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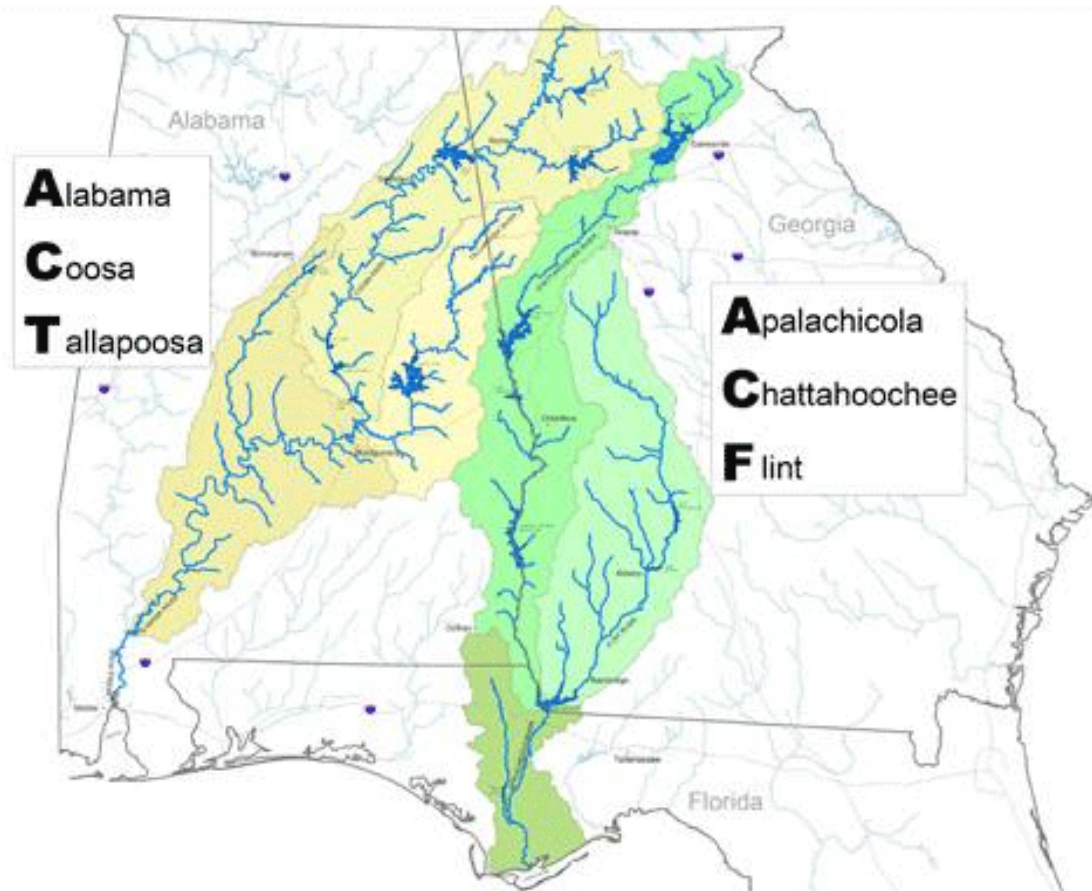


# FL v. GA 142, Original Water Demand Management at the US Supreme Court

Peter Mayer, P.E.  
Principal



# The Tri-State Water Wars



- Georgia
- Florida
- Alabama

How it all started....


- August 14, 2013
- Gov. (now US Senator) Rick Scott

**USA TODAY**

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## Florida governor says he'll sue Georgia for water


Karl Etters, Tallahassee (Fla.) Democrat Published 12:52 p.m. ET Aug. 14, 2013 | Updated 8:12 p.m. ET Aug. 14, 2013



0:39 | 2:36 Fla. governor revives water lawsuit against...

Florida Gov. Rick Scott announced his intention Aug. 13, 2013, to file a lawsuit next month against the state of Georgia, continuing decades of litigation, failed negotiations and acrimonious claims over water. Tallahassee (Fla.) Democrat

*Oysters in Florida's Apalachicola Bay diseased, dying because of Atlanta's growing water needs.*



(Photo: Phil Sears, AP)

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APALACHICOLA, Fla. — Florida will fire the [next salvo in its water war with Georgia](#) next month as the governor promised to seek a Supreme Court injunction for more river flow into the Sunshine State.

After members of Florida's congressional delegation

# FL v. GA 142, Original

- October 2013, Florida asks the U.S. Supreme Court for permission to sue Georgia for an “equitable apportionment” of the waters of the ACF Basin.
- Florida requests a decree restricting Georgia’s consumptive water use to levels that existed in 1992.

