**WHO OWNS WATER?**

Though this is not always the case, the short answer for purposes of this article is the federal government; the Army Corps of Engineers. Cumberland’s Water Law professor[[1]](#footnote-1) asked the question “who owns the water of the United States?” the first day of class. The students were unaware at the time, but that question would resonate in their minds beyond situations pertaining to the course. The current debate in the southeast concerns thirty years of litigation for water between three states that became known as the “tri-state water wars.” Though Alabama was dismissed from further court proceedings, Florida and Georgia are still involved in the ongoing water war that is yet to be fully resolved and is the topic of this article.

Background

There are two river basins shared by Alabama, Florida, and Georgia: the Apalachicola-Chattahoochee-Flint (ACF) and the Alabama-Coosa-Tallapoosa (ACT) river basins.[[2]](#footnote-2) The rivers supply water, including drinking water, to all three states for various needs.[[3]](#footnote-3) The ACF basin[[4]](#footnote-4) includes Lake Lanier on the Chattahoochee River and is the main water supplier to Atlanta and other downstream communities.[[5]](#footnote-5) The ACF flows from Atlanta, along the west border between Georgia and Atlanta, joins the Flint River before flowing into the Apalachicola Bay in Florida.[[6]](#footnote-6) The ACT basin includes Lake Allatoona along the Etowah River and supplies water to Cobb County and Marietta Georgia.[[7]](#footnote-7) Both basins have dams that are controlled by the Army Corps of Engineers (Corps).[[8]](#footnote-8) Furthermore, Alabama challenged the Corps water supply operations from Lake Allatoona in the ACT, but the case was dismissed in 2012 due to premature litigation, thus leaving the ACF as the primary basin in litigation.[[9]](#footnote-9)

The wars over water between the three states began as early as 1956 when the Corps completed the Buford Dam to form Lake Lanier by impeding the Chattahoochee River.[[10]](#footnote-10) The Corps retained authority over the dam to control downstream water flow and operate three hydroelectric turbines that produced power for the region while still complying with federal laws, including conservation of fish and wildlife and water quality standards.[[11]](#footnote-11) Then in 1959, the Corps released operating guidelines that stated how the water from Lake Lanier would be allocated to various locations, including the city of Atlanta.[[12]](#footnote-12) Despite these operating guidelines, Alabama, Florida, and Georgia formed a commission in 1997 to reconcile arising water disputes and reallocate water appropriately for each state.[[13]](#footnote-13) However, this commission was terminated in 2003 when the states were unable to reach an agreement and so began the tri-state water wars.[[14]](#footnote-14) The water issues were then amplified after a drought spread throughout the southeast in 2007.[[15]](#footnote-15) Even after further court involvement, attempting to force the states to reconcile the issue, the states began suing one another in 2013.[[16]](#footnote-16) In late 2014, the United States Supreme Court agreed to hear Florida’s lawsuit and appointed an attorney from Maine, Ralph Lancaster, to be a special master.[[17]](#footnote-17) The special master was appointed to oversee the case proceedings and to resolve the dispute between the two states.[[18]](#footnote-18)

Lancaster released Alabama from being a party and also rejected Georgia’s argument that the federal government, the Corps, should be a party to the suit because that would cause case dismissal.[[19]](#footnote-19) Evidentiary hearings began October 31, 2016 and ended approximately a month later, on December 1, resulting in a total of thirty million dollars in legal costs in early 2017.[[20]](#footnote-20) Lancaster’s report disclosing his final opinion on the case was released February 14, 2017, to which the Supreme Court holds discretion to either adopt or reject.[[21]](#footnote-21)

Court Proceedings

Florida began the lawsuit as an equitable apportionment action by asking the Supreme Court to issue a decree allocating a specified amount of water to each state.[[22]](#footnote-22) This case was an original jurisdiction case because it involves a suit between two states.[[23]](#footnote-23) Florida asserted that Georgia increased their water use, which decreased the water flow downstream to Apalachicola Bay.[[24]](#footnote-24) As alleged, the decreased river flow into the bay caused increased salinity levels, which directly caused the seafood population to harm and suffering, specifically oysters.[[25]](#footnote-25) Florida argued that the state is entitled to an adequate stream flow in the river to sustain the ecology and oyster beds in the bay.[[26]](#footnote-26) Alternatively, Georgia asserted its water consumption is adequate enough to meet water flow demands downstream including Atlanta, irrigation, and agricultural communities, and any resulting harm is self-inflicted, a product of misappropriation by the Corps, or climate change.[[27]](#footnote-27) Georgia further asserted that Florida’s claim is irremediable if the Corps is not a party to the suit. [[28]](#footnote-28)

