

**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

**GEORGIA’S RESPONSE TO FLORIDA’S MEMORANDUM OF AUTHORITIES
REGARDING GEORGIA’S REQUEST TO DEPOSE THE COMMISSIONER OF
AGRICULTURE & CONSUMER SERVICES**

Defendant State of Georgia (“Georgia”) hereby submits the following response to Florida’s January 13, 2016 Memorandum of Authorities Regarding Georgia’s Request to Depose the Commissioner of Agriculture and Consumer Services.

Introduction

Georgia has made the showing necessary to take a brief, four-hour deposition of Adam Putnam, the Commissioner of the Florida Department of Agriculture and Consumer Services (“FDACS”), who has responsibility for regulating the Apalachicola Bay oyster fishery that Florida claims was injured by Georgia’s water consumption. Indeed, in the course of fulfilling those duties, Mr. Putnam authored a letter requesting that the Governor of Florida seek a federal-fisheries-disaster declaration with respect to the Apalachicola oyster fishery—a fact that Florida

emphasized in its complaint against Georgia. Critically, Mr. Putnam's letter attributes the collapse of the Apalachicola Bay oyster fishery to causes *other* than Georgia's upstream water consumption, and thus his letter directly undermines Florida's claims in this case. Georgia therefore has a strong basis for a limited deposition of Mr. Putnam, so that the Supreme Court can hear the reasons he believes that the causes of Florida's alleged injuries differ from those alleged by Florida in this lawsuit.

Sensitive to Mr. Putnam's position, Georgia first tried to obtain information regarding Mr. Putnam's letter from other Florida witnesses. But every Florida witness deposed to date has disavowed any relevant knowledge of Mr. Putnam's letter or the reasons for his conclusions regarding the sources of Florida's alleged harms. Indeed, just last week Georgia deposed Nick Wiley, Executive Director of Florida's Fish and Wildlife Conservation Commission, who—based on contemporaneous documents and Florida's responses to interrogatories—discussed these very issues with Mr. Putnam at the time Mr. Putnam sent his letter to Governor Scott. Mr. Wiley, however, could not remember anything about his meeting with Commissioner Putnam, and testified that neither he, nor his agency, were involved in drafting the letter, and further that he did not know who drafted it. *See* Wiley Rough Dep. Tr. at 128-30, 180-81, 330-31. In these circumstances, a brief, 4-hour deposition of Mr. Putnam is warranted, so that Georgia and this Court can hear from Mr. Putnam directly regarding his own thought processes and rationales.

I. Mr. Putnam May Be Deposed Because He Has Unique Personal Knowledge About Central Issues In This Lawsuit

Florida's brief recites a series of cases explaining that parties must make a heightened showing before deposing high-ranking government officials. *See* Fl. Br. at 2-3 (citing cases). While those cases differ in their description of the relevant standard, all agree on one fundamental point: a deposition of a government official *is appropriate* where the official has

unique information about an issue relevant to the case that is not available from other sources. That is precisely the case here. Mr. Putnam has unique information about his bases for attributing the harm in the Apalachicola fishery to causes other than Georgia's water use, and no other witness has or can testify to those facts or to Mr. Putnam's mental process.

A. Mr. Putnam Has Unique Knowledge About Florida's Alleged Harm

As Commissioner of FDACS, Mr. Putnam exercises chief supervisory and management responsibility for Florida's fisheries, and is involved in developing and implementing Florida's state water policy. Mr. Putnam also supervises the FDACS Division of Aquaculture, which develops and enforces regulations related to commercial aquaculture harvesting and processing.¹

In the course of performing those duties, Mr. Putnam has demonstrated unique knowledge of key issues at stake in this case. For example, Florida's complaint alleges that Georgia's upstream water consumption "precipitated a collapse of Florida's oyster fishery," Compl. ¶ 6, and "led Florida Governor Rick Scott to seek a declaration of a commercial fisheries' failure for the oyster industry," *id.* ¶ 56. Mr. Putnam authored a letter that formed the basis of Governor Scott's request for a commercial fisheries failure. In that letter, Mr. Putnam attributed the oyster fisheries' failure in Apalachicola Bay to multiple causes *other than* Georgia's upstream water consumption, including drought affecting many areas of the State (not just Apalachicola Bay), Florida's overharvesting of the sub-legal oysters necessary to sustain the population, and at least two tropical storm events. For example, his September 5, 2012 letter states that "oyster resources in the state, particularly those in Apalachicola Bay, have been significantly impacted by the prolonged drought that many areas of the state are facing." Putnam's Disaster Declaration Request Letter to Gov. Scott, hereinafter "Putnam Letter," pg. 1,

¹ See <http://www.freshfromflorida.com/Divisions-Offices/Aquaculture>.

