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A Dispatch from the Water Wars -- The Georgia Front

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by [Zane O. Gresham](#), [Priscillia B. de Muizon](#)

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Mark Twain's observation about the relative uses of water and whiskey evidently applies as much in the Southeast as out West. As an epochal drought persists, Florida and Alabama continue to battle with Georgia over who gets the water from Lake Lanier, a federal reservoir that supplies water to over 3 million residents of Atlanta – and feeds the Apalachicola River that flows down to Florida and Alabama. The latest skirmish was before the U.S. Court of Appeals for the D. C. Circuit (*Southeastern Fed. Power Customers, Inc. v. Geren*).

The specific issue before the court was a 2003 agreement between Georgia and the U.S. Corps of Engineers (Corps), the federal agency that operates Lake Lanier. The agreement would have given metro Atlanta 65% more water from Lake Lanier (representing about a quarter of the reservoir's storage capacity). Florida and Alabama sued to invalidate the deal, claiming that Georgia's withdrawals from the reservoir would sharply reduce the flows essential for their municipalities, industries, recreational water users, and wetlands ecosystems. They brought claims under the National Environmental Policy Act (NEPA), the Flood Control Act, and the Water Supply Act. One of the factual allegations was that Georgia had done virtually nothing to reduce water usage through conservation or land use controls.

The court sided with Florida and Alabama, although it did not address some of the more provocative issues under NEPA and the Flood Control Act. It held the 2003 agreement between Georgia and the Corps void under the Water Supply Act because the Corps had not obtained Congressional approval for such a "major operational change" to the management of a federal reservoir. (Even the Corps conceded at oral argument that increasing the amount of Lake Lanier waters designated for drinking supplies from 47.6 billion gallons to 78.5 billion represented the largest reallocation by the Corps ever without Congressional approval.)

This extended water "border war" may be resolved in various ways: Georgia can appeal the decision to the U.S. Supreme Court; the three states can continue their long-standing negotiations over long-term water supplies, or Congress can step in (although Congress may dodge the issues while the states haggle over a water supply agreement, especially during an election year).

The broader lessons from the conflict among these states:

- without effective regional plans and actions for sustainable long-term water supplies, water disputes will only get uglier;
- tighter requirements for water conservation and pre-development assurances of adequate water supplies will be essential to resolve disputes between states or within states.

California already has linked approval of development with water supplies, through Senate Bills 610 and 221 (requiring that sufficient water supplies be identified as part of land use approvals for projects), and in the courts (in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, the California Supreme Court held that under the California Environmental Quality Act (CEQA), a lead agency must identify adequate water supplies prior to approving the project and analyze the environmental impact of procuring sufficient water).

The water wars are likely to continue on both coasts. Government, land owners and businesses need to insist on sound long-term water resource planning and regulation to ensure the responsible use of water, and the availability of a precious regional resource to support continued economic growth.

Citations:

- *Southeastern Fed. Power Customers, Inc. v. Geren*, ___ F.3d ___ (D.C. Cir. Feb. 5, 2008).
- *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal. 4th 412 (2007).

