GEORGIA WATER LAW

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Summary

Water law in Georgia is bifurcated according to the amount of water withdrawn from the water source, whether it is a surface water source (river, stream, reservoir) or a groundwater source (aquifer).

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 and Georgia's groundwater law can be classified as a form of the Regulated Reasonable Use doctrine for groundwater.

For withdrawals from surface sources that are less than 100,000 gallons per day (gpd), Georgia's water law closely adheres to the common law Riparian Rights doctrine, clarified by decisions of the Georgia Supreme Court in specific instances. 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 However, the case law that exists relies on outdated geologic principles, and a strong argument could be made that some form of reasonable use doctrine should be adopted by the courts in determining groundwater rights.

Georgia's Existing Water Law Framework

Riparian Rights

For those individuals who withdraw small amounts of surface water (less than 100,000 gpd on a monthly average) conflicts over existing sources of water are determined by application of the common law doctrine of Riparian Rights.

Georgia's Riparian Rights doctrine is codified in O.C.G.A. §§ 44-8-1 and 51-9-7. Section 44-8-1 provides, to wit:

> Running water, while on land, belongs to the owner of the land, but he has no right to divert it from the usual channel, nor may he so use or adulterate it as to interfere with the enjoyment of it by the next owner.

Section 51-9-7 provides, to wit:

> The owner of land through which nonnavigable watercourses may 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 riparian proprietors; and the diverting of the stream, wholly or in part, from the same, or the

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> obstruction thereof so as to impede its course or cause it to overflow or injure his land, or any right appurtenant thereto, or the pollution thereof so as to lessen its value to him, shall be a trespass upon his property.

Probably the best judicial interpretation of this doctrine can be found in the case of Price v. High Shoals Manufacturing Co., 132 Ga. 246, 248 (1909) wherein can be found the following language:

> "Under a proper construction of the Civil Code, Secs. 3057, 3802, 3879, every riparian owner is entitled to a reasonable use of the water in the stream. If the general rule that each riparian owner could not in any way interrupt or diminish the flow of the stream were strictly followed, the water would be of but little practical use to any proprietor, and the enforcement of the rule would deny, rather than grant, the use thereof. Every riparian owner is entitled to a reasonable use of the water. Every such proprietor is also entitled to have the stream pass over his land according to its natural flow, subject to such disturbances, interruptions, and diminutions as may be necessary and unavoidable on account of the reasonable and proper use of it by other riparian proprietors. Riparian proprietors have a common right in the water of the stream, and the necessities of the business of one cannot be the standard of the rights of another, but each is entitled to a reasonable use of the water with respect to the rights of others. What is a reasonable use is a question for the jury in view of all the facts in the case, taking into consideration the nature of use of the machinery, the quantity of water used in its operation, the use to which the stream can be applied, the velocity of its current, the character and size of the watercourse, and the varying circumstances of each case." (Emphasis added.)

The courts have characterized this concept as "natural flow subject to reasonable use." Pyle v. Gilbert, 245 Ga. 403 (1980). In Pyle v. Gilbert, supra, the Georgia Supreme Court reversed the trial court and held that whether the use of water for irrigation was reasonable or unreasonable presented a triable question. The only time the issue of reasonableness of use as between two riparian owners does not come into play is where one such owner obtains the right to invade the other riparian proprietor's rights by prescription through adverse use. Terrell v. Terrell, 144 Ga. 32 (1915).

Before the Pyle decision, the law in Georgia restricted the use of water to riparian lands. In Hendrix v. Roberts Marble Co. 175 Ga. 389 (1932), the court stated in relevant part, to wit:

> The court is of the opinion that under the law riparian rights are appurtenant only to lands which actually touch on the watercourse, or through which it flows, and that a riparian owner or proprietor can not himself lawfully use or convey to another the right to use water flowing along or through his property, upon non-riparian lands or lands physically separated from the lands bordering upon the stream.

There were only two clearly recognized exceptions to this rule. In City of Elberton v. Hobbs, 121 Ga. 149 (1905), the Georgia Supreme Court recognized the power to condemn riparian rights, i.e., the right to use water on non-riparian lands could be acquired by condemnation. And in City of Elberton v. Pearle Mills, 123 Ga. 1 (1905), the Court held that relief will be denied if the complaining riparian owner fails to act with reasonable promptness.

