

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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**THE STATE OF FLORIDA’S APRIL 3, 2015 PROGRESS REPORT**

The State of Florida respectfully submits this Progress Report to the Special Master pursuant to Section 4 of the December 3, 2014 Case Management Plan (“CMP”), as subsequently amended.

**I. CHANGES IN THE GENERAL STATUS OF THE MATTER.**

Since the State of Florida’s March 6, 2015 Progress Report, the Parties have made meaningful progress in several key areas, including briefing on the Motion to Dismiss, written discovery (including the production of documents, databases, models, and emails), and initial preparations for a meeting regarding settlement. The progress on each of those items is detailed below:

- **Motion to Dismiss Briefing.** On March 11, 2015, the United States filed a Brief as Amicus Curiae in Opposition to Georgia’s *Motion to Dismiss for Failure to*

*Join a Required Party.* On March 18, 2015, ahead of the filing deadline, Florida filed its *Brief in Opposition to Georgia's Motion to Dismiss for Failure to Join a Required Party*. Georgia requested, and was granted, an extension of time through April 3, 2015, in which to file its reply to Florida's *Brief in Opposition*.

- **Discovery Efforts.** Florida continues to actively engage in written discovery, promptly propounding and responding to interrogatories, as well as requests for production. Since its March 6, 2015 Progress Report, Florida has served written discovery on Georgia and numerous third parties—including seven federal government agencies. Florida remains diligent in working with the State of Georgia and the third parties to address discovery issues as they arise, participating in numerous and productive meet-and-confer sessions over the last month. Florida also continues to identify, collect, and review documents potentially responsive to requests for production issued by Georgia in accordance with upcoming production deadlines. Additional detail about Florida's discovery efforts is provided in Section II below.
  
- **Meeting Regarding Settlement.** The Parties continue to work cooperatively to arrange a meeting between Georgia Governor Nathan Deal and Florida Governor Rick Scott to the potential for settlement of this dispute. In connection with these efforts, the Parties have submitted a joint motion for entry of a confidentiality order to ensure any settlement discussions remain confidential and inadmissible.

As detailed below however, despite constant diligence, the Parties are unable to complete production in accordance with the schedule delineated in Section 6.1.2 of the CMP, as amended. Moreover, various third-parties, including seven United States agencies, are similarly unable to complete their productions in accordance with the current schedule. Accordingly, the Parties now jointly and respectfully request a 120-day period extension of the final production deadline specified in Section 6.1.2 of the CMP, as amended.

## **II. DISCOVERY EFFORTS.**

### **A. Written Discovery to and from Georgia**

Since its March 6, 2015 Progress Report, Florida has both actively sought discovery from Georgia, and responded promptly to Georgia's discovery requests. Among other things, Florida served its Second Set of Interrogatories and Second Set of Requests for Production to Georgia on

March 13, 2015; timely served its objections and responses to Georgia's Second Set of Requests for Production on March 26, 2015; and timely served its objections and responses to Georgia's Third Set of Requests for Production on April 2, 2015. In addition, Florida supplemented its Responses and Objections to Georgia's First Set of Requests for Production and First Set of Interrogatories on April 2, 2015. As discovery evolves, Florida expects to further develop factual and expert discovery, and contemplates supplementing its responses in accordance with its obligations under Section 15 of the CMP. In addition, Florida expects to file its objections to Georgia's Second Set of Interrogatories by April 6, 2015.

**B. Written Discovery to Third Parties**

Since the March 6, 2015 Progress Report, Florida has actively pursued written discovery from numerous non-parties, including seven federal agencies.

1. Touhy Requests and Subpoenas to Federal Agencies

On March 12, 2015, the parties jointly served *Touhy* requests and subpoenas for production of documents on the following federal agencies:

- 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.

Counsel for the Parties contacted the Department of Justice and each of these agencies prior to service to notify them of the requests, ensure proper service, and communicate the Parties'

commitment to meet and confer with the agencies regarding the scope of the requests to reduce the burdens of collection and production that the requests may pose.

By letter dated March 24, 2015, counsel for the United States advised that processing the *Touhy* requests will likely require more than 120 days. Since that time, counsel for the Parties have had productive calls with counsel for all the agencies that received *Touhy* requests, and will continue to work with the respective agencies to identify responsive documents and reduce the burdens of collection and production. However, given the scope of the search required to respond and the current availability of agency resources, these agencies have advised they are unlikely to complete their productions within 120 days. The additional time required by these agencies to complete their productions animates the Parties' belief that a 120-day period extension of the production deadline specified in Section 6.1.2 of the CMP, as amended, is needed.

