

No. 142, Original

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In The  
Supreme Court of the United States

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STATE OF FLORIDA,

*Plaintiff,*

v.

STATE OF GEORGIA,

*Defendant.*

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Before the Special Master  
Hon. Ralph I. Lancaster

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**MOTION BY NATIONAL AUDUBON SOCIETY,  
DEFENDERS OF WILDLIFE, FLORIDA WILDLIFE  
FEDERATION, AND APALACHICOLA RIVERKEEPER  
FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF**

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## **MOTION FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF**

This case is of enormous significance not only to the parties and places directly affected by its outcome, but also to the evolving jurisprudence of equitable apportionment. Historically, interstate water disputes have focused on consumptive uses and, to a lesser extent, on whether conservation measures can stretch available resources to accommodate competing human uses. Unlike those prior interstate water allocations, this proceeding puts the need to apportion water for pressing ecological concerns front and center. Whether in the arid West or the more verdant East, water is the life blood of any natural system. The Court’s decision here will directly determine the fate of the Apalachicola River watershed and may well establish important precedent for future interstate water disputes that inevitably will arise in the face of growing human populations, a changing climate regime, and myriad federal and state legal mandates to protect ecosystem health.

For these reasons, National Audubon Society, Defenders of Wildlife, Florida Wildlife Federation, and Apalachicola Riverkeeper (“Amici Applicants”) hereby respectfully request the Court’s permission to submit an *amicus curiae* brief addressing why any equitable apportionment for the Apalachicola-Chattahoochee-Flint Basin should account for the significant ecological needs of the downstream floodplain river system. Doing so will benefit not only the ecologically exceptional Apalachicola River watershed in Florida, but also the significant ecological needs of

the upstream Chattahoochee and Flint Rivers in Georgia and the downstream Eastern Gulf of Mexico.

A comprehensive understanding of the ecological functioning of the Apalachicola River watershed – and how it interacts with the Apalachicola Bay ecosystem – is critical to the Court’s informed evaluation of the equities at stake in this case. The health and integrity of this natural ecosystem – and the myriad species that rely on it – depend on the fluvial processes that sustain the river and its floodplain and sloughs. The timing, depth, duration, and extent of inundation of the river floodplain is a driving factor in the viability of the extensive floodplain wetland system, the diversity of floodplain plant species, access of fish and wildlife to the floodplain, and fish and wildlife spawning, breeding, rearing, feeding and resting cycles. Today, the Apalachicola River floodplain ecosystem is in crisis and on a path to collapse. The Court’s decision in this case may well determine its fate and the future of the downstream bay.

Amici Applicants are well-positioned to provide the Court with critical context about the ecological function of the Apalachicola floodplain river system and its local, national, and international significance. Amici Applicants have an abiding interest in the resilience and sustainability of the Apalachicola River, and collectively they bring both extensive local experience working on flow regimes and protection, conservation, and restoration of the watershed’s ecological integrity, as well as a larger perspective on the need for dynamic water management in the face of a changing climate. Specifically:

**National Audubon Society (Audubon)**, a not for profit organization, is one of the oldest conservation organizations in the country and is supported by close to half a million members, 463 independently organized chapters, and staff in 22 state offices. Audubon's Florida office, Audubon Florida, is one of the state's leading voices for conservation furthering Audubon's mission to conserve and restore natural ecosystems focusing on birds, other wildlife and their habitats. Together with a statewide network of chapters, and the more than 30,000 Florida members, Audubon Florida works to preserve Florida's imperiled species and ecosystems through science, conservation, education, advocacy and its sanctuaries. For more than 20 years, Audubon Florida has worked to protect and preserve the habitat and ecosystem of the Apalachicola River and Bay and its surrounding area. The Apalachicola River and Bay provide critical habitat for threatened coastal birds and is the site of several globally designated important bird areas, including Lanark Reef, which is owned by Audubon. Audubon Florida employs four field staff and thirty volunteers who actively monitor bird populations and colonies in Apalachicola Bay. The Apalachicola River Basin, the site of member birdwatching activities, is home to two Audubon chapters.

**Defenders of Wildlife (Defenders)**, a 501(c)(3) nonprofit organization founded in 1947, has over 1.2 million members and supporters, over 80,000 of whom live in Florida. Defenders is dedicated to protecting all native wild animals and plants in their natural communities and preserving their habitat. To achieve these goals, the organization uses education, litigation, research, legislation, and advocacy. Defenders has worked in the southeastern U.S. for over two decades,

with a focus on conserving federally-protected species in terrestrial, marine, and freshwater environments, including the Apalachicola River Basin. The organization is one of the nation's leading advocates for endangered species and has over thirty-five years of experience with U.S. Endangered Species Act issues.

**Florida Wildlife Federation (FWF)**, a non-profit corporation established in 1936, has approximately 13,000 members and 60,000 supporters statewide and is affiliated with the National Wildlife Federation. FWF has long supported environmental sustainability and conservation in Florida by education, advocacy and litigation. The Apalachicola River and Bay system has been the focus of FWF efforts over the course of many years, as this region of the state is one of the most biologically rich in the entire nation. Moreover, the River and Bay play a critical role in the overall health of the Gulf of Mexico. FWF has previously worked with the U.S. Army Corps of Engineers and relevant state agencies to restore the Apalachicola to the betterment of both the economy and ecology of this unique area. FWF members use and enjoy outdoor recreation, including fishing, boating, hunting and nature observation, throughout the Apalachicola River Basin, Apalachicola Bay, and nearby Gulf of Mexico waters.

**Apalachicola Bay and River Keeper (Apalachicola Riverkeeper)** is a nonprofit corporation organized under the laws of Florida and a licensed member organization of Waterkeeper Alliance since 1999. Over 1,400 members use and enjoy the Apalachicola river system for economic, social and cultural endeavors and activities. Its headquarters are located in Apalachicola, Florida. Its mission is to

provide stewardship and advocacy for the protection of the Apalachicola River and Bay and its tributaries and watersheds in order to improve and maintain the environmental integrity of these waterways and to preserve their natural, scenic, recreational, and commercial fishing character. For more than 15 years, Apalachicola Riverkeeper has worked on the management of the river system in collaboration with local, state, and interstate stakeholders, including fishermen, landowners, government and agency officials, and citizens from all walks of life.

In sum, Amici Applicants will bring a valuable ecosystem perspective to this litigation that is unlikely to be fully addressed by the parties, who are focused on specific resources (e.g., the downstream oyster fishery). In accordance with Case Management Order No. 20, Amici Applicants intend to submit their *amicus* brief by October 21, 2016. But because factual evidence and expert reports are not yet publically available, and the parties' pre-trial briefs will have been filed just over a week before *amicus* briefs are due, an *amicus* brief filed on October 21 may not address some relevant, and perhaps critically important, issues that arise during trial. Accordingly, Amici Applicants respectfully request the Court's consideration and guidance concerning the question of whether a later-timed *amicus* brief, for example timed to coincide with responses to opening briefs, or supplemental post-trial *amicus* briefs, would be more helpful to the Court's consideration of the critical issues in this matter.

Dated: September 15, 2016

Respectfully submitted,

/s/ Deborah A. Sivas

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## CERTIFICATE OF SERVICE

This is to certify that the MOTION BY NATIONAL AUDUBON SOCIETY, DEFENDERS OF WILDLIFE, FLORIDA WILDLIFE FEDERATION, AND APALACHICOLA RIVERKEEPER FOR PERMISSION TO FILE AMICUS CURIAE BRIEF has been served September 15, 2016 in the manner specified below:

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