

No. 142, Original

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF FLORIDA,

Plaintiff,

v.

STATE OF GEORGIA,

Defendant.

*Before the Special Master
Hon. Ralph I. Lancaster*

**AMICI CURIAE BRIEF OF
THE GEORGIA AGRIBUSINESS COUNCIL, INC.,
GEORGIA GREEN INDUSTRY ASSOCIATION, INC., AND
THE GEORGIA URBAN AGRICULTURE COUNCIL, INC.**

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TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES..... ii

STATEMENT OF INTEREST..... 1

INTRODUCTION..... 6

ARGUMENT 8

 I. MUCH OF GEORGIA AGRIBUSINESS AND RURAL
 ECONOMY WILL SUFFER IF THIS COURT APPORTIONS
 THE FLINT RIVER IN FLORIDA’S FAVOR. 9

 II. GEORGIA’S AGRICULTURAL BUSINESSES USE WATER
 EFFICIENTLY. 11

CONCLUSION..... 14

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Colorado v. New Mexico</i> , 459 U.S. 176 (1982).....	<i>passim</i>
<i>Connecticut v. Massachusetts</i> , 282 U.S. 660 (1931).....	6, 8
<i>Nebraska v. Wyoming</i> , 325 U.S. 589 (1945).....	<i>passim</i>

**BRIEF OF THE GEORGIA AGRIBUSINESS COUNCIL, INC.,
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AND THE GEORGIA URBAN AGRICULTURE COUNCIL, INC.
AS AMICI CURIAE**

The Georgia Agribusiness Council, Georgia Green Industry Association, and Georgia Urban Agriculture Council submit this brief to add their voice to the important water issues before the Court.¹

STATEMENT OF INTEREST

When most people think of Georgia agriculture, they think of peaches, peanuts, or pecans. But Georgia agriculture is much more than that. It also includes a wide array of other crops, poultry, livestock, and even things that people wouldn't immediately think of as "agriculture"—such as landscape management, horticulture, and sod farms.

Amici—three groups that represent Georgia's agricultural interests across the spectrum—submit this brief to discuss the negative economic impacts that an equitable apportionment in Florida's favor would produce on Georgia's diverse agricultural economy. *Amici* detail the ways in which Georgia's agricultural industry has evolved over the years to better conserve water and provide evidence that Georgia agricultural businesses of all types have used the water resources in question for generations to benefit not only the State but also the Country and increasingly the world. Finally, *amici* discuss the stakes for Georgia's agricultural families and rural communities.

¹ In accordance with Supreme Court Rule 37.6, *amici curiae* state that no counsel for a party authored this brief in whole or in part and that no party or counsel for a party helped fund the preparation or submission of the brief. No person other than *amici curiae* or their counsel funded work on the brief.

On September 21, 2016, the Special Master granted *amici's* motion for leave to file this brief.

Georgia Agribusiness Council. Incorporated in 1966, the Georgia Agribusiness Council advances agricultural business in the State through economic development, environmental stewardship, and education. The Council's board of directors and members have represented diverse interests within agriculture and include a long list of industry stalwarts. They include President Jimmy Carter (board member from 1969-1971), former governors, past and present state legislators, agribusiness CEOs, farmers, foresters, and educators. The Georgia Agribusiness Council is pleased to have the participation and support of many community and state leaders.

The Council's members are living proof that small businesses are indeed the backbone of Georgia's largest economic industry. More than half of Council member companies have ten or fewer employees and only fourteen percent have more than twenty-five employees. In addition, these members are as diverse as the state's agricultural economy. Many are family farming operations covering a wide range of farm products, encompassing everything from peaches, peanuts, pecans and poultry to cotton, Vidalia onions, blueberries and livestock. Members also include agricultural retail suppliers, grain elevators, cotton and peanut processors, farm equipment dealers, and wholesale and retail food distributors. Service providers are also a key part of the membership, ranging from landscape contractors to companies that specialize in custom fertilizer and crop protection to crop consultants, just to name a few.