1  
No. \_\_\_\_, Original  
— ♦ —  
In The  
**Supreme Court of the United States**  
— ♦ —  
STATE OF FLORIDA,  
*Plaintiff,*  
v.  
STATE OF GEORGIA,  
*Defendant.*  
— ♦ —

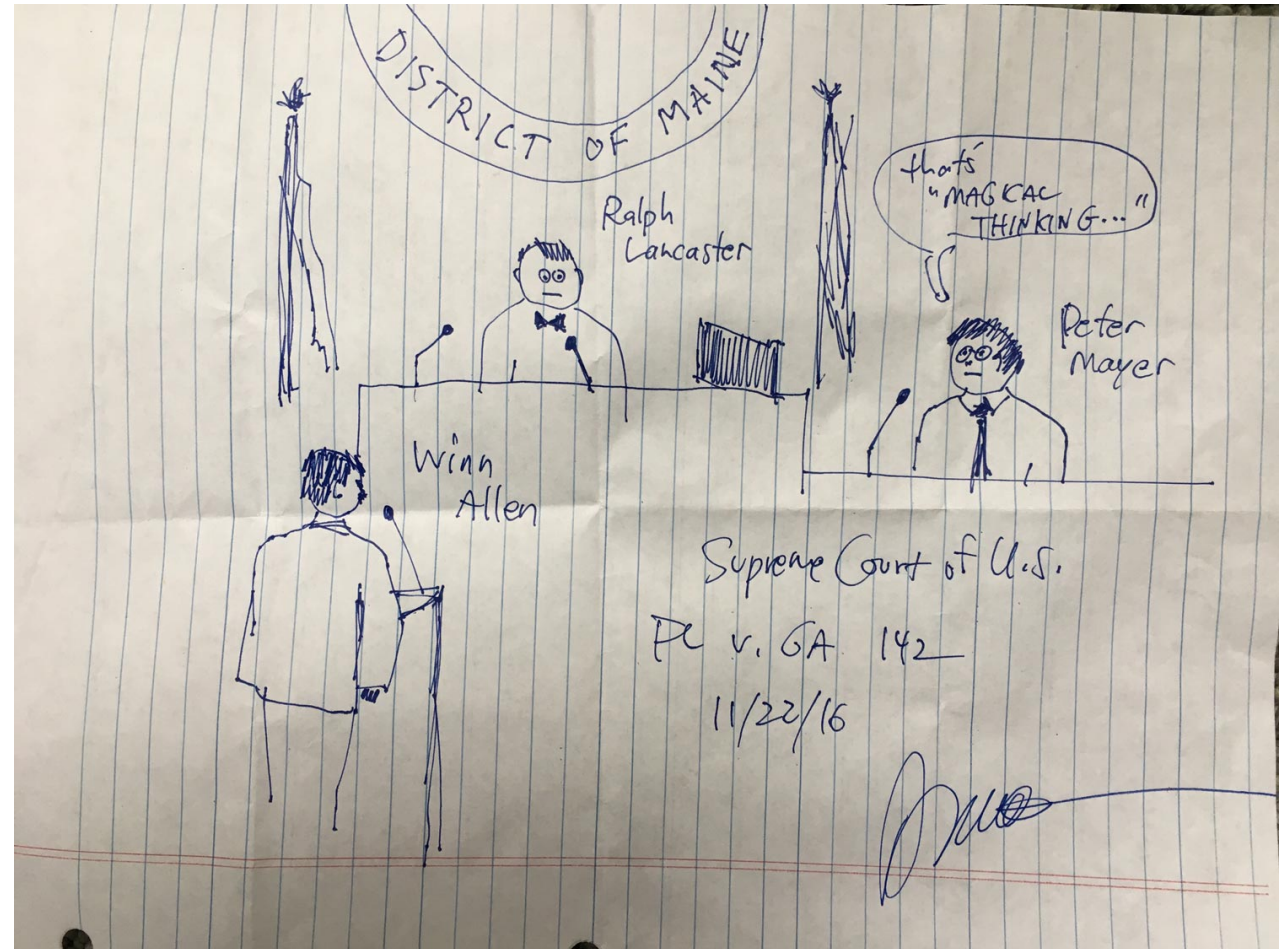
**COMPLAINT FOR EQUITABLE  
APPORTIONMENT AND INJUNCTIVE RELIEF**

The State of Florida, plaintiff, on its own behalf and on behalf of the citizens of Florida, alleges as follows:

1. This is an action by the State of Florida to equitably apportion the interstate waters of the Apalachicola-Chattahoochee-Flint River Basin (“ACF Basin”).

# Peter Mayer, Expert Witness, US Supreme Court

- Hired through a law firm that represented Georgia
- Reviewed and commented on reports prepared by Florida experts
- Prepared an expert report on urban water use and supply in Georgia
- 8-hour deposition
- 5-week trial, Portland, ME
- Special Master (age 93)
- Pre-filed direct testimony
- On the witness stand, Nov. 22, 2016



Artist: Dave Williams, Metro Atlanta Chamber

*In The  
Supreme Court of the United States*

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STATE OF FLORIDA,

*Plaintiff,*

v.

