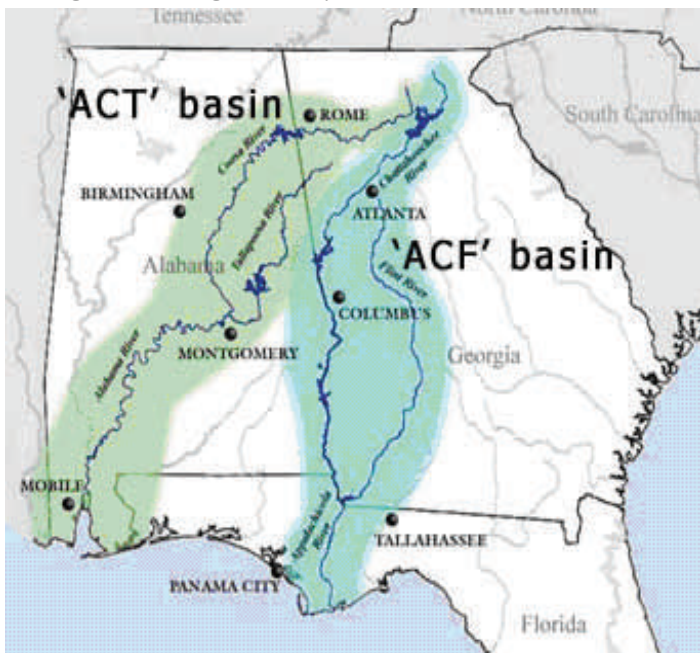


Georgia's Water Wars**Building a bridge over troubled water**

By: Angie Fiese

Over the last 20 years, the population of metropolitan Atlanta has doubled, and the region is now home to more than half the population of the state. An estimated 2.3 million new people are expected over the next 25 years. Complicating matters, the Chattahoochee River is the smallest river in the nation serving as the major source of water for a region of this size. Water management issues in Georgia have become increasingly important over the last five years, driven by the worst drought in Georgia history from 1998-2002, and further heightened by the current drought declaration. Decisions on how to best allocate water during times of drought have resulted in water wars currently being fought with Alabama and Florida, and may result in water wars between different regions within the state.



A state-wide water planning effort is underway to develop a policy framework which will be used to determine water allocations among the regions within the state. The Environmental Protection Division (EPD) will be presenting the draft State-wide Water Management Plan to the Water Council one year from now. EPD recently released a draft proposed policy framework for managing water quantity in Georgia which emphasizes conservation and reuse to manage water in a way that ensures sufficient amounts remain for all users. Alternatively, the Comprehensive Desalination Study Committee is meeting this summer to study whether desalinated water can become a solution to the state's water needs and ultimately allow the state to prevail in the water wars.

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**At A Glance:
Constitutional Ban on
Same-Sex Marriage**

By: Taryn Murphy

On May 16, 2006, a Fulton County Superior Court judge struck down the state constitutional amendment limiting marriage to the union of a man and a woman in the *O'Kelley v. Perdue* case. The amendment was overwhelmingly approved by 76 percent of Georgia voters in November 2004. As ratified, the amendment prohibits state recognition of a legal union between persons of the same sex as marriage, meaning that such unions are not entitled to any of the benefits of marriage, such as joint filing for taxes.

When proposing a constitutional amendment to the voters for ratification, Article X, Section I, Paragraph II of the Georgia Constitution requires that each amendment be separate to allow citizens to vote on each issue. However, the state constitution specifically states that related changes in one or more articles may be submitted in a single amendment. According to the judge in *O'Kelley v. Perdue*, the wording of the proposed amendment only allowed one vote on at least two separate issues: marriage between persons of the same sex and non-marital legal unions between persons of the same sex. The court held that banning marriage between persons of the same

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Interstate Water Wars: Alabama, Florida, and Georgia

The Army Corps of Engineers (Corps) built Buford Dam on the Chattahoochee River, creating Lake Lanier, in 1972, after the United States Congress authorized the Corps to study alternatives to meet anticipated water supply needs in Atlanta. The authorized purpose of the lake was to provide flood control, hydropower, and navigation. In 1988, after a 16-year water supply study, the Corps recommended reallocating water stored in Lake Lanier from power generation to municipal water supply. As Atlanta's population increased, the Corps began issuing interim contracts to municipal water-supply providers without any evaluation under the National Environmental Policy Act (NEPA).

