



## Concerns Expressed with New ACT Proposal

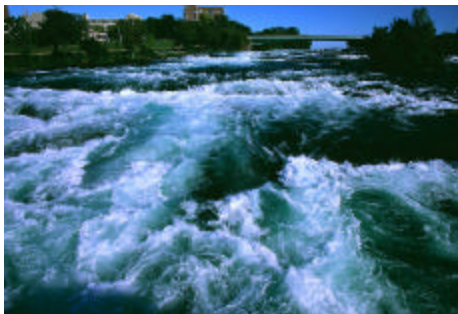
WATERWAYS

Summer 2001 Issue

On July 6, Alabama revised its December 13, 2000 proposal for the Alabama-Coosa-Tallapoosa (ACT) agreement. Reaction to the changes has been mixed. Some people think the revision has addressed some of the major objections to the original proposal while others think major problems still exist. And yet another section of Alabama rarely heard from in these negotiations to this point has raised concerns about an area that the state's water officials admit has not been a major focal point in negotiations: Mobile Bay.

### December 13, 2000 proposal criticized

Stakeholders criticized the December proposal as essentially giving away the store to Georgia. Folks in northeast Alabama and northwest Georgia were concerned about con-



sumption caps being too generous, minimum flows at key points being made targets, and inter-basin transfers being increased with none of that water being returned. Lake Associations on the Coosa and Tallapoosa worried about lake levels falling. Alabama River users, CARIA among them, questioned whether there would be sufficient flows to support navigation and industrial supply. Environ-

mentalists thought the proposal did not address water quality adequately, including the need to maintain certain flows for the purpose of diluting pollutants. Still others said the ACT agreement was tied too closely to the fate of the Apalachicola-Chattahoochee-Flint agreement.

### Alabama revises its proposal

Alabama's negotiators, heeding the feedback, made several revisions, summarized below.

- a) Changed wording to emphasize that minimum flows at Mayo's Bar are not targets or ceilings.
- b) State of Alabama has initiated a detailed assessment of the impacts of the proposed formula to the water quality in Lake Weiss.
- c) Eliminated the 25% cap on consumption from any single basin. Wording now reads that consumptive water use must be "reasonable" under applicable law.
- d) Added an additional review at the 20-year point of the agreement.
- e) Provided for increased monitoring of biological and ecological data.
- f) Tightens requirement for management action during low flow conditions at Mayo's Bar and calls for an updated water control plan from the Corps of Engineers.
- g) Narrowed the reasons for suspending the agreement, essentially delinking the ACT proposal from the ACF once the agreements are implemented.

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Visit our new website,  
[www.caria.org](http://www.caria.org)  
for updates on  
the ACT Agreement  
and news of  
CARIA activities.

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The proposal, plus a very helpful *Frequently Asked Questions* section and fact sheet, can be found at the Alabama Office of Water Resources (OWR) website through [adeca.state.al.us](http://adeca.state.al.us). (The site works best with the Internet Explorer browser.)

### Where's the beef?

Of particular note in the revision is the removal of any consumptive caps, one of the new concerns expressed by the Rome-Cherokee County contingent. The guiding principle is that *"use and consumption of water resources must be reasonable and must comply with applicable state laws and regulations."* A great hue and cry has arisen about the "reasonable" term. In other words, where's the beef? Where are the teeth in this proposal?

According to the Alabama Office of Water Resources, there's plenty of beef to sink your teeth into. Alabama's negotiators insist, despite the gnashing of teeth about the lack of a number applied to consumptive caps, that several different provisions within the proposal ensure Georgia will not be able to siphon off more than its fair share of the waters feeding the ACT basin.

### How are Downstream Users Protected under the Proposed ACT Agreement?

In response to numerous questions about what protection do downstream users in the ACT Basin, including the northwest part of Georgia, OWR released the following, which is to be incorporated into the Frequently Asked Questions file:

There are numerous protections for Alabama in the document as written. They include:

1. **"Reasonable Use" Limitations.** This limitation has been represented in several press editorials as being defined by whatever is reasonable to any one particular party. This is completely untrue. Reasonable use is a concept embedded in the riparian rights doctrine governing water use in both Alabama and Georgia. "Reasonable use" imposes restrictions on the amount and timing of water

withdrawals from surface water streams. The nature of these restrictions may vary over the natural range of hydrological conditions. For example, what is reasonable in a "wet" year may be unreasonable in a "dry" year. Whether a particular use at a particular time is "reasonable" depends on the impacts on both water quantity and water quality available to downstream users. The additional monitoring and reporting required under this agreement will help the Office of Water Resources in evaluating the reasonableness of uses and whether they comply with the allocation agreement.

