Water Policy in Georgia

By Mary Shoemaker May 2013

Intern

****The following paper was written by our Intern for the 2013-2014 Legislative Sessions, Mary Shoemaker. Mary primarily assisted the Senate Natural Resources and Transportation Committees. For her class, Mary was required to write an argumentative paper on a topic of interest during the Session. She chose to write about Water Policy in Georgia, as illustrated by several bills that were heard during the Session. The statements, views, and opinions contained in this paper are those of Mary and are not endorsed by, nor do they necessarily reflect the opinions of the Senate Research Office****

My name is Mary Shoemaker and I interned in the Senate Research Office during the 2013 Legislative Session. Working in this office, I had the opportunity to write bill summaries for most of the legislation going through the Senate Natural Resources and Transportation Committees, as well as provide committee meeting reports for each of these committees' meetings. My favorite days of the week were the ones during which I would get to attend these meetings and have conversations with the Senators or other staff members. During each meeting, I was captivated by the public's testimonials, and the manner in which these stakeholders' positions were accounted for in the Committee and Senate-wide votes. Another aspect of my job that I loved was completing small-scale research projects for senators. Frequently, I was told to explore topics that I had no prior exposure to, so I cherished these opportunities to build my own knowledge from the ground up. I saw each of these projects as an excuse to learn about something that I would have never had the chance to otherwise. Some of my other dearest moments during this internship were the times I spent on the floor of the Senate Chamber. The proposal of amendments, the conducting of votes, and the structured discussion of bills: these were the exciting moments that my textbook knowledge of state legislatures had never given justice. As I move forward in my studies and in my career, I will always value the people that I worked with and the skills that I garnished.

I. Georgia's Water Problems

The state of Georgia is comprised of 14 major river basins; six of these are completely within the state's boundaries, while eight of cross boundaries with neighboring states (GA Env. Protection Division). These interstate basins contain water resources which must be shared; however, discerning the fair way to share such an invaluable material is no simple matter. States east of the Mississippi River generally determine water rights according to the riparian rights principle; it grants a person use of water running through or adjacent to their land so long as they are doing so responsibly. States west of the Mississippi River uphold a different theory of water law: the Law of Prior Appropriation,

which essentially yields water and land privileges on a first come, first serve basis (Samuel 1914). Defining the water rights of individuals in Georgia, and of the state as a whole, is a contentious task that is complicated by the rapidly growing pressure placed upon natural resources. Between 1990 and 2000, Georgia's water use expanded 20 percent as a result of the state's expeditious population growth and its economic development (GA Env. Protection Division). Meeting this increasing demand should be at the forefront of Georgia's environmental policy portfolio because failing to do so would affect so many areas of the population.

The primary motivation for protecting this natural resource is undoubtedly to meet humanity's agricultural, industrial, and recreational needs. The protection of aquatic life, for both ecological and economical purposes, is yet another impetus for sustainable water consumption. Water preservation is the most influential environmental cause in Georgia for another reason entirely: failure to monitor use of this resource leads to direct and immediate consequences. With most environmental issues, such as air quality maintenance or forest management, the repercussions take time to manifest themselves. People are often slow to realize the ramifications of pollution because poor air quality is not immediately discernible. Excessive deforestation is similarly easy to overlook because so many citizens, including most urbanites, are removed from such woodlands and are still able to maintain our high-quality lives in spite of the abuse of this resource. Water is unlike both of these public goods because it is demanded on such a regular basis and in such great quantities. The moment water sources are compromised, the public is made fully aware: by the media, by conspicuously low water levels, and by the actions of the legislature. When asked to define the most pressing environmental issue in Georgia, Senator Ross Tolleson - Chairman of the Senate Natural Resources Committee - highlighted water issues as one of the most common topics among natural resources-related legislation. Senator Tolleson then remarked on the unabating nature of this problem in its resurfacing throughout the year, even when the legislature is not in Session. In evaluating Georgia's water predicaments and their solutions, one must first reflect upon state-level water policy efforts.

