

## SUPREME COURT

### Special master sides with Ga. in Southeast water war

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The Apalachicola-Chattahoochee-Flint River Basin water that flows from Georgia supports oyster harvests in Florida's Apalachicola Bay. Stan Kirkland/Florida Fish and Wildlife/Flickr

Georgia notched a fresh victory this week against Florida over water flows in the Apalachicola-Chattahoochee-Flint River Basin, but the states' long battle is still not over.

The Sunshine State has not shown that its northern neighbor was unreasonable in its use of two waterways that feed the basin or that Georgia has caused harm to the region's oyster fisheries, said New Mexico-based attorney Paul Kelly, who serves as special master over the Supreme Court litigation.

"[T]he evidence has not shown harm to Florida caused by Georgia; the evidence has shown that Georgia's water use is reasonable; and the evidence has not shown that the benefits of apportionment would substantially outweigh the potential harms," Kelly wrote in a Wednesday [report](#) to the nation's highest bench.



The Supreme Court will have the final say on whether Florida can secure a decree to curb Georgia's water use.

Justices for the court last year handed the dispute back to the special master — a role that was then held by the late Maine lawyer Ralph Lancaster — after finding that Florida had presented a "legally sufficient showing" in support of capping Georgia's consumption ([Greenwire](#), June 27, 2018).

The Peach State had argued that Florida could not demonstrate that Georgia had diminished water supply because the Army Corps of Engineers oversees the volume and timing of flows in the Apalachicola River, which cuts across the Florida Panhandle.

Georgia Gov. Brian Kemp (R) applauded Kelly's recommendation in *Florida v. Georgia*.

"We greatly appreciate Special Master Kelly's recognition of Georgia's strong, evidence-based case in this litigation," Kemp said in a statement

[+] The Apalachicola-Chattahoochee-Flint River Basin. Claudine Hellmuth/E&E News

yesterday. "We will continue to be good stewards of water resources in every corner of our state, and we hope that this issue will reach a final conclusion soon."

Florida Department of Environmental Protection Secretary Noah Valenstein said the state is evaluating the report and reviewing its options.

"We are extremely disappointed in the report issued by the Special Master with his recommendations to the Supreme Court on the Apalachicola-Chattahoochee-Flint (ACF) case," he said in a statement. "The state of Florida remains committed to restoring the historic flows of the Apalachicola River and the families who rely on this river for their livelihood."

"The water this river provides is essential for the Apalachicola Bay, and we will remain steadfast in our commitment to protecting it."

Georgia, Florida and Alabama — which is not involved in the Supreme Court litigation — have been fighting over the river basin for decades.

In 2014, Florida elevated the battle to the Supreme Court, which rarely agrees to allocate river flows, in search of "equitable apportionment" of the ACF River Basin's waters.

The case went to trial in 2016 after unsuccessful negotiations between the states.

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