2. **Limits on Interbasin Transfers.** The Alabama draft proposal specifically limits interbasin transfers out of the ACT to an amount not to exceed 75 MGD (90 MGD in 2010 and 100 MGD in 2020). This will serve to ensure that water falling in the ACT Basin stays in the ACT Basin. The agreement further limits the State of Georgia in making transfers between the Coosa and Tallapoosa sub-basins within the ACT Basin.
3. **Limits on "Reallocations" from the Federal reservoirs at Lake Carters and Allatoona Lake.** Under this proposal, the State of Georgia is allowed to pursue the reallocation of up to 60 MGD from Carters Lake and up to 220 MGD from Lake Allatoona with the support and concurrence of the State of Alabama. The State of Alabama reserves the right to challenge any reallocation above those limits.
4. **Reservoir Yield Limits.** Both states would agree that the total demands placed on a reservoir could not exceed the reservoir safe yield for any reservoir in the ACT Basin.

*The tentative  
ACT Agreement  
continues to draw  
fire from  
Northeast  
Alabama and*

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## Mobile Bay concerned ACT proposal will provide too much flow

Now comes the Mobile Register with a new twist: The ACT proposal will sometimes provide too much water for the good of Mobile Bay.

In an article on August 5<sup>th</sup>, Register writer Bill Finch suggested that Alabama's July 6 proposal could be harmful to the Mobile Bay because the guaranteed minimums at Montgomery will not allow the river to cycle through its natural patterns of low flow during the summer months. The proposal, according to Finch, "forces too much water on the Delta during a critical season of low flow." The minimums at Montgomery have the potential of "damaging consequences for areas far downstream."

Finch contends a minimum flow rate of 4640 cubic feet per second (cfs) at Montgomery reduces the amount of salt water entering the Delta, thereby restricting the commercially important marine life that comes with it – shrimp, speckled trout, red fish, tarpon, crabs, and others. Drought periods prove to be a boon for shrimp and crab because the "dry weather increases the habitat" or nursery area for those species. He says maintaining the 4640 cfs will "wreak havoc on the lower Alabama River system and threaten the commercial and recreational fishery in the Mobile Tensaw-Delta."

Finch pointed out that dams have already altered the natural flow regime on the Alabama and, in his opinion, the proposed agreement would make matters worse by writing "these severely altered rivers into federal law."

Some in Mobile think that the federal licenses governing dam operations should be amended to allow more flexibility in water flow management. Noting the low commercial barge trade currently on the Alabama, Finch suggested the navigation industry would not be severely affected by low flows since navigation during the summer is difficult anyway.

### Flaws in the Finch article

In addition to being alarmist in tone, the Finch article contains several flaws. The most obvious factual error is that there is no stipulated minimum flow rate at Montgomery. The 4640 cfs is the combined minimum flow release from the Bouldin and Jordan Dams on the Coosa River and the Thurlow Dam on the Tallapoosa River.

Although originally conceived in 1972 as an aid to navigation, the minimum release also serves to augment the natural inflows into the Alabama River in support of several additional needs, including environmental, industrial, and recreational interests.

The flow rate at Montgomery will vary according to the amount of rainfall in the basin, the need to generate hydropower at Corps dams on the Alabama River, and the capability of Alabama Power Company to meet its requirements – but there is no minimum. Modeling results of the Alabama proposal show that flows at Montgomery would be slightly below seasonal historic averages 95% of the time. The flow at Montgomery is projected to be above the historic rates only during severe droughts, i.e., during excessively low flow conditions.

At Claiborne, the closest gauge to Mobile Bay, the model shows flows slightly below historic averages 100% of the time. In that scenario, the entire Alabama River system will be in a "low flow condition." Where are the catastrophic consequences for the Bay from too much water?

Look at what has happened over the past two years. Drought conditions have caused historically low flows throughout the ACT Basin. River depths below Claiborne were down to less than six feet for several months in the summer and fall of 2000. The shrimping and crabbing industries enjoyed a "boon market."

