

THE RIPARIAN COUNTY STAKEHOLDER COALITION (RCSC)



October 2020

FLORIDA'S CLOSING ARGUMENT

"... the Court could instruct the parties to negotiate on the decree's terms, including as appropriate with the Corps. The Corps has previously represented that it would be willing to participate in such negotiations. Id. at 40. Florida believes that such negotiations— following a decision by this Court holding that Florida is entitled to an equitable apportionment—would facilitate a decree that would reasonably accommodate the interests of all concerned. The parties could then present the decree to the Special Master for approval. If this process fails, then the Special Master should order further proceedings on fashioning a decree."

LAWSUITS TO KEEP WATER FLOWING IN THE APALACHICOLA RIVER

State of Florida vs State of Georgia

We have long heard about the State of Florida lawsuit against Georgia contesting the exploitation of water by users within the State of Georgia, specifically agriculture and water supply. Unregulated withdrawals and overuse seriously impact the nature and character of the flow in the Apalachicola River.

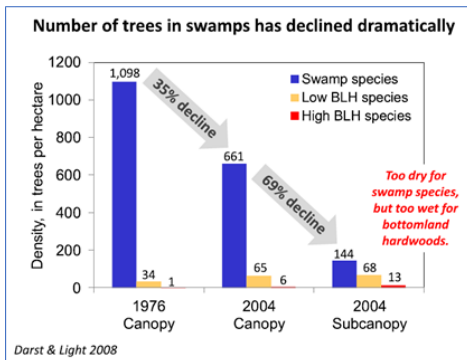
In the initial phase of the case the appointed Special Master ruled generally in favor of the State of Florida where he recognized the impacts from water users in Georgia on the Apalachicola River and Bay. The Supreme Court recognized the pivotal role of the United States Army Corps of Engineers (Corps) and remanded the case to a second Special Master to sort out the details of how the Corps' control of GA reservoirs could mitigate periods of reduced flow.

Unfortunately for Florida, the second Special Master discounted the majority opinion and followed the dissenting argument and ultimately responded to the Supreme Court with a recommendation of no harm, a 180 degree turn around from the original findings. The state has requested another round of oral arguments due to the radically different reviews from the Special Master.

Conservation Groups challenge United States Corps of Engineers over Water Control Plan

Earthjustice is a non-profit public interest and environmental law organization. They are representing local and national environmental advocates including the National Wildlife Federation, the Florida Wildlife Federation and the Apalachicola Bay and Riverkeeper in a legal challenge against the Corps regarding the appropriate development of standards for the Water Control Manual for the Chattahoochee River Reservoirs.

The health of the floodplain of the Apalachicola and Chipola Rivers is tied to how closely the Corps decides to mimic the natural flow characteristics in the Apalachicola River from the flows of the Chattahoochee and Flint Rivers. This suit challenges the way the Corps has modified the way water is controlled (stored and discharged) through the large reservoirs along the Chattahoochee River. The recent change to the Water Control Manual, which is the written process of how water is managed is even more damaging to the Apalachicola floodplain and bay than the one it replaced.



The Tupelo honey industry is harmed by the documented loss of Tupelo trees directly due to the changes in the natural flow characteristics of the river by the way the Corps operates the reservoirs. The old Water Control Manual poorly supported natural resources and now the new Water Control Manual is devastating.

Supporting a good cause

The riparian counties can support the environmental community in their challenge against the Corps by filing a friend of the court or amicus brief. An amicus brief would be developed by the RCSC at no additional cost to the counties. In public interest cases, there are often law school clinics or pro bono lawyers available to prepare and file amicus briefs at little to no cost on behalf of individuals or groups who would like to be heard in a specific case. Typically, these lawyers confer with the interested group (RCSC) about the issues that should be raised in the brief, then draft both the brief and a request to the court to file the brief. The court has full discretion to grant or deny the request. Submitting the written brief usually represents the totality of the amicus' participation in the case, and the brief is considered by the judge along with all other filings before ruling on the case.

This Action would have to be at the County Commission level only after extensive briefing with County Administrators and County Attorneys

Check out this newly released video explaining the devastation derived by poor water management.

<https://www.youtube.com/watch?v=p6TsxV-D8SY&feature=youtu.be>

If you have questions or want to contact the RCSC please email or call:

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The federal suit was initially filed in Washington D.C., then reassigned to a court in Atlanta.

The lawsuit claims that the Corps' proposed plan for how freshwater will flow down the Chattahoochee and Flint Rivers to the Apalachicola portion of the System is flawed because it ignores the congressionally authorized requirement for the conservation of fish and wildlife under the Fish and Wildlife Coordination Act and fails to consider a wide range of environmental impacts as required by the National Environmental Policy Act (NEPA). Numerous comments by the State of Florida, various conservation groups and the USFWS were ignored by the Corps. The plan does not consider the freshwater needs for a healthy Apalachicola River, floodplain or bay. The lawsuit points out that the Corps plan, and the environmental impact statement used to develop that plan are significantly flawed. A set of comments by the USFWS sent separately from the NEPA process document violations of the Fish and Wildlife Coordination Act which were disregarded by the Corps.

The suit asks the Court to order the Corps to “re-do” the water management plan and environmental impact statement and emphasizes the need to recognize the vital freshwater needs of the Apalachicola ecosystem during the critical breeding, spawning, and flowering seasons for many species, particularly during droughts.

Generally speaking, the Corps has taken the position that management of the Apalachicola River, floodplain and bay are not to be considered in decisions regarding reservoir management. These resources are not considered “Authorized Uses”. As a result, the Corps does not feel they are obligated to abide by comments provided by the United States Fish and Wildlife Service. The case is on-going.

HOW CAN THE RCSC HELP YOU

The RCSC can provide technical support and expertise in areas of concern related to issues within the Apalachicola River floodplain and bay watershed. We can support your initiatives with state and federal agencies. Feel free to contact the Coordinator.

