

Water Wars News Update

March, 2017

This document is intended to provide an update on the "Water Wars" for the members of the North Georgia Crappie Anglers Club. As indicated in the December Water Wars News Summary, the Florida vs. Georgia water consumption case was elevated to a "special master" appointed by the U.S. Supreme Court to settle this dispute. A special master is a judge that hears all of the detailed evidence and arguments in a case. The special master sends his ruling to the U.S. Supreme Court which then reviews the ruling much like an appeals court. If they agree with the ruling, it becomes a Supreme Court ruling. Ralph Lancaster, Jr. was the appointed special master in this case. He heard the arguments for the Florida and Georgia sides at a site in Portland, Maine. The legal presentations were completed on December 1.

On February 14, 2017, the special master released his report which denied Florida's claims in the suit. The "Conclusion" from his report is reprinted below. The bottom line is that Florida failed to show that a consumption cap would afford adequate relief. Part of the problem for Florida is that they did not include the U.S. Army Corps of Engineers in their suit. The Corps' operation of the reservoirs is a significant factor in the flow of water entering Florida. Since they were not in the suit, the court could not mandate the Corps to alter their operations.

The ruling by the special master is good news for Lake Lanier as the Corps will not be forced to change their operations.

From special master's report:

VII. CONCLUSION

In issuing the Order on Georgia's motion to dismiss, I observed that "Florida's claim will live or die based on whether Florida can show that a consumption cap is justified and will afford adequate relief." (Order on Georgia's Motion to Dismiss, at 13 (Dkt. No. 128) (citing Idaho, 444 U.S. at 392)). Florida has failed to show that a consumption cap will afford adequate relief. The testimony and evidence submitted at trial demonstrates that the Corps can likely offset increased streamflow in the Flint River by storing additional water in its reservoirs along the Chattahoochee River during dry periods. The evidence also shows that the Corps retains extensive discretion in the operation of those federal reservoirs. As a result, the Corps can release (or not release) water largely as it sees fit, subject to certain minimum requirements under the RIOP. There is no guarantee that the Corps will exercise its discretion to release or hold back water at any particular time. Further, Florida has not shown that it would benefit from increased pass-through operations under normal conditions. Finally, without the Corps as a party, the Court cannot order the Corps to take any particular action. Accordingly, Florida has not proven by clear and convincing evidence that any additional streamflow in the Flint River resulting from a decree imposing a consumptive cap on Georgia's water use would be released from Jim Woodruff Dam into the River at a time that would provide a material benefit to Florida.