*Too much water...Mobile Register.*

*Article has flaws.*

## Mobile Bay Concerns

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And this was done even with 4640 cfs being provided by Alabama Power Company, which has been the standard operational guideline for 30 years.

Given there is no minimum required flow at Montgomery and the river's performance over the last two years, Finch's assertion of "havoc" on the lower Alabama River and dire consequences for the Mobile Delta is questionable.

The flow into the Delta is more of a function of rainfall than deliberate attempts by dam operators to flood the system during the drier months of the year. (Many people think the major threat to the Delta is the acre-devouring development of housing, parks, and recreational sites that chew up the wetlands.)

In turn, the major problems implied for shrimpers and crabbers are also suspect. In fact, the shrimping industry seems to be very strong if figures for the year 1998 are indicative as 20.1 million pounds of shrimp valued at \$42.2 million were processed. And that's before the more severe drought period of 1999-2000, described as a "boon market" for the industry.

Not addressed in the Finch article is the effect of lower flows on the industrial users on the Alabama River, such as International Paper, Alabama River Pulp, etc., or the hydropower generating capability of the dams operated by the US Army Corps of Engineers. All of these users require a certain flow to maintain their operation.

Excessively low flows would be highly detrimental. It is precisely during these "drought" conditions, normally during the hotter months of the year, the Corps needs to be able to generate electricity to meet peak demands. Industries that use water in the manufacturing process could be forced to suspend operations or make substantial operational changes, both very expensive options to the company and to the consumer.

Finch brushes off the effect of low flows on the navigation industry. Low flows mean less depth in the navigation channel, a factor directly affecting the capacity of the river to support barges. Barge traffic on the river currently is the lowest since the channel was opened in 1972, primarily because of the low industrial base in

the Alabama River Basin, a result in part due to the declining economy.

Contributing to that condition, however, is the perception that the Alabama River is unreliable (depth is less than nine feet) for some parts of the year. It is true that water depths below Claiborne can fall below the authorized nine feet, even with the current flow management system, especially during the late summer and early fall months – but it is not always the case.

When the Corps does not dredge on schedule, however, as has occurred the last two years, low water depths are more frequent even with normal rainfall. Reducing the flow further can only reduce the reliability, making the channel less attractive to potential shippers

A fully functional navigation channel is needed to attract new barge-using industries into a river basin rife with areas of high unemployment, namely the counties of Clarke, Monroe, Wilcox, Dallas, and Lowndes. Several prospective shippers are looking at the Alabama.

The first question asked is whether the channel will be there when needed. That doesn't mean just part of the year, but year around.

The uncertainty surrounding the potential loss of funding for maintenance dredging on the Alabama, manifested in the President's Budget proposal for 2002, has given these prospective shippers cause to hesitate. But thanks to the wisdom of the Alabama congressional delegation, that funding has been restored.

The best chance for the channel to be available is when there is sufficient flow, the Corps dredges as required, and the Corps maintains the training works below Claiborne.

### **Is a "natural flow" regime beneficial to our needs?**

**O**n the philosophical side, is it an axiom that a river basin's "natural flow" regime is the most beneficial for that basin? Consider the economic, social, and humanitarian benefits the current river management system provides — flood control, recreation, economic development, etc.

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*Continued from page 4*

Is the welfare and well-being of the human population subservient to a bid to return an ecology to a more pristine state? It is axiomatic that an ecology adjusts as everything does over time. In the grand scheme of things, a higher flow at Montgomery during historically low-flow periods may be just fine.

### Summary

The Finch article is alarmist in its tone. There is no minimum flow rate stipulated at Montgomery in Alabama's proposal for the ACT. Anticipated flows at Montgomery and Claiborne should not cause "severe" effects on the ecological balance of the Mobile Delta.

The Delta's fishery should not be in imminent jeopardy from the minimum release requirement from Alabama Power reservoirs. Jeopardy to the fishing industry in the Delta is in the continued loss of wetlands to development activities.

Perhaps the public meeting in Mobile on August 27 will allay some of those fears.

