

**Water Issues  
White Paper**

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Property in Water in Georgia

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Prepared for the Comprehensive State Water Plan Joint  
Study Committee

by  
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## Executive Summary

What is the property interest in water under Georgia law? This paper examines the history of water law and concludes that the property interest in both surface water and groundwater is a usufructory right, a qualified right to use the water for reasonable purposes as determined by a public agency, EPD. There is no ownership of, or title to, the water.

The law governing water use remains basically state law. This paper describes the historical evolution of water law in Georgia, beginning with the pre-1776 English common law. This evolution has resulted in a complex system of different water laws whose application depends on the quantity of water withdrawn and whether the source is surface water or ground water. Yet at all times, because of the ambient nature of the resource that makes it an inherently shared resource, water is managed as a public resource.

With increasing interstate water conflicts developing between Georgia and adjoining states, Georgia's law needs to realize more fully the public dimension of water as a resource if Georgia is to succeed in litigation involving other states before the U.S. Supreme Court. Proper construction of Georgia law by the Georgia courts will realize the public nature of water as a resource. Such a construction establishes that water under Georgia law is a public resource that can be withdrawn from its natural source and used only according to the limited rights afforded by law. Even after water is withdrawn from its source, the water must be used only for the purposes determined by law, usually through the EPD. In other words, under Georgia law, water is a public resource that is managed by a public agency. The fact that the state has chosen not to burden itself with withdrawals below a threshold of 100,000 gallons per day is a mere matter of administrative convenience. It does not alter the fact that water in Georgia is a public resource.

## Georgia Water Law Summarized

As described by the Attorney General in his presentation to the Joint Comprehensive Water Plan Study Committee,<sup>1</sup> water law in Georgia is technically governed by the amount of water withdrawn from the water source and whether it is a surface water source, such as a river, lake, or stream, or a groundwater source, such as an aquifer. The fundamental principles and court rulings of Georgia's water laws have been well documented by Robert Bomar, Assistant Attorney General, State of Georgia.<sup>2</sup>

Georgia's water law for surface and ground water withdrawals greater than 100,000 gallons per day adheres to similar doctrines in as much as both types of withdrawals are regulated by a comprehensive permit system. Georgia's surface water law can be classified as a form of the *Regulated Riparian doctrine*<sup>3</sup> and Georgia's groundwater law can be classified as a form of the *Regulated Reasonable Use* doctrine for groundwater. These are the same legal doctrine under different labels.

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<sup>1</sup> Remarks of the Honorable Thurbert Baker, Attorney General State of Georgia concerning the Legal Status of Water Rights in Georgia, Joint Meeting of the Comprehensive Water Plan Study Committee and the Water Plan Advisory Committee January 7, 2002 Atlanta, Georgia, found at [www.cviog.uga.edu/water](http://www.cviog.uga.edu/water).

<sup>2</sup> Robert S. Bomar, Deputy Attorney General, *Georgia Water Law*, A White Paper to the Joint Comprehensive Water Plan Study Committee, found at [www.cviog.uga.edu/water](http://www.cviog.uga.edu/water).

<sup>3</sup> For a description of water law doctrines, see Joseph W. Dellapenna and Stephen E. Draper, *Water Law Doctrines As Applied to Georgia Water Law*, A White Paper to the Joint Comprehensive Water Plan Study Committee, May 13, 2002, found at [www.cviog.uga.edu/water](http://www.cviog.uga.edu/water).

For withdrawals from surface sources that are less than 100,000 gallons per day (gpd), Georgia's water law adheres to *common-law Riparian Rights*, clarified by decisions of the Georgia Supreme Court in specific instances that make clear that this is the *reasonable use* version of Riparian Rights. For withdrawals from groundwater sources that are less than 100,000 gallons per day, Georgia's water law is ambiguous. Taken on its face, the water law arguably adheres to a modified *Absolute Dominion doctrine*. However, the case law is ambiguous and a strong case can be made that Georgia common law for groundwater rights has evolved to a form of the *Reasonable Use doctrine* for groundwater.

