

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

THE STATE OF GEORGIA, )  
)  
Plaintiff, )

v. )

THE UNITED STATES ARMY )  
CORPS OF ENGINEERS; JOHN )  
MCHUGH, in his official capacity as )  
Secretary of the United States Army; )  
JO-ELLEN DARCY, in her official )  
capacity as Assistant Secretary of the )  
United States Army for Civil Works; )  
LIEUTENANT GENERAL THOMAS )  
P. BOSTICK, in his official capacity )  
as Commander and Chief of )  
Engineers, United States Army Corps )  
of Engineers; BRIGADIER )  
GENERAL C. DAVID TURNER, in )  
his official capacity as Division )  
Commander, South Atlantic Division, )  
United States Army Corps of )  
Engineers; and COLONEL JON J. )  
CHYTKA, in his official capacity as )  
District Commander, Mobile District, )  
United States Army Corps of )  
Engineers, )  
Defendants. )

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CIVIL ACTION NO.  
\_\_-CV-\_\_

## **COMPLAINT**

Plaintiff, the State of Georgia (“Georgia”), files this Complaint against the Defendants as follows:

### **SUMMARY**

1. An adequate supply of water is vital to Georgia’s economic well-being and the health, safety, and welfare of its citizens.
2. The United States Army Corps of Engineers (“Corps”), through its ownership and operation of Carters Lake and Lake Allatoona, has a direct and substantial effect on Georgia’s water resource planning and management.
3. For more than 30 years, Georgia has been seeking to obtain from the Corps rational, reasonable plans and manuals for the Corps’ operations of its projects so that Georgia can manage its water resources and plan for the State’s future needs.
4. Claiming to have been stymied by litigation in numerous district and circuit courts, the Corps never produced water control plans and manuals adequate for Georgia’s needs, instead relying on outdated and inadequate plans and manuals produced in 1952 for the Alabama-Coosa-Tallapoosa (“ACT”)

Basin and in 1958 for the Apalachicola-Chattahoochee-Flint (“ACF”) River Basin.

5. In 2011, the Eleventh Circuit Court of Appeals definitively resolved the challenges impeding the Corps’ development of reasonable water control plans and manuals in the ACF Basin. As a result of the Eleventh Circuit’s 2011 decision, similar litigation regarding the ACT Basin was dismissed in 2012.

6. Freed from these impediments, the Corps was obligated to develop comprehensive water control plans and manuals for its projects without unreasonable delay.

7. Any adequate water control plans and manuals must address current and future water supply needs and operations within that basin.

8. Despite the need to address water supply needs and operations in the ACT Basin, however, over the past several years the Corps has made public and private statements indicating that, due to political pressure by the State of Alabama, the Corps in fact has no intention of developing plans and manuals that address current and future water supply needs and operations in the ACT Basin.

(a) For example, the Corps' draft environmental impact statement for the ACT water control manual update expressly stated that the Corps would not consider alternatives that would require the reallocation of storage to water supply. In addition, the Corps stated that it would not consider alternatives for the reallocation of water supply at Lake Allatoona because Georgia and Alabama could not reach consensus regarding such an alternative.

(b) In a letter dated April 29, 2013, Assistant Secretary of the Army (Civil Works), Jo-Ellen Darcy informed Georgia Governor Nathan Deal that the Corps would not take any action regarding the allocation of storage in Lake Allatoona as part of the Corps' efforts to update the ACT water control plans and manuals.

(c) Again, in testimony before the Senate Public Works Committee on July 22, 2013, the Corps reaffirmed its position, in response to questions from Alabama Senator Jeff Sessions, that water supply would not be considered in any update to the ACT water control plans and manuals.

9. Today, the Corps issued a final environmental impact statement ("Final EIS") for Lake Allatoona and the ACT Basin confirming that the Corps

has not addressed and has no plans to address properly and completely current and future water supply needs for the ACT Basin.

10. There is no legitimate legal basis for the Corps' refusal to fully consider current and future water supply needs for the ACT Basin.