Environmental stewardship is key to the Council and Georgia's agribusiness industry. This commitment is even captured in the Council's mission statement: "To advance the business of agriculture through economic development, environmental

stewardship and education to enhance the quality of life for all Georgians.” Much of the Council’s work over the past twenty years has focused on water resource management through conservation and efficiency. These efforts have helped support legislative and regulatory initiatives that have greatly enhanced the stewardship of water resources—and their work is far from over. Irrigation metering has helped drive conservation initiatives that have dramatically improved irrigation efficiencies both on the farm and in the urban landscape. Members recognize more can be done and are committed to advancing voluntary stewardship efforts.

In 2014, Georgia’s food and fiber production contributed \$74.3 billion to the economy and accounted for more than 411,500 jobs. In almost two-thirds of Georgia’s 159 counties, agribusiness and directly related industries are the largest or second-largest economic engines. This massive, complex business has invested and created a voice for itself in the public arena. That voice is the Georgia Agribusiness Council. It provides a forum for the entire agricultural industry to share views, develop understanding, and work on issues of common concern.

Georgia Green Industry Association. The Georgia Green Industry Association is a trade association for the horticulture and landscape industries in Georgia. The Association’s membership draws from six diverse sectors: wholesale growers, retail garden centers, landscape contractors, irrigation contractors, floriculture, and allied suppliers. Together, those sectors perennially rank among Georgia’s top five agricultural commodities, making an \$7 billion impact on the State’s economy. The Association strives to increase professionalism, to advocate for the industry, and to

communicate the environmental and economic impact that its members' products have on Georgia and beyond.

The Association's members depend on access to sufficient water resources. Producing living, breathing products requires water. Growers recognize the need to conserve and protect water resources and strive to minimize their usage and to maintain high water quality. Once the product enters the consumer market, water is once again required to establish and maintain healthy and sustainable landscapes. The industry has long been a leader in protecting water resources for homeowners and citizens by promoting certified professionals and water efficient products while educating consumers and professionals alike on efficient and conservation-minded water use.

The Association's membership reflects the rich diversity of the industry. Production nurseries and greenhouse operations range from three-acre propagation specialists employing five to ten employees to large scale operations encompassing hundreds of acres and employees. Automated, efficient irrigation coupled with recapture and reuse not only saves water but also protects water quality by reducing runoff.

The Association also serves as the state affiliate for the Irrigation Association, a nationwide organization that advocates for efficient irrigation and long term sustainability of water resources. Through that affiliation, the Association offers multiple certifications for irrigation professionals focusing on best management practices, new technologies, and irrigation efficiency. The Association conducts

certification training and continuing education for irrigation and landscape contractors, teaching the efficient use of water in the landscape.

The Georgia Urban Agriculture Council. The Georgia Urban Agriculture Council is a trade association for businesses, employees, and practitioners involved in all sectors of the urban agricultural industry. Urban agriculture involves creating, growing, introducing, and managing constructed landscapes designed to support and enhance natural environmental systems and a sustainable quality of life.

The Council represents one of the largest and most successful industries in Georgia, consisting of over 7,000 companies and more than 80,000 employees. The Council's members include all sectors of the industry, including landscape design, management and construction, irrigation design, installation, repair and management, turf care and sports-turf management, parks and recreation and golf-course management, nursery and garden centers, sod production, tree care, and all green-industry supplies and consulting.

The Urban Agriculture Council advocates for the environmental and economic benefits of urban agriculture. The Council educates its members about best management practices for environmental and economic sustainability by working closely with the University of Georgia Center for Urban Agriculture.

For over thirty years, the Council has supported research by the University of Georgia to develop turf and ornamental cultivars that require less inputs—including supplemental irrigation. The Council has promoted and encouraged its members to practice water conservation Best Management Practices (BMPs) that integrate plant

selection, plant adaptation, irrigation, cultural and management practices, and a change in the acceptable expectations of plant performance under sub-optimal water conditions. The primary objective of those BMPs is to reduce landscape water use—not just during periods of drought, but throughout the growing season. Water conservation involves improvements in overall water-use efficiency, not just temporary responses to periodic drought. BMPs are designed to be economical, practical, and sustainable while maintaining a healthy, functional landscape—a landscape that capitalizes on the environmental benefits of plant systems.

