

# Florida v. Georgia: U.S. Supreme Court Addresses Interstate Water Dispute



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The United States Supreme Court (“Court”) issued an opinion today in the interstate water dispute between the states of Florida and Georgia.

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.

The Special Master conducted evidentiary proceedings and submitted a Report to the Court. The 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 rejects in the June 27th opinion the Special Master’s conclusion. It holds 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. In reaching this determination the Court noted:

- Both Georgia and Florida possess an equal right to make a reasonable use of the waters of the Flint River
- When confronted with competing claims to interstate water, the Court’s effort always is to secure an equitable apportionment without “quibbling over formulas”
- In light of the sovereign status and equal dignity of the states – the complaining state’s burden is much greater than the burden ordinarily shouldered by a private party seeking an injunction

- Because equitable apportionment is flexible (as opposed to formulaic) the Court will seek to arrive at a just and equitable apportionment of an interstate stream by considering all relevant factors, which include:
- Physical and climatic conditions
- The consumptive use of water in the several sections of the river
- The character and rate of return flows
- The extent of established uses
- The availability of storage water
- The practical effect of wasteful uses on downstream areas
- Damage to upstream areas as opposed to the benefit to downstream areas if a limitation is imposed on the former

The Court states that the Special Master must make the findings of fact necessary to address these factors. However, the Court notes that it is reserving judgment as to the ultimate disposition of the case addressing only what it describes as the “narrow threshold” question – i.e., whether Florida has shown that its injuries can 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.

A [link to the opinion](#) can be found here.