Celebrating the Clean Water Act's Impact on

GEORGIA'S WATER

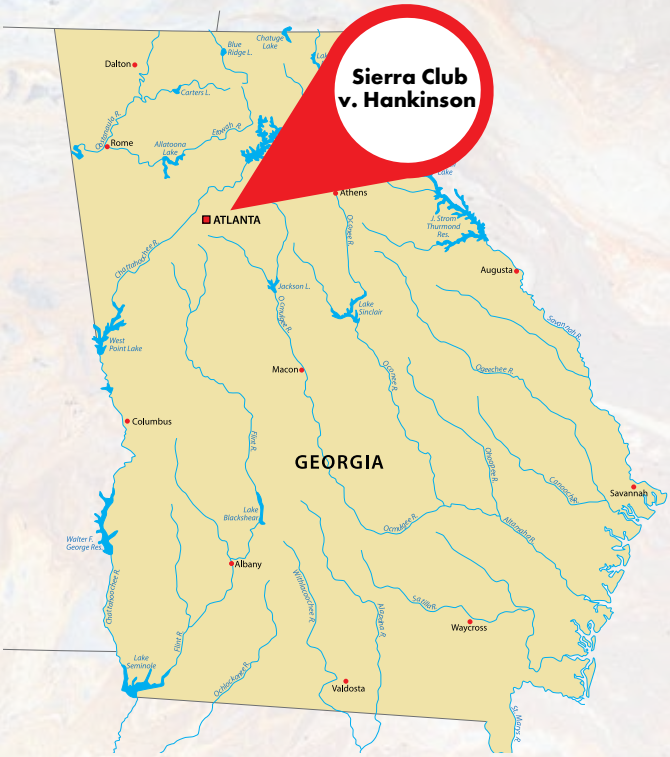
2022 GEORGIA'S DIRTY DOZEN SPECIAL EDITION

SIERRA CLUB V. HANKINSON

Grassroots Groups Force State and Federal Agencies To Abide Clean Water Act

INTRODUCTION

The year was 1994, the Clean Water Act was 22 years old, and in Georgia, a key component of the law—identifying polluted waters and developing cleanup plans for them—had hardly begun. While neighboring states had teams of more than 100 people working on clean water, Georgia's Environmental Protection Division (EPD) had just 20 people assigned to clean water compliance and enforcement. In fact, the state's program to monitor streams for pollutants was so anemic, that by 1994, only two cleanup plans (known as Total Maximum Daily Loads or TMDLs) had been submitted to federal regulators. That's when a coalition of grassroots citizen watershed protection groups (Georgia Environmental Organization, Coosa River Basin Initiative and Ogeechee River Valley Association) and national organizations, including the Sierra Club and Trout Unlimited, sued the federal government for failing to enforce its own law, allowing Georgia regulators to shirk their duties under the Clean Water Act. Ultimately, the plaintiffs won, setting in motion the tedious but necessary work of monitoring Georgia's 70,000 miles of streams and rivers for pollutants and developing plans to correct pollution problems.



THE WATER BODY

Georgia is a water rich state. More than 70,000 miles of streams and rivers drain the state's land and feed some 425,000 acres of reservoirs. Along the coast, five large estuaries are fringed by some 400,000 acres of coastal marshes. These water bodies, along with underlying groundwater, provide our drinking water. At sewage treatment plants and industrial facilities, our waterways assimilate our treated waste. And, along their courses where we fish, boat and recreate, they support an outdoor recreation economy that generates an estimated $27.3 billion annually in consumer spending and $1.8 billion in state and local taxes. And, for many, these waterways provide sustenance in the form of fish and shellfish.

A water quality monitoring station on the South River in Atlanta attests to the progress that Georgia has made since 1996 when Judge Marvin Shoob ruled that the state must begin full implementation of its TMDL program and develop cleanup plans for polluted streams.