In response to this recommendation, Alabama sued the Corps in 1990 in the Alabama Federal District Court, claiming that reallocating the water would favor Georgia's interests and that the Corps had violated NEPA by ignoring the environmental impacts of reallocating water on the downstream states. Alabama also claimed that the Corps breached its duty to operate Lake Lanier and other federal reservoirs for the benefit of all downstream users in the Apalachicola-Chattahoochee-Flint (ACF) basin, which flows from northwest Georgia south along the border of Alabama and empties into Florida's Apalachicola Bay, and the Alabama-Coosa-Tallapoosa (ACT) basin, which also begins in northwest Georgia, and empties into Alabama's Mobile Bay. Florida sought to intervene on the side of Alabama, while Georgia moved to intervene on the side of

the Corps. Litigation was "stayed" to allow for negotiations between the states. Formal interstate compacts on water management in ACT and ACF basins were ratified by each state and by the United States Congress in 1997. However, the ACF compact expired in 2003 when Florida refused to extend the compact; and, the ACT compact expired in 2004 when Alabama refused to extend the compact. The "stay" was then lifted, allowing litigation to resume.

In 2000, before the stay was lifted, the Southeastern Power Customers Association (SEPA), representing hydropower customers, filed suit in Federal Court in Washington D.C. to challenge the financial arrangements between local water supply providers and the Corps, claiming that water withdrawals for municipal use in the Atlanta region resulted in less

“Whiskey is for drinking.

Water is for fighting.”

• Mark Twain

electricity for SEPA and alleging water supply providers should pay a higher price because the water that can be used for hydropower was consequently reduced. The State of Georgia, the Atlanta Regional Commission, and local water supply providers moved to intervene and then participated in court-ordered mediation.

In early 2003, Georgia, SEPA, and the Corps entered into a Settlement Agreement which reallo-

cated a portion of Lake Lanier's storage from hydropower to water supply and provided compensation to the hydropower customers. Alabama and Florida intervened in this case and challenged the agreement as being a secret reallocation of water in violation of the stay in the Alabama Federal District Court.

The Alabama Federal District Court Judge, Judge Bowdre, issued an injunction preventing implementation of the agreement and claimed jurisdiction to reallocate the waters of Lake Lanier. The Judge also allowed Alabama and Florida to amend their complaints to challenge all aspects of the operation of the federal reservoirs for water supply and recreation, including an Endangered Species Act claim, discussed below. The Federal District Court in D.C., after a full hearing on the merits, ruled that the Settlement Agreement did not violate any laws and issued an order allowing the parties to implement the agreement once the injunction was lifted. Alabama and Florida appealed the decision to the United States Court of Appeals for the District of Columbia. Ultimately, the D.C. Court of Appeals dismissed the appeal for jurisdictional reasons without ruling on the issues.

Georgia appealed the injunction issued by the Alabama Federal District Court Judge to the Eleventh Circuit Court of Appeals, which reversed the injunction.

However, the injunction remains in place until the Eleventh Circuit Court of Appeals rules on a petition for rehearing the case. Alabama and Florida appealed the

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Eleventh Circuit Court of Appeals ruling to the United States Supreme Court, which rejected the appeal.

Regarding the amended complaint, under Section 7 of the Endangered Species Act (ESA), federal agencies, such as the Corps, must undergo a formal consultation with the U.S. Fish and Wildlife Service to obtain a “biological opinion” that their operation or actions will not harm or jeopardize ESA protected species. After years of delay, and in reaction to the injunction sought by Florida in Alabama that would compel the Corps to undertake a Section 7 consultation, the Corps initiated this process on March 7, 2006 and prepared an Interim Operations Plan (IOP). In April, the Corps began releasing water in accordance with this Plan to protect the Gulf Sturgeon and two species of freshwater mussels.

Georgia then sued the Corps in the Alabama Federal District Court to prevent the Corps from releasing more water, concluding a “substantial risk that the Chattahoochee reservoir system will completely dry of water.” The suit was filed after the Corps had admitted to releasing more than 22 billion gallons of water by mistake. Georgia claims that the Corps adopted the Plan without undertaking any kind of thorough analysis. Corps regulations require periodic updating of Water Control Plans, which manage the reservoirs. However, the Corps has not updated its Water Control Plan since the Eisenhower administration. Instead, the Corps adopted the IOP in response to Florida’s ESA claim and has no definite plans to adopt the more comprehensive Water Control Plan. Georgia also seeks to extend the formal consultation timeframe

until September 2006 because the data the Corps used to determine the adequate flow needed to protect Florida’s endangered species was based on very limited data on four data points observed during the relatively wet conditions of 2005.