Sept. 5, 2012. In addition, his letter attaches and expressly endorses an FDACS report that attributes the decline of oyster populations in Apalachicola Bay in part to “the excessive harvesting of sub-legal oysters,” as well as Florida’s official approval of “additional harvesting days” from 2010 through 2012, which “resulted in an intense harvesting effort which precluded any recovery time for the resource.” *Id.* at 1-2 (citing FDACS August 2012 Oyster Resource Assessment Report for Apalachicola Bay, hereinafter “FDACS Oyster Report,” pgs. 7-8). The letter also cites Tropical Storms Debby and Isaac as factors that “further impacted” an “already scarce resource.” Putnam Letter at 1. Further underscoring that the oyster situation in Florida was a broader issue not tied to Georgia’s water use, Mr. Putnam’s letter also reported that oyster harvesters in counties that ***do not border or rely on*** Apalachicola Bay had informed him of “high oyster mortality rates due to the drought,” *id.*—a phenomenon that could not possibly have been caused by Georgia, whose water use has no impact on those unconnected Florida counties.

Florida does not dispute that Mr. Putnam’s failure to identify Georgia’s upstream water use as a contributing factor to the oyster collapse—and his choice instead to attribute the collapse to other causes—is highly relevant to the claims at issue in this case. Instead, Florida argues that Mr. Putnam’s signature on the September 5, 2012 letter was “pro forma” and that Mr. Putnam lacks ***any*** personal information relating to the statements made in the letter. That is, to put it simply, hard to believe. Florida does not attach to its brief an affidavit or declaration from Mr. Putnam disclaiming all knowledge regarding the topics discussed in his September 5, 2012 letter. And document discovery strongly suggests that Mr. Putnam ***does*** have such knowledge: as just one example, emails produced by Florida show that Mr. Putnam discussed the draft of the disaster-declaration with Nick Wiley, Executive Director of Florida’s Fish and Wildlife Conservation Commission. *See* Aug. 29 E-mail from David Heil (FWC) to Luiz Barbieri (FWC)

(attached as Exhibit A) (“FYI - Nick [Wiley] and Commissioner Adam Putnam met about the oyster industry problems.”). Georgia asked Mr. Wiley about the letter and this in-person meeting during his January 14, 2016 deposition (taken after Florida submitted its brief), but Mr. Wiley was unable to provide any substantive testimony about these events or his interactions with Mr. Putnam on oyster issues in 2012. *See* Wiley Rough Dep. Tr. at 181 (“I don’t recall a specific meeting with him”); 330-31 (“Do you know do you know who drafted the letter that was signed by [C]ommissioner Putnam dated September 5th, 2012, to [G]overnor Scott?” “No. I do not.” “And FWC had no involvement in the drafting, to your knowledge, did they?” “That is correct. To my knowledge, no.”).²

In addition, Mr. Putnam has made numerous public statements regarding what he believes to have caused harm to the Apalachicola Bay fishery—and those statements tellingly focus on the role of the Army Corps of Engineers. As Your Honor will recall, Florida has repeatedly asserted in this case that its alleged injuries are caused solely by Georgia and that the Court can remedy Florida’s alleged harms without any involvement by the United States Army Corps of Engineers. *See, e.g.*, Oral Arg. Tr. at 27:2-13 (June 2, 2015); Fl.’s Br. in Opp. to Ga.’s Mot. to Dismiss for Failure to Join a Required Party at 13; Fl Compl. ¶ 15. Mr. Putnam, however, has taken a different view. In October 2012, Mr. Putnam said that it was “imperative that the Corps of Engineers release more water” because the Corps’ decisions on water release were “having an enormous impact on oyster populations.”³ Mr. Putnam has also warned that “if

² Please note that these citations are to the rough transcript of the deposition of Mr. Wiley. The final transcript was not yet available at the time of filing of this submission. If there are any material differences in the final version of the transcript, Georgia will advise the Court.

