monitoring programs are inadequate, the Scientific Advisory Panel shall develop a monitoring program in partnership with any state or federal agency or any other public or private entity and submit this report to the ACT Basin Commission. All reports prepared by the Scientific Advisory Panel shall include the opportunity for public input.

Concluding Remarks of the Federal Commissioner