

# Eastern Water Conflicts

Governor's Conference  
on the Future of Water in Kansas  
Manhattan, Kansas  
November 15, 2016

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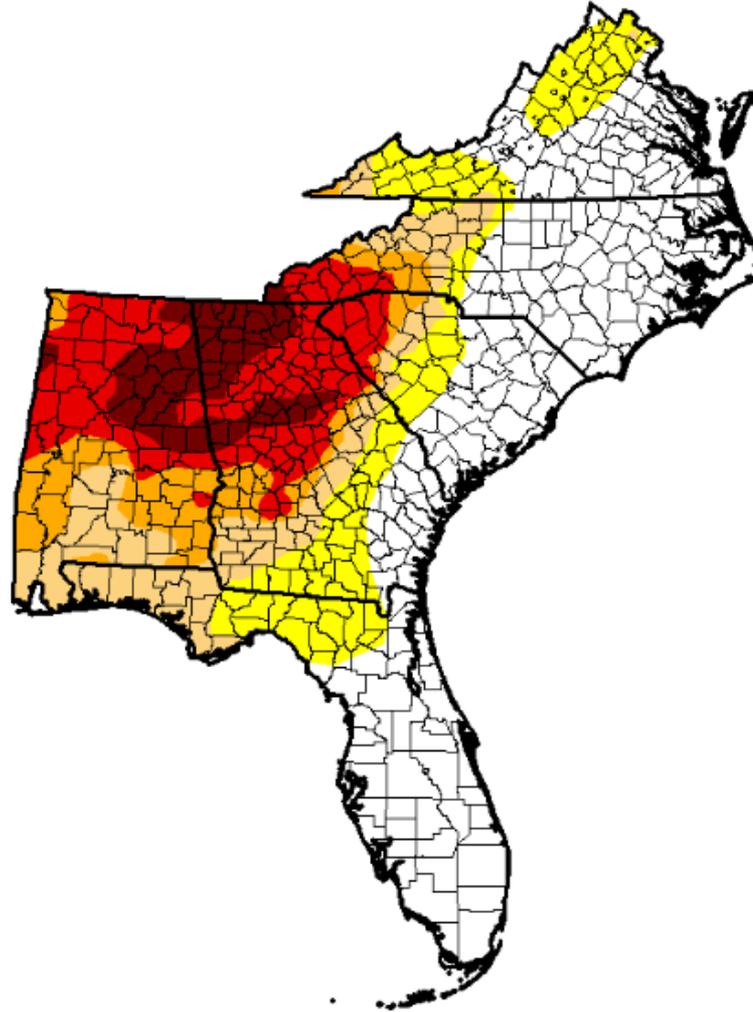
# Conditions for Conflict

- Historical abundance
- Under-developed law
- Growing populations
- Increasingly frequent and severe droughts
- Major rivers already developed by Army Corps of Engineers for 20<sup>th</sup> Century priorities (navigation, rural electrification, flood control)

