

**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
MARCH 6, 2015**

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

I. GENERAL STATUS

On February 16, 2015, Georgia filed a Motion to Dismiss Florida's Complaint for Failure to Join a Required Party. Briefing on that motion will be completed by April 2, 2015.

Georgia also continues to engage actively in written discovery. Since the last status conference, Georgia has routinely met and conferred with counsel for Florida on multiple discovery issues; served additional third party discovery; responded to written discovery; interviewed and collected documents from additional document custodians; and collected, reviewed, and produced additional documents and databases. Details about these efforts are set forth below in Section II.

II. STATUS OF GEORGIA'S DISCOVERY EFFORTS

A. Georgia Has Met and Conferred With Florida on Discovery Issues.

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

- Finalizing a protocol for Electronically Stored Information (“ESI”), which was recently filed with the Special Master;
- Finalizing a protocol for handling potentially privileged documents through a Clawback Agreement, which also was recently filed with the Special Master;
- Identification of potential email custodians for each State, including the exchange of lists of potential custodians;
- Conducting test runs of search terms on subsets of email custodians to determine the number of potentially responsive documents that will have to be reviewed;
- Crafting and exchanging search terms to narrow the universe of potentially responsive emails and other electronic documents;
- Drafting of joint *Touhy* requests and subpoenas to several federal agencies, including the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. Geological Service, the National Oceanic and Atmospheric Administration, the U.S. Department of Agriculture, and the U.S. Department of Commerce, which the parties expect to serve next week.

The Parties scheduled a February 25, 2015 in-person meeting in Atlanta to discuss document production, discovery responses, and other case issues, but delayed the meeting when inclement weather resulted in a State of Emergency being declared in Georgia for that same day. The parties then conducted multiple follow-up telephone calls to address many of the discovery issues they intended to discuss in person. Georgia will continue to engage in discussion with Florida about discovery in the coming months, especially regarding ongoing document and data production.

B. Georgia Has Responded to Florida's Written Discovery and Has Propounded Additional Written Requests.

Since the last status conference, Georgia served its Objections to Florida's Interrogatories on February 11, 2015, and its Responses to Florida's Interrogatories on February 26, 2015. On March 6, 2015, Georgia served additional Interrogatories and Requests for Production on Florida.

C. Georgia Has Served Additional Written Discovery on Third Parties.

Since the last status conference, Georgia has issued subpoenas to 7 additional third parties:

- Apalachicola Bay and River Keeper (February 12, 2015)
- Apalachicola Bay Oyster Dealers Association (February 12, 2015)
- Apalachicola Chamber of Commerce (February 12, 2015)
- Bay County, Florida (February 12, 2015)
- Washington County, Florida (February 12, 2015)
- Florida State University (February 18, 2015)
- University of Florida (February 18, 2015)

Georgia has also met and conferred with multiple third parties about the scope of the subpoenas it has served, and has worked with those entities to minimize burden and cost while still pursuing documents responsive to its requests.

Additionally, Georgia and Florida have been drafting joint *Touhy* requests and subpoenas to a number of federal agencies, including the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. Geological Service, the National Oceanic and Atmospheric Administration, the U.S. Department of Agriculture, and the U.S. Department of Commerce. The parties anticipate serving those requests within the next week.

D. Georgia Has Identified Potential Email Custodians And Continues to Interview Other Potential Custodians and to Collect Documents.

The parties have agreed that one way to minimize the cost and burden of electronic discovery would be to identify and agree upon a limited set of email custodians. On February 26, 2015, Georgia offered Florida a list of more than a dozen potential email custodians. Florida provided a similar list the next day. Since exchanging lists, the parties have met and conferred in an effort to finalize the universe of email custodians.

At the same time, Georgia has continued to interview potential document custodians from several state agencies. Since submitting its last status report, counsel for Georgia has conducted in-person interviews of 6 additional potential custodians from 3 state agencies in Atlanta, for a total of more than 50 in-person interviews, and has conducted 5 telephone interviews for a total of more than 10 telephone interviews.

E. Georgia Has Produced And Will Continue To Produce Documents and Data to Florida.

On February 11, 2015, Georgia served its first and second document productions to Florida. Those productions included 7 native models, 1 native database, and 1,172 documents for a total of 13,500 pages. On March 6, 2015, Georgia served its third production of documents. The production included 2 native databases and 1,614 documents for a total of 28,014 pages.