The Pyle decision opened up use of water on non-riparian lands. The Court agreed with the American Law Institute "... that the right to use water on non-riparian land should be permitted and if that right can be acquired by condemnation, it can also be acquired by grant...." Thus, the Court concluded, to wit:

> Thus we find that the right to the reasonable use of water in a nonnavigable watercourse on non-riparian land can be acquired by grant from a riparian owner. The contrary conclusion in Hendrix v. Roberts Marble Co., supra, will not be followed. 245 Ga. at 411.

This decision takes on added significance given the fact that Georgia moved in 1977 to regulate by statute the withdrawal of large quantities of water.

The common law doctrine of Riparian Rights treats water as a common resource and the resolution of conflicting claims is left to the courts. While this is probably sufficient protection for small water users, during the late 1970's it became apparent that there was a need for active public management of large water users in order to prevent improper usage of surface waters and to allow governmental coordination of such uses; thus, the enactment in 1977 of an amendment to the Georgia Water Quality Control Act to require the permitting of water diversions and withdrawals of more than 100,000 gpd on a monthly average.

"**Regulated Riparianism**"

As noted above, the General Assembly enacted legislation in 1977 which utilized the State's police powers to regulate the withdrawal and diversion of surface waters of the State in an amount greater than 100,000 gpd on a monthly average. O.C.G.A. § 12-5-31. This surface water allocation measure authorized the Board of Natural Resources to establish a reasonable system of classification for application in situations involving competing uses for a supply of available surface waters. Two factors applied in such classification are the kinds of businesses or activities to which the various uses are related and the importance and necessity of the uses. O.C.G.A. § 12-5-31(e). In this regard, the regulations promulgated pursuant to this law prioritize uses when the source is insufficient to supply all applicants as follows: emergency facilities for essential life support measures; domestic and personal uses; farm uses; other uses; outdoor recreational uses. EPD must take into consideration the extent to which any withdrawals are reasonably necessary to meet the applicant's needs and to grant a permit to meet those reasonable needs. O.C.G.A. § 12-5-31(g). The duration of surface water permits must be no less than 10 years or more than 50 years. O.C.G.A. § 12-5-31(h). A permit is subject to revocation for non-use for a period of two years or more. O.C.G.A. § 12-5-31(k)(4). There is no provision for the transfer of surface water permits.

With regard to applications for permits which if granted would authorize the withdrawal and transfer of surface waters across natural basins, EPD must first endeavor to allocate a reasonable supply of surface waters to competing existing uses and applications for permits which would not involve interbasin transfers. At least 7 days before the issuance of such a permit, a press release regarding such issuance must be given to newspapers of general circulation in the affected areas and if EPD determines the existence of sufficient public interest, a public hearing must be held in the affected area prior to the permit issuance. And finally, a public advisory regarding the proposed issuance of a new permit must be provided to at least one newspaper of general circulation in the area of the applicant. O.C.G.A. § 12-5-31(n).

A glaring deficiency in this law is the almost total exemption of water permits for farm use from the criteria applied to non-farm use applications for surface water withdrawal permits. Permits for the withdrawal or diversion of surface water for farm use must be issued when the application provides reasonable proof that such use occurred prior to July 1, 1988 and the application is submitted prior to July 1, 1991. For such application, the permit must allow a rate of withdrawal equal to the operating capacity in place for withdrawal on July 1, 1988. If applications are submitted after July 1, 1991 or if based on a withdrawal occurring or proposed to occur on or after July 1, 1988, the permit is subject to the same

evaluation and classification as is given to non-farm use applications, provided, however, a permit must be issued to ensure the applicant's right to a reasonable use of such surface waters. Therefore, grandfathered farm use permits may be modified to ensure such reasonable use. O.C.G.A. §§ 12-5-31(a)(3); 12-5-31(k)(7). However, farm use permits may not be modified for other reasons, even in situations where it is determined that the quantity of water allowed is greater than needed or the use would prevent other non-farm applicants from making a reasonable use of surface waters. O.C.G.A. § 12-5-31(k)(6).

Farm use water permits have no reporting requirements, no term and may be transferred or assigned to subsequent owners of lands that are the subjects of such permits. O.C.G.A. § 12-5-31(k)(3)(m) & (n).

The Director of Georgia EPD may revoke a farm use water permit for which irrigation has never occurred, and he may modify a farm use water permit when it is shown that an emergency period of water shortage exists within an area. During such period, the director must give first priority to providing water for human consumption and second priority to farm use. O.C.G.A. §§ 12-5-31(a)(3); 12-5-31(k)(4) and 12-5-31(l)(1) and (3).