Equitable Apportionment

Equitable apportionment is a federal doctrine that governs disputes between states regarding the right to water.[[29]](#footnote-29) The doctrine is only available to a “state that has suffered ‘real and substantial injury’ as a result of proposed or actual upstream water use” and the injury must be redressable by the court in which the suit was filed.[[30]](#footnote-30) Equitable apportionment implements “the exercise of an informed judgment on a consideration of many factors” to allocate resources in a just and equitable manner without one single factor controlling.[[31]](#footnote-31) The factors considered include “physical and climatic conditions, the consumptive use of water in several sections of the river, the character and rate of return flows, the extent of established uses, the availability of storage water, the practical effect of wasteful uses on downstream areas, [and] the damage to upstream areas as compared to the benefits to downstream areas if a limitation is imposed on the former.”[[32]](#footnote-32) Additionally, courts weigh the harms and benefits of the competing states.[[33]](#footnote-33)

The riparian system, used by the midwest and southern states, allow an owner of land contiguous to a water body to be entitled to stream flow by or through the land.[[34]](#footnote-34) Each riparian proprietor has an equal right to the water so long as the use is reasonable with respect to other riparian interests. [[35]](#footnote-35) As applied to Florida and Georgia, Florida is considered a downstream water user holding a riparian interest and is entitled to use the water subject to reasonable upstream uses by Georgia.[[36]](#footnote-36)

Various Stakeholders

Though Florida and Georgia are the two parties identified in the case, there are several other stakeholders that are directly impacted from the water wars and the outcome.

**Florida** - Floridians residing in Apalachicola Bay are directly impacted by this case. These include people such as the oyster farmers and the seafood industry, fish and wildlife services, and the Apalachicola Riverkeeper. Apalachicola Bay is one of the most productive estuaries in the northern hemisphere, making it a major resource for seafood such as oysters, shrimp, and fish.[[37]](#footnote-37) The ACF river flow is necessary to dilute the salt water from the ocean and maintain the salinity in the Bay, which directly supplies appropriate nutrients to the oysters.[[38]](#footnote-38) The Bay produces ninety percent of Florida’s oysters, which supports a culture, community, and economy founded on oyster farms and fisheries, with significant man labor to ensure proper harvesting.[[39]](#footnote-39) Joseph Parrish, representing the seafood industry in Apalachicola Bay, claimed the whole economy in the area is affected by the lack of water in the bay because the workers in the seafood industry are unable to work which makes them unable to provide for their families.[[40]](#footnote-40)

In addition to the seafood industry, the Fish and Wildlife Service (FWS) representing the natural ecosystems, the wildlife, and the environment is responsible for protecting fish, migratory birds, wetlands and 65 endangered species within the Apalachicola-Chattahoochee-Flint (ACF) and the adjacent Alabama-Coosa-Tallapoosa (ACT) basins, including four freshwater mussel species and gulf sturgeon.[[41]](#footnote-41) Any increase in water salinity levels, caused by a decrease in river water and increase in ocean water in Apalachicola Bay, may cause harm or devastation to these species and their surrounding ecosystems. Furthermore, the FWS is responsible for controlling and maintaining several refuges along the waters in dispute including the Eufaula National Wildlife Refuge on the Chattahoochee River in Georgia and Alabama, the St. Vincent National Wildlife Refuge along the Apalachicola River in Florida, and the Warm Springs Service Fish Hatchery and Regional Fish Technology Center in the upper Flint River basin in Georgia.[[42]](#footnote-42) Due to their management of these refuges, they are a riparian landowner and water in the ACT.[[43]](#footnote-43) Lastly, the Apalachicola Bay Riverkeeper, Dan Tonsmeire is also affected in representing the river, bay, and the supporting communities.[[44]](#footnote-44) Tonsmeire continues to lobby Florida senators and congressmen in an effort to pass laws regarding water allocation and ensure that the Supreme Court does not adopt the special master’s recommendation in upcoming proceedings.[[45]](#footnote-45)

**Georgia** – This water issue directly affects Georgia citizens living in Atlanta. The city must depend on surface water from lakes and rivers because there is limited groundwater.[[46]](#footnote-46) Thus, Atlanta mainly depends on the Corps’ ability to store water in Lake Lanier and Lake Allatoona for the city’s water supply.[[47]](#footnote-47) With water being highly desired, the area of Metro Atlanta employed a water conservation program that decreased the total water use despite the increase in population, using roughly 602 million gallons of water per day.[[48]](#footnote-48) Atlanta is the ninth-largest city in the United States and any restriction on water would mean a restriction on population growth, a decline in new businesses, property values and income.[[49]](#footnote-49) Additionally, farmers in southern Georgia who rely on the river would be limited in agriculture growth and crop productivity.[[50]](#footnote-50) Other parties affected by the water wars include the Flint Riverkeeper[[51]](#footnote-51), Gordon Rogers, and the Chattahoochee Riverkeeper[[52]](#footnote-52), Jason Ulseth, who seek to protect the ecosystems of the river.

