

**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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**STATUS REPORT OF THE STATE OF GEORGIA  
APRIL 3, 2015**

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

**I. GENERAL STATUS**

On April 3, 2015, Georgia filed its Reply in Support of its Motion to Dismiss Florida's Complaint for Failure to Join a Required Party, completing the briefing on that motion.

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

Now nearly halfway through the written discovery period provided by the Case Management Plan and Orders, and almost 90 days into the 120-day discovery period permitted for the first sets of written discovery propounded on each party, Georgia continues to engage actively in all aspects of the discovery process, including propounding and responding to written discovery and collecting, reviewing, and producing documents. However—and as described below in Section V—given the broad scope of Florida’s discovery requests and the complex nature of this litigation, Georgia does not believe it can realistically complete document production to Florida within 120 days, despite its consistent and diligent efforts to meet this deadline. Georgia has conferred with Florida and understands that Florida is in a similar position. Similarly, and as described more below, the United States has stated that it does not believe it can complete document production for the States’ joint *Touhy* requests and subpoenas within 120 days.

## **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:

- Issuing joint *Touhy* requests and subpoenas to 7 federal agencies or entities, including the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. Geological Survey, the National Oceanic and Atmospheric Administration, the U.S. Department of Agriculture’s Natural Resources Conservation Service, the U.S. Department of Agriculture’s National Agricultural Statistics Service, and the U.S. Department of Commerce;
- Jointly calling each federal agency to which a *Touhy* request and subpoena was served to preview the requests and to lay groundwork for future meet-and-confer discussions with the United States;
- Conducting joint, follow-up meet-and-confer calls with federal agencies to clarify and narrow the scope of *Touhy* requests and subpoenas and to outline a schedule for production;

- Jointly submitting a proposed confidentiality order to the Special Master.

**B. The Parties Have Negotiated Search Terms for Email Custodians.**

To focus and limit the universe of potentially relevant documents, Georgia and Florida have successfully negotiated search terms to apply to emails collected from email custodians. These search terms are being applied to emails to narrow the universe of potentially responsive documents, and the review of that narrowed—but still quite voluminous—set is underway.

**C. Georgia Has Responded to Florida’s Written Discovery and Has Propounded Additional Written Requests.**

On March 6, 2015, Georgia served its Second Set of Interrogatories and Second Set of Requests for Production on Florida. On March 13, 2015, Georgia served its Third Set of Requests for Production on Florida. That same day, Florida served its Second Set of Interrogatories and Second Set of Requests for Production on Georgia. On April 2, 2015, Georgia served objections to Florida’s Second Set of Requests for Production. Georgia will serve objections to Florida’s Second Set of Interrogatories by April 13, 2015.

**D. Georgia Has Served Additional Written Discovery on Third Parties.**

On March 10, 2015, Georgia issued third-party subpoenas to 18 water users in the Florida portion of the ACF Basin:

- City of Marianna, Florida;
- City of Port St. Joe, Florida;
- City of Blountstown, Florida;
- Town of Altha, Florida;
- Town of Alford, Florida;
- City of Cottondale, Florida;
- Town of Greenwood, Florida;

- City of Jacob City, Florida;
- Town of Malone, Florida;
- Town of Sneads, Florida;
- City of Bristol, Florida;
- Alligator Point Water Resources District;
- Eastpoint Water and Sewer District;
- Water Management Services, Inc.;
- Lighthouse Utilities Company;
- St. James Island Utility Company;
- City of Wewahitchka, Florida;
- City of Chattahoochee, Florida.

Georgia continues to meet and confer with third parties about the scope of the subpoenas it has issued in an effort to obtain responsive documents without imposing an unnecessary burden on those entities.

Additionally, as mentioned above, Georgia and Florida finalized and served 7 joint *Touhy* requests and subpoenas on 5 federal agencies. The following federal agencies and entities were served with joint *Touhy* requests and subpoenas on March 12-13, 2015:

- U.S. Army Corps of Engineers;
- The U.S. Fish and Wildlife Service;
- The U.S. Geological Survey;
- The U.S. Department of Commerce and the National Oceanic and Atmospheric Administration;
- The U.S. Department of Agriculture's National Agricultural Statistics Service and Natural Resources Conservation Service.

As noted in Part A, counsel from Georgia and Florida have conducted multiple, joint meet-and-confer telephone conferences with federal agencies and with the United States regarding the scope of *Touhy* requests and subpoenas. Although the States have endeavored to narrow the requests to facilitate production, the United States has indicated in correspondence with the Special Master that it will not be able to complete document production within 120 days of service of the joint requests.

**E. Georgia Has Identified Email Custodians and Continues to Interview Other Potential Custodians and to Collect Documents.**

Since the last status conference, the parties agreed on lists of custodians whose email correspondence will be collected and produced, if responsive. The parties also agreed to search terms that will apply to these custodians' emails as part of the document review process.

