

# Storage Accounting and State Control Over Water Resources



National Water Supply Alliance  
Fall Meeting

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# Agenda

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- State Primacy & Storage Accounting
- Cobb County-Marietta Water Authority Example
- Other Examples
- Questions

# First, a word game



“Fish” is to “gill” as

- (A) “Oyster” is to “shell”
- (B) “Penguin” is to “wing”
- (C) “Whale” is to “flipper”
- (D) “Mammal” is to “lung”

“Flake” is to “snow” as

- (A) “Storm” is to “hail”
- (B) “Drop” is to “rain”
- (C) “Field” is to “wheat”
- (D) “Stack” is to “hay”

“Storage” is to “water” as

- (A) “Space” is to “matter”
- (B) “Bottle” is to “beverage”
- (C) “Warehouse” is to “box”
- (D) “Federal” is to “state”



# Storage and Water

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- The distinction is foundational to the Civil Works program—not just to the water supply program.
- From the early Congressional debates:

“[T]he United States does not control the water. It controls only the reservoir sites in which the water may be collected. The water is under the control of the States.” [29 Cong. Rec. 1948-1949](#) (1897) (Cong. Lacey). “It is the State alone that owns and controls the water, under the constitution of our States; and I suppose that is true under the laws of every State.”

# Cooperative federalism at Corps Reservoirs...



## FEDERAL DOMAIN

- Storage allocation
- Reservoir management for authorized purposes

• Clear Definitions  
• Water & Storage Accounting

## STATE DOMAIN

- Water allocation
  - Water rights
- Water permitting



# “Storage” Accounting

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1. Water for all conservation purposes is commingled in the Conservation Pool.
2. Storage Accounting is used to determine how much is held for each User.
3. Divide the Conservation Pool into virtual “storage accounts,” the size of each account being the volume it can hold.
4. Account for all gains and losses to the Conservation Pool daily
  - a. Allocate inflow based on State-granted water rights
  - b. Debit withdrawals and releases to the appropriate user
  - c. Distribute “unallocated” gains and losses proportionally
5. If any account is full, redistribute inflow appropriately



# Practical issues

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1. How many of the required inputs are actually measured?
2. Who does the accounting?



# Legal Issues

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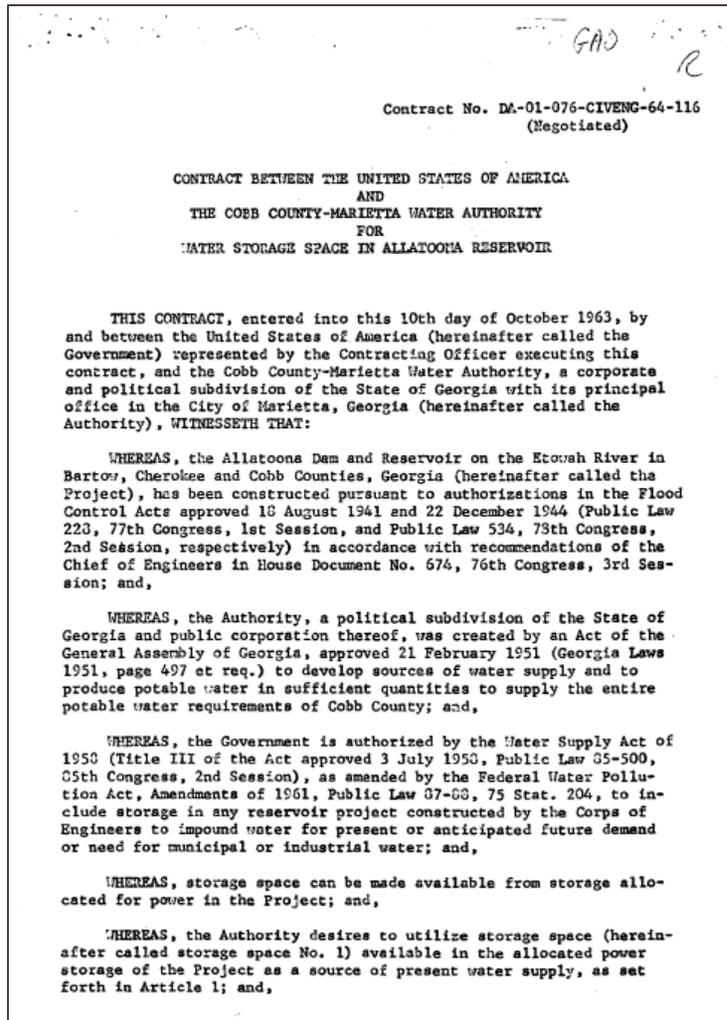
1. What is the limiting principle to keep State water allocations from frustrating federal objectives or interfering with authorized purposes?
2. What about riparian States?
  - a. In the absence of a State allocation rule, inflow can be distributed proportionally.
  - b. All States are on “equal footing” vis-à-vis the Corps in relation to their authority over water, so it is up to the States
  - c. Many riparian states have regulatory regimes that approximate Western water rights.
3. Can States assert authority they have not traditionally asserted?