The Water Issues White Paper, recently issued by the Board of Natural Resources, recommends amendments to the surface water and groundwater allocation provisions which would modify farm use permitting in the following particulars:

- allow revocation of farm use water permits for which irrigation has not occurred over an extended period of time.
- allow permitting of farm ponds including the ones created by damming a stream.
- require agricultural metering and reporting of the amounts of water used.
- specify unequivocally that a farm use water permit is tied to the land on which the well is drilled or on which the pump is installed.

The statutory scheme set forth above does not alter substantially the common law doctrine of Riparian Rights. In fact, O.C.G.A. § 12-5-46 provides that nothing in the Water Quality Control Act (which includes the surface water allocation provisions) can be construed to prevent a riparian owner from exercising his rights to suppress nuisances or to abate any pollution. Consequently, the riparian principle of "reasonableness" remains intact. However, it is suggested that the granting of a surface water allocation permit raises a presumption of reasonableness of use by the permit grantee. Such a statutory scheme has been referred to as "Regulated Riparianism". See J. Dellapenna, "Regulated Riparianism" in Waters and Water Rights § 9.01 at 417, n. 23 (describing Georgia as one of several states with a "regulatory permit system based on riparian principles").

Modified Absolute Ownership

As is the case with surface water, individuals who withdraw small amounts of groundwater (less than 100,000 gpd on a daily basis) must resolve their conflicts by application of case law developed in the 19th and early 20th centuries. Case law for groundwater allocation as developed in Georgia establishes a principle quite different from the common law doctrine of Riparian Rights and amounts to a modified absolute ownership rule based upon the principle that in Georgia, the owner of realty has title downwards and upwards indefinitely. Stoner v. Patten, 132 Ga. 178 (1909).

The Georgia courts have distinguished between the withdrawal uses of percolating waters and subterranean streams. Percolating waters are not moving through the earth in known and defined channels. "... ground waters of this class are not 'subsurface' or 'underground streams with defined

channels,' or 'water flowing in a well defined channel.' Rather they are waters 'percolating, oozing, or filtrating through the earth." 3 Farnham § 936-2712.

There is a dearth of cases in Georgia on the ownership rights in percolating waters. In the original case, Saddler v. Lee, 66 Ga. 45 (1879), the court stated that percolating water which "filters from the land of one proprietor to that of another, gives the latter no rights thereto which the law can recognize." Supra, at 47. However, in St. Amand v. Lehman, 120 Ga. 253 (1904), petitioner sought to enjoin defendant from blasting a well on an adjoining lot. He alleged that the construction was for the sole purpose of destroying petitioner's mineral spring which was fed by an underground stream running under defendant's land. Defendant answered by denying the existence of an underground stream. The Supreme Court allowed a temporary injunction pending the outcome of a jury trial on the issues. The court observed that if the defendants were "actuated by malice in wasting or diverting the water" the petitioner should prevail whether or not an underground stream exited. It would appear that malice must be shown in such a case and no relief would be granted if an unintentional or negligent waste of percolating water was involved.

There are no Georgia cases dealing with a situation of a use of percolating waters off an individual's land.

With regard to subterranean streams, the Supreme Court in Stoner v. Patten, 132 Ga. 178, 179 (1909) held that non-malicious interference with underground waters is non-actionable unless the waters are part of a stream which "is well defined and its existence known or easily discernable." If the existence of such a stream is established, the courts will apply the rules governing surface streams. However, in the majority of cases, a plaintiff will labor against a rebuttable but strong presumption that the underground waters in dispute are merely percolating. See Stoner, supra, at 180.
As established by Stoner, supra, above, when a lower proprietor complains of the use of water by an upper proprietor, which he claims to come to his premises by an underground (subterranean) stream, the burden is on him to show that it is a stream of water flowing in a marked or well-defined channel. If he should carry his burden of proof, then the rights of both upper and lower proprietors are in all respects equal, and each may divert so much of the water as will not unreasonably impair the rights of the other. See Stoner, supra, at 180.