This paper discusses whether the property interest attached to water includes ownership, or title, to the water. One view that has been expressed is that

“The concept that running water belongs to the owner of the land on which it runs is also recognized in the Georgia Code. Similarly, groundwater belongs to the landowner in Georgia. ... Thus, water rights are property rights in the State of Georgia, protected by the Constitution, common law, and Georgia.”<sup>4</sup>

Without explanation, however, this statement is seriously misleading. While water rights are legally protected property rights in Georgia, those rights do not include ownership of the water itself. Rather, water rights are usufructory rights to a reasonable use of the water, and an understanding of the scope of those rights is necessary for the development of comprehensive management of water in Georgia.

## Property Rights as an Aggregate of Benefits

*Black's Law Dictionary* defines “property right” as a “generic term that refers to any type of right to specific property whether it is personal or real property, tangible or intangible.” A property right in the piece of real estate may mean many things. At one extreme, an individual may own the land—“the exclusive right of possession, enjoyment, and disposal.”<sup>5</sup> The term property right, however, may also mean something less than ownership. An apartment dweller usually does not “own” his apartment, but he has a property interest in the apartment that grants him the right to use the apartment for the term and conditions spelled out in the lease. Someone else may have the right to use the property for a specific purpose, a usufructory right.

The term “usufructory” derives from combining the Latin terms *usus* (the right to use property) and *fructus* (the right to the fruits of the property).<sup>6</sup> In Roman law, this terminology suggests that ownership is less than complete, lacking the element of *abusus* (meaning the right to alienate, destroy, or otherwise dispose of property).<sup>7</sup> A “usufructory right” then is a “right of enjoying a thing, the property of which is vested in another, and to draw from the same all the profit, utility, and advantage which it may produce.”<sup>8</sup> This “right to use” normally is an interest

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<sup>4</sup> See The Role of Water Rights and Georgia Law in Comprehensive Water Planning for Georgia, A White Paper to the Joint Comprehensive Water Plan, Study Committee by the Georgia Chamber of Commerce Prepared By: Gregory W. Blount, Harvey A. Rosenzweig and David M. Moore, Troutman Sanders LLP; James F. Renner, Golder Associates Inc.; James R. Wallace, Law Engineering and Environmental Services, Inc.; Stephen Loftin, Georgia Chamber of Commerce; Carol R. Geiger, Kilpatrick Stockton, LLP; Randall D. Quintrell, Sutherland, Asbill, Brennan, LLP; and Charles H. Hood, Georgia-Pacific, Corp., March 4, 2002, found at [www.cviog.uga.edu/water](http://www.cviog.uga.edu/water).

<sup>5</sup> *Black's Law Dictionary*, 5<sup>th</sup> Ed.

<sup>6</sup> *One River Place Condo. Ass'n v. Mitchell*, 609 So. 2d 942, 946 (La. App.), *writ denied*, 612 So. 2d 81 (La. 1993).

<sup>7</sup> *Id.*

<sup>8</sup> *Black's Law Dictionary*, 5<sup>th</sup> Ed.

in property that is legally protected. In the context of Riparian Rights, owning a usufructory right means that one owns only a qualified right to use the water as flows through one's land. One does not have the right to impair seriously the similar rights of others to use the water and to receive its fruits as it passes over or lies upon their land.