³ Peter Schorsch, *Perfect storm threatens oysters, and way of life, on North Florida Bay*, Saint Peters Blog (Oct. 27, 2012), available at <http://www.saintpetersblog.com/archives/75653>

the federal government does not guarantee the state of Florida adequate flows of water that we are entitled to, it will continue to devastate jobs, families, and communities.”⁴

Georgia and the Supreme Court are entitled to hear from Mr. Putnam about these topics, including his basis for attributing the alleged oyster collapse in Apalachicola Bay to factors other than Georgia’s water use and his belief that the Army Corps’ operations have an “enormous impact” on Apalachicola Bay. As an agency head “privy to the decision-making processes occurring at the managerial levels,” *United States v. Sensient Colors, Inc.*, 649 F. Supp. 2d 309, 324 (D.N.J. 2009), Mr. Putnam should testify about the bases for his statements that go to the heart of this inter-state dispute.

B. No Other Witness Can Testify Concerning Mr. Putnam’s Knowledge Of These Matters

No other witness can testify concerning Mr. Putnam’s knowledge of the important issues identified above. Georgia posed interrogatories to Florida seeking to identify what other individuals (if any) were involved in the drafting and decision-making regarding Florida’s request of an oyster fishery disaster in Apalachicola Bay. *See* Florida’s Response to Georgia’s Interrogatory Request No. 47, filed Nov. 9, 2015 (attached as Exhibit B). Florida responded by identifying almost 20 individuals from 7 different agencies who purportedly were involved. *See id.* At Florida’s urging in multiple meet-and-confer sessions over this issue, Georgia then proceeded to depose a number of those individuals to determine if they could provide the necessary information relating to Mr. Putnam’s letter. None of those witnesses was able to testify regarding Mr. Putnam’s letter or Mr. Putnam’s reasons for attributing the oyster fisheries collapse to factors other than Georgia’s upstream water use.

⁴ Lee Gordon, *Where Have All the Oysters Gone?* 850 Business Magazine (Dec. 2012), available at: <http://www.850businessmagazine.com/December-January-2012/Floridas-once-bustling-oyster-industry-is-drying-up/>

For example, Georgia deposed Kal Knickerbocker, the highest-ranking official from Florida's Department of Agriculture and Consumer Services that Florida identified as being involved with the request for a fishery-disaster declaration. *See* Florida's Response to Georgia Interrogatory No. 47. Mr. Knickerbocker testified, however, that he had nothing to do with Mr. Putnam's letter or the information contained in it. *See* Knickerbocker Dep. at 138:8-12 ("Did Commissioner Putnam ask you at any time to provide input to correspondence that he sent to the Governor about the oyster emergency in Apalachicola Bay?" "No."); *see also id.* at 244:10-13 ("[Y]ou were not consulted by Commissioner Putnam with respect to any of the information he has included in his letter?" "No.").⁵ Other witnesses deposed by Georgia likewise have been unable to testify regarding the drafting of Mr. Putnam's letter or the decision-making process surrounding it. These include: Brett Cyphers, Executive Director of the Northwest Florida Water Management Division; (NFWMD), Cyphers Dep. at 81:14-18 ("You weren't consulted by Commissioner Putnam or anybody to provide input for this letter?" "The district may have, but I don't believe I was."); Douglas Barr, former NFWMD director, Barr Dep. at 386:12-13 ("But this [letter], no, I don't recall seeing this."); Lee Edmiston, Reserve Manager at the Florida Department of Environmental Protection, Edmiston Dep. at 158:23-159:2 ("Did you have any input into the content of this [letter]?" "From Putnam to Scott, Rick Scott?...No, I did not."); and Jon Steverson, Secretary of Florida Department of Environmental Protection, Steverson Dep. at 37:2- 10 ("Did you have any input into...that letter to Governor Scott?" "No.").

⁵ Mr. Knickerbocker did state that FDACS employee Mark Berrigan at least partially authored the FDACS August 2012 Oyster Resource Assessment (a copy of which Mr. Putnam attached to his letter). *See* Knickerbocker Dep. at 39:3-9. But Mr. Knickerbocker did not suggest explicitly, or even imply, that Mr. Berrigan had any role in drafting Mr. Putnam's letter. Regardless, cognizant of the discovery deadline and armed with this new information, Georgia promptly filed a notice of deposition for Mr. Berrigan.