The decision in Stoner places an almost impossible burden upon a proprietor whose underground water supply is diminished or destroyed. First, he must show the existence of an underground stream. Even the Stoner Court recognized the difficulty of ascertaining the course of an underground stream. Secondly, the Stoner Court labored under a misconception that "[A]n underground stream of water differs from a surface stream only with respect to its location above or below the surface. A stream of water has a defined channel; it has banks, and is very distinct from the percolation of subsurface water, which oozes in veins or filters through the earth's strata." Modern geology teaches that waters in the various aquifers "ooze in veins" or flow within the spaces between rock, sand or other minerals. Consequently, it may be impossible to prove the existence of an "underground stream" as it is defined in Stoner. And finally, even if such a stream could be shown to exist, the lower proprietor must also establish that the upper proprietor is making an unreasonable use of the waters.

The above case law resulted from a lack of knowledge of how underground water behaves. Consequently, by disregarding the riparian principle of "natural flow subject to reasonable use" the courts have created a situation where the strongest pump wins. This certainly negates putting the underground water resources of the State to their fullest beneficial use and encourages waste.

Regulated Reasonable Use

In 1972, the General Assembly enacted the Ground-water Use Act of 1972. O.C.G.A. § 12-5-90 et seq. Under this Act, groundwater is allocated by a statutory scheme using the concept of "reasonable use." This is referred to by some as the Regulated Reasonable Use doctrine. The enactment of this Act marked a significant departure from the doctrine of modified Absolute Ownership.

The Act provides that no person shall withdraw, obtain or utilize groundwater in excess of 100,000 gallons per day for any purpose unless that person obtains a permit from the Environmental Protection Division. O.C.G.A. § 12-5-96(a)(1). The Act gives non-consumptive users and person withdrawing or using water prior to July 1, 1973 priority in groundwater allocation. O.C.G.A. § 12-5-96(b); O.C.G.A. § 12-5-97(f). If an applicant for groundwater provides EPD with sufficient evidence that the groundwater being withdrawn or used is not consumptively used, a permit will be issued without the conditions which may be imposed in a permit issued to a person for a consumptive use of groundwater. Such conditions might include permitted well depth, the aquifer(s) to be utilized, the maximum pumping rate, elevations below which water may not be pumped, the amount of groundwater to be withdrawn or used, well spacing and time of withdrawal. O.C.G.A. § 12-5-95(a). When an application for groundwater is filed and it is determined that water to be withdrawn and used is a consumptive use and that such use will result in unreasonable adverse effects on other water uses, including potential as well as present use, the application will be denied. O.C.G.A. § 12-5-96(c)(4).

Regarding applicants withdrawing or using groundwater prior to July 1, 1973, EPD will take into consideration the extent to which any uses or withdrawals were reasonably necessary, in the judgment of EPD, to meet the applicant's needs and will grant a permit to meet those reasonable needs, provided such permit will not have unreasonable effects upon other water uses in the area. Applications for consumptive uses filed after July 1, 1973 must be considered in the context of criteria set forth in the Act including the kinds of activities to which the various uses are related and the importance and necessity of the uses. O.C.G.A. § 12-5-96(d).

Water withdrawn under any groundwater withdrawal permit must be used only for the purposes specified in the permit. Further, with the exception for farm uses, groundwater permits may not be transferred without the approval of EPD; will be issued for any period of time not less than 10 years nor more than 50 years; and every permit holder must file with EPD semi-annually, a certified statement of the quantities of water used or withdrawn, sources of water, and the nature of the use thereof. O.C.G.A. §§ 12-5-97(a), 12-5-97(c), and 12-5-97(d). If a person is applying for a permit or permit modification which indicates an increase in water usage, such person must submit a water conservation plan based upon guidelines issued by the director. Again, this requirement does not apply to application for agricultural usage permits. O.C.G.A. § 12-5-96(a)(2).

As noted above, a different set of requirements apply to applications for permits to withdraw and utilize groundwater for farm uses. Such a permit must be issued when the application provides reasonable proof that such use occurred prior to July 1, 1988 and the application is submitted prior to July 1, 1991. For applicants whose use occurred after July 1, 1988 or who made application after July 1, 1991, the application is subject to the same evaluation and classification as are other applications. However, a permit must still be issued to ensure the applicant's right to a reasonable use of the groundwater. O.C.G.A. § 12-5-105(a). The Act clearly states that to ensure this result, the direction must modify a grandfathered groundwater permit if the quantity of water allowed would prevent other applicants from reasonable use of groundwater beneath their property for farm use. O.C.G.A. § 12-5-105(b)(3).

Consequently, as is the case with the surface water allocation provisions, we find an almost total exemption of water permits for farm uses from the criteria applied to non-farm use application for underground water withdrawals. As set forth earlier, the Board of Natural Resources' Water Issues White Paper calls for certain changes in farm use permitting of both surface water and groundwater withdrawals.

