

**In The
Supreme Court of the United States**

STATE OF FLORIDA,

Plaintiff,

v.

STATE OF GEORGIA,

Defendant.

Before the Special Master

Hon. Ralph I. Lancaster

**STATUS REPORT OF THE STATE OF GEORGIA
JULY 9, 2015**

This report constitutes the sixth monthly status report filed by the State of Georgia pursuant to Section 4 of the Case Management Plan.

I. GENERAL STATUS

The States continue to make progress in discovery by producing documents and data. In particular, Georgia has made steady progress in producing native model and database files responsive to Florida's discovery requests, despite technical challenges to doing so. Consistent with past practice, Georgia also continues to meet and confer with counsel for Florida to discuss discovery issues; coordinate with Florida to process data produced in response to the States' joint *Touhy* requests and subpoenas to the United States; meet and confer with third parties about subpoena responses; collect, review, and produce additional documents and data; and review

documents and data produced by third parties and by Florida. Details about these discovery efforts are set forth below in Section II.

II. STATUS OF GEORGIA'S DISCOVERY EFFORTS

A. Written Discovery Between Parties.

Neither Florida nor Georgia has served or responded to additional written discovery since the last Status Report. Georgia contemplates serving additional supplemental responses as discovery continues.

B. Georgia Has Met and Conferred with Florida on Discovery Issues.

The States continue to meet and confer regularly and have worked together on a number of discovery issues including:

- Finalizing the details of a non-disclosure agreement that the States can use pursuant to Section 10 of the Case Management Plan;
- Processing and producing native databases;
- Conferring about *Touhy* requests and subpoenas served on federal agencies including:
 - U.S. Army Corps of Engineers;
 - U.S. Geological Survey;
 - U.S. Fish and Wildlife Service;
 - National Oceanic and Atmospheric Administration;
 - U.S. Department of Commerce;
 - U.S. Department of Agriculture – National Agricultural Statistics Service; and
 - U.S. Department of Agriculture – National Resources Conservation Service.
- Working with federal agencies to address concerns related to *Touhy* requests and subpoenas, such as production timing, confidentiality, and prioritizing and narrowing the scope of joint requests where possible.

C. Georgia Has Met and Conferred with Other Third Parties Regarding Collection and Production of Documents.

Georgia continues to follow up and confer with third parties other than the United States in an effort to obtain responsive documents without imposing unnecessary burdens. Georgia has narrowed the scope of its subpoenas where possible and has also offered to provide assistance with the transmission of responsive documents. To date, Georgia has produced nearly 75,000 pages of documents it received from twenty eight nonparties in response to its subpoenas, and continues to process documents received from additional nonparties. A chart of the nonparty documents received and produced is attached as Exhibit A.

D. Georgia Has Produced and Will Continue to Produce Documents and Data to Florida.

Georgia continues to produce voluminous documents and data. On June 15, 2015, Georgia served its eleventh production, which consisted of a native database pertaining to surface water withdrawals, as well as a database report pertaining to dams located in the Georgia portion of the ACF Basin. On June 22, 2015, Georgia served its twelfth production of documents responsive to Florida's First and Second Requests for Production. The production included approximately 16,000 records, including hard copy documents, emails, and other electronically stored information that together amounted to nearly 50,000 pages. On July 1, 2015, Georgia produced more than 4,000 pages of documents it received from third parties in response to its subpoenas, for a total of nearly 75,000 pages to date. Details about Georgia's third-party productions are provided in Attachment B. On July 7, 2015, Georgia served its thirteenth production of documents, producing approximately 220,000 pages of hard copy documents, emails, and other electronically stored information. To date, Georgia has produced more than 860,000 pages of documents—in addition to nearly 75,000 pages of documents received in response to third-party subpoenas—and 20 native models (approximately 90 GB of

modeling files). Georgia has also produced a total of six native databases or database reports pertaining to Permits, Safe Dams, Agricultural Metering, Monthly Operating Reports, Agricultural Permitting, and Geological Appraisal. Georgia will continue to produce additional documents, data, and models on a rolling basis as discovery progresses.

Georgia continues to dedicate substantial resources to the full-time review of documents it has collected from its own custodians, as well as documents produced by Florida, by third parties, and by the United States. Approximately fifty full-time attorneys are now dedicated to document review for Georgia.

E. Georgia Has Begun to Review and Analyze Documents and Data Produced by the United States.

The States have conferred with all federal agencies on which *Touhy* requests and subpoenas were served, and—as noted in last month’s Status Report—some agencies have begun producing documents and data. For example:

- On May 13, 2015, the U.S. Army Corps of Engineers produced 7 native models to the States, including models pertaining to the operation of Woodruff Dam.
- On May 29, 2015, the U.S. Fish and Wildlife Service produced almost 250,000 files to the States, including electronically stored information and models.
- On May 29, 2015, the U.S. Geological Survey produced almost 30,000 files to the States, including electronically stored information and models.
- On June 25, 2015, the U.S. Department of Agriculture – National Resources Conservation Service produced two native spreadsheets of aggregate data in response to the States’ joint request.
- On July 1, 2015, the U.S. Department of Agriculture – National Agricultural Statistics Service produced five spreadsheets of aggregate data pertaining to past Censuses of Agriculture.

