No. 142, Original

In The
Supreme Court of the United States

STATE OF FLORIDA,

Plaintiff,

v.

STATE OF GEORGIA,

Defendant.

REPLY BRIEF IN SUPPORT OF GEORGIA'S MOTION TO DISMISS FOR FAILURE TO JOIN A REQUIRED PARTY

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INTRODUCTION

No matter how hard it tries to blur the issue, Florida's only goal in this case is to increase the amount of water that flows from Georgia into Florida. To achieve that goal, Florida will first have to meet its heavy burden of proving a substantial, cognizable injury caused by an inequitable water use by Georgia. Assuming it is able to make that showing, however, nothing entitles Florida to limit the remedies the Supreme Court can provide to redress any such injury. That is the nub of the current dispute over the need for the United States to participate as a party in this equitable apportionment action.

There is no question that the Army Corps of Engineers controls the "spigot" of water at the Florida-Georgia line, through its operation of both the Jim Woodruff Dam at the headwaters of the Apalachicola River, as well as a series of upstream dams and reservoirs on the Chattahoochee River. It is also undisputed that the Corps operates those dams and reservoirs to serve an array of federal purposes, and that the Corps is working apace on updating its Master Manual for how it will implement those federal purposes in the operation of its facilities in the ACF Basin. Thus, while it is true that the United States does not *own* the waters in the Basin, it is also true that there are important federal interests in the management of federal facilities in the Basin, and that the Corps has statutory obligations with respect to the operation of those facilities.

For this reason, the United States agrees with Georgia that the United States is a "required party" because the disposition of this case may, as a practical matter, impair the Corps' ability to fulfill its statutory obligations. If this Court

were to direct that a certain amount of water flow from Georgia into Florida—the most obvious and direct remedy for Florida's alleged injury—it would necessarily impact the Corps' operations. Even Florida does not seriously contest this point.

Although it concedes it is a required party, the United States does not intend to intervene and thereby subject itself to this Court's jurisdiction. The crux of the current dispute, thus, is whether this action may proceed in "equity and good conscience" without the participation of the United States as a party. Fed. R. Civ. P. 19(b). Both Florida and the United States assert that it may, on the theory that this Court could afford Florida relief by limiting any decree to imposing consumption caps, in lieu of a state-line-flow requirement or other forms of relief. That assertion, however, fundamentally misperceives the nature of an equitable apportionment action. The States in our federal Union are certainly entitled to ask this Court for an equitable apportionment (assuming they are able to establish the various prerequisites for such extraordinary relief). But they are not entitled to limit the *remedies* available to this Court in implementing such an allocation. Florida certainly has no legitimate interest in dictating the remedies available to this Court in an equitable apportionment action, and it certainly cannot gerrymander its requested remedies to try to avoid a required-party problem. There is no basis in principle or precedent for the proposition that a State can "plead around" such a problem by purporting to tie *this* Court's hands in fashioning an appropriate equitable remedy.

In any event, this case cannot proceed in "equity and good conscience" if any relief ultimately provided would be limited to a consumption cap. Such an artificially limited proceeding would be highly prejudicial to Georgia because it would tie the State's hands in determining how to comply with the Court's order—Georgia would be *forced* to reduce consumption even if other, less intrusive remedies would otherwise be available. Consumption caps would also not provide Florida adequate relief. Because the United States controls flows in the ACF Basin to serve federal purposes, reducing Georgia's consumption would not guarantee Florida relief—particularly during periods of low-flows or drought when federal purposes would force the Corps to impound additional water upstream.

For those very reasons the United States tries to reserve the right to pull the plug on this dispute if the eventual remedy proves to be prejudicial to the government. But that solution raises serious separation of powers concerns. When this Court, as the head of the Judicial Branch, undertakes to adjudicate a case—especially a case as delicate as a dispute between States—it should not be up to the Executive Branch to decide whether and to what extent that case may proceed. And it would certainly be inefficient, and inconsistent with this Court's professed desire to exercise its original jurisdiction sparingly, to force the parties to spend millions of taxpayer dollars in litigating this action only to have the United States ultimately declare that its interests would be prejudiced by a proposed resolution and render everything for naught. The Executive Branch should not be allowed to hold a sword of Damocles over the parties and this Court.

