

# OPINION

## Was Augusta's river input thwarted intentionally?



Photographed from the top of the Georgia Cyber Center in downtown Augusta, bridge pilings and lowered boat docks show the effects of the Savannah River drawdown on Feb. 12. (MICHAEL HOLAHAN/THE AUGUSTA CHRONICLE)

By J. Noel Schweers III  
Guest Columnist

I write this to share details of how we got where we are regarding the New Savannah Bluff Lock and Dam (L&D). I believe these facts are relevant to the ongoing public debate about its future.

The issues we now face are not new. In January 2000, the U.S. Army Corps of Engineers conducted a drawdown of the Savannah River to evaluate the L&D's possible removal. There was great public outcry.

In response, U.S. Rep. Charlie Norwood, then-U.S. Rep. Lindsey Graham and others obtained protection for the L&D through federal legislation. The new law required the Corps to repair and rehabilitate the L&D at federal expense. Once done, the Corps was permitted to convey it to the city of North Augusta and Aiken County. This would relieve the Corps from future maintenance obligations. Until it was conveyed, the Corps was required to "continue to operate and maintain" the project. The law contained an estimated repair cost of \$5.3 million.

Within weeks of this legislation, Congress amended

the law to remove the estimated repair cost and add a requirement that the Corps "construct appropriate fish passage devices at the dam, at federal expense." Unfortunately, Congress never appropriated repair funding. The structure continued to deteriorate, despite the directive in the law for the Corps to maintain it.

After 16 years of neglect, the 2000 law was quietly gutted, and input from Augusta residents was intentionally blocked or ignored. In 2016, the Senate approved an amendment to Water Infrastructure Improvements for the Nation Act (WIIN). The impetus for the amendment was the L&D's role in the Savannah Harbor Expansion Project. SHEP involves the deepening of the Savannah Harbor to accommodate newer super-sized cargo ships. Without the deepening, ships would bypass Savannah in favor of deeper ports, such as Charleston, S.C.

Before SHEP could commence, a permit was required under the Federal Clean Water Act. This law, administered by the states, required Georgia and South Carolina to certify that the proposed

project would not adversely affect states' water quality. Georgia quickly issued its certification. The issuance of the South Carolina certificate was contentious, but it eventually was issued and incorporated into the settlement of a pending lawsuit regarding SHEP.

The lawsuit was filed by the Savannah Riverkeeper and other environmental groups to block SHEP. The Corps and the Georgia Ports Authority were the defendants. To settle the case, the GPA agreed to appease the plaintiffs by satisfying several conditions.

The conditions included the installation of an oxygenation system in the Savannah Harbor (reported cost: \$90 million); the acquisition and donation of about 2,000 acres of salt marsh; and a payment of \$33.5 million to various state and nonprofit entities (including some parties to the suit) to support environmental causes related to the Savannah River. The settlement agreement also required compliance with all mitigation obligations imposed by the Corps in its approval of SHEP.

One of the key required mitigation efforts related to an endangered fish, the Atlantic shortnose sturgeon.

To mitigate for loss of habitat caused by dredging, the GPA was required to install a fish bypass at the L&D. Additional effective fish passages would still be required at the Augusta Canal Diversion Dam and the Stevens Creek Dam to allow fish to reach the desired destination of the Augusta Shoals near Interstate 20. This mitigation plan was derived by the adoption of recommendations in a "Biological Opinion" issued by the National Marine Fisheries Service. The opinion required the GPA to complete the bypass before commencing dredging of the "inner harbor."

As of late summer 2016, the GPA had not yet begun work on the bypass and apparently approached the Corps for guidance. The Corps' response is described in a memo obtained from the GPA pursuant to an open-records request. The deauthorization memo was unsigned, but based upon the document's properties - originated from the computer of Hope Moorer at the GPA.

It revealed that the Corps warned that, unless the L&D was quickly "deauthorized"

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## Don't leave riverfront neighborhood without a river

By Robert A. Pettit  
Guest Columnist

We no longer have to imagine our riverfront without the New Savannah Bluff Lock and Dam. It was easy to see muddy riverbanks; docks and boats high and dry, and homes far from the waterfront. This is what dismantling the Lock and Dam will do.

Residents of North

Augusta and Augusta have made it clear this is not what we want. One North Augustan expressed her frustration to me via email: "The low river levels are completely ridiculous and have left my riverfront neighborhood without a river."

U.S. Army Corps of Engineers leaders made it clear early on our riverfront would be sacrificed so the

Savannah Harbor could be deepened. They were open about it. The picture they portrayed then is very different from what we saw.