INTRODUCTION

Before this Court even gets to the equitable balancing called for by the Court’s equitable-apportionment cases, the “state seeking to prevent or enjoin a diversion by another state bears the burden of proving that the diversion will cause ‘it real or substantial injury or damage.’” *Colorado v. New Mexico*, 459 U.S. 176, 187 n.13 (1982) (quoting *Connecticut v. Massachusetts*, 282 U.S. 660, 672 (1931)). The complaining state must “establish not only that its claim is of a ‘serious magnitude,’ but also that its position is supported by ‘clear and convincing evidence.’” *Id.*

In undertaking the equitable-apportionment analysis, this Court considers many different factors, but a few factors are, to use Orwell’s famous line, more equal than others. They include “the balance of the harm and benefit” to the competing States, “the protection of existing economies,” and “the conservation measures available to both states.” *Colorado*, 459 U.S. at 185, 187–89. Among those factors, “the extent of established uses” and “the damage to upstream areas as compared to downstream areas

if a limitation is imposed on the former” loom particularly large in the analysis. *Id.* at 183; *see also Nebraska v. Wyoming*, 325 U.S. 589, 618 (1945).

Diverting additional water resources from the Flint-River/Apalachicola-River Basin to Florida would result in negative cascading impacts on many long-established uses in Georgia that generate billions of dollars for Georgia’s, the Country’s, and the world’s economy. The resulting benefit to Florida from any apportionment would prove minimal in comparison. The “damage to upstream areas” (here, in Georgia) from any apportionment would outstrip by orders of magnitude any possible benefit to Florida and its economies.

Amici’s members and their forebears have understood for over a century that water is a precious resource that drives Georgia’s economic activity. Over time, they developed businesses and communities that became the engines for much of the economic growth in the Southeast. Early on, they understood the value of the water from the Flint River and other sources in and around the State. Indeed, many of the towns, communities, and economies in southwestern Georgia exist because of the Flint River. Those economies are not Johnny-come-lately enterprises; they have been integral to the region for decades.

As technology has increased economic possibilities, *amici’s* members have become even more concerned about preserving water and using it more efficiently. Those concerns have in turn driven even greater technological gains; today, many farms and agribusinesses in the State employ conservation technologies that would strike most of us as futuristic dreams rather than existing realities.

The point is that Georgia’s economies—both in the southwestern part of the State and elsewhere—are finely calibrated to the existing water supply. The butterfly effects from taking some of that water away from Georgia and giving it to Florida are inestimable.

ARGUMENT

This Court “will not exert its extraordinary power to control the conduct of one State at the suit of another, unless the threatened invasion of rights is of serious magnitude and established by clear and convincing evidence.” *Connecticut v. Massachusetts*, 282 U.S. 660, 669 (1931). The burden on the complaining party (here, Florida) is “much greater than that generally required to be borne by one seeking an injunction in a suit between private parties. *Id.*”

In determining whether an equitable apportionment is appropriate, this Court considers “the pertinent laws of the contending States and all other relevant facts.” *Connecticut*, 282 U.S. at 670–71. “[A]ll of the factors which create equities in favor of one state or the other must be weighed” (*Nebraska v. Wyoming*, 325 U.S. 589, 618 (1945)), including

physical and climatic conditions, the consumptive use of water in the several sections of the river, the character and rate of return flows, the extent of established uses, the availability of storage water, the practical effect of wasteful uses on downstream areas, [and] the damage to upstream areas as compared to the benefits to downstream areas if a limitation is imposed on the former.

Colorado, 459 U.S. at 183 (citing *Nebraska*, 325 U.S. at 618).