# Cobb County-Marietta Water Authority



Using Storage Accounting to Define State  
Permit Rights

# The 1963 Storage Contract



- Water Supply Act storage contract executed in 1963
- Provides right to use 13,140 af of storage
- Expected to yield 34.5 mgd, but no limits on withdrawals

# The 1963 Storage Contract



ARTICLE 1. WATER STORAGE SPACE. - The Authority shall have the right to utilize storage space No. 1 for ... for municipal and industrial use as deemed necessary by the Authority and to make such diversions as granted to the Authority by the State of Georgia to the extent such storage space will yield....

WHEREAS, the Authority desires to utilize storage space No. 1 in the allocated power storage space as set forth in Article 1 of the Contract;

WHEREAS, the Authority hereby requires of the Water Supply Authority the following:

ARTICLE 1. WATER STORAGE SPACE. - The Authority shall have the right to utilize storage space No. 1 in the allocated power storage space as set forth in Article 1 of the Contract; and to make such diversions as granted to the Authority by the State of Georgia to the extent such storage space will yield. Storage space No. 1 is defined as an undivided 1.0 percent of the storage allocated to power generation, 2,370 acre-feet at the maximum elevation at the top of the power pool. Specifically, after sufficient notification is given to the Government, and payments are received for, the Authority shall have the right to utilize storage space No. 1 from 175 to and including 175.0 feet and storage space No. 2 from 175.0 feet to and including 175.0 feet and storage space No. 3 from 175.0 feet to and including 175.0 feet, respectively, at the maximum elevation at the top of the power pool. The period for use of storage space Nos. 1 and 2 or either shall not be adjusted as a result of any change in the maximum elevation of the power pool.

The Government shall not be responsible for diversions by others, nor will it become a party to any controversies between users of the allocated storage space.

The Authority shall have the right to withdraw water from the allocated storage space at any time as long as sufficient water is available within the allocated power storage of the Project.

The Authority shall have the right to construct installations or facilities for the purpose of diversions or withdrawals from the Project subject to the approval of the Contracting Officer as to design and location; the cost of such installations or facilities or any modifications thereof, shall be borne by the Authority.

The Authority hereby agrees that releases or withdrawals which would lower the water level below elevation 100.0 feet above mean sea level will not be made unless specifically approved by the Contracting Officer.

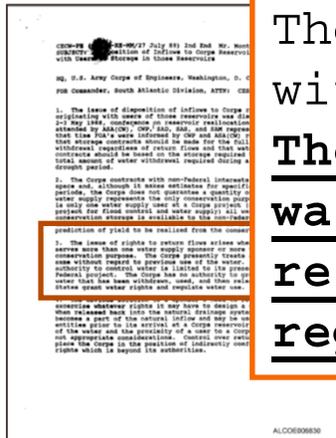
The Government reserves the right to do such releases as may be necessary in the operation of the Project to preserve life and/or property.

# CCMWA's Efforts to Increase Supply



- Requested additional storage from Corps in 1981
- Asked that “return flows” from reclamation facilities be credited to CCMWA
- Request for credit (correctly) rejected by Corps

The issue of rights to return flows arises when a project serves more than one water supply sponsor or more than one conservation purpose. The Corps presently treats all inflows the same without regard to previous use of the water. **The Corps has no authority to grant rights to water that has been withdrawn, used, and then released. The States grant water rights and regulate water use.**



# The Corps Declines to Act on CCMWA's Reallocation Request

- In 1990, Corps withdraws reallocation study due to litigation by Alabama, but demands CCMWA's continue to increase
- Expectation was that litigation would be resolved relatively quickly and easily
  - “Live and Let Live” agreement between States and Corps allows CCMWA to continue to make reasonable increases in withdrawals
- Interstate compacts dissolved in 2003 and 2004 without agreement

