

No. 142, Original

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

STATE OF FLORIDA,

Plaintiff,

v.

STATE OF GEORGIA,

Defendant.

**GEORGIA'S RESPONSE TO
FLORIDA'S MOTION FOR CLARIFICATION OF
CASE MANAGEMENT ORDER NO. 25**

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Florida's motion asks the Special Master to "clarify" whether the parties can address in their forthcoming briefs what "reasonable modifications" the U.S. Army Corps of Engineers' ("Corps") could adopt to the existing Water Control Manual. Fla.'s Mot. for Clarification of Case Mgmt. Order No. 25 at 1-2 (filed Nov. 16, 2018) (Dkt. No. 646). Georgia does not object if Florida wishes to include that issue in its brief. That said, Georgia does not believe such briefing will serve any meaningful purpose in this proceeding.

As the Special Master previously explained, consideration of "potential reasonable modifications to the manual would be entirely speculative because the United States is not a party and cannot be bound by any final decree." Case Mgmt. Order ("CMO") No. 25 at 5-6 (Dkt. No. 645) (citing United States' Statement of Continued Participation ("U.S. Statement") at 5-6 (filed Oct. 2, 2018) (Dkt. No. 643)). Thus, as the United States itself has said, the question of "[w]hether it would be possible for the Corps to implement particular, as-yet-unidentified modifications to the existing Master Manual that might provide redress to Florida, and the process, review, or congressional authorization any such modifications would require, ... cannot be resolved within the bounds of this proceeding." U.S. Statement at 5. To the contrary, the Corps could adopt such modifications only by going through a lengthy administrative process that would be separate and apart from this case. *See* Joint Memorandum ("Joint Mem.") at 27 (filed Oct. 2, 2018) (Dkt. No. 644) (citing U.S. Army Corps Record of Decision at 18 (Mar. 30, 2017)); *see also id.* at 28-30 (discussing this lengthy administrative process); U.S. Statement at 6 ("[T]he Corps 'must

take account of a variety of circumstances and statutory obligations’ before making a decision to modify the Master Manual, ... including required public involvement.”).

That separate process would implicate far more than Florida and Georgia’s respective interests. The Corps would have to “balance numerous congressionally mandated objectives, ... including ‘navigation, hydroelectric power generation, national defense, recreation, and industrial and municipal water supply,’” comply with various federal statutes and regulations, and go through a lengthy federal agency review and extensive public notice-and-comment period. Joint Mem. at 28. The last time the Corps updated its Master Manual, the process took almost ten years, involved comments from hundreds of parties, and required the Corps to coordinate with numerous federal agencies including the United States Fish and Wildlife Service, the Department of Commerce, National Marine Fisheries Service, and the Environmental Protection Agency. *Id.* at 28-29. That same process would be required for the Corps to adopt any “modifications” to the Manual that Florida might propose.

The outcome of any such hypothetical administrative process, and the precise nature and contours of any “modifications” to the Water Control Manual that might come out of that process, are entirely speculative. Such speculative evidence cannot meet Florida’s heavy burden of proof in this case. That said, if Florida wishes to brief the issue of reasonable modifications in its forthcoming submissions to the Special Master, Georgia does not object.

Dated: November 30, 2018

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Before the Special Master

Hon. Paul J. Kelly, Jr.

CERTIFICATE OF SERVICE

This is to certify that the GEORGIA'S RESPONSE TO FLORIDA'S MOTION FOR CLARIFICATION OF CASE MANAGEMENT ORDER NO. 25 has been served on this 30th day of November 2018, in the manner specified below:

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