

RESOLUTION OF INTERSTATE WATER ISSUES

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Abstract. The Alabama-Coosa-Tallapoosa (ACT)/Apalachicola-Chattahoochee-Flint (ACF) Comprehensive Study provides an opportunity to address and resolve complex water resources issues through a collaborative/partnership approach. The study process is a journey which involves Federal, State, interstate and other stakeholders. Technical issues are addressed along with the development of a mechanism(s) to implement the study findings.

INTRODUCTION

A recent literature review (Kenny and Lord, 1994) illustrates the pervasive nature of shared water conflicts: "Every major river basin in the United States is either international, interstate and/or substate; no basin conforms exactly to the contours of a state boundary. As a consequence, water resources administration in the United States has been characterized by multi-jurisdictional conflicts from the first days of the republic."

The State of Georgia certainly demonstrates the applicability of shared water use as the State is currently involved in a myriad of interstate water issues. The primary focus of this paper is the use of a comprehensive water resources study to address and resolve complex and controversial interstate water resources issues. The Alabama-Coosa-Tallapoosa (ACT)/Apalachicola-Chattahoochee-Flint (ACF) River Basins Comprehensive Study is being conducted in partnership with the States of Alabama, Georgia and Florida and the U.S. Army Corps of Engineers, Mobile District. As denoted by the partnership the issues being addressed are broader than pure interstate issues; the authorities and operational practices related to Federal (Corps) reservoirs are also intricately involved. The two basins have 233 miles of common boundary and collectively

have 10 Federal and 21 non-Federal reservoirs. (McClure and Griffin, 1993).

The issues are diverse and complex. They involve both surface and groundwater. Hydrologic issues include withdrawals, lake levels, streamflows, reservoir operations and periodicity/timing especially from a systemwide perspective. Water quality and environmental concerns include waste treatment/ loadings, assimilative capacity, fish and wildlife habitat, endangered species and implications of upstream activities on the diversity and productivity of the Apalachicola River and Bay. Interbasin transfers, hydrologic extremes (floods and droughts) and the heterogeneous characteristics of both basins increase the complexity of issues under consideration.

The interstate water resources issues in these two basins have not been resolved, but a process is underway through the Comprehensive Study to address the issues and seek resolution among the parties and interests involved. The ACT/ACF study is addressing technical issues such as a variety of water demands and the availability of surface and groundwater to meet existing as well as projected demands to the year 2050.

BACKGROUND

A series of circumstances, events and activities occurred during the 1980's which created controversies related to the shared use of water. From a hydrologic perspective, a series of droughts in 1981, 1986 and 1988 alerted the region to the finiteness of the resource. The Atlanta Metropolitan Statistical Area continued to grow at a rapid pace with the overall population increasing by almost 700,000 during the 1980's to reach a 1990 total of approximately 2.8 million. (U.S. Department of Commerce, 1992). Existing Corps reservoirs were identified as potential sources to meet

the increasing water demands associated with this growth and at the request of Georgia users, the Corps proposed reallocation of hydropower storage to water supply at Allatoona and Carters Lakes in the ACT Basin and Lake Lanier in the ACF Basin. The State of Georgia also requested a permit from the Corps to construct a regional reservoir on the Tallapoosa River just 5 miles upstream of the Alabama state line. With increasing development and demands for water, coupled with droughts, water quality in the region also became more of a concern. Collectively all of these factors, and others, created tensions among the States of Alabama, Georgia and Florida and the Corps. Tensions also increased among intrastate interests, especially those involving upstream/ downstream effects and urban/rural constituencies. As a consummation of the building pressures, the State of Alabama filed a lawsuit in Federal court in June 1990, challenging the adequacy of the Corps' compliance with the National Environmental Policy Act associated with the proposed storage reallocations.

Shortly after the lawsuit was filed negotiations began to seek resolution of the issues outside of the courts. Initially Alabama and Georgia met, and shortly thereafter the Corps and Florida joined the discussions. There was both hope and skepticism among the parties; at times the media would publish articles which tended to polarize interest groups.

