



# Reallocation of Water Storage at Federal Water Projects for Municipal and Industrial Water Supply

*Cynthia Brougher, Nicole T. Carter*

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Pursuant to congressional authorization, the U.S. Army Corps of Engineers (Corps) and the U.S. Bureau of Reclamation (Reclamation), the agencies with primary responsibility for federal water resources management, operate water projects for specified purposes. In the case of Corps dams and their related reservoirs, Congress generally has limited the use of such projects for municipal and industrial (M&I) water supply, but growing M&I demands have raised interest in—and concern about—changing current law and reservoir operations to give Corps facilities a greater role in M&I water storage. Reallocation of storage from a currently authorized purpose to M&I use would change the types of benefits produced by a facility and the stakeholders served, which has led to controversy over project operations at some federal projects. The Corps and Reclamation, therefore, may be authorized to operate federal water projects for M&I use under the project-specific authorization statutes. Alternatively, the generally applicable Water Supply Act of 1958 (WSA) authorizes the Corps and Reclamation to include water storage for municipal and industrial use as a project purpose for new and existing projects. The WSA requires congressional approval if adding water supply storage would seriously affect the original project purposes or involve a major operational change for the project. However, the WSA does not define the extent to which the change in water supply storage must affect existing purposes or what constitutes a major operational change. This ambiguity has become a particular issue when severe drought raises the competition for water supply, and is an especially contentious issue in eastern riparian states where all users are affected by any drought. Because of such water shortages in some riparian basins with Corps projects, the Corps' reallocation of water storage at its discretion has been of particular interest. This issue is at the center of ongoing litigation related to the Corps' activities in the Apalachicola-Chattahoochee-Flint River Basin (ACF). The scope of the Corps' authority under the WSA was the subject of a 2008 decision by the U.S. Court of Appeals for the D.C. Circuit (*Southeastern Federal Power Customers v. Geren*), as well as a 2011 decision by the U.S. Court of Appeals for the 11th Circuit (*In re Tri-State Water Rights Litigation*). The D.C. and 11th Circuits reached different results, and the U.S. Supreme Court declined a petition for its review of the issue in 2012. These cases each addressed a tri-state water dispute involving Lake Lanier, a Corps water project in the ACF basin, which includes parts of Alabama, Florida, and Georgia. Using the Corps' reallocations of water storage for M&I use at Lake Lanier as an example, this report analyzes the legal and policy issues associated with reallocation under the WSA. Specifically, it examines Corps authority under the WSA, including limitations on modifications that constitute major operational changes. The report details data and examples regarding the Corps' reallocations under the WSA. It also analyzes various legal challenges of water supply storage at Lake Lanier, including courts' identification of congressionally authorized purposes, and discusses results of the litigation and options for Congress. Although the WSA provides authority to Reclamation as well, the application of the WSA to Reclamation is beyond the scope of the report.

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