

**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
OCTOBER 2, 2015**

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

I. GENERAL STATUS

Georgia is on track to complete its production of documents and data consistent with the deadlines set by the Case Management Plan. Georgia also continues to review the documents and data produced by Florida and third parties in preparation for upcoming depositions. Georgia and Florida have met and conferred concerning various issues associated with Florida's production and anticipate further meet-and-confer sessions as review of Florida's materials continues and questions about Florida's production need to be addressed. Georgia hopes that the parties can resolve any issues between themselves and will promptly notify the Special Master if

it appears that parties cannot reach a resolution. Further details about Georgia's discovery efforts to date are set forth below in Section II.

II. STATUS OF GEORGIA'S DISCOVERY EFFORTS

A. Written Discovery Between Parties.

Georgia and Florida each served a third set of interrogatories to each other on September 25, 2015. Parties also served their first sets of requests for admission to each other on September 25, 2015. Georgia contemplates further supplementation of its responses to Florida's interrogatories as discovery continues.

B. Georgia Has Met and Conferred with Florida on Discovery Issues.

The States continue to meet and confer regularly and have been discussing a number of discovery issues including:

- Processing and producing Georgia's native databases and models;
- Conferring about *Touhy* requests and subpoenas served on federal agencies;
- Scheduling third-party and 30(b)(6) depositions, pursuant to Sections 6.2 and Appendix C of the Case Management Plan.

C. Georgia Has Met and Conferred with Other Third Parties Regarding Collection and Production of Documents.

Georgia continues to meet and confer with third parties other than the United States in an effort to obtain responsive documents without imposing unnecessary burdens, and to schedule third-party depositions as needed. To date, Georgia has produced nearly 1.7 million pages of documents it received from 33 nonparties in response to its subpoenas. A chart of the nonparty documents Georgia has received and produced is attached as Exhibit A.

D. Georgia Has Produced and Will Continue to Produce Documents and Data to Florida.

Georgia continues to produce voluminous documents and data. Georgia has made two large rolling productions this month. On September 9, 2015, Georgia served its seventeenth production of documents responsive to Florida's First and Second Requests for Production. And on October 1, 2015, Georgia served its eighteenth production of documents responsive to Florida's First and Second Requests for Production. These two productions together included hard copy documents, emails, and other electronically stored information that amounted to more than 300,000 pages. To date, Georgia has produced approximately 2.1 million pages of documents—in addition to nearly 1.7 million pages of documents received in response to third-party subpoenas—and 26 native models (approximately 240 GB of modeling files). Georgia has also produced a total of six native databases or database reports pertaining to Permits, Safe Dams, Agricultural Metering, Monthly Operating Reports, Agricultural Permitting, and Geological Appraisal. Georgia will continue to produce additional documents, data, and models on a rolling basis as discovery progresses.

Georgia continues to dedicate substantial resources to the full-time review of documents it has collected from its own custodians, as well as documents produced by Florida, by third parties, and by the United States. Approximately forty full-time attorneys are dedicated to document review for Georgia.

E. Georgia Continues to Review and Analyze Documents and Data Produced by the United States.

The States have conferred with all federal agencies that received *Touhy* requests and subpoenas. All agencies have now produced at least some documents and data. For example:

- On May 13, 2015, the U.S. Army Corps of Engineers produced 7 native models to the States, including models pertaining to the operation of Woodruff Dam.

- On May 29, 2015, the U.S. Fish and Wildlife Service produced almost 250,000 files to the States, including electronically stored information and models.
- On May 29, 2015, the U.S. Geological Survey produced almost 30,000 files to the States, including electronically stored information and models.
- On June 25, 2015, the U.S. Department of Agriculture – National Resources Conservation Service produced two native spreadsheets of aggregate data in response to the States’ joint request.
- On July 1, 2015, the U.S. Department of Agriculture – National Agricultural Statistics Service produced five spreadsheets of aggregate data pertaining to past Censuses of Agriculture.
- On July 9, 2015, the U.S. Geological Survey produced 75 files to the States in response to the States’ joint request.
- On July 10, 2015, the U.S. Army Corps of Engineers produced 195 files to the States, including electronically stored information.
- On July 10, 2015, the U.S. Department of Commerce produced 2,789 files, including electronically stored information.
- On July 31, 2015, the U.S. Department of Agriculture – National Agricultural Statistics Service produced native spreadsheets of data in response to the States’ joint request.
- On August 5, 2015, the U.S. Fish and Wildlife Service produced 965 files responsive to the states’ joint request.
- On August 21, 2015, the U.S. Army Corps of Engineers produced 136 email files responsive to the states’ joint request.
- On August 13, 2015, the U.S. Department of Agriculture – National Resources Conservation Service produced 69 files in response to the States’ joint request.
- On August 24, 2015, the U.S. Department of Commerce – National Oceanic and Atmospheric Association (NOAA) produced 1,744 files responsive to the States’ joint request.
- On September 30, 2015, the U.S. Army Corps of Engineers produced a DVD of modeling files and electronically stored information related to the HEC-ResSim model and report used by the Corps for its draft Water Control Manual (“WCM”) released the same day.

