

No. 142, Original

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

STATE OF FLORIDA,

Plaintiff,

v.

STATE OF GEORGIA,

Defendant.

**STATE OF GEORGIA'S CONSENT MOTION FOR EXTENSION OF EXPERT
DISCOVERY DEADLINES**

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INTRODUCTION

The State of Georgia hereby moves to extend the deadlines for (1) filing defensive expert reports; and (2) completing expert discovery. Under the existing Case Management Plan, those deadlines are April 14, 2016 and May 16, 2016, respectively. For the reasons given below, adhering to the existing deadlines would prejudice Georgia's ability to defend its case and prevent the full and fair development of the record that equitable-apportionment cases require. Georgia is mindful of the Special Master's admonition that this case proceed expeditiously and has taken steps to heed that guidance wherever possible. But Florida's filing of 20 expert reports requires that Georgia be afforded additional time to respond. Georgia otherwise would not be able to prepare complete and comprehensive responses to Florida's expert submissions. Georgia therefore proposes that the defensive-report deadline be extended from April 14, 2016 to May 20, 2016, and the expert-discovery deadline be extended from May 16, 2016 to July 29, 2016. Florida has stated that it agrees with extending these deadlines and with Georgia's proposed new dates. Florida has further indicated that while it agrees with the proposed amendments to the schedule, it plans to submit a response to Georgia's submission.

ARGUMENT

The full development of relevant factual and expert evidence is a crucial objective of original jurisdiction proceedings before the Supreme Court. *See United States v. Texas*, 339 U.S. 707, 715 (1950) ("The Court in original actions, passing as

it does on controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts.”); *Nebraska v. Wyoming*, 515 U.S. 1, 13 (1995) (affording “fair opportunity” for a State to present its case). Having a “fair opportunity” to respond to expert reports is particularly important in a case of this nature, which involves complex hydrologic, engineering, economic, ecological, and scientific issues. Adhering to the current deadlines in this case, however, will prejudice Georgia’s ability to respond to Florida’s expert submissions, will severely impact the parties’ ability to conduct expert depositions, and will deprive the Court of the “full development of the facts” and expert analysis that this case requires.

On February 29, 2016, Florida served 20 expert reports on Georgia comprising over 2,500 pages. Those reports were accompanied by 1.3 terabytes of previously unproduced supporting materials, including hundreds of highly technical modeling files and voluminous data sets. Florida’s decision to submit and rely upon such a large volume of material substantially impacts Georgia’s ability to comply with the Special Master’s previously appointed deadlines. The process of downloading, reviewing, analyzing, and drafting responses to Florida’s reports (and supporting materials) will take many weeks and will unavoidably extend well beyond the current April 14, 2016 deadline.

Even the most basic step of obtaining Florida’s expert reports, reliance materials, and modeling, and then distributing those materials to Georgia’s experts, took almost a week. Florida provided Georgia with two hard drives containing all

models and supporting materials which totaled 1.3 terabytes of data. Although Georgia worked expeditiously to upload and distribute the data, the size and complexity of the materials that were provided took a significant amount of time to electronically transfer and process.

Even now that Florida's data and supporting materials have been provided to Georgia's experts, it will take many weeks for those experts to analyze the reports and underlying data. Analyzing Florida's expert opinions requires much more than just reading and scrutinizing the reports, which themselves are long and complex. Florida's reports are also supported by complex hydrodynamic, economic, and ecological datasets and models. Florida's datasets and models must be reviewed and analyzed; model runs must be replicated; model outputs must be reviewed; Georgia must perform its own responsive model runs; and those model outputs must be reviewed, validated, and compared to Florida's. Finally, the results and analysis must be summarized in a Defensive Expert report.

That process will take a significant amount of time and effort. For example, running a *single* 5-year simulation with the modified INTERA model used by one of Florida's experts, Dr. Marcia Greenblatt, takes approximately **12 days**. It takes another 5 days to process and interpret the output from that single run. Moreover, conducting a meaningful analysis of Florida's work requires multiple runs of that same model with changes in different variables—with each run requiring 12 days of running time. As yet another example, Dr. Dennis Lettenmaier, another Florida expert, relies on the results from 38 different global climate models and 7 different

observed or model-derived datasets. Each of those input datasets, model runs, and respective outputs must be analyzed by Georgia's experts in order to sufficiently respond to Dr. Lettenmaier's opinions.

Moreover, one expert's work is still unable to be reviewed by Georgia. As produced, Georgia cannot replicate the tables and figures included in Dr. David Sunding's report because of technical errors in the computer code that was provided by Florida. The parties are conferring in an attempt to get this code to function, but now two weeks have passed and Georgia's experts have not been able to even run the computer code that forms the basis for several of Dr. Sunding's opinions.