## 2. Non-Party Subpoenas

Since the date of the last Progress Report, Florida served 50 additional non-party subpoenas seeking information and documents from various regional and local entities within Georgia, resulting in a total of 88 subpoenas served by Florida on non-parties. A table listing all subpoenas served on non-parties to date, and the dates such subpoenas were served on opposing counsel, is included as an attachment to this Report.

Counsel for Florida has conferred with representatives of 70 of the 88 subpoenaed entities, all of whom have agreed to cooperate on the production of responsive documents. Florida continues to work with these subpoenaed third parties to streamline further production and resolve any outstanding issues. Eighteen subpoenaed entities have made at least a partial production of documents, yielding approximately 8,500 documents produced to date. Efforts to communicate with counsel for the remaining subpoena recipients are ongoing, and counsel for

Florida will continue to make every effort to facilitate the third parties' timely, cost-efficient production of documents.

### **C. Production of Responsive Documents to Georgia**

Pursuant to Section 6.1.2 of the CMP, as amended, the Parties timely commenced their respective production of documents on February 11, 2015, and are continuing to produce documents on a rolling basis. Notably, Florida has already started to produce responsive email, making a production of over 44,000 emails, totaling approximately 115,000 pages, from the custody of Northwest Florida Water Management District personnel on April 3, 2015. In addition, Florida has produced more than 100,000 documents and over 60 gigabytes of electronically produced modelling files.

Florida continues to diligently search for potentially relevant and/or responsive materials. As part of this effort, it has conducted interviews of more than 30 individuals within various state agencies and has collected over two terabytes of data—not including modelling data and certain other collections.<sup>1</sup> To review this large quantity of potentially-responsive data within the constraints of the CMP, Florida has mobilized a document review team of more than 60 attorneys to review and organize potentially responsive information.

Moreover, the Parties continue to participate in meet-and-confer sessions to facilitate the discovery process and to resolve discovery issues promptly. As noted in previous Progress Reports, the Parties have devoted a considerable amount of time to further developing and refining the parameters of electronic discovery, and have reached agreement on an initial set of email custodians and search terms for each side. While questions remain about the existence and

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<sup>1</sup> For reference, one terabyte is equivalent to 1,000 gigabytes and corresponds to approximately 7,500,000 documents or 75,000,000 pages. Two terabytes corresponds to roughly 15,000,000 documents or 150,000,000 pages. See Hudson/DTI ESI Calculator (available online at <http://us.hudson.com/legal/esi-calculator>) (last visited on April 1, 2015).

preservation of emails for particular Georgia custodians identified by Florida, the approach has substantially reduced the scope and volume of materials the parties must review and produce. For example, the agreed search terms reduced the universe of potentially responsive email from 963 gigabytes to 472. However, even after application of the search terms provided by Georgia, Florida must manually review approximately 550,000 emails for relevance and privilege, in addition to approximately 150,000 other non-email ESI documents—a number Florida expects to increase. This manual review process is labor intensive and time consuming, and Florida now projects it will be unable to meet the existing May 12, 2015 production deadline, and to complete all written discovery within the current period, in spite of the fact that Florida has assigned over 60 attorneys to the task.

Indeed as discovery has evolved, both Parties recognize that the volume of data and documents each has requested and will produce renders them unable to adhere to the production deadline specified in Section 6.1.2 of the CMP, as amended.

### **III. UNRESOLVED DISPUTES.**

At this stage, there are no unresolved disputes. While the Parties have identified certain issues regarding the sufficiency of written discovery responses and the completeness of designated and identified email custodians, they continue to meet and confer on a frequent basis to resolve such issues. Since the date of the last status report, Florida has supplemented its initial discovery responses, as requested by Georgia. As discovery progresses, Florida recognizes both Parties have an obligation to supplement their respective responses as additional factual and expert information is developed. Similarly, as Georgia learns information about the existence of e-mails and other electronic records for particular custodians, Florida expects that Georgia will share that information to ensure full transparency and completeness of discovery efforts. As noted in prior status reports, Florida believes that the scope and frequency of counsel interaction

has facilitated—and will continue to facilitate—resolution of the foregoing and other issues.

#### **IV. OTHER ISSUES OF CONCERN**

##### **A. Technological Issues with the Production of Models and Data Sets**

As Florida noted in its March 6, 2015 Progress Report, technological issues with models and other data sets are slowing the Parties' progress in discovery. The Parties are continuing to discuss technological issues associated with the production of certain data sets and scientific models, but the production of such documentation continues to prove challenging. Moreover, the assimilation and analysis of even the limited data and modeling information produced to date has been time consuming for both Parties, and has required multiple meet-and-confer sessions regarding the accessibility and scope of what has been produced. Florida anticipates such issues will continue to arise as discovery progresses. The existence of these issues further animate the joint request for a 120-day period extension of the production deadline specified in Section 6.1.2 of the CMP, as amended.

