

SYLLABUS:
POLS 4785 – Tri-State Water Wars – Fall 2024
Wed. 4:15-6:45pm, Baldwin Rm. 301
Judson H. Turner

OFFICE HOURS:
By appointment
Email: judsonturner@jtcounsel.com
Mobile: 770-468-9151

Course Description

This course will use the interstate dispute between Alabama, Florida and Georgia over the shared river basin of the Appalachicola-Flint-Chattahoochee (ACF), popularly known as the “Tri-state Water Wars,” as the framework to explore issues around the application of federal and state environmental legislation in the context of shared river basins, the interaction of statutory law and common law in the area of water resources, the interplay of federalism in our constitutional structure as it relates to the application of law and regulation in this context, and the legal and regulatory elements involved in Original Action Case No. 142, *Florida v. Georgia* - in which Florida sued Georgia in the United States Supreme Court seeking an equitable apportionment of the water resources of the ACF basin. The course will also explore the complexities around the negotiation of interstate compacts over shared water basins in the context of the ACF dispute.

Tentative Class Schedule

Disclaimer: the course syllabus is a general plan for the course; deviations announced to the class by the instructor may be required

Class #1 – (August 14) - INTRO TO CLASS – OVERVIEW

The Historical Perspective: Water Resources in the Development of the United States

- Reading: 36 pages
 - The Source: How Rivers Made America and America Remade Its Rivers
 - Chapter 1 – “Navigating the Republic” – (26 pages)
 - Federalist Paper #2 – <https://guides.loc.gov/federalist-papers/text-1-10>
 - Federalist Paper #11- <https://guides.loc.gov/federalist-papers/text-11-20>
 - *Gibbons v. Ogden* (1824) - <https://www.archives.gov/milestone-documents/gibbons-v-ogden>

Class #2 – (August 21) - Legal and Institutional Framework for Water Management in the U.S.

- Reading: 37 pages
 - A Twenty-First Century U.S. Water Policy
 - Chapters 1 – “Water of the United States” – (19 pages)
 - Chapter 2 – “Legal and Institutional Framework for Water Management in the United States” – (28 pages)

Class #3 – (August 28) - Water Law Basic Concepts

- Reading: 41 pages
 - Water Law
 - Chapter 2 – “Riparian Law” – pp. 15, 16, 24-30 (9 pages)

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- Chapter 3 – “Dealing with Western Water Law Realities: the Creation and Adoption of Prior Appropriation” – pp. 40-56 (16 pages)
- Whose Drop Is It Anyway?
 - Chapter 2 – “The East and West Converge: Prior Appropriation Meets Regulated Riparianism” - (16 pages)
- Georgia’s Groundwater Use Act (OCGA §12-5-90 et. seq.) -
<https://law.justia.com/codes/georgia/2022/title-12/chapter-5/article-3/part-2/>
- Georgia’s Water Quality Act (OCGA §12-5-31 et. seq.)
<https://law.justia.com/codes/georgia/2022/title-12/chapter-5/article-2/>

Class #4 – (September 4)

The Nature of Subnational Hydropolitics in the United States

- Reading: 33 pages
 - Subnational Hydropolitics
 - Intro. – pp. 1-10 (10 pages)
 - Chapter 1 – “Deconstructing the State” - pp. 18-27 (9 pages)
 - Chapter 4 – “Institutional Diversity and Hydropolitics in the United States” – pp. 66-73; 104-111 (14 pages)

Key Federal Water Interests (in the Eastern U.S.) – Navigation, Flood Control and Hydropower Generation

- Reading: 68 pages
 - 21st Century Water Policy
 - Chapter 9 – “Water and Energy” – pp. 221-235 (15 pages)
 - The Source: How Rivers Made America and America Remade Its Rivers
 - Chapter 4 – “Flood Control” – pp. 78-86, 108-111 (15 pages)
 - Chapter 9 – “Regulating Power” – (11 pages)
 - Chapter 10 – “Power of the River” – (27 pages)