The process of analysis, review, and response is further time consuming because of the sheer volume of files and supporting materials that Florida has provided. Florida's expert-reliance materials include new and complex models that will require many weeks to evaluate after they are run. For example, Florida's recently produced reliance materials include:

- An IMPLAN economic model
- A DSSAT crop model
- Data and results from recently conducted surveys
- A Precipitation-Runoff Modeling System (PRMS) model, as well a new datasets created from that model
- A modified Res-Sim model
- A newly created Lake Seminole model
- A state-space oyster population model and modeling files
- A NOAA ECOPATH w/ ECOSIM ecological model
- Independent field data and statistical analysis for oyster experiments

Each of those models must be independently analyzed and reviewed by Georgia's experts. Because of the size and complexity of those models, Georgia simply would not be able to review and respond to Florida's expert reports under the current deadline for defensive expert reports.

In addition to these complex models, Florida's expert reports rely upon scores of independent databases or datasets, many of which Georgia will need to analyze. For example, Florida relies on United States Department of Agriculture agricultural census data; National Climatic Data Center, Intergovernmental Panel on Climate Change, National Research Council, and United States Bureau of Reclamation climatic datasets (to name a few); conservation expenditure data; United States Fish and Wildlife Service recreational survey data; Florida Department of Agriculture and Consumer Services oyster surveys and oyster biomass data; United States Geological Survey/Apalachicola Natural Estuarine Research Reserve oyster reef habitat data; oyster size distribution data; salinity and temperature data; nutrient data; and population surveys of mussels and clams. Reviewing and analyzing those datasets, determining whether they support Florida's assertions, and developing responses will also take a substantial amount of time.

Finally, once Georgia's experts have completed their analysis and review of Florida's materials and models, they will still be left with the task of drafting responsive reports. The process of drafting, reviewing, revising, and finalizing

reports takes several weeks—at a minimum—and will necessarily add to the time needed to complete a response to Florida’s claims.

Underscoring the need for Georgia to have a modest amount of additional time to prepare its responsive reports, several of Florida’s experts have been working on these issues and preparing their analyses and reports for years. For example, Dr. David Allan, who submitted a 203-page report with over 15 opinions, has been working on his report since at least May 2012. *See* Expert Report of D. Allan (2016) at 7. Other experts have been retained since mid-2014. *See* Expert Report of J. White at 1 (retained in June 2014); Expert Report of D. Kimbro at 1 (retained in July 2014). Georgia’s requested extension is reasonable in light of the substantial amount of time Florida’s experts had to prepare their reports.

In short, the time currently allotted for reviewing, analyzing, and responding to Florida’s expert reports and materials is not sufficient due to the breadth and volume of those reports and the datasets and modeling that support them. Extending the defensive-report deadline to May 20, 2016 would still be an aggressive schedule, but would provide enough time for Georgia’s experts to prepare and submit defensive reports. Florida, as noted above, supports this extension.

In addition, both parties will require additional time for expert depositions. The current schedule provides 30 days for parties to complete all expert depositions. Florida has already designated 20 expert witnesses on whose opinions it intends to rely. Georgia, for its part, has already designated one expert and intends to designate 8-12 additional expert witnesses. That means that the parties are faced

with over 30 expert depositions. Given that the Case Management Plan allows for up to three deposition days for each witness (with eight hours of testimony each day), the parties are facing potentially up to 90 days of depositions and up to 720 deposition hours. Georgia will of course meet and confer with Florida to limit these burdens, and hopefully depositions can be limited to 1 or 2 days. But even when limited through good faith meet-and-confer efforts, such a significant number of depositions cannot be done under the current schedule. Instead, the parties propose that they have until July 29, 2016 to complete expert depositions. This additional time will enable the parties to take meaningful depositions of each side's experts.

CONCLUSION

For the foregoing reasons, the State of Georgia respectfully requests that the Special Master grant this Consent Motion for Extension of Expert Discovery Deadlines and enter an order that extends the defensive-report deadline to May 20, 2016, and the expert-deposition deadline to July 29, 2016.

Respectfully submitted,

/s/ Craig S. Primis

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Before the Special Master

Hon. Ralph I. Lancaster

CERTIFICATE OF SERVICE

This is to certify that the GEORGIA'S CONSENT MOTION FOR EXTENSION OF EXPERT DISCOVERY DEADLINES has been served on this 14th day of March, 2016, in the manner specified below:

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