

**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 MOTION TO SUBMIT TRIAL EXHIBITS
UNDER SEAL OR WITH REDACTIONS**

Pursuant to Section 10 of the Case Management Plan, Case Management Order No. 20, 2.3.3, and the Federal Rules of Civil Procedure, Georgia submits this motion to file trial exhibits under seal or with redactions to protect specific types of information from public disclosure.

I. CATEGORIES FOR REDACTION

Based on the authorities presented in Section II, Georgia requests that the Special Master allow trial exhibits and related submissions to be filed under seal or with redactions protecting the following information:

1. Social Security numbers;
2. Names of minor children;
3. Dates of birth;
4. Financial account numbers;

5. Home addresses;
6. Home telephone numbers;
7. Cell phone numbers;
8. Personal email addresses;
9. Precise locations (such as GPS coordinates) of threatened and endangered species;
10. Individual farm water use information;
11. Precise locations (such as GPS coordinates) of public water supply intakes and private water withdrawal points;
12. Precise locations (such as GPS coordinates) of agricultural water meters;
13. Names of agricultural water permit holders;
14. Proprietary university materials (draft and related materials that are not yet public, pending patent submissions, etc.);
15. Confidential information related to settlement or mediation; and
16. Pending enforcement actions.

II. BASIS FOR REQUEST

Section 10 of the Case Management Plan in this case provides that “[a]ll documents, models, or other tangible things containing a trade secret or other confidential information may be designated ‘Confidential,’ so long as such documents have not been disclosed by the producing party to anyone other than those persons employed or retained by it and are not otherwise available for public inspection under applicable law.”

Federal Rules of Civil Procedure and Evidence treat certain types of information as confidential. Rule 5.2 of the Federal Rules of Civil Procedure requires the redaction of “an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number.” The Supreme Court of the United States, Office of the Clerk also instructs that “Social Security numbers, names of minor

children, dates of birth, financial account numbers, and home addresses” should not be included in any filings. *Electronic Submission of Briefs on the Merits*, Office of the Clerk, Supreme Court of the United States. Rule 26 of the Federal Rules of Civil Procedure allows a court to enter an order to protect trade secrets or other confidential research, development, or commercial information from disclosure. Confidential information related to mediation is not admissible pursuant to Rule 408 of the Federal Rules of Evidence.

State laws of Georgia exempt certain types of information from public disclosure in the open-records context, and the policy and security rationales that support those laws should extend to the introduction of exhibits in a case like this. For example, the Georgia Open Records Act exempts from public disclosure multiple types of personal information, Georgia Open Records Act (“GORA”), 50-18-72(a)(20)(A), “site-specific information” about “rare species of plants or animals,” GORA 50-18-72(a)(18), pending enforcement actions, GORA 50-18-72(a)(4), information that could “compromise security against sabotage or criminal or terrorist acts” such as specific locations of water intake, GORA 50-18-72(a)(25)(A), “records of farm water use by individual farms as determined by water-measuring devices,” GORA 50-18-72(a)(15), and proprietary information from universities, GORA 50-18-72(a)(35) & GORA 50-18-72(a)(36).

Florida has agreed that many of these categories should be treated as confidential, including Social Security numbers, names of minor children, dates of birth, financial account numbers, home addresses, home telephone numbers, cell phone numbers, personal email addresses, and names of agricultural water permit holders.

For these reasons, Georgia requests that the categories of confidential information presented in Section I be kept out of the public record.

III. DURATION OF THE REDACTION OR SEALING

The redacted information is sensitive personal information or information that could endanger critical infrastructure or rare species. As such, the redacted information should be permanently sealed.

IV. FILING UNDER SEAL

Georgia requests that only specific categories of information be treated as confidential pursuant to this motion. For files where confidential information can be redacted, Georgia has provided proposed redactions. Other proposed trial exhibits include confidential information but in a form where it is not practical or even possible to redact (e.g., large spreadsheets, databases, model inputs, shapefiles). For those documents, Georgia proposes to submit those files under seal to protect the specific categories of confidential information as described in this motion. Georgia does not object to the use of information derived from those files in open court or the display of the files themselves so long as the specific categories of confidential information identified in Section I are kept out of the public record.

V. SPECIFIC REQUESTS TO SEAL OR REDACT

Georgia has provided two attachments to this motion: a list of documents from Florida's proposed exhibit list that contain confidential information (Attachment A) and a list of documents from Georgia's proposed exhibit list that contain confidential information (Attachment B). Both attachments contain a column that identifies the specific information Georgia asserts is confidential by referring to the specific categories described in Section I of this motion. Attachment B also contains a column explaining why the document that contains the confidential information is nonetheless relevant per § 2.3.3 of Case Management Order No. 10.

