

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

In Re Tri-State Water Rights Litigation

Case No. 3:07-md-1-J-PAM-JRK

This Order relates to:

State of Florida v. United States Fish and  
Wildlife Service, Case No. 3:07-cv-250

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**ORDER**

This matter is before the Court on the Lake Lanier Association's (LLA) Unopposed Motion to Intervene (Doc. 15; Motion) in State of Florida v. United States Fish and Wildlife Service, No. 3:07-cv-250, filed January 10, 2008.<sup>1</sup> For the reasons that follow, the Court grants the Motion.

The LLA seeks to intervene in this matter to protect the interests of the LLA and its members in the U.S. Army Corps of Engineers' (Corps) and U.S. Fish and Wildlife Services' (FWS) management of federal reservoirs and biological resources in the Apalachicola-Chattahoochee-Flint Basin (ACF), including Lake Lanier. Brief in Support of Unopposed Motion to Intervene (Doc. 16; Brief) at 3-4. In particular, the LLA alleges that depletion of water storage in the ACF has left Lake Lanier as "virtually the only remaining source of water in the system." Id. at 3. As an entity comprised of Lake Lanier property owners, homeowners, recreational users, business owners, marinas, and others, the LLA seeks to protect its interest in maintaining adequate water levels in Lake Lanier. Id. at 2-4.

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<sup>1</sup> The Lake Lanier Association is also a party to State of Alabama v. United States Army Corps of Engineers, et al., No. 3:07-cv-249, and State of Georgia v. United States Army Corps of Engineers, et al., No. 3:07-cv-252 (Georgia I).

In support of its Motion, the LLA relies in part on Federal Rule of Civil Procedure 24(a),<sup>2</sup> which provides in pertinent part:

On timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. Proc. 24(a). To intervene as of right under Rule 24(a), a party must show that (1) the application to intervene is timely; (2) the applicant has an interest relating to the property or transaction which is the subject of the action; (3) the applicant is so situated that disposition of the action, as a practical matter, may impede or impair the applicant's ability to protect that interest; and (4) the applicant's interest is not adequately represented by the existing parties to the suit. Chiles v. Thornburgh, 865 F.2d 1197, 1213 (11th Cir. 1989).

Upon review of the Motion, it appears the LLA has met each of the requirements for intervention under Rule 24(a). First, the Motion was filed on January 10, 2008, the last day permitted for filing motions to intervene under the Joint Scheduling Order, and therefore is timely. Second, the LLA has an interest in the subject of the action, in that the LLA alleges its constituent members, as homeowners, property owners, business owners, and recreational users of Lake Lanier, have an interest in maintaining adequate water levels in

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<sup>2</sup> In the alternative, the LLA argues that Federal Rule of Civil Procedure 24(b), governing permissive intervention, provides authority for the LLA to intervene. As the Court finds the LLA's argument under Rule 24(a) persuasive, it does not address the LLA's alternative theory.

Lake Lanier.<sup>3</sup> Brief at 6-7. Third, the LLA is so situated that the disposition of the action without its participation may impede or impair its ability to protect its interest. The LLA's interest in preserving the business, recreational, and private property interests of its members by maintaining adequate water levels in Lake Lanier could be adversely affected if Plaintiff, State of Florida, is successful in its suit and the LLA had no opportunity to take part. Id. Finally, the LLA's interests are not adequately represented by the existing parties to the suit. Defendants FWS and the Corps are primarily concerned in this action with resource management and protection. Id. at 8. The LLA, by contrast, is motivated by its members' interests in maintaining adequate water levels in Lake Lanier for the benefit of recreational, private and business users. Similarly, the other Defendant-Intervenors do not represent the interests of the LLA as they have an interest in higher water flows through Lake Lanier, including higher rates of withdrawal, which is at odds with the LLA's interest in adequate water level preservation. Id. at 8-9.

Based on the foregoing, the Court finds that the LLA is a proper intervenor under the standard of Rule 24(a). Accordingly, it is

**ORDERED:**

1. The Unopposed Motion to Intervene of Lake Lanier Association (Doc. 15) is

**GRANTED.**

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<sup>3</sup> Of note, the LLA alleges that the water level in Lake Lanier has fallen to 1051 feet, twenty feet below the full pool elevation of 1071 feet. The LLA claims that low water levels lead to out-of-service boat ramps, unusable beaches, impassable channels, and unusable private docks. Brief at 4, 6.