Advantages of Georgia's Water Withdrawal Statutory Framework

There are some obvious advantages to Georgia's water withdrawal statutory framework in dealing with water use allocation and conflicts. Unlike many other states, Georgia has in place a statutory scheme which allows for system-wide management of its surface and underground water resources. This results in a more coordinated approach to management of water resources especially during times of water shortage. As noted earlier, the Director of Georgia EPD presently has in place a moratorium in southeast Georgia on the withdrawal of groundwater from the Floridan aquifer and in coastal Georgia on the withdrawal of groundwater from the upper Floridan aquifer.

As to surface water withdrawal, system-wide management replaces a system which relied on lawsuits brought before judges, each with his own standards for ascertaining the best economic use of surface water resources and the reasonableness of such use. Some have suggested that this created a systematic bias in favor of large users.

Georgia's statutory framework for underground water allocation replaces the court-created modified absolute ownership doctrine with a reasonable use concept. This concept allows for equitable allocation and conservation of use and negates the "biggest pump wins" principle of water allocation.

That said, there still remains the need for refinement of the current water withdrawal statutory framework. Some suggested changes have been noted in this paper and others are worthy of consideration. It has been suggested that a statutory refinement of interbasin transfer of water is in order.

"Takings" and Water Rights

With the enactment in Georgia of a "regulated riparian" statute for allocation of surface water and a "regulated reasonable use" statute for groundwater allocation, the question arises as to whether either of these enactments constitutes a "taking" of private property without due process or just and adequate compensation as prohibited by the United States and Georgia Constitutions.

It appears that "regulated riparian" statutes have been upheld against all "takings" challenges to date. One argument utilized in defending such statutes is that navigable waters are publicly owned or held in trust for all the people. This doctrine is known as the "public trust doctrine". While Georgia jurisprudence has not expressly recognized this common law doctrine, and even if recognized would apply only to navigable waters, it is submitted that it is not necessary to get into a debate over water ownership in order to uphold State regulation of its groundwaters and surface waters. Such statutes are firmly grounded on the State's inherent and constitutionally authorized police powers.

The "police power" has been declared by the courts to be that inherent and plenary power in the State which enables it to prohibit all things hurtful to the comfort, safety, and welfare of society. Oldknow v. City of Atlanta, 9 Ga. App. 594 (1911). It enables a governing authority to secure the public against some danger, and to limit the activities of some individual or group, if necessary, in order that the welfare, health or property of the body politic may be protected. Crummey v. State, 83 Ga. App. 459 (1951). The purpose of police power is to protect the health, morals, safety, comfort and general welfare of society. Hall v. Hospital Authority of Hall County, 93 Ga. App. 319 (1956); McCoy v. Sanders, 113 Ga. App. 565

(1966). It is critical that there be an essential public need for the exercise of the police power to justify its use. Autry & Lowndes County v. City of Atlanta, 78 Ga. App. 390 (1948).

In the case of Pope v. City of Atlanta, et al., 242 Ga. 331 (1978), the Court discussed at length the issue of an improper "taking" versus a legitimate use of the State's police powers. The case involved a constitutional challenge to the Metropolitan River Protection Act, Ga. Laws 1973, pp. 128 et seq., as amended. The Act was based squarely upon the police power of the State and made it unlawful to build within a particular stream corridor if such construction was incompatible or inconsistent with a coordinated land and water use plan developed by the Metropolitan Area Planning and Development Commission. The plaintiff, who had been denied the right to build a tennis court within the stream corridor, alleged that the Act violated her State due process and eminent domain rights.

In upholding the constitutionality of the Metropolitan River Protection Act, the Court declared:

