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105TH CONGRESS, 1st Session | HOUSE OF REPRESENTATIVES | REPORT 105–369

APALACHICOLA-CHATTAHOOCHEE-FLINT RIVER BASIN COMPACT

OCTOBER 31, 1997.—Referred to the House Calendar and ordered to be printed

Mr. HYDE, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.J. Res. 91]

The Committee on the Judiciary, to whom was referred the joint resolution (H.J. Res. 91) granting the consent of Congress to the Apalachicola-Chattahoochee-Flint River Basin Compact, having considered the same, report favorably thereon with an amendment and recommend that the joint resolution as amended do pass.

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The amendment is as follows:

Strike out all after the resolving clause and insert in lieu thereof the following:

SECTION 1. CONGRESSIONAL CONSENT.

The Congress consents to the Apalachicola-Chattahoochee-Flint River Basin Compact entered into by the States of Alabama, Florida, and Georgia. The Compact is substantially as follows:

59–006

"Apalachicola-Chattahoochee-Flint River Basin Compact

"The States of Alabama, Florida and Georgia and the United States of America hereby agree to the following compact which shall become effective upon enactment of concurrent legislation by each respective state legislature and the Congress of the United States.

"SHORT TITLE

"This Act shall be known and may be cited as the 'Apalachicola-Chattahoochee-Flint River Basin Compact' and shall be referred to hereafter in this document as the 'ACF Compact' or 'Compact'.

"ARTICLE I

"COMPACT PURPOSES

"This Compact among the States of Alabama, Florida and Georgia and the United States of America has been entered into for the purposes of promoting interstate comity, removing causes of present and future controversies, equitably apportioning the surface waters of the ACF, engaging in water planning, and developing and sharing common data bases.

"ARTICLE II

"SCOPE OF THE COMPACT

"This Compact shall extend to all of the waters arising within the drainage basin of the ACF in the states of Alabama, Florida and Georgia.

"ARTICLE III

"PARTIES

"The parties to this Compact are the states of Alabama, Florida and Georgia and the United States of America.

"ARTICLE IV

"DEFINITIONS

"For the purposes of this Compact, the following words, phrases and terms shall have the following meanings:

"(a) 'ACF Basin' or 'ACF' means the area of natural drainage into the Apalachicola River and its tributaries, the Chattahoochee River and its tributaries, and the Flint River and its tributaries. Any reference to the rivers within this Compact will be designated using the letters 'ACF' and when so referenced will mean each of these three rivers and each of the tributaries to each such river.

"(b) 'Allocation formula' means the methodology, in whatever form, by which the ACF Basin Commission determines an equitable apportionment of surface waters within the ACF Basin among the three states. Such formula may be represented by a table, chart, mathematical calculation or any other expression of the Commission's apportionment of waters pursuant to this compact.

"(c) 'Commission' or 'ACF Basin Commission' means the Apalachicola-Chattahoochee-Flint River Basin Commission created and established pursuant to this Compact.

"(d) 'Ground waters' means waters within a saturated zone or stratum beneath the surface of land, whether or not flowing through known and definite channels.

"(e) 'Person' means any individual, firm, association, organization, partnership, business, trust, corporation, public corporation, company, the United States of America, any state, and all political subdivisions, regions, districts, municipalities, and public agencies thereof.

"(f) 'Surface waters' means waters upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be considered 'surface waters' when it exits from the spring onto the surface of the earth.

"(g) 'United States' means the executive branch of the government of the United States of America, and any department, agency, bureau or division thereof.

"(h) 'Water Resource Facility' means any facility or project constructed for the impoundment, diversion, retention, control or regulation of waters within the ACF Basin for any purpose.

"(i) 'Water resources,' or 'waters' means all surface waters and ground waters contained or otherwise originating within the ACF Basin.

"ARTICLE V

"CONDITIONS PRECEDENT TO LEGAL VIABILITY OF THE COMPACT

"This Compact shall not be binding on any party until it has been enacted into law by the legislatures of the states of Alabama, Florida and Georgia and by the Congress of the United States of America.

"ARTICLE VI

"ACF BASIN COMMISSION CREATED

"(a) There is hereby created an interstate administrative agency to be known as the 'ACF Basin Commission.' The Commission shall be comprised of one member representing the state of Alabama, one member representing the state of Florida, one member representing the state of Georgia, and one non-voting member representing the United States of America. The state members shall be known as 'State Commissioners' and the federal member shall be known as 'Federal Commissioner.' The ACF Basin Commission is a body politic and corporate, with succession for the duration of this Compact.

"(b) The Governor of each of the states shall serve as the State Commissioner for his or her state. Each State Commissioner shall appoint one or more alternate members and one of such alternates as designated by the State Commissioner shall serve in the State Commissioner's place and carry out the functions of the State Commissioner, including voting on Commission matters, in the event the State Commissioner is unable to attend a meeting of the Commission. The alternate members from each state shall be knowledgeable in the field of water resources management. Unless otherwise provided by law of the state for which an alternate State Commissioner is appointed, each alternate State Commissioner shall serve at the pleasure of the State Commissioner. In the event of a vacancy in the office of an alternate, it shall be filled in the same manner as an original appointment.

"(c) The President of the United States of America shall appoint the Federal Commissioner who shall serve as the representative of all federal agencies with an interest in the ACF. The President shall also appoint an alternate Federal Commissioner to attend and participate in the meetings of the Commission in the event the Federal Commissioner is unable to attend meetings. When at meetings, the alternate Federal Commissioner shall possess all of the powers of the Federal Commissioner. The Federal Commissioner and alternate appointed by the President shall serve until they resign or their replacements are appointed.

"(d) Each state shall have one vote on the ACF Basin Commission and the Commission shall make all decisions and exercise all powers by unanimous vote of the three State Commissioners. The Federal Commissioner shall not have a vote, but shall attend and participate in all meetings of the ACF Basin Commission to the same extent as the State Commissioners.