Georgia is providing unredacted copies of the files identified in Attachments A and B via overnight delivery. *See* Case Management Order No. 10, § 2.3.3; Case Management Plan, § 2.2.

VI. RESERVING RIGHT TO ASSERT CONFIDENTIALITY

Although Georgia has diligently reviewed the proposed exhibits for confidential information, it reserves its right to seek permission from the Special Master to redact or seal a document if a need for such action emerges. For example, it is currently impossible to assess whether either party will present testimony that contains confidential information. Should any party seek to introduce testimony or exhibits that reveal confidential information as defined in Section I, Georgia reserves its right to request the Special Master protect that information.

VII. DOCUMENTS FROM UNIVERSITY OF FLORIDA

Georgia plans to use documents that were produced by University of Florida that relate to Florida's alleged harms in this case. The University has informed Georgia that some of those documents include confidential student education record information. Specifically, the University requests that Exhibit UFL_00023912 should remain confidential in its entirety because this was drafted by a student and is considered part of the student's educational record. The University also asserts that UFL_00021507, UFL_00022809, UFL_0023911, UFL_00235066, and UFL_00235070 are emails containing student names, and requests that the court allow student names to be redacted. Neither Georgia nor Florida objects to the redactions proposed by University of Florida. Georgia is transmitting the unredacted documents and proposed redactions to the Special Master via overnight delivery.

Dated: September 16, 2016

/s/ Craig S. Primis

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CERTIFICATE OF SERVICE

This is to certify that GEORGIA’S MOTION TO SUBMIT TRIAL EXHIBITS UNDER SEAL OR WITH REDACTIONS has been served on this 16th day of September 2016, in the manner specified below:

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|--|---|
| <p><u>For State of Florida</u></p> <p><u>By Federal Express and Email</u></p> <p>Gregory G. Garre <i>Counsel of Record</i> Latham & Watkins LLP 555 11th Street, NW Suite 1000 Washington, DC 20004 T: (202) 637-2207 gregory.garre@lw.com</p> | <p><u>For United States of America</u></p> <p><u>By Federal Express and Email</u></p> <p>Donald J. Verrilli Solicitor General <i>Counsel of Record</i> Department of Justice 950 Pennsylvania Avenue, N.W. Washington, DC 20530 T: 202-514-7717 supremectbriefs@usdoj.gov</p> |
| <p>Jonathan L. Williams Deputy Solicitor General Office of Florida Attorney General The Capital, PL-01 Tallahassee, FL 32399 T: 850-414-3300 jonathan.williams@myfloridalegal.com</p> | <p><u>By Email Only</u></p> <p>Michael T. Gray michael.gray2@usdoj.gov James DuBois james.dubois@usdoj.gov</p> |
| <p><u>By Email Only</u></p> <p>Pamela Jo Bondi Craig Varn Christopher M. Kise James A. McKee Adam C. Losey Matthew Z. Leopold Philip J. Perry Abid R. Qureshi Claudia M. O’Brien Paul N. Signarella Donald G. Blankenau Thomas R. Wilmoth floridaacf.lwteam@lw.com floridawaterteam@foley.com</p> | <p><u>For State of Georgia</u></p> <p><u>By Email Only</u></p> <p>Samuel S. Olens Britt Grant Sarah H. Warren Seth P. Waxman Craig S. Primis K. Winn Allen Devora W. Allon georgiawaterteam@kirkland.com</p> <p align="right">/s/ <i>Craig S. Primis</i></p> <hr/> <p align="right">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> |