# The 2007 Drought



NATIONAL

## Southern States Fight for Water During Drought

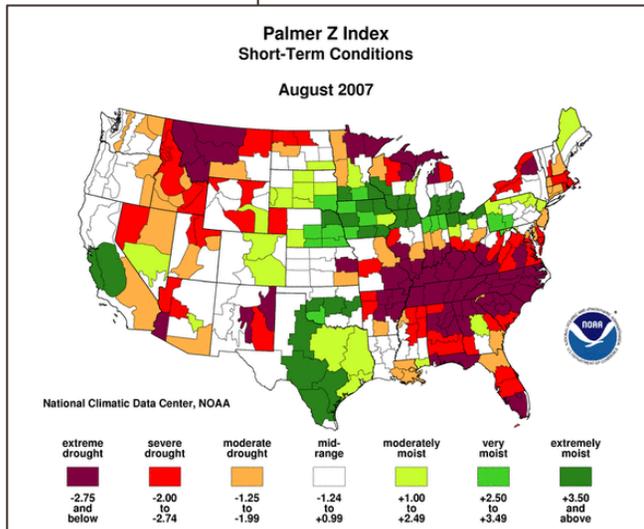
October 29, 2007 · 12:00 PM ET  
 Heard on [Tell Me More](#)

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The South is experiencing one of the worst droughts on record. Lakes and rivers are lowering in water levels, translating into a loss of h

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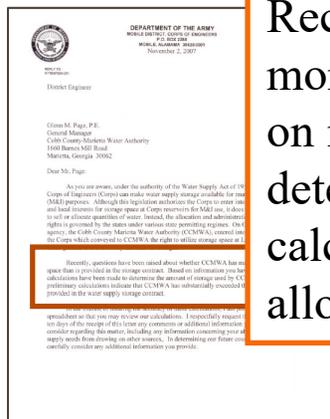


The Georgia Department of Natural Resources released updates to its drought rule this week. A buoy and several docks are left high and dry in Lake Allatoona in Acworth, Georgia, in this Nov. 2, 2007, file photo.

# The Corps' Storage Accounting



- In response to pressure from Alabama, Corps implements “storage accounting” at Allatoona Lake
- Concludes that CCMWA withdrawals exceed yield of storage, but accounting system has many errors
- CCMWA provides detailed comments and corrections but the Corps never responds