> "The inherent police power of the state extends to the protection of the lives, health and property of the citizen, and to the preservation of good order and public morals and is not subject to any definite limitations, but is coextensive with the necessities of the case and the safeguard of public interest. (Citation omitted.) Further, in the area of environmental legislation, the State Constitution specifically authorizes the General Assembly 'to provide for restrictions upon land use in order to protect and preserve the natural resources, environment and vital areas of this State.' Ga. Code Ann. § 2-1404. Appellant contends that the City's failure to permit her to construct a tennis court is, per se, a taking of property like eminent domain. This position misconceives the law.
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> "The distinction between use of eminent domain and use of the police power is that the former involves the taking of property because it is needed for public use while the latter involves the regulation of the property to prevent its use in a manner detrimental to the public interest. (Citation omitted.) Many regulations restrict the use of property, diminish its value or cut off certain property rights, but no compensation for the property owner is required.... This court tests regulation of property to determine that the government has not exceeded its police power, for excessive regulation of property violates the due process clause, Ga. Code Ann. § 2-101, and the prohibition against taking property for public use without compensation. Ga. Code Ann. § 2-301. In Vinson v. Home Builders Ass'n of Atlanta, supra, this court stated that that exercise of the police power was subject to the limitation that the ordinance bear some 'reasonable relation' to the public health. In Barrett v. Hamby, supra, this reasonableness standard was further articulated as the requirement that a zoning classification 'may only be justified if it bears a substantial relation to the public health, safety, morality or general welfare.' 235 Ga. at 265.... This approach essentially balances the state's interest in regulation against the landowner's interest in the unfettered use of his property. We adopt a balancing test for the type of police power restriction on property involved in this case."

The Court went on to say that the interests advanced by the Act relate to the public health and safety. And that when the State's interests in preventing flooding, halting land erosion and protecting the water supply are weighed against appellant's interest in constructing her tennis court within 150 feet of the river, the State's interest weigh heavier in the balance. Therefore, the Court concluded that the State had engaged in valid land use regulation and had not appropriated plaintiff's land for public use without compensation.

The holding in Pope, supra, was affirmed with minimum discussion in the case of Rolleston v. State of Georgia, et al., 245 Ga. 576 (1980). Rolleston involved an attack upon the State's Shore Assistance Act

of 1979. This Act requires a permit to alter the submerged shoreline lands of this State from the seaward limit of the State's jurisdiction landward (the foreshore) and the "dynamic dune field on the barrier islands of the State," with certain exceptions. Plaintiff argued, among other things, that the Shore Assistance Act was unconstitutional because it constituted a taking of property without just compensation. The Court, in upholding the Act, commented thusly:

> "Rolleston [plaintiff] also urges that the Shore Assistance Act of 1979 is unconstitutional because it constitutes a taking of property without just compensation, citing Pennsylvania Coal Co. v. Mahon, 260 U.S. 393 (1922). Rolleston, however, is not entirely deprived of the value and practical use of his property as in the Mahon case. On the contrary, the Act is a valid land use regulation well within the ambit of legislative authority. 1978 Ga. Const., Art. III, Sec. VIII, par. iiiA; Code Ann. § 2-1404; Pope v. City of Atlanta, 242 Ga. 331 (249 SE2d 16) (1978)." [Matter in brackets added.]

In addition to other arguments which could be made, it would appear that the surface water and groundwater allocation provisions of the Georgia Water Quality Control Act and the Groundwater Use Act of 1972 are based squarely upon the police powers of the State and such powers are coextensive with the necessities of the case and the safeguard of public interest. Furthermore, it would appear that there has been no excessive regulation of property in these instances so as to violate the due process clause of the Georgia Constitution or the prohibition against taking property for public use without compensation. Can it reasonably be argued that the water allocation provisions do not bear some "reasonable relation" to the public health or that they do not bear a "substantial relation to the public health, safety, morality or general welfare." Neither can it be argued that the Water Quality Control Act or the Groundwater Use Act of 1972 respectively entirely deprive an individual of the value and practical use of his property. Given the necessities in this present day of regulating natural resources such as water use, it would appear that the "balancing test" would swing strongly in favor of this type of police power restriction on water usage.

Regarding a "takings" claim under the United States Constitution, it is submitted that the water allocation provisions do not establish a Lucas categorical claim in that the abutting property owner is denied only a partial economic use of this property if any denial at all. Further, a Penn Central claim should be rejected because under the economic impact factor, the owner of the abutting property is not denied the opportunity to make profitable use of the property, and under the character factor, the regulation is an exercise of the police power designed to protect the public health, safety, and welfare. See, Rith Energy, Inc. v. United States, 201 WL 1380899 (Fed. Cir., November 5, 2001).

Conclusion

Water conflicts in Georgia do exist, and given the State's expansive growth, other such conflicts are expected. Although there still remains the need for refinement of Georgia's current water withdrawal statutory framework, that framework does provide Georgia EPD with authority to address water conflicts and emergency water shortages. Studies are currently being undertaken to recommend a process and schedule for preparation of a comprehensive water plan and to develop the principles for such a plan.