

No. 142, Original

---

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

---

**THE STATE OF FLORIDA’S MAY 1, 2015 PROGRESS REPORT**

The State of Florida respectfully submits this Progress Report to the Special Master pursuant to Section 4 of the December 3, 2014 Case Management Plan (“CMP”), as subsequently amended.

**I. CHANGES IN THE GENERAL STATUS OF THE MATTER.**

Since the State of Florida’s April 3, 2015 Progress Report, the States have made meaningful progress in discovery. Florida remains diligent in working with the State of Georgia and third parties to address discovery issues as they arise, participating in numerous and productive meet-and-confer sessions over the last month—including with several federal government agencies. Florida also continues to identify, collect, and review documents potentially responsive to requests for production issued by Georgia in accordance with the

production deadlines. Additional detail about Florida's discovery efforts is provided in Section II below.

However, as detailed in the April 30, 2015 letter to the Special Master from Counsel for Georgia, despite their diligence, the States do not anticipate completing preparation of their respective expert disclosures in accordance with the schedule delineated in Sections 6.2 and 7 of the CMP, as amended.

## **II. DISCOVERY EFFORTS.**

### **A. Written Discovery to and from Georgia**

Since its April 3, 2015 Progress Report, Florida has both actively sought discovery from Georgia, and responded promptly to Georgia's discovery requests. Among other things, Florida timely served its Objections to Georgia's Second Set of Interrogatories on April 6, 2015, and timely served its Responses to Georgia's Second Set of Interrogatories on April 20, 2015. Florida also supplemented its Responses to Georgia's Interrogatories No. 1, 3, and 6 on May 1, 2015.

As discovery evolves, Florida expects to further develop factual and expert discovery, and contemplates supplementing its responses in accordance with its obligations under Section 15 of the CMP.

### **B. Written Discovery to Third Parties**

Since the April 3, 2015 Progress Report, Florida has actively pursued responses to its written discovery from numerous non-parties, including seven federal agencies and departments.

#### **1. Touhy Requests and Subpoenas to Federal Agencies**

As the Court is aware, the States jointly served *Touhy* requests and subpoenas for production of documents on the following federal agencies and departments:

- U.S. Army Corps of Engineers;

- U.S. Geological Survey;
- U.S. Fish and Wildlife Service;
- National Oceanic and Atmospheric Administration;
- U.S. Department of Commerce;
- U.S. Department of Agriculture – National Agricultural Statistics Service; and
- U.S. Department of Agriculture – National Resources Conservation Service.

Counsel for the States have jointly convened multiple productive calls with counsel for all of the agencies and departments listed above, and the States will continue to work jointly with them to identify responsive documents and reduce their burdens of collection and production. However, given the scope of the search required to respond and the current availability of agency resources, these agencies have advised the States that they are unlikely to complete their productions within 120 days. The additional time required by these agencies to complete their productions animates the States' belief that the requested extensions of the expert disclosure and deposition deadlines in the CMP are necessary.

## 2. Non-Party Subpoenas

Florida has served a total of 88 non-party subpoenas. A table listing all subpoenas served on non-parties to date, and the dates such subpoenas were served on opposing counsel, is included as Attachment A to this Report.

Thus far, Counsel for Florida has conferred with representatives of 77 of the 88 subpoenaed entities, all of whom are currently cooperating on the production of responsive documents. Florida continues to work with these subpoenaed third parties to streamline further production and resolve any outstanding issues. 42 subpoenaed entities have made at least a partial production of documents, yielding approximately 12,781 documents produced to date. Efforts to communicate with counsel for the remaining subpoena recipients are ongoing, and

counsel for Florida will continue to make every effort to facilitate the third parties' timely, cost-efficient production of documents. However, given the scope of the search required to respond, a number of non-parties have advised Florida that they are unlikely to complete their productions within 120 days. The additional time required by these non-parties to complete their productions animates the States' belief that the requested extensions of the expert disclosure and deposition deadlines in the CMP are necessary.