Furthermore, issuance of a supposedly final EIS that fails to adequately consider such an essential feature of the Basin system's operation is defective.

11. The Corps' refusal to properly address current and future water supply needs hampers the State of Georgia's ability to properly manage its valuable water resources and potentially puts the health, safety and welfare of Georgia's citizens at risk.

12. Georgia files this action to compel the Corps to prepare reasonable and up-to-date water control plans and manuals, preceded by appropriate environmental studies, adequate for the State to meet its duty to protect the health, safety and welfare of its citizens.

13. Georgia therefore prays for the Court to direct the Corps to evaluate and respond to the requests for additional water supply storage at Lake Allatoona, to prepare up-to-date water control plans and manuals that properly consider the current and future water supply needs of the citizens of the State, and to declare invalid and set aside the Corps' Final EIS.

## **PARTIES**

14. Georgia brings this action in its own capacity based upon actual injury to its interests and in its representative capacity as *parens patriae* for the citizens of Georgia based upon irreparable harm to the general welfare of Georgia and its citizens. Georgia has suffered legal and irreparable harm because of the agency action and failure to act described in this Complaint.

15. Defendant the Corps is a branch of the United States Army under the direction and supervision of the Secretary of the United States Army and is an agency of the United States within the meaning of 5 U.S.C. § 701.

16. Defendant John McHugh (“Secretary McHugh”) is the Secretary of the United States Army.

17. Defendant Jo-Ellen Darcy (“Assistant Secretary Darcy”) is the Assistant Secretary of the United States Army for Civil Works.

18. Defendant Lieutenant General Thomas P. Bostick (“General Bostick”) is the Commander and Chief of Engineers, United States Army Corps of Engineers.

19. Defendant Brigadier General C. David Turner (“General Turner”) is the Division Commander for the South Atlantic Division of the Corps.

20. Defendant Colonel Jon J. Chytka (“Colonel Chytka”) is the District Commander for the Mobile District of the Corps.

21. Secretary McHugh, Assistant Secretary Darcy, General Bostick, General Turner, and Colonel Chytka, or their predecessors, acting in their official capacities, individually or collectively are responsible for and approved the acts and omissions of the Corps alleged herein and are responsible for compliance by the Corps with any decree of this Court.

### **JURISDICTION**

22. This Court has jurisdiction over the subject matter of this action pursuant to federal law, including 28 U.S.C. § 1331 and 5 U.S.C. § 701 *et seq.*

### **VENUE**

23. Lake Allatoona, the federal reservoir at issue in this litigation, is located, in part, in Cherokee and Cobb Counties, which are in the Atlanta Division of the Northern District of Georgia. A substantial part of the events and omissions giving rise to the claims asserted in this Complaint occurred in the Northern District of Georgia and in the Atlanta Division. In addition, General Turner resides in the Northern District of Georgia and in the Atlanta Division.

24. Venue in the Northern District of Georgia and the Atlanta Division is proper pursuant to 28 U.S.C. § 1391 and Local Rule 3.1 of the Northern District of Georgia Court Rules.

### **FACTS**

#### **Georgia's Regulatory Control of Water Resources in Georgia**

25. Georgia has exercised dominion and control over its water resources since its statehood. Today, Georgia requires conservation of those resources and carefully regulates water use. For example, the Georgia Water Quality Control Act reads as follows:

The people of the State of Georgia are dependent upon the rivers, streams, lakes, and subsurface waters of the state for public and private water supply and for agricultural, industrial, and recreational uses. It is therefore declared to be the policy of the State of Georgia that the water resources of the state shall be utilized prudently for the maximum benefit of the people, in order to restore and maintain a reasonable degree of purity in the waters of the state and an adequate supply of such waters, and to require where necessary reasonable usage of the waters of the state . . . . To achieve this end, the government of the state shall assume responsibility for the quality and quantity of such water resources and the establishment and maintenance of a water quality and water quantity control program adequate for present needs and designed to care for the future needs of the state.