## The Georgia Common Law Relating to Surface Water

Georgia's common law for water rights was adopted from the common law of England, as it existed on May 14, 1776.<sup>9</sup> Under the common law, ownership of the right to use water related to land (real property), and did not draw from the law of transient natural resources such as wild animals or water. Ownership was in the land (*i.e.*, the beds of streams and rivers), and not in the water itself. The right to withdraw the overlying running water for reasonable use was based on ownership of the beds or banks of a surface waterbody. American common law before 1863 mirrored the English common law, clearly establishing that ownership was in the land and not the water itself.<sup>10</sup> This was, of course, simply a usufructory right.<sup>11</sup> Georgia common law concurred in that legal position—the property right was a usufructory right limited to “a ‘reasonable’ use of the water, for domestic, agricultural and manufacturing; provided, that in making such use, he does not work a material injury to the other proprietors.”<sup>12</sup>

The Georgia Code of 1863 codified (albeit at times inartfully) the then existing law, including the common law of the state. Through the years, the Georgia Supreme Court has repeatedly indicated that the Code is to be understood as simply reiterating the common law, “unless the contrary manifestly appears from the words employed.”<sup>13</sup> The present Georgia Code states the property interest in water rights in same language as the 1863 Code:

OCGA § 44-8-1. Running water belongs to the owner of the land on which it runs, but the landowner has no right to divert the water from its usual channel nor may he so use or adulterate it so as to interfere with the enjoyment of it by the next owner.<sup>14</sup>

OCGA § 44-8-2. The beds of non-navigational streams belong to the owner(s) of the adjacent land.<sup>15</sup>

OCGA § 44-8-3. The owner of a non-navigational stream is entitled to the same exclusive possession of the stream as he has of any other part of his land.<sup>16</sup>

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<sup>9</sup> *Givens v. Ichauway, Inc.*, 268 Ga. 710, 713, 493 S.E. 2d 148, 152 (1997).

<sup>10</sup> “But no action will lie to recover possession of a watercourse ... The action must be for the land at the bottom ... It is impossible, indeed, to give execution of that which is naturally so wandering and fugitive as running water.” JOSEPH K. ANGELL, *TREATISE ON THE LAW OF WATERCOURSES* 2 (3<sup>rd</sup> ed., Charles C. Little and James Brown, Boston, 1840).

<sup>11</sup> “The property in the water therefore, by virtue of the riparian ownership, is usufructuary, and consists not so much of the fluid itself, as of the advantage of its impetus.” *Id.* at 11. See also JOHN M. GOULD, *A TREATISE ON THE LAW OF WATERS* § 46 (Callaghan & Co., Chicago 1883).

<sup>12</sup> “When there are two opposite riparian proprietors, each owns that portion of the bed of the river or creek, which is adjoining his land ... each is entitled to an equal share of the water.” “A riparian proprietor has the right to use the water in the stream, as it was wont to flow. ...” *Hendrick v. Cook*, 4 Ga. 241, 256 (1848).

<sup>13</sup> *Givens v. Ichauway, Inc.*, 268 Ga. 710, 713, 493 S.E. 2d 148, 152, 155 (1997); *Aldridge v. Georgia Hospitality Ass'n*, 251 Ga. 234, 238, 304 S.E.2d 708, 712 (1983); *Maddox v. First Nat'l Jefferson Bank*, 191 Ga. 106, 109, 11 S.E.2d 662, 664 (1940); *Alropa Corp. v. Pomerance*, 190 Ga. 1, 9, 8 S.E.2d 62, 67 (1940); *State v. Camp*, 189 Ga. 209, 210, 6 S.E.2d 299, 301 (1939); *Rogers v. Carmichael*, 184 Ga. 496, 504, 192 S.E. 39, 44 (1937); *Atlanta Coach Co. v. Simmons*, 184 Ga. 1, 6, 190 S.E. 610, 613 (1937); *Clark v. Newsome*, 180 Ga. 97, 100, 175 S.E. 386, 387 (1935); *Lamar v. McLaren*, 107 Ga. 591, 599, 34 S.E. 116, 119 (1899).

<sup>14</sup> <sup>14</sup> Ga. L. 1855-56, p.12; Orig. Code 1863, §2206 et seq.

<sup>15</sup> Orig. Code 1863, §2210.

