

# Florida v. Georgia/Interstate Water Dispute: U.S. Supreme Court Special Master Report



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A United States Supreme Court (“Court”) Special Master (“Special Master”) issued a December 11th Report in the interstate water dispute between the states of Florida and Georgia. See *State of Florida v. State of Georgia, No. 142, Original*.

The Court had previously found that the litigation fit within its original jurisdiction.

The action involves a conflict between the two states over allocation of water from the Apalachicola-Chattahoochee-Flint River Basin (“Flint River Basin”).

The Court’s description of the Flint River Basin states that it:

... drains an area of more than 20,000 square miles across the southeastern United States. Three interstate rivers form the heart of the Basin and are central to this case. They are the Chattahoochee River, the Flint River, and the Apalachicola River. It is easiest to think of these three rivers as forming the capital letter “Y,” with each branch starting at a different point in northeastern Georgia near Atlanta and the stem running through the Florida panhandle and emptying into Apalachicola Bay in the Gulf of Mexico.

Downstream state Florida sued the upstream state Georgia in 2010 asking that the Court equitably apportion the Flint River Basin’s waters. After agreeing to exercise original jurisdiction, the Court appointed a Special Master.

A Special Master had previously conducted evidentiary proceedings and submitted a February 2017 Report to the Court. That Report recommended that the Court dismiss Florida’s Complaint.

The Special Master’s recommendation was premised on the conclusion that Florida failed to make the necessary showing (by clear and convincing evidence) that the state’s injuries could be redressed by a decree limiting Georgia’s upstream water consumption if the decree does not also bind the United States Corps of Engineers. The United States had previously declined to waive its sovereign immunity from an action in the case.

The Court in its June 27, 2018, opinion rejected the Special Master’s conclusion. It held that the Special Master applied too strict a standard in concluding that Florida failed to meet its initial burden of demonstrating that an effective equitable decree could be fashioned. As a result, the Court required that a Special Master make Findings of Fact necessary to address certain factors. However, it held that it was reserving judgment as to the ultimate disposition of the case. It addressed only what it described as the “narrow threshold” question (i.e., whether Florida had shown that its injuries could be effectively

redressed by limiting Georgia's consumptive use of water from the Flint River Basin without a decree binding the United States Army Corps of Engineers.

The Court's 2018 Decision was not a final decree of apportionment of water between Florida and Georgia. Instead, it instructed a subsequent Special Master to apportion water in a way that could remedy Florida's harm. The Supreme Court would then consider that apportionment recommendation. A determinant would be made whether a final decree should be issued.

The December 11th Special Report was authored by a new Special Master. He is Judge Paul Kelly, Jr. of the Tenth Circuit Court of Appeals.

The subsequent Special Master asked Florida and Georgia whether an additional evidentiary hearing should be held. Florida asked for additional discovery and an evidentiary hearing related to certain questions that the Court had raised for remand. The Special Master denied Florida's request holding that the record developed at the previous trial was extensive and stating:

- further evidentiary proceedings would only further delay resolving what is described as a "protracted dispute"
- the United States explained that the question whether reasonable modifications could be made to the United States Army Corps of Engineers current Master Manual would be better left until after other issues in the case were resolved

Florida and Georgia simultaneously proposed findings of fact and conclusions along with supplemental briefs.

The Special Master in the December 11th Report states he strived to make:

... "extensive," "specific," and "detailed" factual findings to reach a conclusion on the issues identified by the Supreme Court in this Report.

The Special Master in the December 11th Report recommends denying Florida's request for a decree. He holds that the state has not proved the elements necessary to obtain relief.

The stated rationale for the Decision includes:

- failure to find that Georgia caused harm to Florida's oyster fishery collapse by clear and convincing evidence
- Georgia's use of the Flint and Chattahoochee Rivers has not increased unreasonably or inequitably since the 1970s
- the benefits of an apportionment would not substantially outweigh the harm that might result
- the U.S. Army Corps of Engineers' reservoir operations on the Chattahoochee River would prevent most streamflow increases from reaching Florida during the times it is needed to alleviate that state's alleged harms

Besides the Introduction and Conclusion, the 81-page Special Report includes the following sections:

- Florida's Alleged Injuries
- Whether Georgia's Use of ACF Waters is Inequitable
- U.S. Corps of Engineers Operations
- Whether the Benefits of a Decree Would Substantially Outweigh the Harm that Might Result

The Court will now consider the Special Master's Report.

A copy of the Special Master's Report can be downloaded [here](#).