Class #5 – (September 11) – ACF Basin Background and Key History

- Background – Overview
 - ACFS SWMP
 - https://www.acfstakeholders.org/files/ugd/f8e0c1_50131a17d65a427ba277021282819926.pdf
- Basins/Rivers/Reservoirs at issue – (Basin map) (page 7 of SWMP)
- Aquifers
 - <http://www.georgiaenr.com/wp-content/uploads/2015/01/39JamesKennedy.pdf>

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- Players and Interests

Class #6 – (September 18) – (Session A) - Water Supply Planning/Management - Generally

- Reading List: 78 pages
 - Whose Drop Is It Anyway?
 - Chapter 5 – “Population Growth, New Development and Water Supply” – (24 pages)
 - A Twenty-First Century U.S. Water Policy
 - Chapter 7 – “Municipal Water Use” – (28 pages)
 - Chapter 8 – “Water and Agriculture” – (26 pages)
 - Enabling Legislation – MNGWPD
 - <https://casetext.com/statute/code-of-georgia/title-12-conservation-and-natural-resources/chapter-5-water-resources/article-10-metropolitan-north-georgia-water-planning-district-act>
 - Enabling Legislation – State Water Plan
 - <https://casetext.com/statute/code-of-georgia/title-12-conservation-and-natural-resources/chapter-5-water-resources/article-8-comprehensive-state-wide-water-management-planning-act>
 - See also: www.waterplanning.georgia.gov
 - Enabling Legislation - Flint River Drought Protection Act
 - <https://casetext.com/statute/code-of-georgia/title-12-conservation-and-natural-resources/chapter-5-water-resources/article-8-comprehensive-state-wide-water-management-planning-act>

Water Supply Planning in Georgia

- Metro-Atlanta North Georgia Water Planning District – history
- The State Water Plan – history
- Water Planning Councils
 - Municipal and Industrial Water Supply
 - Federal Reservoirs
 - Other local or regional reservoirs
 - Reservoirs vs. groundwater below fall-line
 - Agricultural Water Supply
 - Agricultural Permitting
 - Surface water permits
 - Groundwater permits

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- Interaction between Floridan and surface water
- Agricultural water estimates
- Metering Program
- 2000 Ag water withdrawal permit moratorium
- 2006 Flint River Basin Regional Water Development and Conservation Plan
 - <https://epd.georgia.gov/georgia-river-basin-management-planning/georgia-flint-river-basin-plan#:~:text=The%202006%20Flint%20River%20Basin,Regional%20Water%20Plan%20by%20reference.>
- 2012 Ag water withdrawal permit moratorium – scan (attached)
- Key Concepts: State efforts at water supply planning and provision of adequate water for its people, industries and economy

(Session B) - Guest Speaker – Katherine Zitsch – Metro Water Supply Planning

- **Director, Metro-Atlanta North Georgia Water Planning District**
- **Apalachicola-Chattahoochee-Flint Stakeholders (ACFS)**

Class #7 – (September 25) – Role and Importance of Reservoir Management and Governance in ACF Basin

- Role and Importance of Reservoirs in Basin – Focal Point of Conflict
 - Storage for multiple authorized purposes
- Operation of Federal Authorizations in Operation of Federal Reservoirs
 - Water Supply
 - Difference between river users and lake users
 - Navigation
 - Flood Control
 - Recreation
 - Water Quality
- Basics of Reservoir Operations in ACF
 - Rule Curves – United States Corps of Engineers Daily Operations control – Mobile District
 - Unregulated Arm – Flint River – Agricultural Water Use
- Rivers and Harbors Act of 1946 – Lake Lanier Authorization
- Water Supply Act of 1958
 - Updates to the Water Control Manuals
 - ACT – Storage Accounting
 - ACF – Water Supply Contracts

