

# Georgia scores a court win over Florida in water war

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Georgia notched a victory in a long-running legal dispute with Florida on Tuesday when a judicial official urged the U.S. Supreme Court to reject strict new water consumption limits that Georgia said would have struck a devastating blow to the state's economy.

The recommendation by Ralph Lancaster, a special master appointed by the U.S. Supreme Court to handle the case, found that Florida had **“failed to show that a consumption cap”** was needed after five weeks of hearing testimony in the case.

The finding was celebrated by Georgia politicians, business boosters and agriculture groups that said strict new water limits **could have cost the state billions of dollars**. Florida said a court defeat could endanger its environment and hobble its thriving oyster industry.

Lancaster's finding is not final, as the high court can reject his recommendation or take another route. Congress could ultimately weigh in, and further lawsuits can't be ruled out either. Still, Gov. Nathan Deal and other state leaders said Lancaster's order vindicated Georgia's argument.

"Georgia remains committed to the conservation efforts that make us amicable stewards of our water," Deal said in a statement. "We are encouraged by this outcome which puts us closer to finding a resolution to a decades-long dispute over the use and management of the waters of the basin."

The fight between the two states — plus Alabama, which has been nervously watching the proceedings — involves water flowing from Lake Lanier downstream through Alabama to Florida's Apalachicola Bay.

Georgia's two neighbors have argued for decades that the Peach State has **drawn more than its share** from the Chattahoochee and Flint rivers, **posing a threat to the ecological system** and harming the livelihoods of their residents.

Georgia countered that the state's water use had little to do with the **collapse of the Apalachicola oyster industry**. The U.S. Army Corps of Engineers gave Georgia a stamp of approval last year when it said metro Atlanta would get virtually all the water it needs from Lanier through 2050.

Lancaster had practically begged Florida and Georgia to reach an out-of-court settlement, urging the attorneys for both states repeatedly to hash out a compromise before he made his finding. Deal **had a series of quiet meetings with his counterparts**, but the sessions have yet to yield a public agreement.

Florida officials didn't immediately comment, but Lancaster's finding did appear to leave an opening to launch a separate legal complaint. Lancaster hinted throughout his recommendation that Florida made a grievous tactical error by not including the U.S. Army Corps of Engineers as a party to the lawsuit.

"Without the Corps as a party, the Court cannot order the Corps to take any particular action," he wrote.

It was the latest good news for Georgia in a decades-long court fight with Florida and Alabama over how to share regional water resources. This particular feud started in 2013 when Florida sued Georgia claiming that metro Atlanta residents and southwest Georgia farmers hurt downstream aquatic species by using too much water.

Florida's lawsuit aimed to cap Georgia's overall water consumption and boost the amount of water it sends downstream during drought. It sought to freeze consumption by metro Atlanta's 5.4 million residents at 1992 levels, when the region's population was 3 million.

The U.S. Supreme Court shocked Georgia officials in November 2014 by agreeing to hear the case. Lancaster concluded five weeks of trial in Maine in early December.

The stakes are high. An economic analysis presented by Georgia during the trial warned that the state could suffer nearly \$2.5 billion in economic losses each year if the verdict went against it. Florida argued the costs would be about \$100 million.

The outcome also affects millions of residents along the Apalachicola-Chattahoochee-Flint river basin, which spreads from metro Atlanta through Columbus, Albany, eastern Alabama and a large swath of the Florida Panhandle.

In the closing days of the trial, state officials highlighted Georgia's conservation efforts to argue that it was a good steward of water resources.

In a rare public appeal, Deal said Florida was forced to target Georgia's agriculture industry in part because of successful conservation efforts by metro Atlanta. He pointed to data provided by his office that show metro Atlanta is withdrawing 10 percent less water over the past decade despite growing by more than 1 million people.

At the same time, Georgia poured an increasing amount of resources into winning the case. The legal costs of the case **ballooned to nearly \$30 million this year**, and the governor recently beefed up the state's legal staff and tapped a water czar to oversee the fight.

The Metro Atlanta Chamber, among the business boosters carefully watching the case, said in a statement that Lancaster's order proved the work by Deal and other political leaders and industry officials to conserve water is paying off.

"The metro Atlanta region remains committed to investing in our conservation and efficiency efforts and ensuring a sustainable, long-term water supply for all Georgians," said Katie Kirkpatrick, the chamber's chief policy officer.