### **C. Production of Responsive Documents to Georgia**

Pursuant to Section 6.1.2 of the CMP, as amended, the States timely commenced their respective production of documents on February 11, 2015, and are continuing to produce documents on a rolling basis. Notably, Florida has already started to produce responsive email, making a production of nearly 45,000 emails from the custody of Northwest Florida Water Management District personnel on April 3, 2015, and over 32,000 emails from Northwest Florida Water Management District and Florida Department of Agriculture & Consumer Services personnel on May 1, 2015. In addition, Florida has produced more than 100,000 documents and over 60 gigabytes of electronically produced modelling files.

While Georgia has yet to produce any meaningful quantity of responsive email, Florida expects that production of such communications by Georgia will commence shortly. In addition, while Georgia has recently stated in interrogatory responses that emails accounts associated with certain custodians may no longer exist, it continues to investigate the issue and will provide additional details to Florida as it collects additional information.

For its part, Florida continues to diligently search for potentially relevant and/or responsive materials. As part of this effort, it has conducted interviews of more than 30 individuals within various state agencies and has collected over two terabytes of data—not

including modelling data and certain other collections. As noted previously, Florida has mobilized a document review team of more than 60 attorneys to review and organize potentially responsive information in accordance with the schedule established by the CMP.

Moreover, the States continue to participate in meet-and-confer sessions to facilitate the discovery process and to resolve discovery issues promptly. As noted in previous Progress Reports, the States have devoted a considerable amount of time to further developing and refining the parameters of electronic discovery, and have reached agreement on an initial set of email custodians and search terms for each side. This approach has substantially reduced the scope and volume of materials the States must review and produce.

With the 120-day extension to Florida's production deadlines this Court provided in Case Management Order No. 7 (April 8, 2015), Florida expects to complete production within the production deadline specified in Section 6.1.2 of the CMP, as amended.

### **III. UNRESOLVED DISPUTES.**

Currently, there are no unresolved disputes. While the States have identified certain issues regarding the sufficiency of written discovery responses and the completeness of designated and identified email custodians, they continue to meet and confer on a frequent basis to resolve such issues. As discovery progresses, Florida recognizes both States have an obligation to supplement their respective responses as additional factual and expert information is developed. For example, as noted above, Florida recently supplemented its response to Interrogatory 1 issued by Georgia to ensure timely and transparent exchange of information. Florida expects that Georgia will similarly share information on a real-time basis by periodically supplementing its responses to written discovery requests as such an approach will ensure full transparency and completeness of discovery efforts. As noted in prior Progress Reports, Florida believes that the scope and frequency of counsel interaction has facilitated—and will continue to

facilitate—resolution of the foregoing and other issues.

#### **IV. OTHER ISSUES OF CONCERN**

##### **A. Technological Issues with the Production of Models and Data Sets**

As Florida noted in its April 3, 2015 Progress Report, technological issues with models and other data sets are slowing the States' progress in discovery. The States are continuing to discuss technological issues associated with the production of certain data sets and scientific models, but the production of such documentation remains challenging. Moreover, the assimilation and analysis of even the limited data and modeling information produced to date is time consuming for both States, and has required multiple meet-and-confer sessions regarding the accessibility and scope of what has been produced. Florida anticipates such issues will continue to arise as discovery progresses.

##### **B. Timing**

As detailed in the April 30, 2015 letter to the Special Master from Counsel for Georgia, despite their diligence, the States do not anticipate completing preparation of their respective expert disclosures in accordance with the schedule delineated in Sections 6.2 and 7 of the CMP, as amended.

#### **V. FURTHER DISCOVERY ANTICIPATED DURING THE COMING MONTH.**

Florida continues to analyze responses it received from Georgia and anticipates propounding focused additional written discovery during the coming month. As it has endeavored to do throughout this proceeding, Florida will work to minimize the burden and narrow the scope of any additional discovery requests it issues to Georgia or any third parties.

