

HOUSE JOINT RESOLUTION 778

By Sparks

A RESOLUTION to urge the U.S. Army Corps of Engineers to comply with Tennessee law in its administration of water projects within the State of Tennessee.

WHEREAS, the waters of Tennessee are held by the State of Tennessee in public trust for all Tennesseans, and this body "has an obligation to take all prudent steps to secure, protect, and preserve" the public's right to clean, safe, and affordable water; and

WHEREAS, the U.S. Army Corps of Engineers has been authorized by the United States Congress to construct and operate water infrastructure projects within the State of Tennessee, including lock and dam projects on the main stem of the Cumberland River and reservoir projects on its tributaries and headwaters, such projects including specifically the J. Percy Priest Reservoir on the East Fork of the Stones River; and

WHEREAS, the Army Corps' reservoir projects serve multiple important purposes, including, but not limited to, flood control, hydropower, water supply, recreation, and the protection and enhancement of fish and wildlife; and

WHEREAS, while authorizing the Army Corps to cooperate with State and local agencies to make federal storage projects available for water supply, the United States Congress has also declared water supply to be primarily a State responsibility; and

WHEREAS, in recognition of the right and responsibility of states to develop water supplies for their citizens, the United States Congress has also repeatedly declared it to be the policy of the United States to defer to states in determining the best use of their water resources and in allocating water rights; and

WHEREAS, consistent with these principles, the United States Congress has limited the Army Corps' role in developing water supplies to providing and managing the infrastructure that

is used to store water, while deferring to states to allocate water rights associated with the use of such facilities; and

WHEREAS, a controversy about the right to store and utilize return flows has arisen at the Army Corps' J. Percy Priest Reservoir in Rutherford County; and

WHEREAS, the Tennessee General Assembly in 2017 enacted legislation, Tennessee Code Annotated, Section 69-3-108(u), to resolve this controversy by granting water utilities that have contracted for the right to store water in Army Corps reservoirs exclusive rights to store any return flows they discharge into the reservoir; and

WHEREAS, in derogation of this law, the Army Corps proposed in 2016 a rule regarding the "Use of U.S. Army Corps of Engineers Reservoir Projects for Domestic, Municipal & Industrial Water Supply" (81 Fed. Reg. 91556) to allocate return flows to users other than those to whom the State has granted them, according to a formula developed by the Army Corps without the State's consent; and

WHEREAS, there is a direct and irreconcilable conflict between the law of the State of Tennessee granting users exclusive rights to store return flows and the Army Corps' proposed rule; and

WHEREAS, if not corrected, the Army Corps' proposed rule will unlawfully override the State's water allocation decisions and interfere with user's State-granted water rights; and

WHEREAS, if not corrected, the Army Corps' disregard of Tennessee law will cost Tennessee rate payers millions of dollars, limit their future water supplies, require construction of costly new infrastructure that would not otherwise be needed, and compromise the State of Tennessee's ability to provide safe, reliable, and affordable water to its citizens; and

WHEREAS, on January 19, 2020, President Donald J. Trump directed the Army Corps to withdraw the proposed rule that would have codified the Army Corps' derogation of State law, specifically on grounds that "the authority rightfully belongs to States."; now, therefore,

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE ONE HUNDRED ELEVENTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE SENATE CONCURRING, that we staunchly oppose the U.S. Army Corps of Engineers' unlawful assertion

of authority to allocate return flows in derogation of Tennessee law, applaud the President of the United States' action to prevent the Army Corps from codifying that unlawful policy, and urge the Army Corps to respect and defer to Tennessee law by allocating return flows to the persons to whom they have been granted by the State of Tennessee.

BE IT FURTHER RESOLVED, that certified copies of this resolution be transmitted to the President of the United States, the Assistant Secretary of the Army for Civil Works, the Chief of Engineers, and the Commanders of the River and Lake Division from the Nashville District of the United States Army Corps of Engineers.