The Tri-State Water Wars

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The Tri-State Water Wars

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Description: An overview of research on the Georgia, Alabama, Florida feud over the ACF River Basin.
RSS: Subscribe to Updates via RSS

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Scope
The purpose of this online research guide is to provide an overview of the dispute between Georgia, Alabama, and Florida over the Apalachicolo-Chattahoochee-Flint River Basin.

About the Author
Carmela Orsini is a third year law student at Georgia State University’s College of Law. She is creating this web research guide for an Advanced Legal Research class taught by Nancy Johnson. This guide was last updated on November 15, 2010. She chose this topic because of her interest in water rights and natural resource law.

Disclaimer
Bibliographies on this Web site were prepared for educational purposes by law students as part of Nancy P. Johnson's Advanced Legal Research course. The Law Library does not guarantee the accuracy, completeness, or usefulness of any information provided. Thorough legal research requires a researcher to update materials from date of publication; please note the semester and year the bibliography was prepared.

Primary Sources

Federal Statutes
Many if of the arguments used from all sides in the Tri-State Water Wars involve Federal Statutes. These are listed below with links to the text of the statute:

  - The main users of the ESA is Florida. They raise issues of the violation of ESA in order to protect sufficient water flow into the Apalachicola Bay where numerous endangered species live.

  - Florida also relies heavily on the NEPA in order to protect the ecosystem of the Bay and its inhabitants. Local citizens rely on the bay and its fishery business to sustain the economy.

  - The WSA gives the operational instructions of the Buford Dam and Lake Lanier to the Corps of Engineers. Much of the litigation has centered around whether or not the WSA authorizes Atlanta to draw drinking water from the ACF Basin.
### Cases

The heart of the Tri-State Water Wars is a sea of litigation in a multitude of venues. The cases below list out this extensive litigation. Where full text is available, the links go to full text of the case from one of the many free case law providers on the Internet, including LexisOne and FindLaw. In a few instances, the links go to a paid service such as Weslaw or LexisNexis.

#### The Alabama Cases

<table>
<thead>
<tr>
<th>Case</th>
<th>Description</th>
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<tbody>
<tr>
<td>Alabama v. U.S. Army Corps of Eng'rs, 382 F. Supp. 2d 1301 (N.D. Ala. 2005)</td>
<td>The court granted the complaints from the various states but ordered them to revise these complaints in order to accurately determine the court's jurisdiction.</td>
</tr>
<tr>
<td>Alabama v. U.S. Army Corps of Eng'rs, 424 F.3d 1117 (11th Cir. 2005)</td>
<td>On appeal, the case was remanded after the district court's order enjoining the DC Agreement was vacated.</td>
</tr>
<tr>
<td>Alabama v. U.S. Army Corps of Eng'rs, 357 F. Supp. 2d 1313 (N.D. Ala. 2005)</td>
<td>The motions of the Corps and Georgia to dissolve the preliminary injunction were denied.</td>
</tr>
<tr>
<td>Alabama v. U.S. Army Corps of Eng'rs, 441 F. Supp. 2d 1123 (N.D. Ala. 2006)</td>
<td>Applying the traditional four-prong test for injunctive relief, the court held that Florida failed its burden of showing the necessary causal link between the Corps' actions and the harm suffered by an endangered mussels, thus failing to demonstrate a likelihood of success on the merits. The severe drought and an excess buildup of sedimentation that isolated a slough that was the mussels' primary habitat from the river flow downstream from the dam could not be linked to the Corps' activities, so Florida's motion was denied.</td>
</tr>
<tr>
<td>Alabama v. U.S. Army Corps of Eng'rs, No. 1:90-cv-01331 (N.D. Ala. Apr. 19, 2007)</td>
<td>The case was remanded with instructions that Florida and Alabama specifically state exactly which agency actions they were challenging and the statutory authority these claims are based on.</td>
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#### The D.C. Cases