PAMELA JO BONDI  
ATTORNEY GENERAL, STATE OF  
FLORIDA

ALLEN WINSOR  
SOLICITOR GENERAL  
*Counsel of Record*  
JONATHAN GLOGAU  
SPECIAL COUNSEL  
OFFICE OF THE ATTORNEY GENERAL  
The Capitol, PL-01  
Tallahassee, FL 32399-1050  
Tel.: (850) 414-3300

CRAIG VARN  
SPECIAL COUNSEL  
FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION  
3900 Commonwealth Blvd. MS 35  
Tallahassee, FL 32399-3000  
Tel.: (850) 245-2295

Respectfully submitted,

CHRISTOPHER M. KISE  
JAMES A. MCKEE  
ADAM C. LOSEY  
FOLEY & LARDNER LLP  
106 East College Avenue  
Tallahassee, FL 32301  
Tel.: (850) 513-3367

GREGORY G. GARRE  
PHILLIP J. PERRY  
ABID R. QURESHI  
CLAUDIA M. O'BRIEN  
LATHAM & WATKINS LLP  
555 11th Street, NW  
Suite 1000  
Washington, DC 20004  
Tel.: (202) 637-2207

DONALD G. BLANKENAU  
THOMAS R. WILMOTH  
BLANKENAU WILMOTH JARECKE  
LLP  
1023 Lincoln Mall  
Suite 201  
Lincoln, NE 68508-2817  
Tel.: (402) 475-7080

*Attorneys for the State of Florida*

## Attachment A

### List of Non-Party Subpoenas (As of May 1, 2015)

Entity	Propounding Party	Date Served on Opposing Party
Atlanta-Fulton Water Resources Commission	Florida	1.23.2015
Bartow County, GA	Florida	1.23.2015
Cherokee County, GA	Florida	1.23.2015
Clayton County, GA	Florida	1.23.2015
Dawson County, GA	Florida	1.23.2015
Douglas County, GA	Florida	1.23.2015
Fayette County, GA	Florida	1.23.2015
Forsyth County, GA	Florida	1.23.2015
Henry County, GA	Florida	1.23.2015
Lumpkin County, GA	Florida	1.23.2015
Paulding County, GA	Florida	1.23.2015
Rockdale County, GA	Florida	1.23.2015
Walton County, GA.	Florida	1.23.2015
White County, GA	Florida	1.23.2015
City of Albany Water, Gas & Light Commission	Florida	1.23.2015
City of Americus, GA	Florida	1.23.2015
City of Buford, GA	Florida	1.23.2015
City of Cumming, GA	Florida	1.23.2015
City of Gainesville, GA	Florida	1.23.2015
City of La Grange, GA	Florida	1.23.2015
City of Newnan, GA	Florida	1.23.2015
DeKalb County Department of Watershed Management	Florida	2.2.2015



Entity	Propounding Party	Date Served on Opposing Party
City of Cordele, GA	Florida	2.2.2015
Gwinnett County Department of Water Resources	Florida	2.2.2015
Gwinnet County Department of Water and Sewerage	Florida	2.2.2015
Georgia River Network, Inc.	Florida	2.2.2015
Columbus Water Works	Florida	2.2.2015
Flint River Partnership	Florida	2.2.2015
City of Bainbridge, GA	Florida	2.2.2015
Cobb County-Marietta Water Authority	Florida	2.2.2015
City of Atlanta Department of Watershed Management	Florida	2.2.2015
Habersham County, GA	Florida	2.2.2015
ACF Stakeholders, Inc.	Florida	2.2.2015
Chattahoochee Riverkeeper, Inc.	Florida	2.2.2015
Jackson County, FL	Georgia	2.3.2015
Calhoun County, FL	Georgia	2.3.2015
Franklin County, FL	Georgia	2.3.2015
Gulf County, FL	Georgia	2.3.2015
Gadsden County, FL	Georgia	2.3.2015
Liberty County, FL	Georgia	2.3.2015
City of Apalachicola, FL	Georgia	2.3.2015
City of Carrabelle, FL	Georgia	2.3.2015
Florida Sea Grant	Georgia	2.3.2015
Franklin County Seafood Workers Association	Georgia	2.3.2015
Bay County, FL	Georgia	2.12.2015

