

**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

**ORDER**

On September 29, 2017, the Court granted in part the Georgia Parties' Motion for Summary Judgment, holding that the U.S. Army Corps of Engineers ("Corps") had unreasonably delayed action on water supply requests at Allatoona Lake (Doc. 61). The Court directed 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") to "confer [and] attempt to reach a mutual agreement on the Corps' time for response," stating that it "will issue a subsequent Order compelling the Corps to

evaluate the Georgia Parties request for additional storage space in Allatoona Lake and issue a decision within a specified time.” (Doc. 61 at 45).

As directed by the Court, the Parties have reached agreement and submitted a joint response (Doc. 66) regarding the schedule for the Federal Defendants to evaluate the Georgia Parties’ request<sup>1</sup> and issue a decision. In view of that submission, and based on the entire record before the Court, the Federal Defendants are ordered to take final action on the Georgia Parties’ request as follows.

The Federal Defendants will execute a Record of Decision responding to the Georgia Parties’ request by no later than March 1, 2021, subject to the terms outlined herein. If the decision is to reallocate storage and enter into new contracts, the draft contracts to be proffered will be presented along with the Record of

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<sup>1</sup> There are two water supply requests at issue in this case—one initiated in 1981 by Cobb County-Marietta Water Authority and supplemented most recently in 2012; and another submitted by the State of Georgia in 2013. To provide certainty to the Federal Defendants regarding the issues to be addressed, the “Georgia Parties’ request” shall mean the request contained in the January 24, 2013 letter from Governor Deal to Assistant Secretary Darcy (D-00065085–151), as updated by Plaintiffs with new information per the study milestones, *infra*. The Parties agree that the Corps shall fully discharge the duty identified in the Court’s September 29, 2017 Order by responding to, and addressing the issues raised by, the State of Georgia’s 2013 request. The Parties further agree that the resulting record of decision will be deemed a response to both water supply requests.

Decision. The Court anticipates the Federal Defendants will complete all required studies consistent with jointly proposed milestones set forth below. These milestones shall not themselves constitute enforceable deadlines, but rather are included to ensure the Federal Defendants take final action consistent with the Court's order.

February 14, 2018	Federal Defendants and the State of Georgia Reach Agreement on Substantive Terms of Contributed Funds Agreement <sup>2</sup>
March 14, 2018	Federal Defendants and the State of Georgia Execute Memorandum of Agreement regarding the use of Contributed Funds
March 31, 2018	Georgia Parties Submit Updated Water Supply Information Consistent with the Georgia Parties' January 2013 Request
September 1, 2018	NEPA Scoping Complete

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<sup>2</sup> Federal Defendants and the State of Georgia have represented that they intend to reach agreement by February 14, 2018 on the substantive terms of a contributed funds agreement to support a reallocation study. If no such agreement can be reached, and as a result the Federal Defendants believe the schedule needs to be modified, the Parties will submit to the Court, by March 1, 2018, a Notice of Intention to Submit a Revised Joint Scheduling Order consistent with the milestones provided herein except with provisions for Federal Defendants to carry out the study using appropriated funds.

September 1, 2018	Georgia Parties Provide Updated Information Regarding Water Supply Alternatives and Impacts Consistent with the Georgia Parties' Request
September 1, 2019	Draft Environmental Impact Statement Issued (if Applicable)
September 1, 2020	Final Environmental Impact Statement Issued (if Applicable)
March 1, 2021	Record of Decision Including Proffer of Contracts (if Applicable)

The Federal Defendants have represented that studies required to issue its final decision on the Georgia Parties' request may cost up to \$3 million to complete. To facilitate timely completion of the Federal Defendants' study process, the State of Georgia has represented that it may contribute up to \$3 million pursuant to 33 U.S.C. § 701h, provided the State of Georgia and the Corps can reach agreement on the terms of a contributed funds agreement. The Parties will 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. To that end, the Federal Defendants shall provide all notices to congressional committees required under Pub. L. 113-121 § 1015(b) (June 10, 2014), 128 Stat. 1223; 33 U.S.C. § 701h Notes, as soon as practicable, and with the intent of executing a contributed funds agreement by March 14, 2018. Upon completion of the study process, the Corps shall return any unexpended "excess contributions" to


the State of Georgia. The Court recognizes that Federal Defendants' undertakings are subject to the availability of funds, whether appropriated or contributed. 31 U.S.C. § 1341.

Therefore, it is hereby ORDERED that:

By March 1, 2021 the United States Army Corps shall respond to the Georgia Parties' water supply requests subject to the terms outlined above; and the Parties shall file Joint Status Reports every three months during the first year following entry of this order and every six months thereafter until such time as the Corps issues its final decision on the Georgia Parties' request. In addition, any party may file a status report to bring relevant matters to the Court's attention at any time during the study period.

This Order constitutes the final judgment of the Court as to the claims asserted in this case. The Court will retain limited jurisdiction over this matter, however, to ensure compliance with this Order.

So ORDERED this 9<sup>th</sup> day of Jan., 2018.

  
HON. RICHARD W. STORY  
United States District Judge