

105TH CONGRESS  
1ST SESSION

# H. J. RES. 91

---

IN THE SENATE OF THE UNITED STATES

NOVEMBER 5, 1997

Received

---

## **JOINT RESOLUTION**

Granting the consent of Congress to the Apalachicola-  
Chattahoochee-Flint River Basin Compact.

1        *Resolved by the Senate and House of Representatives*  
2   *of the United States of America in Congress assembled,*

1 **SECTION 1. CONGRESSIONAL CONSENT.**

2 The Congress consents to the Apalachicola-Chat-  
3 tahoochee-Flint River Basin Compact entered into by the  
4 States of Alabama, Florida, and Georgia. The Compact  
5 is substantially as follows:

6 **“Apalachicola-Chattahoochee-Flint River**  
7 **Basin Compact**

8 “The States of Alabama, Florida and Georgia and  
9 the United States of America hereby agree to the following  
10 compact which shall become effective upon enactment of  
11 concurrent legislation by each respective state legislature  
12 and the Congress of the United States.

13 “SHORT TITLE

14 “This Act shall be known and may be cited as the  
15 ‘Apalachicola-Chattahoochee-Flint River Basin Compact’  
16 and shall be referred to hereafter in this document as the  
17 ‘ACF Compact’ or ‘Compact’.

18 “ARTICLE I

19 “COMPACT PURPOSES

20 “This Compact among the States of Alabama, Flor-  
21 ida and Georgia and the United States of America has  
22 been entered into for the purposes of promoting interstate  
23 comity, removing causes of present and future controver-  
24 sies, equitably apportioning the surface waters of the  
25 ACF, engaging in water planning, and developing and  
26 sharing common data bases.

## 1                                   “ARTICLE II

## 2                                   “SCOPE OF THE COMPACT

3           “This Compact shall extend to all of the waters arising within the drainage basin of the ACF in the states of Alabama, Florida and Georgia.

## 6                                   “ARTICLE III

## 7                                   “PARTIES

8           “The parties to this Compact are the states of Alabama, Florida and Georgia and the United States of America.

## 11                                  “ARTICLE IV

## 12                                  “DEFINITIONS

13           “For the purposes of this Compact, the following words, phrases and terms shall have the following meanings:

16           “(a) ‘ACF Basin’ or ‘ACF’ means the area of natural drainage into the Apalachicola River and its tributaries, the Chattahoochee River and its tributaries, and the Flint River and its tributaries. Any reference to the rivers within this Compact will be designated using the letters ‘ACF’ and when so referenced will mean each of these three rivers and each of the tributaries to each such river.

23           “(b) ‘Allocation formula’ means the methodology, in whatever form, by which the ACF Basin Commission determines an equitable apportionment of surface waters

1 within the ACF Basin among the three states. Such for-  
2 mula may be represented by a table, chart, mathematical  
3 calculation or any other expression of the Commission's  
4 apportionment of waters pursuant to this compact.

5       “(c) ‘Commission’ or ‘ACF Basin Commission’ means  
6 the Apalachicola-Chattahoochee-Flint River Basin Com-  
7 mission created and established pursuant to this Compact.

8       “(d) ‘Ground waters’ means waters within a satu-  
9 rated zone or stratum beneath the surface of land, wheth-  
10 er or not flowing through known and definite channels.

11       “(e) ‘Person’ means any individual, firm, association,  
12 organization, partnership, business, trust, corporation,  
13 public corporation, company, the United States of Amer-  
14 ica, any state, and all political subdivisions, regions, dis-  
15 tricts, municipalities, and public agencies thereof.

16       “(f) ‘Surface waters’ means waters upon the surface  
17 of the earth, whether contained in bounds created natu-  
18 rally or artificially or diffused. Water from natural springs  
19 shall be considered ‘surface waters’ when it exits from the  
20 spring onto the surface of the earth.

21       “(g) ‘United States’ means the executive branch of  
22 the government of the United States of America, and any  
23 department, agency, bureau or division thereof.

24       “(h) ‘Water Resource Facility’ means any facility or  
25 project constructed for the impoundment, diversion, reten-

1 tion, control or regulation of waters within the ACF Basin  
 2 for any purpose.

3 “(i) ‘Water resources,’ or ‘waters’ means all surface  
 4 waters and ground waters contained or otherwise originat-  
 5 ing within the ACF Basin.

## 6 “ARTICLE V

### 7 “CONDITIONS PRECEDENT TO LEGAL 8 VIABILITY OF THE COMPACT

9 “This Compact shall not be binding on any party  
 10 until it has been enacted into law by the legislatures of  
 11 the states of Alabama, Florida and Georgia and by the  
 12 Congress of the United States of America.