Then, in a January 8, 2016 meet and confer—*three months* after Georgia filed its notice of deposition for Mr. Putnam—Florida for the first time offered the names of three additional FDACS employees (Leslie Palmer, Mike Joyner, and Mark Berrigan) who it now claims are “all of the individuals involved in drafting both the letter and the study it references.” Fl. Br. at 7. Significantly, *none* of these individuals was listed in the interrogatory response that Florida served on November 9, 2015. And Florida did not identify any of these people in a meet and confer last year around the time that Mr. Putnam’s deposition was first noticed, where Florida unhelpfully instructed Georgia to figure out on its own who authored the Putnam letter. Florida’s failure to identify those individuals in a timely fashion has prejudiced Georgia’s ability to obtain the deposition discovery it needs, since Georgia could have noticed and taken those depositions months ago, if not for Florida’s undue delay in revealing those names.

More significantly, nothing in law or logic requires Georgia to depose each and every lower-level employee that potentially played some role in the drafting of a letter before deposing the individual who has been shown to have knowledge and information relevant to key issues in this case. Cases make clear that courts do not require parties to depose all “rank and file” employees before taking a deposition of a senior official. *See, e.g., Sensient Colors, Inc.*, 649 F. Supp. 2d at 324. And it would hardly serve interests of litigation efficiency and economy to force Georgia to take three separate depositions—in addition to depositions Georgia has already taken—in lieu of a single, 4-hour deposition of the state official who authored the document in question and made public statements about its content.

In addition, Ms. Palmer, Mr. Joyner, and Mr. Berrigan will not be able to testify regarding the critical questions sought to be inquired into by Georgia’s deposition notice. Georgia is seeking discovery on *Mr. Putnam’s* reasons and basis for attributing the oyster

fishery collapse in Apalachicola Bay to causes other than Georgia's water consumption, and for stating that the operations of the Army Corps of Engineers are continuing to injure Florida. Only Mr. Putnam can provide that testimony.

Finally, Florida's attempt to blame Georgia for a supposed delay in raising this issue is misplaced. *See* Fl. Br. at n. 1. Florida specifically requested that the dispute over Mr. Putnam's deposition be deferred until Georgia had taken the depositions of other individuals who might have information on these topics. Georgia complied with that request. When it became clear, however, that Florida's interrogatory response was deficient and that the witnesses identified by Florida could not provide the requested information, Georgia immediately re-raised the issue of taking Mr. Putnam's deposition. There has been no delay in pursuing this issue.

C. Case Law Supports Requiring Mr. Putnam's Deposition

For these reasons, Mr. Putnam has unique, personal knowledge of information that is important to the case and that is not available from other witnesses. In such circumstances, courts have ordered depositions of government officials. *See, e.g., Payne v. D.C.*, 279 F.R.D. 1, *7-8 (D.D.C. 2011) (permitting deposition of mayor because he had personal knowledge of the matter and others could not testify to the information); *United States v. Sensient Colors, Inc.*, 649 F. Supp. 2d 309, 323-24 (D.N.J. 2009) (permitting deposition of EPA Regional Administrator because she possessed ultimate decision-making authority, such that requiring the plaintiff to "investigate rank and file personnel" not involved in policy-level decision-making before deposing the Administrator was "an exercise in futility" and unnecessary); *Coleman v. Schwarzenegger*, Nos. C-S-90-0520, 2008 WL 4300437 (E.D. Cal. Sept. 15, 2008) (permitting deposition of Cabinet member because he was likely to have discoverable information about the program at issue); *Atlanta Journal & Constitution v. City of Atlanta Dep't of Aviation*, 175 F.R.D. 347, 348 (N.D. Ga. 1997) (permitting deposition of mayor where he was directly

involved with the challenged ordinance); *Am. Broad. Companies, Inc. v. U.S. Info. Agency*, 599 F. Supp. 765, 769-70 (D.D.C. 1984) (permitting deposition of head of federal agency to discover information related to documents he created).

