

**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
SEPTEMBER 4, 2015**

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

I. GENERAL STATUS

Georgia continues to make steady progress producing documents and data in this case. Georgia is also continuing its review of documents and data produced by Florida and third parties. Georgia has begun the process of meeting and conferring with Florida concerning various issues associated with Florida's production and anticipates further meet-and-confer sessions as review of Florida's materials continues and questions need to be addressed. Georgia hopes that the parties can resolve any issues between themselves and will keep the Special Master informed as discussions continue. 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.

Neither Florida nor Georgia has served or responded to additional written discovery since the last Status Report. Georgia contemplates further supplementation of its responses as necessary as discovery continues.

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

The States continue to meet and confer regularly and have worked together on a number of discovery issues including:

- Finalizing and executing a non-disclosure agreement that the States can use pursuant to Section 10 of the Case Management Plan, which has now been signed by both States;
- Processing and producing Georgia's native databases and models;
- Conferring about *Touhy* requests and subpoenas served on federal agencies including:
 - 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.
- Working with federal agencies to address concerns related to *Touhy* requests and subpoenas, such as production timing, confidentiality, and prioritizing and narrowing the scope of joint requests where possible.

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. To date, Georgia

has produced nearly 200,000 pages of documents it received from 33 nonparties in response to its subpoenas. A chart of the nonparty documents received and produced is attached as Exhibit A. As of September 4, 2015, Florida has produced documents to Georgia from only 23 third parties. Georgia understands that Florida has not yet produced to Georgia all documents it has received pursuant to third party subpoenas. Georgia is meeting and conferring with Florida to obtain those materials. Georgia has also separately negotiated, finalized and executed a non-disclosure agreement with Florida State University, pursuant to the principles set forth in Section 10 of the CMP.

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

Georgia continues to produce voluminous documents and data. On August 26, 2015, Georgia served its sixteenth production of documents responsive to Florida's First and Second Requests for Production. The production included hard copy documents, emails, and other electronically stored information that together amounted to more than 440,000 pages. To date, Georgia has produced nearly 1.4 million pages of documents—in addition to nearly 200,000 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. More than 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 on which *Touhy* requests and subpoenas were served. 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 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.

While this month’s productions represent progress, many of the federal agencies have not yet completed their productions.

F. Deposition Discovery Between Parties.

Now that the parties are moving into deposition discovery, Georgia and Florida have initiated discussions concerning the number, timing and coordination of depositions of both State personnel and various third parties. On August 26, 2015, Florida served deposition notices to four professors in Georgia universities. On August 28, 2015, Florida served deposition notices on six additional third parties.

On September 2, 2015, the States conducted a meet and confer telephone conversation on the scope and timing of depositions, and Georgia is hopeful that the parties can reach agreement on these issues without court intervention. However, if the States are unable to agree on an efficient deposition plan, Georgia may need to request guidance from the court.

III. ANTICIPATED DISCOVERY

Georgia anticipates conducting the following discovery in the next month:

- Producing to Florida additional documents and data on a rolling basis;
- Producing to Florida additional third-party documents produced to Georgia in response to its subpoenas;
- Continuing joint discussions with federal agencies about the scope and timing for production of documents and data;
- Conferring with Florida to coordinate the processing of document 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 initiate and conduct deposition discovery in an orderly and efficient manner;
- Conferring with third parties about scheduling depositions in the coming weeks;
- Conferring with Florida regarding certain questions Georgia has concerning Florida's document production to date.

IV. UNRESOLVED DISPUTES AND OTHER CONCERNS

A. U.S. Department of Agriculture Production Concern.

The issue raised in last month's status report pertaining to production from the United States Department of Agriculture remains open. Georgia continues to engage with the USDA and is hopeful that this discovery issue can be resolved without intervention by the Special Master.

B. Production Concerns Between States.

As Georgia has reviewed in further detail the document productions made by Florida, federal agencies, and other third parties, Georgia has been conducting, and will continue to conduct, follow-up discussions to ensure that responsive materials are being produced. Georgia has already met and conferred with Florida regarding some production materials that have not yet been produced by Florida. Although these discussions have not yet escalated into discovery disputes, and Florida's future productions may address any anticipated issues, Georgia believes it is appropriate to flag the possibility of future discovery disputes in advance of the close of written discovery. Georgia hopes to resolve these issues before depositions begin.

C. Further Supplementation of Written Discovery Requested.

Georgia expects that supplementation of written discovery responses may be in order in the coming month. Specifically, Georgia has asked that Florida clarify the scope and extent of

its alleged harm by specifically identifying all species that it believes has been harmed by Georgia's conduct. The parties are continuing to meet and confer about that request.

Dated: September 4, 2015

/s/ Craig S. Primis
Craig S. Primis, P.C.
K. Winn Allen
KIRKLAND & ELLIS LLP
655 Fifteenth St. NW
Washington, DC 20005
Tel.: (202) 879-5000
Fax: (202) 879-5200
cprimis@kirkland.com

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
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
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
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
Gadsden County	Gadsden_Co_0001 to Gadsden_Co_0015	Apr. 30, 2015
Jackson County	JACKSON_CO_0001 to JACKSON_CO_0062	Apr. 30, 2015

Third Party	Bates Range	Date Produced
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
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

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

CERTIFICATE OF SERVICE

This is to certify that the SEPTEMBER 4, 2015 STATUS REPORT OF THE STATE OF GEORGIA has been served on this 4th day of September 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>
<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 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>