**Alabama** – In addition to the primary stakeholders in litigation, Alabama also is an affected party due to the agriculture industry, fisheries, and nuclear power industry. The Farley Nuclear Plant, owned by Alabama Power, withdrew 4,405 million gallons of water per day in the year 2013.[[53]](#footnote-53) However, of the 4,405 million gallons per day of water withdrawn from the ACF, only 281 million gallons of water was consumed, or used, by the facility per day.[[54]](#footnote-54) The remaining water was replenished back into the ACF basin.

**Army Corps of Engineers** – The Corps also retains an interest in this complex litigation issue because they hold the authority of the dams and control the water flow in the lakes discussed. The Corps operates three reservoirs with substantial conservation storage capacity in the ACF basin, with sixty-five percent of the usable storage being in Lake Lanier from which Metro Atlanta is supplied water.[[55]](#footnote-55) Though they are not a party to the suit between Florida and Georgia, the Corps is responsible for any issues arising from water misappropriation and therefore, could be a party in future suits.

**ACF Stakeholders Incorporated** – The Apalachicola-Chattahoochee-Flint Stakeholders Incorporated is a large organization comprised of over seventy members, representing fourteen different interests, that seeks to achieve an equitable water-sharing solution for all parties through scientific modeling in sustainable water management plans and in-stream flow assessments.[[56]](#footnote-56) The ACF Stakeholders seek an interstate compact by representing interests in all three states.[[57]](#footnote-57)

Key Issues

Initially, there are two key issues: first, has Florida sustained a “real and substantial injury” resulting from Georgia’s unreasonable upstream water use, and second, will the consumption cap by equitable apportionment redress Florida’s alleged injury?[[58]](#footnote-58) Florida, as the aggrieved party, bears the burden to prove, through clear and convincing evidence, that Georgia’s conduct caused Florida’s “real and substantial injury” and that the proposed remedy will redress the injury.[[59]](#footnote-59) After hearing the case, Lancaster combines the two issues into one single issue that resolves the case: even if Florida sustained an injury caused by Georgia’s unreasonable upstream water use, can the injury be redressed by limiting Georgia’s consumptive use without binding the Corps, who is not a party to the suit?[[60]](#footnote-60) However, if the Corps were added to the case, sovereign immunity would preclude the federal government from being brought into an argument between two states. This creates a complex predicament for the states.

The Result

Ultimately, Lancaster recommended the Supreme Court deny Florida’s equitable apportionment request for relief because, without the Corps being a party to the suit, the court is unable to mandate the Corps to remedy any issue within their operations.[[61]](#footnote-61) Thus, Florida was unable to prove, with clear and convincing evidence, that the Supreme Court could redress their injury because the only party that could redress the alleged injury was not a party to the suit.[[62]](#footnote-62)

The Rationale

Through the trial, Lancaster determined Florida indeed sustained actual harm.[[63]](#footnote-63) The oyster fisheries collapse in 2012 evidenced this harm because the collapse was caused by decreased flow in the river, which directly increased salinity levels in the Bay.[[64]](#footnote-64) This collapse resulted in a substantial threat to the oystermen’s long-term sustainability in the region.[[65]](#footnote-65) In addition to Florida’s harm, Lancaster also determined that Georgia’s consumption on water for agriculture use dramatically increased since 1970 and water use permits do not employ limitations on the amount used.[[66]](#footnote-66) Furthermore, despite experiencing a drought in 2011, Georgia did not declare a drought due to the costs associated with preventative action.[[67]](#footnote-67)

