

United States Senate

WASHINGTON, DC 20510

May 16, 2016

The Honorable Mitch McConnell
Majority Leader
United States Senate
S-230 The Capitol

The Honorable Harry Reid
Minority Leader
United States Senate
S-221 The Capitol

Dear Majority Leader McConnell and Minority Leader Reid:

We write with regard to an ongoing issue involving the states of Alabama, Florida, and Georgia that spans several decades, concerning the Apalachicola-Chattahoochee-Flint (ACF) and the Alabama-Coosa-Tallapoosa (ACT) River Basins. We want to provide some context for this dispute and to ultimately solicit your assistance.

As you know, there is pending litigation involving these two river basins. First, the State of Alabama has sued the Army Corps of Engineers (Corps) over the water-control manual (WCM) for the ACT Basin. This WCM was finalized on May 4, 2015, and Alabama alleges that the Corps violated multiple federal statutes in completing the ACT WCM. Therefore, the State of Alabama filed suit in the D.C. District Court. It is important to note that the State of Georgia is not a party to this action.

In addition, the State of Florida has pending litigation against Georgia, claiming original jurisdiction before the U.S. Supreme Court. Specifically, Florida is seeking to cap or limit Georgia's water withdrawals out of the ACF River Basin. A Special Master has been appointed to manage this case, which notably determined that Alabama is not required to participate in the ensuing proceedings.

On October 2, 2015, the Corps released a Draft Environmental Impact Statement (DEIS) pertaining to a WCM update for the ACF River Basin. In submitted comments regarding the DEIS, Alabama, Florida, the Environmental Protection Agency, and others have raised multiple concerns that the DEIS is contrary to legal rationale and public policy, and prioritizes one state's water needs over others. This WCM update represents one example in a long line of actions by the Corps that favor Georgia over Alabama and Florida.

Furthermore, during the negotiations of the Continuing Appropriations Act of 2016, we advocated for the inclusion of language specifically pertaining to this matter. For example, in the Energy and Water Development bill, we supported a provision that would have prohibited funds for the reallocation of water within the ACT and ACF Basins until the Corps executed a Partnering Agreement between Alabama, Florida, and Georgia. Such a provision would have ensured that the Corps remained neutral in the dispute, rather than continue to tip the scales in favor of Georgia.

Moreover, in the same bill, the Commerce, Justice, and Science (CJS) Subcommittee title included language directing the Department of Justice, in coordination with the Corps, to compile and report instances of breach of contract or exceedances associated with water supply agreements. While the information is already publicly available, accumulating such data would provide Congress and the American people with knowledge of federal water contract violations, promote government transparency, and institute safeguards so that no state is able to violate its contractual obligations to the detriment of other states.

The intent of both provisions is to facilitate and create the necessary conditions that would allow the states to amicably resolve this issue once and for all. Unfortunately, the status quo currently benefits only the State of Georgia, while causing serious and chronic harm to the commerce, environments, and quality of life in Alabama and Florida. We believe that these provisions are not “hostile,” but seek to curtail decades of legal wrangling by creating conditions to compel the states to act.

Also, in what we believe to be unprecedented, after the Continuing Appropriations Act of 2016 Conference Report was agreed to by conferees, House leadership stripped the aforementioned report language included in the CJS title of the omnibus. Such an action shields debate, hinders the conference process, and sets a dangerous precedent for how Congress operates and functions in the future. Not only does this reversal violate regular order, but privileges one state’s attempt to hide publicly available information to the detriment of two other states, their delegations, and the citizens they represent.

In conclusion, while a resolution to the states’ differing viewpoints has been elusive, the most equitable and durable way to resolve this dispute will be for the states to enter into an agreement such as an interstate compact. To this end, the 2014 Water Resources Development Act (WRDA) Conference Report contained language to strongly encourage the governors of Alabama, Florida, and Georgia to reach such a compromise. Further, Section 1051 of WRDA stated that “[a]bsent such action, the Committees of jurisdiction should consider appropriate legislation to address these matters including any necessary clarifications to the Water Supply Act of 1958 or other law.”

Unfortunately, a resolution to this decades-long dispute does not seem any closer than when it began. Therefore, we believe that Congress has clearly spoken on this matter and should follow through with its prior commitment to facilitate a solution by the states. We are working to this end as the Senate considers both WRDA and Appropriations legislation, and we ask for your support to help create the conditions necessary to bring all three states together. While some Members of Congress suggest that one or more senior senators are trying to punish one state unfairly, we are in fact seeking to extricate Congress and the Courts from this dispute. Accordingly, we remain open to any real policy option that helps compel the governors – including ours – to the table.

Sincerely,



Richard Shelby
United States Senator



Bill Nelson
United States Senator



Jeff Sessions
United States Senator



Marco Rubio
United States Senator

Cc: Senator Thad Cochran, Chairman, Senate Appropriations Committee
Senator Barbara Mikulski, Ranking Member, Senate Appropriations Committee
Senator James Inhofe, Chairman, Senate Environment and Public Works Committee
Senator Barbara Boxer, Ranking Member, Senate Environment and Public Works Committee