Georgia's large-scale document review is underway. On February 27, 2015, more than 25 contract attorneys began to review the documents Georgia has collected. Georgia anticipates that this review process will continue throughout the discovery period, and it will continue to produce additional documents and data to Florida on a rolling basis.

F. Georgia Continues to Negotiate Search Terms for Electronically Stored Information.

Since early February, Georgia has been working with Florida to negotiate search terms to apply to email to focus and limit the universe of potentially relevant documents. The parties have exchanged proposed terms and run them against sample data sets to determine the potential volume of documents generated by the search terms and to make adjustments where appropriate. The parties have held multiple meet-and-confers on this issue but have not yet agreed on final search terms. Similarly, the parties continue to discuss application of search terms to non-email electronically stored information but have not yet reached an agreement. Resolution of these issues in the near term is important to facilitate Georgia's review of electronic documents consistent with the existing deadlines.

III. ANTICIPATED DISCOVERY

Georgia anticipates conducting the following discovery in the next month:

- Producing to Florida additional models, databases, and documents on a rolling basis;
- Serving additional non-party subpoenas;
- Serving non-party subpoenas and *Touhy* requests on various federal agencies, including subpoenas submitted jointly with Florida;
- Serving additional document requests and interrogatories on Florida;
- Supplementing Georgia's Responses to Florida's First Set of Interrogatories as Georgia learns more information about documents and data through additional custodial interviews.

IV. EFFORTS TOWARDS RESOLUTION

On February 13, 2015, Georgia Governor Nathan Deal wrote Florida Governor Rick Scott, offering to travel to Tallahassee, Florida, to discuss the states' ongoing water issues.

V. UNRESOLVED DISPUTES AND OTHER CONCERNS

A. Timeline

For the first 60 days of written discovery, Georgia has made a significant effort to collect and review documents responsive to Florida's requests. Nonetheless, the completion of document production on a 120-day deadline remains a concern for both Georgia and Florida. As explained in the parties' January 22, 2015 letter to the Special Master and in Georgia's first status report, the volume and complex nature of the documents, models, and data the parties have requested will make completing document production within 120 days challenging. Georgia continues to interview relevant custodians, collect documents, and review documents diligently in an effort to meet the 120-day deadline and will have a better sense of whether, and to what extent, an extension may be warranted at the time of the next status report.

B. Production of Models and Databases

The collection and production of native databases and models has proven to be a challenge for both parties. Both States have employees involved in water-resource management and related disciplines who are responsible for the assembly and management of complex models that estimate water use and its effects. The exercise of collecting all parts of a native model from relevant custodians and pre-production review of the native materials is complicated and time-consuming, particularly when the materials can be viewed only through a specialized electronic platform that is different from the platforms typically used in routine electronic discovery. Similarly, collecting, copying, and reviewing native databases—which are in many cases the most effective means of conveying large amounts of responsive data—is expensive, time-consuming, and in some cases technically challenging. For example, Georgia has been unable to view the native models Florida has produced and understands that it cannot access those files without file conversion or provision of proprietary software or a license. Georgia has

requested Florida's assistance with this technical issue, while also offering technical support for the native materials it has already produced to Florida.

C. Written Discovery

On March 3, 2015, Georgia asked Florida to supplement its Responses to Georgia's First Set of Interrogatories. Specifically, Georgia asked Florida to provide substantive responses to Interrogatory Nos. 5, 7, and 8, which ask Florida to: 1) identify and describe its alleged injuries; 2) identify the minimum flow rate it claims is necessary to prevent its alleged harms; and 3) explain the basis of its request to return Georgia to 1992 water-use levels. The information pertaining to those requests is uniquely known to Florida. While both States will need to supplement certain requests because discovery is still ongoing, substantive responses to these interrogatories are essential to focus discovery and to frame any potential settlement negotiations. For these reasons, Georgia has sought timely supplementation from Florida on those issues. Georgia will continue to meet and confer with Florida on this issue.

Dated: March 6, 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

CERTIFICATE OF SERVICE

This is to certify that the MARCH 6, 2015 STATUS REPORT OF THE STATE OF GEORGIA has been served on this 6th day of March 2015, in the manner specified below:

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| <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 style="width: 20%; margin-left: 0;"/> <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> |