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The ACF Water Crisis: A Major Challenge with a Feasible "Volunteer" Solution

Tremaine Reese

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THE ACF WATER CRISIS: A MAJOR CHALLENGE WITH A FEASIBLE "VOLUNTEER" SOLUTION

Tremaine Reese*

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I. Hypothetical: A Slow Death for the City Perfect

The City Perfect is a thriving metropolitan area in the southeastern region of the United States. Weather conditions are ideal for families, corporations and small businesses. Summers are nice and warm; winters are cool and tolerable with less icy weather than one would experience in the northern regions. The City Perfect is less than two hours away from the great Appalachian Mountains and less than three hours away from the beautiful waters of the Atlantic Ocean. The City Perfect is dissected by three interstate highways and an aerial interstate system that is conducive to commerce.

The City Perfect is home to the busiest and largest international airport in the world, which millions of travelers pass through each year. The City Perfect is no stranger to the international community, for she hosted the Summer Olympics a few years ago. The City Perfect is arguably an epicenter of academic retreat for African-Americans and home to many major institutions that affect the world. The City Perfect is proud to hold the seat of her state government and is home to crucial federal government entities, including the Centers for Disease Control, the Federal Reserve and a regional Environmental Protection Agency office. The City Perfect has attracted individuals from all across the world who now call her home. In fact, the City Perfect contributes to her state's increase in population growth.

However, this growth in business, population and significance is placing a huge toll on the City Perfect. The infrastructure has taken a beating. The highways are overcrowded. Though designed for convenience, they become inconveniently congested during certain times of the day. As with any large metropolitan area, the concentration of people has attracted individuals who lack a desire to comply with policy, rules and laws. Most importantly, the vital resources that humans require to survive are stretching thin. The air is tainted by emissions from vehicles, factories and other sources. The level of sewage being produced each day is almost defeating the system designed for disposing of it. The water supply, critical to any development, has been challenged by recent droughts and demand for adequate supply downstream.

City officials of the City Perfect never imagined that the demand for water would be an issue for her constituents. They were more focused on ensuring the infrastructure that provides the drinking water was intact. City officials for the City Perfect were under great pressure from constituents because of television images of big trucks falling in sinkholes in downtown city streets due to failures in the pip-
ing system. Images of water percolating from the ground and running down busy highways had become a weekly occurrence.

However, it was never a secret that the city could not operate without water. One city official had a vision and painted a very dim picture. He explained that a loss of water for one day would cause a major hiccup in the business world. Government entities would be forced to cease business operations for that day. The grocery markets would be inundated with individuals purchasing water for drinking, cooking and cleaning. Bottled sources would be depleted within hours. The medical arena would experience minor setbacks, as backup water supplies would have to be ushered to the hospitals. He further explained that the loss of water for a week would be devastating. The business world would take a great hit. Many small businesses would not survive losing income for an entire week. The local government, state government and federal entities would experience a major setback of losing an unexpected week of work. The international airport would be greatly affected and would experience cancelled flights. This block of cancellations would send ripples throughout the entire aviation industry. The restaurant business would come to a screeching halt. Sanitation issues would cause great alarm from all corners of the metropolitan region. All medical facilities would be forced to alternative methods for sterilization, cooking, cleaning and other functions.

As the city official continued to proceed, he dropped his head. He knew he was about to voice Armageddon for the City Perfect. For the first time, the City Perfect and its officials were faced with a materializing scenario that could equate to the slow death of this great metropolis. They were words that few dared to think and fewer still dared to speak. How was it possible that a resource as simple as water could be the downfall of a city so powerful? If the City Perfect lost water for a month, the results would be catastrophic. No small business could withstand the loss of water for such a length of time. Federal efforts to mobilize water to the area would have the impact of pouring a bottle of water onto a forest fire 10 miles long. Large corporations would be forced to transfer their operations to other areas so that business could continue. The loss of revenue to the local government and businesses would result in irreversible damage to the financial structure and the economy.

The City Perfect would experience extreme job loss and unemployment. The intense migration to the City Perfect would reverse and its citizens would move away in masses. All medical facilities would cease to operate and surrounding medical facilities would be flooded with individuals needing medical attention. The federal government
would have to assist with mass evacuations that would dwarf those witnessed in New Orleans after Hurricane Katrina. The region would experience a population shift unseen in the history of this great nation. Infrastructures, schools, highways, medical facilities and government resources in other areas would be stretched to their limits from the sharp increase in population. The City Perfect would cease to exist and the implications would be widespread.

II. Actual

The hypothetical city is not far from reality and closely resembles the water situation that currently exists in Atlanta, Georgia. The deteriorating infrastructure\(^1\), population explosion\(^2\), drought conditions\(^3\) and downriver demand for water on the Chattahoochee\(^4\) has shaped up to be the perfect storm for Atlanta’s water woes. The crisis in Atlanta is a sign of problems to come for cities east of the Mississippi River that have traditionally enjoyed an abundance of water. Unlike the western states, which have experienced mounds of disputes and litigation about water, the eastern United States is littered with lakes, rivers, streams and springs which prevented significant disputes in relations to accessible and abundant water supplies.

Historically this plentiful supply of water has satisfied all water needs and led the eastern states to adopt a modified version of English water law called riparianism.\(^5\) Under the riparian system, eastern states assign rights for water use to land owners and require sharing

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1. Geoffrey Segal, What Can We Learn from Atlanta’s Water Privatization, GEORGIA PUBLIC POLICY FOUNDATION, Jan. 31, 2003, available at http://reason.org/news/show/122661.html (“Using EPA estimates, communities will need an estimated $300 billion to $1 trillion over the next 20 years to repair, replace, or upgrade aging drinking water and wastewater facilities; accommodate a growing population; and meet new water quality standards. EPA projects a $650 billion shortfall between current spending levels and money that will be needed over the next 15 years.”)

2. Id. (“Over the last 40 years the Atlanta metropolitan area experienced rapid growth.”)


among users in times of shortages.\(^6\) Due to the demand for water in the Atlanta area, the demand for water by farmers in South Georgia and Alabama, and the demand for water in the mid-panhandle of Florida for environmental reasons, the area has witnessed a water war emerge with western characteristics. Despite conservation efforts, the water demand is sharply increasing\(^7\) and will require a unique solution.

This note takes a comprehensive look at the Apalachicola, Chattahoochee, Flint (ACF) region, past litigation, and failed attempts to negotiate. This note also strongly recommends a solution that is viable in Florida, Georgia and Alabama with additional economic benefits to Tennessee. Part I dives into the ACF river region with a detailed look at each river. Next, Part II examines the root behind the demand for water and inclinations for future use. Part III evaluates and details negotiations to resolve the problem and litigation that has transpired. Part IV takes us back historically to areas with similar disputes, their solutions and how application of those solutions to the ACF would fare. Finally, Part V offers a solution to the ACF water demand that involves economic gains for the state of Tennessee. As this note will illustrate, conventional attempts of water conservation and allocation will not suffice with this water problem. Though unique in nature, the solution this note proposes is the most beneficial way to resolve the ACF region water problem. Without a unique solution like this note offers, the City of Atlanta will become the City Un-perfect.

