

STAY AGREEMENT

This Agreement is entered into as of the Effective Date by and among the State of Alabama; the Federal Defendants (the U.S. Army Corps of Engineers; Christine E. Wormuth, Secretary of the Army, as successor to Robert M. Speer; Michael L. Connor, Assistant Secretary of the Army (Civil Works), as successor to Douglas Lamont; Lt. Gen. Scott A. Spellmon, Chief of Engineers; as successor to Maj. Gen. Todd T. Semonite; Brig. Gen. Daniel H. Hibner, Commander, South Atlantic Division, as successor to Brig. Gen. C. David Turner; Col. Jeremy J. Chapman, Commander, Mobile District, as successor to Col. James A. DeLapp); the Atlanta Regional Commission, City of Atlanta, Georgia, Cobb County-Marietta Water Authority, DeKalb County, Forsyth County, Fulton County, City of Gainesville, Georgia, and Gwinnett County (the “Water Supply Providers”); and the State of Georgia (together with the Water Supply Providers, the “Georgia Parties”), who are the parties in the appeal captioned *State of Alabama et al. v. U.S. Army Corps of Engineers, et al.*, Nos. 21-13104 and 21-13444 (11th Cir.) (collectively, the “Parties”).

WHEREAS, the U.S. Army Corps of Engineers (“Corps”) owns and operates a series of reservoirs in the Apalachicola-Chattahoochee-Flint (“ACF”) River Basin;

WHEREAS, the Corps operates the ACF River Basin reservoirs pursuant to a Master Water Control Manual (the “ACF Master Manual”), which governs the operations of each reservoir and the reservoir system for their various authorized purposes;

WHEREAS, on March 17, 2017, the Senior Official Performing the Duties of the Assistant Secretary of the Army (Civil Works) signed a Record of Decision adopting an updated Master Water Control Manual (the “2017 ACF Master Manual”) specifying the Corps’ operations of the ACF River Basin reservoirs including operations to support water supply withdrawals from the Chattahoochee River below Buford Dam and a reallocation of storage space in Lake Lanier to support water supply withdrawals from Lake Lanier;

WHEREAS, the State of Alabama challenged the Corps' adoption of the 2017 ACF Master Manual on multiple grounds;

WHEREAS, by orders dated May 5, 2020, and August 11, 2021, respectively, the United States District Court for the Northern District of Georgia granted judgment in favor of the Federal Defendants and the Georgia Parties on all claims asserted by the State of Alabama (*see In re ACF Basin Water Litig.*, 467 F. Supp. 3d 1323 (N.D. Ga. 2020); *In re ACF Basin Water Litig.*, 554 F. Supp. 3d 1282 (N.D. Ga. 2021));

WHEREAS, the State of Alabama timely appealed the district court's final judgment and all underlying orders and opinions to the United States Court of Appeals for the Eleventh Circuit, where its appeal was docketed as *State of Alabama v. United States Army Corps of Engineers, et al.*, No. 21-13104 (11th Cir.);

WHEREAS, the Parties have disputed the Federal Defendants' decisions about operating the ACF reservoirs for many years, resulting in many court cases, of which Alabama's current challenge to the 2017 ACF Master Manual is the latest;

WHEREAS, through mediation, the non-Federal Parties have agreed upon modifications (the "Flow Objective Alternative," defined below) to the 2017 ACF Master Manual that, if adopted and implemented by the Corps, will resolve Alabama's pending challenge;

WHEREAS, the Federal Defendants have agreed to review and evaluate the Flow Objective Alternative to determine if it can and should be adopted to resolve Alabama's pending challenge.

NOW THEREFORE, the Parties agree as follows:

1) Definitions

1.1 The "Pending Appeal" refers to the State of Alabama's appeal pending before the United States Court of Appeals for the Eleventh Circuit, which is docketed as *State of Alabama v. U.S. Army Corps of Engineers, et al.*, No. 21-13104 (11th Cir.).

1.2 The “Flow Objective Alternative” refers to the following four water management objectives, considered as a package: (1) an objective to maintain a minimum average daily flow of 1,350 cfs over any 7-day period at the gage located on the Chattahoochee River at 14th Street at Columbus, Georgia (Gage No. 02341460) when the ACF Basin is not in “Drought Zone Operations” as that term is defined in the 2017 ACF Master Manual; (2) an objective to maintain a minimum average weekday flow of 2,000 cfs at the gage located on the Chattahoochee River near Columbia, Alabama (Gage No. 02343801) when the ACF Basin is not in “Drought Zone Operations” as that term is defined in the 2017 ACF Master Manual; (3) an objective to maintain the minimum average flows at Columbus, Georgia and Columbia, Alabama described in items (1) and (2) above, on two days each calendar week starting each Monday when the ACF Basin is in “Drought Zone Operations” as that term is defined in the 2017 ACF Master Manual; and (4) an objective to maintain Lake Seminole at or above an elevation of 76 feet NVGD in the same manner and to the same extent as provided in the 2017 ACF Master Manual, and in particular the following paragraphs from Appendix A, the Water Control Manual for Jim Woodruff Lock and Dam and Lake Seminole: Chapter III, paragraph 3-03; Chapter VII, paragraphs 7-03, 7-05(a), 7-10, and 7-11; and Chapter VIII, Paragraph 8-11 b.. If the Flow Objective Alternative is adopted, the Corps would make data available on its publicly available website from which ascertainment of these objectives can be determined.