O.C.G.A. § 12-5-21(a).

26. To ensure optimal use of Georgia’s water resources while protecting the State’s environment, the Georgia Water Quality Control Act authorizes the Environmental Protection Division of the Georgia Department of Natural Resources (“EPD”) to regulate the withdrawal, diversion, or impoundment of surface waters of the State and the discharge of pollutants into the surface waters of the State.

27. The regulation of its water resources lies at the heart of Georgia’s sovereignty as a State within our federal system. Central to the exercise of that sovereignty is the ability to plan for and allocate the waters of Lake Allatoona and Carters Lake.

28. Under its water planning statutes, Georgia is required to take steps necessary to manage its water resources “in a sustainable manner to support the state’s economy, to protect public health and natural systems, and to enhance the quality of life for all citizens.” O.C.G.A. § 15-2-522.

**Alabama-Coosa-Tallapoosa River Basin**

29. This case concerns what is known as the ACT River Basin.

30. The Coosa River is formed by the confluence of the Etowah River and the Oostanaula River in Rome, Georgia. The Etowah River rises in the Blue Ridge Mountains near Dahlonega, Georgia and flows towards the

southwest for approximately 150 miles before it joins with the Oostanaula River. The Oostanaula River is formed by the Conasauga and Coosawattee Rivers near Resaca, Georgia. The Tallapoosa River originates as a collection of streams that drain the southern Appalachian Mountain range in Georgia, forming the River's main stem near Carrolton, Georgia and running through Paulding and Haralson Counties in Georgia before entering Alabama. The Coosa and Tallapoosa Rivers join to form the Alabama River in Alabama.

31. The Corps' two primary storage reservoirs in the ACT River Basin—Lake Allatoona and Carters Lake—are located entirely in Georgia in the Coosa River Basin upstream of Rome, Georgia. Lake Allatoona impounds the Etowah River in Cobb, Cherokee, and Bartow Counties. Carters Lake impounds the Coosawattee River in Gilmer and Murray Counties. Georgia relies upon both reservoirs for municipal and industrial water supply, recreation, support of water quality, and fish and wildlife habitat. There is no Corps reservoir on the Tallapoosa River in Georgia. Several Georgia communities rely on the Tallapoosa River and its tributaries to meet municipal and industrial water supply needs.

**Georgia’s Use of Storage in Lake Allatoona to Impound Water  
for Water Supply**

32. In 1958, Congress enacted the Water Supply Act of 1958, which authorizes the Corps to include storage in any reservoir the Corps has constructed “to impound water for present or anticipated future demand or need for municipal or industrial water,” provided, however, that if doing so would “seriously affect the purposes for which the project was authorized, surveyed, planned, or constructed,” or would “involve major structural or operational changes,” the Corps must obtain the approval of Congress. 43 U.S.C. § 390b(b), (d).

33. Two water systems currently withdraw water from Lake Allatoona: Cobb County-Marietta Water Authority (“CCMWA”) and the City of Cartersville (“Cartersville”). CCMWA provides water to public water suppliers in Cobb, Cherokee, Douglas, Fulton, and Paulding Counties. Cartersville provides most of the water for Bartow County. More than 915,000 people currently rely upon the water that CCMWA and Cartersville withdraw from Lake Allatoona to meet their water supply needs.

34. Pursuant to contracts with the United States, CCMWA and Cartersville have purchased rights to use storage space in Lake Allatoona to impound state waters for withdrawal as permitted by Georgia.

35. CCMWA's Lake Allatoona storage contract with the United States, authorized under the Water Supply Act of 1958, is dated October 10, 1963 (the "CCMWA Contract") and remains in effect today. The CCMWA Contract entitles CCMWA to use three blocks of storage space that total 13,140 acre feet.

