

The Essentials for GA Water Planning

The Relationship
Between the
Proposed GA State Comprehensive Water Plan
and
the Alabama-Florida-Georgia Water Sharing Dispute
(The failure to agree on the two Compacts)

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THE CONTEXT

1990: Need to conform GA water laws & policies with GA response to AL-FL suit against COE first expressed to GA AG.

1997: Need to conform GA water laws & policies with GA response to AL-FL-GA Compact negotiations first expressed to Candidate Barnes.

1999: Need to conform GA water laws & policies with GA response to AL-FL-GA Compact negotiations recommended to Governor Barnes

2001: JSC formed with mandate restricted to intrastate water policies.

2003: Potential FL suit in Supreme Court; GA intrastate water planning and GA strategy to respond to suit remain bifurcated.

2004: Watershed year for GA

THE TWO SIGNIFICANT WATER ISSUES IN GA

- (1) Collapse of the AL-FL-GA Water Sharing Agreements, Compacts
(Likely U.S. Supreme Court Litigation)
- (2) Proposed State Comprehensive Water Management Plan for GA, 2004

AL-FL-GA Water Sharing Dispute: Factors Impacting the State Water Plan

- (1) *Robustness of State Water Laws*
- (2) *Comprehensive Water Resource Study*
- (3) *Environmental vs. Economic Focus*
- (4) *A USSC Decision-making Process w/ Uncertain Results*

AL Water Law

Largely Undeveloped
Riparianism; Recent
Moves Towards
Regulated Riparianism



GA Water Law

Regulated Riparianism
“Light”

FL Water Law

Regulated Riparianism
“Heavy”

Admin Water Law ?

Comprehensive Water Resource Study

Environmental vs. Economic Focus

The U.S. Supreme Court Decision Process

- The Supreme Court is the trial court for suits between states.
- The Supreme Court appoints a special master who actually conducts the trial and recommends (1) findings of fact and conclusions of law based on federal, not state, law to the Supreme Court.
- The Supreme Court enters judgment after hearing arguments from the parties on their objections to the recommendations of the special master.
- The process will take a minimum of three years and may extend to 10-12 years.
- The process is likely to cost each state millions in legal fees.
- The judgment will require a reasonable sharing of the water (an “equitable apportionment”)

The U.S. Supreme Court Focus

- Does the benefit of the disputed use outweigh the harm to the existing use by clear and convincing evidence?
- Is an existing economy harmed?
- For future uses, is there long range planning comparing economic efficiencies?

The U.S. Supreme Court Analysis

- Physical and climatic conditions (water availability);
- The availability of **storage water**;
- The **consumptive use of water** and the character and rate of return flows;
- The extent of established uses and economies built on them;
- Effect of **wasteful uses by the upstream parties** on those downstream;
- The use of **financially feasible conservation measures** for existing & future uses
- The **damage to upstream areas compared to the benefits to downstream** areas if limitations were to be imposed on the former.

Note: **Red** indicates factors important for state comprehensive water plan.

Essential Elements of the State Water Plan

1. Purposes of Georgia's State Water Management Plan
2. **Vision Statement & Guiding Principles**
3. Issues & Goals & **Objectives w/ Performance Measures**
4. State & Substate Planning Structure
5. Institutional Powers & Authorities
6. Intergovernmental Relations
7. **State Policies**

State Policies Essential to State Water Plan

Policies Related to USSC Analysis

- A. Water Rights Structure
- B. Integrated Management
- C. Water Availability Assessment
- D. Water Supply**
 - a. Water Allocation – Withdrawal Permit Program
 - b. Water Storage & Delivery**
 - c. Interbasin Transfer with Basin-of-Origin Protection
- E. Water Use**
 - a. Reasonable & Beneficial Use**
 - b. Role of Economics in Water Management**
- F. Conservation & Reuse**
 - a. Programs for Water Use Efficiency**
 - b. Consumptive Use & Return Flows**
- G. Water Quality
 - a. Clean Water Act Implementation
 - b. Instream Flow
- H. Water-based Recreation
- I. Wetland & Riparian Zone Management
- J. Ecosystem Management & Instream Flow
- K. Extreme Conditions

