



Water Supply Rule

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A RESOLUTION REQUESTING THAT THE UNITED STATE ARMY CORPS OF ENGINEERS RESCIND ITS “USE OF RESERVOIR PROJECTS FOR DOMESTIC, MUNICIPAL & INDUSTRIAL WATER SUPPLY” RULEMAKING AND ENTER INTO CONSULTATION WITH NON-FEDERAL INTERESTS

“WHEREAS, the Brazos River Authority is the local sponsor of Lakes Whitney, Aquilla, Proctor, Belton, Still-House Hollow, Georgetown, Granger, and Somerville, which are owned and operated for the Brazos River Authority benefit by the United States Army Corps of Engineers (USACE); and



WHEREAS, the Brazos River Authority has entered into contracts with the municipal, industrial, and agricultural water users in the Brazos basin, under which the Brazos River Authority has committed to supply water from those reservoirs and others to those users; and

WHEREAS, Texas, as a condition of its admission and annexation to the United States, retained exclusive ownership of the water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and the storm water, floodwater, and rainwater of every river, natural stream, and watershed as property of the state; and

WHEREAS, Texas holds its rights in surface water in trust for the benefit of Texans, and has conferred those rights upon the Brazos River Authority; and



WHEREAS, the Brazos River Authority has invested significant capital to make use of that state-owned resource; and

WHEREAS, both the Flood Control Act of 1944 (P.L. 78-534) and the Water Supply Act of 1958 (P.L. 85-500) reflect the unequivocal congressional intent that USACE shall not apply those acts in a manner that interferes with the exclusive rights of the states in determining the development of the watersheds within their borders, the states' interests and rights in water utilization and control, and the states' primary responsibility and authority to develop water supplies for domestic, municipal, industrial, and other purposes; and

WHEREAS, in direct response to disputes arising in the Apalachicola-Chattahoochee-Flint, Alabama-Coosa-Tallapoosa, and Missouri River basins, on December 16, 2016, the USACE proposed rules entitled "Use of U.S. Army Corps of Engineers Reservoir Projects for Domestic, Municipal & Industrial Water Supply," more commonly referred to as the "Water Supply Rule"; and



WHEREAS, the Water Supply Rule, while intended to resolve disputes of limited geographic concern, would be nationwide in scope; and

WHEREAS, the disputes motivating the Water Supply Rule's proposal are a function of their interstate nature and the failure of the involved parties to cooperate in their resolution; and

WHEREAS, the Water Supply Rule preamble states that USACE does "not believe that the proposed rule has Federalism implications"; and

WHEREAS, proposals in the Water Supply Rule preamble indicate an intent by USACE to apply the rule in a fashion inconsistent with the Brazos River Authority's rights to use state-owned water granted to it by the State of Texas; and



WHEREAS, the Texas Commission on Environmental Quality, and many political subdivisions affected by the proposed Water Supply Rule have commented and urged USACE to withdraw the rule proposal; and

WHEREAS, in order to protect Texas's sovereignty over its state-owned water and the rights granted therein to the Brazos River Authority, it is imperative that USACE withdraw its proposed Water Supply Rule, and engage in meaningful consultation with the states and non-federal interests to develop a new proposal that adequately reflects the mandates of federalism contained in both the Flood Control Act of 1944 and the Water Supply Act of 1958;



NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE BRAZOS RIVER AUTHORITY:

(a) that the Brazos River Authority hereby expresses its grave concern that the Water Supply Rule may, according to its preamble, be applied by USACE as a basis to allocate rights to surface water owned by the State of Texas; and

(b) that the Brazos River Authority urges USACE to withdraw its proposed Water Supply Rule; and

(c) that subsequent to said withdrawal, requests that USACE engage in statutorily-mandated consultation with the State of Texas and its affected non-federal sponsors regarding water supply accounting in federally-owned reservoirs in Texas; and, be it further

RESOLVED, that an official copy of this resolution be prepared for the Assistant Secretary of the Army, Civil Works, USACE as an expression of the sentiment of the Brazos River Authority.”



Brazos River Authority



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