Among those factors, this Court often focuses on “the balance of the harm and benefit” to competing states, “the protection of existing economies,” “the conservation measures available to both states,” and “the availability of substitute sources of water.” *Colorado*, 459 U.S. at 187–89 . Chief among those concerns is the protection of existing economies. *See Nebraska*, 325 U.S. at 618 (noting “[s]o far as possible [the] established uses should be protected”); *Colorado*, 459 U.S. at 187 (recognizing “the equities supporting the protection of existing economies will usually be compelling”).

There can be no question that, as between the two States, Georgia stands to suffer the most damage to existing economies from any apportionment.

I. MUCH OF GEORGIA AGRIBUSINESS AND RURAL ECONOMY WILL SUFFER IF THIS COURT APPORTIONS THE FLINT RIVER IN FLORIDA’S FAVOR.

Since colonial times, agriculture has been foundational to Georgia’s economy. Row crops are as much a part of Georgia’s history as anything else.

Those products remain vital to Georgia, but the State’s agricultural industry has grown and evolved significantly. Today, Georgia’s products include not only the three Ps (peaches, peanuts, and pecans) but also blueberries, cotton, poultry, ornamental horticulture, turfgrass, and livestock. *See 2016 Ag Snapshots, A brief focus on Georgia’s agricultural industry*, The University of Georgia Center for Agribusiness and Economic Development, <http://www.caes.uga.edu/center/caed/AgSnapshotDownloads.html>.

Today, beef and dairy are among the top ten commodities in Georgia. *See id.*

Even that doesn’t give a full picture of the diversity in Georgia’s agricultural economy. Beyond those products, there are the agricultural retail suppliers, grain

elevators, processors, equipment dealers, and food distributors. And there are the green industries and urban agriculture that have grown rapidly in recent years. Landscape and horticultural services now contribute over \$7 billion and 76,500 jobs to the local economy. *See id.* Greenhouses and container nurseries recently ranked in the top twenty agricultural commodities in Georgia. *See id.*

A large part of the landscaping industry involves producing, installing, and maintaining turfgrass, which is the primary vegetative covering on airports, athletic fields, cemeteries, churches, commercial buildings, golf courses, home lawns, schools, parks, and roadsides. *See* Gil Landry, *Turfgrass Industry Facts in Georgia*, Georgia Turf, http://www.commodities.caes.uga.edu/turfgrass/georgiaturf/Industry/1420_Facts.htm. Turfgrass prevents soil erosion, improves recreation, and provides increased aesthetic value. Turfgrass is one of the largest agricultural commodities in Georgia at nearly 1.8 million acres.

Water is the *sine qua non* for each of those industries. A restricted water supply would devastate Georgia's crops and rural economy virtually overnight. But just as important, many of the non-traditional agribusinesses that rely on a steady flow of water would also suffer great losses under permanently restricted water flow. Landscape and horticultural services and greenhouse and floriculture production do not purchase water directly but instead depend on their customers' water supply to irrigate lawns and gardens. A restricted water supply would invariably reduce consumer spending on those kinds of services—for proof, see the effects of recent droughts in the State (Archie Flanders, John McKissick & Tommie Shepherd, *Georgia Economic Losses Due to 2007*

Drought, The University of Georgia College of Agriculture & Environmental Sciences, (July 2007) <http://www.caes.uga.edu/center/caed/pubs/2007/documents/CR-07-10.pdf>.)—and that will cost *amici's* members thousands of jobs.

Estimates suggest the 2007–08 drought led to nearly \$800 million in production losses to Georgia's agricultural industry. Flanders, et al., at 1. The total economic output impact was estimated at over \$1 billion. *Id.* Those data account for the direct impacts on crop production, livestock, and other conventional elements of agriculture. Adding in the indirect impact on urban agriculture and other green industries, the losses become astronomical.

Those recent droughts prove just how debilitating any apportionment would be on Georgia's existing economies. They have also pushed Georgia's agricultural industry to the forefront of water-conservation efforts in the Southeast.

II. GEORGIA'S AGRICULTURAL BUSINESSES USE WATER EFFICIENTLY.

Because of past experience with droughts and the reality that water is a limited resource, Georgia agribusinesses have long worked to preserve water resources in the State. And in recent decades, public and private entities have worked together to propose, adopt, and implement extensive water conservation efforts.