The States have met and conferred multiple times about how to narrow the scope of relevant data and documents produced by each agency, and how to share the burdens of processing that data. After extensive discussions, Georgia and Florida have collaborated on a

method for sharing costs and burdens of gathering public data cited in agency subpoena responses, as well as for sharing the costs of data processing for documents and data produced by those agencies. Despite voluminous productions by the Fish and Wildlife Service and United States Geological Survey, the United States has not produced the bulk of documents and data responsive to the States' joint requests. On July 6, 2015, the United States informed the Special Master that none of the federal agencies would be able to meet the current 120-day production deadline. The United States requested a 45-day extension, while reserving the right to submit additional extension requests in the future. Although the States will continue to work with the United States on the timing and scope of productions, Georgia notes that delays in the production of critical agency documents—and in particular responsive documents from the U.S. Army Corps of Engineers—will likely result in delays in the ability to review, assess, and incorporate important information into expert reports.

III. ANTICIPATED DISCOVERY

Georgia anticipates conducting the following discovery in the next month:

- Producing to Florida additional documents and data on a rolling basis;
- Producing to Florida additional third-party documents produced to Georgia in response to its subpoenas;
- Continuing joint discussions with federal agencies about the scope and timing for production of documents and data;
- Conferring with Florida to coordinate the processing of document and models produced in response to the States' joint *Touhy* requests and subpoenas.

IV. UNRESOLVED DISPUTES AND OTHER CONCERNS

A. Technological Issues With the Production of Native Models and Databases

As Georgia has noted in prior status reports, the technical issues associated with collecting, processing, and producing native models and databases remains challenging. Given

that both Florida and Georgia face these technical challenges, the States regularly meet and confer about the process and timing of native productions. Nevertheless, Georgia continues its diligent efforts to collect, review, and produce native modeling and database files responsive to Florida's discovery requests, and is making significant efforts to complete that work before the November deadline.

B. Disputes

There are currently no unresolved disputes between the States.

V. SETTLEMENT DISCUSSIONS

On June 9, 2015, the Governor of Georgia and certain staff members held an in-person meeting with the Governor of Florida to discuss possibilities for settlement of this matter. Georgia intends to continue an open dialogue with Florida in the hopes of reaching a resolution of this dispute.

Dated: July 9, 2015

/s/ Craig S. Primis
Craig S. Primis, P.C.
Sarah Hawkins Warren
K. Winn Allen
KIRKLAND & ELLIS LLP
655 Fifteenth St. NW
Washington, DC 20005
Tel.: (202) 879-5000
Fax: (202) 879-5200
cprimis@kirkland.com

EXHIBIT A

**DOCUMENTS RECEIVED FROM THIRD PARTIES IN RESPONSE TO GEORGIA'S
SUBPOENAS AND PRODUCED TO FLORIDA**

Third Party	Bates Range	Date Produced
Alligator Point Water Resources District	APWRD_00001 to APWRD_01177	July 1, 2015
Apalachicola Bay Oyster Dealers Association	ABODA_0001 to ABODA_0081	Apr. 30, 2015
Apalachicola Chamber of Commerce	ACOC_0001 to ACOC_0195	Apr. 30, 2015
Apalachicola Riverkeeper	AR_0001 to AR_0036	Apr. 30, 2015
Bay County	BAY_CO.(FL)_00001 to BAY_CO.(FL)_00009	July 1, 2015
Calhoun County	CALHOUN_CO_0001 to CALHOUN_CO_0049	Apr. 30, 2015
City of Apalachicola	City_of_Apalachicola(FL)_0001 to City_of_Apalachicola(FL)_0617	Apr. 30, 2015
City of Blountstown	BLOUNTSTOWN(FL)_00001 to BLOUNTSTOWN(FL)_01557	May 29, 2015
City of Carrabelle	City_of_Carrabelle(FL)_0001 to City_of_Carrabelle(FL)_0020	Apr. 30, 2015
	City_of_Carrabelle(FL)_0021 to City_of_Carrabelle(FL)_1595	July 1, 2015
City of Chattahoochee	City_of_Chattahoochee(FL)_00001 to City_of_Chattahoochee(FL)_00136	May 29, 2015
City of Cottdale	COTTONDALE(FL)_00001 to COTTONDALE(FL)_00227	May 29, 2015
Florida State University	FL_State_Univ_00001 to FL_State_Univ_00050	May 29, 2015
Florida Sea Grant	FL_SEA-GRANT_00001 to FL_SEA-GRANT_37355	Apr. 30, 2015
	FL_SEA-GRANT_37356 to FL_SEA-GRANT_56648	May 29, 2015
Franklin County	FRANKLIN_CO_0001 to FRANKLIN_CO_5512	Apr. 30, 2015
Franklin Co. Seafood Workers Association	FCSWA_00001 to FCSWA_00005	May 29, 2015
	FCSWA_00006 to FCSWA_00017	July 1, 2015
Gadsden County	Gadsden_Co_0001 to Gadsden_Co_0015	Apr. 30, 2015
Jackson County	JACKSON_CO_0001 to JACKSON_CO_0062	Apr. 30, 2015
Jacob City	JACOB_CITY(FL)_00001 to JACOB_CITY(FL)_00309	July 1, 2015
Liberty County	Liberty_Co_0001 to Liberty_Co_0804	Apr. 30, 2015
Lighthouse Utility Co.	Lighthouse_Util_Co.(FL)_00001 to Lighthouse_Util_Co.(FL)_00581	July 1, 2015
City of Marianna	City_of_Marianna(FL)_00001 to City_of_Marianna(FL)_00217	July 1, 2015
Town of Alford	Town_of_Alford(FL)_00001 to Town_of_Alford(FL)_00480	May 29, 2015