Florida countersued in Alabama, asking for an order to the Corps to release more water than before. Judge Bowdre sided with Florida and issued an immediate temporary order to the Corps to release 8,500 cubic feet per second of water. The order was issued a day after the Director of the Environmental Protection Division (EPD), Dr. Carol Couch, declared a drought in the state. The Corps had previously been releasing about 5,500 cubic feet per second. The day after issuance of the order, Georgia, Florida, and Alabama entered into a temporary agreement which allowed the Corp to release 7,000 cubic feet per second of water. Subsequent conference calls caused Judge

Bowdre to reduce the flow to about 6,000 cubic feet.

On June 27, 2006, the Senate and House Natural Resources Committee held an emergency briefing on the current water issues. Three days later, Governor Sonny Perdue announced that the State reached a short-term agreement with Alabama and Florida allowing the Corps to release water from the reservoirs at a baseline of 5,000 cubic feet per second. The agreement, set to expire on July 24, 2006, requires the creation of an environmental storage pool of less than 5 percent of the total conservation storage available in the basin reservoirs, to be used for the protection of Florida endangered species. The remaining conservation storage will be preserved for Georgia’s water needs, including water supply and recreation use. Finally, the agreement allows a greater portion of rains that might occur over the

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sex was the central purpose of the amendment; therefore, the inclusion of a ban on legal unions went beyond the central purpose. The state appealed this decision, stating that banning both the marriage and legal union of same sex couples is germane to the central purpose, which is protecting the sanctity of marriage.

In addition to the state constitutional amendment banning same-sex marriage, the state legislature passed a marriage protection statute in 1996 (O.C.G.A. § 19-3-3.1), which accomplishes the same goal of preserving the tradition of marriage. According to this law, it is

the public policy of Georgia to recognize only the union of a man and a woman, and marriage between persons of the same sex is prohibited. The federal Defense of Marriage Act (28 U.S.C. 1738C) specifically allows the states to refuse to recognize a marriage, or any legal relationship that is treated as marriage, performed in another state. Forty states, including Georgia, have enacted their own versions of the Defense of Marriage Act, thus legally refusing to recognize legal unions of same-sex couples performed in other states.

In the federalist tradition, the institution of marriage is governed by
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next month to be stored in the reservoirs.

Intrastate Water Wars: Comprehensive State-wide Water Management Plan

Recognizing that **all** regions of the state need a reliable water supply, the Legislature enacted the Comprehensive State-wide Water Management Planning Act in 2004, mandating the development of a State-wide Water Management Plan (Plan), and creating the Water Council, which will review, modify, and approve the final draft of the proposed Plan. Senator Ross Tolleson, a member of the Water Council and Chairman of the Senate Natural Resources & the Environment Committee, recognizes the need for water management solutions that benefit the entire state, describing the state as “one economic engine,” and the regions of the state as “cylinders of the engine.”

“Each cylinder must be firing properly for the engine to run efficiently,” Sen. Tolleson said. “Formulating water policy allows the ‘economic engine’ to fire on all cylinders.”

The first draft of the proposed Plan will be completed in July 2007 and will be presented to the General Assembly during the 2008 Legislative Session. If the General Assembly does not ratify such Plan, the Water Council may propose alternative plans up until the 20th day of the Legislative Session. The Water Council may also subsequently amend the Plan by undertaking the same development process and obtaining final approval by the General Assembly. In lieu of ratification, the General Assembly may enact a statutory comprehensive plan

during the Session in which the Water Council has proposed the draft Plan. If the General Assembly fails to ratify the draft Plan, and a statutory comprehensive plan enacted by the General Assembly does not become law on July 1 of that year, the last draft Plan submitted to the General Assembly by the Water Council will become effective.

The draft Plan will focus on a policy framework aimed at proposed changes to state law, regulations, and programs regarding water management issues state-wide, and will outline guidance for region-specific water management strategies. The second phase of the plan will allocate water supplies across the state, determining future demands for such supplies.

