

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

STATE OF GEORGIA, ATLANTA
REGIONAL COMMISSION, and
COBB COUNTY-MARIETTA
WATER AUTHORITY,

Plaintiffs,

v.

THE UNITED STATES ARMY
CORPS OF ENGINEERS, et. al,

Defendants.

Civil Action No. 1:14-cv-03593-RWS

FIRST JOINT STATUS REPORT

In accordance with the Court’s January 9, 2018 Order (ECF No. 68), the State of Georgia, Atlanta Regional Commission, and Cobb County-Marietta Water Authority (the “Georgia Parties”) and the Federal Defendants (together with the Georgia Parties, the “Parties”) submit this First Joint Status Report.

I. Statement by Georgia Parties

1. On January 9, 2018, the Court issued an Order requiring the U.S. Army Corps of Engineers (“Corps”) to “respond to the Georgia Parties’ water supply requests subject to [the terms of the Order].” ECF No. 68 at 5 (“Order”).

The Order includes eight milestones jointly agreed to by the Parties. The Court “anticipate[d] the Federal Defendants [would] complete all required studies consistent with the jointly proposed milestones.” *Id.* at 3-4. These milestones were “included to ensure the Federal Defendants take final action consistent with the Court’s order.” *Id.* at 3.

2. In addition, the Order requires the Parties to “file Joint Status Reports every three months during the first year following entry of [the] order and every six months thereafter.” ECF No. 68 at 5. The requirement for more frequent status reports during the first year was an acknowledgement by the Court and the Parties that five of the eight critical milestones occur during the first year. *See id.* at 3-4. Three of those milestones were to have occurred during the past three months and are therefore the subject of this First Joint Status Report. *Id.* at 3.

3. As discussed in greater detail below, the Georgia Parties have provided updated water supply information in accordance with the Court’s schedule and therefore met one of the three milestones. Due to the Federal Defendants’ delays, however, the Parties have not met either of the other two milestones memorialized in the Order during this reporting period.

Date	Milestone	Status
February 14, 2018	Federal Defendants and the State of Georgia Reach Agreement on Substantive Terms of Contributed Funds Agreement	Unmet. The Corps has not obtained the internal approvals necessary even to initiate negotiations regarding the agreement.
March 14, 2018	Federal Defendants and the State of Georgia Execute Memorandum of Agreement regarding the use of Contributed Funds	Unmet. See above.
March 31, 2018	Georgia Parties Submit Updated Water Supply Information Consistent with the Georgia Parties' January 2013 Request	Completed by the Georgia Parties on March 30, 2018.

**Negotiations Regarding the Contributed Funds Agreement
Have Not Progressed**

4. The Court's Order anticipated that the Federal Defendants and the State of Georgia would reach agreement on the substantive terms of a contributed funds agreement by February 14, 2018, and that they would execute the agreement by March 14, 2018. Neither of these milestones has been met.

5. To initiate the contributed funds process, the Corps asked the State of Georgia to send a letter to the Corps outlining, among other things, the State of Georgia's willingness to enter into a contributed funds agreement, and stating that the State of Georgia stood ready to contribute up to \$3 million towards the cost of

the required studies. As requested, the State of Georgia sent that letter to the Corps on January 24, 2018.

6. Following receipt of the State's letter, the Corps informed the State that its Mobile District prepared and transmitted a "contributed funds package" to the South Atlantic Division on January 26, 2018 for approval. The Corps stated that the South Atlantic Division, in turn, sent the contributed funds package to Corps Headquarters on February 13, 2018 and that Corps Headquarters sent the package to the Office of the Assistant Secretary of the Army for Civil Works ("ASA") on April 4, 2018.

7. Corps guidance addressing the contributed funds process states that the Corps cannot begin negotiating the terms of a contributed funds agreement until the ASA submits to the Office of Management and Budget ("OMB") draft letters providing notice of contributed funds to relevant congressional committees. Because of the Corps' delay in sending the required notices, the Parties have been unable even to begin negotiations over the contributed funds agreement.

8. Thus, despite the State of Georgia's best efforts, including numerous requests that the Corps complete its internal process so negotiations could begin, the State and the Corps did not reach agreement on substantive terms of a contributed funds agreement by February 14, 2018. For the same reason, they did

not execute a memorandum of agreement regarding the use of contributed funds by March 14, 2018.

9. Although the Georgia Parties appreciate the Corps' decision to use its own funds to initiate the scoping process, they are also cognizant of the Corps' previous warning that after Fiscal year 2018 "continuation of the reallocation study will be dependent on future appropriations and/or funds contributed by the State of Georgia." ECF 66 at 4. It was for this reason—to ensure there would be no gap in funding, and thus to ensure the study would be completed within three years—that the State of Georgia agreed to contribute funds. Accordingly, the Georgia Parties are concerned that the Corps has allowed these milestones to slip and urge the Corps to remedy this failing.

Georgia Parties Submit Updated Water Supply Information Consistent with the Georgia Parties' January 2013 Request

10. The Order's third milestone anticipated that the Georgia Parties would submit updated water supply information to the Corps by March 31, 2018.

11. The State of Georgia submitted the updated water supply request to the Corps on March 30, 2018.

II. Statement by Federal Defendants¹

12. The Corps is pleased to report it has made significant progress during the remand period, and expects to meet the March 2021 deadline to complete the reallocation decision as ordered by this Court.

13. While the Corps acknowledges that a contributed funds agreement has not been entered with the State of Georgia, there has been no impact on the Corps' progress in meeting the ultimate objective of "execut[ing] a Record of Decision responding to the Georgia Parties' request by no later than March 1, 2021[,]" as defined by this Court's January 9, 2018 Order. ECF No. 68.

14. The Parties' Joint submission as well as this Court's order recognized that a joint funding agreement was not a precondition to undertaking the study but rather one potential funding option to be considered. ECF No. 68 at 4. Towards that end the Parties would endeavor to "use their best efforts to comply with any procedures required to effectuate the contribution of funds by the State of Georgia as expeditiously as practicable." *Id.* The Corps personnel continue to use their best efforts to pursue a contributed funds agreement. To this end, the Corps can report that Corps' Headquarters completed its review of the contributed funds

¹ The Federal Defendants do not adopt the statement of the Georgia Parties, as set forth in Sec. I.

notification package and forwarded it to the Office of the Assistant Secretary of the Army for Civil Works on April 4, 2018. While the Corps and the State of Georgia pursue a contributed funds agreement, the Corps has utilized its own funding—as expressly contemplated in the Parties’ Joint Submission, ECF No. 66 at ¶ 3.a—to conduct remand tasks in the intervening months.

15. In particular, the Corps has been working on scoping for the reallocation study and anticipates issuing a public Notice of Intent for the scoping in late April 2018--consistent with achieving the next Joint Submission “milestone” of “NEPA Scoping Complete” by September 1, 2018, ECF No. 66 at ¶ 6.

16. As indicated above, the Corps expects to respond to the Georgia Parties' water supply requests by March 1, 2021 as contemplated by the Parties and ordered by the Court. ECF No. 68 at 5.

Respectfully submitted this 9th day of April, 2018.

[Signature Blocks on Following Pages]

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CERTIFICATE OF SERVICE

I hereby certify that I have this 9th day of April, 2018, electronically filed the foregoing *First Joint Status Report* using the CM/ECF system which will automatically send email notification of such filing to all registered CM/ECF users.

/s/ Shelly Jacobs Ellerhorst
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