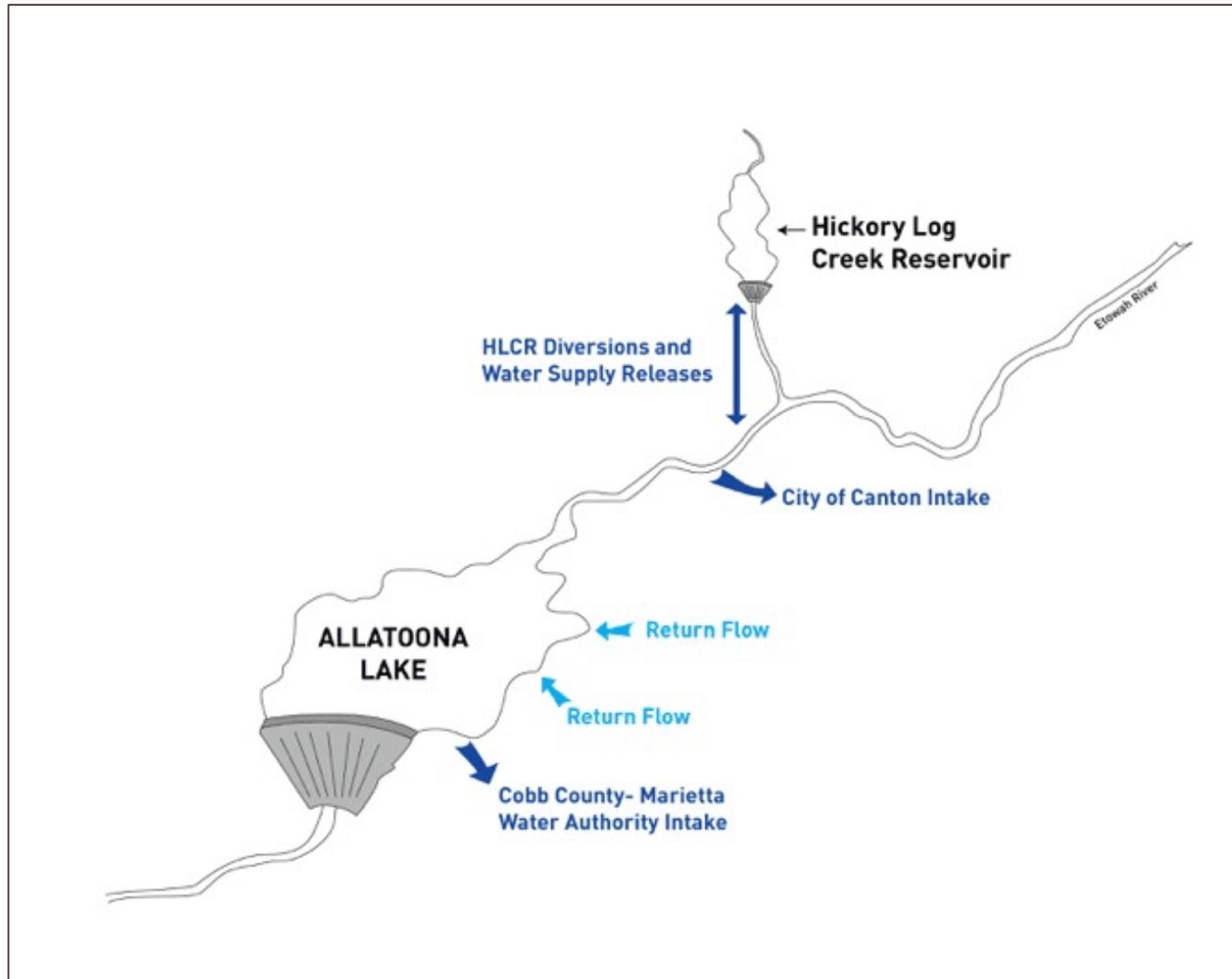
Recently, questions have been raised about whether CCMWA has made more use of storage space than is provided in the storage contract. Based on information you have provided, calculations have been made to determine the amount of storage used by CCMWA. Our preliminary calculations indicate that CCMWA has substantially exceeded the storage allocation provided in the water supply storage contract.

# Made Inflows



- CCMWA works to increase supply without an additional storage from the Corps
- Strategy focuses on “made inflows”
  - Reclaimed water returned to the reservoir (“return flows”)
  - Releases from Hickory Log Creek Reservoir upstream of Allatoona Lake

# Made Inflows



# State of Georgia Allocates Made Inflows to CCMWA



- CCMWA initially secures rights to made inflows from the State of Georgia, but Corps declines to credit water consistent with State's allocation
- State of Georgia promulgates regulations clarifying authority to allocate made inflows
- State of Georgia amends CCMWA's permit to allocate return flows and releases from Hickory Log Creek

# State of Georgia Allocates Made Inflows to CCMWA



3. To the extent that storage space is available in Allatoona Lake to the permit holder under the terms of its contract with the U.S. Army Corps of Engineers, the permit holder will have the exclusive right to impound in such storage space any and all “made inflows” into Allatoona Lake from the following sources:

- a) The metered discharge from the Cobb County – Northwest Water Reclamation Facility to Allatoona Lake.
- b) The metered discharge from the Cobb County – Noonday Creek Water Reclamation Facility to Allatoona Lake via Noonday Creek and Little River.
- c) The metered discharge from Hickory Log Creek Reservoir directly into the Etowah River through the diversion pipe, excluding water required to be discharged from Hickory Log Creek Reservoir to meet the requirements of the City of Canton’s withdrawal permit (Permit No. 028-1491-04).

**PERMIT HOLDER'S ADDRESS: 1175 Atlanta Industrial Drive, Marietta, Georgia 30066**

In accordance with the provisions of the Georgia Water Quality Control Act (OCGA, § 12-10-1) and the rules promulgated thereunder, and the Rules and Regulations for Water Quality Control, Chapter 201-4, promulgated pursuant thereto, this permit is issued to withdraw water from the source(s) Allatoona Lake in the Coosho River Basin for the purpose of municipal water supply. Subject to the general withdrawal limits and special conditions set forth herein, the withdrawal shall be subject to the following conditions: Allatoona Lake water withdrawal from Allatoona Lake may be all "made inflows" as described in Special Condition paragraph 3 to Allatoona Lake from the following sources:

1. The Cobb County - Northwest Water Reclamation Facility;
2. The Cobb County - Noonday Creek Water Reclamation Facility; and
3. Hickory Log Creek Reservoir.

