

Florida ruling could have implications in Georgia-Tennessee border dispute

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Photo by Dan Henry /Times Free Press.

A key judicial recommendation seen as a victory for Georgia in its water war with Florida could have implications for a longstanding border **dispute between Tennessee and Georgia** — one centered on Georgia's desire to pump water to Atlanta from Nickajack Lake.

Peach State officials are praising the Feb. 14 recommendation by Ralph Lancaster, U.S. Supreme Court-appointed special master, which appears to deny an effort by Florida to limit Georgia's use of the Chattahoochee and Flint rivers in South Georgia.

Those same officials stayed silent last week over whether the judicial victory has emboldened them to make a run at the piece of Nickajack Lake in Marion County long claimed by Georgia lawmakers. But an Atlanta newspaper columnist asserted that with no compromise from Tennessee, Georgia should bring the matter before the Supreme Court.

Tennessee officials have said for years they aren't interested in sharing the Tennessee River with their thirsty counterparts to the south.

"The governor's position on this remains unchanged," a spokeswoman for Tennessee Gov. Bill Haslam wrote in an email.

Officials in the offices of Georgia Gov. Nathan Deal and Attorney General Chris Carr did not respond to questions about whether they might try to parlay Lancaster's recommendation on the Florida issue into a new legal challenge on the state's northern border.

Georgia lawmakers have long claimed a faulty 1818 survey left the state line roughly a mile south of the 35th parallel, which is where the border was intended to go. The mistake means the Tennessee River stays in Tennessee until it crosses into Alabama near South Pittsburg.

It comes within about 300 feet of the Georgia state line at one point in Marion County, leaving Dade County, Ga., tantalizingly close to the water.

With a sliver of the river in its control, Georgia could access Nickajack Lake to pump up to 1 billion gallons a day into the state to quench widespread water woes, magnified last year as the area grappled with devastating drought.

Dade County Executive Ted Rumley said last week the issue is still alive, even though it has been quiet for a few years. In 2013, Georgia lawmakers overwhelmingly passed a resolution offering to give up the border dispute in exchange for 1.5 square miles of Tennessee land, where a pipeline could be built. Tennessee scoffed at the deal.

"There's some things that are coming back on this," Rumley said. "It's never been dead, but it's just been on the back burner as far as the actual border dispute. I think it's something you'll see come back in the next year or so."

Rumley believes Dade County could benefit from pumping the water out. He said property taxes could be slashed in half if a half-cent per gallon of the water sent toward Atlanta went back to county coffers.

"Sometimes it's like the Tennessee politicians think it's a joke," Rumley said. "The 35th parallel has never changed. I think it'll come down to a Supreme Court ruling some day."

Marion County Mayor David Jackson said he remains "totally opposed" to moving the border or offering a slice of his county to Georgia.

"It gets into planning," he said. "Maybe they should look at better ways to plan in the future."

In 2008, former Chattanooga Mayor Ron Littlefield sent an aide, who reportedly wore a coonskin cap, and a city councilman to Atlanta with a truckload of bottled water during a previous chapter of the dispute.

"We wanted to put a little bit of humor into something that threatens to be far too serious," Littlefield said at the time.

All joking aside, the possible redirection of hundreds of billions of gallons of water each year from the Tennessee River to Atlanta would face a number of hurdles, even if Haslam and state legislators suddenly found a soft spot in their hearts for their Southeastern Conference rivals.

The maneuver would be an "interbasin transfer" that would require a review by the Tennessee Valley Authority. That would only occur if the state of origin — Tennessee — sent a letter to TVA stating it does not object to the transfer and would be proceeding with any state permitting requirement.

A National Environmental Policy Act permit also would be required, long before the many and various federal construction permits could be considered, TVA spokeswoman Gail Rymer confirmed Thursday. Upon completion of the final environmental reviews, the request would need final approval from the TVA board of directors, she said.

The other course of action, a legal challenge, might net Georgia more than just water. Newspaper archives show there are more than 30,000 Tennesseans living near the state line who would become Georgia residents if the border changed.

Georgia's 2013 resolution, the one Tennessee dismissed, dropped any claim to those residents in exchange for a sliver of the lake.

"The value of that water is great," Tennessee state Rep. Gerald McCormick, R-Chattanooga, said in a phone interview last week. "They aren't making any more of it, and Georgia needs it. But we don't want to harm the citizens of our state to do it. We don't want that to happen just because they haven't properly planned for their growth."

Moving a state border nearly 200 years after it was established and flip-flopping thousands of residents would likely be an unprecedented move, but the Supreme Court has tweaked state borders before.

Atlanta Journal-Constitution opinion writer Kyle Wingfield wrote a Feb. 18 column headlined, "After water win against Florida, Georgia should now pivot to Tennessee," noting at least one example.

Wingfield, originally from Dalton, Ga., wrote that the Supreme Court "settled a similar fight between Maryland and Virginia in 2003." Wingfield also wrote that North Carolina

and South Carolina recently tweaked their border willingly in an action that moved some residents from one state to the other.

He suggested that now is the time for Georgia to settle its border question with Tennessee, "when our backs are not up against the proverbial wall because of litigation with Florida (or Alabama) over the Chattahoochee-Flint."

"If Tennessee won't agree willingly, Georgia should be ready to ask the Supreme Court to do the job," Wingfield wrote.

The Georgia-Florida issue did not involve a border, but Georgia attorneys argued the state's economy could take an \$18 billion hit if the state had to limit its use of the two rivers.

Florida filed a lawsuit in 2013 arguing that Georgia's heavy consumption of the Chattahoochee and Flint rivers was devastating Florida's oyster industry. The lawsuit sought a cap to restrict Georgia's use of the water.

Lancaster's favorable recommendation for Georgia came four years later, after Georgia taxpayers handled a legal tab that nearly reached \$30 million, according to the Atlanta Journal- Constitution.

Any legal challenge by Georgia over the border would likely require extensive attorneys fees for Tennessee. McCormick said he does not like spending unnecessarily on attorneys.

"But if we have to defend the state, then we have to get attorneys to do it," he said.

McCormick added the Tennessee- Georgia water dispute always brings up "a lot of good-natured ribbing between the legislatures."

"We make fun of it, but they do have some serious problems and need to work on their issue," he said.

McCormick also pointed out that while the Tennessee River is a great resource for the state, Georgia has its own in the form of the Atlantic Ocean.

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