## Protections

*Continued from page 2*

5. **Concepts for Reservoir Operations.** The draft Alabama proposal contains very specific guidance as to the concept for and the operation of the Federal Reservoirs at Carters Lake and Lake Allatoona. This will ensure that minimum flows are met or exceeded while balancing the need for reservoir storage to react to floods and droughts.
6. **New Reservoir Minimum Criteria.** New reservoirs in the ACT Basin must maintain a minimum release of at least 25% of the AADF (except when inflow is less than 25% of the AADF, then at least inflow must be released.)
7. **State Law Protections.** Both states agree to manage the water resources in their state to ensure that all withdrawals are legal and will maintain responsible procedures governing the use, conservation, and preservation of such waters.
8. **Federal Law Protections.** Neither the ACT Compact nor any agreed upon allocation formula can override existing or future federal laws. This serves to ensure that legal protections provided under the Clean Water Act, the Endangered Species Act, etc. are not reduced or circumvented by any aspect of this agreement.
9. **Limits on Stream Withdrawals.** The draft agreement contains protections to ensure that withdrawals for off-stream storage cannot take place when streamflows are below 25% of the AADF at the point of withdrawal. Further, withdrawals must be consistent with any limitations that exist or are enacted under respective state laws.
10. **Annual and Periodic Review Requirements.** Provisions are also included which establish requirements for detailed assessments at the ten and twenty year anniversaries of the agreement. This will ensure that actions either under this agreement or as a result of some other changing condition are not harming the basin. Further, the agreement establishes annual reviews and monitoring to help in this effort.
11. **Suspension Criteria.** If, even with all the above provisions, a feeling were to exist that some aspect of the agreement were causing some unforeseen impact that could not be handled within the bounds of the agreement or through effort within the ACT Commission, there is an action of last resort – a suspension event. A suspension event provides the parties with an ability to call a halt to the agreement and formally begin discussions to address the issue of concern.

## Alabama River Navigation Update

### Navigation Maintenance Funding.

The US House and Senate Appropriations Subcommittees on Energy and Water have reinstated funding in the proposed FY 2002 Civil Works Budget to maintain the Alabama River navigation channel. President Bush's proposed budget had zeroed out funding to maintain any of the navigation channel's operational capabilities. Slight differences between the two houses will be resolved in conference after their return from the August recess.

### Lower Alabama River Feasibility Study

Mobile District is developing models to evaluate the best arrangement for modifying existing training works below Claiborne as well as the best placement for adding new works if necessary. One model will look at flow rates and a second on the deposition of sediment that the works may affect.

All of the other work in the feasibility study depends on the completion of these models, which is estimated to be in April 2002. A preliminary economic analysis is complete, but will be updated when the modeling results are available. Completion of the study is anticipated in December 2002.

### Critical Dredging Being Done on Lower Alabama

Three barge tows stuck on sand bars below Claiborne over the past three months prompted a plea for help to the Mobile District from operators, shippers, and CARIA. In response, the District redirected the dredge Henry No. 6 from the Black Warrior-Tombigbee system

to the Alabama on July 27. As of August 15, most of the identified trouble spots had been relieved at least to an 8-foot depth, which enhances the safety of the transiting tows.

Mobile District received no bids on the dredging contract for the Alabama waterway this year, prompting concerns about the availability of private dredge companies in this area. Funding for dredging on all systems was available, but bidders were few. CARIA, the Warrior-Tombigbee Association, and the Tenn-Tom Waterway Authority will be meeting with the District Engineer and his staff on 4 September to discuss the dredging program.

### Trade with Latin America through Southeast will triple by 2020

The Latin America Trade and Transportation Study, published in March 2001, funded by federal dollars and supported by an alliance of southeastern states and Puerto Rico, concluded that trade with Latin America transiting the alliance states will triple by 2020.

Major growth is seen in crude oil and petroleum products, agricultural commodities, chemicals, iron, steel, and manufactured products.

In the other direction, grain exports are expected to grow along with durable products such as automobiles, electronics, and industrial machinery and equipment. It all points to a critical need to maintain a competitive, reliable, and efficient freight transportation system.

For Alabama, the study points out the need to improve the Alabama State Docks and the Mobile Port in general to receive and dispatch both bulk and container shipments.

The State's recent investment in the State Docks is a good start. We also need to improve the intermodal capability throughout the state, including the river navigation channels, if we are to take advantage of the anticipated growth in the Latin American trade.

## Alabama Sturgeon

### Update

#### Alabama Sturgeon

The Alabama-Tombigbee Rivers Coalition continues to pursue its suit against the US Department of Interior and the US Fish and Wildlife Service to remove the Alabama sturgeon from the endangered species list.

At this point, there has been little movement except a request from the Coalition under the Freedom of Information Act for information from FWS regarding a FWS public statement about no economic effects from the listing. The Coalition is also seeking discovery of key witnesses regarding the FWS handling of genetic information of the sturgeon developed by FWS scientists.