2) Review of Flow Objective Alternative

2.1 Motion to Stay Appeal. Within 10 days of the Effective Date, the Parties shall jointly move the Court to stay the Pending Appeal pending conclusion of the public and environmental review process described in Paragraphs 2) and 3).

2.2 Review Process and Public Comment.

(a) Within 14 days of the Effective Date, the Corps shall initiate a process to determine if the Flow Objective Alternative should be adopted and incorporated into the ACF Master Manual.

(b) The review process shall include the following at a minimum: (i) the preparation of a Supplemental Information Report to determine if any additional documentation under the National Environmental Policy Act is required pursuant to 40 C.F.R. § 1502.9(d); (ii) a 30-day public comment period beginning after the Corps has determined whether additional NEPA documentation will be required and coordinated with any comment period associated with such additional NEPA documentation; and (iii) such other procedures as the Corps, after consulting with the Non-Federal Parties, deems necessary to comply with applicable requirements.

(c) Because the Flow Objective Alternative is the product of a mediated agreement, the Parties expressly acknowledge and agree that all four components of the Flow Objective Alternative will be evaluated and considered for adoption together as a single alternative.

3) Final Decision by the Corps. The Corps shall within the time frames set forth below issue a Final Decision stating whether the Flow Objective Alternative will be adopted and incorporated into the ACF Master Manual:

3.1 If the Corps determines under Paragraph 2.2(b) that additional NEPA documentation is not required, the Corps shall appropriately document that determination within 30 days of the close of the last public comment period required under Paragraph 2) above.

3.2 If the Corps determines under Paragraph 2.2(b) that additional NEPA documentation is required, the Corps shall issue an Environmental Assessment and Finding of No Significant Impact or a Record of Decision in accordance with 40 C.F.R. § 1506.11.

3.3 If the Corps' Final Decision declines to adopt the Flow Objective Alternative, the Parties will jointly move the Court within 10 days to lift any stay of the Pending Appeal, and this Agreement will otherwise be null and void.

3.4 If the Corps' Final Decision adopts the Flow Objective Alternative:

(a) Within 1 year after the issuance of a Final Decision by the Corps to adopt the Flow Objective Alternative, Alabama shall voluntarily dismiss the Pending Appeal pursuant to Federal Rule of Appellate Procedure 42(b), with all parties to bear their own attorneys' fees and costs and with any costs due to the Court to be divided equally among the Parties. Provided, however, that if at the end of that 1-year period, litigation is pending challenging the Corps' adoption of the Flow Objective Alternative, Alabama's obligation to voluntarily dismiss the Pending Appeal will be stayed until 7 days after the issuance of whatever final, non-appealable orders are necessary to resolve all such litigation in favor of the Corps' adoption of the Flow Objective Alternative. If that litigation results in a final and non-appealable order setting aside the Corps' decision to adopt the Flow Objective Alternative, then the parties will jointly move the Court within 10 days to lift any stay of the Pending Appeal, and this Agreement will otherwise be null and void.

(b) No Party will move to alter, amend, or vacate any order, decision, or judgment of the district court under review in the Pending Appeal, including on grounds that the Pending Appeal became moot as a result of this Agreement. The Parties further agree to oppose any such motion by any non- Party.

4) Effective Date. This Agreement may be executed in counterparts and shall become effective upon execution by all Parties or their authorized representatives.

5) Notices.

5.1 All notices required to be provided under this Agreement shall be sent to the Parties at the following addresses unless otherwise agreed to by the parties:

To the Federal Defendants:	Michael T. Gray Environment and Natural Resources Division U.S. Department of Justice Post Office Box 7415 Washington, D.C. 20044 michael.gray2@usdoj.gov
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To the State of
Alabama: John C. Neiman, Jr.
Brandt P. Hill
Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue N.
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bhill@maynardcooper.com

To the State of Georgia: Shelly Jacobs Ellerhorst
John C. Allen
Kazmarek Mowrey Cloud Laseter LLP
1230 Peachtree Street, NE
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sellerhorst@kmcllaw.com
jallen@kmcllaw.com

To the Water Supply
Providers: Lewis B. Jones
John L. Fortuna
Jones Fortuna LP
111 New Street, Suite A
Decatur, GA 30030
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jfortuna@jonesfortuna.com