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<thead>
<tr>
<th>Case</th>
<th>Description</th>
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<tr>
<td>Se. Fed. Power Customers, Inc. v. Caldera, 301 F. Supp. 2d 26 (D.D.C. 2004)</td>
<td>The DC Agreement was affirmed provided the injunction issued by the Northern District of Alabama was vacated.</td>
</tr>
<tr>
<td>Se. Fed. Power Customers, Inc. v. Geren, 514 F.3d 316 (D.C. Cir. 2008).</td>
<td>The appellate court ruled that the DC Agreement should not have been found to be valid and overturned it.</td>
</tr>
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</table>

#### The Georgia Cases

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<tr>
<th>Case</th>
<th>Description</th>
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<tbody>
<tr>
<td>Georgia v. U.S. Army Corps of Eng'rs, 302 F.3d 1242 (11th Cir. 2002)</td>
<td>Georgia sued to compel the Corps to grant its request for increased releases of water from a reservoir managed by the Corps which was subject to the Apalachicola-Chattahoochee-Flint (ACF) Compact among Georgia, Florida, and Alabama.</td>
</tr>
<tr>
<td>In re Tri-State Water Rights Litigation, No. 3:07-md-00001 (M.D. Fla. Mar. 21, 2007)</td>
<td>When Alabama and a group of water suppliers in North Georgia intervened in the case, the case was...</td>
</tr>
</tbody>
</table>
In re Tri-State Water Rights Litigation

- All the various above cases were combined into the Tri-State Water Rights Litigation under Judge Paul Magnuson. He heard the case in two phases. This case, Phase I, ruled that the Corps did indeed need Congressional authorization to enter into the D.C. Agreement because the terms constituted a major operational change and to fail to have the proper approval would be in violation of the WSA.

- Florida sought to protect its share of the ACF water flow based on the EPA’s placement of three native Apalachicola Bay species on the threatened or endangered species list: the Gulf sturgeon, the fat three-ridge mussel, and the purple bankclimber. However, the Court was unpersuaded and dismissed all the ESA claims and declared the NEPA claims moot since all current practices of water allocation were temporary solutions.

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Secondary Sources

Legal Encyclopedias

Legal Encyclopedias are an excellent resource for getting an overview of a topic. Here are some examples of articles found within legal encyclopedias that discuss broad topics within water rights law in the United States that might be helpful for someone unfamiliar with water law that needed to do research on the Tri-State Water Wars.

- 78 Am. Jur. 2d, Territorial Extent of Use and Title; Rights, § 34 (2010).
- 78 Am. Jur. 2d, Authority and Jurisdiction as Between State and Federal Governments, § 159 (2010).

American Law Reports

American Law Reports are a very useful tool in getting an overview of a specific legal issue. Within each report, one can find a summary of the legal issue and landmark cases. The following ALR articles discuss the Tri-State Water Wars.

- Apportionment and Division of Area of River as Between Riparian Tracts Fronting on Same Bank, in Absence of Agreement or Specification, C.T. Foster, 65 A.L.R. 2d 143.
- Riparian Owner's Right to New Land Created by Relicition or by Accretion Influenced by Artificial Condition Not Produced by Such Owner, 63 A.L.R. 3d 249.

Books

Below is a bibliography of books found at the GSU College of Law Library on Water Rights and the Tri-State Water War. These books cover a broad range of topics dealing with water allocation between states. While many of them focus specifically on the Tri-State Water War, some of them deal with the subject of water rights or water conflicts more generally. This list is limited to books published since 2000.

- A collection of essays on various water disputes, including the ACF Basin
Empirical data on rainfall and drought predictions for the ACF River Basin area


A book from a leader in the field of water rights that offers ideal law


This is part II of the final report of the Task Committee for the Shared Use of Transboundary Water Resources


A brief, 68 page outline of Riparian Law, the dominating rule of law in the southeast.


An overview of Water Rights and laws in the USA with an easy to follow Table of Contents


Also comes with an extensive bibliography


Another model compact book that again takes more of an international and tribal relations context


A collection of essays with more of a focus on international water relationships


An outline of law by type, starting with litigation, moving onto legislation, then compacts, etc.