## 13 “ARTICLE VI

### 14 “ACF BASIN COMMISSION CREATED

15 “(a) There is hereby created an interstate adminis-  
 16 trative agency to be known as the ‘ACF Basin Commis-  
 17 sion.’ The Commission shall be comprised of one member  
 18 representing the state of Alabama, one member represent-  
 19 ing the state of Florida, one member representing the  
 20 state of Georgia, and one non-voting member representing  
 21 the United States of America. The state members shall  
 22 be known as ‘State Commissioners’ and the federal mem-  
 23 ber shall be known as ‘Federal Commissioner.’ The ACF  
 24 Basin Commission is a body politic and corporate, with  
 25 succession for the duration of this Compact.

1       “(b) The Governor of each of the states shall serve  
2 as the State Commissioner for his or her state. Each State  
3 Commissioner shall appoint one or more alternate mem-  
4 bers and one of such alternates as designated by the State  
5 Commissioner shall serve in the State Commissioner’s  
6 place and carry out the functions of the State Commis-  
7 sioner, including voting on Commission matters, in the  
8 event the State Commissioner is unable to attend a meet-  
9 ing of the Commission. The alternate members from each  
10 state shall be knowledgeable in the field of water resources  
11 management. Unless otherwise provided by law of the  
12 state for which an alternate State Commissioner is ap-  
13 pointed, each alternate State Commissioner shall serve at  
14 the pleasure of the State Commissioner. In the event of  
15 a vacancy in the office of an alternate, it shall be filled  
16 in the same manner as an original appointment.

17       “(c) The President of the United States of America  
18 shall appoint the Federal Commissioner who shall serve  
19 as the representative of all federal agencies with an inter-  
20 est in the ACF. The President shall also appoint an alter-  
21 nate Federal Commissioner to attend and participate in  
22 the meetings of the Commission in the event the Federal  
23 Commissioner is unable to attend meetings. When at  
24 meetings, the alternate Federal Commissioner shall pos-  
25 sess all of the powers of the Federal Commissioner. The

1 Federal Commissioner and alternate appointed by the  
2 President shall serve until they resign or their replace-  
3 ments are appointed.

4       “(d) Each state shall have one vote on the ACF Basin  
5 Commission and the Commission shall make all decisions  
6 and exercise all powers by unanimous vote of the three  
7 State Commissioners. The Federal Commissioner shall not  
8 have a vote, but shall attend and participate in all meet-  
9 ings of the ACF Basin Commission to the same extent  
10 as the State Commissioners.

11       “(e) The ACF Basin Commission shall meet at least  
12 once a year at a date set at its initial meeting. Such initial  
13 meeting shall take place within ninety days of the ratifica-  
14 tion of the Compact by the Congress of the United States  
15 and shall be called by the chairman of the Commission.  
16 Special meetings of the Commission may be called at the  
17 discretion of the chairman of the Commission and shall  
18 be called by the chairman of the Commission upon written  
19 request of any member of the Commission. All members  
20 shall be notified of the time and place designated for any  
21 regular or special meeting at least five days prior to such  
22 meeting in one of the following ways: by written notice  
23 mailed to the last mailing address given to the Commission  
24 by each member, by facsimile, telegram or by telephone.  
25 The Chairmanship of the Commission shall rotate annu-

1 ally among the voting members of the Commission on an  
2 alphabetical basis, with the first chairman to be the State  
3 Commissioner representing the State of Alabama.

4 “(f) All meetings of the Commission shall be open  
5 to the public.

6 “(g) The ACF Basin Commission, so long as the ex-  
7 ercise of power is consistent with this Compact, shall have  
8 the following general powers:

9 “(1) to adopt bylaws and procedures governing  
10 its conduct;

11 “(2) to sue and be sued in any court of com-  
12 petent jurisdiction;

13 “(3) to retain and discharge professional, tech-  
14 nical, clerical and other staff and such consultants  
15 as are necessary to accomplish the purposes of this  
16 Compact;

17 “(4) to receive funds from any lawful source  
18 and expend funds for any lawful purpose;

19 “(5) to enter into agreements or contracts,  
20 where appropriate, in order to accomplish the pur-  
21 poses of this Compact;

22 “(6) to create committees and delegate respon-  
23 sibilities;

24 “(7) to plan, coordinate, monitor, and make  
25 recommendations for the water resources of the

1 ACF Basin for the purposes of, but not limited to,  
2 minimizing adverse impacts of floods and droughts  
3 and improving water quality, water supply, and con-  
4 servation as may be deemed necessary by the Com-  
5 mission;

6 “(8) to participate with other governmental and  
7 non-governmental entities in carrying out the pur-  
8 poses of this Compact;

9 “(9) to conduct studies, to generate information  
10 regarding the water resources of the ACF Basin,  
11 and to share this information among the Commis-  
12 sion members and with others;