Three different advisory committees (State-wide Advisory Committee, Basin Advisory Councils, and Technical Advisory Committees) are being utilized to address four management objectives prioritized by EPD, which are to: minimize withdrawals; maximize returns; meet instream and off-stream demands; and protect water quality. EPD has presented a policy framework for water quantity management for Management Objectives 1 and 2, as well as an introduction to Management Objective 3, to the Water Council and to the Basin Advisory Councils at meetings held throughout the state. Senator Tolleson and staff have attended such meetings to hear the concerns from each region of the state so as to better address such concerns in development of the Plan. Town Hall meetings will be held in July for citizens to discuss the state-wide water planning efforts.

EPD has completed a Flint River Regional Water Development and

Conservation Basin Plan (FRB Plan) and a Coastal Georgia Water & Wastewater Permitting Plan for Managing Saltwater Intrusion (Coastal Plan), which will be aligned with the State-wide Water Management Plan. The FRB Plan was developed after EPD issued a moratorium on new surface water irrigation permits in December 1999, due to concerns that farm use of water during drought was having an adverse impact on the Flint River. The FRB Plan is based on the recommendations developed by a Stakeholder Advisory Committee (SAC). Significant recommendations of the SAC include: reducing the amount of irrigation in the Ichawaynochaway and Spring Creek Basins by 20 percent during a drought to meet low flow criteria; and, requiring all new permit applications to provide proof of ownership and a conservation plan that reduces the amount of water withdrawn. The Coastal Plan is based on the Coastal Sound Science Initiative Study, which studied the effects of groundwater pumping on the Upper Floridan Aquifer in a 24-county area. Of significance, Chatham and Effingham counties, which are currently experiencing tremendous population growth, will be restricted to the amount of water currently being withdrawn.

Desalination: An Alternative Source of Water?

Desalination is the process of removing dissolved solids, primarily salts, from water. Proponents argue that desalination can provide a drought-proof and an endless water supply for the state.

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state law, subject to limits set the United States Constitution and by each state constitution.

Over the years, the United States Supreme Court has overturned several state laws prohibiting certain types of marriage on the basis that such laws are based on discrimination against a certain class of people. In *Loving v. Virginia* (388 U.S. 1, 1967), the Court held that legal distinctions drawn on race are subject to the most rigorous judicial scrutiny, and that a Virginia law banning interracial marriage served no legitimate state purpose. The Supreme Court has not specifically ruled on the constitutionality of state laws prohibiting same-sex marriage, but the Court issued a summary decision in *Baker v. Nelson* (409 U.S. 810, 1972), denying an appeal by a same-sex couple of a Minnesota Supreme Court decision; the basis of this holding was that the state limitations on same-sex marriage did not violate the Equal Protection Clause of the 14th Amendment. In that case, the Minnesota court held that there is a clear distinction between a restriction of marriage based on race and such a restriction based on sex. All lower courts are bound by this summary decision until the Supreme Court finds otherwise in a future case.

Currently, Massachusetts is the only state that has legalized same-sex marriage. The Massachusetts Supreme Court held in *Goodridge v. Department of Public Health* (798 N.E.2d. 941, 2003) that the state could not deny the benefits of civil marriage to persons of the same sex who wanted to marry, because the state did not have a constitutionally sufficient reason for doing so. However, several states recognize domestic partnerships



and/or civil unions, which bestow many of the same benefits of marriage, without offending the tradition and sanctity of marriage between a man and a woman. These states are California, Connecticut, the District of Columbia, Hawaii, Maine, New Jersey, and Vermont.

Several proposals for a marriage protection amendment to the United States Constitution have failed to garner the support of two-thirds of both houses of Congress, required in order to send the amendment to the states for ratification. Most recently, the Senate failed to attain the 60 votes needed to invoke a cloture motion, which is required to end a filibuster and bring the measure to a vote, on one version of the Federal Marriage Amendment. This amendment would define marriage as the union of a man and a woman, and it would also prevent judicial intervention in extending marital rights to same-sex couples.

There are two versions of the Federal Marriage Amendment currently pending in the United States House of Representatives. The first, H.J. Res. 39, is a broad statement that not only defines marriage as the union of a man and a woman, but also removes judicial jurisdiction over extending marriage benefits to same-sex couples, and specifically gives each state the right to refuse to recognize any law or court proceeding respecting marriage or legal unions between members of the same sex. The second, H.J. Res. 88, contains more restricted language, stating only that marriage is the union of a man and a woman, and prohibiting the federal Constitution and all state constitutions from conferring marriage rights upon any other type of union.