It is Georgia's understanding that most federal agencies have substantially completed their productions. The States will continue to work together to process and review those productions. Georgia is also in the process of reviewing the materials received yesterday from the U.S. Army Corps of Engineers relating to its release of the draft WCM and Environmental Impact Statement ("EIS"). While the Corps has maintained that this represents its final production under the States' joint requests, Georgia anticipates that there likely will be additional materials in the Corps' possession relating to the WCM and EIS to be produced in response to these joint requests.

F. Deposition Discovery Between Parties.

Georgia and Florida continue to discuss the number, timing, and coordination of depositions of both State personnel and various third parties. Florida has served 27 notices or subpoenas: 4 on August 26, 6 on August 28, 5 on September 14, 8 on September 18, and 4 on September 21. In addition, Florida has identified 7 federal agency witnesses and at least 8 to 10 additional witnesses that it plans to subpoena, bringing its total to at least 44 deponents. Florida has indicated that it intends to take a minimum of 45 depositions in this case, some for multiple days, and that it does not believe any deposition limits should apply.

Georgia has served 16 notices or subpoenas: 13 on September 15, including a 30(b)(6) subpoena on Florida, and 3 on September 24. Georgia believes that deposition limits are important to complete discovery in a focused and efficient manner within the deadlines set by the CMP and has asked the Special Master to impose a limit of 20 depositions on each party. The Special Master heard argument on this issue from both States on September 29 and has taken the issue under advisement.

III. ANTICIPATED DISCOVERY

Georgia anticipates conducting the following discovery in the next month:

- Ongoing discussions with Florida concerning various issues with Florida's document production, including the production of non-email ESI, models and databases, and files for key Florida custodians (discussed in more detail below).
- Producing to Florida additional documents and data;
- Producing to Florida additional third-party documents produced to Georgia in response to its subpoenas;
- Initiating joint discussions with federal agencies to finalize their productions of documents and data;
- Conferring with Florida to coordinate the processing of documents and models produced in response to the States' joint *Touhy* requests and subpoenas;
- Issuing deposition notices to Florida and deposition subpoenas to third parties;
- Conferring with Florida about a deposition schedule and the identification of deponents to conduct deposition discovery in an orderly and efficient manner;
- Conferring with third parties about scheduling depositions;
- Taking and defending depositions.

IV. UNRESOLVED DISPUTES AND OTHER CONCERNS

A. Document and Data Production Concerns

As Georgia mentioned in its last status report, it will continue to review in further detail the document productions made by Florida, federal agencies, and other third parties, and will continue to conduct follow-up discussions to ensure that responsive materials are being produced. To date, based on Georgia's review, it appears that Florida's document production consists only of emails and email attachments, and that non-email electronically stored information and hard-copy documents have not yet been produced. Florida has proposed deposition dates in mid-October for individuals whose documents have not yet been produced; these depositions cannot move forward until the witnesses' documents have been produced to Georgia and Georgia has had an opportunity to review them.

Florida made a production on October 1, 2015; Georgia will again confer with Florida if that production does not address Georgia's concerns. With discovery deadlines approaching, and given the imperative of having these materials for upcoming depositions and expert reports, Georgia may need to bring these issues to the Special Master for resolution. It remains Georgia's hope that document issues can be resolved through continued meet-and-confer sessions.

B. Dispute Regarding Deposition Limits

The parties initiated discussions concerning deposition issues, including potential scope and timing, in August, 2015. On September 2 and September 23, 2015, the States conducted meet and confer telephone conversations on the scope and timing of depositions. However, after multiple conversations, the States have been unable to reach an agreement on a deposition limit. Georgia also raised the issue of deposition limits with Florida by email on September 11 and September 15, 2015. Unable to reach agreement, on September 23, the parties submitted seventy-five word summaries of their respective positions pursuant to Section 5.2.8 of Case Management Plan. As indicated above, the parties held a telephone conference with the Special Master on September 29, 2015 and await resolution of this issue.