A. Rivers of the ACF Region

The rivers of the ACF region include the Apalachicola, Chattahoochee and Flint rivers. Headwaters of the Chattahoochee and Flint rivers begin in north Georgia.\(^8\) The Chattahoochee and the Flint combine in south Georgia to form the Apalachicola River.\(^9\) The Apalachicola River flows through the Florida panhandle and into the Apalachicola Bay.\(^10\) Combined, the ACF region covers roughly 19,600

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6. Id. at 33.
9. Id.
10. Id.
square miles throughout Georgia, Florida and Alabama. The basin is roughly 385 miles top to bottom. This area equates to 12.3 million acres of regional drainage into the rivers. Even though the majority of the area is forested, the land is 6 percent residential, 2 percent commercial, and 25 percent agricultural. There are 16 reservoirs on the main stems of the river.

B. The Area

Most of the region’s coverage is based in Georgia, which comprises 90 percent of its population, holds 75 percent of the basin’s land area and accounts for slightly more than 80 percent of the water withdrawals. 7 percent of the population in the ACF river region lives in Alabama. Roughly 15 percent of the basin is within the state of Alabama and the state accounts for 11 percent of the withdrawal. The remaining 3 percent of the population, 11 percent of the land area and 7 percent of withdrawals come from the state of Florida. The upper Chattahoochee is home to Lake Lanier, which provides drinking water for most of the Metropolitan Atlanta area. Farmers in west Georgia and east Alabama account for most of the consumption of water in the middle. The lower end of the river region is predominately the Apalachicola River corridor and estuary that houses an environmentally sensitive wildlife system with endangered species.

13. Id.
14. Id.
15. Id.
18. Id.
19. Id.
21. Id. (Some endangered species include Gulf sturgeon, shoal bass, mussels [fat threeridge, chipola slabshell, purple bankclimber].)
C. Problematic Water Availability

“In Georgia’s sixteen-county Metropolitan North Georgia Water Planning District alone, approximately 652 million gallons of water are used every day; the District predicts that population within the District will increase from four million in 2000, to nearly eight million by 2030.”23 The projected increases in population will almost double the approximate million gallons of water per day demand.24 Currently, the Metro Water District receives 99 percent of its water supply from six rivers’ basins,25 whose headwaters begin in the Metro Atlanta area.26 Since most of these basins have very small headwater areas, Lake Lanier and the Chattahoochee River account for approximately 73 percent of the metro water supply.27 Metro Atlanta is currently permitted to use 767.85 million gallons per day from the Chattahoochee River Basin.28 Thus, a problem emerges because the permitted amount is strategically calculated to provide water for Metro Atlanta while at the same time assuring the water demands for parties downstream of Metro Atlanta are reasonably met. There are plans to build two additional reservoirs on the Chattahoochee River; however, they are estimated to yield only an additional 21.4 million gallons per day.29 How did we get to this problem? What happened to increase the demand and to strain the supply?

In the early 1900’s water in the north Georgia area, particularly the Chattahoochee River, was more than sufficient to supply the small demand created by a very modest population base.30 The Chattahoochee finds its origins in the north Georgia Mountains, 3,200 above sea level, with its first headwaters percolating from a patch of sand and gravel in the mountains near the Chattahoochee Gap on the Appalachian Trail.31 As the river flows, it quickly joins with many other springs

23. O’Day et al., supra note 11, at 230 (discussing the implication of population growth in the Atlanta Metro region).
26. Id. (Chattahoochee, Coosa, Flint, Ocmulgee, Oconee and Tallapoosa river basins).
27. Id.
28. Id.
29. Id. at 4.
31. Id.
and tributaries flowing down the mountainside. The Chattahoochee River is a source of fresh water and an expression of Mother Nature. As the river flows through the mountains, it creates breathtaking waterfalls before peacefully entering the Atlanta area in the northern suburbs. After gracing Atlanta, the river flows southwest creating the border between Georgia and Alabama where it is joined with the Flint River, ultimately creating the Florida panhandle's Apalachicola River.

The untamed river often flooded areas in north Georgia during the early 1900's. Because of the frequent flooding, residents of West Point raised their wooden sidewalks five feet above the ground. To help control the flooding, masterminds of that time turned to damming. The federal government stepped in and the Army Corps of Engineers (Corps) received congressional approval to build the Buford Dam on the Chattahoochee River, thereby creating Lake Lanier. The Buford dam was completed in 1956. The damming created a 38,000-acre lake with 692 miles of shoreline. Today, Lake Lanier is a popular vacationing spot for camping, fishing, boating, swimming, picnicking and sightseeing and accommodates 7.5 million visitors annually. It was in the 1970s that the Corps first agreed to use water from Lake Lanier as drinking water and thus Lake Lanier began to quench the thirst of the Metro Atlanta area. Before the decision, a vast majority (99 percent) of the water supply was extracted directly from the river. The thirst of Metro Atlanta was easily quenchable until the population grew.

32. Id.
34. Id.
36. Chattahoochee River, supra note 30 (illustrating the flow of the Chattahoochee before damming and drought conditions).
38. O'Day et al., supra note 11, at 234.
39. Id.
40. Chattahoochee River, supra note 30.
41. Id.
42. O'Day et al., supra note 11, at 234.
43. METROPOLITAN NORTH GEORGIA WATER PLANNING DISTRICT, supra note 25.
III. The Great Migration to Atlanta

In 1900, the city of Atlanta had a population of almost 90,000. By 1950, the Metro Atlanta population increased to 998,000 residents. According to the 2010 census, the same area now has a population of 5,730,000. With desirable weather conditions, growing entertainment and a great living atmosphere, the population growth of Metro Atlanta is showing no sign of slowing. To demonstrate the growth of Metro Atlanta, one author stated, "[t]o put such dramatic population growth in perspective, consider that metropolitan Atlanta grows by the total population of the town of Apalachicola every month." In 1989, the population increase directly led the Corps to reallocate water in Lake Lanier that was designated for hydropower usage to water supply instead.

When considering the great migration to Atlanta, many tend to focus more on people; however, there was also a migration of companies and federal government activity that resulted in a huge economic boom. After the Civil War, the redevelopment of the railroad system spurred growth and economic development. City leaders within Atlanta shared a new vision for growth in the early twentieth century. Regional initiatives shifted from focusing on the railroad to developing a regional business center with aims of supporting commerce and economic growth. Visionaries Ivan Allen Sr. and W.R.C. Smith of the Atlanta Chamber of Commerce launched a national advertising campaign in 1925 entitled "Forward Atlanta." This plan sold Atlanta as a gold mine for new businesses and a great place for large national cor-

45. Id.
46. Id.
50. Id.
51. Id.
52. Id.
portations to locate regional offices. The plan of Allen and Smith was highly successful, bringing thousands of jobs and adding an estimated $34 million in annual payrolls to the city's economy.