The Energy and Water Development Appropriations Bill of 1991 contained the following language:

"Alabama-Coosa and Apalachicola-Chattahoochee-Flint River Basins, Alabama, Georgia, and Florida.--The Committee has provided \$1,000,000 to continue the comprehensive water resources study of the Alabama-Coosa and Apalachicola-Chattahoochee-Flint River Basins. This study will evaluate the longterm water resources availability and needs within the two river basins. *When complete, this study will provide the Governors of the three States with the information they need to develop a mutually agreeable plan for the allocation of available water in the basins*". (U.S. House of Representatives, 1990). (Emphasis Added).

The concept of a comprehensive water resources study became a focal point of dialogue and compromise. The highlighted congressional language is particularly intriguing as it specifies a special role for the States. A key ingredient leading to settlement was the concept of the three States serving as equal partners in the management and conduct of the study.

MEMORANDUM OF AGREEMENT

On January 3, 1992, after 18 months of intensive negotiations, exchanges of proposals and shuttle diplomacy, the Governors of Alabama, Georgia and Florida and the Assistant Secretary of Army (Civil Works) signed a Memorandum of Agreement (MOA) pledging to work together to seek resolution of water resources issues in the two basins (MOA, 1992). The parties agreed to these essential provisions of the MOA:

- o Participate in Comprehensive Study as equal partners;
- o Support the study with monetary and non-monetary resources;
- o Recognize benefit of informal negotiations to resolve issues;
- o Existing water uses could continue;
- o Increased (10mgd) or new (1mgd) withdrawals would be reported to other parties;
- o No permanent rights granted by MOA;
- o Equitable allocation of water resources in both basins will be addressed;
- o Corps will operate reservoirs to maximize water resource benefits to the basins as a whole;
- o Publish a document on the findings of the study;
- o Use a dispute resolution process including nonbinding mediation to address unresolved disputes;
- o Request lawsuit be assigned to an inactive docket of the Court until study is completed.

The MOA specified a three year timeframe for the study. This was modified in January 1994 with a supplemental MOA establishing September 30, 1995, as the date for completing all or a substantial part of the study and issuing a report on the current findings (SMOA, 1994).

The U.S. Congress expressed support for the MOA provisions and the partnership study process with the following language accompanying the Fiscal Year 1993 Appropriations Bill

"Alabama-Coosa comprehensive water resource study. Alabama, Florida, and Georgia.--The Committee is aware that the States of Alabama, Florida, and Georgia and the U.S. Army Corps of Engineers are currently cooperating in implementing the plan of study for the Alabama-Coosa-Tallapoosa/Apalachicola-Chattahoochee-Flint comprehensive water study, which could serve as a model for management of future basin studies and basin management plans, as well as

a model for Corps and State cooperation. This process represents a commitment to the balanced use, development, and protection of the water resources in both basins. It is the Committee's understanding that the Governors of the three States have committed State funding, in addition to Federal funding, to further the study process. It is the Committee's intent that management and direction of the study be shared equally between the Corps and the three participating States. The Committee intends that the Corps, to the maximum extent practicable, obtain State agreement on the expenditure of study funds and in the selection of contractors to complete the study elements. Further, the Committee finds that the States' concurrence is needed to assure that all study elements are successfully completed and basin management plans are produced. To ensure coordinated planning, it is the intent of the Committee that the U.S. Fish and Wildlife Service, U.S. Geological Survey, and the U.S. Environmental Protection Agency and other appropriate Federal agencies, provide participation and input to the comprehensive study through existing programs to the maximum extent practicable. The Committee also intends that the Corps transfer funds to or from the States of Alabama, Florida, and Georgia and to or from other appropriate Federal agencies as needed to complete this study." (U.S. Senate, 1992).

PLAN OF STUDY

The later part of the negotiation period was utilized in a constructive fashion in preparation for getting the ACT/ACF study underway. A Plan of Study (POS) was jointly developed by the parties in anticipation that agreement would be reached on working together to conduct the study. The process of reaching consensus on the plan of study served as a precursor for the actual study. The establishment of working relationships and joint participation in public involvement activities in each state to gain stakeholder input to the POS demonstrated the collective resolve of the parties to work together in a collaborative approach. This successful venture produced a POS which represented a consensus of the partners.

As described later, the POS established a management structure which is headed by the Executive Coordinating Committee (ECC). The POS was adopted by ECC at their first meeting on January 3, 1992, following the signing of the MOA. The POS serves as a general guide for the comprehensive study and

provided the basis for preparation of detailed Scopes of Work (SOW). The adoption of the POS reaffirmed the partners' commitment to the study process. (TCG, 1992).