II. A Statewide Water Plan

Georgia's population growth has led to contention amongst Georgia citizens as well as with other states. Over the past decade, these disputes have demonstrated the necessity of creating a unified water plan to address statewide concerns. During the 2003-2004 Legislative Sessions, the Georgia General Assembly passed HB 237 – the Comprehensive Statewide Water Management Planning Act – which required the state to develop a statewide water plan that considered long-term goals in delineating methods of resource management. The Joint Comprehensive Water Plan Study Committee was then created and given the task of developing the framework for this plan. Responsibility for assembling this plan was shared with the Georgia Environmental Protection Division (EPD) with oversight from the Georgia Water Council (GA Water Planning). The plan was expected to accomplish a wide variety of objectives: settle disputes with neighboring states, protect the environment, and regulate water quality and quantity (GA State Univ. Law Review). HB 237 had originally been introduced in the previous session - in 2003 - to address water planning issues such as interbasin water transfers (IBT) and water permit sales. Because these provisions were controversial and inhibited the bill from passing that Session, the author of the bill removed those elements and re-introduced the bill, this time more successfully.

The EPD began to assemble the State Water Plan in 2004 with the purpose of providing a guide for sustainable water management using the framework of existing laws. Through this plan, the EPD proposed an integrated water policy, linking different components of the same problems in order to identify related aspects of each water issue. This part of the plan connected future and present management decisions, surface water and groundwater management deliberations, and water withdrawal and water return decisions. The plan further stressed the importance of addressing water quantity as well as water quality policy. Another component proposed an assessment of Georgia's

water resources, including their capacity to support a growing demand and assimilate more pollutants. In 2008, the General Assembly adopted the State Water Plan and in 2009, regional water planning efforts by Water Planning Councils began. With the EPD's release of its Water Conservation Implementation Plan in 2010, Regional Water Plans were adopted in September 2011 (Highlights Regional Water Planning). According to Senator Tolleson, Georgia's Statewide Water Plan is something that most states do not possess. Understanding the significance of this plan, and the issues it seeks to address, warrants an evaluation of Georgia's water problems both internally and with neighboring states.

III. Intrastate Water Issues

The geography of our state poses a unique challenge in meeting Georgians' water needs: the mountainous northern part of our state provides surface water, while the southern part of our state provides groundwater. The northern half of Georgia is where the majority of our population lives; however, groundwater sources cannot supply sufficient quantities of water for cities and large industrial operations. Consequently, the majority of the water provided to residences across Georgia comes from surface water sources (EPD Water Sources). North and South Georgia are not only different because of where their water comes from, but because of how they use this resource. Cities and municipalities consume water and use it for waste management, whereas rural areas use water for agricultural purposes. Senator Tyler Harper from Ocilla, Georgia affirmed that water in South Georgia is all about "sustaining life" whereas in North Georgia it is primarily used for drinking. South Georgians, he said, have a fear that North Georgians will route water from the South to the North. This process, known as interbasin transfer (IBT) would require water to be moved through a pipe from one river basin to another, most likely from smaller cities to Metro Atlanta (GA Water Coalition). Proponents of this process advocate that such water transfers are necessary to support Georgia's steady economic growth; however, opponents of this process argue that removing this water from these sources, and failing to return it, means that this water is no longer available to communities downstream from these points of extraction. "These water conflicts are not so much between North and South Georgia, but between urban and rural Georgia," said Senator Harper.

Georgians' Riparian Water Rights Doctrine denotes that possessing a piece of land accompanies possession of all encompassed water sources. Under this system, landowners are prohibited from selling or transferring this water out of their watershed, unless with adjoining land. They must make reasonable use of this water, but their water and property rights are protected by Georgia Code (GA Chamber of Commerce). Recently, however, Georgia's water allocation policy has changed to be more of a Regulated Riparian Doctrine (Southern Regional Water Program) in response to the increased competition for water resources. This approach regards water as a public resource, upholding its universal accessibility but declaring an ability to regulate industrial water use, generally through permitting. The Georgia EPD accomplishes this by protecting riparian landowners' ownership rights while issuing permits to the largest water consumers.

