



TACIR

The Tennessee Advisory Commission
on Intergovernmental Relations



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226 Capitol Boulevard Bldg., Suite 508
Nashville, Tennessee 37243-0760
Phone: (615) 741-3012
Fax: (615) 532-2443
www.tn.gov/tacir

MEMORANDUM

TO: Commission Members

FROM: Cliff Lippard *Cliff*
Executive Director

DATE: May 24, 2017

SUBJECT: Current Water Supply Issues in Tennessee

Continuing Issues in the Cumberland Plateau Area

In January, you heard about several water supply challenges, mainly the difficulties experienced by water systems in southeast Tennessee because of the 2016 drought. At this quarterly meeting, you will hear from Mike Bernard, principal with the engineering firm Smith Seckman Reid. Mr. Bernard led the team that designed the temporary water treatment plant installed at Fall Creek Falls State Park to meet emergency water supply needs in the area, including those of the state's Bledsoe County Correction Complex. He will explain the situation faced there last fall and describe how the challenges were met and resolved, which are recapped in an article he and Lindsay Bryant, also an engineer with Smith Seckman Reid (attachment A). As you will hear from Mr. Bernard, the immediate problem has been resolved. And although further meetings were held by staff of the US Army Corps of Engineers (USACE), the utilities most affected by the drought have not yet chosen their course for the future. In the meantime, the USACE and the Tennessee Department of Environment and Conservation have embarked on a watershed study for the area to inform future water supply considerations.

Issues in West and Middle Tennessee

Two other issues were briefly presented in January: The lawsuit brought by the State of Mississippi claiming that wells serving the City of Memphis have altered the flow of water in the Memphis Sand Aquifer, pulling more of it northward across the state line; and the multi-year study by the USACE to determine whether and how much

additional water storage can be reallocated from other uses to Rutherford County water systems from the J. Percy Priest Reservoir (JPP).

The status of the Mississippi lawsuit remains unchanged since last October. It remains in the hands of a special master appointed by the US Supreme Court in 2015, whose October 2016 order approving a case management plan provides for discovery by the parties through June 30, 2017, and submission by August 31, 2017, of a joint proposed order setting forth a plan for an evidentiary hearing. As noted in materials for the January meeting, the Special Master narrowed the parties' focus to the factual question whether the aquifer is an interstate water resource. A timeline of the case provided by the office of Tennessee's Attorney General and Reporter is presented in attachment B. A comprehensive article from the Commercial Appeal that lays out the broader issues and background is attachment C.

The long-running study by the USACE of the potential to reallocate more water storage to water systems in Rutherford County is proceeding toward resolution. A great deal of highly technical work has gone on over the last year by USACE staff and engineers and attorneys working for the cities of Smyrna and Murfreesboro and the Consolidated Utility District of Rutherford County (CUDRC). The work has been carefully vetted in regular meetings led by USACE staff. While all involved are frustrated by the many years it has taken to reach the point of having an agreed draft reallocation report, there is a sense that they are seeing the light at the end of the tunnel, and much-needed reallocations, most significantly for the CUDRC, which is experiencing the fastest customer growth of any utility in the area, are now expected in the coming months.

A related issue, also mentioned in January, is the USACE's proposed a rule to clarify and standardize its approach to water supply storage and accounting. The comment period for the rule has been extended twice, most recently through August 18, 2017. As of last Friday, 44 entities had commented. The proposed rule was first posted last December, but many utilities across the country were already having issues with the way the USACE made allocations and accounted for storage. A number of them along with several states have been meeting regularly as the recently-chartered National Water Supply Association. The group is preparing joint comments, but many members have or will comment separately. The lead attorney for the group, Lewis B. Jones, a partner with King and Spalding in Atlanta, will explain the issues as they relate to Tennessee and to the USACE's study of JPP Reservoir and answer questions about both the study and the proposed rule. Mr. Jones has been representing the City of Murfreesboro and CUDRC in negotiations with the USACE.

The main issue with the rule as it relates to JPP Reservoir and Tennessee is how the USACE computes the amount of water remaining in any water system's purchased reservoir storage when a reservoir's level falls below its annual guide curve—specifically, whether the system gets full credit for water returned to the reservoir (return flows) against the withdrawals it has made. This issue has been central to discussions and negotiations involved with the USACE reallocation study for JPP Reservoir. In an effort to resolve the issue for Tennessee, legislation was sought and passed by the Tennessee General Assembly. The final version, Public Chapter 220, Acts of 2017, (attachment D) takes effect July 1, 2017, and requires return flows to be credited to the entity generating them subject to TDEC's regulatory requirements and to the extent that the entity has unused storage in the reservoir.

Georgia's Potential Claim on the Tennessee River—an Issue that Bears Watching

As indicated by a February 2017 article in the Chattanooga Times Free Press (attachment E), it is almost inevitable that this claim will become an immediate issue at some point. The article suggest that it may be more likely now that the Special Master appointed in Florida's lawsuit against Georgia recommended that the Court (the US Supreme Court, which hears all disputes between states) deny Florida's request for relief. The case should not have any direct bearing on any issues between Georgia and Tennessee, because the issues are very different, but one Georgia newspaper columnist has suggested that a win by Georgia against Florida could allow Georgia to turn its attention to Tennessee. Florida's complaint sought equitable apportionment of the waters of the Apalachicola-Chattahoochee-Flint River Basin and appropriate injunctive relief against Georgia to sustain an adequate flow of fresh water into the Apalachicola Region. The Special Master's 137-page report can be found online at [https://www.pierceatwood.com/sites/default/files/Docket%20636%20Special%20Master%20Report,%20FL%20v%20GA%20No.%20142%20Orig.%20\(W6008636x7AC2E\).PDF](https://www.pierceatwood.com/sites/default/files/Docket%20636%20Special%20Master%20Report,%20FL%20v%20GA%20No.%20142%20Orig.%20(W6008636x7AC2E).PDF). This is not the end of the matter. As noted in an Atlanta Journal Constitution article (attachment F), the Supreme Court could reject the findings or take another route, Congress could weigh in, and further lawsuits are possible.