



Charles



Flowers



Water Wars in the Southeast

As University of Florida graduates, the authors of this article tend to view the war between Georgia and Florida as one that is annually settled on the college football field, a rivalry that has raged since 1915. However, for the past two decades there has been a more heated war between the two states over water supply. Florida, along with Alabama, claims that Georgia—Atlanta in particular—is taking more than its fair share of water from the Chattahoochee, Flint, and Apalachicola River Basins, which is having adverse effects on the economies and the environments of Florida and Alabama. Florida and Alabama point to Atlanta’s burgeoning population and the resultant water demands as the root of the problem.

Atlanta was founded as a railroad hub but has since grown to be the largest US city without a major water body nearby. Consequently, Atlanta relies heavily on two reservoirs under federal jurisdiction to provide roughly 75% of the city’s water supply. Atlanta’s increasing demand for water has left downstream users (i.e., Florida and Alabama) feeling that Georgia is claiming more than its rightful part of the water to the detriment of the downstream states. Recently, Florida added a new procedural twist to the Southeast’s water wars by directly suing Georgia in the US Supreme Court over competing water demands.

A LAWSUIT OVER BALANCING DEMANDS

The lawsuit against the state of Georgia was filed by the state of Florida on September 29, 2013. This dispute is representative of an increasing problem facing many states and cities across the country—that is,

addressing the issue of increased water demands to meet the needs of growing urban areas while balancing the water demands of downstream users (other states and cities). For more than two decades, Florida, Georgia, and Alabama have engaged in this struggle, which has been dubbed the Tri-State Water Wars. The dispute centers on withdrawals from Lake Lanier near Atlanta, a federal reservoir on the Chattahoochee River. Lake Lanier was created 50 years ago when the United States Army Corps of Engineers (USACE) constructed a dam on the Chattahoochee River. The Chattahoochee River ultimately merges with the Flint River to form the Apalachicola River, which in turn feeds freshwater into Florida’s Apalachicola Bay—water that is essential to the region’s shellfish industry and economy.

As the population of Atlanta has grown, so has its water demands and the water it uses is pumped out of the same river basin that Florida and Alabama rely on. Florida claims that the increasing demand for water by farmers in southern Georgia and Atlanta’s residents has resulted in reductions in freshwater entering the Apalachicola Bay. This reduction in water flow disrupts the delicate salinity balance necessary to support Florida’s shellfish, a vital industry for Florida’s economy. In essence, this battle is one over competition between human water demands upstream and ecological water needs of downstream environments and the economies that rely on those environments.

A HISTORY OF LITIGATION

This is not the first time Georgia and Florida have been engaged in litigation over water consumption

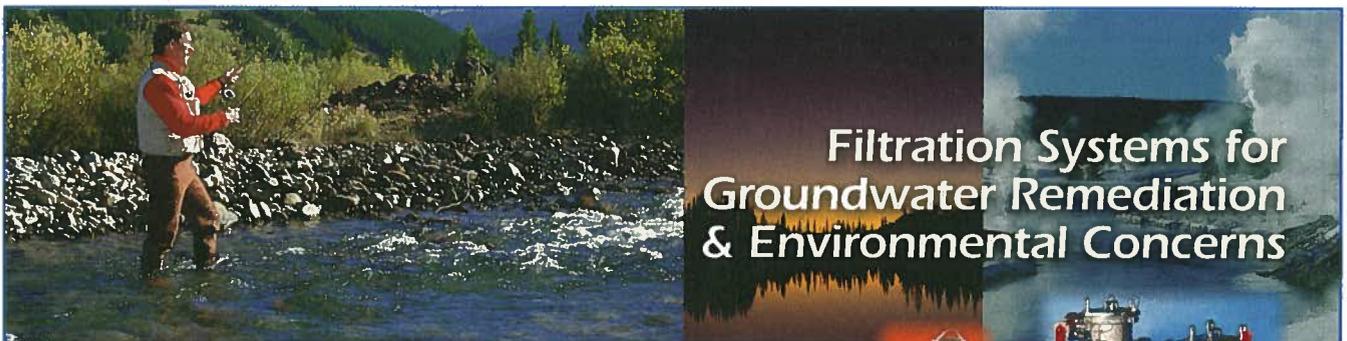
from Lake Lanier and its impact on the Apalachicola Bay River Basin. In 2009, Alabama sued the USACE over its operations of Lake Lanier, an action in which both Georgia and Florida intervened. Lake Lanier was originally created for the purpose of providing flood control, hydropower, and navigation for the surrounding region. The USACE, however, issued contracts to municipal water supply providers and diverted water for public supply purposes to the Atlanta region. Alabama's lawsuit was put on hold so the three states and the USACE could attempt to negotiate a settlement.