"(e) The ACF Basin Commission shall meet at least once a year at a date set at its initial meeting. Such initial meeting shall take place within ninety days of the ratification of the Compact by the Congress of the United States and shall be called by the chairman of the Commission. Special meetings of the Commission may be called at the discretion of the chairman of the Commission and shall be called by the chairman of the Commission upon written request of any member of the Commission. All members shall be notified of the time and place designated for any regular or special meeting at least five days prior to such meeting in one of the following ways: by written notice mailed to the last mailing address given to the Commission by each member, by facsimile, telegram or by telephone. The Chairmanship of the Commission shall rotate annually among the voting members of the Commission on an alphabetical basis, with the first chairman to be the State Commissioner representing the State of Alabama.

"(f) All meetings of the Commission shall be open to the public.

"(g) The ACF Basin Commission, so long as the exercise of power is consistent with this Compact, shall have the following general powers:

"(1) to adopt bylaws and procedures governing its conduct;

"(2) to sue and be sued in any court of competent jurisdiction;

"(3) to retain and discharge professional, technical, clerical and other staff and such consultants as are necessary to accomplish the purposes of this Compact;

"(4) to receive funds from any lawful source and expend funds for any lawful purpose;

"(5) to enter into agreements or contracts, where appropriate, in order to accomplish the purposes of this Compact;

"(6) to create committees and delegate responsibilities;

"(7) to plan, coordinate, monitor, and make recommendations for the water resources of the ACF Basin for the purposes of, but not limited to, minimizing adverse impacts of floods and droughts and improving water quality, water supply, and conservation as may be deemed necessary by the Commission;

"(8) to participate with other governmental and non-governmental entities in carrying out the purposes of this Compact;

"(9) to conduct studies, to generate information regarding the water resources of the ACF Basin, and to share this information among the Commission members and with others;

"(10) to cooperate with appropriate state, federal, and local agencies or any other person in the development, ownership, sponsorship, and operation of water resource facilities in the ACF Basin; provided, however, that the Commission shall not own or operate a federally-owned water resource facility unless authorized by the United States Congress;

"(11) to acquire, receive, hold and convey such personal and real property as may be necessary for the performance of its duties under the Compact; provided, however, that nothing in this Compact shall be construed as granting the ACF Basin Commission authority to issue bonds or to exercise any right of eminent domain or power of condemnation;

"(12) to establish and modify an allocation formula for apportioning the surface waters of the ACF Basin among the states of Alabama, Florida and Georgia; and

"(13) to perform all functions required of it by this Compact and to do all things necessary, proper or convenient in the performance of its duties hereunder, either independently or in cooperation with any state or the United States.

"ARTICLE VII

"EQUITABLE APPORTIONMENT

"(a) It is the intent of the parties to this Compact to develop an allocation formula for equitably apportioning the surface waters of the ACF Basin among the states while protecting the water quality, ecology and biodiversity of the ACF, as provided in the Clean Water Act, 33 U.S.C. Sections 1251 et seq., the Endangered Species Act, 16 U.S.C. Sections 1532 et seq., the National Environmental Policy Act, 42 U.S.C. Sections 4321 et seq., the Rivers and Harbors Act of 1899, 33 U.S.C. Sections 401 et seq., and other applicable federal laws. For this purpose, all members of the ACF Basin Commission, including the Federal Commissioner, shall have full rights to notice of and participation in all meetings of the ACF Basin Commission and technical committees in which the basis and terms and conditions of the allocation formula are to be discussed or negotiated. When an allocation formula is unanimously approved by the State Commissioners, there shall be an agreement among the states regarding an allocation formula. The allocation formula thus agreed upon shall become effective and binding upon the parties to this Compact upon receipt by the Commission of a letter of concurrence with said formula from the Federal Commissioner. If, however, the Federal Commissioner fails to submit a letter of concurrence to the Commission within two hundred ten (210) days after the allocation formula is agreed upon by the State Commissioners, the Federal Commissioner shall within forty-five (45) days thereafter submit to the ACF Basin Commission a letter of nonconcurrence with the allocation formula setting forth therein specifically and in detail the reasons for nonconcurrence; provided, however, the reasons for nonconcurrence as contained in the letter of nonconcurrence shall be based solely upon federal law. The allocation formula shall also become effective and binding upon the parties to this Compact if the Federal Commissioner fails to submit to the ACF Basin Commission a letter of nonconcurrence in accordance with this Article. Once adopted pursuant to this Article, the allocation formula may only be modified by unanimous decision of the State Commissioners and the concurrence by the Federal Commissioner in accordance with the procedures set forth in this Article.

"(b) The parties to this Compact recognize that the United States operates certain projects within the ACF Basin that may influence the water resources within the ACF Basin. The parties to this Compact further acknowledge and recognize that various agencies of the United States have responsibilities for administering certain

federal laws and exercising certain federal powers that may influence the water resources within the ACF Basin. It is the intent of the parties to this Compact, including the United States, to achieve compliance with the allocation formula adopted in accordance with this Article. Accordingly, once an allocation formula is adopted, each and every officer, agency, and instrumentality of the United States shall have an obligation and duty, to the maximum extent practicable, to exercise their powers, authority, and discretion in a manner consistent with the allocation formula so long as the exercise of such powers, authority, and discretion is not in conflict with federal law.

"(c) Between the effective date of this Compact and the approval of the allocation formula under this Article, the signatories to this Compact agree that any person who is withdrawing, diverting, or consuming water resources of the ACF Basin as of the effective date of this Compact, may continue to withdraw, divert or consume such water resources in accordance with the laws of the state where such person resides or does business and in accordance with applicable federal laws. The parties to this Compact further agree that any such person may increase the amount of water resources withdrawn, diverted or consumed to satisfy reasonable increases in the demand of such person for water between the effective date of this Compact and the date on which an allocation formula is approved by the ACF Basin Commission as permitted by applicable law. Each of the state parties to this Compact further agree to provide written notice to each of the other parties to this Compact in the event any person increases the withdrawal, diversion or consumption of such water resources by more than 10 million gallons per day on an average annual daily basis, or in the event any person, who was not withdrawing, diverting or consuming any water resources from the ACF Basin as of the effective date of this Compact, seeks to withdraw, divert or consume more than one million gallons per day on an average annual daily basis from such resources. This Article shall not be construed as granting any permanent, vested or perpetual rights to the amounts of water used between January 3, 1992 and the date on which the Commission adopts an allocation formula.