Corps leadership tells us we just don't get it. In an opinion piece "Balancing fish passage and current uses," which appeared Feb. 10 in The Augusta Chronicle, Erik Blechinger, the deputy district engineer and top

civilian from the Corps' Savannah office, was adamant: Language in the 2016 Water Infrastructure Improvements for the Nation Act to "maintain the pool ... as in existence on the date of enactment of this Act" could not possibly mean to keep the pool elevation as it was when the bill was signed into law. He said "there appears to be a misunderstanding."

The language in the law is key to this discussion. What did Congress intend with the words "maintain the pool ... as it was on the date of enactment"? U.S. Rep. Rick Allen frequently has stated it relates to the pool's elevation. He wrote to the Corps' Savannah District commander expressing

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### BIBLE VERSE

The Lord render to every man his righteousness and his faithfulness; for the Lord delivered thee into my hand to day, but I would not stretch forth mine hand against the Lord's anointed.  
- 1 Samuel 26:23

### QUOTE OF THE DAY

Eventually, all things merge into one, and a river runs through it.  
- Norman Maclean

# OPINION

## The Augusta Chronicle

William S. Morris, Publisher, 1936-1966

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## RIVER

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outside the Corps' normal procedures, SHEP likely would be delayed for a couple of years. Deauthorization is the process by which Congress determines whether a federally authorized project still served a federal purpose. The deauthorization was represented as needed to permit the recently proposed modifications to replace the long-planned fish bypass.

The need for this action seems suspect, considering that modifications to a project on North Carolina's Cape Fear River — often cited as a model for the L&D proposal — were completed without deauthorization. That structure is only now being considered for deauthorization.

Once deauthorized, a project is no longer eligible for federal funding. Pursuant to Section 216 of the Flood Control Act of 1970, the Corps generally conducts a "216 Study" before recommending deauthorization.

The study requires the Corps to do a comprehensive investigation of a project before issuing reporting to Congress recommending deauthorization. The study generally takes more than two years to complete and provides several opportunities for public input.



The Savannah River during the drawdown photographed from the top of the Georgia Cyber Center in Augusta, Ga., Tuesday afternoon February 12, 2019. (MICHAEL HOLAHAN/ THE AUGUSTA CHRONICLE)

As part of any 216 Study, the Corps must consider, among many other factors, any authorized purpose of the project under consideration.

The L&D's original authorized purpose was to improve navigation on the Savannah River between Augusta and Savannah. Although navigation was the original authorized purpose, according to a 1992 Corps report, it was not the only one. That report, which provides a good explanation of authorized purposes, states that recreation and river re-regulation also were authorized purposes.

According to the report, the authorization of a project can originate from several sources and can include more than one. While an authorized purpose typically is in the legislation originally approving the project, it also may be found in other federal laws or actions, either specifically describing the project or in laws of general application.

In light of this flexibility, it seems worth asking if there are other applicable authorized purposes — such as the provision of North Augusta's water supply.

Apparently, to avoid a costly delay in SHEP, the GPA's Jamie McCurry presented the deauthorization memo to staffers of U.S. Sens Johnny Isakson and David Perdue, and U.S. Rep. Buddy Carter of Savannah, seeking their help. The email and the memo called for an immediate change to the law to deauthorize the L&D and permit its removal. It also recommended that the legislators seek assistance from the Corps in drafting the law.

Despite the neutral role the Corps purports to play, senior members of the Corps leadership were involved deeply in the deauthorization legislation. In fact, Wesley Coleman, the head of the Corps' Water Resources Institute, appears to have personally drafted the law. Before doing so, he sought input from many members of the Corps' senior management in Washington on "the ultimate fate" of the L&D. No input appeared to be received from anyone who might oppose the deauthorization.

The hastily and poorly drafted law is the cause of many of the problems L&D supporters face. When the amendment was drafted, it included two options for the L&D:

modify the L&D so that it will "maintain the pool for navigation, water supply, and recreational activities, as in a letter to the date of enactment of this Act" and "allow safe passage over the structure to historic spawning grounds of shortnose sturgeon, Atlantic sturgeon, and other migratory fish"; or

replace the L&D with a structure that can "maintain the pool for water supply and recreational activities, as in existence on the date of enactment of this Act."

The Corps' selected alternative falls under Option 2. Considering that this option does not even mention fish as a relevant factor, one might question whether the Corps is authorized to build a fish bypass at all.

On Sept. 15, 2016, Isakson and Perdue jointly introduced the Corps' drafted language as an amendment to the pending WIIN Act of 2016. The amendment was approved without debate.

Despite his almost certain interest in the subject, U.S. Rep. Rick Allen was not notified in advance of the Senate vote. The elected officials from South Carolina likewise were reportedly excluded from the process. The role, if any, of Augusta city officials is unclear.

Additionally, within hours of the Senate approval, Mr. McCurry sent an email to representatives of then-Georgia

Gov. Nathan Deal notifying them of pending change to the law. In 2018, Deal expressed support for attempts to maintain the river level in a letter to Isakson. He also has been a champion of the new Augusta University Cyber Riverfront Campus.