Since 2001, Georgia's elected and regulatory leaders have advanced policy initiatives that charted a path forward for water conservation and stewardship. After a multi-year process involving input from many stakeholders across Georgia, the General Assembly passed a law creating a farm-irrigation metering program that monitors rates and volumes of agricultural irrigation supplied by groundwater, surface-water, and well-

to-pond sources. That program involves a network of more than 12,000 annually read flow meters and about 200 daily reporting, satellite-transmitted telemetry sites.

The Water Stewardship Act, a broad water conservation effort that became law in 2010, targeted inefficiencies in water delivery systems, multi-family dwellings, outdoor water use, and more. In addition, numerous other laws and programs have been put in place to enhance water conservation and protect the environment. They include building a statewide water planning process from the ground up, implementing an irrigation-permitting system that eliminated numerous unused farm-use permits, establishing a process for protecting stream flows for critical habitats in drought-susceptible creeks, partnering with federal agencies to provide cost-share irrigation efficiency retrofit technologies on qualified systems, creating a mobile program to test farm-irrigation efficiencies and make repairs when needed, and modifying farm-irrigation permitting for those farmers using equipment with less than eighty percent irrigation efficiency.

Those and other conservation projects have proven great successes. In 2003, for instance, the Metro North Georgia Water Planning District adopted a Water Supply and Water Conservation Management Plan. The plan instituted nineteen aggressive conservation measures, including, among others, replacing old, inefficient plumbing fixtures, installing rain sensor shut-off switches on new irrigation systems, conducting residential and commercial water audits, and initiating a multi-family high efficiency toilet rebate program. Since 2003, under this plan, total water use in the region has dropped by more than ten percent despite a population increase of one million people.

Regional per capita water use in Metro Atlanta is currently lower than in much smaller cities such as Tallahassee, Tampa, Birmingham, and Montgomery.

Beyond that, the Stripling Irrigation Research Park (SIRP) at the University of Georgia works closely with local farmers to develop and implement water-conservation efforts. The Georgia Soil and Water Conservation Commission (GSWCC) has helped farmers retrofit conventional center-pivot irrigation systems by converting them from high- to low-pressure sprinklers and adding end-gun shutoffs—changes that conserve energy and can reduce water use by up to twenty percent. With SIRP and GSWCC assistance, farmers have also adopted practices such as Variable Rate Irrigation, conservation tillage, advanced irrigation scheduling, and remote soil moisture monitoring. Those tools and practices have each led to water savings of up to fifteen percent.

Landscape and horticulture practices in Georgia have also improved as a result of sustainability and conservation efforts. Through grants from the Georgia Department of Agriculture, the University of Georgia has developed new methods to maintain vibrant lawns and landscapes while using less water. UGA turfgrass breeders continue to push the limits to develop sod varieties that encourage a deep, healthy root system during hot or dry periods and maintain vigor while requiring less water. The industry has also developed and completed numerous trainings for landscape workers to educate them in the biology and cultivation of turfgrass and other horticultural crops to ensure efficient water management.

* * *

This Court's analysis of Florida's apportionment request must account for both the vibrant existing economies and the conservation efforts already in place. Many facets of Georgia's agricultural industry depend on water from the Flint River Basin. Any potential benefit to Florida from an equitable apportionment pales in comparison to the unavoidable negative impact on existing agriculture industries in Georgia. And the Georgia agriculture industry has more than shouldered its burden to reduce water consumption.

CONCLUSION

For all these reasons and those stated in Georgia's separate brief, this Court should deny Florida's request for equitable apportionment.

Respectfully submitted,

October 21, 2016

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CERTIFICATE OF SERVICE

This is to certify that the foregoing *Amici Curiae* Brief of the Georgia Agribusiness Council, Inc., Georgia Green Industry Association, Inc., and the Georgia Urban Agriculture Council, Inc., has been served this 21st day of October, 2016, in the manner specified below:

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