"(d) As the owner, operator, licensor, permitting authority or regulator of a water resource facility under its jurisdiction, each state shall be responsible for using its best efforts to achieve compliance with the allocation formula adopted pursuant to this Article. Each such state agrees to take such actions as may be necessary to achieve compliance with the allocation formula.

"(e) This Compact shall not commit any state to agree to any data generated by any study or commit any state to any allocation formula not acceptable to such state.

"ARTICLE VIII

"CONDITIONS RESULTING IN TERMINATION OF THE COMPACT

"(a) This Compact shall be terminated and thereby be void and of no further force and effect if any of the following events occur:

"(1) The legislatures of the states of Alabama, Florida and Georgia each agree by general laws enacted by each state within any three consecutive years that this Compact should be terminated.

"(2) The United States Congress enacts a law expressly repealing this Compact.

"(3) The States of Alabama, Florida and Georgia fail to agree on an equitable apportionment of the surface waters of the ACF as provided in Article VII(a) of this Compact by December 31, 1998, unless the voting members of the ACF Basin Commission unanimously agree to extend this deadline.

"(4) The Federal Commissioner submits to the Commission a letter of nonconcurrence in the initial allocation formula in accordance with Article VII(a) of the Compact, unless the voting members of the ACF Basin Commission unanimously agree to allow a single 45 day period in which the non-voting Federal Commissioner and the voting State Commissioners may renegotiate an allocation formula and the Federal Commissioner withdraws the letter of nonconcurrence upon completion of this renegotiation.

"(b) If the Compact is terminated in accordance with this Article it shall be of no further force and effect and shall not be the subject of any proceeding for the enforcement thereof in any federal or state court. Further, if so terminated, no party shall be deemed to have acquired a specific right to any quantity of water because it has become a signatory to this Compact.

"ARTICLE IX

"COMPLETION OF STUDIES PENDING ADOPTION OF ALLOCATION FORMULA

"The ACF Basin Commission, in conjunction with one or more interstate, federal, state or local agencies, is hereby authorized to participate in any study in process as of the effective date of this Compact, including, without limitation, all or any part of the Alabama-Coosa-Tallapoosa/Apalachicola-Chattahoochee-Flint River Basin Comprehensive Water Resource Study, as may be determined by the Commission in its sole discretion.

"ARTICLE X

"RELATIONSHIP TO OTHER LAWS

"(a) It is the intent of the party states and of the United States Congress by ratifying this Compact, that all state and federal officials enforcing, implementing or administering other state and federal laws affecting the ACF Basin shall, to the maximum extent practicable, enforce, implement or administer those laws in furtherance of the purposes of this Compact and the allocation formula adopted by the Commission insofar as such actions are not in conflict with applicable federal laws.

"(b) Nothing contained in this Compact shall be deemed to restrict the executive powers of the President in the event of a national emergency.

"(c) Nothing contained in this Compact shall impair or affect the constitutional authority of the United States or any of its powers, rights, functions or jurisdiction under other existing or future laws in and over the area or waters which are the subject of the Compact, including projects of the Commission, nor shall any act of the Commission have the effect of repealing, modifying or amending any federal law. All officers, agencies and instrumentalities of the United States shall exercise their powers and authority over water resources in the ACF Basin and water resource facilities, and to the maximum extent practicable, shall exercise their discretion in carrying out their responsibilities, powers, and authorities over water resources in the ACF Basin and water resource facilities in the ACF Basin in a manner consistent with and that effectuates the allocation formula developed pursuant to this Compact or any modification of the allocation formula so long as the actions are not in conflict with any applicable federal law. The United States Army Corps of Engineers, or its successors, and all other federal agencies and instrumentalities shall cooperate with the ACF Basin Commission in accomplishing the purposes of the Compact and fulfilling the obligations of each of the parties to the Compact regarding the allocation formula.

"(d) Once adopted by the three states and ratified by the United States Congress, this Compact shall have the full force and effect of federal law, and shall supersede state and local laws operating contrary to the provisions herein or the purposes of this Compact; provided, however, nothing contained in this Compact shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective signatory states relating to water quality, and riparian rights as among persons exclusively within each state.

"ARTICLE XI

"PUBLIC PARTICIPATION

"All meetings of the Commission shall be open to the public. The signatory parties recognize the importance and necessity of public participation in activities of the Commission, including the development and adoption of the initial allocation formula and any modification thereto. Prior to the adoption of the initial allocation formula, the Commission shall adopt procedures ensuring public participation in the development, review, and approval of the initial allocation formula and any subsequent modification thereto. At a minimum, public notice to interested parties and a comment period shall be provided. The Commission shall respond in writing to relevant comments.

"ARTICLE XII

"FUNDING AND EXPENSES OF THE COMMISSION

"Commissioners shall serve without compensation from the ACF Basin Commission. All general operational funding required by the Commission and agreed to by

the voting members shall obligate each state to pay an equal share of such agreed upon funding. Funds remitted to the Commission by a state in payment of such obligation shall not lapse; provided, however, that if any state fails to remit payment within 90 days after payment is due, such obligation shall terminate and any state which has made payment may have such payment returned. Costs of attendance and participation at meetings of the Commission by the Federal Commissioner shall be paid by the United States.

"ARTICLE XIII

"DISPUTE RESOLUTION

"(a) In the event of a dispute between two or more voting members of this Compact involving a claim relating to compliance with the allocation formula adopted by the Commission under this Compact, the following procedures shall govern:

"(1) Notice of claim shall be filed with the Commission by a voting member of this Compact and served upon each member of the Commission. The notice shall provide a written statement of the claim, including a brief narrative of the relevant matters supporting the claimant's position.

"(2) Within twenty (20) days of the Commission's receipt of a written statement of a claim, the party or parties to the Compact against whom the complaint is made may prepare a brief narrative of the relevant matters and file it with the Commission and serve it upon each member of the Commission.

"(3) Upon receipt of a claim and any response or responses thereto, the Commission shall convene as soon as reasonably practicable, but in no event later than twenty (20) days from receipt of any response to the claim, and shall determine if a resolution of the dispute is possible.