# *U.S. Drought Monitor*

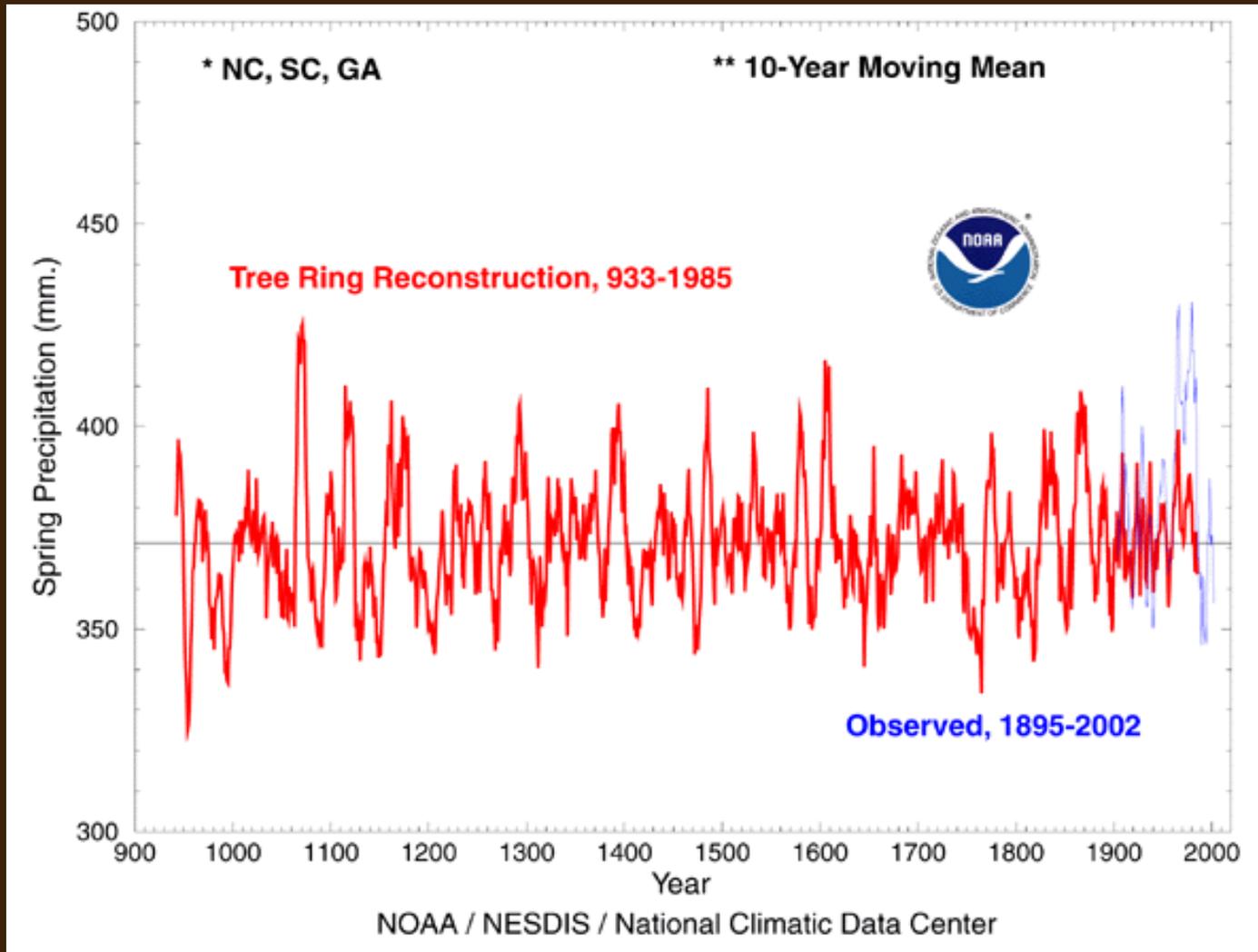
**Southeast**

**Nov. 8, 2016**



# The new normal?

## Southeast U.S. Precipitation (Spring) 933-2002





# *Tri-State Water Wars*

# *Georgia- Florida- Alabama*

## *Florida v. Georgia*

- Supreme Court granted leave to file Oct. 2014
- Special Master Ralph Lancaster
  - Trial began Oct. 31, 2016.
  - Six weeks
  - Report expected early to mid 2017
- The United States is not participating
  - Georgia asserts it is “indispensable” because it controls the flow from Georgia to Florida
- New water control plan for ACF reservoirs expected this month

# Florida's Claims

- Alleges Georgia's water use has harmed
  - oyster fishery in Apalachicola Bay
  - species in the Apalachicola River
- Seeks to cap Georgia's water use at 1992 levels
  - Municipal and industrial use in the Upper Chattahoochee (metro Atlanta)
  - Irrigation in the lower Flint River Basin

# Georgia's Response

- Drought and over-fishing caused the fishery to collapse, not Georgia
- The Corps also played a major role
  - Dams truncated habitat
  - Hydropower operations and dredging have damaged river and floodplain habitat
- Any decree would have to include the Corps to help Florida – otherwise any water saved may be held in Corps reservoirs

# Firsts

- First equitable apportionment case since 1984 (Ninth in history)
- First between riparian states since 1931
- First to focus primarily on the balance between environmental harm economic uses of water
- First involving a river system already developed and controlled by federal water projects

# Issues

- What does Florida have to prove to win?
- Can it prove its allegations by “clear and convincing evidence”?
- What law should be applied (if any) to balance alleged harm to ecosystems against harm to existing economic uses of water?
- Would the benefits to Florida of a decree capping Georgia’s water use outweigh harm to Georgia?
- Is the Corps indispensable to any apportionment

# Alabama-Coosa-Tallapoosa River Basin

- Georgia, Alabama
- New master manual adopted Spring 2015
- Multiple challenges pending
  - Georgia's main claim is that the Army has failed to act on long-pending water supply requests.
  - Alabama asserts the manual gives too much priority to water supply and navigation.