The arrival of automobiles also affected population growth. The automobile allowed residents to easily move around the region and resulted in a housing boom with further development away from the city's center. It was not long before air travel graced the region in the 1920's and Atlanta developed a passenger terminal, airmail and passenger routes that elevated its reputation as a regional business center.

World War II (1941-45) brought many opportunities to Atlanta and the south in general. As a response to the war, the federal government invested more than $10 billion in war industries and military bases located in the South. As a boost to the local government structure, the federal government financially supported housing projects, health-care facilities and built schools to support the families relocated to military installations. This activity by the federal government was beneficial to Atlanta because it helped end the depression; swelled the city's population; spread a broad net of federal installations throughout the metropolitan area; and enlisted blacks, whites, men and women, in the armed forces and in war-related industries.

Many soldiers were brought to Atlanta and did not leave. As a result, the Metro Atlanta area experienced a spurt in population growth, prompting the city to annex more residents. It was during this period that Atlanta annexed an additional 82 square miles, adding 100,000 new residents. To meet the city's growing needs, more high-

54. Id.
55. See generally The New Georgia Encyclopedia, supra note 48 (circa 1935).
57. Id.
58. Id.
59. Id.
60. Id. (War allowed the government to spark the economy by strategically locating jobs during a economic difficult time.)
63. Id.
64. Id. (Annexation was met with resistance.)
65. Id.
ways were expanded or built.66 The proactive approach to highway building allowed the Metro Atlanta area to take full advantage of funds from the interstate highway program, an approach that allowed the city to later connect with three major interstate highways connecting Atlanta to the region and fed suburban metropolitan growth (Interstates 75, 85 & 20).67 By 2009, Atlanta was ranked number 4 in cities with the most Fortune 500 company headquarters.68 The combination of population growth and economic growth has equated to a rapidly growing demand for water in the Metro Atlanta area. The north Georgia Water Planning District has proclaimed “without adequate planning and conservation measures, the demands of population growth will lead to exhaustion of available water supplies as soon as 2017.”69

IV. Farmers Need Water, Too... 

It is reasonable to conclude that while Metro Atlanta was experiencing a huge growth spurt, agriculture would also experience a peak in activity. Right before the Great Depression, so many farmers were producing crops that the overabundance in supply created extremely low prices, placing many farmers in difficult financial positions.70 In an attempt to fix the problem, Congress passed the Agriculture Adjustment Act which paid farmers to not plant certain crops so the decreased supply would yield higher dividends for those that continued to plant.71 However, the administration of this Act favored larger farmers and most subsidies were paid in the Midwest.72 Recently in 2006, the top three states receiving subsidies were Texas, Iowa and Illinois respectively, with Georgia ranking number 16 with almost 6

67. Id.
69. Metropolitan North Georgia Water Planning District, supra note 7.
billion dollars in subsidies. In 1997, Georgia’s 43,000 farmers generated approximately $7.4 billion in annual farm gate sales.

Irrigation, which assisted Georgia farmers during the drought, was developed over the years to sustain crop growth in areas and in conditions that were once impossible. In Georgia and Alabama, however, where dry land farming is possible almost every year, irrigation can boost yields significantly. Thus, the principal irrigation benefit to farmers in Georgia and Alabama is providing water to crops that are experiencing a lesser amount of rain than historically experienced. Irrigation may become even more critical to farmers in the future if weather conditions continue to become less favorable for plants that need steady water. According to a study by the University of Maryland, the agricultural sector is likely to experience uneven impacts throughout the country as weather patterns shift from the norm and become more unpredictable in the Georgia region. The study predicts regional droughts and water shortages. In addition, the spread of pests and diseases will negatively affect agriculture in the region.

As more farmers in the ACF Region resort to irrigating, the demand for water from farmers in the area will increase. Many farmers in the ACF region have resorted to ground water extraction. Often, this is done with high capacity wells capable of producing high volumes of water. For instance, a 6" well can produce 125 gallons per minute. This depth well could fill an Olympic size swimming pool in roughly 3.5 days. In 2000, for irrigation purposes, Georgia used 732 million gallons per day and Alabama used 73 million gallons per day. Well water is not a relief to rivers that depend upon ground water infusion.

73. Id.
74. UNIVERSITY OF GEORGIA COLLEGE OF AGRICULTURAL AND ENVIRONMENTAL SCIENCES, IMPACT OF AGRICULTURE ON GEORGIA’S ECONOMY, available at http://www.ces.uga.edu/Agriculture/agecon/pubs/paper/impact.htm (“Farm gate sales” refers to the sale of products directly from the producer.).
75. Robert Davids, Farm Irrigation – A Primer (2010).
77. Id.
78. Id.
79. Industry and government standard identifies a large capacity well as one with the capability of producing more than 70 gallons per minute or 100,000 gallons per day.
80. Olympic Size Swimming Pool – 164’ long, 82’ wide, 6’ 7” deep.
to maintain flow and recharge the river. An infusion problem occurs when the natural ground water level is above the river. Under normal hydrogeological conditions, the ground water would infuse into the river. Over-extraction from wells lowers this level, thus resulting in little to no ground water infusion into the river directly affecting river flow and available water. The New Jersey Geological Survey Report states:

The potential for natural groundwater recharge begins with precipitation (rain, snow, hail, sleet). Some of the precipitation never seeps into the soil, but instead leaves the system as surface runoff. The water that seeps into the soil is infiltration. Part of the water that does infiltrate is returned to the atmosphere through Evapotranspiration. Evapotranspiration refers to water that is returned to the atmosphere from vegetated areas by evaporation from the soil and plant surfaces and soil water that is taken up by plant roots and transpired through plant leaves or needles. Infiltrated water that is not returned to the atmosphere by Evapotranspiration moves vertically downward and, upon reaching the saturated zone, becomes ground water. This ground water could be in a geologic material that is either an aquifer or non-aquifer, depending on whether it can yield satisfactory quantities to wells.

In essence, pumping ground water at a rate faster than it recharges will have detrimental effects on the underground water table and the rivers in the area.

V. ALONG CAME A DROUGHT

Historical data shows that droughts are a standard part of the climate system in the Southeast. The natural ecosystem in Georgia requires drought conditions to thrive. This ecosystem consists of the plants and animals that have learned to survive without intervention from humans. Animals and plants that do not require much water and plants that utilize dry, windy conditions to help with pollination

83. Sax et al., supra note 5, at 478.
84. Id.
85. Id.
87. Metropolitan North Georgia Water Planning District, supra note 7.
89. Id.
90. Id.
(like the Needle Pine Tree) occupy this area. Periodic drought conditions, even severe, help sustain the natural ecosystem even though drought conditions are not productive for humans and have negative impacts on economic and social systems. As witnessed in the 1920s, drought conditions have historically had a great negative impact on industry and farming. As a result, rural Georgia counties have failed to rebound to the population peak experienced right before drought in 1920.