### People

**Onis "Trey" Glenn, III**, has been named as the new Chief of the Alabama Office of Water Resources, filling a key position vacant since September of 2000 when Walter Stevenson retired after 30 years of service to the State. Glenn is a hydrologic engineer was the senior hydrologic engineer with Alabama Power Company's Environmental Affairs/Reservoir Management section. In his new role, Glenn hopes to conserve and safeguard Alabama's water resources and to continue his involvement with interstate negotiations. He will head a staff aligned under the Alabama Department of Economic and Community Affairs and is responsible for managing and administering the implementation and operation of the Alabama Water Resources Act, including overall policy and guidance for management of the state's water resources. Trey graduated with honors from Auburn University with a degree in civil engineering and holds a master's degree in business administration from the University of Alabama in Birmingham. A registered professional engineer, he is a member of the American Society of Civil Engineers.

**Colonel Robert B. Keyser** assumed command as the 47th District Engineer in the history of the Mobile Engineer District on August 2, 2001, replacing retiring Colonel Dave Norwood. Colonel Norwood is moving to Nashville, Tennessee where he has secured work with a civilian engineering firm. A native of Cornwall, N. Y., Col Keyser holds a Master's Degree in Engineering from the University of Florida and a Master's Degree in National Resource Strategy from the Industrial College of the Armed Forces, is a registered professional engineer in the State of Alabama and a member of Tau Beta Pi.

Commissioned as second lieutenant in the COEs in June 1978, Col. Keyser later graduated from the Engineer Officer Courses, the Air Command and Staff College, and the Industrial College of the Armed Forces. He has served with the 588th Engineer Battalion at Fort Polk, La., the 2nd Engineer Battalion in Korea, the 94th Engineer Battalion in Germany and Southwest Asia, the U.S. Total Army Personnel Command in Alexandria, Va., the Corps of Engineers Mobile District, and as Commander of the Corps of Engineers Philadelphia District. Among his awards, Col. Keyser wears the Meritorious Service Medal (with five oak leaf clusters), the Army Commendation Medal and the Army Achievement Medal.

He and his wife, the former Cathy Nugent of Pineville, La., reside in Fairhope, Ala., with their four children, Daniel, Brian, Michael and Amy.

## Scheduled Events

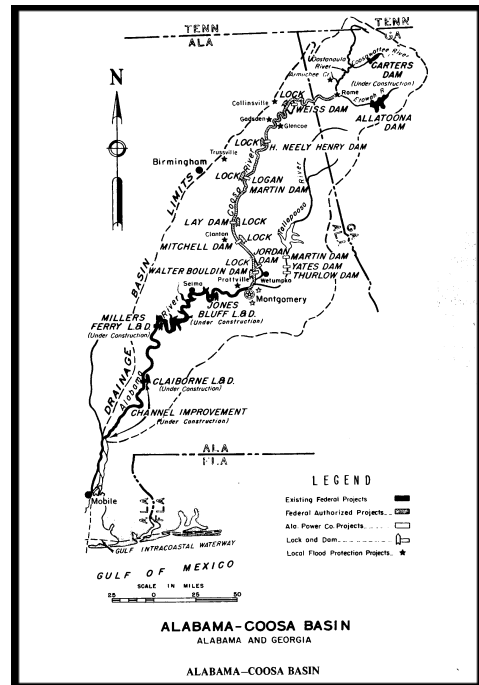
<b>Sept. 5-7</b>	Alabama Water Resources Association Annual Meeting, Perdido Hotel Resort, Orange Beach, AL Info: Auburn Univ. Environmental Inst. 334-844-4132
<b>Sept 19-21</b>	National Waterways Conference Annual Meeting, Louisville, KY. Contact Harry Cook (202) 296-4415. Email: hcook@waterways.org
<b>Oct 23-25</b>	Tenn-Tom Waterway Development Opportunities Conference, Beau Rivage, Biloxi, MS. Contact Don Waldon (662) 328-3286. Email: tenntom@ebicom.net.
<b>Feb. 7-8, 2002</b>	<b>CARIA</b> Annual Meeting, Embassy Suites Hotel, Montgomery, AL. Contact Janet Adams (334) 265-5744. Email: coosalarive@worldnet.att.net

# WATERWAYS

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