IV. The Flint River Drought Protection Act and Aquifer Storage and Recovery

This philosophical shift has manifested itself through contention during the 2012-2013 Legislative Session, specifically, through the Flint River Drought Protection Act, or SB 213. This bill requires the EPD to undertake certain studies in revising rules affecting the Flint River Basin, allows the EPD to modify certain water permits in mandating application efficiencies, authorizes the state to fund augmentation projects - with notice to affected permittees, and clarifies various compliance and enforcement provisions of the act. Opponents of the bill, such as the Georgia Water Coalition, asserted that the bill authorized "stream flow augmentation" projects - including Aquifer Storage and Recovery (ASR) - and threatened the water rights of people across the state. The failure of SB 213 to pass the House is largely attributed to the controversial provision about aquifer storage and recovery.

Contention surrounding ASR inhibited this bill from addressing a systematic shortcoming of Georgia's water policy: an absence of regulations specifying the circumstances under which the EPD may relocate water during a drought. In a white paper to Georgia's Comprehensive Water Plan in 2002, the Georgia Chamber of Commerce further claimed that laws needed to be more anticipatory so that there is a system for limiting water usage during water shortages (GA Chamber of Commerce). By reforming policy in such a manner, water users would be able to anticipate when withdrawal privileges might be curbed in the event of a shortage.

V. Proponents of Aquifer Storage and Recovery

One of the largest proponents of this system is the administration of Governor Nathan Deal, which recently invested $4.6 million to test the ability of ASR to enhance depleted rivers and streams. While members of Deal's administration admit that the scientific feasibility of the project has yet to be confirmed, they defend its cost-effectiveness and potential for successful water management. Currently, there exists a shallow aquifer in Florida that is often exhausted by farmers during water shortages. The proposed project would drill a well into this aquifer, storing water deep underground and reinjecting it into depleted water sources during dry periods. It is argued that this form of underground water storage is cheaper, better retains water, and more efficiently uses land than current above-ground reservoirs. This ability to deliberately amplify the flow of a stream is expected to protect mussels that suffer during droughts, thereby decreasing the likelihood that federal wildlife authorities will impose stringent water usage limits (Henry 2013). This technology is also expected to most directly target statewide water shortages. TSG Resources, a private company based in Savannah, has been seeking permits from the Georgia Environmental Protection Division to begin an ASR project in the Floridan Aquifer. A spokesman for TSG defends that conservation awareness, endorsed by environmental groups, does not solve the seasonal water supply issues that Georgians experience. Further, TSG claims that the problem is not whether we have enough water in Georgia, but that we are not able to control the time or quantity of water availability (Savannah Now). Proponents of aquifer storage and recovery believe that this proactive approach to conservation will empower Georgia's natural resources policy decisions and protect its agricultural interests.

VI. Opponents of Storage and Recovery

Throughout the 2012-2013 Session, opponents to ASR were extremely vocal in expressing their concerns. Groups such as the Georgia Water Coalition, Georgia River Network, the Georgia Chapter of the Sierra Club, and the Georgia Environmental Action Network vehemently opposed ASR, claiming that it would empower the Director of the EPD by giving him/her ownership of unlimited augmented flows. These groups argued against the economic and environmental sustainability of this method of water supply by drawing attention to the need for further testing of the effects on aquifer water quality. In addition to this uncertainty of quality maintenance, these environmental groups uphold the threat that implementing this system would pose to our doctrine of riparian rights. Removing water from multiple peoples' properties and combining it in an aquifer would unavoidably remove the ability of any party to claim this water when it is injected in the future during a drought. It is during such times of water scarcity that citizens are most likely to seek ownership of water they believe they are entitled to. Consequently, it would be a regulatory disaster for the EPD to discern which stakeholders have legitimate, riparian claims to water released from - or held within - aquifers in Georgia. Environmental groups believe it would be more cost effective to perpetuate a culture of water conservation than to build the storage facilities that would be needed to maintain this program. April Ingle, the executive director of the Georgia River Network, emphasized the fiscal irresponsibility of ASR projects by noting that they often take more time and money to build than anticipated. Opponents of aquifer storage and recovery ardently fight for environmental preservation through the evasion of this detrimental process.