The permit holder must comply with the following limitations:

- (1) Maximum 24 hour Withdrawal (MWD): Implementation see Special Condition 3, Division \_\_\_\_ MWD
- (2) No seasonal or monthly average of MWD

This permit is conditioned upon the permit holder complying with the following:

**STANDARD CONDITIONS**

- (1) The provisions of the Water Quality Control Act, as amended, or any of the Rules and Regulations promulgated thereunder;
- (2) This permit shall not be transferred except with the approval of the Division;
- (3) The use of the water is limited to the quantity and purposes as specified herein;
- (4) The permit holder shall submit annually to the Division, within 30 days of completion of the calendar year, a report listing the total amount of the previous year:
  - a. The gallons per day withdrawn, based on an average of the daily withdrawals for the month;
  - b. The maximum 24 hour withdrawal;
- (5) All the attached special conditions which are hereby made a part of this permit.

In accordance with the application filed (Date: 12/20/14) and in conformity with the statements and supporting data provided in the application, the Division of Environmental Protection, Department of Natural Resources, hereby issues this permit to the permit holder and subject to the Georgia Water Quality Control Act, as amended (OCGA, § 12-10-1).

Always give precedence to amendments with the same language. This Permit must expire on the 31<sup>st</sup> day of May, 2015.

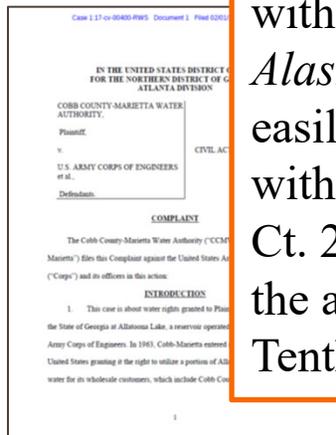
DATE: November 7, 2014  
 Director  
 Environmental Protection Division  
 Department of Natural Resources

# CCMWA Files Suit to Protect Its State-Granted Water Rights



This case is about water rights granted to Plaintiff Cobb-Marietta by the State of Georgia at Allatoona Lake, a reservoir operated by the United States Army Corps of Engineers.

The Corps' decision to allocate water rights in a manner contrary to Georgia law violates basic principles of federalism governing federal water projects and the allocation of water rights. As sovereign entities in our federal system, States have "inherent authority ... to regulate the use of water" within their borders. *Kansas v. Nebraska*, 135 S. Ct. 1042, 1066 (2015). The Supreme Court has called this "power to control ... public uses of water" within their borders "an essential attribute of sovereignty," *United States v. Alaska*, 521 U.S. 1, 5 (1997), and it is "well-established ... that States do not easily cede their sovereign powers, including their control over waters within their own territories," *Tarrant Reg'l Water Dist. v. Herrmann*, 133 S. Ct. 2120, 2132 (2013). Thus, unless specifically preempted by federal law, the authority to allocate water rights is reserved to the States under the Tenth Amendment to the United States Constitution.



# The Corps' Reconsideration and Legal Analysis

- The Corps agrees to stay CCMWA's litigation and to reconsider its storage accounting.
- Issues "legal analysis" providing rationale for its storage accounting rules.
- Legal analysis acknowledges that CCMWA permit...
  - "purports to allocate the right to use or store 'made inflows' in Lake Allatoona"
  - "the Corps takes no position on the validity of this permit under state law"
- But the Corps claims...
  - Language in CCMWA's permit makes allocation subject to Corps' storage accounting rules
  - Therefore, Corps storage accounting that denies credit for made inflows does not interfere with any State water right