Lancaster then turned to the Corps’ operational protocols to analyze any relief available to Florida.[[68]](#footnote-68) The Corps operates three reservoirs with substantial conservation storage capacity in the ACF basin, with sixty-five percent of the usable storage being in Lake Lanier from which Metro Atlanta is supplied water.[[69]](#footnote-69) The Corps’ authority is designed to balance all project purposes and operate the reservoirs in a continuous and unified manner to ensure appropriate water is stored during wet times of the year so as to release water during the critical drought periods.[[70]](#footnote-70) The Corps began working in 2015 on an updated ACF Water Control Manual that explains how the reservoirs will be operated, including water flow limits downstream.[[71]](#footnote-71) The most recent Master Water Control Manual was updated in the 1950’s before reservoirs and dams were constructed.[[72]](#footnote-72) However, due to the recent litigation concerning the ACF, the Corps developed a new Master Water Control Manual, and an Environmental Impact Statement that analyzes the environmental benefits and impacts from the control manual.[[73]](#footnote-73) However, Lancaster determined that the Corps’ revised control manual should not materially affect the outcome of the case because it is unlikely to have an incremental effect on the flow conditions into Florida.[[74]](#footnote-74) The new Water Control Manual will begin drought operations earlier, set revised action zones for reservoir management, and slightly constrain operations, but none of these will drastically affect the total water flow into Florida.[[75]](#footnote-75) Additionally, the Corps recently released a finalized Environmental Impact Statement in December of 2016 shortly after trial concluded.[[76]](#footnote-76)

Ultimately, Lancaster determined the evidence supported a finding that the Corps’ operation of the basins was a “highly regulated system” that allows them to operate projects as they deemed necessary to offset any increased flow during droughts or low flows and that any potential benefit to Florida from increased water was uncertain and speculative.[[77]](#footnote-77) Even if Georgia increased stream flow in the Flint River by decreasing water use for agriculture, expert testimony held that water would not reach Florida during a drought or low flow conditions.[[78]](#footnote-78) Furthermore, even if the Corps could offset increased stream flow and allocate more water to Florida, there is no guarantee that they do so because the Corps itself retains discretion in its operation.[[79]](#footnote-79) Despite significant expert testimony and hydrologic modeling in support of Florida’s contention that a consumption cap would increase flows in the ACF and into Florida, Lancaster concluded Florida failed to prove, by clear and convincing evidence, that the Corps would exercise its discretion and make greater releases than required to redress Florida’s injury.[[80]](#footnote-80)

The Lasting Implications

Lancaster’s final report finding Florida’s failure to prove limitations on Georgia’s water consumption would redress resulting injuries is not legally and was submitted to the Supreme Court on February 16, 2017 for further review.[[81]](#footnote-81) The Supreme Court ordered a briefing schedule March 20, 2017 with exceptions due May 31, 2017, replies due July 31, 2017, and sur-replies due August 30, 3017.[[82]](#footnote-82)

Assuming Lancaster’s report stands, the long-term effects of no water restrictions mean the Corps retains an absolute authority to discern the appropriation of water. The various stakeholders are left with limited options including congressional appointment, equitable appointment, water-sharing compacts, and private litigation.[[83]](#footnote-83)

The first option is congressional apportionment of the waters between states.[[84]](#footnote-84) This would bind states to the terms of the congressional act and has only been done twice in history because it is difficult to make congressional action neutral without favoring one state and disadvantaging another.[[85]](#footnote-85)

The second option is implementing an agreement or compact among the states. [[86]](#footnote-86) This would require extensive negotiations and state cooperation, which failed numerous times in the past for Florida and Georgia. The states would be forced to combine their efforts in creating a water-sharing compact. The advantage to an interstate compact is that they do not generally regulate the citizens and they are as enforceable as the states deem necessary without having federal repercussions.[[87]](#footnote-87) Any resulting litigation from the compact then becomes a contractual issue and the court applies contractual law for any breach of the compact.[[88]](#footnote-88)

The third option is equitable apportionment litigation between or among the states and is exactly what Florida sought in this case.[[89]](#footnote-89) Typically an equitable apportionment is made in the absence of mutual agreement or congressional action.[[90]](#footnote-90) Equitable apportionment is the principal instrument outside of negotiations to resolve interstate water disputes and usually involves the appointment of a special master to hear all evidence and render a decision.[[91]](#footnote-91) The disadvantage of equitable apportionment is that the decision binds many who are not present before the court through *parens patriae*.[[92]](#footnote-92)

The last option is private interstate water litigation in federal courts between water users.[[93]](#footnote-93) Private interstate water litigation is usually used when the relevant state government lacks interest or will to negotiate a compact or employ equitable apportionment.[[94]](#footnote-94) The disadvantage of this option is that jurisdictional and choice-of-law problems can arise but can often be overcome with long-arm statutes or *in personam* jurisdiction.[[95]](#footnote-95)

Possible Solutions

This leaves the resonating question of what happens next? A wise professor once suggested that Florida could divert water flow from the Destin Bay to Apalachicola Bay.[[96]](#footnote-96) Then Florida would have the flow required for the oyster farms or could sue Alabama instead of Georgia for more water. Florida could also sue Farley Nuclear for proper water allocation, which would involve private interstate water litigation. However, this would likely cause the same outcome as the current case.