The cases on which Florida relies, in contrast, all involve instances in which the government official in question ***did not*** have personal knowledge of the issues in dispute. *See, e.g., Hankins v. City of Philadelphia*, No. 95-1449, 1996 WL 524334, *2 (E.D. Pa. Sept. 12, 1996) (mayor could not be deposed where he had no personal knowledge about the job classification change in dispute); *In re U.S.*, 985 F.2d 510, 512 (11th Cir. 1993) (FDA Commissioner could not be deposed where he was appointed after the alleged selective prosecution took place); *Simplex Time Recorder Co. v. Secretary of Labor*, 766 F.2d 575, 586 (D.C. Circuit 1985) (Department of Labor officials could not be deposed because they “had no first-hand knowledge of the facts of this case”); *FDIC v. Galan-Alvarez*, No. 1:15-mc-00752 (D.D.C. Sept. 4, 2015) (top-ranking FDIC officials could not be deposed because they had no first-hand knowledge of the issues being litigated).

Unlike those cases, it can hardly be said that Mr. Putnam has no personal knowledge regarding the issues in his September 5, 2012 letter or the impact of the Army Corps’ operations on wildlife in Florida. Mr. Putnam has made numerous public statements regarding both issues, and his official duties plainly encompass those matters. This case is thus far afield from one in which a plaintiff seeks to depose a senior government official who has no connection to the dispute. Indeed, Georgia has attempted to accommodate the general presumption against deposing senior government officials by forgoing the deposition of Florida Governor Scott, even though Governor Scott has also issued letters and made public statements relevant to Florida’s allegations of harm. *See Gov. Scott Letter to Rebecca Blank, Acting Secretary of the United*

States Department of Commerce, Sept. 6, 2012 (citing Apalachicola Bay “harvesting pressures and practices” that “were altered to increase fishing effort” in 2010, which “led to overharvesting of illegal and sub-legal oysters[.]”).

This case is also distinguishable from those cited by Florida for a more fundamental reason: this is an equitable apportionment action between two states in which Florida is challenging Georgia’s overall water policies. Florida has cited no original-jurisdiction case in which the Supreme Court or a Special Master foreclosed a deposition of a clearly relevant State official—much less the deposition of a state official who authored a key document on which the plaintiff State relied for the allegations in its complaint. Simply put, this is “not a routine case.” *Coleman*, 2008 WL 4300437, at *5. Mr. Putnam is the official in charge of developing and implementing harvesting regulations in Apalachicola Bay, and actively participated in Florida’s pursuit of a federal fishery disaster declaration. Florida itself has placed those responsibilities and actions at issue by making them important pieces of its allegations in this case.

Permitting Mr. Putnam’s deposition in this case will not, as Florida claims in alarmist fashion, result in “a vast number of high-ranking federal and state officials ... be[ing] deposed in virtually any case where their public policy positions were arguably relevant.” Fl. Br. at 5. This is not a run-of-the-mill lawsuit. This is an exceedingly rare original action between two States in which Florida made the voluntary choice to sue Georgia. Inherent in such a case is the potential discovery of knowledge and information from state officials, particularly those whose actions underlie Florida’s allegations in its Complaint.

Moreover, the cases Florida cites underscore and strengthen Georgia’s position. *See* Fl. Brief at 3, citing *Coleman v. Schwarzenegger*, Nos. C-S-90-0520, 2008 WL 4300437 (E.D. Cal. Sept. 15, 2008). In *Coleman*, the court provided plaintiffs with the very outcome Georgia seeks:

permitting the deposition of a cabinet member to speak about knowledge only the cabinet member possessed. While the Plaintiff sought to depose the Governor and his Chief of Staff, the court concluded that the Cabinet-level official was more appropriate because that official was the “most likely person to have knowledge” that was “material to the case.” *Coleman*, 2008 WL 4300437 at *5. Similarly, in *Marisol v. Giuliani*, the deposition of New York’s mayor was denied because the mayor instructed one of his subordinates to act, and the subordinate therefore possessed the unique knowledge the plaintiff sought. *Marisol A. v. Giuliani*, No. 95 CIV. 10533 (RJW), 1998 WL 132810, at *4-5 (S.D.N.Y. Mar. 23, 1998). In this case, Commissioner Putnam requested that his superior, Governor Scott, request the fishery disaster declaration. Georgia has rightly chosen to seek the deposition of Commissioner Putnam, because he is the subordinate with personal involvement on the issue. In recognition that a lower-level official has this information, Georgia has not noticed Governor Scott for a deposition.

For these reasons, Georgia respectfully requests that this Court permit Mr. Putnam to be deposed and agrees to limit such deposition to four hours.