13 “(10) to cooperate with appropriate state, fed-  
14 eral, and local agencies or any other person in the  
15 development, ownership, sponsorship, and operation  
16 of water resource facilities in the ACF Basin; pro-  
17 vided, however, that the Commission shall not own  
18 or operate a federally-owned water resource facility  
19 unless authorized by the United States Congress;

20 “(11) to acquire, receive, hold and convey such  
21 personal and real property as may be necessary for  
22 the performance of its duties under the Compact;  
23 provided, however, that nothing in this Compact  
24 shall be construed as granting the ACF Basin Com-

1 mission authority to issue bonds or to exercise any  
2 right of eminent domain or power of condemnation;

3 “(12) to establish and modify an allocation for-  
4 mula for apportioning the surface waters of the ACF  
5 Basin among the states of Alabama, Florida and  
6 Georgia; and

7 “(13) to perform all functions required of it by  
8 this Compact and to do all things necessary, proper  
9 or convenient in the performance of its duties here-  
10 under, either independently or in cooperation with  
11 any state or the United States.

## 12 “ARTICLE VII

### 13 “EQUITABLE APPORTIONMENT

14 “(a) It is the intent of the parties to this Compact  
15 to develop an allocation formula for equitably apportioning  
16 the surface waters of the ACF Basin among the states  
17 while protecting the water quality, ecology and biodiversity  
18 of the ACF, as provided in the Clean Water Act, 33  
19 U.S.C. Sections 1251 et seq., the Endangered Species Act,  
20 16 U.S.C. Sections 1532 et seq., the National Environ-  
21 mental Policy Act, 42 U.S.C. Sections 4321 et seq., the  
22 Rivers and Harbors Act of 1899, 33 U.S.C. Sections 401  
23 et seq., and other applicable federal laws. For this pur-  
24 pose, all members of the ACF Basin Commission, includ-  
25 ing the Federal Commissioner, shall have full rights to no-

1 tice of and participation in all meetings of the ACF Basin  
2 Commission and technical committees in which the basis  
3 and terms and conditions of the allocation formula are to  
4 be discussed or negotiated. When an allocation formula  
5 is unanimously approved by the State Commissioners,  
6 there shall be an agreement among the states regarding  
7 an allocation formula. The allocation formula thus agreed  
8 upon shall become effective and binding upon the parties  
9 to this Compact upon receipt by the Commission of a let-  
10 ter of concurrence with said formula from the Federal  
11 Commissioner. If, however, the Federal Commissioner  
12 fails to submit a letter of concurrence to the Commission  
13 within two hundred ten (210) days after the allocation for-  
14 mula is agreed upon by the State Commissioners, the Fed-  
15 eral Commissioner shall within forty-five (45) days there-  
16 after submit to the ACF Basin Commission a letter of  
17 nonconcurrence with the allocation formula setting forth  
18 therein specifically and in detail the reasons for non-  
19 concurrence; provided, however, the reasons for non-  
20 concurrence as contained in the letter of nonconcurrence  
21 shall be based solely upon federal law. The allocation for-  
22 mula shall also become effective and binding upon the par-  
23 ties to this Compact if the Federal Commissioner fails to  
24 submit to the ACF Basin Commission a letter of non-  
25 concurrence in accordance with this Article. Once adopted

1 pursuant to this Article, the allocation formula may only  
2 be modified by unanimous decision of the State Commis-  
3 sioners and the concurrence by the Federal Commissioner  
4 in accordance with the procedures set forth in this Article.

5       “(b) The parties to this Compact recognize that the  
6 United States operates certain projects within the ACF  
7 Basin that may influence the water resources within the  
8 ACF Basin. The parties to this Compact further acknowl-  
9 edge and recognize that various agencies of the United  
10 States have responsibilities for administering certain fed-  
11 eral laws and exercising certain federal powers that may  
12 influence the water resources within the ACF Basin. It  
13 is the intent of the parties to this Compact, including the  
14 United States, to achieve compliance with the allocation  
15 formula adopted in accordance with this Article. Accord-  
16 ingly, once an allocation formula is adopted, each and  
17 every officer, agency, and instrumentality of the United  
18 States shall have an obligation and duty, to the maximum  
19 extent practicable, to exercise their powers, authority, and  
20 discretion in a manner consistent with the allocation for-  
21 mula so long as the exercise of such powers, authority,  
22 and discretion is not in conflict with federal law.