##### **B. Timing**

As noted during the last status conference, and as highlighted by letters submitted by the United States as well as certain other third parties, completion of production within the 120-day time period specified in Section 6.1.2 of the CMP, as amended, is not possible. While, as described above, the Parties have worked together to streamline the discovery process, the volume and complex nature of pertinent discovery, as well as the production schedule envisioned by various third parties, has challenged the Parties' ability to meet the deadline. Accordingly, the Parties expect to submit a joint motion respectfully seeking a 120-day extension of the deadline specified in Section 6.1.2 of the CMP, as amended. While it is not possible to determine at this stage given the relatively small volume of discovery information exchanged to

date in comparison to the total volume of information to be produced, the parties do believe some adjustments to other deadlines (i.e., submission of expert reports and completion of fact depositions) may become necessary and appropriate. The parties will continue to collaborate regarding such discovery matters and provide timely updates to the Special Master.

**V. FURTHER DISCOVERY ANTICIPATED DURING THE COMING MONTH.**

Florida does not at this time anticipate propounding additional written discovery. However, substantial additional discovery responses from Georgia are anticipated (both documents and email), review of which may result in the need to formulate and serve follow up discovery requests.

Respectfully submitted,

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## Attachment to Florida's Progress Report

### List of Non-Party Subpoenas (As of April 3, 2015)

Entity	Propounding Party	Date Served on Opposing Party
Atlanta-Fulton Water Resources Commission	Florida	1.23.2015
Bartow County, GA	Florida	1.23.2015
Cherokee County, GA	Florida	1.23.2015
Clayton County, GA	Florida	1.23.2015
Dawson County, GA	Florida	1.23.2015
Douglas County, GA	Florida	1.23.2015
Fayette County, GA	Florida	1.23.2015
Forsyth County, GA	Florida	1.23.2015
Henry County, GA	Florida	1.23.2015
Lumpkin County, GA	Florida	1.23.2015
Paulding County, GA	Florida	1.23.2015
Rockdale County, GA	Florida	1.23.2015
Walton County, GA.	Florida	1.23.2015
White County, GA	Florida	1.23.2015
City of Albany Water, Gas & Light Commission	Florida	1.23.2015
City of Americus, GA	Florida	1.23.2015
City of Buford, GA	Florida	1.23.2015
City of Cumming, GA	Florida	1.23.2015
City of Gainesville, GA	Florida	1.23.2015
City of La Grange, GA	Florida	1.23.2015
City of Newnan, GA	Florida	1.23.2015
DeKalb County Department of Watershed Management	Florida	2.2.2015

Entity	Propounding Party	Date Served on Opposing Party
City of Cordele, GA	Florida	2.2.2015
Gwinnett County Department of Water Resources	Florida	2.2.2015
Gwinnet County Department of Water and Sewerage	Florida	2.2.2015
Georgia River Network, Inc.	Florida	2.2.2015
Columbus Water Works	Florida	2.2.2015
Flint River Partnership	Florida	2.2.2015
City of Bainbridge, GA	Florida	2.2.2015
Cobb County-Marietta Water Authority	Florida	2.2.2015
City of Atlanta Department of Watershed Management	Florida	2.2.2015
Habersham County, GA	Florida	2.2.2015
ACF Stakeholders, Inc.	Florida	2.2.2015
Chattahoochee Riverkeeper, Inc.	Florida	2.2.2015
Jackson County, FL	Georgia	2.3.2015
Calhoun County, FL	Georgia	2.3.2015
Franklin County, FL	Georgia	2.3.2015
Gulf County, FL	Georgia	2.3.2015
Gadsden County, FL	Georgia	2.3.2015
Liberty County, FL	Georgia	2.3.2015
City of Apalachicola, FL	Georgia	2.3.2015
City of Carrabelle, FL	Georgia	2.3.2015
Florida Sea Grant	Georgia	2.3.2015
Franklin County Seafood Workers Association	Georgia	2.3.2015
Bay County, FL	Georgia	2.12.2015