Given the broad scope of Florida's initial document requests, as well as the service of new requests for production, Georgia continues to interview and collect documents from potential custodians from several state agencies. Since submitting its last status report, counsel for Georgia have made multiple trips to conduct in-person interviews of potential custodians, and/or collect documents from almost 30 additional potential custodians, for a total of almost 80 in-person interviews. To date, Georgia has collected hundreds of boxes of paper documents and multiple terabytes of electronic documents. Thus far, Georgia has collected over a million electronic files and paper documents for review.

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

As of April 3, 2015, Georgia has produced 208,007 pages of documents.

- 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.

- On March 27, 2015, Georgia served its fourth production of documents, which included an agricultural water metering database. Georgia also provided summaries of two other drinking water databases for Florida's review in order to facilitate later targeted production.
- On April 2, 2015, Georgia served its fifth production of documents in response to Florida's Second Requests for Production. The production included 8 documents for a total of 471 pages.
- On April 3, 2015, Georgia served its sixth production of documents. The production included 9 native models and 22,384 documents for a total of 166,017 pages.

In addition, Georgia's large-scale document review continues and has intensified. To that end, Georgia recently hired fifteen additional contract attorneys, for a total of almost 40 attorneys dedicated solely to document review. Georgia will continue to review the documents it has collected from its own custodians, as well as those produced by Florida and by third parties. Georgia will continue to produce additional documents, data, and models on a rolling basis.

### **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;
- Supplementing Georgia's Responses to Florida's First Set of Interrogatories as Georgia learns more information about documents and data through additional custodial interviews;
- Supplementing Georgia's Responses and Objections to Florida's First Set of Requests for Production as Georgia learns additional information through the document collection process;
- Serving objections to Florida's Second Set of Interrogatories by April 13, 2015;
- Responding to Florida's Second Set of Interrogatories by April 27, 2015;
- Serving additional Interrogatories on Florida.

### **IV. EFFORTS TOWARDS RESOLUTION**

Since the last status conference, the Governors of Georgia and Florida (and their respective staffs) have spoken and intend to meet to discuss the States' ongoing water issues. As

mentioned above in Section I, the parties have submitted for the Special Master's consideration a confidentiality order that will facilitate negotiations between the States.

## **V. UNRESOLVED DISPUTES AND OTHER CONCERNS**

### **A. Timeline**

Almost 90 days into the written discovery period, Georgia has made a significant effort to collect and review documents responsive to Florida's requests. Despite the diligent and continuous efforts of dozens of attorneys, it is unlikely that Georgia can complete document production to Florida on a 120-day timeline. Georgia has collected over a million electronic files and paper documents for review. In addition, Georgia needs to review the tens of thousands of documents Florida and third parties have already produced, plus the tens of thousands more that are expected to be produced in coming months. After conferring with Florida, Georgia understands that Florida faces many of the same challenges.

In addition, the United States has stated that for *Touhy* requests and subpoenas issued to federal agencies "it appears that it simply will not be possible to complete the necessary review and production in 120 days." *See* March 23, 2015 Ltr. from M. Gray to Special Master. In a recent meet-and-confer teleconference between the United States, the Army Corps of Engineers, Georgia, and Florida, the Army Corps of Engineers stated that it may not be able to produce documents for 6 months in response to the States' joint requests due to the agency's ongoing work on the Water Control Manual. Given the central role of federal agencies in this case—and in particular, the Army Corps of Engineers' role in evaluating and regulating the water supply in the ACF basin—it is impractical to proceed with discovery on the current timeline. The inability of federal agencies to produce what may be some of the most relevant data in this case until months after written discovery is currently scheduled to end creates significant practical problems for the parties to advance discovery.

Given the complex nature of this litigation, the import of the issues in this case, the United States' inability to produce important data and documents on a 120-day timeline, and the multiple sets of comprehensive discovery each party has already served on the other, Georgia respectfully requests that the Special Master extend the period for written discovery, which is currently scheduled to end on July 13, 2015, by 120 days. Georgia also notes that, given the volume of document review and analysis that must be completed before depositions commence, as well as the parties' desire to conduct depositions efficiently and effectively, the parties will likely need to revisit at a later date the start date and time allotted for depositions.

**B. Production of Models and Databases**

The collection and production of native databases and models continues to be a challenge for both parties. Georgia and Florida have held several meet-and-confer calls to work to resolve technical impediments to the production and review of models. Although the parties have been working together to resolve these issues, technical challenges remain and have slowed down the process of producing and reviewing models. Georgia has been able to produce its native models to Florida in readable formats but that production process is technically challenging and takes more time and resources than the production of ordinary electronic documents. Georgia will continue to offer Florida technical support with this aspect of its production.

Dated: April 3, 2015

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**CERTIFICATE OF SERVICE**

This is to certify that the APRIL 3, 2015 STATUS REPORT OF THE STATE OF GEORGIA has been served on this 3rd day of April 2015, in the manner specified below:

<p><b><u>For State of Florida</u></b></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  <a href="mailto:allen.winsor@myfloridalegal.com">allen.winsor@myfloridalegal.com</a></p>	<p><b><u>For United States of America</u></b></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  <a href="mailto:supremectbriefs@usdoj.gov">supremectbriefs@usdoj.gov</a></p>
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