ATTACHMENT A

Attachment A
Confidential Documents on Florida's Proposed Exhibit List

| Florida Proposed Trial Exhibit | Description | Redact or Seal | Type of Confidential Information in Document |
|---------------------------------------|---|-----------------------|--|
| 9 | Irrigation and the Flint River - Memorandum from Harold Reheis to Governor Roy Barnes [Reheis Dep. Ex. 10] | Redact | Addresses and Phone Numbers |
| 14 | Southwest Georgia Farm Credit ACA, Memorandum to H. Reheis and B. Kerr re: Water Policy Initiative Meeting | Redact | Addresses and Phone Numbers |
| 95 | Georgia EPD Declares Level Two Drought Statewide with Attachments - Email from C. Couch to T. Irvin, et al. | Redact | Personal Email Address |
| 101 | Radium Aprings Fauna Count - Email from Kelly Jessop to Rob Weller and C. Mathis | Redact | Personal Email Address |
| 221 | Memorandum from G. Robert Kerr & Harold F. Reheis to Governor's Advisory Council on Tri-State Water Issues & Georgia Stakeholders RE: ACF Commission Meeting; Notes from "4/29/03 Meeting w/ EPD" | Redact | Bank Account |
| 234 | Changes to Flint River Drought Protection Act - Emails Between Glenn Cox and Cliff Lewis | Redact | Personal Email Address |
| 267 | Permit and Permitted Acreage Counts | Seal | Names, Addresses, Phone Number, Location-specific intake information, Individual Farm Water Use Data Request to seal because not practical to redact file |
| 288 | Governor, EPD Ease Outdoor Water Use Schedules - Email from B. Dykes to Soil and Water Conservation Commission, et al. | Redact | Addresses and Phone Numbers |
| 289 | Letter dated 2-15-10 from the Georgia Department of Natural Resources to [REDACT] | Redact | Name, Address, Intake Location |
| 290 | Memo from E. Rooks to G. Cowie re: "Exemption for Groundwater Withdrawals for Farms in Capacity Use Areas for Backlog Applications" | Redact | Names, Addresses, Phone Number, Location-specific intake information, Individual Farm Water Use Data |
| 291 | Permit No.: 030-1295-04 | Redact | Intake Location |
| 293 | Application and Permit No.: 022-1217-01 | Redact | Intake Location |
| 294 | Permit No.: 058-1290-12 | Redact | Intake Location |
| 295 | Permit No.: 060-1209-02 | Redact | Intake Location |

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| 296 | Permit No.: A88-128-0001 | Redact | Name, Address, Intake Location |
| 297 | Permit No.: A00-125-0508 | Redact | Name, Address, Intake Location |
| 299 | Permit No.: 141-1292-02 | Redact | Intake Location |
| 300 | Permit No.: A03-100-0660 | Redact | Name, Address, Intake Location |
| 301 | Permit No.: A08-060-0015 | Redact | Name, Address, Intake Location |
| 302 | Permit No.: A91-120-0023 | Redact | Name, Address, Intake Location |
| 303 | Permit No.: A91-101-0528 | Redact | Name, Address, Intake Location |
| 304 | Permit No.: 106-1293-05 | Redact | Intake Location |
| 305 | Permit for Farm Use of Ground And/Or Surface Water for [REDACTED] | Redact | Name, Address |
| 306 | Permit for Farm Use of Ground And/Or Surface Water for [REDACTED]. | Redact | Name, Address |
| 320 | Summary of Lower Flint River Basin Project Meeting | Redact | Name, Address, Intake Location |
| 346 | Impact of Upstream Water Use on Salinity and Ecology of Apalachicola Bay - Preliminary Results, by B. Villegas and J. W. Roberts | Seal | Unpublished Proprietary University Material |
| 349 | Draft Manuscript, "A Mathematical Model of Apalachicola Bay Salinity and its Potential Effects on Oyster Harvesting" by B. Villegas, P. Roberts, and A. Georgakakos | Seal | Unpublished Proprietary University Material |
| 520 | Emails between A. Georgakakos and M. Kistenmacher re: Sumatra Simulated Flow | Seal | Personal Email and University Material |
| 525 | Columbus-Columbia - Email from Aris Georgakakos to Martin Kistenmacher | Seal | Personal Email Address and Unpublished Proprietary University Material |
| 529 | Emails between Aris Georgakakos and Stephen Simpson RE: ACFS Qualifications | Redact | Personal Email Address |
| 531 | ARC Comments on UIF Report - Email from A. Georgakakos | Seal | Email and University Material |
| 540 | Interbasin Transfer Permit Application | Redact | Intake Location |
| 642 | Report: Baseline Conservation Analysis for Agricultural Irrigation in Priority Watersheds of the Lower Flint River Basin by Mark Masters | Redact | Home Address and Telephone Number |