OCGA § 51-9-7. The owner of land through which nonnavigable watercourses flow is entitled to have the water in such streams come to his land in its natural and usual flow, subject only to such detention or diminution as may be caused by a reasonable use of it by other riparians. The diverting of the stream in whole or in part from its natural and usual flow, or the obstructing thereof so as to impede its course or cause it to overflow or injure the land through which it flows or any right appurtenant thereto, or the polluting thereof so as to lessen its value to the owner of such land shall constitute a trespass upon the property.<sup>17</sup>

The language used in these code sections is ambiguous. OCGA § 44-8-1 uses the word “belongs” that can be interpreted as “owns,” while OCGA § 44-8-3 suggests that the owner of a non-navigational stream is “entitled to possession of the stream.” Yet OCGA § 51-9-7 indicates that one is only entitled to make a reasonable use of the water while it passes over one’s land even while apparently reiterating the natural flow rule. The ambiguity is resolved by reference both to the common law before 1863 and to case law that has interpreted these provisions subsequent to 1863. These cases clarify that the property right is an exclusive right to use the water while it passes across the owner’s land but it is not the same as title to or an unlimited right to appropriate the water regardless of the interests of others. Georgia court decisions have followed the common law principle that the property interest is of a limited right to use the water, not ownership of the water itself. The Georgia Supreme Court in interpreting the code in the context of the common law expressed this view very clearly in the 1909 case of *Price v. High Shoals Manufacturing Co.*:<sup>18</sup>

Riparian proprietors have a common right in the waters of the stream, and the necessities of the business of one cannot be the standard of the rights of another. ... Riparian proprietors have no title to the water which flows over their land, but are entitled to a reasonable use thereof ... The property, therefore, consists, not in the water itself, but the added value which the stream gives to the land through which it flows.

This remains the law today. Riparians then have property rights in the water moving across or adjacent to their lands, but they do not have title to the water itself. The property right is a right to use a common resource and that right follows the Riparian Rights doctrine of reasonable use.

## **The Georgia Law Relating to Groundwater**

Prior to 1972, water rights for groundwater had to be inferred from three sections of the 1863 Code as clarified by only a few Georgia Court decisions.

O.C.G.A. §44-1-2(b). The property of the owner of real estate extends downward indefinitely and upward indefinitely.<sup>19</sup>

O.C.G.A §51-9-8. The course of a stream of water underground and its exact condition before its first use are so difficult of ascertainment that trespass may not be brought for any supposed interference with the rights of a proprietor.<sup>20</sup>

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<sup>16</sup> Orig. Code 1863, §2207.

<sup>17</sup> Orig. Code 1863, §2960.

<sup>18</sup> *Price v. High Shoals Mfg. Co.*, 132 Ga., 246, 250, 64 S.E. 87, 88-89 (1909).

<sup>19</sup> Orig. Code 1863, §2197.

<sup>20</sup> Orig. Code 1863, §2961.

O.C.G.A. §51-9-9. The owner of realty has title downwards and upwards indefinitely; and an unlawful interference with his rights, either below or above the surface, gives him a right of action.<sup>21</sup>

The first decision on groundwater law came in 1880. In *Saddler v. Lee*,<sup>22</sup> the Court distinguished between percolating waters and underground streams, holding that the common law of riparian rights applied to underground streams.

“[W]here the exact course and condition of a stream of water, after its first use, are well defined and ascertained, and the interference with the rights of a proprietor using the water of the stream, is not such as are *supposed*, but *positive* and *certain*, then trespass lies. If there exist under such a state of facts, sufficient grounds to give a court of equity jurisdiction to interfere by injunction, then that remedy would lie.

The decision held that riparian rights applied to groundwater that flowed in an underground stream. In this case, a landowner had a usufructory right to use the groundwater for reasonable uses but he could not work a material injury to neighboring landowners. In the case of percolating groundwater, however, the holding of the Court was different. In that case, the landowner could make exclusive use of the percolating water on his property.