STATE OF GEORGIA,

*Defendant.*

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**DIRECT TESTIMONY OF  
PETER MAYER, P.E.**

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October 26, 2016

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# Opinions Filed Oct. 26, 2016

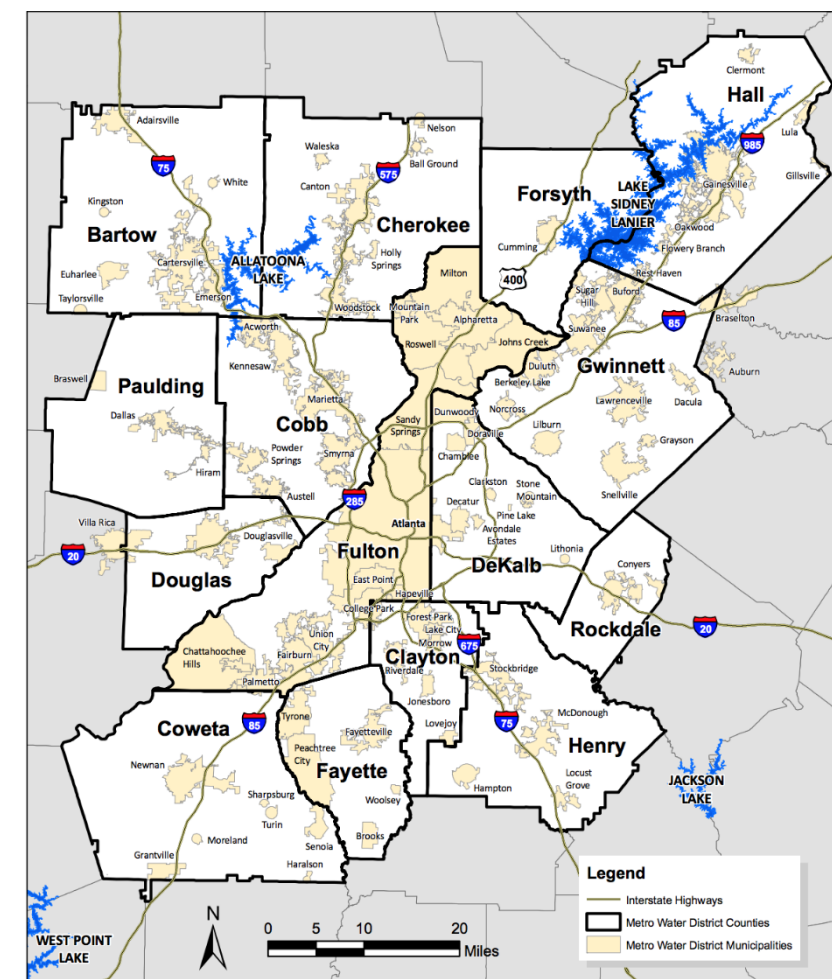
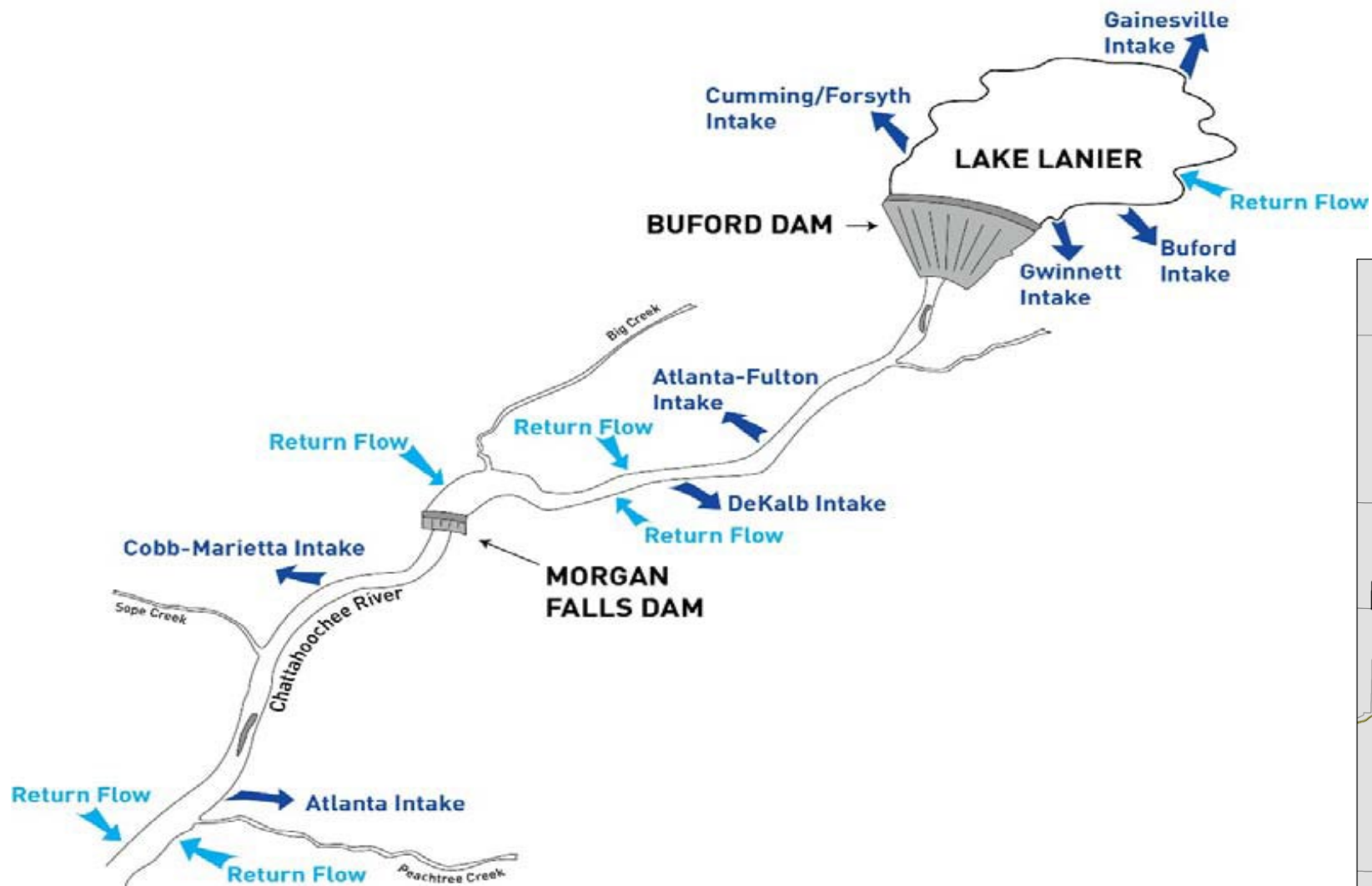
- Georgia's municipal and industrial water withdrawals and consumption in the ACF
- Scope and effectiveness of Georgia's water conservation and efficiency policies and measures
- Overall reasonableness of municipal and industrial water use by Georgia in the ACF