36. Cartersville entered into a contract with the United States for storage in Lake Allatoona on July 12, 1966 (the "1966 Cartersville Contract"). The 1966 Cartersville Contract provided rights to two increments of storage space totaling 1,996 acre feet of storage space. In October 1991, Cartersville entered into another contract with the United States for the purchase of 4,374 acre feet of additional storage space (the "1991 Cartersville Contract").

37. By statute, CCMWA and Cartersville each have a permanent right to use their contracted storage for so long as the storage space is physically available. Pub. L. No. 88-140; EP 1165-2-1 at 18-1 (July 1999).

38. In 2006, CCMWA's gross withdrawals from Lake Allatoona varied from 33.5 million gallons per day ("MGD") in January to 62.9 MGD in June, and the annual average withdrawal was above 34.5 MGD. CCMWA's gross withdrawals on an annual basis have been lower since 2006 but remain above 34.5 MGD nearly every month. CCMWA's net withdrawals (that is,

gross withdrawals less returns to the Lake or streams flowing into the Lake), by contrast, have been below 34.5 MGD in nearly every month. CCMWA and Cartersville cumulatively withdrew an average of 49.5 MGD in 2011. The highest average gross withdrawal for an individual month by CCMWA and Cartersville cumulatively in 2011 was 64.3 MGD.

39. EPD projects that gross water withdrawals from Lake Allatoona will increase to at least 123.9 MGD in 2040. EPD developed its forecasts for future water supply need projections in cooperation with the Metropolitan North Georgia Water Planning District (the “Metro District”), a body that was established by Georgia statute to help coordinate water planning for the multi-county Metropolitan Atlanta Region. The Metro District projections and EPD forecasts are based on a number of factors, including population, employment, and commercial and residential consumption rates.

40. The Corps has not made the requisite determination of the amount of storage space that is needed to accommodate the current and projected future water supply withdrawals by CCMWA and Cartersville.

41. Those who rely upon Lake Allatoona for water supply need the assurance of future water supply so that they may make intelligent and

informed decisions about how to meet the needs driven by future population and economic growth.

42. If Lake Allatoona were not available to meet Georgia's current and future water supply needs, additional reservoirs and other water supply infrastructure would have to be developed. Due to the complexity and uncertainty associated with developing such resources, planning must begin 15 to 25 years in advance. Therefore, the Corps' failure to make the requisite determinations as to current and future water supply needs at Lake Allatoona results in an actual and imminent harm to Georgia's ability to properly plan for its water supply needs.

43. The development of additional reservoirs and other water supply infrastructure could result in harm to the environment that could be avoided if additional amounts of storage in Lake Allatoona were available to meet Georgia's reasonable water supply needs. Georgia would also incur economic harm as a result of developing water resources projects to meet water supply needs that could otherwise be met through withdrawals from Lake Allatoona.

44. The costs, uncertainty, and limitations in meeting the State's water supply needs as a result of inaction by the Corps, including economic and other

losses as a result of short- and long-term water shortages, result in harm to the health, safety, and welfare of Georgia's citizens.

**Requests for Additional Water Supply Storage in Lake Allatoona**

45. When CCMWA's contract was executed in 1963, the Army estimated that the storage space contracted to CCMWA would refill with sufficient frequency to support average withdrawals in the amount of 34.5 MGD, an amount expected to meet CCMWA's projected demand through the mid-1990s.

46. Beginning in the early 1970's, however, Georgia entered into discussions with the Corps regarding Georgia's water supply needs throughout the state and the essential role that the Corps' projects would play in meeting those needs. As a result, the Corps has been aware of the critical role of Lake Allatoona in the State's water supply planning and management for over forty years.

47. In addition, since as early as 1981, as a result of formal requests for reallocation and otherwise, the Corps has been aware that CCMWA would need additional storage to meet its water supply needs. From 1981 through 1989, the Corps repeatedly assured CCMWA that changes necessary to provide additional water supply storage were imminent.

48. As a result of litigation filed by the State of Alabama, however, the Corps did not take final action to reallocate storage to water supply at Lake Allatoona.