On July 6, 2006, the Georgia Supreme Court voted unanimously to overturn the lower court decision in *O'Kelley v. Perdue*, thus agreeing with state officials and reinstating the ban on same-sex marriage. The basis of the holding was that the amendment did not violate the single subject rule of the state constitution, because the central purpose of the amendment was to preserve the sanctity and the benefits of marriage for the unions of one man and one woman. According to the court, the ban on same-sex civil unions is not divergent from this purpose. **SRO**

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Opponents of desalination argue that it is an expensive water supply option and that significant environmental impacts must be considered, such as impingement of marine organisms and safe disposal of the salt brine discharged after desalting the water.

Rapid population growth, increased tourism, and industrial activity have adversely affected coastal Georgia's water resources. House Resolution 1551 created the Comprehensive Water Desalination Study Committee to re-examine Georgia's water policy and the viability of alternative water sources such as purification of seawater through the desalination process. The Senate Members appointed to the Committee are: Senator Ross Tolleson, serving as Co-Chair; Senator Jeff Chapman; Senator George Hooks; Senator Eric Johnson; and Senator Tommie Williams. Florida, Texas, and California have also undertaken desalination projects. **SRO**



In Brief . . .

Unemployment Insurance Program

Unemployment insurance (UI) pays temporary cash benefits to workers who have lost jobs through no fault of their own. The UI system is administered as a federal-state partnership. To finance the program, the state levies and collects payroll taxes from employers. The State undertakes most UI administrative activities related to both paying benefits and collecting from employers the payroll taxes that support the program. The funds collected are managed in a trust fund administered by the federal government. **SRO**

Limited Taxation Study Committee

The Limited Taxation Study Committee met on June 15, 2006 at the Capitol to discuss the nature and merits of Tax Expenditure Limitations (TEL). The Committee heard comments from the Georgia Public Policy Foundation, Georgia Budget and Policy Institute and the Senate Budget and Evaluation Office. A TEL is a fiscal mechanism designed to provide certain safeguards to restrain the growth of governmental budgets either through revenue or spending—or both. Currently, 30 states have enacted some form of a tax expenditure limitation. The Study Committee will convene next on August 10, 2006 at the Capitol. The Committee is chaired by Sen. Mitch Seabaugh. **SRO**

Human Papillomavirus Virus Vaccine

The Center for Disease Control's Advisory Committee on Immunization Practices (ACIP) voted unanimously to recommend that all 11 and 12 year old girls be vaccinated to protect against human papillomavirus virus (HPV), the disease responsible for most types of cervical cancer. Proponents of the vaccine say it could drastically reduce the nearly 4,000 cervical cancer deaths in the United States each year. The vaccine, manufactured by Merck, gained FDA approval on June 8, and is the first vaccine ever developed to prevent cancer. **SRO**

Senate Septage Disposal Study Committee

Senate Resolution 818 created the Senate Septage Disposal Study Committee to examine issues regarding the lack of availability of locations for disposal of septage, the environmental and health effects resulting from the lack of availability, and to determine relevant solutions which may include, allowing a municipality or county to charge a fee for accepting septage waste. Senate Members appointed to this Committee are: Senator John Bulloch, serving as Chairman; Senator Johnny Grant, Senator Ross Tolleson, and Senator Jim Whitehead.

The Committee held its first meeting on July 10 in Atlanta. **SRO**

Stay in School Program

Governor Perdue announced a Stay in School Program expansion as he presented the Governor's \$1 million Workforce Investment Grant to the Georgia Department of Technical and Adult Education, which manages the Program. **SRO**

Public-Private Partnerships

Public-Private Initiatives (PPI) are a faster, more creative process for meeting Georgia's transportation needs. PPI allows the Georgia DOT to accept and evaluate proposals from private/corporate businesses for transportation projects.

There are two types of PPI proposals: **Unsolicited** and **Solicited**. Georgia DOT may solicit PPIs through a Request For Proposal (RFP) process, or private entities can submit an unsolicited proposal for consideration by the Georgia DOT for the design, funding, construction and /or maintenance of a transportation improvement.

Current proposals under consideration are: Roadway improvements for Georgia State Route 316; the I-75/I-575 Northwest Corridor project; the Georgia 400 Crossroads Region proposal; and the I-285 Northwest Truck Only Toll (TOT) Lanes proposal. **SRO**