Based upon the foregoing, it seems unlikely that he would support the adoption of a law that could affect Augusta's riverfront so profoundly. The timing of the email raises the question of whether the governor also was kept in the dark.

By their actions, the GPA and the Corps prevented Allen, or anyone else who might object, from providing input — until it was too late to mount an effective opposition.

Since the passage of the act, Allen repeatedly has demanded that the Corps address his concerns and those of his constituents. He also shared his research regarding the water level on the date of the WIIN Act, which as we know is higher than what is proposed.

To date, there seems to be little regard for his comments.

For those with interest in the documents referenced herein, they are available at lockanddaminfo.com.

The writer is general counsel for Morris Communications Co. LLC, the previous owner of The Augusta Chronicle.

## WITHOUT

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this Augusta-Richmond County, Aiken County and the city of North Augusta are united in the opinion that the intent clearly was to maintain the pool elevation as the Corps was doing when the law was signed.

The Corps' position is that a pool of any elevation will do, as long as water supply intakes of the cities and industries aren't affected and recreation is possible. Blechinger argued that interpreting the law to require a pool, without any allowing for fluctuation in elevation, created an impossible situation.

The Corps obviously doesn't want to recognize the possibility that Rep. Allen is correct. Its leadership sees an opportunity finally to get rid of the Lock and Dam.

The common interpretation requires the Corps to control (maintain) the pool as it was in December 2016. The overflow elevation of a rock weir cannot be changed. A weir designed

to maintain the pool as it has been for 80 years would flood North Augusta residential areas during high flows. Lock and Dam gates can be adjusted to mitigate flooding.

There is one reason this whole thing became an issue. Dredging the Savannah Harbor damages a small area where fish spawned. One of those, the shortnose sturgeon, is endangered. Corps leadership, with the National Oceanic and Atmospheric Administration, took the opportunity to promote a mitigation plan to allow fish to gain access to historical spawning grounds: the Augusta shoals.

Corps leadership, working with NOAA and the Georgia Ports Authority, decided the best solution was replacement of the Lock and Dam with a rock weir across the river. They understood residents in the Augusta area would be outraged once the dam was removed and the scenic riverfront became a mudflat.

They were right. We are outraged.

The Corps worked with

Georgia's U.S. senators, the Georgia Department of Transportation and the GPA to add a section to the WIIN Act requiring action: Repair the Lock and Dam and add a fish passage or build a rock weir across the river. These alternatives must have been added a "0" rating because of outrage if the Lock and Dam were removed and the pool went away.

The Corps developed variations for the rock weir. NOAA rated each alternative "0, -1, or +1" on its ability to allow fish to pass. The rock weir was rated "+1" because fish could use the entire width of the river to get upstream. The alternative to repair the Lock and Dam received a "0" rating. It wasn't "full width." This kept it from being the top-rated alternative.

The Corps' approach to this project has been disappointing. The project team explained what they were planning. Charts, graphs and tables presented a multitude of data. Cost estimates for each alternative were included — but at the time no details, because

internal Corps review wasn't complete.

Many questions remain unanswered. What was the GPA involvement in selecting the preferred alternative? Why was the "repair" alternative rated as neutral just because it wasn't "full width" without a full evaluation? Why haven't studies demonstrating shortnose sturgeon successfully swimming up a fish ladder been provided? Faced with three governing bodies united in opposition to a lower pool and Rep. Allen's belief the Corps' interpretation of the law differs from that of Congress, it appears the Corps has a new buzzword: functionality. I can't recall hearing it in discussions over the previous two years — not once in face-to-face meetings, public briefings, meetings with EPA staffers in Washington, D.C., nor in written correspondence. I first saw it in Blechinger's opinion. I heard it again last week.

The leadership of the Savannah District Corps has now seen the dramatic impact the rock weir will have on our region. Maybe they are shocked and a little

dismayed by the impact this demonstration had on North Augusta's riverfront. Maybe it didn't turn out the way they expected. Maybe that's why the leadership started using a new buzzword — one that would make sure we no longer misunderstand what they have been telling us.

A new buzzword wasn't necessary. We fully understand the Corps leadership. The river itself proves we were right. The impact to our riverfront is unacceptable — precisely what we have been telling them for years. It's time for Corps leadership to stop misunderstanding us.

My opinion has not changed from that expressed in my opinion piece "Fish Bypass provides best solution to Lock and Dam conundrum" in the Oct. 22, 2017, Chronicle. Repair the Lock and Dam and construct a modest-sized fish bypass. This solution will not leave North Augusta with a "riverfront neighborhood without a river."

The writer is the mayor of North Augusta, S.C.