49. Similarly, since 1999, Cartersville has made repeated requests for the Corps to allocate additional storage space in Lake Allatoona to meet Cartersville's reasonable and reasonably foreseeable water supply needs.

50. On January 29, 2013, culminating decades of discussions and as a result, in part, of the Corps' continued refusal to respond to requests for additional storage in Lake Allatoona, Georgia Governor Nathan Deal submitted to Assistant Secretary Darcy a formal request that the Corps manage the resources of Lake Allatoona to meet projected year 2040 water supply needs of CCMWA and Cartersville and those other suppliers to whom they provide water ("Georgia's Allatoona Water Supply Request").

51. On April 29, 2013, the Assistant Secretary issued a response to Georgia's Allatoona Water Supply Request. That response attempted to justify the Corps' failure to address current and future water supply needs by stating that the Corps would revise the water control plans and manuals for the ACT River Basin before making a decision on Georgia's Allatoona Water Supply Request.

52. On July 22, 2013, in testimony before the Senate Public Works Committee, the Corps made plain that it had no intention of addressing Georgia's current or future water supply needs when updating the water control plans and manuals for the ACT basin.

53. To date, the Corps has failed to address the pending water supply requests from CCMWA, Cartersville, and the State of Georgia.

54. Not only is the Corps obligated to conclude action on the water supply requests within a reasonable time, the Corps is required by law to consider current and reasonably foreseeable needs in its development of new water control plans and manuals.

55. To date, the Corps has unlawfully refused to take, and/or unreasonably delayed taking, the requisite final action to address the requests for additional water supply storage at Lake Allatoona and to update its water control plans and manuals for Lake Allatoona and the other reservoirs in the ACT Basin to address its water supply operations.

#### **Regulations on Water Control Plans and Manuals**

56. A water control manual is the document in which the Corps presents a water control plan. The Corps must prepare a "water control plan" for "reservoirs, locks and dams, regulation and major control structures and

interrelated systems to conform with objectives and specific provisions of authorizing legislation and applicable Corps of Engineers reports.” 33 C.F.R. § 222.5(f)(1). “Water control plans and manuals include coordinated regulation schedules for project/system regulation and such additional provisions as may be required to collect, analyze and disseminate basic data, prepare detailed operation instructions, assure project safety and carry out regulation of projects in an appropriate manner.” 33 C.F.R. § 222.5(e)(1).

57. The Corps must prepare a “water control manual” for all reservoirs under its supervision regardless of the purpose or size of the project. 33 C.F.R. § 222.5(i)(2). The primary purpose of the water control manual is to describe “the functional regulation of an individual project or system of projects.” 33 C.F.R. § 222.5(i)(1).

58. Where there are several projects in a drainage basin with interrelated purposes, a “master manual” must be prepared. 33 C.F.R. § 222.5(i)(2). The Corps’ projects in the ACT Basin have interrelated purposes.

59. The Corps must take actions necessary “to keep approved water control plans up-to-date.” 33 C.F.R. § 222.5(f)(2). To keep the water control plans and manuals up-to-date, the plans and manuals must “be subject to continuing and progressive study” by the Corps. *Id.* Water control plans and

manuals must be “revised as necessary to conform with changing requirements resulting from developments in the project area and downstream, improvements in technology, new legislation and other relevant factors.” 33 C.F.R. § 222.5(f)(3).

60. The Corps’ regulations call for the “appropriate consideration of efficient water management in conformance with the emphasis on water conservation as a national priority. The objectives of efficient water control management are to produce beneficial water savings and improvements in the availability and quality of water resulting from project regulation/operation.” 33 C.F.R. § 222.5(f)(3). To accomplish this goal, the Corps must make “[c]ontinuous examination” of “regulation schedules, possible need for storage reallocation (within existing authority and constraints) and to identify needed changes in normal regulation.” 33 C.F.R. § 222.5(f)(3).

**NEPA Requirements Applicable to Development of  
Water Control Plans and Manuals**

61. The Corps is required to comply with the National Environmental Policy Act (“NEPA”) in developing new water control plans and manuals for the ACT River Basin.