INTERBASIN TRANSFER
of
WATER

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INTERBASIN TRANSFER OF WATER

- It is important to allow interbasin transfer of water for public supply purposes, especially in multi-river basin regions such as Metropolitan North Georgia,
- However, excessive ITB can complicate the economic division between urban and rural Georgia.
- Excessive IBT can be a transfer of wealth (from an economically inferior basin to an economically superior or urban basin).
 - + significant negative effects on existing and future economic development and quality of life
 - + no opportunity locally for an expanding population and the tax base withers as people leave the basin to seek opportunity elsewhere.

Pre-conditions of IBT:

- _____ (1) Best water management practices instituted in the receiving basin.
- (2) Receiving basin must demonstrate a compelling need for IBT (no practical alternatives exist).
- (3) Consent of basin-of-origin obtained.
- (4) Basin-of-origin compensated
 - Financial compensation, and/or
 - Return of non-consumed water

**REGULATING INTERBASIN TRANSFER of WATER in
GEORGIA from ONE RIVER BASIN to ANOTHER RIVER BASIN**

BASIN-of-ORIGIN PROTECTION

INTERBASIN TRANSFER

It is the policy of this state to protect reasonable needs of both the basin of origin and the receiving basin through the regulation of interbasin transfers. Accordingly, in the consideration of applications for permits which if granted would authorize the withdrawal and transfer of surface waters across natural basins an interbasin transfer, the director shall be bound by the following requirements:

(1)(A) The director shall give due consideration to competing existing uses and applications for permits which would not involve interbasin transfers of surface waters and, subject to subsection (e) of this Code section, shall endeavor to allocate a reasonable supply of surface waters to such users and applicants;

(B) Any interbasin transfer that crosses more than two adjacent counties is prohibited, except to satisfy critical needs, except for interbasin or intrabasin transfers that are part of a plan approved by the division pursuant to Article 10 of Chapter 5 of this title, the ‘Metropolitan North Georgia Water Planning District Act,’ or except to satisfy critical needs;

(C) Any person who receives in one county an interbasin transfer of water which originates in a second county, is prohibited from transferring any or all of such water by means of pipes, conduits, ditches, or canals into a third county, except to satisfy critical needs;

(D) Any person proposing to receive an interbasin transfer must be implementing *clearly-defined best water management practices as defined by the director and a water conservation plan approved by the director prior to the receipt of any requested interbasin transfer;*

~~(E) The consent of a majority of the county commissions of the Georgia counties within the basin-of-origin shall be obtained.~~

(F) An impact statement shall be prepared by the division to estimate the economic, public health, social and environmental effects of such transfer. The cost of the impact statement shall be borne by the party requesting the interbasin transfer,

(G) The non-consumptive return flows resulting from the use of the waters of the interbasin transfer will be released into the basin-of-origin, if not unreasonable to do so.

(H) If return of the non-consumptive flows cannot be reasonably returned to the basin-of-origin, the party requesting the transfer will pay an interbasin transfer offset fee annually \$1.00 for each acre-foot of water to be transferred during the year.

(i) The interbasin transfer offset fee shall be paid annually to the Department of Community Affairs in a manner and at the time prescribed by the Commissioner.

(ii) Fees collected under this section shall be deposited to the credit of an interbasin transfer offset fund designated for financial assistance to a river authority, political subdivision, or other water supplier to pay for the construction of a water development project, including a reservoir, desalination plant, or major conservation project, to offset the loss of surface water from a basin of origin in an

interbasin transfer.

(I) The director shall provide a press release regarding the proposed issuance of all any permits authorizing such interbasin transfer of surface waters to newspapers of general circulation in all areas of the state which would be affected by such issuance. The press release shall be provided at least seven 30 days before the issuance of these any such permits. If the director should determine determines that sufficient public interest warrants a public hearing on the issuance of these any such permits, he or she shall cause such a hearing to be held somewhere in the area affected prior to the issuance of these any such permits.