

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

In re Tri-State Water Rights Litigation

Case No. 3:07-md-00001 (PAM/JRK)

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State of Georgia, et al.,

Civ. No. 3:07-252 (PAM/JRK)

Plaintiffs.

v.

United States Army Corps  
of Engineers, et al.,

Defendants

**ORDER**

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This matter is before the Court on the Water Supply Providers'<sup>1</sup> Motion for Entry of Judgment. The Water Supply Providers ask the Court to enter judgment pursuant to Fed. R. Civ. P. 58(d), so that they may appeal the Court's Order of July 17, 2009. Only Alabama and Florida oppose the Motion.

This Motion presents an interesting and somewhat novel issue: when is judgment in a case consolidated by the Judicial Panel on Multidistrict Litigation appropriate? The instant Motion is complicated by the fact that, although the July 17, 2009, Order denied the Water Supply Providers' Motion for Summary Judgment in Georgia I, it also denied the competing

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<sup>1</sup> The Water Supply Providers are the State of Georgia, the Atlanta Regional Commission, the Georgia cities of Atlanta and Gainesville, the Georgia counties of DeKalb and Fulton, and the Cobb County-Marietta Water Authority, all plaintiffs or intervenor-plaintiffs in Georgia v. United States Army Corps of Eng'rs, Civ. No. 3:07-252 ("Georgia I").

summary judgment motion of the U.S. Army Corps of Engineers and thus did not grant judgment to either party in Georgia I. However, the Court's determinations in the July 17, 2009, Order resolved the legal issues raised by the Georgia I Complaint.<sup>2</sup>

The Water Supply Providers argue that the Court need not look to Fed. R. Civ. P. 54(b) in determining whether judgment may be entered, insisting that because Georgia I was consolidated into the MDL only for pretrial proceedings, it retains its individual character and a Rule 58(d) judgment is appropriate. If this were the case, however, then the Water Supply Providers would not have moved the Court for entry of judgment at all; no Rule 54(b) judgment is necessary if the Court's July 17, 2009, Order constituted a final judgment under Rule 58. See Brown v. United States, 976 F.2d 1104, 1107 (7th Cir. 1992) (finding judgment in one MDL member case appealable "notwithstanding the lack of a Rule 54(b) determination").

The salient fact here is that the Court did not order any relief in the July 17, 2009, Order. Rather, the Court stayed the matter for three years, to allow the parties and the political system to attempt to reach a solution to this inherently political problem. Thus, although the Court may have disposed of the legal issues in Georgia I, the Court's Order is not a judgment because it effects no relief. Moreover, given the Court's grave doubts about the propriety of the appeals noticed in the other member cases, it seems imprudent to allow

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<sup>2</sup> The Water Supply Providers have apparently abandoned or waived the claims in Georgia I that were not presented in their summary judgment motion. (Reply Mem. at 2.) In keeping with the gamesmanship evidenced throughout this litigation, however, the Water Supply Providers do not ever explicitly abandon or waive any of their claims.

an appeal in only one of the cases.<sup>3</sup> An appeal will only delay and further complicate the resolution of the important claims at issue in Phase I.

Rule 54(b) allows the Court to enter judgment only “when there is no just reason for delay.” Fed. R. Civ. P. 54(b). As the Rule itself states, “Otherwise, any order or decision . . . may be revised at any time before the entry of judgment.” *Id.* This is precisely the scenario envisioned by the Court’s July 17, 2009, Order and resulting stay. The Court fully anticipates that the parties will resolve their differences within the three-year stay and that the Court will revise its July 17, 2009, Order accordingly. The entry of judgment in Georgia I is simply not appropriate at this time.

Accordingly, **IT IS HEREBY ORDERED** that the Motion for Entry of Judgment (Docket No. 55) is **DENIED**.

Dated: Monday, October 5, 2009

*s/ Paul A. Magnuson*

Paul A. Magnuson

United States District Court Judge

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<sup>3</sup> The Georgia parties have appealed the Court’s Order of July 17, 2009, under the immediate appellate jurisdiction provision of 28 U.S.C. § 1292(a)(1). This section applies to orders for injunctive relief. No injunctive relief was ordered or intended by the Court’s July 17, 2009, Order.