In the 1904 case, *St. Amand v. Lehman*,<sup>23</sup> the Court reexamined the law as it related to percolating waters. It recognized that adjacent landowners also had a common law right to relief when they were harmed by another landowner’s misuse of percolating groundwater. Consequently, the Court held that a landowner could not withdraw groundwater without consideration of its effect on adjacent landowners. If the evidence showed one landowner caused injury to another landowner “by malice in wasting or diverting” the percolating waters, the injured landowner could get legal relief. “Wasting” of water means using it for purposes that are not considered “reasonable.”<sup>24</sup> “Diverting” water means causing the quantity of water reaching the other landowner to be reduced for reasons not associated with “reasonable use.”<sup>25</sup> Thus the ruling was an evolution in Georgia water law where the law began to approximate the reasonable use rule. In the 1909 case, *Stoner v. Patton*,<sup>26</sup> the Court repeated the distinction between underground streams and percolating groundwater, confirming the holding in *Saddler* as modified by *St. Amand*.

The rulings in *Saddler* and *St. Amand* were examined and confirmed twice in the middle and late twentieth century.<sup>27</sup> Essentially, the Code sections were interpreted by the Court to give the landowner the exclusive right to extract groundwater from under his property and use it for any reasonable purpose, a purpose that did not maliciously waste or divert the water.

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<sup>21</sup> Orig., Code 1863, §2962,

<sup>22</sup> *Saddler v. Lee*, 66 Ga. 45 (1880),

<sup>23</sup> *St. Amand v. Lehman*, 120 Ga. 253 (1904).

<sup>24</sup> “Waste,” in a legal sense, may mean “unreasonable conduct by owner of possessory estate that results in physical damage to real estate and substantial diminution in value of estates in which others have an interest.” [Black’s Law Dictionary, 1979.]

<sup>25</sup> “Diversion,” in a legal sense, may mean “a turning aside or altering the natural course or route of a thing. The term is chiefly applied to the unauthorized change or alteration of a watercourse to the prejudice of a lower riparian.” [Black’s Law Dictionary, 1979.]

<sup>26</sup> *Stoner v. Patton*, 132 Ga. 178 (1909).

<sup>27</sup> *City of Atlanta v. Hudgins*, 193 Ga. 618 (1942); *City of Hawkinsville v. Clark*, 135 Ga. App. 875 (1975).

## Georgia's Water Allocation Legislation

Beginning in 1972, legislative acts introduced a permit system in Georgia, under which withdrawals of groundwater<sup>28</sup> and surface water<sup>29</sup> in excess of 100,000 gpd require permits from the state.<sup>30</sup> In considering and granting the permit, the state through EPD consider the requested permit against a background of other existing and prospective withdrawals and environmental considerations. EPD then identifies a specific reasonable use to which the water withdrawn may be put, the duration of the permit, as well as other conditions to the permit. These conditions may include conservation plans, drought contingency plans, and the right to modify the permit in mid-term.

These Code provisions introduced the Regulated Riparian Rights doctrine for surface water, which is substantially consistent with the common law riparian rights/reasonable use doctrine. The property right in water withdrawal and use, at least for those withdrawals above 100,000 gpd, continued to be usufructory but now the right became the right to withdraw and use the water for the specific purpose and conditions expressed in the permit. EPD as a public agency now determines the amount of water involved and determines the specific "reasonable use" that is allowed. This right to withdraw and use surface water is protected by law but is conditioned to the terms of the permit as set and modified by EPD, a public agency who manages the resource. The right may be terminated at the end of the duration of the permit, modified in mid-term, or terminated for non-use<sup>31</sup> or, presumably, by non-compliance with the conditions of the permit. For withdrawals of less than 100,000 gpd, the property right remains the common-law usufructory riparian rights, natural flow doctrine, subject to "reasonable use" rights and constraints<sup>32</sup>