The U.S. Geological Survey confirmed that during the year 2000, Alabama, Florida and Georgia suffered the driest May-October months on record. Despite the lack of precipitation, Georgia experienced a 30 percent increase in water usage compared to usage before the declaration of drought in the later 1990s. The drought of 2007, with lower than normal rainfall, began in 2006. The October 3, 2007 issue of Southeast Farm Press reported John Beasley, University of Georgia Extension peanut specialist, saying residents deemed the 2007 drought worse than an infamously bad drought experienced in 1954.

As the lack of rain persisted from spring into the summer of 2007, it was quickly becoming clear that the 2007 drought threatened to become a huge problem for the ACF river region and north Georgia. Governor Sonny Perdue (2003-2011) placed the northern third of the state under a state of emergency, implemented water restrictions throughout the state, and asked President Bush to declare the area a "major disaster." The situation was so calamitous officials declared that water in Lake Lanier would be depleted in three months. In an attempt to protect the citizens of north Georgia, Perdue asked President Bush to exempt the Corps from complying with federal water release regulations designed to protect mussels downstream.

91. Id.
93. Historical Droughts in Georgia, supra note 86.
94. Id.
97. Dolan, supra note 85.
98. Id.
100. Id.
As water resources became dire for north Georgia, the true politics of the situation became more evident. "We've learned from this what a blunt weapon the Endangered Species Act has become," said state Rep. John Linder. \textsuperscript{102} "We need to understand this lake was created not for mussels but for people."\textsuperscript{103} The drought was so severe that watering in the northern half of the state was partially, then totally, banned by environmental officials. \textsuperscript{104} Drought conditions thus added a new dimension to the challenge of providing adequate water to meet expectations of the water recipients in the ACF region. Drought conditions stressed the water supply that was available and made water resources in the ACF region more valuable. The demand for more water and disputes in usage ultimately led to litigation and compromises.

V. A Twisted Timeline of Requests, Litigation and Compromises

A. Georgia Makes the First Move

In the late 1980s, prior to the droughts of 2000 and 2007, the leaders of the state of Georgia, specifically Metro Atlanta, were devising plans to secure water for the needs of the metropolitan area in the event that water resources once again became scarce. \textsuperscript{105} Considering the dangers and attempting to avoid a disaster of great proportions, Georgia sought to increase its water supply by pursuing a deal with the Corps to increase water release to Metro Atlanta. \textsuperscript{106} Convinced by the present danger and to prepare for the new residents expected to move to Atlanta in the next twenty years, the Corps agreed to release more water to Metro Atlanta. \textsuperscript{107}

The plans to supply north Georgia with water did not stop there. The U.S. Army Corps of Engineers also planned to store water on the Coosa River, which ultimately flows into the state of Ala-

\textsuperscript{102} Georgia's Governor Declares Drought Emergency, supra note 89.
\textsuperscript{103} Id.
\textsuperscript{106} Id.
Additionally, a plan was revised to withdraw more water from the Chattahoochee and Flint rivers. As one would imagine this plan did not sit too well with the state of Alabama. The plan amounted to less water for the entire state of Alabama. It would also deprive the Coosa River of water, which crosses the center of the state, and reduce the Chattahoochee, which serves the southeastern part of the state of Alabama. Large municipalities in Alabama, such as Birmingham and Montgomery, are in the affected area.

B. Alabama Calls on Lady Justice

Alabama responded as many projected they would, and in June of 1990 they brought an action for declaratory and injunctive relief. The state of Alabama sought relief requesting that the court declare that the Corps violated provisions of the National Environmental Policy Act (NEPA) before entering contractual agreements with Georgia to release more water from Lake Lanier. Alabama urged the court to issue a preliminary and permanent injunction requiring the Corps to comply with the provisions and regulations of NEPA and to recall and to refrain from executing proposed contracts for withdrawals of water from Lake Lanier and prohibiting any increase in withdrawals of water until a requested Comprehensive Studies Plan was completed. Specifically, Alabama argued that by entering into contracts with Georgia, the Corps violated NEPA by not preparing an environmental impact study. Alabama further argued that NEPA required the Corps when allocating water to follow a "systematic, interdisciplinary approach." Alabama also argued "by preparing only an Environmental Assessment (EA) regarding the Post Authorization Change Notifica-
tion report for Lake Lanier, rather than a full Environmental Impact Statement ("EIS") as required by NEPA, and by failing to assess the cumulative impacts of the proposed increased withdrawals of water from ACF Basin," a very critical aspect of NEPA was violated. Finally, Alabama argued Corps violated NEPA "by failing to develop methods and procedures to ensure that 'presently unquantifiable environmental amenities and values' are considered in assessing the environmental impacts of withdrawing water from Lake Lanier."  

After conversations between Alabama and the Corps, they jointly moved for a stay of the proceedings. Alabama and the Corps had reached an agreement to attempt to negotiate an agreement. During this time, Florida attempted to join the litigation as a plaintiff and Georgia attempted to join as a defendant, but the motions to intervene were dismissed without prejudice because the case was moved to an inactive docket after the Alabama-Corps agreement. Florida and Georgia alternatively sought to join the negotiations. Alabama and the Corps agreed to allow Florida and Georgia to participate in the negotiations under the condition that Alabama and the Corps would jointly file for termination of the agreement if Florida or Georgia withdrew from the discussions. This provision prevented the exit of Florida or Georgia to stop the negotiations between Alabama and the Corps. However, Alabama or the Corps could terminate the agreement with written notice and an 80-day grace period after notice is given. In a further stipulation, the Corps agreed not to participate in any water contracts pertaining to the issue at hand. The agreement to negotiate was successful at halting litigation but did nothing to reach a resolution for the growing water demand and dwindling supply in the ACF region.

