

January 11, 2017

BY E-MAIL AND U.S. MAIL

Ralph I. Lancaster
Special Master
Pierce Atwood LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101

Re: *Florida v. Georgia* (No. 142, Original), Case Management Order No. 22

Dear Special Master Lancaster:

The State of Alabama is writing regarding the Case Management Order No. 22 of January 3, Doc. 634, which presents a development that could change this case's practical significance to Alabama. The order requires Florida and Georgia to meet and confer about settlement and to consider, among other things, a solution that would involve importation of water from outside the ACF Basin. To Alabama's knowledge, neither Florida nor Georgia has requested the Court to enter an order or decree that would authorize either party to make interbasin transfers of that sort. The possibility mentioned in the January 3 Order could alter the nature of this action from Alabama's perspective, for Florida's complaint described the action as one "to equitably apportion the interstate waters of the Apalachicola-Chattahoochee-Flint ("ACF") Basin," Compl. ¶1, not to apportion interstate waters of other basins. Alabama thus assumes that the January 3 Order contemplates only importation of water from basins wholly within Georgia, such as the Oconee and Ocmulgee River Basins, rather than from interstate river basins that flow into Alabama, such as the Coosa, Tallapoosa, and Tennessee River Basins.

Due to the limits the pleadings place on this case, Alabama's *amicus* submissions have not considered or discussed the effect that a decree authorizing interbasin transfers could have on Alabama. Alabama explained that it did not need to become a party to this case because Florida's requested relief was limited to a cap on Georgia's withdrawals from the ACF Basin, which would not prejudice Alabama. See Doc. 117 (Ala. Amicus Br. Regarding Non-Joinder) at 1, 8-15; Doc. 520 (Ala. Pre-Trial Amicus Br.) at 1-3. If this case's scope were expanded to include the possibility of a decree authorizing interbasin transfers from rivers flowing into Alabama, Alabama's interests in the case would be different. The practical effect of a settlement or decree authorizing such transfers could prejudice Alabama, and

Alabama would, as a result, become a necessary party to further litigation in this case. *Cf. id.* at 8 (referencing Alabama’s long-running disputes with the Corps of Engineers over Georgia’s withdrawals from Corps facilities in both the ACT and ACF Basins).

When Alabama offered its view that its presence was unnecessary as a party in this case in light of the “remedy Florida is seeking,” Doc. 117 at 1, it also “reserve[d] its right to assert its interests, in an appropriate manner, if later developments in the litigation reveal that Alabama’s relationship to this action is different from what it currently perceive[d],” *id.* at 15. Based on the scope of the pleadings and evidence as Alabama understands them, Alabama does not believe that entry of a decree authorizing transfers from non-ACF interstate river basins would be within this Court’s discretion at this time. But if the Court contemplates a decree authorizing transfers from interstate river basins flowing into Alabama as a result of settlement discussions or otherwise, Alabama would respectfully request that it first receive notice of that possibility and be given the opportunity to assert its interests in an appropriate way. To this end, Alabama is willing to participate in any negotiations between Florida and Georgia that address this issue, and will separately ask Florida and Georgia to include Alabama in any such negotiations.

Very truly yours,

s/ John C. Neiman, Jr.

John C. Neiman, Jr.
Attorney for *Amicus* State of Alabama

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