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- Reading List:
 - Litigation History/Timeline - <https://atlantaregional.org/natural-resources/water-wars/tri-state-water-wars-background-and-history/>
 - Key Cases:
 - DC Circuit – WSA 1958 – “Major Operational Change” – Federal Power Customers litigation
 - *Southeastern Fed. Power Customers, Inc. v. Geren*, 514 F.3d 1316, 1319-20 (D.C. Cir. 2008)
 - <https://casetext.com/case/sfpc-v-geren>
 - MDL – Magnuson Decision – Phase I – Water Supply
 - <https://cdn.atlantaregional.org/wp-content/uploads/ep-tri-state-water-litigation-order-090717-mdfla-07md1-doc-264.pdf>
 - 11th Circuit Decision
 - *In re: Tri-States Water Rights Litigation*, 644 F.3d 1160 (11th Cir. 2011).
 - <https://casetext.com/case/in-re-mdl-1824-tri-state-water-rights-lit>
 - Army Corps of Engineer’s Opinion re: Legal Authority to Grant Georgia’s Entire Water supply Request
 - https://www.sam.usace.army.mil/Portals/46/docs/planning_environmental/acf/docs/2012ACF_legalopinion.pdf
 - MDL – Magnuson Decision – Phase II – ESA Claims
 - <https://cdn.atlantaregional.org/wp-content/uploads/mdfla-07md1-doc-376-phase-2-order.pdf>
- Key Concepts:
 - Preeminence of federal statutory frameworks in relation to federal reservoir operations
 - Multiple (and often conflicting) federal authorized purposes

Class #8 – (OCTOBER 2) – MIDTERM EXAM – In class

Reservoir Operations Continued

Reading List:

- Final Environmental Impact Statement Lake Lanier Water Control Manual Update and ACF Basin Operations – Executive Summary – (100 pages)
 - https://www.sam.usace.army.mil/Portals/46/docs/planning_environmental/acf/docs/01_ACF_FEIS_Dec%202016_Volume%201.pdf?ver=2016-12-07-164912-723

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Key Concepts: Review of the final WCM update and where USACE landed on key operations updates and considerations after the resolution of key litigation filed by the states against the USACE ACF Basin reservoir operations

Water Quality

- Reading List: 28 pages
 - Water Law
 - Chapter 11 – “Intersection of Water Law and Pollution Control” – (28 pages)
 - <https://storymaps.arcgis.com/stories/67b7b29771b842268f878b94cb7c6d69>
- Key Concepts:
 - Overview of the Clean Water Act
 - ACF water quality considerations
 - Assimilative Flow at Peachtree Creek
 - Assimilative Flow at Columbus
 - EPD’s Role: Delegated Authority Under the Clean Water Act

Class #9 - (October 9) – Endangered Species Act

- Reading List:
 - Whose Drop Is It Anyway?
 - Chapter 3 – “Using the Endangered Species Act to Control Water Resources” – (30 pages)
 - Water Law
 - Chapter 12 – “The Human Use of Water and Endangered Species” – (32 pages)
 - Habitat Conservation Planning – ESA
 - *Aransas v. Shaw*, F.3d 801 (5th Cir. 2014)
 - <https://casetext.com/case/aransas-project-v-shaw-3>
 - Visioneering America, Inc.: Lower Flint Basin Habitat Conservation Report
 - Pdf made available
- Key Concepts: Endangered Species (aquatic)
 - Role of ESA in reservoir operations for Apalachicola listed species
 - ESA considerations in Georgia
 - Agricultural Water Use
 - Habitat Conservation Plan – What is an HCP?
 - Incidental Take Permits under HCP
 - Section 10, Section 6, Section 7
- **Guest Speaker – Mark Masters**
 - **Agricultural Water Use and Planning**

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- **Habitat Conservation Planning in Lower Flint Basin**
- **Apalachicola-Flint-Chattahoochee Stakeholders (ACFS)**