23       “(c) Between the effective date of this Compact and  
24 the approval of the allocation formula under this Article,  
25 the signatories to this Compact agree that any person who

1 is withdrawing, diverting, or consuming water resources  
2 of the ACF Basin as of the effective date of this Compact,  
3 may continue to withdraw, divert or consume such water  
4 resources in accordance with the laws of the state where  
5 such person resides or does business and in accordance  
6 with applicable federal laws. The parties to this Compact  
7 further agree that any such person may increase the  
8 amount of water resources withdrawn, diverted or  
9 consumed to satisfy reasonable increases in the demand  
10 of such person for water between the effective date of this  
11 Compact and the date on which an allocation formula is  
12 approved by the ACF Basin Commission as permitted by  
13 applicable law. Each of the state parties to this Compact  
14 further agree to provide written notice to each of the other  
15 parties to this Compact in the event any person increases  
16 the withdrawal, diversion or consumption of such water  
17 resources by more than 10 million gallons per day on an  
18 average annual daily basis, or in the event any person,  
19 who was not withdrawing, diverting or consuming any  
20 water resources from the ACF Basin as of the effective  
21 date of this Compact, seeks to withdraw, divert or  
22 consume more than one million gallons per day on an aver-  
23 age annual daily basis from such resources. This Article  
24 shall not be construed as granting any permanent, vested  
25 or perpetual rights to the amounts of water used between

1 January 3, 1992 and the date on which the Commission  
2 adopts an allocation formula.

3 “(d) As the owner, operator, licensor, permitting au-  
4 thority or regulator of a water resource facility under its  
5 jurisdiction, each state shall be responsible for using its  
6 best efforts to achieve compliance with the allocation for-  
7 mula adopted pursuant to this Article. Each such state  
8 agrees to take such actions as may be necessary to achieve  
9 compliance with the allocation formula.

10 “(e) This Compact shall not commit any state to  
11 agree to any data generated by any study or commit any  
12 state to any allocation formula not acceptable to such  
13 state.

14 “ARTICLE VIII

15 “CONDITIONS RESULTING IN TERMINATION OF  
16 THE COMPACT

17 “(a) This Compact shall be terminated and thereby  
18 be void and of no further force and effect if any of the  
19 following events occur:

20 “(1) The legislatures of the states of Alabama,  
21 Florida and Georgia each agree by general laws en-  
22 acted by each state within any three consecutive  
23 years that this Compact should be terminated.

24 “(2) The United States Congress enacts a law  
25 expressly repealing this Compact.

1           “(3) The States of Alabama, Florida and Geor-  
2           gia fail to agree on an equitable apportionment of  
3           the surface waters of the ACF as provided in Article  
4           VII(a) of this Compact by December 31, 1998, un-  
5           less the voting members of the ACF Basin Commis-  
6           sion unanimously agree to extend this deadline.

7           “(4) The Federal Commissioner submits to the  
8           Commission a letter of nonconcurrence in the initial  
9           allocation formula in accordance with Article VII(a)  
10          of the Compact, unless the voting members of the  
11          ACF Basin Commission unanimously agree to allow  
12          a single 45 day period in which the non-voting Fed-  
13          eral Commissioner and the voting State Commis-  
14          sioners may renegotiate an allocation formula and  
15          the Federal Commissioner withdraws the letter of  
16          nonconcurrence upon completion of this renegoti-  
17          ation.

18          “(b) If the Compact is terminated in accordance with  
19          this Article it shall be of no further force and effect and  
20          shall not be the subject of any proceeding for the enforce-  
21          ment thereof in any federal or state court. Further, if so  
22          terminated, no party shall be deemed to have acquired a  
23          specific right to any quantity of water because it has be-  
24          come a signatory to this Compact.

## 1                                   “ARTICLE IX

## 2                   “COMPLETION OF STUDIES PENDING

## 3                   ADOPTION OF ALLOCATION FORMULA

4           “The ACF Basin Commission, in conjunction with  
5 one or more interstate, federal, state or local agencies, is  
6 hereby authorized to participate in any study in process  
7 as of the effective date of this Compact, including, without  
8 limitation, all or any part of the Alabama-Coosa-  
9 Tallapoosa/Apalachicola-Chattahoochee-Flint River Basin  
10 Comprehensive Water Resource Study, as may be deter-  
11 mined by the Commission in its sole discretion.

## 12                                   “ARTICLE X

## 13                   “RELATIONSHIP TO OTHER LAWS

14           “(a) It is the intent of the party states and of the  
15 United States Congress by ratifying this Compact, that  
16 all state and federal officials enforcing, implementing or  
17 administering other state and federal laws affecting the  
18 ACF Basin shall, to the maximum extent practicable, en-  
19 force, implement or administer those laws in furtherance  
20 of the purposes of this Compact and the allocation formula  
21 adopted by the Commission insofar as such actions are  
22 not in conflict with applicable federal laws.

23           “(b) Nothing contained in this Compact shall be  
24 deemed to restrict the executive powers of the President  
25 in the event of a national emergency.