VII. The Solution Intrastate Water Issues

A thorough evaluation of these stances yields the conclusion that implementing aquifer storage recovery projects in Georgia is a proactive approach to water management and storage; however, it would simultaneously require our state to reevaluate the system by which we allot water rights. ASR is a system that has merit for several reasons. Firstly, it is commonsensical for the state to relocate water stored in shallow areas to underground aquifers because it frees up the land for other purposes and reduces the accessibility of such stored water, decreasing the likelihood that people will abuse this public good in times of shortage. Setting this water aside is also favorable because it makes communities and ecosystems more resilient during droughts. While this new technology is a precautionary measure, other safeguards must also be enacted to reduce dependence on the system. Implementation of ASR projects should be accompanied by increased conservation awareness programs to inform citizens how to use water most efficiently. Another measure that would facilitate a sensible and expeditious response during a shortage would be to expand preemptive drought management strategies. Employing such foresight in determining a course of action before a problem arises would lead to a more equitable response to the problem, setting water control expectations early on and removing bias from the decision-making process.

The reexamination of the water rights distribution system would also be a necessary component of this course of action. Continuing to follow a purely riparian system would be an outdated approach, considering that the definition of property ownership has evolved so much over the centuries. It is no longer established according to the quantity of a land that a person owns, but by the dimensions of the floor space they possess. Manifest destiny has taken a 90 degree turn, with some of society's most valuable real estate located the furthest from the ground. Egalitarian distribution of water rights can no longer be determined by examining a map; consequently, urbanized society demands heightened regulation of water withdrawals and permit distribution. One aspect of the Flint River Drought Protection Act that did not constructively regulate water use was its confiscation of surface-water withdrawal privileges from permittees downstream from aquifer-water-injection sites. Employing aquifer storage and recovery technologies and re-evaluating a system of water right allocation will set Georgia on the path to internal conflict remediation.

VIII. Interstate Water Issues

Interstate water issues are similar to intrastate issues in that they often involve territorial disputes and boundary ambiguities. Among the most deep-rooted and far-reaching water problems in the Southeast have been those between Georgia, Alabama, and Florida. For the past couple of decades, these three states have been fighting over the allocation of water in the Alabama-Coosa-Tallapoosa (ACT) and Apalachicola-Chattahoochee-Flint (ACF) river basins. Metro Atlanta continues to grow, along with its water demands, while Alabama and Florida defend their right to this water as downstream users from Atlanta. Both Alabama and Florida have economic interests at stake: Alabama's power generation and fishing industries, and Florida's shellfish industry. For the past ten years, Atlanta and the Army Corps of Engineers have been litigating Alabama and Florida for metro Atlanta's right to depend so heavily upon Lake Lanier as its water supply (Southern Environmental Law Center). To put into perspective Metro Atlanta's water demand - and the struggle to satisfy it - there are no natural lakes in North Georgia, therefore metro Atlanta must use man-made reservoirs to store water for use during dry times. Furthermore, three million residents in metro Atlanta rely on Lake Lanier and the Chattahoochee River for drinking water, while a half million Atlantans depend on Lake Allatoona (Atlanta Regional).