Alternatively, the oyster farmers of Apalachicola Bay could team up with the Fish and Wildlife Services and sue Florida for failure to comply with mandatory flows required by the Endangered Species Act to protect the upstream species and species in the Bay. The Corps controls the last dam before the oyster farms in the Bay and they are required to comply with federal laws, such as the Endangered Species Act, to meet minimum flow requirements so as to keep the species from extinction. On the other hand, it is always better to have more teammates than enemies, which is why the Apalachicola Riverkeeper is currently trying to adopt a water management plan to sustain all the basin users with the assistance from senators Nelson and Rubio. Similarly, the Department of Justice filed an amicus brief that supports a case dismissal until the Corps issues a revised and binding Master Manual for the Apalachicola-Chattahoochee-Flint (ACF) River Basin. [[97]](#footnote-97)

Ultimately, it is this writer’s opinion that the states attempt to negotiate an appropriate allocation system that takes into consideration the possibility that Mother Nature herself is the root of *some* disputes. Looking at science objectively, and together, the states could use twice as much will power to produce adequate results for all parties. Then, Florida and Georgia, together, could sue the Corps if necessary for proper water appropriation.

**APPENDIX A**

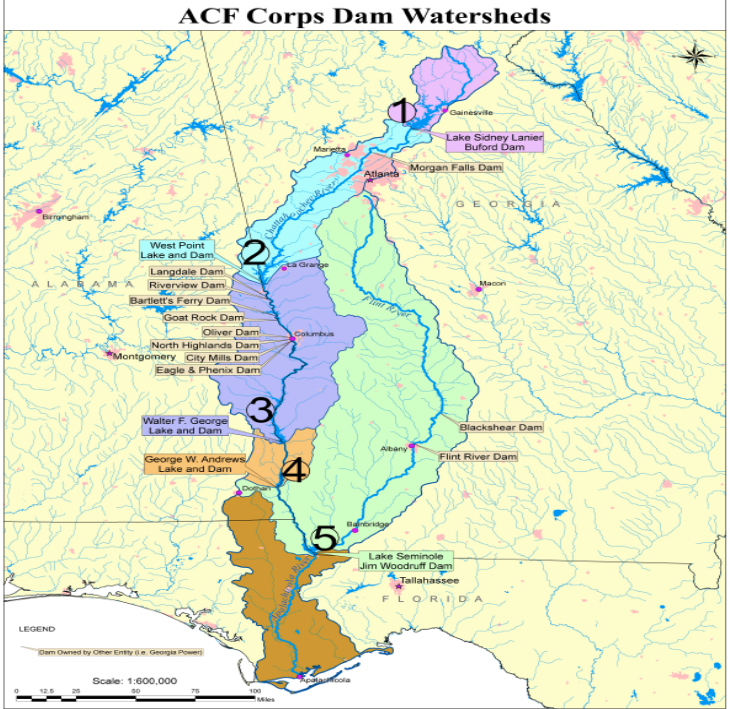


Photo provided by Alabama Power.[[98]](#footnote-98)