62. NEPA requires federal agencies to develop an EIS before undertaking any major federal action “significantly affecting the quality of the human environment.” 42 U.S.C. § 4332.

63. The development of new water control plans and manuals for the ACT Basin is a major federal action significantly affecting the human environment under NEPA.

64. The purpose of an EIS is to “provide full and fair discussion of significant environmental impacts” and “inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. § 1502.1.

65. The EIS is to be used to evaluate potential actions before a decision is made, not to justify a decision that an agency has already made. 40 C.F.R. § 1502.5. The Corps must integrate its NEPA evaluation into its decision-making process at the earliest possible time. 40 C.F.R. § 1501.2.

66. The EIS must rigorously “explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14(a). One such alternative that the agency must consider is what is called the no action alternative, which represents the de facto status quo. 40 C.F.R. § 1502.14(d).

67. The Corps must consider the cumulative impact of the no action alternative and the cumulative impact of each of the other reasonable alternatives. “Cumulative impact” is defined to include the effects not only of the agency’s actions but also the actions of third parties that will result from the agency’s actions or failure to act:

Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.

40 C.F.R. § 1508.7.

68. Environmental consequences are the “scientific and analytic basis for consideration of alternatives.” 40 C.F.R. § 1502.16. Consequences to be considered include direct and indirect effects, and possible conflicts with state plans and polices. 40 C.F.R. § 1502.16(c). Effects to be considered include economic, ecological, aesthetic, historic, cultural, social, and health, whether direct, indirect, or cumulative. 40 C.F.R. § 1508.8. When economic and sociological effects are interrelated with environmental effects, then all of these effects on the human environment are to be studied. 40 C.F.R. § 1508.14.

## **The Corps' NEPA Process for the ACT Basin Water Control Manual**

69. In August 2008, the Corps issued a notice in the Federal Register announcing that it intended to update the water control plans and manuals for the ACT River Basin. The first step in that process was to determine the scope of the EIS for the water control plans and manuals.

70. In October 2008, Georgia and other parties submitted comments in response to the Corps' NEPA scoping notice, stating that failure to consider reallocation to meet current and future water supply needs would be in direct conflict with federal law.

71. During public meetings held to discuss the scope of the EIS for the ACT water control manual process, representatives from the Corps stated that, due to budget constraints, the Corps planned only to document its current operations in the ACT Basin and not to study alternatives to those operations, such as a reallocation of storage to meet future water supply needs.

72. In reality, the Corps' decision not to consider alternatives to "current operations" arose from political pressure applied by the State of Alabama. Before beginning the NEPA process for the ACT water control manual update, senior Corps officials made a commitment to members of Alabama's congressional delegation that the Corps would not propose or even

study as an alternative any reallocation of storage that may be needed to meet current or future water supply needs.

73. On March 8, 2013, the Corps issued the Draft Environmental Impact Statement for Revised Water Control Manuals for the Alabama-Coosa-Tallapoosa River Basin (78 Fed. Reg. 15,007) (“Draft EIS”). The Corps requested public comment on the Draft EIS.

74. Following through on its promise to Alabama politicians, the Corps in the Draft EIS did not consider as an alternative any reallocation of storage to meet current or future water supply needs.

75. On May 31, 2013, the State of Georgia, CCMWA, and other parties filed extensive comments on the Draft EIS explaining that the Draft EIS was inadequate under NEPA and the Corps’ regulations because, among other things, the no-action alternative was incorrect and the Corps failed to consider cumulative effects or reasonable alternatives for increased water supply withdrawals from Lake Allatoona.

## **Final EIS**

76. On November 7, 2014, the Corps published the Final Environmental Impact Statement for Revised Water Control Manuals for the Alabama-Coosa-Tallapoosa River Basin.

77. In the Final EIS, the Corps improperly narrows the definition of the purpose and need for the proposed project. This improper narrowing of the purpose and needs led the Corps to reject alternatives that would require the reallocation of storage in Lake Allatoona to water supply.