"(4) A resolution of a dispute under this Article through unanimous vote of the State Commissioners shall be binding upon the state parties and any state party determined to be in violation of the allocation formula shall correct such violation without delay.

"(5) If the Commission is unable to resolve the dispute within 10 days from the date of the meeting convened pursuant to subparagraph (a)(3) of this Article, the Commission shall select, by unanimous decision of the voting members of the Commission, an independent mediator to conduct a non-binding mediation of the dispute. The mediator shall not be a resident or domiciliary of any member state, shall not be an employee or agent of any member of the Commission, shall be a person knowledgeable in water resource management issues, and shall disclose any and all current or prior contractual or other relations to any member of the Commission. The expenses of the mediator shall be paid by the Commission. If the mediator becomes unwilling or unable to serve, the Commission by unanimous decision of the voting members of the Commission, shall appoint another independent mediator.

"(6) If the Commission fails to appoint an independent mediator to conduct a non-binding mediation of the dispute within seventy-five (75) days of the filing of the original claim or within thirty (30) days of the date on which the Commission learns that a mediator is unwilling or unable to serve, the party submitting the claim shall have no further obligation to bring the claim before the Commission and may proceed by pursuing any appropriate remedies, including any and all judicial remedies.

"(7) If an independent mediator is selected, the mediator shall establish the time and location for the mediation session or sessions and may request that each party to the Compact submit, in writing, to the mediator a statement of its position regarding the issue or issues in dispute. Such statements shall not be exchanged by the parties except upon the unanimous agreement of the parties to the mediation.

"(8) The mediator shall not divulge confidential information disclosed to the mediator by the parties or by witnesses, if any, in the course of the mediation. All records, reports, or other documents received by a mediator while serving as a mediator shall be considered confidential. The mediator shall not be compelled in any adversary proceeding or judicial forum to divulge the contents of such documents or the fact that such documents exist or to testify in regard to the mediation.

"(9) Each party to the mediation shall maintain the confidentiality of the information received during the mediation and shall not rely on or introduce in any judicial proceeding as evidence:

"a. Views expressed or suggestions made by another party regarding a settlement of the dispute;

"b. Proposals made or views expressed by the mediator; or

"c. The fact that another party to the hearing had or had not indicated a willingness to accept a proposal for settlement of the dispute.

"(10) The mediator may terminate the non-binding mediation session or sessions whenever, in the judgment of the mediator, further efforts to resolve the dispute would not lead to a resolution of the dispute between or among the parties. Any party to the dispute may terminate the mediation process at any time by giving written notification to the mediator and the Commission. If terminated prior to reaching a resolution, the party submitting the original claim to the Commission shall have no further obligation to bring its claim before the Commission and may proceed by pursuing any appropriate remedies, including any and all judicial remedies.

"(11) The mediator shall have no authority to require the parties to enter into a settlement of any dispute regarding the Compact. The mediator may simply attempt to assist the parties in reaching a mutually acceptable resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the mediation and to make oral or written recommendations for a settlement of the dispute.

"(12) At any time during the mediation process, the Commission is encouraged to take whatever steps it deems necessary to assist the mediator or the parties to resolve the dispute.

"(13) In the event of a proceeding seeking enforcement of the allocation formula, this Compact creates a cause of action solely for equitable relief. No action for money damages may be maintained. The party or parties alleging a violation of the Compact shall have the burden of proof.

"(b) In the event of a dispute between any voting member and the United States relating to a state's noncompliance with the allocation formula as a result of actions or a refusal to act by officers, agencies or instrumentalities of the United States, the provisions set forth in paragraph (a) of this Article (other than the provisions of subparagraph (a)(4)) shall apply.

"(c) The United States may initiate dispute resolution under paragraph (a) in the same manner as other parties to this Compact.

"(d) Any signatory party who is affected by any action of the Commission, other than the adoption or enforcement of or compliance with the allocation formula, may file a complaint before the ACF Basin Commission seeking to enforce any provision of this Compact.

"(1) The Commission shall refer the dispute to an independent hearing officer or mediator, to conduct a hearing or mediation of the dispute. If the parties are unable to settle their dispute through mediation, a hearing shall be held by the Commission or its designated hearing officer. Following a hearing conducted by a hearing officer, the hearing officer shall submit a report to the Commission setting forth findings of fact and conclusions of law, and making recommendations to the Commission for the resolution of the dispute.

"(2) The Commission may adopt or modify the recommendations of the hearing officer within 60 days of submittal of the report. If the Commission is unable to reach unanimous agreement on the resolution of the dispute within 60 days of submittal of the report with the concurrence of the Federal Commissioner in disputes involving or affecting federal interests, the affected party may file an action in any court of competent jurisdiction to enforce the provisions of this Compact. The hearing officer's report shall be of no force and effect and shall not be admissible as evidence in any further proceedings.

"(e) All actions under this Article shall be subject to the following provisions:

"(1) The Commission shall adopt guidelines and procedures for the appointment of hearing officers or independent mediators to conduct all hearings and mediations required under this Article. The hearing officer or mediator appointed under this Article shall be compensated by the Commission.

"(2) All hearings or mediations conducted under this article may be conducted utilizing the Federal Administrative Procedures Act, the Federal Rules of Civil Procedure, and the Federal Rules of Evidence. The Commission may also choose to adopt some or all of its own procedural and evidentiary rules for the conduct of hearings or mediations under this Compact.

"(3) Any action brought under this Article shall be limited to equitable relief only. This Compact shall not give rise to a cause of action for money damages.

"(4) Any signatory party bringing an action before the Commission under this Article shall have the burdens of proof and persuasion.

"ARTICLE XIV

"ENFORCEMENT

"The Commission may, upon unanimous decision, bring an action against any person to enforce any provision of this Compact, other than the adoption or enforcement of or compliance with the allocation formula, in any court of competent jurisdiction.

"ARTICLE XV

"IMPACTS ON OTHER STREAM SYSTEMS

"This Compact shall not be construed as establishing any general principle or precedent applicable to any other interstate streams.