THE CASE

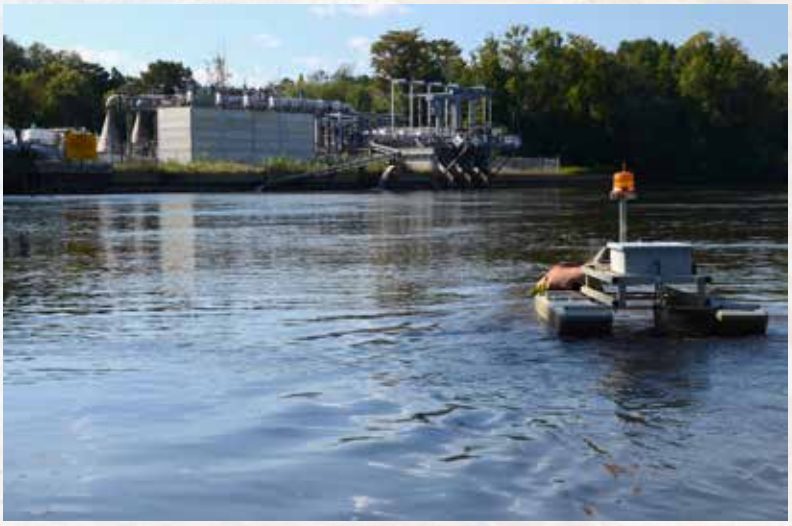
While one of the core provisions of the Clean Water Act was to regulate and cleanup discharges from the pipes of municipal sewage treatment

plants and industrial facilities, the Act included the more lofty goal of evaluating individual streams on a holistic level to determine what specific pollutants were in the water and how these streams could be restored. The process takes time and manpower. In the early 1990s, Georgia leaders were investing little in either.

Doug Haines, the lead attorney for the plaintiffs in Sierra Club v. Hankinson, told the *Atlanta Constitution* at the time: "This represents slumbering agencies at their worst."

During hearings, Haines and fellow attorney, Eric Huber, encountered a David v. Goliath experience. The attorneys with the Georgia Center for Law in the Public Interest were met by a bevy of attorneys from the federal and state governments along with what Haines called lawyers representing a "panoply of moneyed interests."

The case was open and shut. Judge Marvin Shoob who ruled for the plaintiffs noted that at its current pace, "Georgia will take more than hundred years to comply with the Clean Water Act."



The U.S. Army Corps of Engineers dissolved oxygen injection system operates on the banks of the Savannah River. The facility injects oxygen into the river to support habitat for aquatic wildlife, including federally protected fish species. The Savannah River TMDL for dissolved oxygen forced more than 20 municipal and industrial dischargers to work to reduce their impact on the river and prompted the construction of this facility to mitigate impacts from the deepening of the Savannah Harbor.

Since that ruling, hundreds of cleanup plans for polluted streams have been developed by the state. Unfortunately, many of these TMDLs have become merely paper plans collecting dust on office shelves. Meanwhile, the magnitude of the task of testing all of the state's 70,000 miles of waterways remains overwhelming. In 2022, EPD assessed 2,976 miles of streams and found that of those about half did not meet state water quality standards

Haines, who considers the ruling among his biggest legal victories but has lamented some of the failures of its implementation, said, "It was kind of like if your star child grows up to wait tables."

On the whole, however, the TMDL process has been a success. Failing septic tanks have been fixed, cattle have been fenced out of streams, tons of chicken litter has been properly handled, wastewater treatment plants have eliminated more pollutants from their effluent and scores of citizens have learned how they can prevent water pollution.

In the Coosa River system, because of the TMDL process, more than 30 sewage treatment facilities were required to dramatically reduce phosphorus discharges to the system to prevent algal blooms on Weiss Lake in Alabama. Collectively, they achieved a 30 percent reduction to help restore the downstream reservoir.

On the Savannah River, Georgia and South Carolina regulators worked cooperatively with more than 20 municipal and industrial dischargers between Augusta and Savannah to improve oxygen levels in the Savannah harbor.

And because of the TMDL process, over the past 15 years, Georgia's Environmental Protection Division (EPD) has developed computerized river models that aid the agency in prioritizing areas where reductions in pollutant loads are needed.

Nearly three decades after the case, one the great ironies was that the plaintiffs, in suing the U.S. Environmental Protection Agency, named the agency's regional administrator John Hankinson as the defendant. Hankinson, a clean water advocate who was well respected among Georgia's environmental community, later told Haines: "My mother said: "I thought you were doing good things for the environment. Why is Trout Unlimited coming after you?" Hankinson passed away in 2017 at the age of 68.

FOR MORE INFORMATION

Doug Haines,
douglasphaines@gmail.com, 706-224-0065

GEORGIA WATER COALITION