# CCMWA's Permit Amendment



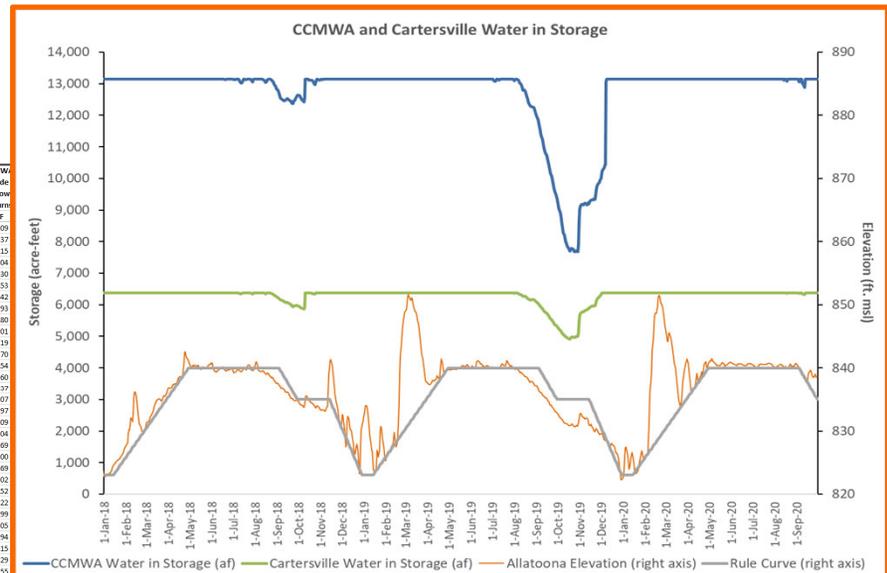
- CCMWA petitions State of Georgia in response to Corps' assertions in its legal analysis
- State issues an amended permit “to clarify EPD’s original intent” in allocating made inflows
  - CCMWA is permitted to impound and withdraw all made inflows allocated to CCMWA
  - The total volume of water in storage does not exceed volume storage allocated to CCMWA under the 1963 storage contract

# CCMWA's Permit Amendment



- Permit incorporates “water accounting system” to “implement EPD’s relocation of made inflow”
- Quantifies, on a daily basis, the amount of water CCMWA is entitled under State law to impound and withdraw