"ARTICLE XVI

"IMPACT OF COMPACT ON USE OF WATER WITHIN THE BOUNDARIES OF THE COMPACTING STATES

"The provisions of this Compact shall not interfere with the right or power of any state to regulate the use and control of water within the boundaries of the state, providing such state action is not inconsistent with the allocation formula.

"ARTICLE XVII

"AGREEMENT REGARDING WATER QUALITY

"(a) The States of Alabama, Florida, and Georgia mutually agree to the principle of individual State efforts to control man-made water pollution from sources located and operating within each State and to the continuing support of each State in active water pollution control programs.

"(b) The States of Alabama, Florida, and Georgia agree to cooperate, through their appropriate State agencies, in the investigation, abatement, and control of sources of alleged interstate pollution within the ACF River Basin whenever such sources are called to their attention by the Commission.

"(c) The States of Alabama, Florida, and Georgia agree to cooperate in maintaining the quality of the waters of the ACF River Basin.

"(d) The States of Alabama, Florida, and Georgia agree that no State may require another state to provide water for the purpose of water quality control as a substitute for or in lieu of adequate waste treatment.

"ARTICLE XVIII

"EFFECT OF OVER OR UNDER DELIVERIES UNDER THE COMPACT

"No state shall acquire any right or expectation to the use of water because of any other state's failure to use the full amount of water allocated to it under this Compact.

"ARTICLE XIX

"SEVERABILITY

"If any portion of this Compact is held invalid for any reason, the remaining portions, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force, effect, and application.

"ARTICLE XX

"NOTICE AND FORMS OF SIGNATURE

"Notice of ratification of this Compact by the legislature of each state shall promptly be given by the Governor of the ratifying state to the Governors of the other participating states. When all three state legislatures have ratified the Compact, notice of their mutual ratification shall be forwarded to the Congressional delegation of the signatory states for submission to the Congress of the United States for ratification. When the Compact is ratified by the Congress of the United States, the President, upon signing the Federal ratification legislation, shall promptly notify

the Governors of the participating states and appoint the Federal Commissioner. The Compact shall be signed by all four Commissioners as their first order of business at their first meeting and shall be filed of record in the party states.".

SEC. 2. INCONSISTENCY OF LANGUAGE.

The validity of the compact consented to by this Act shall not be affected by any insubstantial difference in its form or language as adopted by the States.

SEC. 3. RIGHT TO ALTER, AMEND, OR REPEAL.

The right to alter, amend, or repeal this joint resolution is hereby expressly reserved.

SEC. 4. RESERVATIONS.

To ensure participation of Federal agencies during the development of the allocation formula and participation in all technical working groups and meetings in which the terms and conditions of the allocation formula are negotiated and to preserve Federal discretion under law, the consent of Congress to, and participation of the United States in, the Apalachicola-Chattahoochee-Flint River Basin Compact, is subject to the following conditions and reservations:

(1) Representatives of any Federal agency may attend any and all meetings of the Commission.

(2) Upon the request of the Federal Commissioner, representatives of any Federal agency may participate in any meetings of technical committees, if any, of the Commission at which the basis or terms and conditions of the allocation formula or modifications to the allocation formula are to be discussed or negotiated.

(3) The Federal Commissioner shall be given notice of any meeting of the Commission or any meeting of technical committees, if any, of the Commission at which compliance with the allocation formula by one or more officers, agencies, or instrumentalities of the United States is to be discussed.

(4) Under the provisions of Article VII(a), the Federal Commissioner may submit a letter of concurrence with the allocation formula unanimously adopted by the State Commissioners within 255 days of such adoption.

(5) No mediator shall be selected under Article XIII(b) or Article XIII(c) without the concurrence of the Federal Commissioner and no resolution of a dispute under Article XIII(c) shall be made binding on the United States without the concurrence of the Federal Commissioner.

(6) The obligations of employees, agencies, and instrumentalities of the United States pursuant to Articles VII(b), X(a), and X(c) to exercise their discretion, to the maximum extent practicable, in a manner consistent with the allocation formula shall not be construed to interfere with the ability of such employees, agencies, and instrumentalities to take actions during emergency situations.

(7) As among water right holders within any one State, nothing in this Compact shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective signatory States relating to riparian rights of the United States in and to the waters of the Apalachicola-Chattahoochee-Flint River Basin.

SEC. 5. EFFECTUATION.

(a) FEDERAL AGENCY AUTHORITY.—To carry out the purposes of this Compact, Federal agencies are authorized, as they may deem appropriate—

(1) to engage in cooperative relationships with the Commission;

(2) to conduct studies and monitoring programs in cooperation with the Commission;

(3) to enter into agreements to indemnify private landowners against liability that may arise from studies and monitoring programs undertaken in cooperation with the Commission; and

(4) to furnish assistance, including the provision of services, facilities, and personnel, to the Federal Commissioner.

(b) APPROPRIATIONS.—Appropriations are authorized as necessary for implementing the Compact, including appropriations for carrying out the functions of the Federal Commissioner and alternates and for employment of personnel by the Federal Commissioner.

PURPOSE AND SUMMARY

H.J. Res. 91 grants consent of Congress to the Apalachicola-Chattahoochee-Flint (ACF) River Basin Compact entered into by the states of Alabama, Florida and Georgia providing for the cre-

ation of a commission to develop a formula allocating waters from the basin among the signatory states. The ACF Basin Commission, composed of one voting member from each state (either the governor or his appointee) and a non-voting member appointed by the President of the United States, is directed to agree on an equitable apportionment of the surface waters of the ACF Basin by December 31, 1998 unless the voting members of the Basin Commission unanimously agree to extend the deadline.

BACKGROUND AND NEED FOR THE LEGISLATION

Article I, section 10, clause 3 of the United States Constitution provides that: "No State shall without the Consent of Congress * * * enter into any Agreement or Compact with another State, or with a foreign power. * * * " Congressional consent is required for such agreements and compacts in order to determine whether they work to the detriment of another state and to ensure that they do not conflict with Federal law or Federal interests.