ARGUMENT

I. THE UNITED STATES IS A REQUIRED PARTY

A. Resolving This Case May Impede The United States' Ability To Protect Substantial Federal Interests In The ACF Basin.

The United States concedes that it is a required party. That concession is not surprising, given "the United States' statutory duty to operate the federal projects in the [ACF Basin] for their authorized purposes." U.S. Br. 1. The Corps operates five dams and reservoirs in that Basin, "each of which was constructed for specific purposes, including navigation, hydroelectric power, national defense, commercial value of riparian lands, recreation, and industrial and municipal water supply." U.S. Br. 8-9. An array of federal statutes, including the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321, the Endangered Species Act of 1973, 16 U.S.C. § 1531 *et seq.*, the Water Supply Act of 1958, 43 U.S.C. § 390b; the Fish & Wildlife Coordination Act of 1958, 16 U.S.C. §§ 661-667e, and the Flood Control Act of 1944, 16 U.S.C. § 460d, limits the Corps' discretion over the operation of those facilities. *See* U.S. Br. 4 ("[T]he Corps implements statutes enacted by Congress to accomplish specified *federal* purposes on this interstate river system.") (emphasis in original); *id.* at 13 ("Congress has required the Corps to regulate the ACF Basin and to do so for the federal purposes of navigation, flood control, hydropower generation, recreation, the protection of endangered and threatened species, and at least some accommodation of municipal and industrial water supply.").

Thus, as the United States explains, it has a "clear interest in this action to the extent that relief might regulate, limit, or define the volume or rate of flow

through [those] projects." *Id.* at 9. If the Court were to order a specific amount of water to flow through the Jim Woodruff Dam into the Apalachicola River in Florida, for example, "the Corps might be confronted by a conflict between [those] federal statutory purposes of its projects and Florida's right to flows under the decree." *Id.* The possibility of such a conflict is enough to make the United States a required party. *See, e.g.*, Fed. R. Civ. P. 19(a)(1)(B) (deeming a party required if relief "may" impair or impede its interests); *Provident Tradesmens Banks & Trust Co. v. Patterson*, 390 U.S. 102, 108 (1968) (an absent party is required if there is "the *possibility* that a judgment might impede the [absent party's] ability to protect [its] interest") (emphasis added).

Florida tries to avoid that common sense conclusion by insisting that it "is not asking the Court to impose any 'minimum flow' regime." Fla. Br. 18. But "[a]lthough Florida's complaint eschews seeking relief that could affect the Corps' projects, such a possibility cannot be foreclosed at this early stage in the proceedings." U.S. Br. 8. Florida certainly cannot, by narrowing its requested relief in order to avoid a Rule 19 problem, limit the remedies available to the Court in an equitable apportionment action. *See, e.g.*, *Colorado v. New Mexico*, 459 U.S. 176, 183 (1982) (explaining that the Court in an equitable apportionment case "must consider all relevant factors" to reach a "just and equitable allocation") (internal quotation omitted); *South Carolina v. North Carolina*, 558 U.S. 256, 271 (2010) ("We do not approach the task [of an equitable apportionment] in formulaic fashion, but we consider all relevant factors.") (internal quotation omitted).

Nor is it merely a "remote possibility" that the relief ultimately awarded by the Court (if indeed Florida is able to overcome the substantial obstacles necessary to obtain such relief) would be a state-line-flow requirement. Fl. Br. 19 (purporting to distinguish *Patterson* on the ground that the relief in that case was "much more of a realistic 'possibility' than the remote possibility the Court here will issue relief that Florida has not even requested"). The relief ordered in an equitable apportionment case must bear some reasonable relationship to the injury of the plaintiff State. *See, e.g.*, *Idaho ex rel. Evans v. Oregon*, 462 U.S. 1017, 1028 (1983) ("Equitable apportionment is directed at ameliorating present harm and preventing future injuries to the complaining State."). Here, as Florida's brief confirms, Florida's alleged harms all stem from purportedly inadequate water flows from Georgia into the Apalachicola River. *See* Fl. Br. 4 (alleging that Georgia's water consumption "diminishes Apalachicola River flows"); *id.* at 5 (alleging that "Georgia's water usage has depleted spring and summer flows into the Apalachicola"); *id.* (alleging various harms from "[l]ow flows, especially sustained minimal flows"); *id.* at 6 (complaining of the "'amount of water entering Florida'") (quoting Compl. ¶ 59). The most direct and efficient form of relief, therefore, would be an order requiring a certain flow rate at the Georgia-Florida border. *See, e.g.*, *New Jersey v. New York*, 283 U.S. 336, 346 (1931) (imposing minimum flow requirement). Because such relief would affect the United States, there can be no serious question that the United States is a "required party" here. *See* Fed. R. Civ. P. 19(a)(1)(B).

Indeed, the United States claims that this action is *already* impairing its ability to serve federal interests in the ACF Basin. *Id.* In the course of discovery, Georgia and Florida jointly served document subpoenas on various federal agencies, including the Corps. The United States responded by explaining that because "the employees with the most relevant knowledge [of the subpoenas] … are the same employees actively working on the revision of the water control plans and manuals for the ACF Basin," complying with those subpoenas "would yet again jeopardize the Corps' ability to timely complete its revision of the manuals." March 23, 2015 Ltr. from M. Gray to Special Master at 2-3. That only confirms that this action, whatever path it ultimately takes, will continue to impede the United States' ability to protect its interests in the Basin, necessarily making it a required party.