Entity	Propounding Party	Date Served on Opposing Party
Washington County, FL	Georgia	2.12.2015
Apalachicola Bay Chamber of Commerce	Georgia	2.12.2015
Apalachicola Bay Oyster Dealers Association, Inc.	Georgia	2.12.2015
Apalachicola Bay and River Keeper, Inc.	Georgia	2.12.2015
University of Florida	Georgia	2.18.2015
Florida State University	Georgia	2.18.2015
University of Georgia	Florida	3.2.2015
Robert W. Woodruff Foundation, Inc.	Florida	3.2.2015
Joseph W. Jones Ecological Research Center at Ichauway	Florida	3.2.2015
The Stripling Irrigation Research Park	Florida	3.2.2015
Cherokee County Water and Sewer Authority	Florida	3.10.2015
White County Water Authority	Florida	3.10.2015
City of Cleveland, GA	Florida	3.10.2015
City of Helen, GA	Florida	3.10.2015
City of Marianna, FL	Georgia	3.10.2015
City of Port St. Joe, FL	Georgia	3.10.2015
City of Blountstown, FL	Georgia	3.10.2015
Town of Altha, FL	Georgia	3.10.2015
Town of Alford, FL	Georgia	3.10.2015
City of Cottdale, FL	Georgia	3.10.2015
Town of Greenwood, FL	Georgia	3.10.2015
City of Jacob City, FL	Georgia	3.10.2015
Town of Malone, FL	Georgia	3.10.2015
Town of Sneads, FL	Georgia	3.10.2015

Entity	Propounding Party	Date Served on Opposing Party
City of Bristol, FL	Georgia	3.10.2015
Alligator Point Water Resources District	Georgia	3.10.2015
Eastpoint Water and Sewer District	Georgia	3.10.2015
Water Management Services, Inc.	Georgia	3.10.2015
Lighthouse Utilities Company	Georgia	3.10.2015
St. James Island Utility Company	Georgia	3.10.2015
City of Wewahitchka, FL	Georgia	3.10.2015
City of Chattahoochee, FL	Georgia	3.10.2015
Georgia Water Resources Institute	Florida	3.11.2015
Georgia Institute of Technology	Florida	3.11.2015
Flint Riverkeeper, Inc	Florida	3.11.2015
The Georgia Conservancy, Inc.	Florida	3.11.2015
Douglasville-Douglas County Water & Sewer Authority	Florida	3.11.2015
Carroll County Water Authority	Florida	3.11.2015
Haralson County Water Authority	Florida	3.11.2015
Coweta County Water & Sewerage Authority	Florida	3.11.2015
Etowah Water & Sewer Authority	Florida	3.11.2015
The Nature Conservancy	Florida	3.11.2015
Flint River Soil and Water Conservation District	Florida	3.11.2015
Peachtree City Water and Sewerage Authority	Florida	3.11.2015
Spalding County Water Authority	Florida	3.11.2015
City of Fayetteville Water and Sewer Department	Florida	3.11.2015
City of Thomaston, GA	Florida	3.11.2015
City of Griffin, GA	Florida	3.11.2015

Entity	Propounding Party	Date Served on Opposing Party
Clayton County Water Authority	Florida	3.11.2015
City of Woodstock Water & Sewer Utility	Florida	3.11.2015
Loganville, Georgia Department of Utilities	Florida	3.11.2015
City of Powder Springs, GA	Florida	3.11.2015
City of Demorest, Georgia Water Works Department	Florida	3.11.2015
Roswell, Georgia Water Utility	Florida	3.11.2015
City of Canton, GA	Florida	3.11.2015
City of Villa Rica, GA	Florida	3.11.2015
Harris County Water Works	Florida	3.11.2015
City of College Park, GA	Florida	3.11.2015
City of Monroe, GA	Florida	3.11.2015
City of Lawrenceville, GA	Florida	3.11.2015
City of East Point, GA	Florida	3.11.2015
Newnan Utilities	Florida	3.11.2015
City of Smyrna, GA	Florida	3.11.2015
Marietta Power and Water	Florida	3.11.2015
Rockdale County Water and Sewage Authority	Florida	3.11.2015
Paulding County Water Systems	Florida	3.11.2015
Fulton County, Georgia Department of Water Resources	Florida	3.11.2015
Cobb County Water System	Florida	3.11.2015
Hall County, Georgia Public Works	Florida	3.11.2015
City of Oakwood, GA	Florida	3.11.2015
Georgia Soil & Water Conservation Commission	Florida	3.11.2015
Coca-Cola Enterprises, Inc.	Florida	3.13.2015

Entity	Propounding Party	Date Served on Opposing Party
Lowe Engineers, LLC	Florida	3.13.2015
Tim Lowe	Florida	3.13.2015
The Boston Consulting Group	Florida	3.13.2015
University of North Carolina, Environmental Finance Center	Florida	3.13.2015
John F. Brock	Florida	3.13.2015
University of North Carolina, Environmental Finance Center	Florida	3.13.2015