1. Mitch Reid, J.D., Alabama Rivers Alliance. [↑](#footnote-ref-1)
2. Atlanta Regional Commission, *Tri-State Water Wars: 25 Years of Litigation between Alabama, Florida and Georgia*, AtlantaRegional.com (2016), http://www.atlantaregional.com/environment/tri-state-water-wars/background. [↑](#footnote-ref-2)
3. *Id.* [↑](#footnote-ref-3)
4. *See* Appendix A for a pictorial representation of the ACF provided by Alabama Power. [↑](#footnote-ref-4)
5. Atlanta Regional Commission, *Tri-State Water Wars: 25 Years of Litigation between Alabama, Florida and Georgia*, AtlantaRegional.com (2016), http://www.atlantaregional.com/environment/tri-state-water-wars/background. [↑](#footnote-ref-5)
6. Report of the Special Master, Florida v. Georgia, 2017 WL 656655 (U.S. Feb. 16, 2017) (No. 142, Orig.). [↑](#footnote-ref-6)
7. *Id.* [↑](#footnote-ref-7)
8. *Id.* [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. Greg Bluestein, *Georgia Scores a Court Win Over Florida in Water War*, Myajc.com (Feb. 14, 2017, 6:18 PM), http://www.myajc.com/news/state--regional-govt--politics/georgia-scores-win-over-florida-water-war/F84wOLZy8hnlgY0d1BIMuM/. [↑](#footnote-ref-10)
11. *Id.*; Report of the Special Master, Florida v. Georgia, 2017 WL 656655 (U.S. Feb. 16, 2017) (No. 142, Orig.) (stating the Corps’ requirement for federal law compliance). [↑](#footnote-ref-11)
12. Greg Bluestein, *Georgia Scores a Court Win Over Florida in Water War*, Myajc.com (Feb. 14, 2017, 6:18 PM), http://www.myajc.com/news/state--regional-govt--politics/georgia-scores-win-over-florida-water-war/F84wOLZy8hnlgY0d1BIMuM/. [↑](#footnote-ref-12)
13. *Id.* [↑](#footnote-ref-13)
14. *Id.* [↑](#footnote-ref-14)
15. *Id.* [↑](#footnote-ref-15)
16. Greg Bluestein, *Georgia Scores a Court Win Over Florida in Water War*, Myajc.com (Feb. 14, 2017, 6:18 PM), http://www.myajc.com/news/state--regional-govt--politics/georgia-scores-win-over-florida-water-war/F84wOLZy8hnlgY0d1BIMuM/. [↑](#footnote-ref-16)
17. *Id.* [↑](#footnote-ref-17)
18. *Id.*; Report of the Special Master, Florida v. Georgia, 2017 WL 656655 (U.S. Feb. 16, 2017) (No. 142, Orig.). [↑](#footnote-ref-18)
19. *Id.* [↑](#footnote-ref-19)
20. *Id.* [↑](#footnote-ref-20)
21. *Id.* [↑](#footnote-ref-21)
22. Atlanta Regional Commission, *U.S. Supreme Court: Equitable Apportionment*, AtlantaRegional.com (2016), http://www.atlantaregional.com/environment/tri-state-water-wars/acf-supreme-court. [↑](#footnote-ref-22)
23. Report of the Special Master, Florida v. Georgia, 2017 WL 656655 (U.S. Feb. 16, 2017) (No. 142, Orig.). [↑](#footnote-ref-23)
24. Atlanta Regional Commission, *U.S. Supreme Court: Equitable Apportionment*, AtlantaRegional.com (2016), http://www.atlantaregional.com/environment/tri-state-water-wars/acf-supreme-court. [↑](#footnote-ref-24)
25. *Id.* [↑](#footnote-ref-25)
26. Report of the Special Master, Florida v. Georgia, 2017 WL 656655 (U.S. Feb. 16, 2017) (No. 142, Orig.). [↑](#footnote-ref-26)
27. *Id.* [↑](#footnote-ref-27)
28. *Id.* [↑](#footnote-ref-28)
29. *Id.* (citing Colorado v. New Mexico, 459 U.S. 176, 183 (1982)). [↑](#footnote-ref-29)
30. Report of the Special Master, Florida v. Georgia, 2017 WL 656655 (U.S. Feb. 16, 2017) (No. 142, Orig.).(citing Idaho v. Oregon462 U.S. 1017, 1027 (1983)). [↑](#footnote-ref-30)
31. Nebraska v. Wyoming, 325 U.S. 589, 618 (1945). [↑](#footnote-ref-31)
32. Colorado v. New Mexico, 459 U.S. 176, 183 (1982). [↑](#footnote-ref-32)
33. Nebraska v. Wyoming, 325 U.S. at 619. [↑](#footnote-ref-33)
34. Report of the Special Master, Florida v. Georgia, 2017 WL 656655 (U.S. Feb. 16, 2017) (No. 142, Orig.). [↑](#footnote-ref-34)
35. *Id.* [↑](#footnote-ref-35)
36. *Id.* [↑](#footnote-ref-36)
37. *Id.* [↑](#footnote-ref-37)
38. *Id.* [↑](#footnote-ref-38)
39. *Id.* [↑](#footnote-ref-39)
40. Molly Samuel, *Florida and Georgia Argue in Court Over Water Rights*, NPR.org (Oct. 30, 2016 5:00 PM ET), http://www.npr.org/2016/10/30/499985890/florida-and-georgia-argue-in-court-over-water-rights/ (quoting Joseph Parrish in an interview. “It affects the whole economy. It affects people’s ability to buy groceries, provide for their family. You know, it’d be like a small town that relies on steel mills or relies on coal and all of a sudden there ain’t no more.”). [↑](#footnote-ref-40)