IX. Georgia-Tennessee Water Wars

Georgia's tension with surrounding states has recently expanded to include its neighbor to the North: Tennessee. While this conflict is nothing new, Georgia's intense drought of 2007 added much fuel to the fire. In 1818 a cartographer mis-marked the Georgia-Tennessee border, placing it one mile south of its true location on the 35th parallel. Moving the border to its rightful place would add 150 square miles to Georgia's territory and, more importantly, would give Georgia access to the Tennessee River. While Georgia has been nothing but serious in its attempt to rectify this cartographical error, Tennessee has received our complaints with disdain and has retaliated by sending a truck full of bottled water to the Georgia legislators, accompanied by a man dressed as Davy Crockett (Kauffman 2008). During the 2007-2008 session, the Georgia General Assembly passed Senate Resolution 822, affirming the 35th Parallel as our state's northern border, declaring Georgia's intent to initiate suit in the United States Supreme Court, if necessary, and alluding to past Georgia resolutions which make similar assertions.

While Tennessee law references the survey findings, Georgia never ratified them and even refuted them on multiple occasions throughout the 19th and 20th centuries (Dewan 2008). In the late 1800s, both North Carolina and Tennessee's General Assemblies passed legislative acts that expressed concern as to the location of the 35th parallel, or called for action on behalf of each state to accurately mark the state boundaries. Georgia justifies its right to draw one billion gallons of drinking water daily from the Tennessee River by reminding Tennessee officials that four Georgia tributaries feed one-and-a-half billion gallons to the Tennessee River every day (Strassmann 2013). During the 2012-2013 Sessions, the Georgia General Assembly passed another resolution, House Resolution 4, which proposed for the settlement of this boundary dispute through a joint submission of boundary settlement resolutions to the United States Congress. Through the resolution, the General Assembly reminds Tennessee where Georgia's northern border should be, of repeated attempts to rectify this mistake, and the intention to have Georgia's attorney general sue if Tennessee does not participate in negotiations.

X. Georgians for Boundary Adjustment

Atlanta's unique water situation merits creative and collaborative solutions: its population growth is disproportionate to the size of its primary water source, the Chattahoochee. While Georgia's need for water is desperate, it is not the legitimizer for its proposed withdrawal from the Tennessee River. Instead, an argument can be made that the water rights of states east of the Mississippi merits riparian water allocation. Unlike prior appropriation water rights, the approach taken by western states, the parceling of Georgia's riparian rights is not contingent upon a person's discovery of a source of water. Furthermore, a person's claim to water rights in Georgia does not need to be continuous in order to have validity. Riparian rights depend upon location, therefore they are not lost by nonuse, as Tennessee claims Georgia has done in not using the Tennessee River for centuries (Carver 2011). Acceptance of this resolution and its geographical implications is not only beneficial to Georgia, but is most suitable for Tennessee as well in that it spares either state from initiating litigation with the United States Supreme Courts.

XI. Tennesseans Against Georgia's Expansion

Tennessee's argument against the expansion of Georgia's water rights echoes that of Alabama and Florida: with Metro Atlanta as the overpopulated perpetrator and Alabama, Tennessee, and Florida as parched victims. The piece of land over which Tennessee and Georgia battle contains 30,000 residents and a section of the 7th largest river in the United States: the Tennessee River (Carver 2013). Tennessee's control over this river gives it an enormous economic advantage. One of Tennessee's arguments against Georgia's claim is that Georgia has gone for several hundred years without access to this water source, therefore they do not have any legitimate stake now. Tennessee legislators also deem Georgia's attempts futile because they would have to gain the approval of the

Tennessee Valley Authority in order to actually divert the quantity of water they are seeking from the Tennessee River. State border disputes are often heard by the US Supreme Court; therefore Tennessee is apt to demand payment for this resource, if it is taken to federal authorities. Another argument against the diversion of this water in such an unnatural re-routing has been completed in other states and has resulted in massive, irreversible ecological degradation. Over the years the Colorado River has been diverted hundreds of miles to Los Angeles, San Diego, and Phoenix. Having once flowed from the Rockies into Mexico then the Gulf of California, this once fruitful delta is now a barren land.