An overview of Water Law with an extensive bibliography


An overview of water rights conflicts in the United States

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**Newspaper Articles**

Since the Tri-State Water War is still raging. As a result, there are a multitude of newspaper articles on the subject. Below is just a sampling of some of the most relevant ones from the last year:

**The Anniston Star (Alabama)**
- Editorial: Finally, they'll meet: Progress in the water war? Dec. 9, 2009.

**The Atlanta Journal-Constitution**
- Scott, Jeffry, New factor in water debate; City-owned property eyed for reservoir; Purchased as site for second airport, tri-state issue may alter plans. Sept. 19, 2010. Pg. 1B.
- Fox, Patrick, Corps gives no help on lake use; New manual for Lanier doesn't cover function as metro water source. Sept. 11, 2010. Pg. 1B
- Redmon, Jeremy, Group forms for water use; Environmentalists, Georgia Power among river stakeholders. Nov. 27, 2009. Pg. 1B.
- Redmon, Jeremy and Bob Keefe, Finger pointing in tri-state water wars; Federal lawmakers say states must negotiate; Perdue still looks to Congress for a solution; governors yet to meet. Oct. 30, 2009. Pg. 1A.
- Redmon, Jeremy and Bob Keefe, States urged to act faster, Congressmen tell governors to hurry up. Oct. 29, 2009. Pg. 1A.
- Redmon, Jeremy and Bob Keefe, 3 states meeting to discuss water war. Oct. 27, 2009. Pg. 1B.
- Rankin, Bill, Judge to Ga.: Stop water war delays. Oct. 6, 2009. Pg. 1A.

**Birmingham News**
- Orndorff, Mary, Army Corps goes with court ruling in water wars. Nov. 20, 2009. Pg. 4B.

**Greenwire**
### Law Review Articles

Law Review articles are helpful when researching certain issues for several reasons. They help by collecting data and organizing it in useful ways, analyzing an issue in a new or unique way, and providing insight and opinion while giving an overview of the law as well. Below is a list of some of the most relevant law review articles on the Tri-State Water War. The links take you to the HeinOnline site for the article, which is a paid service, with a few exceptions where the article was not on Hein. In these cases, the link goes to either Lexis or Westlaw, both also paid services.

  - This article outlines the Tri-State Water War while offering solutions through Federal government intervention, granting the allocation power to the Army Corps of Engineers.

  - By laying out the various water right laws used in various situations, the author proposes how each would work with the Tri-State water situation and which would be most advantageous.

  - Focusing on the D.C. cases and various mediation attempts, the article concludes that Congressional intervention might be the only real answer to solving the problem.

  - This article starts out by describing other multi-state water disputes, notably with the Colorado River, and then points out things that might translate to the Tri-State Water War.

  - Focusing mostly on various regulations and theories on ADR, this article offers ways these regulations could assist in solving water disputes like the Tri-State Water War.

  - Less on the Tri-State Water War, this article focuses more on Federal Law on water rights, water markets, and various climate reform legislation in Congress and how it might affect current water issues.

  - After comparing various state water laws such as riparianism that dominate in the southeast, the author turns to theories of how to solve disputes in times of scarcity.

  - The author provides a great overview of the Tri-State Water dispute and suggests that the various Compacts between the states are not sustainable or enforceable.

  - Focusing on more issues than just the dispute over the ACF Basin, this article discusses other Georgia water issues including quality, economic factors, and conservation.

  - Like some of the other articles, the author here turns to successful multi-state water compacts in other regions of the country, such as Colorado River, and what they can teach the leaders in Alabama, Florida, and Georgia.

This author suggests that instead of transferring water from basin to basin that some sort reasonable use doctrine might be the most functional solution to the Tri-State Water War.

  - This article advocates the international doctrine of equitable apportionment to solve the Tri-State Water dispute.

  - This Georgia Senate Resolution concluded that Atlanta needed water from Lake Lanier and the Chattahoochee River and the author suggests otherwise.

  - This article, not specifically on the Tri-State Water Wars, offers ways the Federal Government can help by setting allocation guidelines and enforcement of environmental regulations.