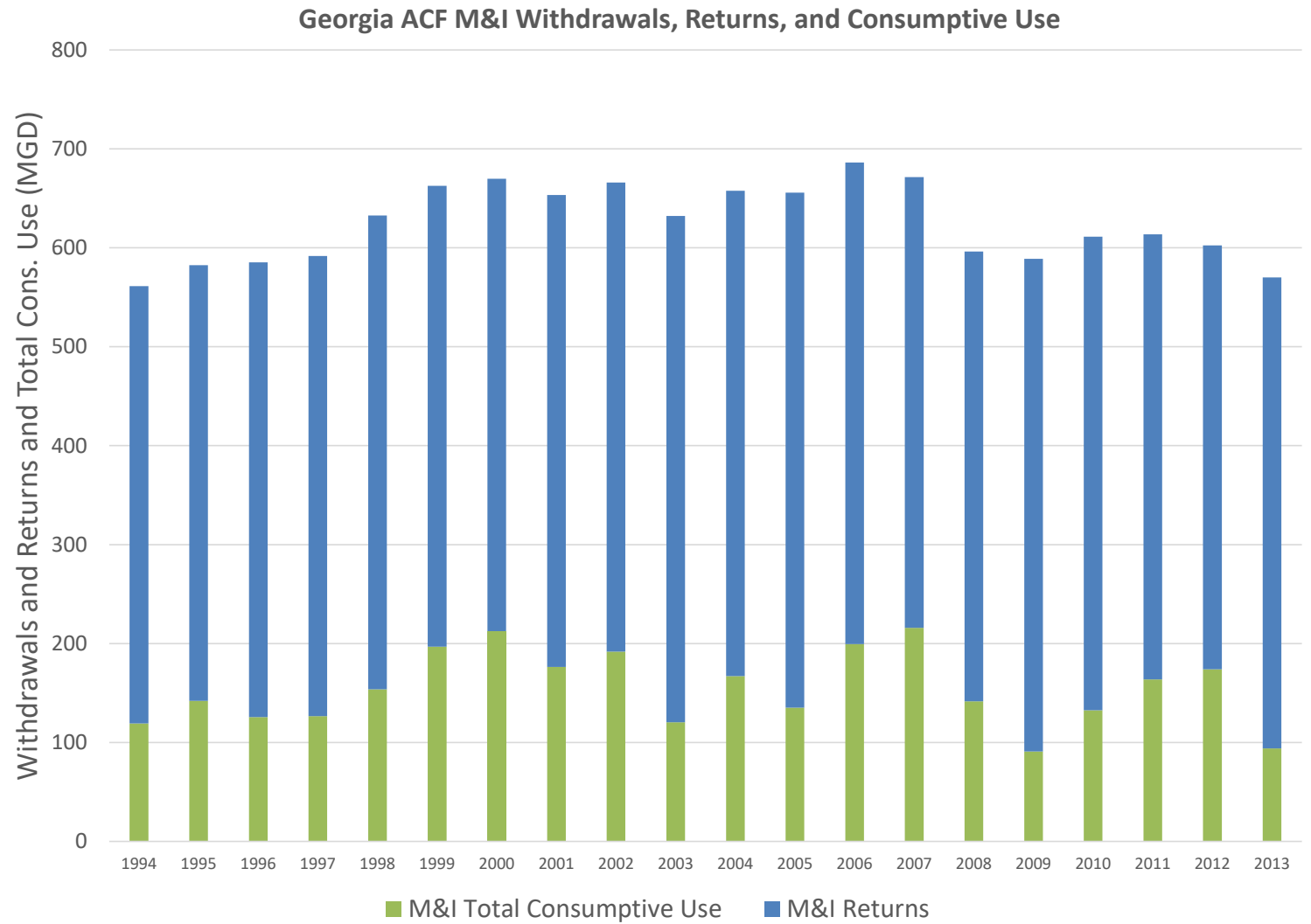


November 22, 2016, Portland ME

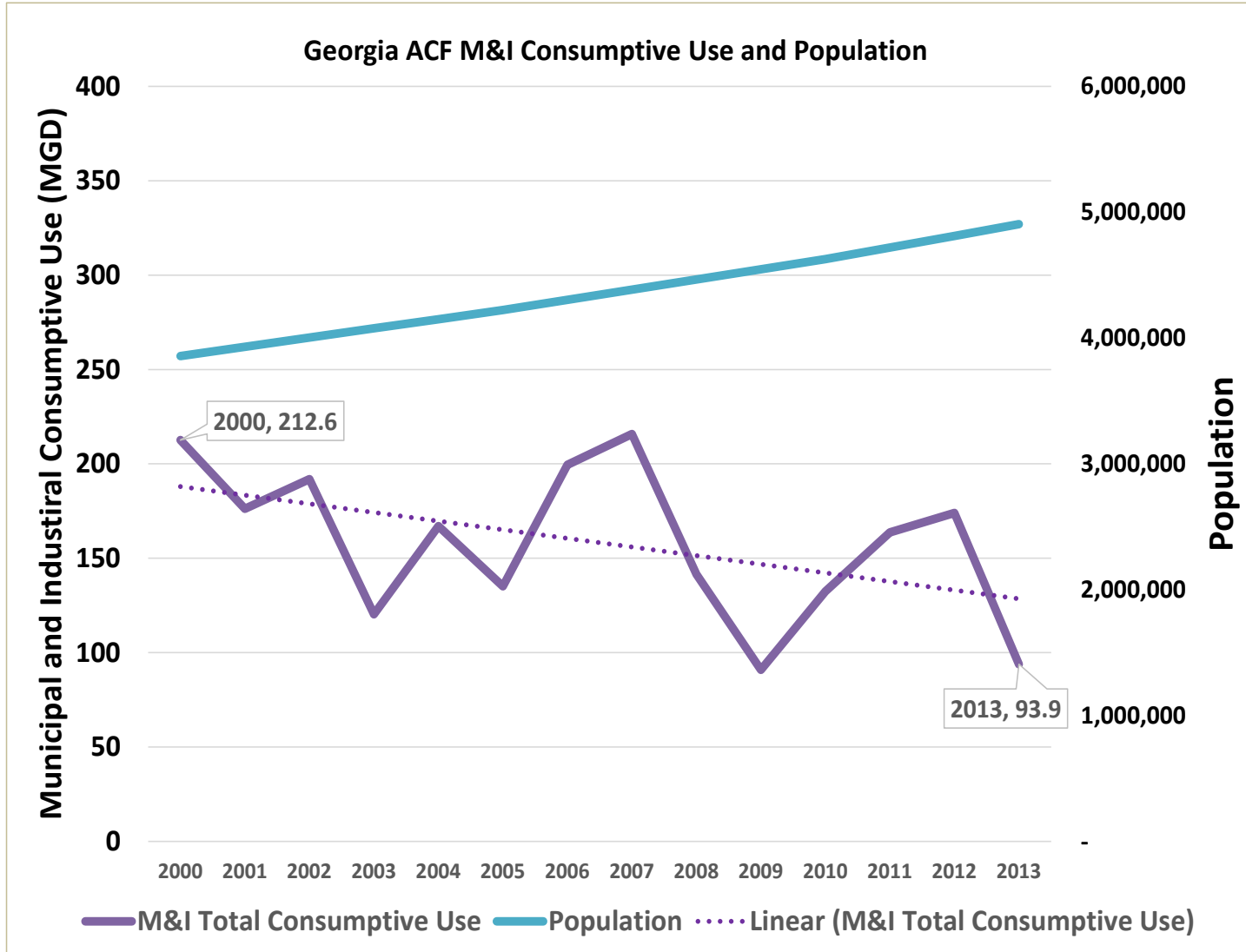




# Majority of M&I Withdrawals Are Returned



# Georgia ACF