1       “(c) Nothing contained in this Compact shall impair  
2 or affect the constitutional authority of the United States  
3 or any of its powers, rights, functions or jurisdiction under  
4 other existing or future laws in and over the area or wa-  
5 ters which are the subject of the Compact, including  
6 projects of the Commission, nor shall any act of the Com-  
7 mission have the effect of repealing, modifying or amend-  
8 ing any federal law. All officers, agencies and instrumen-  
9 talities of the United States shall exercise their powers and  
10 authority over water resources in the ACF Basin and  
11 water resource facilities, and to the maximum extent prac-  
12 ticable, shall exercise their discretion in carrying out their  
13 responsibilities, powers, and authorities over water re-  
14 sources in the ACF Basin and water resource facilities in  
15 the ACF Basin in a manner consistent with and that effec-  
16 tuates the allocation formula developed pursuant to this  
17 Compact or any modification of the allocation formula so  
18 long as the actions are not in conflict with any applicable  
19 federal law. The United States Army Corps of Engineers,  
20 or its successors, and all other federal agencies and instru-  
21 mentalities shall cooperate with the ACF Basin Commis-  
22 sion in accomplishing the purposes of the Compact and  
23 fulfilling the obligations of each of the parties to the Com-  
24 pact regarding the allocation formula.

1       “(d) Once adopted by the three states and ratified  
2 by the United States Congress, this Compact shall have  
3 the full force and effect of federal law, and shall supersede  
4 state and local laws operating contrary to the provisions  
5 herein or the purposes of this Compact; provided, however,  
6 nothing contained in this Compact shall be construed as  
7 affecting or intending to affect or in any way to interfere  
8 with the laws of the respective signatory states relating  
9 to water quality, and riparian rights as among persons ex-  
10 clusively within each state.

11                               “ARTICLE XI

12                               “PUBLIC PARTICIPATION

13       “All meetings of the Commission shall be open to the  
14 public. The signatory parties recognize the importance and  
15 necessity of public participation in activities of the Com-  
16 mission, including the development and adoption of the  
17 initial allocation formula and any modification thereto.  
18 Prior to the adoption of the initial allocation formula, the  
19 Commission shall adopt procedures ensuring public par-  
20 ticipation in the development, review, and approval of the  
21 initial allocation formula and any subsequent modification  
22 thereto. At a minimum, public notice to interested parties  
23 and a comment period shall be provided. The Commission  
24 shall respond in writing to relevant comments.

1                                   “ARTICLE XII  
2                           “FUNDING AND EXPENSES OF THE  
3                                   COMMISSION

4           “Commissioners shall serve without compensation  
5 from the ACF Basin Commission. All general operational  
6 funding required by the Commission and agreed to by the  
7 voting members shall obligate each state to pay an equal  
8 share of such agreed upon funding. Funds remitted to the  
9 Commission by a state in payment of such obligation shall  
10 not lapse; provided, however, that if any state fails to  
11 remit payment within 90 days after payment is due, such  
12 obligation shall terminate and any state which has made  
13 payment may have such payment returned. Costs of at-  
14 tendance and participation at meetings of the Commission  
15 by the Federal Commissioner shall be paid by the United  
16 States.

17                                   “ARTICLE XIII  
18                           “DISPUTE RESOLUTION

19           “(a) In the event of a dispute between two or more  
20 voting members of this Compact involving a claim relating  
21 to compliance with the allocation formula adopted by the  
22 Commission under this Compact, the following procedures  
23 shall govern:

24                           “(1) Notice of claim shall be filed with the  
25           Commission by a voting member of this Compact

1 and served upon each member of the Commission.  
2 The notice shall provide a written statement of the  
3 claim, including a brief narrative of the relevant  
4 matters supporting the claimant's position.

5 “(2) Within twenty (20) days of the Commis-  
6 sion's receipt of a written statement of a claim, the  
7 party or parties to the Compact against whom the  
8 complaint is made may prepare a brief narrative of  
9 the relevant matters and file it with the Commission  
10 and serve it upon each member of the Commission.

11 “(3) Upon receipt of a claim and any response  
12 or responses thereto, the Commission shall convene  
13 as soon as reasonably practicable, but in no event  
14 later than twenty (20) days from receipt of any re-  
15 sponse to the claim, and shall determine if a resolu-  
16 tion of the dispute is possible.

17 “(4) A resolution of a dispute under this Article  
18 through unanimous vote of the State Commissioners  
19 shall be binding upon the state parties and any state  
20 party determined to be in violation of the allocation  
21 formula shall correct such violation without delay.