Alabama, Florida and Georgia have for some time been negotiating over allocation of the waters of the ACF Basin. Concerned about the potential impact of proposed reallocations of storage from federal reservoirs in Georgia, Alabama filed suit in 1990 in Federal District Court to prevent the U.S. Army Corps of Engineers from reallocating storage without completing adequate environmental assessments. The State of Florida later joined Alabama in the suit. Thereafter, the three states and the Corps of Engineers, seeking to negotiate and resolve the issue, agreed that a comprehensive study needed to be conducted by a partnership of the three states and the federal government.

In 1992 the three states adopted a Memorandum of Agreement committing themselves to: a partnership which involved a "live and let live" understanding on water use and management in ACF Basin; a joint comprehensive study of water resources issues; achievement of a long-term water management agreement among the partners; and placing the lawsuit in an inactive status. The MOA expires on December 31, 1997. The ACF Compact, together with a virtually identical compact concerning the Alabama-Coosa-Tallapoosa (ACT) River Basin, was negotiated from September through December 1996 by the states and the federal government.[1] The states adopted the ACF Compact during their 1997 legislative sessions.[2]

The issue of water allocation is of considerable importance to the three states. The ACF and ACT river basins effect more than 22,000 square miles in Georgia, comprising 39 per cent of the land mass of that state. Within Alabama, the figure is more than 17,000 square miles and 34 per cent of the state. Florida's effected area is more than 2,000 square miles and 4 per cent of the state. The ACF Basin intertwines the three states in a cause and effect commonality of interests. Two droughts in the 1980's created significant water shortages in the ACF Basin and led to disputes and litigation about water allocation in the basin from federally owned

[1] The Alabama-Coosa-Tallapoosa River Basin Compact was entered into by Alabama and Georgia. It is proposed for Congressional approval in H.J. Res. 92.

[2] Alabama (1997 Alabama Laws Act 97–67 [H.B.35]); Georgia (1997 Georgia Laws Act 7 [H.B. 149]); and Florida (1997 Florida Laws Ch. 97–25 [C.S.S.B. 788]).

and operated flood control projects. An increased need for drinking water, as well as an increased need for water for agricultural and industrial uses, has effected the availability of fresh water downstream flowing into Apalachicola Bay in Florida, increasing salinity levels and posing a threat to marine life in the bay.

HEARINGS

The Subcommittee on Commercial and Administrative Law of the Judiciary Committee held a hearing on H.J. Res. 91 on October 23, 1997. Testimony was received from 6 witnesses: Rep. Bob Barr; Rep. Allen Boyd; Peter D. Coppelman, Department of Justice; G. Robert Kerr, State of Georgia, accompanied by Harold Reheis, State of Georgia; Walter B. Stevenson, State of Alabama and Douglas E. Barr, State of Florida.

COMMITTEE CONSIDERATION

On October 23, 1997, the Subcommittee on Commercial and Administrative Law met in open session and ordered reported the joint resolution, H.J. Res. 91, as amended, by a voice vote, a quorum being present. On October 29, 1997, the Committee met in open session and ordered reported favorably the joint resolution H.J. Res. 91, as amended, by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There were no recorded votes.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

COMMITTEE COST ESTIMATE

The estimate of the Congressional Budget Office was not available at the time of filing this report. In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that enactment of H.J. Res. 91 will not have substantial budget effect for fiscal year 1998.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(l)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, Section 10, Clause 3, of the Constitution.

SECTION-BY-SECTION ANALYSIS

Section 1. Congressional consent

This section gives the consent of Congress to the Apalachicola-Chattahoochee-Flint (ACF) River Basin Compact between Georgia, Florida, and Alabama and the United States, for the purpose of long term management of the waters of three river basins in these States: the Apalachicola, Chattahoochee, and Flint. It sets out the text of the compact.

Article I. Establishes purposes as promoting interstate comity, removing controversies, and equitably apportioning the surface waters of the three river basins.

Article II, III, and IV. Establish the scope as all waters in the three river basins; name the three states and the United States as parties; and provide definitions.

Article V. States that the Compact is binding only after all three State legislatures and the U.S. Congress enact it into law.

Article VI. Creates the Apalachicola-Chattahoochee-Flint (ACF) River Basin Commission with three State Commissioners who are voting members, and a non-voting Federal Commissioner. While the States' Governors are the State Commissioners, they shall appoint alternates who shall act in their place. The President appoints the Federal Commissioner. All decisions are by unanimous vote of the State Commissioners. The Commission shall meet at least once a year; it shall adopt by-laws. It has broad powers to conduct studies; to plan, coordinate, and monitor waters; and most importantly, to establish and modify an allocation formula for apportioning the waters of the ACF Basin among the States.

Article VII. Provides that once the State Commissioners adopt an allocation formula, it becomes binding when the Federal Commissioner concurs with it or fails to take any action. If the Federal Commissioner does not concur within 210 days, he may nonconcur within 45 more days, but nonconcurrence is to be based only on federal law. Federal employees must operate federal projects (dams) in a manner to help meet the allocation formula as long as such operation is consistent with federal laws. The States agree to make their best efforts to achieve compliance with the allocation formula.

Article VIII. Provides that the Compact is terminated if any of four events occur:

(1) the State legislatures enact laws to terminate it;

(2) the Congress repeals it;

(3) the States fail to agree on an allocation formula by December 31, 1998; or

(4) the Federal Commissioner issues a letter of nonconcurrence.

Article IX. Provides that studies may be conducted as needed by the Commission.

Article X. Provides that all State and Federal officials administering other laws affecting the ACF Basin shall, to the maximum

extent practicable, administer those laws to help meet the allocation formula, so long as there is no conflict with other laws. The Compact does not restrict the emergency powers of the President, nor impair the constitutional authority of the United States, nor affect the state laws on water quality and riparian rights.

Article XI. Provides for general public participation specifically on the development, review, and approval of the allocation formula.

Article XII. Requires Commissioners to serve without compensation and operational funds to be provided equally by the States.

Article XIII. Sets non-binding mediation as the principal dispute resolution process among the States; disputes not settled by mediation may be resolved in a court of competent jurisdiction; and any actions brought are limited to equitable relief only (no money damages).

Article XIV. Provides that the Commission may bring actions against any person to enforce the Compact.