2. Intervenor Lake Lanier Association's Answer and Crossclaim (Doc. 17) is accepted as filed on January 10, 2008.

**DONE AND ORDERED** at Jacksonville, Florida on January 15, 2008.

  
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**JAMES R. KLINDT**  
United States Magistrate Judge

jcd

Copies to:

Counsel of Record

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION**

In Re Tri-State Water Rights Litigation

Case No. 3:07-md-1-J-PAM-JRK

This Order relates to:

State of Georgia v. United States Army  
Corps of Engineers, Case No. 3:07-cv-251

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**ORDER**

This matter is before the Court on the Lake Lanier Association's (LLA) Unopposed Motion to Intervene (Doc. 29; Motion) in State of Georgia v. United States Army Corps of Engineers, No. 3:07-cv-251 (Georgia II), filed January 10, 2008.<sup>1</sup> For the reasons that follow, the Court grants the Motion.

The LLA seeks to intervene in this matter to protect the interests of the LLA and its members in the U.S. Army Corps of Engineers' (Corps) management of federal reservoirs in the Apalachicola-Chattahoochee-Flint Basin (ACF), including Lake Lanier. Brief in Support of Unopposed Motion to Intervene (Doc. 30; Brief) at 3. In particular, the LLA alleges that depletion of water storage in the ACF has left Lake Lanier as "virtually the only remaining source of water in the system." Id. As an entity comprised of Lake Lanier property owners, homeowners, recreational users, business owners, marinas, and others, the LLA seeks to protect its interest in maintaining adequate water levels in Lake Lanier. Id. at 2-3.

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<sup>1</sup> The Lake Lanier Association is also a party to State of Alabama v. United States Army Corps of Engineers, et al., No. 3:07-cv-249, and State of Georgia v. United States Army Corps of Engineers, et al., No. 3:07-cv-252 (Georgia I).

In support of its Motion, the LLA relies in part on Federal Rule of Civil Procedure 24(a),<sup>2</sup> which provides in pertinent part:

On timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

Fed. R. Civ. Proc. 24(a). To intervene as of right under Rule 24(a), a party must show that (1) the application to intervene is timely; (2) the applicant has an interest relating to the property or transaction which is the subject of the action; (3) the applicant is so situated that disposition of the action, as a practical matter, may impede or impair the applicant's ability to protect that interest; and (4) the applicant's interest is not adequately represented by the existing parties to the suit. Chiles v. Thornburgh, 865 F.2d 1197, 1213 (11th Cir. 1989).

Upon review of the Motion, it appears the LLA has met each of the requirements for intervention under Rule 24(a). First, the Motion was filed on January 10, 2008, the last day permitted for filing motions to intervene under the Joint Scheduling Order, and therefore is timely. Second, the LLA has an interest in the subject of the action, in that the LLA alleges its constituent members, as homeowners, property owners, business owners, and recreational users of Lake Lanier, have an interest in maintaining adequate water levels in Lake Lanier.<sup>3</sup> Brief at 5-6. Third, the LLA is so situated that the disposition of Georgia II

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<sup>2</sup> In the alternative, the LLA argues that Federal Rule of Civil Procedure 24(b), governing permissive intervention, provides authority for the LLA to intervene. As the Court finds the LLA's argument under Rule 24(a) persuasive, it does not address the LLA's alternative theory.

<sup>3</sup> Of note, the LLA alleges that the water level in Lake Lanier has fallen to 1051 feet, twenty feet below the full pool elevation of 1071 feet. The LLA claims that low water levels lead to out-of-service boat ramps, unusable beaches, impassable channels, and unusable private docks. Brief at 4, 6.

without its participation may impede or impair its ability to protect its interest. The LLA's interest in preserving the business, recreational, and private property interests of its members could be adversely affected by any disposition of Georgia II in which the LLA had no opportunity to take part. Id. at 6-7. Finally, the LLA's interests are not adequately represented by the existing parties to the suit. The LLA points out that Plaintiff State of Georgia and Plaintiff-Intervenors are primarily focused on water supply, which is not necessarily negatively impacted by smaller changes in water level that have immediate impact on property owners, business owners, recreational users, and other lake users. Id. at 7-8.

Based on the foregoing, the Court finds that the LLA is a proper intervenor under the standard of Rule 24(a). Accordingly, it is

**ORDERED:**

1. The Unopposed Motion to Intervene of Lake Lanier Association (Doc. 29) is

**GRANTED.**

2. Intervenor Lake Lanier Association's Complaint (Doc. 31) is accepted as filed on January 10, 2008.

**DONE AND ORDERED** at Jacksonville, Florida on January 15, 2008.

  
JAMES R. KLINDT  
United States Magistrate Judge

jcd

Copies to:

Counsel of Record