XII. The Solution to Interstate Water Battles

Deliberating a solution to this issue is highly contingent upon the state with which a person's loyalty lies. While the most recent resolution overwhelmingly passed Georgia's House and Senate, two senators voted against the measure: Senator Mullis and Senator Cowsert. Senator Mullis opposed this resolution because he did not believe that Georgians have communicated sufficiently with Tennessee legislators. Senator Mullis' district is in the northwestern corner of Georgia, therefore a considerable number of his constituents commute to Chattanooga for work. Senator Mullis upheld that communication should precede litigation, so he did not lend his support to HR 4. Senator Cowsert similarly opposed the bill due to an objection to the process Georgia has taken. He believes that the legislature is overstepping its bounds by seeking this judicial action. While Cowsert agreed with proponents of the bill that Georgia's claim is sound, he maintained that the legislature cannot file lawsuits (Zoller 2013).

In weighing both sides of this water war, the conclusion can be drawn that Georgia does have a legitimate claim to the disputed land with Tennessee. Both states acknowledge the inaccuracy with which the boundary was marked; therefore it is only reasonable that Tennessee substantiate its verbal consent with remediatory action. Providing Georgia access to this water is further justified by the drawing capacity of this river. A 2004 Environmental Impact Statement by the Tennessee Valley Authority, the nation's largest public power provider, stated that downstream reservoir levels of the Tennessee River would not be substantially impacted if one billion gallons per day were withdrawn. By removing water from the Tennessee River without diverting it or diminishing the source, North Georgia would be able to withdraw water while enabling it to flow as an IBT into both the ACF and ACT river basins, augmenting the Coosa and Chattahoochee Rivers and indirectly adding to water going into Alabama and Florida (Carver Paper).

To address the concerns voiced by Senators opposing HR 4, Senator Mullis has a point in declaring the necessity of opening all lines of communication between parties. Through its countless resolutions over the past two centuries, Georgia has transparently conveyed the course of action it expects from Tennessee. Regardless of the legislature's rights to litigate, this body is a tremendous catalyst for change and pursuing action at the federal level is truly the only way to find a solution to this problem. The inconsistencies among state policies make remediation a very difficult task; therefore it is valid to seek the interjection of the federal government when necessary.

XIII. Conclusion

Water is a unique natural resource because humanity uses it for purposes they are barely even conscious of. There are many daily activities for which people deliberately use water: cooking, bathing, washing, watering, etc. There are also many functions for which we subconsciously use water on a regular basis: waste management, energy production, and transportation. After agricultural irrigation, electricity generation accounts for the second most freshwater withdrawals in the United States - approximately 39 percent. In the south, thermoelectric generation is responsible for 54% of freshwater withdrawals. The failure to account for water availability in the planning and use of these

massive industries is one of the reasons that water policy can be so complex. It is too common for utilities to omit consideration of water resources in discussing the composition of their energy portfolio (Brown 2011). As populations continue to grow, creative solutions will need to be employed in order to quench intensifying thirst. Examining the water implications of power decisions is one of many methods by which people can reduce the strain we place upon our resources.

Another way to reduce the frequency of water predicaments would be to implement more flexible water policy that suits the ever-changing society. Population growth is an unavoidable trend which too often renders laws useless because of their lack of scalability. Both popular water theories in the US - Riparian Rights and Prior Appropriation - only work in communities where water availability is proportional to community size and where longevity of land ownership is expected. Moving forward, legislators drafting water policy must continue to examine Georgia in units: as counties, as regions, and as a state. Weighing the needs of each smaller unit and reconciling those demands with those of larger constituencies will be the only way to collaboratively work with all types of stakeholders. In formulating any water policy, one must seek solutions that preserve the economic, environmental, and social welfare of us, our peers, and generations to come.

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