The negotiations resulted in interstate water compacts that were approved by the three states' legislatures and were ratified by the US Congress in 1997. The compacts set up a framework for the parties to collaboratively determine the best method for managing the affected water resources. The compacts expired before any agreement on management of the water resources was reached. Thus, in 2009 the judge presiding over the case ruled that Atlanta was not authorized to withdraw water from Lake Lanier and ordered Atlanta's water withdrawals to be drastically restricted. This ruling was overturned by the Eleventh US Circuit Court of Appeals, with the court determining that Atlanta had rights to the use of water from the Lake Lanier reservoir with certain restrictions. The

court essentially kicked the matter back to the USACE to figure out how to fairly apportion water supplies from Lake Lanier for various uses (potable water, human, and ecological needs)—a study that will take years to complete.

Florida has taken the position that it cannot wait until the USACE completes its study, because its shellfish industry is being decimated by the reduction of freshwater entering Apalachicola Bay. The governor of Florida announced Florida's intention to file a lawsuit the day after the National Oceanic and Atmospheric Administration issued a fishery disaster declaration for oysters in the Apalachicola Bay. Instead of suing the USACE, Florida has directly sued Georgia, thereby triggering the US Supreme Court's jurisdiction under Article III of the US Constitution.

The Supreme Court's jurisdiction to hear lawsuits in which one state sues another, though infrequently invoked, has historically been used primarily to resolve boundary disputes between states. Commencing with a lawsuit brought by the state of Illinois against the state of Missouri in 1900 (decided in 1901) concerning the discharge of pollutants into the Mississippi River by the city of Chicago, the court's Article III jurisdiction has been increasingly used by states to resolve interstate disputes over water rights.



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A FAR-REACHING DECISION

Florida's decision to invoke the Supreme Court's Article III jurisdiction is a clear indication that the Tri-State Water Wars have escalated as a consequence of the three states' inability to reach an agreement on the issues dividing them. In the lawsuit, Florida asks the Supreme Court to cap Georgia's overall water use at levels that existed in 1992 and have a special master enter a decree that would fairly divide the waters flowing to the Apalachicola, Chattahoochee, and Flint River Basins. The outcome of this case will be one of the most important environmental decisions for the region in recent memory. It most certainly will directly affect nonagricultural water users in Georgia that withdraw water from the Apalachicola, Chattahoochee, and Flint River Basins. For Florida, the state believes its shellfish industry is at stake and cannot survive the current upstream water demands or the expected increased future demands for Atlanta.

The effects of this lawsuit are likely to extend well beyond Florida and Georgia. As noted earlier, ever-increasing water demand for growing urban populations is being experienced in numerous states. Although the states exist within political boundaries, the rivers, lakes, and streams that supply the water to support urban areas do not recognize such boundaries. How the Supreme Court determines to address this case could influence how similar interstate water wars in other parts of the

nation will be handled in the future. The US Supreme Court declined to hear an appeal from the first round of litigation initiated by the state of Alabama against the USACE. It will be interesting to see how Florida's recent lawsuit, in which one state directly sues another, will turn out and what the implications will be for other states in which similar water disputes exist.

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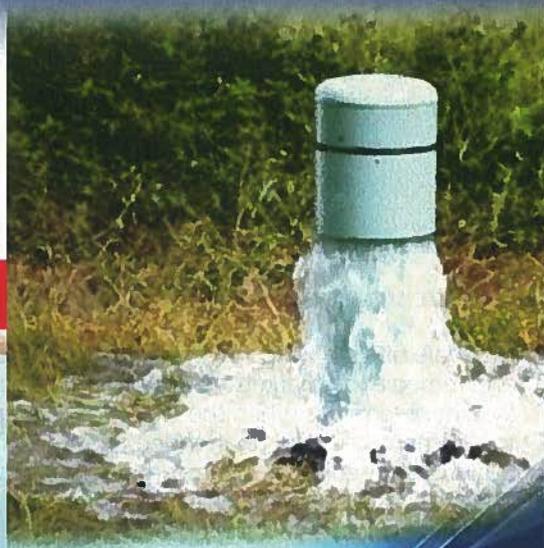
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