78. The Final EIS fails to properly consider increased water supply withdrawals from Lake Allatoona or elsewhere in the ACT Basin in any action alternative, even though Georgia's future water supply need from the ACT Basin is reasonably foreseeable, and the requests of the State of Georgia, CCMWA, and Cartersville that the Corps allocation additional storage space for municipal and industrial water supply use remain pending.

79. The Final EIS fails to properly address how the Corps will operate Lake Allatoona to meet CCMWA's current gross water supply needs.

80. The Final EIS fails to adequately account for return flows to Lake Allatoona, including the effect of such on operation of the project to meet water supply needs.

81. Without adequately considering foreseeable future levels of withdrawal, return flows, and other existing and foreseeable water resources projects, the Final EIS has not properly considered cumulative impacts or rigorously explored and objectively evaluated all reasonable alternatives.

82. The defects in the Final EIS described above will limit Georgia's ability to make use of its water resources available in Lake Allatoona to meet the State's current and future water supply needs, requiring the development of additional reservoirs and other water supply infrastructure.

**COUNT I-FAILURE TO PREPARE WATER CONTROL PLANS AND  
MANUALS REFLECTING CURRENT OPERATIONS**

83. Plaintiff incorporates and re-alleges by reference the allegations of Paragraphs 1-82 above as though fully set forth herein.

84. The Corps has a duty to maintain and update the water control plans and manuals for its water resources projects to reflect current conditions and anticipate future needs. 33 C.F.R. § 222.5(f)(3).

85. The water control plan for Lake Allatoona is out-of-date, inconsistent with current operations, and fails to consider future needs. The Corps therefore has a duty to update the water control plan to consider current and reasonably anticipated future operations, including operations to meet reasonable water supply needs.

86. As evidenced by the Corps' statements and confirmed by the Final EIS, the Corps has refused to make the requisite update to its water control plans and manuals for Lake Allatoona and the other reservoirs in the ACT Basin to reflect current water supply operations or anticipate future water supply needs.

87. The Corps' refusal to update the applicable water control plans and manuals to reflect current conditions is unreasonable and unlawful.

88. The Corps' failure to prepare the requisite water control plans and manuals that reflect its water supply operations at Lake Allatoona creates an actual and immediate risk to public health and safety because it jeopardizes Georgia's ability to plan for and meet the critical water supply needs of its citizens.

89. The Corps will not be prejudiced by a requirement to address its waters supply operations at Lake Allatoona.

90. The Corps' failure to update its water control plans and manuals for Lake Allatoona and the other reservoirs in the ACT Basin to address its water supply operations would constitute "agency action" subject to review under the Administrative Procedure Act, 5 U.S.C. § 706. Accordingly, the

Corps' unreasonable delay in updating its water control plans and manuals is "agency action" subject to review under the aforesaid section.

91. The State of Georgia has suffered a legal wrong and is adversely affected and aggrieved by the Corps decision to unlawfully withhold and/or unreasonably delay these agency actions.

### **COUNT II-FAILURE TO RESPOND TO WATER SUPPLY REQUESTS**

92. Plaintiff incorporates and re-alleges by reference the allegations of Paragraphs 1-91 above as though fully set forth herein.

93. The Corps has a duty under its own regulations to consider reasonable requests for additional water supply storage in Lake Allatoona, and to update its water control plans and manuals for Lake Allatoona and the other reservoirs in the ACT Basin to address its water supply operations.

94. The Corps has a separate statutory duty to conclude matters presented to it within a reasonable period of time. 5 U.S.C. § 555(b).

95. As of at least April 26, 1983, the Corps had commenced the process of evaluating requests for additional storage in Lake Allatoona, and updating its water control plans and manuals for Lake Allatoona and the other reservoirs in the ACT Basin to address its water supply operations. The Corps

has an obligation to proceed with reasonable dispatch and to conclude its decision-making process within a reasonable period of time.

