Water for Georgia: Briefing for 2011 Groundwater Protection Council Annual Forum

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Water Supply Issues

- Droughts in Georgia
  - 1925-27
  - 1954-56
  - 1986-88
  - 1998-2002
  - 2007-2008

- Georgia Population
  - 2,900,000
  - 3,695,000
  - 5,970,000
  - 8,185,000
  - 9,700,000
MNGWPD Projections 2030
Population 4 M to 8 M
What’s Beyond 2020 or 2030?

• Options in Consideration:
  – Other IBTs like Savannah River (Local opposition)
  – Desal. in Savannah, Pump to Atlanta
    • Sea Level to EL 1000, 200+ miles?
  – Streamline Reservoir Implementation

• A Major Additional Source
  – Tennessee River at Nickajack Reservoir
    • Pool EL 634+/-, <100 miles
NW GA to Double in 20 Years

Population

Year
NW GA in Four River Basins

Water Supply Watersheds

- Tennessee (7% of Upper Tn River in GA) 1.7 BGD
- Coosa
- Tallapoosa
- Chattahoochee
Tennessee River at Nickajack
TVA Environmental Impact Statement

Appendix D-9, Final Reservoir Operations EIS (Feb, 2004):

- 1 Billion Gallons of Excess Capacity per 2004 Reservoir Operations Study
- Sensitivity analysis assumed 264 mgd (<1 % of flow) for Metro Atlanta, concluded “IBTs not likely to substantially affect future reservoir elevations…” “no effects on mainstream reservoirs…”
GA Duty to Augment

Equitable apportionment doctrine imposes “affirmative duty to take reasonable steps to conserve and augment the water supply of an interstate stream.”

Solution to Tri-State Water Wars with Alabama and Florida

Solves the ACT/ACF Litigation because Alabama and Florida will know Georgia has enough water sources to meet minimum flows during extreme drought situations.
Prior Voluntary Access Attempts Unsuccessful

- ARC approached TAWC Chattanooga to purchase water from TN River in 1999
- Tennessee responded with Inter-Basin Water Transfer Act of 2000
  - Prohibited IBT w/o TDEC Permit
  - Expressly in direct opposition to Metro Atlanta growth
Originally Riparian to the Tennessee River – North Border “35th Parallel”

Jedediah Morse Map 1796
1835 Map of AL and MS Territory
GA Ceded Mississippi Territory to the United States in 1802
- Cession of Western Land April 24, 1802
- 35th Parallel Clearly Indicated Border
- Expressly Intersects Tennessee River
  - “then in a direct line to Nickajack on the Tennessee River, then crossing the said last-mentioned river, and thence running up the said Tennessee River and along the Western bank thereof to the southern boundary of the State of Tennessee...”
Faulty Survey of 1818

- Border Commission est. by TN and GA
- Mistakenly located 35\textsuperscript{th} Parallel
- Georgia has never accepted current border – still refer to 35\textsuperscript{th} Parallel
- Multiple attempts since by GA to resolve refused or ignored by TN including 2008
Current Border Unconstitutional

• State of Tennessee established after GA
• U.S. Constitution, Article IV, Section 3
  – New States may be admitted by the Congress into this Union; but no new States shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.
• No such Consent ever granted
GA Has Original Sovereign Riparian Rights and/or Federal Reserved Rights in TN River

- Sovereign Riparian rights not lost by nonuse nor subject to regulation by adjacent states (VA vs. MD, US Supreme Court, 2003)

- TVA has duty to implement federal promise to GA in Cession Agreement, using its own riparian rights if needed, analogous to federal reserved water rights doctrine

- FRWR supersede prior appropriation, riparian, and other rights (Laitos, 1985)
FERC Order Granted GA Authority

• 1981 FERC decision confirmed 1974 agreement with TN that GA has sole jurisdiction over gas utility in the disputed strip

• TN PSC expressly stated GA border still in dispute

In Re Atlanta Gas Light Company, Docket No. CP71-221, 15 FERC P 61240.
35th Parallel Intersects TN River
Aerial Photo 1999 USGS

Current Borders Approximate

Cole City Creek
Topographical Map 1982 USGS
TVA Marginal Strip
View of Nickajack from Dade Co
Questions / Discussion