Article XV. Provides that the Compact shall not be construed as establishing principles or precedents applicable to any other interstate streams.

Article XVI. Provides that the Compact shall not affect the rights or powers of any State to regulate the use and control of waters within the State, as long as State actions are not inconsistent with the allocation formula.

Article XVII. Commits the states to cooperation in maintaining the water quality of the ACF Basin.

Article XVIII. Provides that no State acquires a right to the use of water because of another State's failure to use all of its allocated water.

Article XIX. Provides that the Compact is severable.

Article XX. Requires notices of ratification to be promptly given.

Section 2. Inconsistency of language

This section provides that insubstantial differences in form or language as adopted by the States shall not effect the validity of the compact.

Section 3. Right to Alter, Amend, Repeal

This section reserves the right to alter, amend, or repeal the joint resolution.

Section 4. Reservations

This section sets out federal reservations to the compact. (1) Representatives of any Federal agency may attend any meeting of the Commission. (2) Upon request of the Federal Commissioner, representatives of any Federal agency may participate in any meetings of technical committees, if any, of the Commission at which the basis or terms and conditions of the allocation formula or modifications to it are to be considered. (3) The Federal Commissioner shall be given notice of any meeting of the Commission or its technical committees at which compliance with the allocation formula by one or more officers, agencies or instrumentalities of the United States is to be discussed. (4) Under the provisions of Article VII(a), the Federal Commissioner may submit a letter of concurrence with the allocation formula within 255 days of its adoption by the State

Commissioners. (5) No mediator shall be selected under Article XIII(b) or Article XIII(c), nor shall any resolution of a dispute under Article XIII(c) be made binding on the United States without concurrence of the Federal Commissioner. (6) The obligations of employees, agencies, and instrumentalities of the United States pursuant to Articles VII(b), X(a), and X(c) to exercise their discretion, to the maximum extent practicable, in a manner consistent with the allocation formula shall not be construed to interfere with the ability of such employees, agencies and instrumentalities to take actions during emergency situations. (7) As among water right holders within one State, nothing in the Compact shall be construed as affecting or intending to affect or in any way interfere with the law of the respective signatories relating to the riparian rights of the United States in and to the waters of the ACF Basin.

The Subcommittee adopted, on a voice vote, an amendment offered by Chairman Gekas which made two changes agreed to by the Department of Justice and the states.

First, the amendment deleted the reference to "mandates" in section 4, paragraph 6 of the introduced joint resolution, in order to make clear that, as the preamble of the section states, the Compact "preserve[s] federal discretion under law" when complying with water allocation formulas. In response to a question from Ranking Member Nadler, witnesses from the Department of Justice and the states agreed that this change would preserve the discretion of federal agencies to enforce the laws they are responsible for administering.

Second, the words "and no resolution of a dispute under Article XIII(c) shall be made binding on the United States without concurrence of the Federal Commissioner" were added at the end of section 4, paragraph 5.

Section 5. Effectuation

Subsection (a) authorizes federal agencies to: (a) engage in cooperative relationships with the Commission; (b) conduct studies and monitoring programs in cooperation with the Commission; (c) enter into agreements to indemnify private landowners against liability that may arise from studies and monitoring programs undertaken in cooperation with the Commission; and (d) furnish assistance, including the provision of services, facilities, and personnel, to the Federal Commissioner.

Subsection (b) authorizes appropriations as necessary for implementing the Compact, including appropriations for carrying out the functions of the Federal Commissioner and alternates and for employment of personnel by the Federal Commissioner.

AGENCY VIEWS

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, October 1, 1997.

Hon. GEORGE W. GEKAS,
Chairman, Subcommittee on Commercial and Administrative Law, Committee on the Judiciary
Washington, DC.

DEAR MR. CHAIRMAN: This letter provides the Administration's views on H.J. Res. 91, a Joint Resolution granting the consent of Congress to the Apalachicola-Chattahoochee-Flint (ACF) River Basin Compact, and H.J. Res. 92, a Joint Resolution granting the consent of Congress to the Alabama-Coosa-Tallapoosa (ACT) River Basin Compact. The Administration supports passage of the Joint Resolutions, provided four amendments are made to Section 4.

H.J. Res. 91 and 92 concern two water basins: the ACF basin extends through Georgia, Alabama and Florida and the ACT basin extends through Georgia and Alabama. The compacts for both basins have been ratified by the affected state legislatures and are now before Congress for approval. The Department of Justice has represented the Administration in its negotiations with Alabama, Florida, and Georgia and supports the development of cooperative management of the scarce water resources in the two basins. We believe that a cooperative relationship among the three states and the federal agencies will promote the public interest, help resolve disputes, and further the interests of the state and federal agencies that manage programs in these basins. The Administration's proposed amendments to H.J. Res. 91 and H.J. Res. 92, outlined below, are necessary to achieve these goals.

I. BACKGROUND

H.J. Res. 91 and 92 contain provisions that essentially mirror each other. Section 1 provides the consent of Congress to the applicable compacts, and recites each compact in full. Section 2 preserves the validity of each compact notwithstanding insubstantial differences in form or language as adopted by each State. Section 3 preserves Congress' right to amend each compact. Section 4 addresses the need for federal agency participation and the preservation of federal discretion, and clarifies several compact provisions. Finally, Section 5 authorizes federal agencies to conduct joint studies, monitoring programs and other activities with the Commission established by the compacts and to provide assistance to the Federal Commissioner. It also authorizes appropriations for the purpose of implementing the compacts.

The compacts, as ratified by the states, provide for future development and implementation of water allocation formulas for the ACF and ACT river basins. Each compact establishes a Commission comprised of a voting Commissioner from each State and a nonvoting Federal Commissioner. These Commissions are charged with developing a water allocation formula for their respective basins by December 31, 1998, unless the voting members unanimously agree to extend that deadline. After the voting members unanimously agree on a formula, the Federal Commissioner would

have 255 days to concur or not concur on the formula. The formula becomes effective if the Federal Commissioner fails either to accept or reject the formula within the 255 day period. Further, any decision not to concur must be based on federal law. After adoption of an allocation formula, the compacts would require each federal agency to comply with the formula to the maximum extent practicable, unless compliance would conflict with federal law. The compacts contain several other provisions, including provisions for alternative dispute resolution and public review of proposed allocation formulas.