96. The Corps has failed to make the requisite response to the State of Georgia's Allatoona Water Supply Request, as well as water supply requests by CCMWA and the City of Cartersville, and has failed to acknowledge and respond to decades of ongoing requests for appropriate action.

97. As evidenced by the Corps' statements and confirmed by the Final EIS, the Corps has refused to take the requisite action on the requests for additional water supply storage in Lake Allatoona.

98. The Corps' decision to ignore reasonable requests for additional water supply storage at Lake Allatoona as made by the State of Georgia, CCMWA, and the City of Cartersville is unreasonable and unlawful.

99. In failing to address pending water supply requests in the process for updating the water control manual for the ACT basin, the Corps has unreasonably delayed taking a discrete action that it is lawfully required to take.

100. The Corps' failure to address water supply requests at Lake Allatoona creates an actual and immediate risk to public health and safety because it jeopardizes Georgia's ability to plan for and meet the critical water supply needs of its citizens.

101. The Corps will not be prejudiced by a requirement to address its waters supply operations at Lake Allatoona.

102. The Corps' unreasonable delay in granting or denying requests for additional water supply storage in Lake Allatoona to meet current and future water supply needs constitutes "agency action" subject to review under the Administrative Procedure Act, 5 U.S.C. § 706.

103. The State of Georgia has suffered a legal wrong and is adversely affected and aggrieved by the Corps' decision to unlawfully withhold and/or unreasonably delay these agency actions.

### **COUNT III: UNLAWFUL AGENCY ACTION**

104. Plaintiff incorporates and re-alleges by reference the allegations of Paragraphs 1-103 above as though fully set forth herein.

105. To the extent Defendants contend that they have taken final agency action and have determined not to reallocate water for water supply and/or have denied the pending water supply requests, then such action is arbitrary, capricious, an abuse of discretion, and contrary to law, and the State of Georgia has suffered a legal wrong and is adversely affected and aggrieved by such action.

**COUNT IV - THE FINAL EIS FAILS TO MEET APPLICABLE LEGAL STANDARDS**

106. Plaintiff incorporates and re-alleges by reference the allegations of Paragraphs 1-105 above as though fully set forth herein.

107. The Corps' issuance of the Final EIS constitutes final and reviewable agency action pursuant to 5 U.S.C. § 704.

108. Title 5 U.S.C. § 706 states that a court shall "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;" "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;" or "without observance of procedure required by law."

109. For the reasons stated, the Final EIS is arbitrary, capricious, an abuse of discretion, not in accordance with law; contrary to constitutional right, power, privilege and immunity; in excess of statutory authority and without factual or legal substantiation.

110. The Corps' failure to include adequate action alternatives that comport with Corps' regulations, consider the reallocation of water supply to meet Georgia's current and future water supply needs, and address the full range of operational factors (including return flows) causes direct and substantial harm to the State of Georgia, including impairing Georgia's ability

to properly plan and prepare for the management of water resources within the State to meet future water supply needs.

WHEREFORE, Plaintiff, the State of Georgia, prays that this Court:

- (a) Issue an order pursuant to 5 U.S.C. § 706(1) or 28 U.S.C. § 1361 directing the Corps to evaluate the requests for additional water supply storage at Lake Allatoona and update its water control plans and manuals for Lake Allatoona and the other reservoirs in the ACT Basin to address its water supply operations within a reasonable period of time to be established by the Court;
- (b) If this Court finds that final agency action has occurred, set aside such action as arbitrary, capricious, an abuse of discretion, and/or contrary to law;
- (c) Set aside as unlawful the Final EIS;
- (d) Issue an order directing the Corps to prepare a revised Environmental Impact Statement for the ACT Water Control Manual consistent with federal law;
- (e) Award the State of Georgia attorneys' fees and costs; and
- (f) Award such other and further relief as the Court may deem just and proper to protect the interests of Plaintiff and the citizens of the State of Georgia.

Respectfully submitted this 7th day of November, 2014.

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