Class #10 – (October 16)

- Reading List:
 - Agricultural Water Withdrawal Permitting - 2006 Flint Plan
 - <https://epd.georgia.gov/georgia-river-basin-management-planning/georgia-flint-river-basin-plan>
 - Visioneering America, Inc.: Lower Flint Basin Habitat Conservation Report (cont.)
 - Pdf made available
- Key Concepts:
 - Federal Drought Response – Reservoir Operations
 - State’s Drought Response
 - Municipal and Industrial Use
 - Outdoor watering bands – challenges with restrictions and revenue bond payback
 - Agricultural Use
 - Initial Agricultural Permit Moratorium
 - 2006 Flint Plan
 - 2012 Moratorium
 - Habitat Conservation Planning

Class #11 – (October 23) - Shared River Basin Management and Conflict Resolution

- Reading List: 43 pages
 - Subnational Hydropolitics
 - Chapter 3 – “Dynamics of Hydropolitics” (17 pages)
 - Water Law
 - Chapter 9 – “Interstate Water Pollution, Apportionment and Management” – (26 pages)
 - Apalachicola-Chattahoochee-Flint River Basin Compact, Pub. L. No. 105-104, 111 Stat. 2219 (1997)
 - <https://www.congress.gov/bill/105th-congress/house-joint-resolution/91/text>
 - ACFS SWMP
 - https://www.acfstakeholders.org/files/ugd/f8e0c1_50131a17d65a427ba277021282819926.pdf
- Key Concepts:
 - Challenges with Interstate Negotiations over Shared River Basins

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(October 30) – NO Class

Equitable Apportionment Generally

- Reading List: Equitable Apportionment Cases (specific cases/excerpts will be assigned)
 - *Wyoming v. Colorado* (1922)
 - <https://supreme.justia.com/cases/federal/us/259/419/>
 - *New York v. New Jersey* (1931)
 - <https://supreme.justia.com/cases/federal/us/283/336/>
 - *Connecticut v. Commonwealth of Massachusetts* (1931)
 - <https://supreme.justia.com/cases/federal/us/282/660/>
 - *Nebraska v. Wyoming* (1945)
 - <https://supreme.justia.com/cases/federal/us/325/589/>
 - *Arizona v. California* (1963)
 - <https://supreme.justia.com/cases/federal/us/373/546/>
 - *Vermont v. New York* (1974)
 - <https://supreme.justia.com/cases/federal/us/417/270/>
 - *Idaho v. Oregon* (1980)
 - <https://supreme.justia.com/cases/federal/us/444/380/>
 - *Colorado v. New Mexico* (1982)
 - <https://supreme.justia.com/cases/federal/us/459/176/>
 - *Idaho v. Oregon* (1983)
 - <https://caselaw.findlaw.com/court/us-supreme-court/462/1017.html>
 - *Colorado v. New Mexico* (1984)
 - <https://supreme.justia.com/cases/federal/us/467/310/>
 - *Nebraska v. Wyoming* (1986)
 - <https://supreme.justia.com/cases/federal/us/515/1/case.pdf>
 - *Arizona v. California* (2000)
 - <https://supreme.justia.com/cases/federal/us/530/392/case.pdf>
 - *Kansas v. Nebraska* (2015)
 - <https://supreme.justia.com/cases/federal/us/574/126orig/case.pdf>
 - *South Carolina v. North Carolina* (2010)
 - https://www.supremecourt.gov/specmastrpt/orig138_112808.pdf
 - *Mississippi v. City of Memphis* (2021)
 - https://www.supremecourt.gov/opinions/21pdf/143orig_1qm1.pdf

Florida v. Georgia (2018)(2021)

- Key Concepts:
 - Development of Equitable Apportionment Doctrine
 - Key Elements of Equitable Apportionment Claim

Class #12 – (November 6) – Equitable Apportionment Generally Continued

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Class #13 – (November 13) - Florida v. Georgia, Original Action No. 142

