
Lake Lanier in 2007 (Pouya Dianat / AJC)

Those of us in the west have grown used to thinking of water wars as a regional specialty. But they happen in the east too. Florida, Alabama, and Georgia have been in court for nearly 20 years fighting over the waters of the Apalachicola-Chattahoochee-Flint River system, popularly known as the ACF. On Friday, a federal judge handed the downstream states, Florida and Alabama, a major victory in the latest battle.

The Army Corps of Engineers manages a series of federal reservoirs in the upper ACF basin. The largest, Lake Lanier in northwest Georgia, has been the center of the conflict. Metropolitan Atlanta, although it did not contribute to the costs of construction, has come to rely on Lake Lanier for its water supply. Downstream, water from Lake Lanier provides hydropower; water for agricultural, municipal, and industrial use; and flows for endangered and threatened species. The conflict, although it had simmered for years, came to a boil in 2007, when a drought hit the southeast and Atlanta believed it was in imminent danger of running out of water.Buford Dam, which created Lake Lanier, was originally constructed for hydropower, flood control, and navigation purposes. In the 1970s and 1980s, the Corps of Engineers signed a series of contracts allowing several Georgia communities to draw water from Lake Lanier. Those contracts expired in 1990, but the Corps allowed the withdrawals to continue.

In 1990, Alabama filed suit against the Corps. Florida intervened as a plaintiff, and Georgia came in as a defendant. Shortly thereafter, the litigation was stayed at the request of the parties while they sought to negotiate a settlement. The states managed to negotiate a compact that Congress ratified, but instead of allocating the basin’s waters the compact merely created a commission charged with doing so. The commission proved unable to come up with an allocation formula, and the compact expired in 2003.

Meanwhile, Georgia had sued the Corps for denying its request for permanent water supply use from Lake Lanier. The Corps settled that suit, and entered into new interim contracts allowing Georgia municipalities to withdraw more than 500 million gallons per day from the Lake and the Chatahoochee River. But last year the DC Circuit ruled that the settlement was invalid because the Corps lacked the authority to enter into it without Congressional approval. That lawsuit was remanded to the

district court, where it was consolidated with several other ACF suits before a senior federal judge from Minnesota, Paul Magnuson, sitting in Jacksonville, Florida.

On Friday, Magnuson ruled that water supply is not an authorized purpose of the project that created Lake Lanier, and that the Corps could not lawfully approve increased water supply use, with corresponding reductions in hydropower generation, without Congressional authorization. Recognizing that "the municipal entities that withdraw water from Lake Lanier and the Chattahoochee River cannot suddenly end their reliance on that water merely because a federal court has determined that the Corps failed to comply with its statutory obligations," the court stayed the effect of its ruling for three years to allow Georgia and the Corps to seek congressional approval. Absent such approval, at the end of three years, the court ordered the Corps to go back to operating Lake Lanier as it did in the 1970s, allowing only small withdrawals by a couple of nearby communities, and essentially denying any water to Atlanta. Judge Magnuson wrote:

> The Court recognizes that this is a draconian result. It is, however, the only result that recognizes how far the operation of the Buford project has strayed from the original authorization.

He also had harsh words for both the Corps and the local governments who had expanded their reliance on Lake Lanier's waters over time, and a warning for all of us:

> [T]he slow pace at which the Corps operates has only served to further complicate and provoke this already complicated and inflammatory case. It is beyond comprehension that the current operating manual for the Buford Dam is more than 50 years old. . . . The uncertainty created by the Corps's alarmingly slow pace only adds to the frustration of all parties involved in this litigation. . . .
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> The blame for the current situation cannot be placed solely on the Corps's shoulders, however. Too often, state, local, and even national government actors do not consider the long-term consequences of their decisions. Local governments allow unchecked growth because it increases tax revenue, but these same governments do not sufficiently plan for the

> resources such unchecked growth will require. Nor do individual citizens considerfrequently enough their consumption of our scarce resources, absent a crisis situation such as that experienced in the ACF basin in the last few years. The problems faced in the ACF basin will continue to be repeated throughout this country, as the population grows and more.

The decision can be downloaded here. Not surprisingly, the Governor of Georgia has condemned it, while the Governors of Florida and Alabama have applauded it. Both of the downstream states indicated their willingness to negotiate an equitable sharing of the basin's waters. Georgia's governor Sonny Perdue vowed to appeal the decision and to seek relief from Congress. It doesn't seem likely that either of those avenues will bear fruit for the peach state. Both the legislative history and past statements by Georgia and Atlanta authorities firmly support Judge Magnuson's ruling. And even Georgia's congressional delegation suggested that a tri-state agreement would be a necessary prerequisite to congressional action.

It's high time that Georgia and Atlanta acknowledged their interdependence with their cross-border basin neighbors and come to the table prepared to make some real trade-offs, instead of bludgeoning the Corps with lawsuits and trying to move its boundary with Tennessee to get access to the Tennessee River. It's also high time that the Army Corps started paying closer attention to the limits Congress put on its discretion to run rivers like the ACF according to its own view of how trade-offs ought to be made among competing uses.

For more on this dispute, see the Congressional Research Service's 2008 report to Congress, and law professor J.B. Ruhl's concise explanation of the legal background and the tangled litigation.