

No. 142, Original

**In The
Supreme Court of the United States**

STATE OF FLORIDA,
Plaintiff,

v.

STATE OF GEORGIA,
Defendant.

**MOTION ON BEHALF OF THE ATLANTA REGIONAL COMMISSION FOR
LEAVE TO PARTICIPATE AS *AMICUS CURIAE***

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In accordance with Case Management Order # 20, the Atlanta Regional Commission (“ARC”) seeks leave of the Special Master to file a brief as *amicus curiae* to provide information relevant to the factual and legal issues in this equitable apportionment original action. As explained below, ARC has specific experience and unique knowledge of the relationship between the operations of the U.S. Army Corps of Engineers (“Corps of Engineers”) on the Chattahoochee River and the use of the Chattahoochee River and Lake Lanier for metropolitan Atlanta’s municipal water supply. This information bears directly on the limited extent to which a cap on metropolitan Atlanta’s water withdrawals would impact downstream flows.

INTEREST OF THE ATLANTA REGIONAL COMMISSION

ARC is a regional governmental entity composed of ten counties and the cities contained therein. ARC is the Metropolitan Planning and Development Commission for the Atlanta metropolitan area. In that capacity, ARC is responsible for coordinating and managing the planning, development, implementation, construction, management and operation of regional water projects, and acts as the contracting and coordinating agent for participating affected local governments.

Four different entities in metropolitan Atlanta withdraw water from the Chattahoochee River below Buford Dam, the dam that impounds Lake Lanier—the City of Atlanta, the Atlanta-Fulton County Water Resources Commission, the Cobb County-Marietta Water Authority, and DeKalb County. Two withdraw water from the river below Morgan Falls, a hydropower reservoir operated by the Georgia Power Company, and two withdraw water from a point above Morgan Falls but below Buford Dam. All four depend on the Corps of Engineers to release water from Buford Dam in order to operate their intakes in the river. The two below Morgan Falls also rely on the Georgia Power Company to “reregulate” peaking hydropower releases from Buford Dam to ensure their intakes are operational even when hydropower is not being generated.

ARC facilitates coordination between these four entities, the Georgia Power Company, and the Corps of Engineers on water supply needs and the flows needed to maintain water quality. ARC also serves in a coordinating role between these four entities and other local water utilities and the Corps of Engineers on additional matters related to the operation of Lake Lanier. Because changes in the operation of Lake Lanier can directly threaten metropolitan Atlanta’s water supply (and have in the past), ARC evaluates any proposed changes to operations of the dam and has provided suggestions on how the Corps of Engineers could improve operations to achieve downstream objectives without threatening water supply. The timing of the Corps of Engineers’ reservoir operations is especially important in this context, as water is stored at times of high flow and, typically, released for water supply needs in times of low flows—thus muting the impacts of water supply withdrawals.

As a result of this coordination and related evaluations, ARC is in a unique position to assist the Court in understanding how the Chattahoochee River “works”—including how flows are affected by the Corps of Engineers’ reservoir operations, how reservoir operations are coordinated for water supply needs, and the limited impact of metropolitan Atlanta water supply withdrawals on downstream flows.

SUMMARY OF ARC’S PROPOSED *AMICUS* BRIEF

Florida has requested an equitable apportionment of the waters of the Apalachicola-Chattahoochee-Flint River Basin, which includes Lake Lanier and the four other reservoirs operated by the Corps of Engineers. Because Florida did not seek to make the Corps of Engineers a party to this litigation, and the Corps of Engineers has not chosen to intervene, the only relief requested by or available to Florida is an actual or functional limitation on Georgia’s consumptive use. ARC proposes to provide information to help the Court understand how such a cap, when factored into the Corps of Engineers’ reservoir operations, might affect the timing and availability

of water flows downstream of metropolitan Atlanta. In this regard, ARC proposes to provide information to put metropolitan Atlanta's water use into the context of the basin as a whole, and to explain how the reservoir system substantially mitigates the downstream impacts of consumptive use in Georgia.

ARC respectfully submits that these topics are relevant to the issues in this equitable apportionment proceeding, and that an *amicus* brief from ARC can provide information and perspective that will be helpful to the Special Master's deliberations. ARC therefore respectfully requests that it be permitted to file an *amicus curiae* brief addressing the topics outlined above.

Respectfully submitted,

/s/ Patricia T. Barmeyer

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Before the Special Master

Hon. Ralph I. Lancaster

CERTIFICATE OF SERVICE

This is to certify that the MOTION ON BEHALF OF THE ATLANTA REGIONAL COMMISSION FOR LEAVE TO PARTICIPATE AS *AMICUS CURIAE* has been served on this 16th day of September, 2016, in the manner specified below.

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<u>By U.S. Mail and Email</u>	<u>By U.S. Mail and Email</u>
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