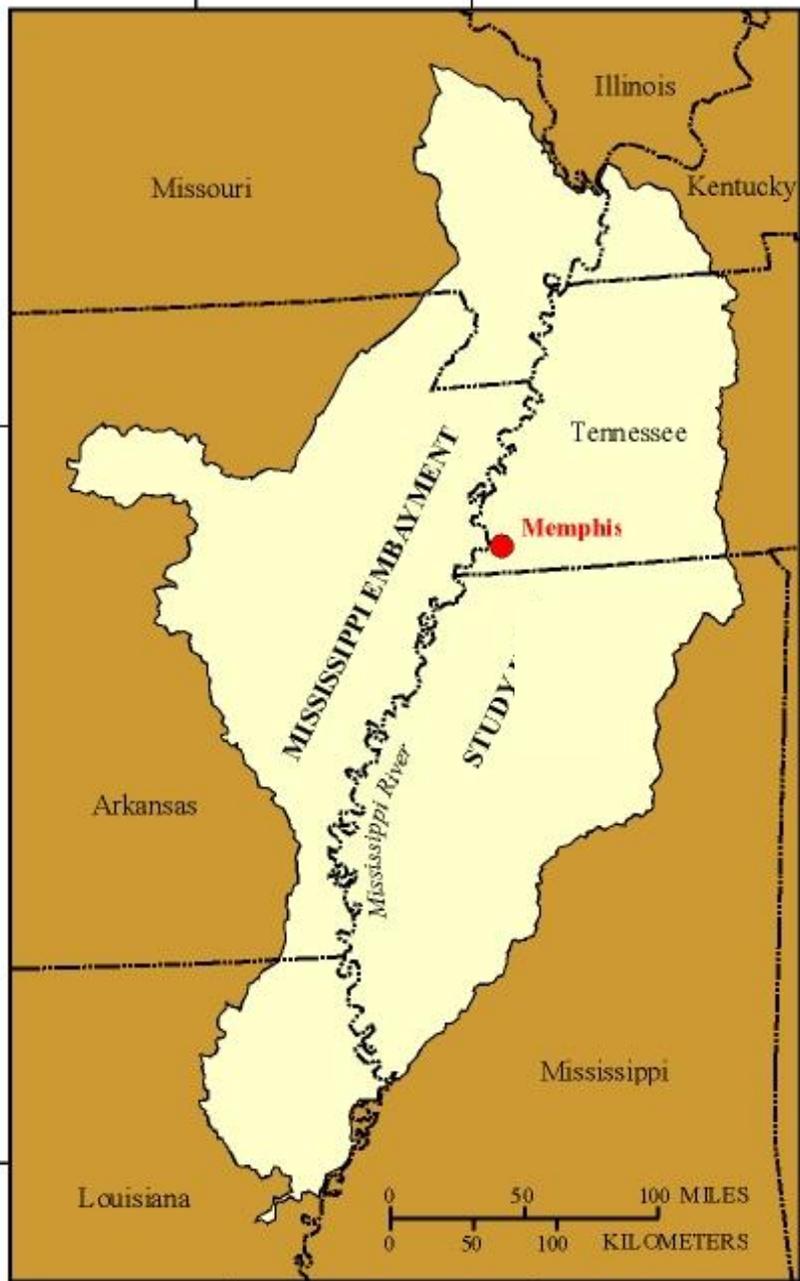
**South Carolina  
v.  
North Carolina  
Orig. No. 138**

# South Carolina v. North Carolina

- Prompted by interbasin transfer in NC serve Canton and Kannapolis (Charlotte exurbs)
  - From Catawba River Basin to Yadkin-Pee Dee River Basin, both of which flow from NC to SC
- FERC relicensing
  - Catawba River Basin controlled by Duke Energy subject to FERC license
  - South Carolina filed suit shortly after a 100+ party settlement (including South Carolina agencies) in the FERC proceeding

# Issues

- Case settled in 2010 without resolving much
- Sequencing of issues / bifurcation
  - Burden of proof issues never resolved
  - Special master first bifurcated, then changed course
- High standard for intervention by non-state entities
  - Charlotte denied intervention
  - Duke Energy allowed in
  - Catawba River Water Supply Authority (a joint venture of Union County, NC and Lancaster County, SC) allowed in



*Mississippi*  
*v.*  
*Tennessee*  
**Orig. No. 143**

# Mississippi v. Memphis

- Mississippi alleges Memphis is taking its groundwater by pumping
  - Alleges conversion or trespass.
  - Does not seek an equitable apportionment
- Question is whether the aquifer is an “interstate” resource subject to equitable apportionment
- Leave to file granted in 2015.
- Special Master Hon. Eugene E. Siler.
  - Denied TN motion to dismiss on Aug. 12
  - Discovery through June 30, 2017

# Questions?

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