C. Further Supplementation of Written Discovery Regarding Florida's Harms Requested.

As previously mentioned, Georgia expects that supplementation of written discovery responses is still required. Georgia has asked on numerous occasions that Florida clarify the scope and extent of its alleged harm by specifically identifying all species or industries that it believes have been harmed by Georgia's conduct so that Georgia can focus its discovery, depositions, and expert analysis on Florida's actual alleged harms. On October 2, 2015, Florida provided a revised interrogatory response. Although Florida provided this just a few hours

before this submission, Georgia's initial review indicates that Florida has not adequately addressed Georgia's concern. Georgia will review more carefully in advance of the upcoming Status Conference and will raise any continuing concerns with Florida or the Special Master as needed.

Dated: October 2, 2015

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EXHIBIT A

**DOCUMENTS RECEIVED FROM THIRD PARTIES IN RESPONSE TO GEORGIA'S
SUBPOENAS AND PRODUCED TO FLORIDA**

Third Party	Bates Range	Date Produced
Alligator Point Water Resources District	APWRD_00001 to APWRD_01177	July 1, 2015
Apalachicola Bay Oyster Dealers Association	ABODA_0001 to ABODA_0081	Apr. 30, 2015
Apalachicola Chamber of Commerce	ACOC_0001 to ACOC_0195	Apr. 30, 2015
Apalachicola Riverkeeper	AR_0001 to AR_0036	Apr. 30, 2015
	AR_0000037 to AR_0116946	July 27, 2015
	AR_0116947 to AR_0221940	Sept. 28, 2015
Bay County	BAY_CO.(FL)_00001 to BAY_CO.(FL)_00009	July 1, 2015
Calhoun County	CALHOUN_CO_0001 to CALHOUN_CO_0049	Apr. 30, 2015
City of Apalachicola	City_of_Apalachicola(FL)_0001 to City_of_Apalachicola(FL)_0617	Apr. 30, 2015
City of Blountstown	BLOUNTSTOWN(FL)_00001 to BLOUNTSTOWN(FL)_01557	May 29, 2015
City of Bristol	City_of_Bristol(FL)_0000001 to City_of_Bristol(FL)_0000998	July 27, 2015
City of Carrabelle	City_of_Carrabelle(FL)_0001 to City_of_Carrabelle(FL)_0020	Apr. 30, 2015
	City_of_Carrabelle(FL)_0021 to City_of_Carrabelle(FL)_1595	July 1, 2015
City of Chattahoochee	City_of_Chattahoochee(FL)_00001 to City_of_Chattahoochee(FL)_00136	May 29, 2015
City of Cottondale	COTTONDALE(FL)_00001 to COTTONDALE(FL)_00227	May 29, 2015
City of Marianna	City_of_Marianna(FL)_00001 to City_of_Marianna(FL)_00217	July 1, 2015
City of Port St. Joe	Port_St_Joe_0000001 to Port_St_Joe_0000486	July 27, 2015
City of Wewahitchka	Wewahitchka(FL)_0000001 to Wewahitchka(FL)_0003099	July 27, 2015
Florida State University	FL_State_Univ_00001 to FL_State_Univ_00050	May 29, 2015
	FL_State_Univ_00051 to FL_State_Univ_01377	Sept. 28, 2015
Florida Sea Grant	FL_SEA-GRANT_00001 to FL_SEA-GRANT_37355	Apr. 30, 2015
	FL_SEA-GRANT_37356 to FL_SEA-GRANT_56648	May 29, 2015
	FL_SEA-GRANT_56649 to FL_SEA-GRANT_56762	Sept. 28, 2015
Franklin County	FRANKLIN_CO_0001 to FRANKLIN_CO_5512	Apr. 30, 2015
Franklin Co. Seafood Workers Association	FCSWA_00001 to FCSWA_00005	May 29, 2015
	FCSWA_00006 to FCSWA_00017	July 1, 2015