- Reading List:
 - Florida’s Complaint
 - <https://www.ca10.uscourts.gov/sites/ca10/files/SM142/1.pdf>
 - Georgia’s Motion to Dismiss
 - <https://www.ca10.uscourts.gov/sites/ca10/files/SM142/48.pdf>
 - Order re: Georgia’s MTD
 - <https://www.ca10.uscourts.gov/sites/ca10/files/SM142/128.pdf>
 - Special Master Lancaster’s Report - 2017
 - <https://www.scotusblog.com/wp-content/uploads/2017/09/2017.02.14-Report-of-Special-Master.pdf>
 - US Supreme Court’s 2018 Opinion
 - https://www.ca10.uscourts.gov/sites/ca10/files/SM142/Docket_637_FL_v._GA_%28_-_US_Supreme_Court_Opinion%2C_06-27-2018.pdf
- Additional Reading of Interest (not required)
 - Direct Testimony of Judson H. Turner
 - <https://www.ca10.uscourts.gov/sites/ca10/files/SM142/573.pdf>
 - Direct Testimony of Mark Masters
 - <https://www.ca10.uscourts.gov/sites/ca10/files/SM142/566.pdf>

Class #14 (November 20) - Florida v. Georgia, Orig. No. 142 (cont.)

- Reading List:
 - Special Master Kelly’s Report - 2019
 - https://www.supremecourt.gov/DocketPDF/22/22O142/125423/20191213102743287_142%20Original%20SM%20Report.pdf
 - US Supreme Court’s 2021 Opinion
 - https://www.supremecourt.gov/opinions/20pdf/22o142_m648.pdf

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Assessments and Grading

Your grade will be composed of your class participation and scores from a Midterm and Final Exam. Since this class meets only once a week, it is important not to miss class, if at all possible. Participation will be broken into an attendance component and a class discussion/participation component. Given the length of our weekly meetings, we will take a break or two during the class.

- **Final Grade:** composed of the following:
 - Quiz Average** – (3) In Class (Unannounced) (Drop lowest) – **10%**
 - Midterm Exam** – In Class (October 2) – **25%**
 - Final Exam** – In Class (Friday, December 6) – **35%** - Non-Cumulative
 - Participation** – **30%** - (attendance 15%, class discussion 15%)

Example:

Quiz Average	90 (.10) =	9
Midterm grade =	80 (.25) =	20
Final Exam grade =	88 (.35) =	30.8
Participation – Attendance	100(.15) =	15
Participation – Class Discussion	100(.15) =	15
<u>Final Grade</u>		89.8 (A-)

- **Quiz Procedure:** We will have three (3) quizzes during the semester. These will not be announced and will cover the reading assigned for that class. We will administer them quickly at start of class. You will be allowed to drop your lowest score. Given the nature of the quiz, if you miss a class period during which a quiz was administered you will have to take that quiz as your drop. I want to encourage good attendance and staying abreast of your reading assignments. I expect you to score well on these quizzes assuming you have prepared for class.
- **Exam Procedure:** Exams will be administered in class and proctored by the instructor. You will be given the option to provide hand written answers to the exam on hard copies of the exam handed out to you at the beginning of the exam or you may type your answers in Word in the exam document that will be emailed to you at the beginning of class. At the close of the exam period, you will email the instructor your exam or hand in the hard copy exam answers. You are not to use your commuter or phone or any other online device to aid you in your answers. You will be allowed to bring up to 10 pages of notes in hard copy into the class for the exam.
- **Exam Makeup Procedure:** Makeup exams will be scheduled for a time and location in coordination with the student and the instructor.
- **Attendance Policy:** Since our class only meets once a week, missing even one class is not advised. Excused absences will not count against your attendance grade; however, only genuine, unavoidable emergencies will be excused. Perfect attendance will earn a 100 on the

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attendance portion of the participation grade. An absence will result in a 90; 2 absences an 80; 3 absences a 70; and 4 or more absences will earn the student a 60 on the attendance portion of the participation grade. Similarly, poor attendance will impact the class discussion portion of participation grade as well.