The Code provisions introduced the Regulated Reasonable Use doctrine for groundwater withdrawal in Georgia, with provisions that are virtually identical to the Regulated Riparian provisions for surface water. To the extent that Georgia cases left an ambiguity about a landowner's rights to groundwater, the ambiguity has been legislatively eliminated, at least with respect to withdrawals in excess of 100,000 gpd. The property interest attached to groundwater withdrawal rights in excess of 100,000 gpd is usufructory in nature and a public agency determines the amount of water involved and determines the specific "reasonable use" that is allowed. This right to withdraw and use groundwater is protected by law but conditioned by the terms of a permit that may be modified or terminated. A limited exception to the general requirements of the permit system relates to agricultural withdrawals, both of surface water and of groundwater. This exception is well documented by Bomar.<sup>33</sup> The exception does not alter the fact that the permit system even as it relates to agriculture still falls within the realm of the Regulated Riparian or Regulated Reasonable Use doctrines.

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<sup>28</sup> Ga., L. 1972, at 976, § 6; GA, L. 1973, at 1273, §§ 10-15; Ga. L. 1982, at 3, § 12; Ga. L. 1988, at 1694, §§ 4, 5; Ga. L. 1992, at 6, § 12; Ga. L. 1994, at 863, § 3; Ga. L. 1995, at 706, §§ 3,4.

<sup>29</sup> Ga. L. 1977, at 368, § 3; Ga. L. 1982, at 3, § 12; Ga. L. 1982, at 2304, § 1; Ga., L. 1983, at 3, § 9; Ga. L. 1984, at 22, § 12; Ga. L. 1984, at 404, § 2; Ga. L. 1988, at 1694, § 1; Ga. L. 1994, at 863, § 2; Ga. L. 1995, at 706, § 2; Ga. L. 2000, at 1589, § 3; Ga. L. 2001, at 4, § 12.

<sup>30</sup> OCGA § 12-5-31 (surface water); OCGA §§ 12-5-90 to 12-5-107 (groundwater).

<sup>31</sup> OCGA § 12-5-31(k)(4).

<sup>32</sup> *Pyle v. Gilbert*, 245 Ga. 403 S.E.2d 584 (1980).

<sup>33</sup> *Bomar, op. Cit.*

## The Future of Georgia Water Law

At the beginning of the 21<sup>st</sup> Century, Georgia faces dramatic increases in the demand for water. At the same time, it faces an increasing water scarcity. To allow each individual direct water user to decide whether, when, how, and for what purpose to withdraw and use water is a classic recipe for the “tragedy of the commons.”<sup>34</sup> Water issues exist across the state, and across the state’s boundaries, establishing the need of a more effective statewide comprehensive water policy that will provide the foundation for effective and efficient water management in Georgia and a basis for cooperating effectively with neighboring states. To be effective in solving these problems and avoiding the tragedy of the commons, Georgia’s water policy must be based on the collaboration of five disciplines: water science, water engineering, water technology, natural resource economics and water law. To meet the needs of the new century, Georgia water law should view water as a public resource whose withdrawal and use are managed by the state to generate sustainable economic growth and prosperity, provide a high standard of public health, preserve and expand superior water-based recreation while protecting the environmental values of Georgia.

In managing its waters, a state may not, however, fashion its laws so as to discriminate against out-of-state citizens.<sup>35</sup> With increasing interstate water conflicts developing between Georgia and adjoining states, Georgia’s laws need to do conform to the positions developed by the Supreme Court of the United States while allowing effective state management of an appropriate share of the common resources straddling and crossing state boundaries.