B. This Court Cannot Accord Florida "Complete Relief" Without The United States As A Party.

Given the United States' inescapable concession that adjudicating this case in its absence "may … as a practical matter impair" its interests, Fed. R. Civ. P. 19(a)(1)(B), it is unnecessary for the Court to address the alternative standard set forth in Rule 19(a)(1)(A)—which asks whether the Court can "accord complete relief" without the absent party. Nonetheless, for reasons given in Georgia's motion, this Court cannot accord Florida "complete relief" without the participation of the United States. *See* Ga. Mot. 11-15. The only way to accord "complete relief" to Florida is to ensure that flows of appropriate magnitude reach Florida at appropriate times. The United States, however, has admitted that it exercises "paramount power … to control [ACF] flows for federal purposes." U.S. Br. 22

(internal quotation omitted). Without a judgment from this Court directing it to do so, nothing would require the Corps to provide Florida with the flows on the Apalachicola that it purports to require—at least during periods of seasonal low flows or droughts—instead of using any additional water to serve federal purposes in the ACF Basin. To the contrary, federal law likely would *prohibit* the Corps from releasing additional water to Florida if doing so served no authorized statutory purpose. Ga. Mot. 13.

Florida responds by arguing that "not *all* of the extra water [created by Georgia's reduced consumption] would be diverted by the Corps, meaning that *more* water necessarily would flow out of the system—and into Florida." Fl. Br. 15 (emphases in original). But equitable apportionment does not "vindicate a barren right" to water. *Washington v. Oregon*, 297 U.S. 517, 523 (1936). To the contrary, it divides interstate waters to ensure that one State does not "harm[] the other's interest in the river." *Virginia v. Maryland*, 540 U.S. 56, 74 n.9 (2003). According Florida complete relief is possible only if the Court can ensure that sufficient water will be released to alleviate the alleged harm to wildlife that Florida alleges to have occurred. And there is simply no way to ensure such mandatory flows if the United States is not a party that can be bound by the Court's decree.

Florida also errs by arguing that "[b]ecause of the limited storage capacity at Lake Seminole, the Corps has no significant ability to regulate water flow from Woodruff Dam into the Apalachicola River." Fl. Br. 7. While it is true that Woodruff Dam is a "run-of-the-river project," U.S. Br. 19, and the Corps does not

store significant amounts of water at Lake Seminole, it is also true (as the United States acknowledges) that the Corps can and does "regulate water flow … into the Apalachicola River" through its operation of the *four other* dams upstream on the Chattahoochee River. *See, e.g.*, U.S. Br. 3 ("During time of low natural inflows to Woodruff Dam, flows are supplemented by releases from the Corps' upstream projects."). In other words, in this unified system, the Corps regulates water flow through Woodruff Dam through its operation of upstream dams and reservoirs on the Chattahoochee River—making it impossible for this Court to provide "complete relief" to Florida in the absence of the United States as a party.

II. "EQUITY AND GOOD CONSCIENCE" WEIGH STRONGLY IN FAVOR OF DISMISSING THIS ACTION

Although it is a "required party," the United States "cannot be joined as a party because it is immune from suit, and it does not intend to intervene." U.S. Br. 7; *see also* U.S. Stmt. of Participation (2/9/15) at 2-4. In light of this development, Florida's assertion that Georgia's motion to dismiss is a "recycled" version of "the same arguments that it made to the Supreme Court in urging the Court to prevent this action from proceeding at all," Fl. Br. 1, is meritless. At the time this Court granted Florida leave to file its complaint, the United States had not decided "whether intervention would be appropriate." U.S. Amicus Br. 20. The Court thus had no occasion to consider the implications of the United States' refusal to participate as a party in this litigation. The Court certainly cannot be deemed to have decided that this case could proceed without the participation of the United States when that question was never before the Court.

That question is now squarely presented: Can this action proceed "in equity and good conscience" without the United States as a party. Fed. R. Civ. P. 19(b). Both Florida and the United States make the same argument for why, in their view, this case can proceed: the Court *may* limit relief to capping Georgia's upstream water consumption, which Florida surmises *might* provide redress for its injuries if the Corps allows additional water to pass through its facilities into Florida. *See* Fl. Br. 12-17; 22-26; U.S. Br. 11-19. That argument, as explained below, misses the point.

A. Limiting Relief To A Consumption Cap Would Be Highly Prejudicial, And That Prejudice Could Not Be Avoided By Shaping Relief.