The POS includes:

- o The geographic coverage of the study, which may be divided into subareas at a later date, if appropriate;
- o A description of the study management structure;
- o One goal and four objectives for the Comprehensive Study;
- o A general description of the tasks to be performed;
- o A general description of the results to be attained by each study element;
- o An indication of study task sequencing to indicate which tasks need to be accomplished to make information available for other required studies.

OPPORTUNITIES FOR RESOLUTION OF ISSUES

Conceptually, the study and its associated activities provide the framework, impetus and vehicle to address and resolve complex water resources issues. The study management structure and partnership philosophy make this initiative unique and innovative. The concept is simple, but relies heavily upon the mutual commitment and trust of each partner. Parity among parties and consensus decisionmaking represent overarching principles. Consensus building can be time consuming and challenging, however, it is considered essential to the development of a mutually agreeable plan.

Management Structure

The management structure is two tiered. The State ECC members are designated by the three governors and the District Engineer, Mobile District, represents the Corps. It is the ECC's responsibility to define the water resources issues to be reviewed in the study and to manage the overall study effort within each basin.

The second tier, the Technical Coordinating Group (TCG), is composed of a designee of each ECC member. The TCG utilizes special task groups, technical review panels, state and Federal agencies, outside experts as well as input from interest groups/stakeholders to guide their deliberations and to seek agreement on content, approach, level of detail, etc., for

each study element.

The TCG adopted a dispute resolution process to assist in avoiding stalemate situations and can always bring unresolved issues to the ECC for resolution and/or direction. The process of reaching consensus in both the ECC and TCG requires time, energy, understanding, communication, cooperation and compromise. It is important for the participants to understand the various issues and to seek to appreciate the respective viewpoints being expressed. Thus far all issues have been resolved by consensus thus fulfilling a dominant ingredient toward sustaining the partnership.

RELIABLE TECHNICAL INFORMATION

The pre-MOA water resources conflicts demonstrated how questions about the adequacy and reliability of data and projections produced areas of controversy among interest groups. Questions existed about the availability of surface and groundwater. Existing water uses for various purposes such as municipal and industrial water supply, hydropower, navigation, recreation, agriculture and environmental considerations were also either not well documented or were not universally accepted. Additionally, the interrelationships among the various uses/demands were not well understood. The inconsistencies and/or unacceptability of projected future needs furthered the areas of contention. Competing interests thus found a fertile ground for challenging both the analyses and the conclusions reached about the implications of proposed water resource management proposals.

A substantial portion of the ACT/ACF study is devoted to resolution of technical issues. A common understanding and mutual acceptance of the needs, availabilities, limitations and potential management options will go a long way toward eliminating confusion and mistrust. The technical aspects include both demand projections and the development of analytical tools which can be used to describe the various situations and explore management options. For example, management options may include various operating scenarios for the Federal and non-Federal reservoirs in the basins. These tools will facilitate the evaluation of tradeoffs and allow the parties and stakeholders to examine the options and draw conclusions as to their beneficial or detrimental impacts. What can be achieved by a variety of conservation practices, waste treatment measures and shared uses of water can also be analyzed. The models have been

selected and approved for development/calibration, and the Scopes of Work for the demand and availability components are being executed. The expectations are that -- with acceptable data and the outputs from reliable analytical tools, synthesized by input from stakeholders, agencies and the public -- the way will be prepared for more informed decisionmaking.

COORDINATION MECHANISM

A parallel activity to addressing and resolving the technical issues is the development of a coordination mechanism. The POS specifies that it is an objective of the ACT/ACF Comprehensive Study to "Recommend a permanent coordination mechanism for the implementation of comprehensive management strategies" (TCG, 1992). A coordination mechanism could take virtually any form from an agreement to informally coordinate and share information to a congressionally approved compact. The Federal government may or may not be an active participant, and its role could vary substantially. As an initial step, information has been gathered on existing and historic coordination mechanisms (Kenny and Lord, 1994). Workshops have been conducted to gain input and insight from stakeholders in the three states (Kenny, 1994). Considerable effort will now be devoted to the development and customizing of optional approaches and the evaluation of how these options meet the basins' needs, as well as the needs of the parties and stakeholders.