  - Again, like other articles, the author here outlines other disputes in the country and concludes that equitable apportionment is the best solution for the Tri-State Water War.

  - Instead of focusing on what other states can teach the Tri-State Water states, this article turns to the lessons other states can learn from Alabama, Florida, and Georgia.

  - This article outlines ways that the states involved in the Water War could start working together instead of assuming their traditional role of rivals.

  - By pointing out the emerging issue of scarcity in the East that has been a common, even old, issue in the arid West, this article attempts to see how the two areas can meld.

  - Because scarcity is such a new, novel issue in the typically water-rich southeast, the author argues that issues like the ones surrounding the ACF Basin are a new era of issues and a telling story of things to come.

  - Outdated, admittedly, with the issue of the Tri-State Water War, the article outlines the way governmental involvement has been crucial in Native American tribal water disputes, providing unique insight to the ACF Basin issue.

  - Not focusing solely on the Tri-State Water War, this article also discusses issues of flooding in water management in the East, an issue that last year became relevant in the talks over controlling the ACF Basin.

  - Pointing out at least two sources of significant uncertainty in evaluating possible outcomes of the ACF/ACT negotiations: factual uncertainty about the future effects of the proposed allocation formulas, and uncertainty about the extent of federal claims on the waters of the basin, this article points out the weaknesses and reasons for failure of negotiations thus far.

  - Pointing out the flaws in the actions and attitudes of the key players in the Tri-State Water War, the article turns then to ways the players can adjust these flaws to reach a solvable solution to the ACF controversy.

  - This article gives a good overview of both the ACF Basin dispute and how it relates to the ACT Basin running through Alabama as well.

  - The author here provides an excellent outline of the dispute and how it parallels with other disputes in the country.

  - This article points out the flaws of riparianism and the various struggles this water rights regime causes in times of scarcity in the southeastern states.

**Treatises**

  - This article advocates the international doctrine of equitable apportionment to solve the Tri-State Water dispute.

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  - This article points out the flaws of riparianism and the various struggles this water rights regime causes in times of scarcity in the southeastern states.
Treatises are a great place to start research on a specific topic because they give an overview of a particular area of law. Below are some treatises from Westlaw on various water rights issues relevant to the Tri-State Water War.


### Computerized Research

#### Websites Focused on the Tri-State Water Wars

<table>
<thead>
<tr>
<th>Upper Chattahoochee Riverkeeper</th>
<th>Description</th>
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</table>
| [chattahoochee.org](chattahoochee.org) | • Provides an overview/history of the Tri-State Water Wars  
• Has volunteer opportunities and conservation tips  
• Gives a multitude of resources on the Riverkeeper, facts on the river, etc, including an app for the iPhone  
• Lists job and internship opportunities |

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<tr>
<th>Water Webster</th>
<th>Description</th>
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</table>
| [waterwebster.com](waterwebster.com) | • Gives a timeline of the Tri-State Water dispute  
• Links to news articles on the water wars, including archives from several years ago  
• Lists of resources including maps and drought records |

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<tr>
<th>Georgia Water Science Center</th>
<th>Description</th>
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</table>
| [Georgia Water Science Center](Georgia Water Science Center) | • More empirical and scientific data than other sites  
• Provides facts sheets on a variety of water quality and quantity surveys  
• Gives a basin study for the ACF |

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<tr>
<th>Atlanta Regional Commission</th>
<th>Description</th>
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</table>
| [ARC.com](ARC.com) | • A self-proclaimed Tri-State Water War Resource Center.  
• Provides background information, resources, fact sheets, news stories, and editorials |
Conclusion

The Tri-State Water War is far from over. Georgia was given three years to find a different source of water for the Metro Atlanta area or to get Congressional approval to use Lake Lanier (a task it has been unable to do for 20 years.) Despite lameduck governors in all three states, negotiations remain politically charged and unproductive. As a result, the research for this topic will always be evolving and changing as the story continues to unfold. Please check news sources and user-provided links for any future developments beyond the due date of this project.