22 “(5) If the Commission is unable to resolve the  
23 dispute within 10 days from the date of the meeting  
24 convened pursuant to subparagraph (a)(3) of this  
25 Article, the Commission shall select, by unanimous

1 decision of the voting members of the Commission,  
2 an independent mediator to conduct a non-binding  
3 mediation of the dispute. The mediator shall not be  
4 a resident or domiciliary of any member state, shall  
5 not be an employee or agent of any member of the  
6 Commission, shall be a person knowledgeable in  
7 water resource management issues, and shall dis-  
8 close any and all current or prior contractual or  
9 other relations to any member of the Commission.  
10 The expenses of the mediator shall be paid by the  
11 Commission. If the mediator becomes unwilling or  
12 unable to serve, the Commission by unanimous deci-  
13 sion of the voting members of the Commission, shall  
14 appoint another independent mediator.

15 “(6) If the Commission fails to appoint an inde-  
16 pendent mediator to conduct a non-binding medi-  
17 ation of the dispute within seventy-five (75) days of  
18 the filing of the original claim or within thirty (30)  
19 days of the date on which the Commission learns  
20 that a mediator is unwilling or unable to serve, the  
21 party submitting the claim shall have no further ob-  
22 ligation to bring the claim before the Commission  
23 and may proceed by pursuing any appropriate rem-  
24 edies, including any and all judicial remedies.

1           “(7) If an independent mediator is selected, the  
2 mediator shall establish the time and location for the  
3 mediation session or sessions and may request that  
4 each party to the Compact submit, in writing, to the  
5 mediator a statement of its position regarding the  
6 issue or issues in dispute. Such statements shall not  
7 be exchanged by the parties except upon the unani-  
8 mous agreement of the parties to the mediation.

9           “(8) The mediator shall not divulge confidential  
10 information disclosed to the mediator by the parties  
11 or by witnesses, if any, in the course of the medi-  
12 ation. All records, reports, or other documents re-  
13 ceived by a mediator while serving as a mediator  
14 shall be considered confidential. The mediator shall  
15 not be compelled in any adversary proceeding or ju-  
16 dicial forum to divulge the contents of such docu-  
17 ments or the fact that such documents exist or to  
18 testify in regard to the mediation.

19           “(9) Each party to the mediation shall maintain  
20 the confidentiality of the information received during  
21 the mediation and shall not rely on or introduce in  
22 any judicial proceeding as evidence:

23           “a. Views expressed or suggestions made  
24 by another party regarding a settlement of the  
25 dispute;

1           “b. Proposals made or views expressed by  
2           the mediator; or

3           “c. The fact that another party to the  
4           hearing had or had not indicated a willingness  
5           to accept a proposal for settlement of the dis-  
6           pute.

7           “(10) The mediator may terminate the non-  
8           binding mediation session or sessions whenever, in  
9           the judgment of the mediator, further efforts to re-  
10          solve the dispute would not lead to a resolution of  
11          the dispute between or among the parties. Any party  
12          to the dispute may terminate the mediation process  
13          at any time by giving written notification to the me-  
14          diator and the Commission. If terminated prior to  
15          reaching a resolution, the party submitting the origi-  
16          nal claim to the Commission shall have no further  
17          obligation to bring its claim before the Commission  
18          and may proceed by pursuing any appropriate rem-  
19          edies, including any and all judicial remedies.

20          “(11) The mediator shall have no authority to  
21          require the parties to enter into a settlement of any  
22          dispute regarding the Compact. The mediator may  
23          simply attempt to assist the parties in reaching a  
24          mutually acceptable resolution of their dispute. The  
25          mediator is authorized to conduct joint and separate

1 meetings with the parties to the mediation and to  
2 make oral or written recommendations for a settle-  
3 ment of the dispute.

4 “(12) At any time during the mediation proc-  
5 ess, the Commission is encouraged to take whatever  
6 steps it deems necessary to assist the mediator or  
7 the parties to resolve the dispute.

8 “(13) In the event of a proceeding seeking en-  
9 forcement of the allocation formula, this Compact  
10 creates a cause of action solely for equitable relief.  
11 No action for money damages may be maintained.  
12 The party or parties alleging a violation of the Com-  
13 pact shall have the burden of proof.

14 “(b) In the event of a dispute between any voting  
15 member and the United States relating to a state’s non-  
16 compliance with the allocation formula as a result of ac-  
17 tions or a refusal to act by officers, agencies or instrumen-  
18 talities of the United States, the provisions set forth in  
19 paragraph (a) of this Article (other than the provisions  
20 of subparagraph (a)(4)) shall apply.

21 “(c) The United States may initiate dispute resolu-  
22 tion under paragraph (a) in the same manner as other  
23 parties to this Compact.

24 “(d) Any signatory party who is affected by any ac-  
25 tion of the Commission, other than the adoption or en-

1 enforcement of or compliance with the allocation formula,  
2 may file a complaint before the ACF Basin Commission  
3 seeking to enforce any provision of this Compact.