41. Georgia Ecological Services Field Offices, *The ACF and ACT Basins: Water Allocation and Natural Resource Protection*, U.S. Fish and Wildlife Service (March 30, 2015), https://www.fws.gov/athens/rivers/ACT\_ACF.html. [↑](#footnote-ref-41)
42. *Id.* [↑](#footnote-ref-42)
43. *Id.* [↑](#footnote-ref-43)
44. Apalachicola Riverkeeper, *FL v. GA*, Apalachicolariverkeeper.org (May 2, 2017), http://apalachicolariverkeeper.org/fl-v-ga/. [↑](#footnote-ref-44)
45. *Id.*  [↑](#footnote-ref-45)
46. Atlanta Regional Commission, *Tri-State Water Wars: 25 Years of Litigation between Alabama, Florida and Georgia*, AtlantaRegional.com (2016), http://www.atlantaregional.com/environment/tri-state-water-wars/background (stating the granite geology underlying metro Atlanta causes groundwater resources to be extremely limited and thus, Atlanta must obtain water in lakes and rivers). [↑](#footnote-ref-46)
47. *Id.* [↑](#footnote-ref-47)
48. Grace Trimble, *Facts about Water Use in Georgia and Metro Atlanta*, Atlanta Regional Commission, July 18, 2013), http://www.atlantaregional.com/about-us/news-press/press-releases/facts-about-water-use-in-georgia-and-metro-atlanta (stating metro Atlanta has a water conservation program that decreased the total water use in Atlanta by fifteen percent between 2006 and 2009 despite the population growth of six percent. The total water use in Atlanta was 602 million gallons per day in 2006). [↑](#footnote-ref-48)
49. Molly Samuel, *Florida and Georgia Argue in Court Over Water Rights*, NPR.org (Oct. 30, 2016 5:00 PM ET), http://www.npr.org/2016/10/30/499985890/florida-and-georgia-argue-in-court-over-water-rights/ (quoting the chief economist at the Metro Atlanta Chamber, Tom Cunningham, who states strict water use limits would restrict population growth and cause a decline in new businesses, property value, and income.). [↑](#footnote-ref-49)
50. *Id.* [↑](#footnote-ref-50)
51. *See* Flint Riverkeeper, *Fighting to Protect Our Flint River*, FlintRiverkeeper.org (2013), http://www.flintriverkeeper.org (citing the Flint Riverkeeper’s dedication to keeping the river ecologically diverse as one of the few rivers left in the U.S. with more than 200 miles unimpeded). [↑](#footnote-ref-51)
52. *See* Chattahoochee Riverkeeper, *Keeping Watch Over Our Waters*, Chattahooche.org (2015), https://chattahoochee.org (citing the Chattahoochee Riverkeeper’s mission to advocate and secure the river and restore and preserve the ecological health to all depending on the river). [↑](#footnote-ref-52)
53. T.C. Moorer, *Energy on the ACF: Adapting to a Changing Environment*, Southern Nuclear Operating Company (Oct. 23, 2014), http://www.troy.edu/phenixcity/assets/documents/cwre/2014-presentations/Moorer-Tom.pdf (providing power-point slides by T.C. Moorer displaying graphs depicting water withdrawn compared to water consumed). [↑](#footnote-ref-53)
54. *Id.* [↑](#footnote-ref-54)
55. *Id.* (stating despite Metro Atlanta’s significant steps to conserve water as a result of adverse litigation, “Georgia’s position – practically, politically, and legally – can be summarized as follows: Georgia’s agricultural water use should be subject to no limitations, regardless of the long-term consequences for the Basin.”). [↑](#footnote-ref-55)
56. ACF Stakeholders, *Sustainable Water Management Plan Approved*, ACFStakeholders.org (2017), http://acfstakeholders.org (listing the various members representing four sub-basins extending through Georgia, Alabama, and Florida including, but not limited to, the Florida Riparian Stakeholders, Atlanta Regional Commission, and Alabama Rivers Alliance). [↑](#footnote-ref-56)
57. *Id.* [↑](#footnote-ref-57)
58. *Id.* [↑](#footnote-ref-58)
59. *Id.* [↑](#footnote-ref-59)
60. *Id.* [↑](#footnote-ref-60)