Entity	Propounding Party	Date Served on Opposing Party
Washington County, FL	Georgia	2.12.2015
Apalachicola Bay Chamber of Commerce	Georgia	2.12.2015
Apalachicola Bay Oyster Dealers Association, Inc.	Georgia	2.12.2015
Apalachicola Bay and River Keeper, Inc.	Georgia	2.12.2015
University of Florida	Georgia	2.18.2015
Florida State University	Georgia	2.18.2015
University of Georgia	Florida	3.2.2015
Robert W. Woodruff Foundation, Inc.	Florida	3.2.2015
Joseph W. Jones Ecological Research Center at Ichauway	Florida	3.2.2015
The Stripling Irrigation Research Park	Florida	3.2.2015
Cherokee County Water and Sewer Authority	Florida	3.10.2015
White County Water Authority	Florida	3.10.2015
City of Cleveland, GA	Florida	3.10.2015
City of Helen, GA	Florida	3.10.2015
City of Marianna, FL	Georgia	3.10.2015
City of Port St. Joe, FL	Georgia	3.10.2015
City of Blountstown, FL	Georgia	3.10.2015
Town of Altha, FL	Georgia	3.10.2015
Town of Alford, FL	Georgia	3.10.2015
City of Cottondale, FL	Georgia	3.10.2015
Town of Greenwood, FL	Georgia	3.10.2015
City of Jacob City, FL	Georgia	3.10.2015
Town of Malone, FL	Georgia	3.10.2015
Town of Sneads, FL	Georgia	3.10.2015

Entity	Propounding Party	Date Served on Opposing Party
City of Bristol, FL	Georgia	3.10.2015
Alligator Point Water Resources District	Georgia	3.10.2015
Eastpoint Water and Sewer District	Georgia	3.10.2015
Water Management Services, Inc.	Georgia	3.10.2015
Lighthouse Utilities Company	Georgia	3.10.2015
St. James Island Utility Company	Georgia	3.10.2015
City of Wewahitchka, FL	Georgia	3.10.2015
City of Chattahoochee, FL	Georgia	3.10.2015
Georgia Water Resources Institute	Florida	3.11.2015
Georgia Institute of Technology	Florida	3.11.2015
Flint Riverkeeper, Inc	Florida	3.11.2015
The Georgia Conservancy, Inc.	Florida	3.11.2015
Douglasville-Douglas County Water & Sewer Authority	Florida	3.11.2015
Carroll County Water Authority	Florida	3.11.2015
Haralson County Water Authority	Florida	3.11.2015
Coweta County Water & Sewerage Authority	Florida	3.11.2015
Etowah Water & Sewer Authority	Florida	3.11.2015
The Nature Conservancy	Florida	3.11.2015
Flint River Soil and Water Conservation District	Florida	3.11.2015
Peachtree City Water and Sewerage Authority	Florida	3.11.2015
Spalding County Water Authority	Florida	3.11.2015
City of Fayetteville Water and Sewer Department	Florida	3.11.2015
City of Thomaston, GA	Florida	3.11.2015
City of Griffin, GA	Florida	3.11.2015

Entity	Propounding Party	Date Served on Opposing Party
Clayton County Water Authority	Florida	3.11.2015
City of Woodstock Water & Sewer Utility	Florida	3.11.2015
Loganville, Georgia Department of Utilities	Florida	3.11.2015
City of Powder Springs, GA	Florida	3.11.2015
City of Demorest, Georgia Water Works Department	Florida	3.11.2015
Roswell, Georgia Water Utility	Florida	3.11.2015
City of Canton, GA	Florida	3.11.2015
City of Villa Rica, GA	Florida	3.11.2015
Harris County Water Works	Florida	3.11.2015
City of College Park, GA	Florida	3.11.2015
City of Monroe, GA	Florida	3.11.2015
City of Lawrenceville, GA	Florida	3.11.2015
City of East Point, GA	Florida	3.11.2015
Newnan Utilities	Florida	3.11.2015
City of Smyrna, GA	Florida	3.11.2015
Marietta Power and Water	Florida	3.11.2015
Rockdale County Water and Sewage Authority	Florida	3.11.2015
Paulding County Water Systems	Florida	3.11.2015
Fulton County, Georgia Department of Water Resources	Florida	3.11.2015
Cobb County Water System	Florida	3.11.2015
Hall County, Georgia Public Works	Florida	3.11.2015
City of Oakwood, GA	Florida	3.11.2015
Georgia Soil & Water Conservation Commission	Florida	3.11.2015
Coca-Cola Enterprises, Inc.	Florida	3.13.2015