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Tuesday's ruling is not final. The U.S. Supreme Court could reject the findings or take another route, and Congress could also ultimately weigh in. Further lawsuits also remain a possibility.

## **A WATER WARS TIMELINE**

**1956:** The Army Corps of Engineers completes construction of the earthen Buford Dam, impounding the Chattahoochee River to form the 38,000-acre Lake Lanier. One of the corps' main functions is to operate three hydroelectric turbines that supply power to the region.

The cities of Buford, Cumming and Gainesville, as well as Forsyth and Gwinnett counties, draw water out of the lake. Cobb, DeKalb and Fulton counties get water from pumping stations on the Chattahoochee after the water passes through the dam's turbines.

**1959:** The corps releases a set of operating guidelines for Buford Dam, detailing how Lake Lanier's water will be used.

**1960s:** The corps allows the metro area to increase its water withdrawals from the Chattahoochee River because the intakes did not affect the dam's hydroelectric operations.

**1973:** The U.S. Senate directs the corps to develop a plan to address the long-term water needs of the Atlanta area.

**1986:** The corps determines that it could supply an average of 327 million gallons of water per day to metro Atlantans without it affecting hydropower generation.

**1997:** Georgia, Alabama and Florida agree to form a commission to figure out an allocation formula. The agreement dissolves in 2003 when the commission cannot agree on a formula.

**2007:** Drought hits the Southeast.

**2009:** A federal judge signs an order that would severely restrict Atlanta's water withdrawals unless Alabama, Florida and Georgia strike a water-sharing deal. U.S. District Judge Paul Magnuson said that Lake Lanier was not intended as a water supply for metro Atlanta. The intended purposes were hydropower, navigation and flood control, he said. Magnuson gave the states three years to work out an agreement before the order would take effect, limiting metro Atlanta to withdraw water at the same levels as it did in the mid-1970s.

**June 28, 2011:** An appeals court overrules Magnuson's decision, saying supplying metro Atlanta water was an intended use for the lake.

**June 25, 2012:** The U.S. Supreme Court secures metro Atlanta's claim to water from Lake Lanier when the court turns down appeals from Alabama and Florida.

**Oct. 1, 2013:** Florida asks the U.S. Supreme Court to order Georgia to let more Chattahoochee River water flow into the Panhandle to keep the state's oyster industry afloat. The suit asks that metro Atlanta's withdrawals from Lake Lanier and the Chattahoochee River be held to the same levels as 1992, when the region drew about 275 million gallons a day to serve 3 million. The level in 2013, following a 55 percent increase in the region's population since 1992 to 5.4 million, was about 360 million gallons a day.

**Nov. 3, 2014:** The U.S. Supreme Court agrees to hear Florida's lawsuit.

**June 19, 2015:** Ralph Lancaster, a Maine attorney whom the Supreme Court appointed as a special master to oversee the case, rejects Georgia's argument that the federal government should also be a party in the Florida case. It was a maneuver Georgia hoped would result in the case's dismissal. Lancaster also kept Alabama out of the case.

**September 2015:** The Army Corps of Engineers updates its water-sharing plan for the Chattahoochee River for the first time since 1989. The plan, which requires final approval, would allow Georgia by 2040 to tap nearly 600 million gallons each day from the Chattahoochee River and Lake Lanier.

**November 2015:** Georgia and Florida agree to enter into mediation in an attempt to reach an agreement on sharing water. Despite the urgings of Lancaster, the states never settle on an agreement.

**Oct. 31, 2016:** The Florida v. Georgia water war trial begins in a Maine courtroom with Lancaster presiding.

**December 2016:** The Florida v. Georgia water wars trial ends. Also in December, the Army Corps of Engineers rules that Forsyth, Gwinnett and Hall counties may withdraw 242 million gallons daily

from Lake Lanier. The city of Atlanta and Cobb, DeKalb and Fulton counties would get an additional 379 million gallons daily from Lake Lanier and the Chattahoochee – enough water to slake population demands through 2050. Metro Atlanta currently taps about 360 million gallons a day from the Chattahoochee.

**January 2017:** Deal signs an executive order shifting \$3.5 million from his emergency fund to pay legal fees in the state’s fight with Florida. That brings the total cost to the state to nearly \$30 million.

**Feb. 14, 2017:** Lancaster rules that Florida failed to prove that new limits on Georgia’s water consumption were needed.