Acceptability, affordability and implement-ability represent important considerations for all parties and interest groups. The MOA prescribes the development of a "...mechanism or mechanisms..." as a necessary component "...to implement the findings or recommendations of the Comprehensive study" (MOA, 1992). Others hold much higher aspirations and envision broader applications for a coordination mechanism, especially as a measure to address and resolve water resources issues without litigation. Regional and local politics will obviously come into play. Achieving agreement among the parties on an appropriate coordination mechanism represents a formidable challenge for the study participants, but certainly a challenge worth pursuing with vigor.

MUTUAL GOALS

Differences in locality, needs, interests, and circumstances can tend to polarize viewpoints about the use

and management of water resources. Tensions arise and confrontations can prevail. Differences need to be recognized and addressed, but mutual goals/expectations should also be recognized. Some mutual goals for the parties involved in the ACT/ACF study surely include:

- o Wise Management and Stewardship of Water Resources
- o Assured Environmental Quality
- o Healthy Economic Growth
- o Environmentally Sustainable Development
- o Ability to Equitably Allocate Shortages
- o Avoidance of Litigation
- o Regional Harmony

These goals are not exhaustive, nor are they mutually exclusive; they are broad in context and subject to interpretation. Nevertheless, they are considered to represent a future state worthy of pursuit. By putting aside parochial views and committing to seek common goals, the comprehensive study process offers the opportunity for adoption of a more altruistic approach by the partnership. The effectiveness of the study is contingent upon the success of the partnership, which relies on the commitment, trust and communications of the partners.

CONGRESSIONAL BRIEFINGS

The United States Congress has been very supportive of the ACT/ACF Comprehensive Study. As mentioned previously, the language appropriating \$1 million for Fiscal Year 1991 was influential in settling the ongoing water resources conflict as it set the stage for full involvement by the States. The Fiscal Year 1993 language, in essence, endorsed the MOA provisions by expressing support for the partnership approach and shared study management responsibilities as well as shared funding. All federal funds requested for the study (\$11.25 million) have been appropriated, which is another indication of Congressional support.

The ECC has conducted two annual briefings for the respective Congressional delegations and their staffs. A separate briefing has been conducted for each State's delegation. All of the ECC members attended the briefings as well as TCG members and others. Briefing handouts which describe the study process, the issues being addressed, status, partnership approach, etc., were reviewed and approved by the ECC members. The briefings have been beneficial from at least two

perspectives. First, they have kept Congressional interests informed and provided the members/staff an opportunity to obtain answers to questions about the study from those directly involved. Secondly, the briefings and peripheral activities fostered team building and promoted the partnership approach to doing business.

CONCLUSIONS

The ACT/ACF comprehensive study is a journey; the journey affords a new way of addressing and resolving water resources issues using a collaborative approach in lieu of engaging in adversarial conflicts. Measures are underway to provide stakeholders and decisionmakers the technical information they need to ascertain how well their respective needs can be met under various management plans for the basins. It must be recognized, however, "...that many water management decisions are not merely technical exercises, but are ultimately choices among divergent public values" (Kenny and Lord, 1994).

In this context the interactions encountered and relationships experienced by the parties during the journey can either further the collaborative approach or interfere with its progress. The MOA, POS, Congressional direction/support and funding all contribute to providing a productive framework and atmosphere for conducting the ACT/ACF comprehensive study. Extraordinary efforts have been expended by the partners to reach consensus on the technical Scopes of Work and other technical issues so that all parties will have sufficient knowledge about the systems' capabilities, projected needs, etc. Measures are also in place to provide adequate background information in the institutional arena in order to analyze and deliberate concerning an appropriate coordination mechanism. With this in mind the ultimate success of the journey may well hinge on the ability of the parties to engage in a paradigm shift. This shift could focus on moving from autonomy to shared use; from state sovereignty and Federal supremacy to inter-dependence. The MOA signifies commitment to the process; the journey will determine if the parties can stay the course. If the ACT/ACF comprehensive study (journey) is successful it could well achieve the vision of Congress and "...serve as a model for management of future basin studies and basin management plans, as well as a model for Corps and State cooperation." (U.S. Senate, 1992).

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