119. Id. at 1123 (Alabama contended that the EA was not detailed enough to highlight the true impact of the change in allocation.)
120. Id. at 1123 n.5.
121. Id. at 1123.
126. Id.
127. Id. at 1123.
128. Id. (This was critical to Alabama and Florida because they felt the Corps had secretly, through backdoor deals reached prior contractual agreements with Georgia.).
C. *The Compact: An Attempted Western Water Solution to an Eastern Water Problem*

Two years after the stay, the negotiations had not accomplished much and the water demands for Metro Atlanta remained the same. Because of the lack of action and with pressure from Georgia, the group entered into a Memorandum of Agreement.\(^{130}\) The agreement "allowed existing withdrawals of water from Lake Lanier to continue or to increase in response to reasonable demand" and allowed "the Corps to abandon the Post Authorization Change Notification Report."\(^{131}\) The negotiations continued and began to gain more attention from political leaders.\(^{132}\) The attention resulted in the passage of the Apalachicola-Chattahoochee-Flint River Basin Compact ("ACF Compact") in 1997, which focused on governing the process to reach a solution between the states.\(^{133}\)

The Compact was approved with 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."\(^{134}\) Each state was given one vote and all decisions required a unanimous vote of the three State Commissioners.\(^{135}\) The compact also charged the parties with developing 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, the Endangered Species Act, the National Environmental Policy Act, the Rivers and Harbors Act of 1899, and other applicable federal laws.\(^{136}\)

Unlike interstate water compacts in the past, this particular compact failed to provide guidance in allocation or a means to calculate alloca-

\(^{130}\) *In re MDL-1824 Tri-State Water Rights Litig.*, 644 F.3d 1160, 1174 (11th Cir. 2011)
\(^{131}\) *Id.* (The 1992 MOA was arguably the most productive result of the negotiations.).
\(^{133}\) *Id.*
\(^{135}\) *Id.* § 1, Art. VI(d).
\(^{136}\) *Id.* § 1, Art. VII(a).
tion, which is normally found in compacts.\textsuperscript{137} Subsequently, the compact expired in September 2003 with no agreement.\textsuperscript{138}

\textbf{D. Magnuson's Mandate}

After unsuccessful attempts to negotiate through the compact, Georgia, Florida and Alabama found themselves back in the hands of the judicial system.\textsuperscript{139} Four different, but issue-related lawsuits challenged the conduct of the Corps.\textsuperscript{140} Four water suppliers\textsuperscript{141} successfully moved to have the cases consolidated, and Judge Paul Magnuson was chosen by the federal multidistrict panel to decide the case.\textsuperscript{142} In an unexpected move, Judge Magnuson, a veteran of western water wars visiting from Minneapolis,\textsuperscript{143} delivered an opinion that even he considered “draconian.”\textsuperscript{144} Judge Magnuson, “gave Georgia, Florida and Alabama until July 2012 to work out an agreement to share water from Lanier and the rest of the Chattahoochee River system.”\textsuperscript{145} This ruling placed the first real deadline on political leaders from the three states to address the water issue.\textsuperscript{146} The ruling allowed

\textsuperscript{137.} APALACHICOLA–CHATTahoochee–FlINT RIVER BASIN COMPACT, PL 105–104, November 20, 1997, 111 Stat 2219. (The compact gives authority to address the issue but fails to provide guidance that is historically found in other water compacts.).

\textsuperscript{138.} In re MDL-1824 Tri-State Water Rights Litig., 644 F.3d 1160, 1175 (11th Cir. 2011).

\textsuperscript{139.} In re Tri-State Water Rights Litig., 481 F.Supp.2d 1351, 1353.


\textsuperscript{141.} In re Tri-State Water Rights Litig., 481 F.Supp.2d at 1352 n.1 (“Atlanta Regional Commission; the City of Atlanta, Georgia; Cobb County–Marietta Water Authority; and the City of Gainesville, Georgia”).

\textsuperscript{142.} Id. at 1353.


\textsuperscript{144.} 11th U.S. Circuit To Consider Tri-state Water Dispute, THE ASSOCIATED PRESS, Mar. 9, 2011, available at http://www.law.com/jsp/article.jsp?id=1202485293241&slreturn=1&hbxlogin=1 (Judge Magnuson knew his ruling would shake the entire debate around the ACF region and lead this dispute towards an eventual resolution.).


\textsuperscript{146.} Id.
for a settlement to be reached between the three states or for Congress to pass legislation authorizing Lake Lanier as a regional water supply.\textsuperscript{147} If this did not happen, the "order provides that water withdrawals would be rolled back to levels not seen since the mid-1970s."\textsuperscript{148}

Judge Magnuson opined, "Congress authorized and paid for the Buford Dam, and gave the Corps authority to operate the dam."\textsuperscript{149} Judge Magnuson's opinion went on to state that the authority given to the Corps was not limitless.\textsuperscript{150} "Congress reserved to itself the power to change the purposes for federal projects such as the Buford Dam project."\textsuperscript{151} The Water Supply Act of 1958 specified that water stored at Corps facilities could be reallocated for municipal and industrial usage as long as it did not harm authorized project purposes or involve major structural changes.\textsuperscript{152} With the above analysis, Judge Magnuson was able to conclude that the Congressional approval for the reallocation of storage in Lake Lanier is required, especially with the Corps' own documents showing their belief that they needed congressional authorization.\textsuperscript{153} This conclusion meant that all decisions made by the Corps outside the original approval of Congress had to be set aside.\textsuperscript{154}

As one would imagine, Georgia political leaders quickly appealed the decision to the Federal Eleventh Circuit Court of Appeals.\textsuperscript{155} It became reasonably conclusive that the water wars had reached a critical level. Metro Atlanta was faced with not having its water needs met, and a water disaster appeared inevitable. In the appeal to the Eleventh Circuit, Georgia argued that "the Corps has the legal authority to release water from Lake Lanier to Atlanta."\textsuperscript{156} Georgia also leaned on public policy and argued that "Judge Magnuson did not properly consider the harm his order would cause" to the millions

\begin{footnotes}
\footnotetext[147]{Id.}
\footnotetext[148]{Id.}
\footnotetext[149]{In re Tri-State Water Rights Litig., 639 F.Supp.2d 1308, 1356 (M.D. Fla. 2009).}
\footnotetext[150]{Id.}
\footnotetext[151]{Id.}
\footnotetext[153]{In re Tri-State Water Rights Litig., 639 F.Supp.2d at 1356. (Judge Magnuson was not convinced that the Corps was within its discretion to regulate water usage of Lake Lanier.)}
\footnotetext[154]{Id.}
\footnotetext[155]{Brief for the Petitioner at 4, Georgia v. U.S. Army Corps of Engineers (2010) (No. 09-14810-G).}
\footnotetext[156]{Id.}
\end{footnotes}
of people, business, industrials and government entities in the Metro Atlanta area.157

This ruling did not go unnoticed by the business world. John Brock, Chairman and CEO of Coca-Cola Enterprises stated, “It’s going to be cataclysmic.”158 He further said, “It’s difficult to create jobs when you don’t have water.”159 A statewide task force concluded that the ruling could have a $30 billion negative impact on the Metro Atlanta economy.160 Georgia is not comfortable leaving the issue in the hands of the courts and Governor Deal redoubled efforts to negotiate with Florida and Alabama.161 Deal indicated to business officials that he believes the state should not expect the appeals court to “toss Magnuson’s ruling.”162 In 2011, Deal met with the newly elected governors of Alabama and Florida to discuss water problems.163

Gov. Deal revealed he was not convinced Congress would intervene to solve the issue.164 Deal’s statement correctly reflects longstanding congressional hesitation to get involved with past interstate water issues.165 However, it did not deter Georgia’s senators from getting involved.166 Senators Isakson and Chambliss introduced legislation giving the Corps authority to operate Buford Dam and Lake Lanier to include allocations for municipal and industrial water supply, thus mooting Judge Magnuson’s decision.167 The rejected bill would have given sufficient congressional authority to the Corps, authorizing the use of Lake Lanier for municipal and industrial water supply.168