M&I Consumptive Use and Population (2000-2013)



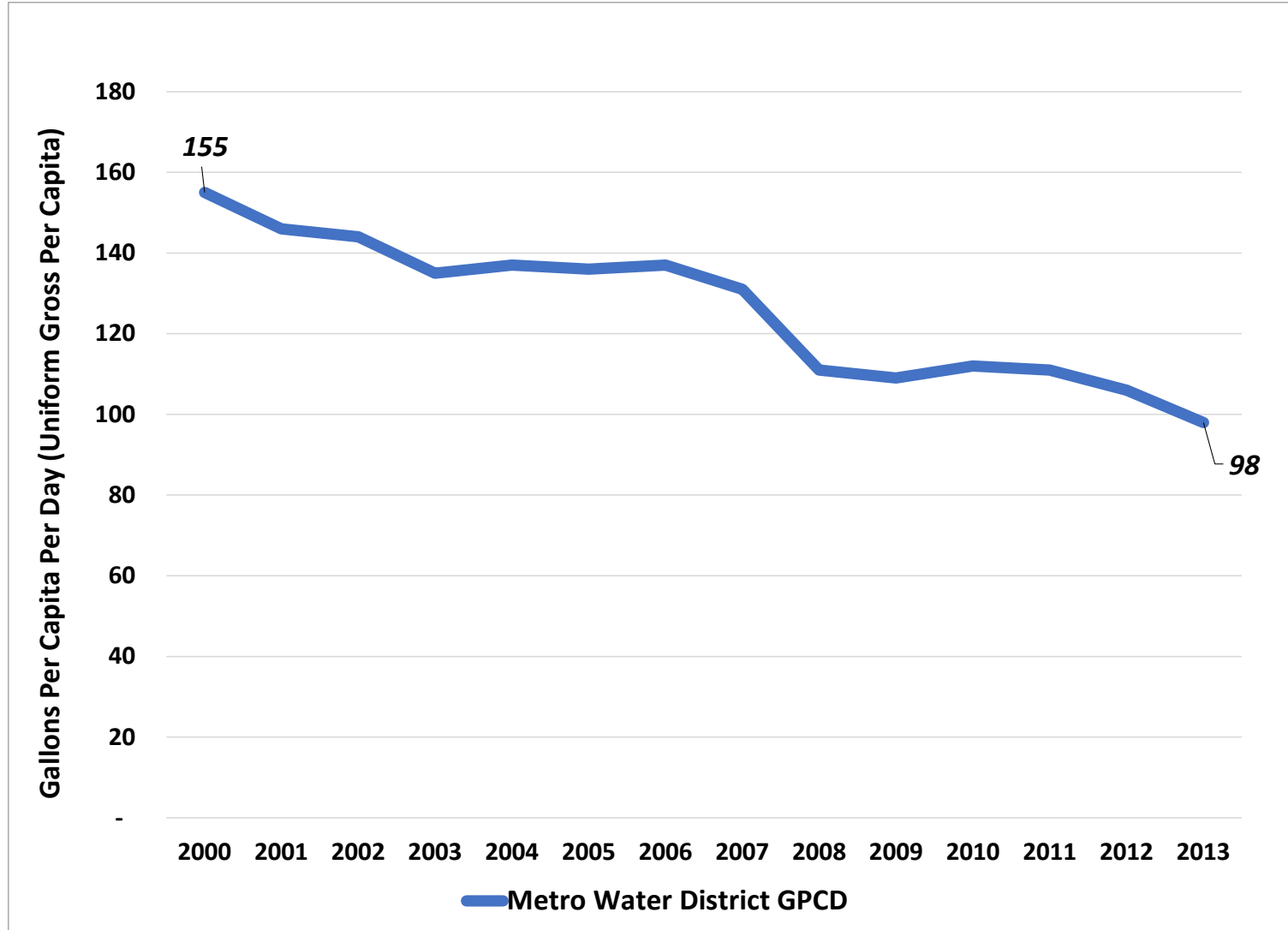
- Consumption declined by over 55% despite population increase.

- 2007 Drought: 215.8 mgd

- 2011 SW GA Drought: 163.7 mgd

- 2013: 93.9 mgd

# Per Capita Use Has Declined Substantially



- Per capita use declined by 36.7% from 155 gpcd in 2000 to 98 gpcd in 2013.

