

Round and Round Florida (and Georgia) Go: An Update on the Florida-Georgia Water Wars



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For most of the last three decades, Florida, Georgia, and Alabama have waged a multifront water war, filing cases in federal courts across the United States. This war, and these cases, turn on apportionment of two river basins: the Apalachicola-Chattahoochee-Flint (ACF) River Basin and the Alabama-Coosa-Tallapoosa (ACT) River Basin. At the heart of this legal tug of war lie competing uses—and visions—for the basins.

On one side sits Georgia and six million thirsty Atlantans. Atlanta relies on Lake Lanier (part of the ACF Basin) and Lake Allatoona (part of the ACT Basin) for most of its drinking water. Sitting on the other side are Florida

and Alabama, which depend on adequate downstream flows for multiple competing uses. Florida's oyster industry, in particular, needs enough ACF Basin freshwater supply to support and sustain it.

These disputes came to a head in the 1990s and 2000s. During those decades, more than a half-dozen cases floated around federal courts in Florida, Alabama, Georgia, and Washington, D.C., each challenging different aspects of the management by the U.S. Army Corps of Engineers (the Corps) of the Lanier and Allatoona lakes.

Fast forward to 2011 and 2012 when the Eleventh Circuit Court of Appeals resolved these by-then-consolidated suits, mostly in Georgia's favor. The Eleventh Circuit dismissed several of Florida's and Alabama's claims as premature; because the Corps hadn't yet made a final water supply decision as those claims came too early. On top of that, the Eleventh Circuit further held that Congress explicitly authorized the Corps to funnel drinking water from at least Lake Lanier to metropolitan Atlanta. It remanded the case to the Corps to figure out *how much* drinking water it should

supply to Atlanta. In short, Georgia won round one.¹

Florida opened round two in 2013, asking the U.S. Supreme Court to equitably apportion the ACF Basin's waters. By seeking to sue Georgia directly, Florida triggered the Supreme Court's "original jurisdiction." In other words, Florida and Georgia started at the Supreme Court, rather than ending there. Unlike the earlier blizzard of cases, *Florida v. Georgia* (the case, not the cocktail party), asked the Court to "equitably apportion" the ACF Basin. That is, rather than suing the Corps—a roundabout way to get a similar result—Florida sued Georgia directly, asking the Court to limit Georgia's consumptive use to 1992 levels.

Florida argues, in essence, that Georgia overconsumes ACF Basin waters. In Florida's telling, Georgia's overuse triggers negative environmental effects, including the collapse of Northwest Florida's oyster population. Georgia, in response, contends that Lake Lanier is a linchpin of Atlanta's drinking water supply and that Florida's injuries are attributable to climate change, fishery mismanagement, and other causes.



The Tallapoosa River, part of the Alabama-Coosa-Tallapoosa (ACT) River Basin.

As it often does in cases like this, the Supreme Court appointed a “special master” to oversee the case and issue a report and recommendation. After several years of discovery and a five-week trial, the special master recommended that the Court deny Florida’s requested apportionment. Yet, this represented the end of the beginning, not the beginning of the end. Florida filed “exceptions” to the special master’s report, functionally asking the Court to overrule the special master. Florida prevailed—on a technicality. Because the special master held Florida to too high a burden of proof, the Court held, Florida and Georgia had to try again, but this time in front of a new special master.

So they did. Following supplemental briefings and additional oral arguments, the new special master submitted his own report, reaching largely the same result: Florida should not be entitled to equitable apportionment. In so finding, the special master decided that Florida didn’t provide enough evidence that Georgia caused its injury, that Georgia’s consumptive use was “not unreasonable or inequitable,” and that Florida failed to prove that the benefits of apportionment substantially outweigh the status quo’s harm (i.e., the “proper” standard).

Still, there’s more ground to tread. Florida filed another round of exceptions, which the Court should rule on in the coming year. If Florida wins again, the process could repeat itself, but after two special master losses, Florida faces an uphill climb. Equitable apportionment—either capping Georgia’s Lake Lanier consumption at 1992 levels, or something less—is moving further out of reach.

Yet, whatever happens in *Florida v. Georgia*, there will be plenty of legal options left for Florida and its in-state interests. Florida could, for example, file its own challenge to the ACF Manual or FEIS. It could also seek to enter Alabama’s ongoing case, as amici or intervenors. Or, it could get creative, and file its own lawsuit. As Georgia’s consumption increases, so too, in theory, does Florida’s injury. Put differently, we might be in for round three in the coming decades. Any interested party in Florida can file an amicus “friend of the court” brief in any of the ongoing or future federal cases.

The short-term upshot: expect more of the same. The status quo is likely to control for a while. Floridians shouldn’t expect increased flows down the Apalachicola River or Apalachicola Bay—at least through judicial intervention—anytime soon, if ever. Simply put, it’s going to be tough, practically speaking, to overcome Georgia’s ace in the hole: six million thirsty Atlantans. But expect Florida and Floridians to keep fighting hard.

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¹ Or, perhaps more accurately, round 1.0. In March 2017, the Corps adopted a Final Environmental Impact Statement (FEIS), new ACF manual, and Water Supply Storage Assessment, as directed by the Eleventh Circuit in 2011. Within days, Alabama challenged these decisions. That case—round 1.5, if you will—is now pending in the U.S. District Court for the Northern District of Georgia.



The Chattahoochee River, part of the Apalachicola-Chattahoochee-Flint (ACF) River Basin.

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