Dated: January 18, 2016

/s/ Craig S. Primis
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EXHIBIT A

From: Heil, David
Sent: Wednesday, August 29, 2012 2:26 PM
To: Barbieri, Luiz
Subject: FW: Draft Apalachicola Bay Oyster Resource Assessment
Attachments: Draft Apalachicola Bay Oyster Resource Assessment

FYI. Nick and Commissioner Adam Putnam met about the oyster industry problems. See attached. I have been working on gathering information regarding a possible Florida request to US Commerce requesting a declaration of a commercial fishery failure (Section 312(a) MSFMCA). Hence, my communications with Geiger and Brown. Let me know if you personally wish to assist and please suggest other contacts.

From: Brown, Steve
Sent: Wednesday, August 29, 2012 2:06 PM
To: Heil, David
Cc: Barbieri, Luiz
Subject: RE: Draft Apalachicola Bay Oyster Resource Assessment

I'll take a look.

From: Heil, David
Sent: Wednesday, August 29, 2012 2:04 PM
To: Brown, Steve
Cc: Barbieri, Luiz
Subject: FW: Draft Apalachicola Bay Oyster Resource Assessment

Steve,

Can you assist?

David

From: Heil, David
Sent: Wednesday, August 29, 2012 2:02 PM
To: Geiger, Steve
Subject: RE: Draft Apalachicola Bay Oyster Resource Assessment

I will. Thanks.

From: Geiger, Steve
Sent: Wednesday, August 29, 2012 2:01 PM
To: Heil, David
Subject: RE: Draft Apalachicola Bay Oyster Resource Assessment

We could certainly ask. I am not certain how they calculate landings for Apalachicola. I had always thought we recorded by county. I also imagine we have some spring data, but always worry about partial data without the proper reference frame. I know they could retrieve monthly data for specific locales, but typically don't due to privacy concerns.

Would you like me to touch base with Steve?

Steve

From: Heil, David
Sent: Wednesday, August 29, 2012 1:43 PM
To: Geiger, Steve
Subject: FW: Draft Apalachicola Bay Oyster Resource Assessment

Steve,

Do you think that Steve Brown should verify the oyster landings in Table 1 found on page 2 of the attached DACS report? And, add any preliminary data that is available for 2012?

David

From: Palmer, Leslie [<mailto:Leslie.Palmer@freshfromflorida.com>]
Sent: Friday, August 10, 2012 8:58 AM
To: McCawley, Jessica
Cc: Heil, David; Berrigan, Mark
Subject: Draft Apalachicola Bay Oyster Resource Assessment

Jessica –

Wanted to make sure you see a draft copy of annual AB oyster assessment report. Commissioner Putnam may call Nick Wiley about this so wanted to make sure you had a copy. We will be diving some of our new plants next week which should be in better shape but certainly not by much. This has not yet been released to Franklin County as it is still in draft form and we want to make sure you have a chance to review prior to release. Give me a call if you need more information or want to discuss further.

Leslie

Leslie Palmer
Director
Division of Aquaculture
Florida Department of Agriculture and Consumer Services
(850) 488-5471 Office
(850) 410-0893 Fax
(850) 251-1310 Mobile
Leslie.Palmer@FreshFromFlorida.com

Please note that Florida has a broad public records law (Chapter 119, Florida Statutes). Most written communications to or from state employees are public records obtainable by the public upon request. Emails sent to me at this email address may be considered public and will only be withheld from disclosure if deemed confidential pursuant to the laws of the State of Florida.

EXHIBIT B

**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

**RESPONSE TO GEORGIA’S THIRD SET OF
INTERROGATORIES TO FLORIDA**

Pursuant to Sections 3.1, 5.1, and 6.1.1 of the Case Management Plan¹ and Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff State of Florida (“Florida”), by and through its attorneys, hereby submits its Response to Defendant State of Georgia’s (“Georgia”) Third Set of Interrogatories to Florida.