II. ADMINISTRATION AMENDMENTS

We recommend four changes to Section 4 of the Joint Resolutions. First, and most significant, we recommend that paragraph (6) be amended as follows:

> (6) [The obligations of employees, agencies, and instrumentalities of the United States pursuant to Articles VII(b), X(a), and X(c) to exercise their discretion, to the maximum extent practicable, in a manner consistent with the allocation formula shall not be construed to interfere with the ability of such employees, agencies, and instrumentalities to take actions mandated by Federal law or during emergency situations.] *This Compact preserves Federal agency discretion under law when meeting the obligation to comply, to the maximum extent practicable, with an allocation formula.*

As introduced, paragraph (6) is contrary to one of the stated purposes of Section 4, specifically the goal of preserving "Federal *discretion* under law." (emphasis added). (See page 29, line 18 of H.J. Res. 91, and page 29, line 13 of H.J. Res. 92). As currently drafted, paragraph (6) fails to recognize that federal programs in the basins are founded on the exercise of discretion. Congress has charged federal agencies with the responsibility of constructing and operating projects for a variety of purposes, such as navigation, flood control, hydropower, recreation, fish and wildlife protection, water quality and water supply. The statutory authorities for these projects require the agencies to exercise discretion as they balance these competing objectives in order to maximize the public interest. The Administration's substitute language reflects this Congressional intent, and recognizes that, while the federal agencies fully intend to administer their programs consistent with the adopted water allocation formulas, under some circumstances, federal agencies may be constrained from following the formulas because of the need to exercise discretion as they carry out the statutory trust that has been placed in them by Congress. Preservation of this statutory discretion is particularly important because, unlike other water compacts, these two do not include the allocation formulas which will control the parties. Instead, they only provide procedures for developing the formulas, and one can only speculate on their ultimate composition.

The Administration's proposed substitute language was developed and agreed to earlier during negotiations hosted by the Speaker of the House. In a letter memorializing those negotiations

and sent to Army Assistant Secretary Lancaster on January 11, 1997, the Speaker proposed inclusion of the above language in a resolution implementing the compacts.

The second and third Administration amendments seek to reflect what all the parties to the compacts already have agreed—that there is a need for federal agency participation in technical committee meetings of the Commissions held for the purpose of developing or amending the water allocation formula, and in meetings where federal compliance with a water allocation formula is discussed. The following two amendments will fulfill this need.

To ensure full federal participation in meetings where development of a water allocation formula is at issue, we recommend the amendment of Section 4, paragraph (2) (page 30, lines 1–2 of H.J. Res. 91 and page 29, lines 20–21 of H.J. Res. 92) by deleting the first clause, as follows:

> **[**Upon the request of the Federal Commissioner,**]** Representatives of any Federal agency may participate in any meetings of technical committees, if any, of the Commission at which the basis or terms and conditions of the allocation formula or modifications to the allocation formula are to be discussed or negotiated.

Article VII(a) of the compacts requires that the Federal Commissioner be given notice of technical committee meetings at which the allocation formula is discussed. As drafted, paragraph (2) of H.J. Res. 91 & 92 would give federal agencies access to those meetings only if the Federal Commissioner requests their attendance. This requirement will impede federal agency participation at the technical committee meetings and will work to the detriment of all parties. Federal agency participation is critical not only to allow the agencies to express their views at the meetings but also to allow them to keep abreast of formula developments, so that they may complete any necessary environmental or other analyses within the 255-day deadline allowed for federal concurrence on a proposed allocation formula.

To ensure full federal participation in meetings held to discuss federal compliance with a water allocation formula, we also recommend that section 4, paragraph (3) (page 30 of both resolutions) be amended as follows:

> (3) The Federal Commissioner shall be given notice of any meeting of the Commission or any meeting of technical committees, if any, for the Commission at which compliance with the allocation formula by one or more officers, agencies, or instrumentalities of the United States is to be discussed*, and representatives of any Federal agency may participate in any such meeting of technical committees.*

Paragraph (3) provides for notice to the Federal Commissioner of any technical committee meetings of the Commission where federal compliance with an allocation formula will be discussed. However, unlike the preceding paragraph on technical committee meetings held to develop an allocation formula, paragraph (3) omits the provision for federal agencies to participate in the meetings. The suggested addition would correct that omission, and would make the

paragraph conform with paragraph (2), by giving federal agencies the ability to participate in both types of meetings. The opportunity to participate at any meetings on federal compliance is important to allow for early action to remedy any alleged violations.

The fourth recommendation seeks to amend the dispute resolution provisions in order to make the procedures for Federal agency participation parallel to the state procedures. We recommend that section 4, paragraph (5) (page 30 of both resolutions) be amended as follows:

> (5) No mediator shall be selected under Article XIII(b) or Article XIII(c) without the concurrence of the Federal Commissioner*, and no resolution of a dispute under Article XIII(c) shall be made binding on the United States without concurrence of the Federal Commissioner.*

Article XIII of the Compacts provides for dispute resolution procedures which can be a helpful tool for avoiding expensive and time-consuming litigation. While most of Article XIII specifies procedures for dispute resolution between the states, paragraph (c) allows the United States to initiate the procedures "in the same manner as other parties to the Compact." See page 24, lines 4–6 of both resolutions.

Paragraph (a)(4) of the Dispute Resolution title provides that, in order for a resolution of a dispute under alternative dispute resolution procedures to be binding on the states, all parties must agree to be bound. See page 20, lines 9–13 of both resolutions. The language proposed above would similarly provide that, should the Federal Commissioner agree to participate in an alternative dispute resolution proceeding, that decision could not be binding on the United States without the agreement of the Federal Commissioner. This change will allow for the United States to participate in alternative dispute resolution in the "same manner" as the states.

In sum, we support enactment of H.J. Res. 91 and H.J. Res. 92 with the four recommended changes. We believe these amendments will further the interests of both the federal and state agencies that manage programs in these basins.

The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's programs.

Sincerely,

ANDREW FOIS,
Assistant Attorney General.

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