Entity	Propounding Party	Date Served on Opposing Party
Lowe Engineers, LLC	Florida	3.13.2015
Tim Lowe	Florida	3.13.2015
The Boston Consulting Group	Florida	3.13.2015
University of North Carolina, Environmental Finance Center	Florida	3.13.2015
John F. Brock	Florida	3.13.2015
University of North Carolina, Environmental Finance Center	Florida	3.13.2015

No. 142, Original

---

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

---

**CERTIFICATE OF SERVICE**

This is to certify that the State of Florida's May 1, 2015 Progress Report has been served on this 1st day of May 2015, in the manner specified below:

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

<p><u>By Email Only:</u></p> <p>Donald G. Blankenau  Jonathon A. Glogau  Christopher M. Kise  Matthew Z. Leopold  Osvaldo Vazquez  Thomas R. Wilmoth  <a href="mailto:Floridawaterteam@foley.com">Floridawaterteam@foley.com</a></p>	<p><u>By Email Only:</u></p> <p>Michael T. Gray  <a href="mailto:Michael.Gray2@usdoj.gov">Michael.Gray2@usdoj.gov</a></p> <p>James DuBois  <a href="mailto:James.Dubois@usdoj.gov">James.Dubois@usdoj.gov</a></p>
<p><b><u>For State of Georgia</u></b></p> <p><u>By U.S. Mail and Email:</u></p> <p>Craig S. Primis, P.C.  Counsel of Record  Kirkland &amp; Ellis LLP  655 15<sup>th</sup> Street, N.W.  Washington, D.C. 20005  T: 202-879-5000  <a href="mailto:Craig.primis@kirkland.com">Craig.primis@kirkland.com</a></p> <p><u>By Email Only:</u></p> <p>Samuel S. Olens  Nels Peterson  Britt Grant  Seth P. Waxman  K. Winn Allen  Sarah H. Warren  <a href="mailto:Georgiawaterteam@kirkland.com">Georgiawaterteam@kirkland.com</a></p>	

PAMELA JO BONDI  
ATTORNEY GENERAL, STATE OF  
FLORIDA

ALLEN WINSOR  
SOLICITOR GENERAL  
*Counsel of Record*  
JONATHAN GLOGAU  
SPECIAL COUNSEL  
OFFICE OF THE ATTORNEY GENERAL  
The Capitol, PL-01  
Tallahassee, FL 32399-1050  
Tel.: (850) 414-3300

CRAIG VARN  
SPECIAL COUNSEL  
FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION  
3900 Commonwealth Blvd. MS 35  
Tallahassee, FL 32399-3000  
Tel.: (850) 245-2295

/s/ Christopher M. Kise  
CHRISTOPHER M. KISE  
JAMES A. MCKEE  
ADAM C. LOSEY  
FOLEY & LARDNER LLP  
106 East College Avenue  
Tallahassee, FL 32301  
Tel.: (850) 513-3367

GREGORY G. GARRE  
PHILLIP J. PERRY  
ABID R. QURESHI  
CLAUDIA M. O'BRIEN  
NICOLE RIES FOX  
LATHAM & WATKINS LLP  
555 11th Street, NW  
Suite 1000  
Washington, DC 20004  
Tel.: (202) 637-2207

DONALD G. BLANKENAU  
THOMAS R. WILMOTH  
BLANKENAU WILMOTH JARECKE  
LLP  
1023 Lincoln Mall  
Suite 201  
Lincoln, NE 68508-2817  
Tel.: (402) 475-7080

*Attorneys for the State of Florida*