157. Id. at 5.
158. Id.
159. 11th U.S. Circuit To Consider Tri-state Water Dispute, supra note 122. (This statement was made to draw more attention to the issue. When the statement was made, unemployment was at an all time high.)
160. Id.
161. Id. (Gov. Deal has a strong legal background.)
162. Id.
164. Shelton, supra note 130.
165. SAX ET AL., supra note 5, at 835.
166. Williams, supra note 127.
168. Id. (This is the same authority Judge Magnuson opined the Corps lacked.).
VI. **Past Congressional and Judicial Water Actions with Teeth**

A. **Colorado River Compact**

Despite little success with the ACF region, congressional and judicial involvement in interstate water issues is still possible. Just as population growth is plaguing the ACF region, population growth in southern California and Colorado led to concerns about the depletion of water in the Colorado River.169 Political leaders in Arizona, Nevada, Utah, Wyoming, Colorado and New Mexico were particularly afraid that California would take all the water in the Colorado River by judicially confirmed prior appropriation or legislative grants because California was first in making beneficial usage of the water from the river and had the most political power of the basin states.170 Farmers in southern California had organized and begun to lobby the federal government to allocate water to southern California.171 They were currently getting water by way of a canal that ran through Mexico.172 The farmers wanted the federal government to build a new canal that would run within the boundaries of the United States.173 Their actions resulted in the All-American Canal, which is different from the California Aqueduct.

After several years of negotiations, the states were able to reach an agreement on splitting the basin geographically, the amount of water allocation for each state and the decision-making process moving forward.174 However, Arizona was not satisfied. Arizona did not feel adequately protected from fast-growing California.175 This led to every state ratifying the agreement except Arizona.176 Arizona's fears became more concrete with the Congressional authorization of Boulder Canyon Dam, which allowed an aqueduct to provide Colorado River water to southern California.177 The remaining states were content to move forward because they felt enough protection existed for them within the agreement.178 Arizona feared that California might have secretly planned or hoped to get parts of Arizona's share because Ari-

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169. Sax et al., supra note 5, at 804.
170. Id.
171. Id. at 804.
172. Id. at 803.
173. Id. at 804.
174. Id. at 805.
175. Id.
176. Id.
177. Id.
178. Id.
Arizona could not physically withdraw the water. Arizona eventually sued in the Supreme Court under original jurisdiction based upon the theory that the congressionally approved Boulder Canyon Project Act articulated the amount of water to be allocated to the states in the area. The Supreme Court awarded Arizona allocations based upon the 1928 Boulder Canyon Project. Arizona subsequently received federal financial help to build the Central Arizona Project (CAP) which lifted the water 1800 feet out of the river into canals that could then use gravity flow to carry the water south to Arizona's heavily populated regions around Phoenix and Tucson. The Colorado River Compact symbolizes a compact where water allocations are determined and controlled by the entities of the agreement.

B. Delaware River Compact

Another successful creation of an allocation compact is that of the Delaware River. Population and industrial growth led a struggle as to how the waters of the Delaware River would be allocated. Delaware, New Jersey, New York and Pennsylvania all declared interest in the river. Compact attempts were defeated in 1925 and 1927 by the New Jersey legislature. Due to the inability to compromise, lawsuits ensued. The Supreme Court reached a final, modified agreement in 1954. This plan was not satisfactory to state and local officials in Pennsylvania, New Jersey, New York and Delaware, though New York City was pleased with the 800 million gallon per day allocation it received. In fact, state and local officials banded together and

179. Id.
181. Id. at 565 (CAP is the largest and most expensive aqueduct system ever constructed in the U.S.)
182. SAX ET AL., supra note 5, at 807 (The CAP canal is 336 miles long.).
183. Id. at 853.
184. Id.
186. New Jersey v. New York, 283 U.S. 336 (1931) (New Jersey was not comfortable with the leverage being given to New York.).
sought a comprehensive plan with a multistate agency empowered to implement the plan.\textsuperscript{189}

The result was a regional plan that met the needs of the region, the individual states and New York City with a means to administer in times of unusual shortage.\textsuperscript{190} The Delaware River Basin Commission was born from the comprehensive plan.\textsuperscript{191} The key to the commission was that it was given broad power and authority.\textsuperscript{192} The commission was directed to act in the best interests of the region, which served as a balancing technique to protect the interest of the people of the various states.\textsuperscript{193} Today the Delaware River Basin Commission is still operational.\textsuperscript{194} In 1996, Pennsylvania Governor Tom Ridge stated the following about the Delaware River Basin Commission:

Our great Commonwealth was founded by the spirit of community and will continue to grow and prosper as we look to dedicated organizations such as yours for guidance, information and protection. . . . [Y]our efforts to promote interstate comity and to remove the causes of controversy among the states in the uses of water resources are unquestionably worthy of honor.\textsuperscript{195}

During the same year, Delaware Governor Thomas Carper stated, "the Commission, which pioneered the concept of partnerships, has the tools through its organizational structure to oversee a unified approach to the development and control of the river system without regard to political boundaries."\textsuperscript{196}

The Colorado River Compact and the Delaware River Compact are two prime examples of the elements a successful compact must possess. The ACF Compact, which was designed to settle an allocation dispute, lacked the critical component of a firm set of allocation principles that the states willingly agreed to accept.\textsuperscript{197} In the ACF, the compact itself was to serve as the forum in which the states would settle the entities at conflict.\textsuperscript{198} The party states, unable to agree before,  

\begin{itemize}
  \item \textsuperscript{189} Sax et al., supra note 5, at 853-54.
  \item \textsuperscript{190} Id. at 854.
  \item \textsuperscript{191} Delaware River Basin Commission, Delaware River Basin Commission Overview, http://www.state.nj.us/drbc/over.htm (the largest water compromise commission in the east).
  \item \textsuperscript{192} Id.
  \item \textsuperscript{193} Sax et al., supra note 5, at 854
  \item \textsuperscript{194} This year the Delaware River Basin Commission celebrates 50 years of existence. Delaware River Basin Commission, http://www.state.nj.us/drbc.
  \item \textsuperscript{195} Id.
  \item \textsuperscript{196} Id.
  \item \textsuperscript{197} See generally, In re Tri-State Water Rights Litig., 639 F.Supp.2d 1308, 1356 (M.D. Fla. 2009).
  \item \textsuperscript{198} Id.
\end{itemize}
remained unable to agree and the compact failed. The exercise was at the best an exercise in faith and at worst, pointless. The ACF Compact amounted to an additional action that merely prolonged the disagreement of the ACF problem.