4           “(1) The Commission shall refer the dispute to  
5 an independent hearing officer or mediator, to con-  
6 duct a hearing or mediation of the dispute. If the  
7 parties are unable to settle their dispute through  
8 mediation, a hearing shall be held by the Commis-  
9 sion or its designated hearing officer. Following a  
10 hearing conducted by a hearing officer, the hearing  
11 officer shall submit a report to the Commission set-  
12 ting forth findings of fact and conclusions of law,  
13 and making recommendations to the Commission for  
14 the resolution of the dispute.

15           “(2) The Commission may adopt or modify the  
16 recommendations of the hearing officer within 60  
17 days of submittal of the report. If the Commission  
18 is unable to reach unanimous agreement on the reso-  
19 lution of the dispute within 60 days of submittal of  
20 the report with the concurrence of the Federal Com-  
21 missioner in disputes involving or affecting federal  
22 interests, the affected party may file an action in  
23 any court of competent jurisdiction to enforce the  
24 provisions of this Compact. The hearing officer’s re-

1 port shall be of no force and effect and shall not be  
2 admissible as evidence in any further proceedings.

3 “(e) All actions under this Article shall be subject to  
4 the following provisions:

5 “(1) The Commission shall adopt guidelines  
6 and procedures for the appointment of hearing offi-  
7 cers or independent mediators to conduct all hear-  
8 ings and mediations required under this Article. The  
9 hearing officer or mediator appointed under this Ar-  
10 ticle shall be compensated by the Commission.

11 “(2) All hearings or mediations conducted  
12 under this article may be conducted utilizing the  
13 Federal Administrative Procedures Act, the Federal  
14 Rules of Civil Procedure, and the Federal Rules of  
15 Evidence. The Commission may also choose to adopt  
16 some or all of its own procedural and evidentiary  
17 rules for the conduct of hearings or mediations  
18 under this Compact.

19 “(3) Any action brought under this Article shall  
20 be limited to equitable relief only. This Compact  
21 shall not give rise to a cause of action for money  
22 damages.

23 “(4) Any signatory party bringing an action be-  
24 fore the Commission under this Article shall have  
25 the burdens of proof and persuasion.

## 1                                   “ARTICLE XIV

## 2                                   “ENFORCEMENT

3           “The Commission may, upon unanimous decision,  
4 bring an action against any person to enforce any provi-  
5 sion of this Compact, other than the adoption or enforce-  
6 ment of or compliance with the allocation formula, in any  
7 court of competent jurisdiction.

## 8                                   “ARTICLE XV

## 9                                   “IMPACTS ON OTHER STREAM SYSTEMS

10          “This Compact shall not be construed as establishing  
11 any general principle or precedent applicable to any other  
12 interstate streams.

## 13                                   “ARTICLE XVI

14 “IMPACT OF COMPACT ON USE OF WATER  
15         WITHIN THE BOUNDARIES OF THE COM-  
16         PACTING STATES

17          “The provisions of this Compact shall not interfere  
18 with the right or power of any state to regulate the use  
19 and control of water within the boundaries of the state,  
20 providing such state action is not inconsistent with the al-  
21 location formula.

## 22                                   “ARTICLE XVII

## 23                                   “AGREEMENT REGARDING WATER QUALITY

24          “(a) The States of Alabama, Florida, and Georgia  
25 mutually agree to the principle of individual State efforts

1 to control man-made water pollution from sources located  
2 and operating within each State and to the continuing  
3 support of each State in active water pollution control pro-  
4 grams.

5       “(b) The States of Alabama, Florida, and Georgia  
6 agree to cooperate, through their appropriate State agen-  
7 cies, in the investigation, abatement, and control of  
8 sources of alleged interstate pollution within the ACF  
9 River Basin whenever such sources are called to their at-  
10 tention by the Commission.

11       “(c) The States of Alabama, Florida, and Georgia  
12 agree to cooperate in maintaining the quality of the waters  
13 of the ACF River Basin.

14       “(d) The States of Alabama, Florida, and Georgia  
15 agree that no State may require another state to provide  
16 water for the purpose of water quality control as a sub-  
17 stitute for or in lieu of adequate waste treatment.

18                                   “ARTICLE XVIII

19                   “EFFECT OF OVER OR UNDER DELIVERIES

20                                   UNDER THE COMPACT

21       “No state shall acquire any right or expectation to  
22 the use of water because of any other state’s failure to  
23 use the full amount of water allocated to it under this  
24 Compact.

## 1 “ARTICLE XIX

## 2 “SEVERABILITY

3 “If any portion of this Compact is held invalid for  
4 any reason, the remaining portions, to the fullest extent  
5 possible, shall be severed from the void portion and given  
6 the fullest possible force, effect, and application.