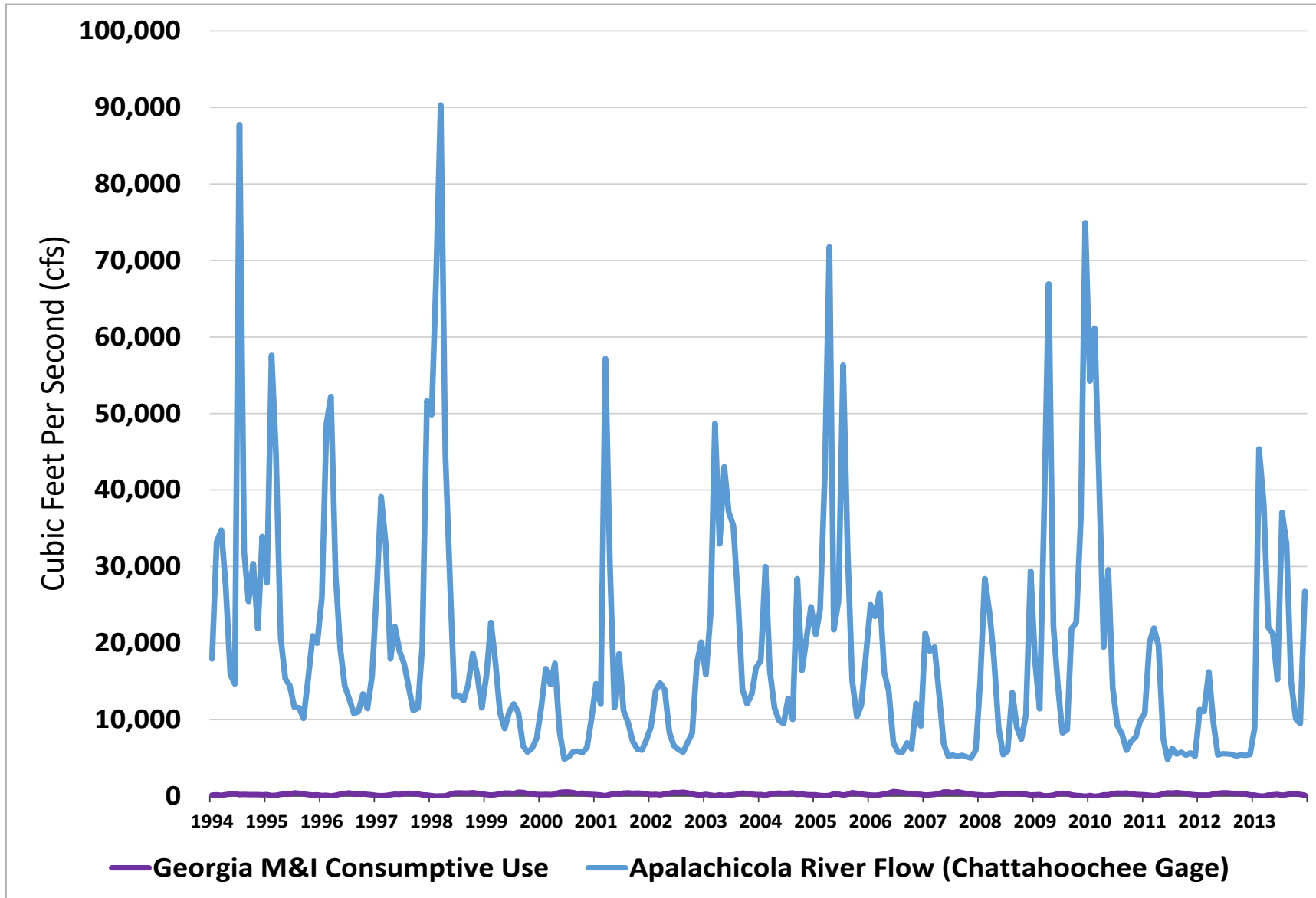
# Key Demand Management Measures in GA

## Measures Adopted Since 2003

- |  |   |
|--|---|
| <ul style="list-style-type: none"><li>• Increasing block-rate conservation pricing for all customers in the Metro District</li><li>• Outdoor watering ban from 10:00am to 4:00pm regardless of drought</li><li>• Water loss audit &amp; control program</li><li>• DNR Regulations Limiting Interbasin Transfers (2011)</li><li>• Drought Management Rules (2015)</li><li>• Water Use Efficiency Rules (2015)</li></ul> | <ul style="list-style-type: none"><li>• Only high-efficiency plumbing fixtures sold in Georgia</li><li>• Award-Winning Education &amp; Outreach Programs</li><li>• Incentive programs - 110,000+ efficient toilets, saving 950 million gallons per year</li><li>• Rain sensor shut-off switches on new irrigation systems</li><li>• Sub-meters required in all new construction</li></ul> |
|--|---|



# M&I Consumption Compared to Apalachicola River Streamflow (1994-2013)



- M&I use supports millions of people and billions in economic output in Georgia.