C. Congress Decides

Congress possesses a tool to handle interstate water issues, but rarely uses it. "The authority of Congress to apportion the waters of interstate rivers is an aspect of its power to regulate commerce among the several states." States are constitutionally required to adhere to congressional action because of the supremacy power held over the states. There are only two times in the Nation's history that Congress has actually exercised this power. The first time was in 1928 with the Boulder Canyon Project. The second time was in 1990, when congressional apportionment was used in dividing the waters of the Truckee and Carson Rivers and Lake Tahoe between California and Nevada. Some argue that the lack of usage isn't because of the lack of interstate water issues. However, the lack of usage is a direct effect of the "political process in the legislative branch and the equal [state] representation in the U.S. Senate. . ." Considering today's political climate, the other 47 states, with the possible exception of Tennessee, will be very disinclined to get involved and decide the water conflict between Florida, Georgia and Alabama.

D. The High Court Takes a Dive

Regardless of the Eleventh Circuit's decision concerning Georgia's appeal of Judge Magnuson's ruling, the case will very likely be appealed to the United States Supreme Court. The Supreme Court finds its authority to decide such a conflict in the Constitution, which indicates that the Court shall have original jurisdiction in cases in

199. \textit{Id.}
200. \textit{Id.}
201. \textit{Id.}
202. \textit{Sax et al., supra} note 5, at 835.
203. \textit{U.S. Const.} art. VI, cl. 2.
204. \textit{Sax et al., supra} note 5, at 835.
207. \textit{Sax et al., supra} note 5, at 835.
208. \textit{Id.}
which a State shall be a party. Therefore, if the states fail to agree or Congress declines to act, the Supreme Court is well within jurisdiction to hear a case concerning disputes about interstate waters. Aside from negotiations, judicial apportionments, or “equitable apportionments,” have become a principal instrument of relief for interstate water disputes.

Though federal courts have been very involved in water disputes, there are only three cases in which the Supreme Court has actually taken an interstate waterway and apportioned the waters. Two cases involved states located in water districts that follow prior appropriation doctrine. The remaining case, a water conflict between New Jersey and New York, was jurisdictionally in a region that follows the riparian doctrine. However, the Supreme Court has held on several other occasions that the then-current state of affairs is

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209. U.S. CONST., art. III, § 2. See also Sax et al., supra note 5, at 858.
211. Sax et al., supra note 5, at 858.
213. Sax et al., supra note 5, at 868. See generally Prior Appropriation, Water Encyclopedia, http://www.waterencyclopedia.com/Po-Re/Prior-Appropriation.html (“The prior appropriation doctrine is a legal concept that evolved in the American West as a means of establishing the right to use scarce water from rivers and streams. This doctrine can be summed up as ‘first in time is first in line.’ The prior appropriation doctrine is distinguished from the riparian doctrine, under which those who own land next to water have rights to use the water. The historic requirements for a valid water right under the prior appropriation doctrine are the intent to divert water, the actual diversion of water, and the application of that water to beneficial use. As the West has evolved from an economy built on mining and agriculture, the prior appropriation doctrine has begun to address new needs for water. ... The prior appropriation doctrine often is administered in a context of scarcity, either because flows in western American rivers can be highly variable, or because too many water rights were claimed in the river. Priority is given to those with older water rights. A senior appropriator can satisfy his or her water needs before a junior appropriator can take water from a river. In a drought year, only a few users may be able to get water. Water rights are spoken of as being property rights, but the description is not entirely accurate.”).
215. Sax et al., supra note 5, at 870. See generally Prior Appropriation, Water Encyclopedia, http://www.waterencyclopedia.com/Re-St/Rights-Riparian.html (“The original definition of ‘riparian’ derives from its Latin origin, ripa, meaning ‘bank of a stream.’ But in law, the term ‘riparian’ may refer to land different than what geographically extends away from the stream. Legal definitions may be as inclusive as all the land under the continuous title of the same landowner whose ownership begins beside the stream. The humid zones of eastern North America had little water law before the 1820s. The riparian doctrine in the United States exists as a legal structure for the human use of stream water in the ‘humid states’: specifically, the states east of the first tier of states west of the Mississippi River.”).
not inequitable under the equitable apportionment doctrine. As discussed previously, the states dependent upon the Delaware River were not pleased with the results of equitable apportionment and ultimately established an agreement. The slow pace of negotiations and agreement between Georgia, Florida and Alabama almost ensures the Supreme Court will ultimately get involved in this water dispute. The states have the power to prevent that intervention only if they reach an agreement or coax Congress to act.

VII. A Southern Problem with a True Southern Solution

A. The "Volunteer" Solution

It will be very difficult for Georgia, Florida and Alabama to reach a solution on the water issue. Additionally, if they reached a solution it would only be a matter of time before that solution would be inadequate, because the ACF region is not constant. The region and its water needs are growing. As the population in Metro Atlanta increases, industrial and business sectors grows, farmers are charged with producing more crops and the eco-system is further damaged in the Apalachicola Bay due to low water flow, water demand from a limited source is increasing. Realistically, the southeast region and this nation cannot afford to sit idle as Atlanta dies of thirst and farmers lose the ability to grow food that feeds all citizens. It has become apparent to many that the water produced in the ACF river region is not enough to satisfy the demand that presently exists and will continue growing.

The only real solution is to provide more water to the region. This reflects the true western solution of simply importing more water. There exists a very adequate water supply less than 100 miles away from existing water supplies in the Metro Atlanta area; that water supply is the Tennessee River. This note does not extensively examine the hostile proposal to move the state of Georgia line north less than a mile due to a 19th century surveyor's error. If the error were cor-


217. SAX ET AL., supra note 5, at 870.

218. Greg Bluestein, Drought Has Georgia Revisiting Border Dispute, WASHINGTON POST, Feb. 10, 2008, http://www.washingtonpost.com/wp-dyn/content/article/2008/02/09/AR2008020902283.html ("Nearly two centuries after a flawed survey placed Georgia's northern border just short of the Tennessee River, some legislators are thirsting to set the record straight. A historic drought has added urgency to Georgia's generations-old claim
rected, that would place the Georgia and Tennessee border in the center of the Tennessee River. However, to take that route would foster negative relations between Georgia and Tennessee. The possibility remains that the High Court could determine the one-mile strip of land belongs to Tennessee.

Georgia and Tennessee are able to make competing arguments that the disputed land should be granted to each of them. Case law and each state's code support their arguments, and those are two major factors in the weighing of a Supreme Court decision. Georgia would make its strongest argument that in order to redefine or move state borders, the Constitution requires consent by both states and Congress. Georgia would argue that it was admitted to the union eight years before Tennessee and thus its northern border was defined as being located at the 35th Parallel line. Georgia can argue that the state has never consented to moving the state line from its "rightful," congressionally defined location. Thus, Georgia could claim that the line remains where it was originally established with the creation of Georgia. Tennessee would attempt to show that Georgia's inaction in regards to the state line resulted in a relinquishment of ownership. Tennessee's argument to victory must convince the court that she has "engaged in meaningful conduct that evidences an actual exercise of sovereignty and control over the disputed area of land, while Georgia must have evidenced a concurrent failure to do so." In a previous case surrounding the same strip of land, the U.S. Court of Appeals for the D.C. Circuit stated that due to an error in an 1818 survey, a dispute exists around "a strip of land which has been claimed by both states for 156 years." The court further said, "Citizens of the area live with numerous anomalies—real estate taxes may be paid to both states, people may go to school in one state while pay-

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219. Id.
220. O'Day et al., supra note 11, at 262.
221. Id.
225. Id. at 264.
226. Id.
ing taxes in another, and so on." It is very unclear how the court would decide.