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| 654 | Georgia's Agricultural Metering Database | Seal | Names, Addresses, Phone Number, Location-specific intake information, Individual Farm Water Use Data Request to seal because not practical to redact file |
| 655 | Georgia's Agricultural Permit Database | Seal | Names, Addresses, Phone Number, Location-specific intake information, Individual Farm Water Use Data Request to seal because not practical to redact file |
| 656 | Georgia's Municipal and Industrial Water Permits Database | Seal | Names, Addresses, Phone Number, Location-specific intake information Request to seal because not practical to redact file |
| 658 | Georgia Wetted Acreage Database | Seal | Location-specific intake information Request to seal because not practical to redact file |
| 659 | Wetted Acres Deliverable | Seal | Location-specific intake information Request to seal because not practical to redact file |
| 693 | Tim SW Questions on Permit | Redact | Name, Address, Intake Location |
| 695 | NRCS 68-3A75-4-200_CPerry_2004 VRI CIG Final Report2.PDF | Redact | Personal Info/SSNs |
| 707 | Average Irrigation Depth of Surface Water Users | Seal | Names, Addresses, Phone Number, Location-specific intake information, Individual Farm Water Use Data Request to seal because not practical to redact file |

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| 708 | Georgia Unpermitted Acres | Seal | Names, Addresses, Phone Number, Location-specific intake information, Individual Farm Water Use Data Request to seal because not practical to redact file |
| 709 | Low Flow Permits | Seal | Names, Addresses, Phone Number, Location-specific intake information, Individual Farm Water Use Data Request to seal because not practical to redact file |
| 49a | Email from W. Hicks to R. Royal, M. Masters, D. Wilson re: "Fw: Pending Drought" (Hicks Decl. Ex. A) | Redact | Personal Email Address |
| 49c | Email from W. Hicks to B. Moore, M. Masters, B. Turner re: "Re: Water Demands Report Approval" (Hicks Decl. Ex. C) | Redact | Personal Email Address |
| 49r | Email from Kristin Rowles to Stephen Simpson re: "Fwd: Flint Model" (Hicks Decl. Ex. R) | Redact | Personal Email Address |
| 49s | Email from Kristin Rowles to Woody Hicks, cc'ing Bradford Moore; Aris Georgakokus; Steve Simpson; and ACF Stakeholders Administrator, re: "UIF Report Conclusions" (Hicks Decl. Ex. S) | Redact | Personal Email Address |
| 49v | Email from Aris Georgakakos to Mark Masters and Bradford Moore, Woody Hicks, cc'ing Steve Simpson; Robert Osborne, re: "ARC Comments on UIF Report" and attaching ARCMemo-UIF-090514Final.pdf (Hicks Decl. Ex. V) | Redact | Personal Email Address |

ATTACHMENT B

Attachment B
Confidential Documents on Georgia's Initial Exhibit List

| Georgia Proposed Trial Exhibit | Description | Redact or Seal | Type of Confidential Information in Document | Relevance |
|-----------------------------------|---|----------------|--|---|
| 1099 | Email from Laura Hartt to Gordon Rogers, Woody Hicks, Bradford Moore et al. re TOCWG Call today - Chairman's Thoughts | Redact | Personal Email Address | Impact of changes in consumptive use in the ACF Basin |
| 1265 | Database or shapefiles, 2016 Wetted Acreage Database | Seal | Specific Intake Location Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |
| 1266 | Database or shapefiles, 2016 Wetted Acreage Database | Seal | Specific Intake Location Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |
| 1267 | Database or shapefiles, 2016 Wetted Acreage Database | Seal | Specific Intake Location Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |
| 1268 | Database or shapefiles, 2016 Wetted Acreage Database | Seal | Specific Intake Location Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |
| 1269 | Database or shapefiles, 2016 Wetted Acreage Database | Seal | Specific Intake Location Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |
| 1270 | Database or shapefiles, 2016 Wetted Acreage Database | Seal | Specific Intake Location Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |
| 1271 | Database or shapefiles, 2016 Wetted Acreage Database | Seal | Specific Intake Location Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |
| 1272 | Database or shapefiles, 2016 Wetted Acreage Database | Seal | Specific Intake Location Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |
| 1273 | Database or shapefiles, 2016 Wetted Acreage Database | Seal | Specific Intake Location Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |
| 1274 | Database or shapefiles, 2016 Wetted Acreage Database | Seal | Specific Intake Location Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |
| 1275 | Database or shapefiles, 2016 Wetted Acreage Database | Seal | Specific Intake Location Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |
| 1276 | Database or shapefiles, 2016 Wetted Acreage Database | Seal | Specific Intake Location Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |
| 1277 | Database or shapefiles, 2016 Wetted Acreage Database | Seal | Specific Intake Location Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |

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| 1278 | Database or shapefiles, 2016 Wetted Acreage Database | Seal | Specific Intake Location Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |
| 1279 | Database or shapefiles, 2016 Wetted Acreage Database | Seal | Specific Intake Location Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |
| 1280 | Database or shapefiles, 2016 Wetted Acreage Database | Seal | Specific Intake Location Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |
| 1341 | 2011-acf-surf-water-meter-w-crops-counties.xlsx | Seal | Farm-specific water use Request to seal because redaction is impractical or impossible | Relevant to water use in the ACF Basin |
| 1342 | 2011-subarea4-gw-meter-with-crop-counties.xlsx | Seal | Farm-specific water use Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |
| 1345 | 2012-acf-surf-water-meter-with-counties-crops.xlsx | Seal | Farm-specific water use Request to seal because redaction is impractical or impossible | Relevant to water use in the ACF Basin |
| 1346 | 2012-subarea4-gw-meter-with-crops-counties.xlsx | Seal | Farm-specific water use Request to seal because redaction is impractical or impossible | Relevant to water use in the ACF Basin |
| 1349 | 2013-acf-surf-water-meter-with-counties-crops.xlsx | Seal | Farm-specific water use Request to seal because redaction is impractical or impossible | Relevant to water use in the ACF Basin |
| 1350 | 2013-subarea4-gw-meter-data-with-counties-crops.xlsx | Seal | Farm-specific water use Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |
| 1352 | 2014-acf-surf-water-meter-w-counties.xlsx | Seal | Farm-specific water use Request to seal because redaction is impractical or impossible | Relevant to water use in the ACF Basin |
| 1353 | 2014-subarea4-ground-water-meter-data-w-counties.xlsx | Seal | Farm-specific water use Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |
| 1379 | 4198_MODFE_InputFiles_IrrigationPumping_28Jan2016.xlsx | Seal | Specific intake location; Farm-specific water use Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin and impact from groundwater pumping |
| 1382 | 4198_MODFLOW_InputFiles_IrrigationPumping_28Jan2016.xlsx | Seal | Specific intake location; Farm-specific water use Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin and impact from groundwater pumping |
| 1383 | 4198_MODFLOW_InputFiles_IrrigationPumping_28Jan2016_ForTableEX.xlsx | Seal | Specific intake location; Farm-specific water use Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin and impact from groundwater pumping |
| 1405 | ACT-ACF GA Withdrawal Returns 1990-2014-missing-20151029-Baseline-2011-hl-20160203.xlsx. | Seal | Specific intake locations Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin and impact from groundwater pumping |

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| 1406 | Ag Permit Database - EPD_APU_DB_6_22_2010.mdb | Seal | Names, Addresses, Phone Numbers, Specific intake location Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin and impact from groundwater pumping |
| 1407 | Ag Water Oracle Database | Seal | Names, Addresses, Phone Numbers, Specific intake location Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin and impact from groundwater pumping |
| 1421 | annual-water-use-2014-fro 5_01_2015update.xlsx | Seal | Specific intake location; Farm-specific water use Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin and impact from groundwater pumping |
| 1428 | AW_EPD_2007_USAGE.xls | Seal | Names, Addresses, Phone Numbers, Specific intake location Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin and impact from groundwater pumping |
| 1429 | AW_EPD_2007_USAGE_BasinCounty.xls | Seal | Names, Addresses, Phone Numbers, Specific intake location; Farm-specific water use | Relevant to calculating water use in the ACF Basin and impact from groundwater pumping |
| 1430 | AW_USAGE_BY_METER_2008.xls | Seal | Names, Addresses, Phone Numbers, Specific intake location; Farm-specific water use Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin and impact from groundwater pumping |
| 1431 | AW_VW_WATER_USAGE Corrected_feb2011.xls | Seal | Names, Addresses, Phone Numbers, Specific intake location; Farm-specific water use Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin and impact from groundwater pumping |
| 1620 | Irrigated Acreage.zip | Seal | Names, Addresses, Phone Numbers, Specific intake location; Farm-specific water use Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |
| 1622 | Irrigation Depths.zip | Seal | Names, Addresses, Phone Numbers, Specific intake location; Farm-specific water use Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |
| 1670 | NRCS 68-3A75-4-200_CPerry_2004 VRI CIG Final Report2.PDF | Redact | Personal Info/SSNs | Relevant to water use in the ACF Basin and conservation measures |
| 1683 | Permits.mdb; Backup of Permits.mdb | Seal | Names, Addresses, Phone Numbers, Specific intake location Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |
| 1783 | Wetted Acreage Database 2016 | Seal | Specific intake location; Request to seal because redaction is impractical or impossible | Relevant to calculating water use in the ACF Basin |