Third Party	Bates Range	Date Produced
Town of Altha	TOWN_OF_ALTHA(FL)_00001 to TOWN_OF_ALTHA(FL)_00163	July 1, 2015
Town of Malone	Town_of_Malone(FL)_00001 to Town_of_Malone(FL)_00181	May 29, 2015
Town of Sneads	SNEADS_0001 to SNEADS_0802	Apr. 30, 2015
St. James Island Utility Company Water Treatment Plant	SJIUC_0001 to SJIUC_0153	Apr. 30, 2015
University of Florida	UFL_0001 to UFL_0858	Apr 30, 2015
	UFL_00859 to UFL_01592	May 29, 2015
Washington County	Washington_Co.(FL)_00001 to Washington_Co.(FL)_00113	May 29, 2015

EXHIBIT B

GEORGIA'S PRODUCTIONS

Production Number	Bates Range	Production Type	Date Produced
First	GA00000001 to GA00000008	7 Models (4.4 GB), 1 Database	Feb. 6, 2015
Second	GA00000009 to GA00013500	Electronically Stored Information	Feb. 10, 2015
Third	GA00013501 to GA00041516	Electronically Stored Information, 2 Databases	Mar. 6, 2015
Fourth	GA00041517	1 Database	Mar. 27, 2015
Fifth	GA00041518 to GA00041989	Electronically Stored Information	Apr. 2, 2015
Sixth	GA00041990 to GA00208007	9 Models (78 GB), Electronically Stored Information and Paper Records	Apr. 3, 2015
Seventh	GA00208008 to GA00208010	3 Models (4.3 GB)	Apr. 30, 2015
Eighth	GA00208011 to GA00338078	Electronically Stored Information and Paper Records	May 1, 2015
Ninth	GA00338079	1 Model (2.5 GB)	May 29, 2015
Tenth	GA00338080 to GA00596884	Electronically Stored Information and Paper Records	June 4, 2015
Eleventh	GA00596885 to GA00596886	1 Database & 1 Database Report	June 15, 2015
Twelfth	GA00596887 to GA00646491	Electronically Stored Information and Paper Records	June 22, 2015
Thirteenth	GA00646492 to GA00865658	Electronically Stored Information and Paper Records	July 7, 2015

CERTIFICATE OF SERVICE

This is to certify that the JULY 9, 2015 STATUS REPORT OF THE STATE OF GEORGIA has been served on this 9th day of July 2015, in the manner specified below:

<p><u>For State of Florida</u></p> <p><u>By U.S. Mail and Email</u></p> <p>Allen Winsor Solicitor General Counsel of Record Office of Florida Attorney General The Capital, PL-01 Tallahassee, FL 32399 T: 850-414-3300 allen.winsor@myfloridalegal.com</p>	<p><u>For United States of America</u></p> <p><u>By U.S. Mail and Email</u></p> <p>Donald J. Verrilli Solicitor General Counsel of Record Department of Justice 950 Pennsylvania Avenue, N.W. Washington, DC 20530 T: 202-514-7717 supremectbriefs@usdoj.gov</p>
<p><u>By Email Only</u></p> <p>Donald G. Blankenau Jonathan A. Glogau Christopher M. Kise Matthew Z. Leopold Osvaldo Vazquez Thomas R. Wilmoth floridawaterteam@foley.com</p>	<p><u>By Email Only</u></p> <p>Michael T. Gray michael.gray2@usdoj.gov</p> <p>James DuBois james.dubois@usdoj.gov</p>
<p><u>For State of Georgia</u></p> <p><u>By Email Only</u></p> <p>Samuel S. Olens Nels Peterson Britt Grant Seth P. Waxman Craig S. Primis K. Winn Allen Sarah H. Warren georgiawaterteam@kirkland.com</p>	<p><i>/s/ Craig S. Primis</i></p> <hr/> <p>Craig S. Primis <i>Counsel of Record</i> KIRKLAND & ELLIS LLP 655 Fifteenth Street, NW Washington, DC 20005 T: 202-879-5000 craig.primis@kirkland.com</p>