The state of Georgia should proceed with caution in this matter in the event Georgia is forced to sit at the table of negotiation with Tennessee in the future. On a brighter note, as this note concludes, the need for water in the ACF region could lead to huge economic gains for the state of Tennessee. The possibility exists for the state of Tennessee to sell water to the ACF region in which the states of Georgia, Alabama and Florida would proportionately cover the bill. As further discussed in this note, states have historically sold state resources in ways that benefit the entire state.

B. The Oil and Water Model That Will Mix

A great model of this concept is the Alaskan Permanent Fund Dividend Program. Before the discovery of oil, the state of Alaska operated on an annual budget just over $100 million. The first lease by the Alaskan government to oil companies yielded a profit of over $900 million. The people of Alaska entered into a debate on how to spend the money. "After a four year debate the Alaska State Legislature decided in 1980 in favor of a savings trust for the future," creating the Alaskan Permanent Fund Corporation. "The same year the Legislature also created the Permanent Fund Dividend Program, retroactive to January 1, 1979, to distribute a portion of the income of the Permanent Fund each year to eligible Alaskans as a dividend payment." "This was the historic beginning of an annual program paying to Alaskan citizens a fair and equal share of the wealth from publicly owned resources." This type of program could be established for the citizens of Tennessee. However, based on Tennessee's population in comparison to Alaska, the state may favor the option of using the funds for vital state projects instead of individual checks.

228. Id.
231. Id.
232. Id.
233. Id.
234. Id.
235. Id.
The people of Tennessee will first need to be convinced that subtractions from the Tennessee River will not hurt them in any way.236

C. The Tennessee River

The Tennessee River is 650 miles long.237 The river drains a 41,000 square mile basin.238 The basin covers seven states, including parts of extreme northeast Georgia.239 The main stem of the Tennessee River is controlled by nine major dams.240 The Tennessee River at Nickajack, an area close to Georgia and the best place to transfer water, has an average flow of 24 billion gallons per day.241 This is 15 times greater than the flow of the Chattahoochee River.242

The Tennessee Valley Authority (TVA) 2004 Reservoir Operations Study concluded that an additional 1 billion gallons per day in inter-basin transfers, in addition to the current in-state, inter-basin transfers, would have almost no effect on its reservoir levels.243 The Metro Atlanta region is projected to need an additional 264 million gallons per day in 2030 to meet water demands.244 The Tennessee River could easily satisfy Metro Atlanta’s water need and help meet the demand for water in the ACF region. The TVA made a comparison of Metro Atlanta and other large metro areas in stating:

236. Convincing may be necessary if the people of Tennessee are overwhelmingly determined to maintain water from the River. Tennessee passed an inter basin water transfer act. The act requires public water suppliers that propose new or increased inter-basin transfers to apply for and be granted a permit. In Sporhase v. Nebraska, 458 U.S. 941 (1982), the court ruled that a Nebraska inter-basin transfer law violated the Commerce Clause because of its reciprocity requirement. Though such requirement does not exist in the Tennessee Act, the Tennessee River is an interstate river that converges several states with great interstate dimension. The river provides irrigation for agriculture, a route for navigation and produces hydroelectricity for many in the southeast and mid-eastern states. There is significant federal interest in the Tennessee River. Tennessee’s possible denial of a permit to Georgia could stir a huge public policy issue of discrimination, thus violating the commerce clause.


238. Id.

239. Id.

240. Id.


242. Id.

243. Id.

244. Id.
[Inter-basin transfers] are a well-established water management tool, and it is no coincidence that six of the seven US metro areas larger than Atlanta (New York, Chicago, Los Angeles, Houston, Dallas, and Miami) rely heavily on them. With a population of over 5 million, metro Atlanta is one of the fastest growing urban areas in the country, but the Chattahoochee is the smallest river to be the primary water source for a major city. From the standpoint of historic national water policy, an IBT to metro Atlanta from the Tennessee River would be no less appropriate than the ones supporting those other major urban areas.245

In the conclusion of its sensitivity study, the TVA stated, “This sensitivity analysis shows that [inter-basin transfers] are not likely to substantially affect future reservoir elevations, either under the Base Case or under the most conservative assumptions for the policy alternatives under most hydrologic conditions.”246

VIII. CONCLUSION

As Chief Judge Britt stated in North Carolina v. Hudson, a case involving an inter-basin transfer to Virginia Beach, Virginia, “water is a necessity of life” and “[i]t is a valuable resource which must be protected and conserved and shared by all.”247 The final decisions that are made in regards to the ACF region will be monumental in nature. Depriving Metro Atlanta of water would have effects of grand proportions and would send detrimental ripples throughout the national and global economies. Farmers in Alabama and Georgia should not be deprived of access to water. Finally, the Apalachicola Bay area is essential to life in the panhandle region and a critical route for commercial activity by way of inland ports.248

A compromise by the states, regardless of the decision, would ultimately result in one or two of these areas not getting sufficient water resources needed to sustain them. The most appropriate and maximum solution does not lie in reaching a solution on the water resources available now, but to seek additional water resources to add to the current supply resulting in an adequate solution for the demand. Metro Atlanta is located in very close proximity to a river that flows

245. Id. at 2.
with great volume. A Tennessee River water transfer is the preferred solution to the threat facing Metro Atlanta and the AFC region.

Georgia, Florida and Alabama should immediately come to the table with Tennessee and work out a plan under which the three states can purchase water from the state of Tennessee. This plan would be a win-win for the ACF region and the Tennessee economy. A commission could be created to oversee the project or this project could be instituted as an extension of the TVA. Either way, the time to start is now. As global weather patterns become more unpredictable and people migrate south, a sufficient supply of water will be significant in the extension of life in the ACF region as we know it.

Georgia, Florida, Alabama and Tennessee have the unique ability to show the world why we are the United States of America. The U.S. comes together in times of adversity and finds solutions when others have given up. As underdeveloped colonies, the U.S. fought a well-established country to gain independence. The U.S. was the first to the moon. The U.S. built megacities like Las Vegas in the middle of the desert. We tamed great rivers with structures like the Hoover Dam.249 It is equally as important that we get it right. Bad projects have imperiled the Everglades, caused the near loss of New Orleans and extirpated salmon runs in the west.250 We can overcome this water challenge in the southeast and we can do it with the American spirit of ingenuity behind us.

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