¹ Case Management Plan, Dkt. 6 (Dec. 3, 2014) was adopted by the Special Master in Case Management Order (“CMO”) No. 1, Dkt. 5 (Dec. 3, 2014) and modified by CMO No. 2, Dkt. 12 (Dec. 19, 2014), CMO No. 3, Dkt. 23 (Jan. 30, 2015), CMO No. 4, Dkt. 40 (Feb. 10, 2015), CMO No. 5, Dkt. 52 (Feb. 23, 2015), CMO No. 6, Dkt. 57 (Mar. 3, 2015), CMO No. 7, Dkt. 99 (Apr. 8, 2015), CMO No. 8, Dkt. 101 (Apr. 13, 2015), CMO No. 9, Dkt. 106 (Apr. 23, 2015), CMO No. 10, Dkt. 119 (May 11, 2015), CMO No. 11, Dkt. 223 (October 6, 2015), CMO No. 12, Dkt. 258 (October 16, 2015), and CMO No. 13., Dkt. (November 2, 2015).

resources; science and education; biological interactions; soil and sediment balance; climate regulation; pollutant attenuation; gas regulation; ornamental resources; and hazard moderation.

The Apalachicola River provides the following ecosystem services: nutrient cycling and balancing; hydrological balancing; biological interactions; landscape diversification; materials and energy transport; migrational corridor; biological diversity; water quality improvement; human harvest; food for other species; habitat for epibenthic flora and fauna; habitat for mobile fish and invertebrates; raw materials.

Additionally, all of the species and features described above support the following cultural services: aesthetics and existence; spiritual; historical; science and education; and recreation.

INTERROGATORY NO. 47:

Identify all persons involved in the decision to request an oyster fishery disaster in the Apalachicola Bay and all persons involved in the drafting of such request.

RESPONSE TO INTERROGATORY NO. 47:

Subject to and without waiving its General and Specific Objections to this Interrogatory, Florida responds as follows:

To the best of Florida's knowledge, the following persons were involved in the decision to request the disaster declaration:

- Governor's Office: Andy Grayson, Rachel Cone
- Florida Fish and Wildlife Conservation Commission: Nick Wiley, Jim Estes

To the best of Florida's knowledge, the following persons were involved in the drafting of the request or the provision of information to support it:

- Governor's Office: Andy Grayson

- Florida Fish and Wildlife Conservation Commission: Nick Wiley, Jim Estes, Bud Vielhauer, David Heil, Luiz Barbieri, Jim Brown, Steve Geiger
- Florida Department of Agriculture and Consumer Services: Kal Knickerbocker, Paul Zajaicek; Chris Brooks
- Florida Department of Environmental Protection: Lee Edmiston
- Northwest Florida Water Management District: Graham Lewis
- Florida Department of Economic Opportunity: Gayle Hamilton, Michael Lynch
- U.S. Department of Commerce: Roy Crabtree, Steve Branstetter

INTERROGATORY NO. 48:

During the period of time on or before August 13, 2013, identify all persons involved in Florida’s decision to file this Original Action against Georgia.

RESPONSE TO INTERROGATORY NO. 48:

Subject to and without waiving its General and Specific Objections, Florida responds that Florida’s counsel consulted with a number of experts and other individuals about its decision to file this Original Action. Those consultations are privileged or attorney work product that is protected from discovery. Further, as Florida noted in its objections, this interrogatory does not appear calculated to lead to the discovery of admissible evidence, and to the extent that the interrogatory seeks “all” persons “involved in Florida’s decision” it is overly broad.

INTERROGATORY NO. 49:

Identify all facts and documents relating to the direction “not to use the terms ‘climate change,’ ‘global warming’ or ‘sustainability,’” or the direction to “beware of the words global

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CERTIFICATE OF SERVICE

This is to certify that GEORGIA'S RESPONSE TO FLORIDA'S MEMORANDUM OF AUTHORITIES REGARDING GEORGIA'S REQUEST TO DEPOSE THE COMMISSIONER OF AGRICULTURE & CONSUMER SERVICES has been served on this 18th day of January 2016, in the manner specified below:

<u>For State of Florida</u>	<u>For United States of America</u>
<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>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>

<p><u>By Email Only</u></p> <p>Donald G. Blankenau Jonathan A. Glogau Christopher M. Kise Matthew Z. Leopold Osvaldo Vazquez Thomas R. Wilmoth floridawaterteam@foley.com</p>	<p><u>By Email Only</u></p> <p>Michael T. Gray michael.gray2@usdoj.gov</p> <p>James DuBois james.dubois@usdoj.gov</p>
<p><u>For State of Georgia</u></p> <p><u>By Email Only</u></p> <p>Samuel S. Olens Nels Peterson Britt Grant Seth P. Waxman Craig S. Primis K. Winn Allen Sarah H. Warren georgiawaterteam@kirkland.com</p>	<p>/s/ Craig S. Primis</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>