Administrative Items

E-Learning

Students must become acquainted with eLearning Commons for this class (<https://uga.view.usg.edu/>). Sign into eLC using your UGA MyId and password. If registered for the class, the course link should show up on the student's eLC homepage. Most content will be available via eLC.

Disability resource center

If the student anticipates needing classroom or exam accommodations due to the impact of a disability or medical condition, they must register for services with the Disability Resource Center. Additional information can be found here: <http://drc.uga.edu/>

Withdrawal policy

Undergraduate students can only withdraw from four courses and receive a withdrawal-passing (WP) grade while enrolled at the University. Students can drop any class without penalty during the drop/add period at the beginning of every semester. Dropped courses during the drop/add period do not qualify as withdrawals. Instructors have the ability to withdraw a student from the class due to excessive absences. Please carefully review the policy in its entirety here: <http://www.reg.uga.edu/policies/withdrawals>

UGA culture of honesty policy

The policy is in place to encourage academic honesty among students, faculty and other members of the university community. Students and faculty are responsible for knowing and complying with the policy and procedures. Academic dishonesty includes plagiarism, cheating and much more. It's in the student's best interest to understand what constitutes dishonest work, as defined by the University. Students caught cheating or plagiarizing will receive an F for the course, and their names will be forwarded to the University. Please carefully review the policy in its entirety here: <https://ovpi.uga.edu/academic-honesty/academic-honesty-policy>

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Mental Health and Wellness Resources:

If you or someone you know needs assistance, you are encouraged to contact Student Care and Outreach in the Division of Student Affairs at 706-542-7774 or visit <https://sco.uga.edu>. They will help you navigate any difficult circumstances you may be facing by connecting you with the appropriate resources or services.

UGA has several resources for a student seeking mental health services (<https://www.uhs.uga.edu/bewelluga/bewelluga>) or crisis support (<https://www.uhs.uga.edu/info/emergencies>).

If you need help managing stress anxiety, relationships, etc., please visit BeWellUGA (<https://www.uhs.uga.edu/bewelluga/bewelluga>) for a list of FREE workshops, classes, mentoring, and health coaching led by licensed clinicians and health educators in the University Health Center. Additional resources can be accessed through the UGA App.

Prohibition on Recording Lectures

In the absence of written authorization from the UGA Disability Resource Center, students may not make a visual or audio recording of any aspect of this course. Students who have a recording accommodation agree in writing that they:

- Will use the records only for personal academic use during the specific course.
- Understand that faculty members have copyright interest in their class lectures and that they agree not to infringe on this right in any way.
- Understand that the faculty member and students in the class have privacy rights and agree not to violate those rights by using recordings for any reason other than their own personal study.
- Will not release, digitally upload, broadcast, transcribe, or otherwise share all or any part of the recordings. They also agree that they will not profit financially and will not allow others to benefit personally or financially from lecture recordings or other course materials.
- Will erase/delete all recordings at the end of the semester.
- Understand that violation of these terms may subject them to discipline under the Student Code of Conduct or subject them to liability under copyright laws.

Peer tutoring availability

The Division of Academic Enhancement (DAE) offers free peer tutoring in over 200 of UGA's most rigorous courses including writing tutoring. To engage with a Peer Tutor, download the Penji app, available on iOS and Android, and sign in through SSO using your MyID. Need help? Visit [our website](#) for more information on how to engage with a Peer Tutor or email us at tutor@uga.edu. In addition to peer tutoring, the DAE also provides Academic Coaching, Student Success Workshops and more. The DAE is

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committed to the success of all students at the University of Georgia. For more on these and other resources, please visit dae.uga.edu