-Yet M&I consumption is a tiny fraction of the water Florida receives



# Review and Final Opinion



# Justice Barret to Florida – 2/21/21

“Most of your brief and most of your argument has focused on Georgia’s agricultural uses. **So, are you abandoning any challenges to municipal use?**”

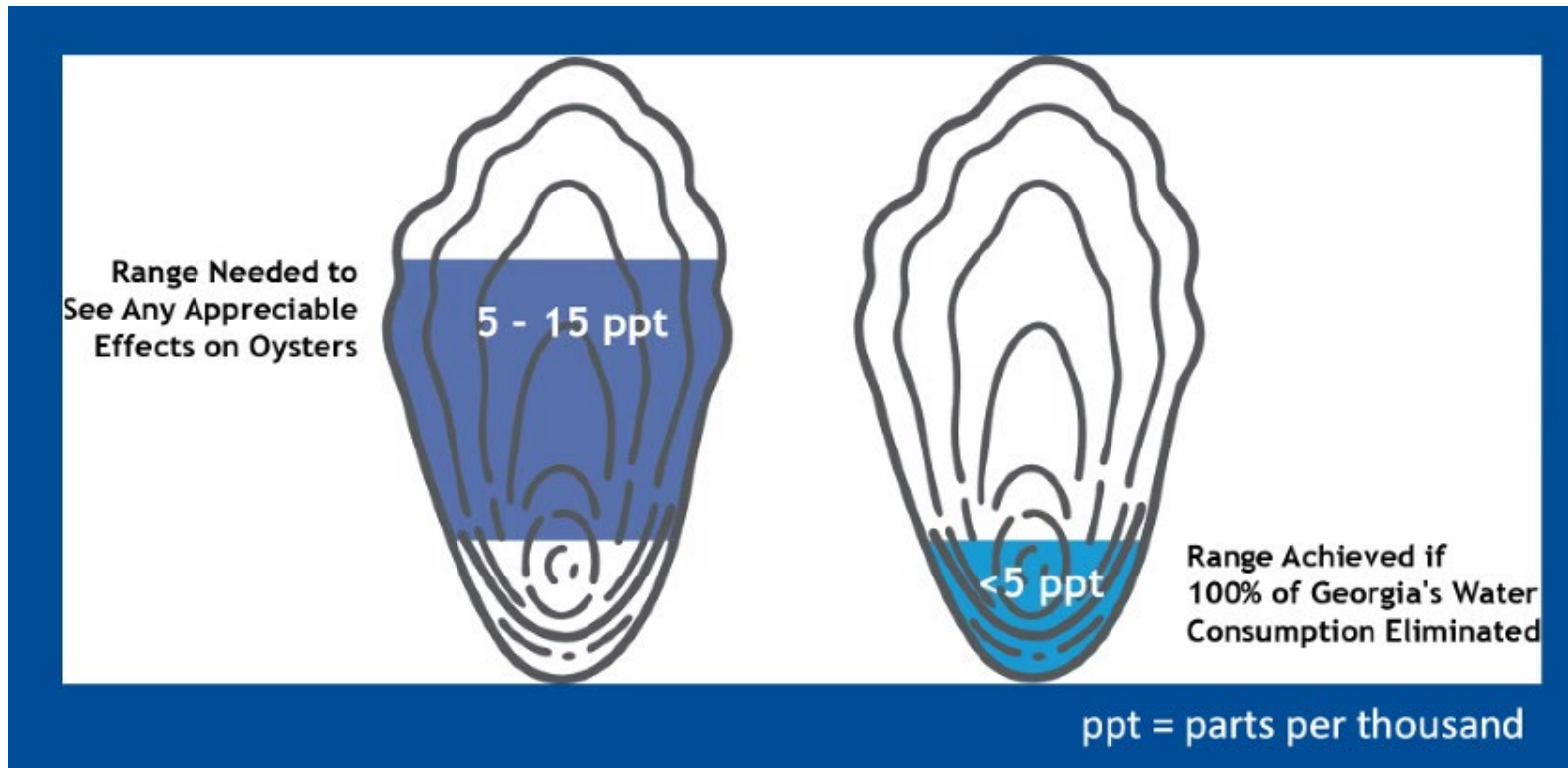
Florida’s Attorney: “**We are.** Our focus here is on agricultural use and irrigation in the Flint River, Your Honor.”

Metro Atlanta: Huge sigh of relief.

Source: Transcript of oral argument, edited for brevity/clarity.

# Justice Sotomayor to Florida

“Counsel, my biggest problem with your case are three facts, all offered by your experts.”



7 – 10% increase in oyster biomass if all of Georgia's water consumption is eliminated

1

2

3

# Justice Sotomayor to Florida

“I’m doubtful that a 10% change is sufficient to be viewed as an invasion of rights of a serious magnitude.”



# Unanimous Decision, 9-0, Case Dismissed

- Florida has **not proved**:
  - The collapse of its oyster fisheries was caused by Georgia's overconsumption.
  - Georgia's overconsumption has harmed river wildlife and plant life.
- Justice Barrett writing for the majority: "We must overrule Florida's exceptions to the Special Master's Report and dismiss the case."



# Lessons Learned

Litigation is expensive and uncertain

- Justices are not water experts
- Cases take years if not decades
- More than \$100 million in legal fees combined

SCOTUS decisions are far reaching and have impact for years

- CA v. AZ looms large on the Colorado River
- FL v. GA similarly looms large on the Apalachicola-Chattahoochee-Flint

Water conservation actions and policies matter for headwaters and upstream states

Measurement and data at the state and local level are important

Thank You

**Peter Mayer, P.E.**

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