Date	Allatoona Elevation MSL	Allatoona Top of Conservation Pool (Rule Curve)	Allatoona Difference from Rule Curve	Conservation Storage Under Rule Curve			Max COE Storage Available	COE	CCMWA		Cartersville		Water in Conservation Storage		Water in Flood Pool		Corrected Inflow	CCMW Made Inflow (Return)	
				AF	AF	AF			%	AF	%	AF	%	AF	%	AF			%
26-Aug-20	840.30	840.00	0.30	284,580	285,069.49	285,069	100.00%	13140	100.00%	6371	100.00%	284580	100.00%	3,559	3037.83	58.09			
27-Aug-20	840.31	840.00	0.31	284,580	285,069.49	285,069	100.00%	13140	100.00%	6371	100.00%	284580	100.00%	3,719	2554.06	51.37			
28-Aug-20	840.31	840.00	0.31	284,580	285,069.49	285,069	100.00%	13140	100.00%	6371	100.00%	284580	100.00%	3,719	2428.22	50.15			
29-Aug-20	840.40	840.00	0.40	284,580	285,069.49	285,069	100.00%	13140	100.00%	6371	100.00%	284580	100.00%	4,799	1941.71	51.04			
30-Aug-20	840.61	840.00	0.61	284,580	285,069.49	285,069	100.00%	13140	100.00%	6371	100.00%	284580	100.00%	7,118	1398.70	50.30			
31-Aug-20	840.68	840.00	0.68	284,580	285,069.49	285,069	100.00%	13140	100.00%	6371	100.00%	284580	100.00%	8,159	4712.41	56.53			
1-Sep-20	840.57	840.00	0.57	284,580	285,069.49	285,069	100.00%	13140	100.00%	6371	100.00%	284580	100.00%	6,839	2999.32	52.42			
2-Sep-20	840.40	840.00	0.40	284,580	285,069.49	285,069	100.00%	13140	100.00%	6371	100.00%	284580	100.00%	4,799	1820.88	51.53			
3-Sep-20	840.19	840.00	0.19	284,580	285,069.49	285,069	100.00%	13140	100.00%	6371	100.00%	284580	100.00%	2,280	1400.21	48.80			
4-Sep-20	839.90	840.00	(0.10)	284,580	285,069.49	283990	99.59%	13056	99.36%	6361	99.85%	283408	99.59%	0	1257.42	49.01			
5-Sep-20	839.96	839.81	0.15	282,325	282,814.05	282814	100.00%	13140	100.00%	6371	100.00%	282325	100.00%	1,786	1648.46	46.19			
6-Sep-20	839.92	839.62	0.30	280,070	280,558.62	280559	100.00%	13140	100.00%	6371	100.00%	280070	100.00%	1,573	855.74	45.70			
7-Sep-20	839.57	839.42	0.15	277,814	258,303.18	258303	100.00%	13140	100.00%	6371	100.00%	277814	100.00%	1,723	872.05	47.54			
8-Sep-20	839.25	839.23	0.02	275,559	256,047.74	256048	100.00%	13140	100.00%	6371	100.00%	275559	100.00%	226	915.59	47.60			
9-Sep-20	838.74	837.04	(0.30)	273,303	253,792.31	253792	99.80%	13031	99.17%	6346	99.63%	272164	99.80%	0	760.75	46.37			
10-Sep-20	838.65	838.85	(0.20)	271,089	251,577.76	249534	99.19%	12973	98.73%	6334	99.42%	268880	99.17%	0	1311.78	49.07			
11-Sep-20	838.33	838.65	(0.32)	268,884	249,373.44	249373	98.62%	12918	98.31%	6321	99.22%	265172	98.62%	0	1063.41	47.97			
12-Sep-20	838.37	838.46	(0.09)	266,680	247,169.11	246427	99.70%	12887	98.08%	6317	99.15%	262611	99.61%	0	1464.61	48.09			
13-Sep-20	838.41	838.17	0.14	264,476	244,964.80	244965	100.00%	13140	100.00%	6371	100.00%	264476	100.00%	1,614	1350.93	49.04			
14-Sep-20	838.17	838.08	0.09	262,271	242,760.47	242760	100.00%	13140	100.00%	6371	100.00%	262271	100.00%	1,067	1321.83	49.69			
15-Sep-20	837.89	837.88	0.01	260,098	240,556.58	240587	100.00%	13140	100.00%	6371	100.00%	260098	100.00%	60	1363.56	48.00			
16-Sep-20	837.59	837.69	(0.10)	257,944	238,343.80	237327	99.52%	13140	100.00%	6371	100.00%	256988	99.56%	0	2080.83	48.89			
17-Sep-20	838.78	837.50	1.28	255,790	236,139.40	236139	100.00%	13140	100.00%	6371	100.00%	255790	100.00%	14,540	1779.92	91.02			
18-Sep-20	839.23	837.31	1.92	253,637	234,935.81	234936	100.00%	13140	100.00%	6371	100.00%	253637	100.00%	21,913	9150.58	82.52			
19-Sep-20	839.49	837.12	2.37	251,483	232,732.22	232732	100.00%	13140	100.00%	6371	100.00%	251483	100.00%	27,116	3933.84	80.22			
20-Sep-20	839.63	836.92	2.71	249,350	230,528.77	230529	100.00%	13140	100.00%	6371	100.00%	249350	100.00%	30,891	2318.55	64.89			
21-Sep-20	839.39	836.73	2.66	247,247	227,325.52	227326	100.00%	13140	100.00%	6371	100.00%	247247	100.00%	30,180	1707.97	60.05			
22-Sep-20	839.07	836.54	2.53	245,143	225,122.29	225123	100.00%	13140	100.00%	6371	100.00%	245143	100.00%	28,530	1431.88	59.94			
23-Sep-20	838.74	836.35	2.39	243,040	222,919.04	222920	100.00%	13140	100.00%	6371	100.00%	243040	100.00%	26,832	1368.13	60.15			
24-Sep-20	838.53	836.15	2.38	240,937	220,715.80	220716	100.00%	13140	100.00%	6371	100.00%	240937	100.00%	25,028	2712.78	64.29			
25-Sep-20	838.55	835.96	2.59	238,843	218,512.39	218512	100.00%	13140	100.00%	6371	100.00%	238843	100.00%	28,851	7066.05	84.55			
26-Sep-20	838.82	835.77	3.05	236,789	217,278.36	217278	100.00%	13140	100.00%	6371	100.00%	236789	100.00%	34,000	4020.67	67.82			
27-Sep-20	839.08	835.18	3.63	234,735	215,074.93	215075	100.00%	13140	100.00%	6371	100.00%	234735	100.00%	38,117	2024.77	64.78			
28-Sep-20	838.70	835.38	3.32	232,681	213,170.28	213170	100.00%	13140	100.00%	6371	100.00%	232681	100.00%	36,732	3499.07	63.34			
																	0.00	2859.98	5.60%
																		3435.73	5.63%



# Role of Storage Accounting in Other Disputes

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# Other issues



- Passthrough flows
- Terminal storage
- Access to natural flows

Questions?