The U.S. Supreme Court has described the concept of public ownership of water as a fiction: “a fiction expressive in legal shorthand of the importance to its people that a State have power to preserve and regulate the exploitation of an important resource.”<sup>36</sup> As Justinian’s Code put it, “By the law of nature, flowing water is a common property of all men,”<sup>37</sup> and that, in the strictest sense public ownership of water not the same as private ownership of real or personal property. The most critical question is not who owns the water. Rather the question is how the state should regulate and supervise the allocation and use of the waters of the state.<sup>38</sup> Georgia’s best long-term interest is to provide for clear and non-discriminatory regulation of water based upon the public and private interests in those waters. Justice Oliver Wendell Holmes, jr., summarized this perspective early in the last century in *New Jersey v. New York*:<sup>39</sup>

A river is more than an amenity, it is a treasure. It offers a necessity of life that must be rationed among those who have power over it. New York has the physical power to cut off all the water within its jurisdiction. But clearly the exercise of such a power to the destruction of the interest of lower States could not be tolerated. And on the other hand equally little could New Jersey be permitted to require New York to give up its power altogether in order that the river might come down to it undiminished. Both states have real and substantial

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<sup>34</sup> Garrett Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243 (1968). See generally Joseph W. Dellapenna, *Introduction to Riparian Rights*, in WATERS AND WATER RIGHTS § 6.02(b), at notes 322-33 (Robert E. Beck ed. 2001 replacement vol.).

<sup>35</sup> *Sporhase v. Nebraska ex rel. Douglas*, 458 U.S. 941 (1982).

<sup>36</sup> *Id.*, at 951, referencing the decisions in *Hughes v. Oklahoma*, 442 U.S. 322 (1979), and *Toomer v. Witsell*, 334 U.S. 385 (1948).

<sup>37</sup> JUSTINIAN’S CODE, Lib. 6. Tit. 1, Sec. 1, quoted in WM. HAM. HALL, C.E., IRRIGATION DEVELOPMENT (Report of the State Engineer of California on Irrigation and the Irrigation Question, Sacramento, 1886).

<sup>38</sup> Robert Gorman, *Common Property and Natural Resource Management*, at [www.ag.uidaho.edu/aers/publications/WRDC%20Publications/Property\\_Rights\\_Primer.pdf](http://www.ag.uidaho.edu/aers/publications/WRDC%20Publications/Property_Rights_Primer.pdf).

<sup>39</sup> 283 U.S. 336, 342-43 (1931).

interests in the River that must be reconciled as best they may. The different traditions and practices in different parts of the country may lead to varying results but the effort always is to secure an equitable apportionment without quibbling over formulas.

The words of Justice Holmes are as applicable to disputes between individual direct water users as they are to disputes between states. In neither case, however, are courts a preferable mechanism for on-going, day-to-day water management. Georgia has wisely embraced the administrative model as the mechanism for managing its waters with a view to protecting its rights and fulfilling its obligations to other states sharing its waterbasins.

In Georgia today, how surface water and groundwater is used (how it is managed) is determined according to how much is used. If the use is above the threshold of 100,000 gpd, how the withdrawn water is used is determined by EPD, a public agency charged by the legislature with managing Georgia's water. The threshold of 100,000 gpd that determines whether the state manages the water is an arbitrary number. No legislative history exists concerning how the number 100,000 was chosen and recent discussion in the Water Rights Working Group,<sup>40</sup> by individuals familiar with the legislation, suggest that the number is arbitrary, chosen perhaps to place a limit on how many permits EPD had to manage. Interestingly, the Working Group has recommended that this threshold number be reviewed and analyzed to determine if the threshold should be lowered in order to manage Georgia's waters more effectively. The legislature could change the number to 50,000 gpd. That being the case, it is clear that Georgia manages all water as a public resource. It chooses to eliminate the cost and administrative burden of managing water withdrawals below the threshold simply as a matter of administrative convenience.

An individual property interest in water in Georgia is a usufructory right, a right to use the water for reasonable purposes as permitted by a public agency, EPD. There is no ownership of the water. Instead, landowners with a permit from EPD or otherwise authorized by law to withdraw or use water hold a usufructory right to the water they are entitled by law to use. That usufructory right is limited by the interests of other persons entitled to withdraw or use water from the same source, by the interests of the public, and by state regulations.

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<sup>40</sup> Notes of the April 4, 2002 Meeting of the Water Rights Working Group of the Joint Study Committee, Comprehensive State Water Planning