6) **Force Majeure.** The possibility exists that circumstances outside the reasonable control of a party could delay its compliance with the timelines, responsibilities, or other expectations contained in this Agreement. On the Federal Defendants' side, such situations include, but are not limited to, a government shutdown or an extreme weather event that prevents Defendants' staff from meeting the timelines, fulfilling the responsibilities, or meeting the expectations contained in provisions to this Agreement. Should a delay occur due to such circumstances, any resulting failure by the Federal Defendants under this Agreement shall not constitute a failure to comply with the terms of this Agreement, and any timelines so affected shall be extended one day for each day of the delay. The party invoking this provision (force majeure) shall provide the opposing party or parties with reasonable notice and explanation for the delay. Any dispute regarding invocation of this provision, or the length of the claimed delay, shall be resolved in accordance with the dispute resolution provision of Paragraph 7) of this Agreement.

7) Dispute Resolution. If any party believes another party has failed to comply with any provision of this Agreement, the party asserting noncompliance shall provide the other(s) with written notice and the basis for the alleged noncompliance. The Parties shall meet and confer (virtually, telephonically, or in person) to attempt to resolve the dispute within 10 days of such written notice or such time thereafter as is agreed upon by the Parties. If the Parties are unable to resolve the dispute, a party's sole remedy for asserted noncompliance is to move the Court to reactivate the Pending Appeal. Any such motion shall state the positions of the other Parties and whether they intend to file a response to the motion. To the extent any such motion is granted, resumption of active litigation renders any remaining obligations of the Parties under this Agreement null and void. The Parties agree that contempt of Court is not an available remedy for any alleged or actual violation of this Agreement. In the event that the Corps' Final Decision adopts the Flow Objective Alternative, this paragraph will not apply to any disputes concerning the Corps' compliance with the water management objectives identified in the Flow Objective Alternative. Instead, any such disputes would need to be resolved through the mechanisms that are generally applicable to disputes concerning the Corps' actions.

8) Anti-Deficiency Act. The Federal Defendants' obligations under this Agreement are subject to the availability of appropriated funds applicable for such purpose. No provision of this Agreement shall be interpreted as, or constitutes, a commitment or requirement that the Federal Defendants are obligated to pay funds exceeding those available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or take any action in contravention of any other applicable appropriations law.

9) Entire Agreement. This Agreement constitutes the entire agreement of the Parties regarding the issues addressed herein.

**AGREED TO BY THE STATE OF ALABAMA, THROUGH THE FOLLOWING
AUTHORIZED REPRESENTATIVES:**



STEVE MARSHALL
Attorney General, State of Alabama

Dated: 11/27/23

By:

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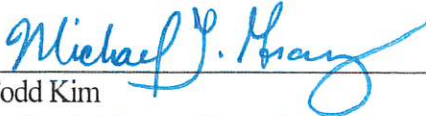
APPROVED:



KAY IVEY
Governor, State of Alabama

Dated: 12-6-23

**AGREED TO BY THE FEDERAL DEFENDANTS, THROUGH THE FOLLOWING
AUTHORIZED REPRESENTATIVE(S):**



Todd Kim
Assistant Attorney General

Dated: November 20, 2023

Michael T. Gray
Environment and Natural Resources Division
U.S. Department of Justice
Post Office Box 7415
Washington, D.C. 20044
michael.gray2@usdoj.gov

Counsel for the U.S. Army Corps of Engineers; Christine E. Wormuth, Secretary of the Army, as successor to Robert M. Speer; Michael L. Connor, Assistant Secretary of the Army (Civil Works), as successor to Douglas Lamont; Lt. Gen. Scott A. Spellmon, Chief of Engineers; as successor to Maj. Gen. Todd T. Semonite; Brig. Gen. Jason E. Kelly, Commander, South Atlantic Division, as successor to Brig. Gen. C. David Turner

State of Alabama, et al. v. U.S. Army Corps of Engineers, et al.
No. 21-13104

**AGREED TO BY THE STATE OF GEORGIA, THROUGH THE FOLLOWING
AUTHORIZED REPRESENTATIVES:**

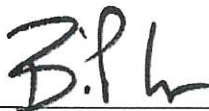


CHRISTOPHER M. CARR
Attorney General, State of Georgia

Dated: 12/5/23

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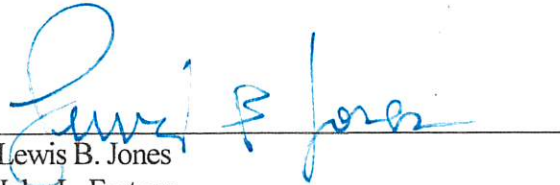
APPROVED:



BRIAN P. KEMP
Governor, State of Georgia

Dated: Dec. 5, 2023

**AGREED TO BY THE WATER SUPPLY PROVIDERS, THROUGH THE FOLLOWING
AUTHORIZED REPRESENTATIVE(S):**



Dated: Nov. 27, 2023

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