Third Party	Bates Range	Date Produced
Gadsden County	Gadsden_Co_0001 to Gadsden_Co_0015	Apr. 30, 2015
Jackson County	JACKSON_CO_0001 to JACKSON_CO_0062	Apr. 30, 2015
Jacob City	JACOB_CITY(FL)_00001 to JACOB_CITY(FL)_00309	July 1, 2015
Liberty County	Liberty_Co_0001 to Liberty_Co_0804	Apr. 30, 2015
Lighthouse Utility Co.	Lighthouse_Util_Co.(FL)_00001 to Lighthouse_Util_Co.(FL)_00581	July 1, 2015
Town of Alford	Town_of_Alford(FL)_00001 to Town_of_Alford(FL)_00480	May 29, 2015
Town of Altha	TOWN_OF_ALTHA(FL)_00001 to TOWN_OF_ALTHA(FL)_00163	July 1, 2015
Town of Greenwood	Town_of_Greenwood(FL)_0000001 to Town_of_Greenwood(FL)_0000019	July 27, 2015
Town of Malone	Town_of_Malone(FL)_00001 to Town_of_Malone(FL)_00181	May 29, 2015
	Town_of_Malone(FL)_00182 to Town_of_Malone(FL)_00284	July 27, 2015
Town of Sneads	SNEADS_0001 to SNEADS_0802	Apr. 30, 2015
St. James Island Utility Company Water Treatment Plant	SJIUC_0001 to SJIUC_0153	Apr. 30, 2015
University of Florida	UFL_0001 to UFL_0858	Apr 30, 2015
	UFL_00859 to UFL_01592	May 29, 2015
	UFL_00001593 to UFL_00846570	Sept. 22, 2015
	UFL_00846571 to UFL_01432034	Sept. 28, 2015
Washington County	Washington_Co.(FL)_00001 to Washington_Co.(FL)_00113	May 29, 2015
Water Management Services, Inc.	Water_Mgmt_Servs(FL)_0000001 to Water_Mgmt_Servs(FL)_0001071	July 27, 2015
	Water_Mgmt_Servs(FL)_0001072 to Water_Mgmt_Servs(FL)_0002133	Sept. 28, 2015

EXHIBIT B**GEORGIA'S PRODUCTIONS**

Production Number	Bates Range	Production Type	Date Produced
First	GA00000001 to GA00000008	7 Models (4.4 GB), 1 Database	Feb. 6, 2015
Second	GA00000009 to GA00013500	Electronically Stored Information	Feb. 10, 2015
Third	GA00013501 to GA00041516	Electronically Stored Information, 2 Databases	Mar. 6, 2015
Fourth	GA00041517	1 Database	Mar. 27, 2015
Fifth	GA00041518 to GA00041989	Electronically Stored Information	Apr. 2, 2015
Sixth	GA00041990 to GA00208007	9 Models (78 GB), Electronically Stored Information and Paper Records	Apr. 3, 2015
Seventh	GA00208008 to GA00208010	3 Models (4.3 GB)	Apr. 30, 2015
Eighth	GA00208011 to GA00338078	Electronically Stored Information and Paper Records	May 1, 2015
Ninth	GA00338079	1 Model (2.5 GB)	May 29, 2015
Tenth	GA00338080 to GA00596884	Electronically Stored Information and Paper Records	June 4, 2015
Eleventh	GA00596885 to GA00596886	1 Database & 1 Database Report	June 15, 2015
Twelfth	GA00596887 to GA00646491	Electronically Stored Information and Paper Records	June 22, 2015
Thirteenth	GA00646492 to GA00865658	Electronically Stored Information and Paper Records	July 7, 2015
Fourteenth	GA00865659 to GA00865664	6 Models (149 GB)	August 5, 2015
Fifteenth	GA00865665 to GA01382872	Electronically Stored Information and Paper Records	August 5, 2015
Sixteenth	GA01382873 to GA01827401	Electronically Stored Information and Paper Records	Aug. 26, 2015
Seventeenth	GA01827402 to GA02052890	Electronically Stored Information and Paper Records	Sept. 9, 2015
Eighteenth	GA02052891 to GA02126195	Electronically Stored Information and Paper Records	Oct. 1, 2015

CERTIFICATE OF SERVICE

This is to certify that the OCTOBER 2, 2015 STATUS REPORT OF THE STATE OF GEORGIA has been served on this 2nd day of October 2015, in the manner specified below:

<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>
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<p><u>For State of Georgia</u></p> <p><u>By Email Only</u></p> <p>Samuel S. Olens Nels Peterson Britt Grant Sarah H. Warren Seth P. Waxman Craig S. Primis K. Winn Allen georgiawaterteam@kirkland.com</p>	<p><i>/s/ Craig S. Primis</i></p> <hr/> <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>