## 7 “ARTICLE XX

## 8 “NOTICE AND FORMS OF SIGNATURE

9 “Notice of ratification of this Compact by the legisla-  
10 ture of each state shall promptly be given by the Governor  
11 of the ratifying state to the Governors of the other partici-  
12 pating states. When all three state legislatures have rati-  
13 fied the Compact, notice of their mutual ratification shall  
14 be forwarded to the Congressional delegation of the signa-  
15 tory states for submission to the Congress of the United  
16 States for ratification. When the Compact is ratified by  
17 the Congress of the United States, the President, upon  
18 signing the Federal ratification legislation, shall promptly  
19 notify the Governors of the participating states and ap-  
20 point the Federal Commissioner. The Compact shall be  
21 signed by all four Commissioners as their first order of  
22 business at their first meeting and shall be filed of record  
23 in the party states.”.

1 **SEC. 2. INCONSISTENCY OF LANGUAGE.**

2 The validity of the compact consented to by this Act  
3 shall not be affected by any insubstantial difference in its  
4 form or language as adopted by the States.

5 **SEC. 3. RIGHT TO ALTER, AMEND, OR REPEAL.**

6 The right to alter, amend, or repeal this joint resolu-  
7 tion is hereby expressly reserved.

8 **SEC. 4. RESERVATIONS.**

9 To ensure participation of Federal agencies during  
10 the development of the allocation formula and partici-  
11 pation in all technical working groups and meetings in which  
12 the terms and conditions of the allocation formula are ne-  
13 gotiated and to preserve Federal discretion under law, the  
14 consent of Congress to, and participation of the United  
15 States in, the Apalachicola-Chattahoochee-Flint River  
16 Basin Compact, is subject to the following conditions and  
17 reservations:

18 (1) Representatives of any Federal agency may  
19 attend any and all meetings of the Commission.

20 (2) Upon the request of the Federal Commis-  
21 sioner, representatives of any Federal agency may  
22 participate in any meetings of technical committees,  
23 if any, of the Commission at which the basis or  
24 terms and conditions of the allocation formula or  
25 modifications to the allocation formula are to be dis-  
26 cussed or negotiated.

1           (3) The Federal Commissioner shall be given  
2 notice of any meeting of the Commission or any  
3 meeting of technical committees, if any, of the Com-  
4 mission at which compliance with the allocation for-  
5 mula by one or more officers, agencies, or instru-  
6 mentalities of the United States is to be discussed.

7           (4) Under the provisions of Article VII(a), the  
8 Federal Commissioner may submit a letter of con-  
9 currence with the allocation formula unanimously  
10 adopted by the State Commissioners within 255  
11 days of such adoption.

12           (5) No mediator shall be selected under Article  
13 XIII(b) or Article XIII(c) without the concurrence of  
14 the Federal Commissioner and no resolution of a  
15 dispute under Article XIII(c) shall be made binding  
16 on the United States without the concurrence of the  
17 Federal Commissioner.

18           (6) The obligations of employees, agencies, and  
19 instrumentalities of the United States pursuant to  
20 Articles VII(b), X(a), and X(e) to exercise their dis-  
21 cretion, to the maximum extent practicable, in a  
22 manner consistent with the allocation formula shall  
23 not be construed to interfere with the ability of such  
24 employees, agencies, and instrumentalities to take  
25 actions during emergency situations.

1           (7) As among water right holders within any  
2 one State, nothing in this Compact shall be con-  
3 strued as affecting or intending to affect or in any  
4 way to interfere with the laws of the respective sig-  
5 natory States relating to riparian rights of the Unit-  
6 ed States in and to the waters of the Apalachicola-  
7 Chattahoochee-Flint River Basin.

8 **SEC. 5. EFFECTUATION.**

9           (a) **FEDERAL AGENCY AUTHORITY.**—To carry out  
10 the purposes of this Compact, Federal agencies are au-  
11 thorized, as they may deem appropriate—

12           (1) to engage in cooperative relationships with  
13 the Commission;

14           (2) to conduct studies and monitoring programs  
15 in cooperation with the Commission;

16           (3) to enter into agreements to indemnify pri-  
17 vate landowners against liability that may arise from  
18 studies and monitoring programs undertaken in co-  
19 operation with the Commission; and

20           (4) to furnish assistance, including the provi-  
21 sion of services, facilities, and personnel, to the Fed-  
22 eral Commissioner.

23           (b) **APPROPRIATIONS.**—Appropriations are author-  
24 ized as necessary for implementing the Compact, including  
25 appropriations for carrying out the functions of the Fed-

1 eral Commissioner and alternates and for employment of  
2 personnel by the Federal Commissioner.

Passed the House of Representatives November 4,  
1997.

Attest:

ROBIN H. CARLE,  
*Clerk.*