61. *Id.* (stating Lancaster’s comment that “what is unfortunately clear from the parties memorandum, is that this last effort to reach an amicable resolution of this complex equitable apportionment proceeding was unsuccessful.”). [↑](#footnote-ref-61)
62. Report of the Special Master, Florida v. Georgia, 2017 WL 656655 (U.S. Feb. 16, 2017) (No. 142, Orig.). [↑](#footnote-ref-62)
63. *Id.* [↑](#footnote-ref-63)
64. *Id.* [↑](#footnote-ref-64)
65. *Id.* [↑](#footnote-ref-65)
66. *Id.* [↑](#footnote-ref-66)
67. *Id.* (stating despite Metro Atlanta’s significant steps to conserve water as a result of adverse litigation, “Georgia’s position – practically, politically, and legally – can be summarized as follows: Georgia’s agricultural water use should be subject to no limitations, regardless of the long-term consequences for the Basin.”). [↑](#footnote-ref-67)
68. Report of the Special Master, Florida v. Georgia, 2017 WL 656655 (U.S. Feb. 16, 2017) (No. 142, Orig.). [↑](#footnote-ref-68)
69. *Id.* [↑](#footnote-ref-69)
70. *Id.* [↑](#footnote-ref-70)
71. Atlanta Regional Commission, *The Corps’ ACF Water Control Manual*, AtlantaRegional.com (2016), http://www.atlantaregional.com/environment/tri-state-water-wars/acf-water-control-manual/. [↑](#footnote-ref-71)
72. *Id.* [↑](#footnote-ref-72)
73. *Id.* [↑](#footnote-ref-73)
74. Report of the Special Master, Florida v. Georgia, 2017 WL 656655 (U.S. Feb. 16, 2017) (No. 142, Orig.). [↑](#footnote-ref-74)
75. *Id.* [↑](#footnote-ref-75)
76. *Id.* [↑](#footnote-ref-76)
77. *Id.* [↑](#footnote-ref-77)
78. *Id.* [↑](#footnote-ref-78)
79. *Id.* [↑](#footnote-ref-79)
80. *Id.* [↑](#footnote-ref-80)
81. The Supreme Court of the United States, *Florida v. Georgia*, SupremeCourt.gov (Oct. 4, 2013), https://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/22o142.htm. [↑](#footnote-ref-81)
82. *Id.*; Atlanta Regional Commission, *U.S. Supreme Court: Equitable Apportionment*, AtlantaRegional.com (May 1, 2017), http://www.atlantaregional.com/environment/tri-state-water-wars/acf-supreme-court. [↑](#footnote-ref-82)
83. Barton H. Thompson, Jr. Et Al., Legal Control of Water Resources: Cases and Materials 892 (5th ed. 2013). [↑](#footnote-ref-83)
84. *Id.* [↑](#footnote-ref-84)
85. *Id.* at 892-93. [↑](#footnote-ref-85)
86. *Id.* at 901-02 (clarifying that the compact clause of the U.S. Constitution stating “no state shall, without the Consent of Congress, . . . enter into an agreement or compact with another state” does not apply to all agreements but rather only those that alter political power in the state. Modern compacts allocating water between states usually are negotiated by the states and later adopted by legislation and only taken to Congress for ratification in federal legislation). [↑](#footnote-ref-86)
87. *Id.* at 902. [↑](#footnote-ref-87)
88. *Id.*  [↑](#footnote-ref-88)
89. *Id.* at 925. [↑](#footnote-ref-89)
90. *Id.* [↑](#footnote-ref-90)
91. *Id.* [↑](#footnote-ref-91)
92. *Id.* at 942 (stating that the court has never granted intervention other than a State, the United States, or an Indian tribe because the “apportionment of an interstate waterway is a sovereign dispute, and the key to intervention in such an action is just that – sovereignty “ and if the court permitted nonsovereigns to intervene in the case it would alter the nature of original jurisdiction “in a fundamental way” into “a forum for airing private interests.” Additionally, *parens patriae* is a doctrine that allows interests to be deemed represented by the state). [↑](#footnote-ref-92)
93. *Id.* at 943. [↑](#footnote-ref-93)
94. *Id.*  [↑](#footnote-ref-94)
95. *Id.*  [↑](#footnote-ref-95)
96. Mitch Reid, J.D., Alabama Rivers Alliance. [↑](#footnote-ref-96)
97. Brief for the United States as Amicus Curiae, Florida v. Georgia, 2014 WL 4652019 (U.S. Sept. 18, 2014) (No. 142 Orig.). [↑](#footnote-ref-97)
98. T.C. Moorer, *Energy on the ACF: Adapting to a Changing Environment*, Southern Nuclear Operating Company (Oct. 23, 2014), http://www.troy.edu/phenixcity/assets/documents/cwre/2014-presentations/Moorer-Tom.pdf (providing powerpoint slides by T.C. Moorer depicting the ACF Corps Dam Watersheds). [↑](#footnote-ref-98)