Proceeding with this equitable apportionment action on the theory that this Court could only enter a consumption cap makes no sense, and would be highly prejudicial to Georgia. *See* Fed. R. Civ. P. 19(b)(1)-(2). As noted above, Florida's alleged injuries all stem from purportedly insufficient flows of water from Georgia. The most direct remedy for Florida's alleged harms, therefore, is an increased water flow at the state line. *See, e.g.*, *New Jersey*, 283 U.S. at 346.[1] The problem, from Florida's perspective, is that such a remedy could not be imposed without the

[1] In addition to imposing a minimum-flow requirement, the Court in *New Jersey* also enjoined the State and City of New York from diverting more than 440 million gallons of water daily. 283 U.S. at 346. A consumption cap (coupled with a minimum-flow requirement) provided New Jersey relief in that case, however, because New York (not the federal government) controlled the dams and reservoirs at issue, meaning that the very party that controlled the flow of water in that case was also a party before the Court that could be bound by a decree. That is not true here, where the United States has refused to intervene.

participation of the United States, which controls flows in the ACF Basin to serve federal purposes.

So Florida proposes the remedy of a consumption cap to try to avoid its required-party problem. But that is nothing but a ploy: a State cannot restrict this Court's broad discretion in an equitable apportionment action by limiting the proposed remedy for its injury. Indeed, a consumption cap is the most *drastic* remedy available because it would go beyond merely trying to provide Florida additional water at the state line, and would instead dictate to Georgia *how* it must manage its own water resources in the AFC Basin. It is hard to think of a remedy more alien to "Our Federalism." *Younger v. Harris*, 401 U.S. 37, 44 (1971). Consumption caps also would require Georgia to cut consumption across the board, even if those caps imposed substantial economic consequences on the millions of citizens that rely on water in the ACF Basin for municipal, industrial, and agricultural purposes—and it would impose those heavy costs even if caps failed to have any meaningful impact on increasing flows at the state line.

The Court should and must be free to consider other, less-intrusive remedies short of the draconian consumption caps that Florida would impose. Florida has no authority to decree how a remedy must be crafted, if, indeed, Florida is able to clear the substantial other hurdles necessary to obtain such relief at all. Nor is there any basis for this Court to embark on an equitable apportionment action where, from the outset, only the most intrusive and punitive remedy is on the table.

Both Florida and the United States thus miss the point by arguing that Florida has *alleged* that a consumption cap is an appropriate remedy, and such a remedy is "at least plausible." *See* Fl. Br. 1, 12-13, 18, 22, 26; U.S. Br. 11, 13-14, 16, 19. That cannot possibly be the standard for allowing an equitable apportionment action to proceed in the absence of a required party. Florida could have alleged that an appropriate remedy here was to limit the citizens of Atlanta to one glass of water per day, or to cease all farming activities in the Flint River Basin. But this is not a pleading game, and the nature of the relief requested (even assuming that Florida had in fact limited its requested relief solely to a consumption cap, which it did not, *see* Fl. Compl. Prayer for Relief) cannot possibly limit or distort this Court's remedial options. Where the absence of a required party would limit this Court to providing a highly prejudicial remedy upon the upstream State, the action cannot "in equity and good conscience" proceed.

Remarkably, the United States recognizes full well that this Court likely cannot adjudicate this case on a consumption-caps-only basis. For that very reason, the United States argues that "[t]he case should proceed with the understanding that, if it appears that relief cannot be issued without prejudicing the interests of the United States ... then the case must be dismissed." U.S. Br. 1; *see also* U.S. Br. 22 ("If it appears in the future that relief cannot be shaped to avoid prejudice to the United States' interests, then dismissal may be appropriate at that time because the balance of equities under Rule 19(b) will have changed."); *id.* at 7 ("[T]he United States concludes that the case may proceed at this time, *subject to dismissal if it*

appears that adequate relief between the parties would prejudice the United States' interests.") (emphasis added); *id.* at 23 ("*For now*, [] the case should be allowed to proceed.") (emphasis added). It is entirely inappropriate, and anathema to principles of separation of powers, for this Court to proceed to adjudicate this original action between States on the understanding that the Executive Branch can pull the plug at any time—especially after the Court and the parties have invested the substantial resources (and taxpayer dollars) necessary to adjudicate such a far-ranging and fact-intensive dispute.

B. This Court Cannot Render An Adequate Judgment In The Absence Of The United States.

It is also likely, if not inevitable, that a judgment rendered in the absence of the United States as a party would not be "adequate." Fed. R. Civ. P. 19(b)(3). Again, Florida and the United States try to avoid this point by asserting that Florida has *alleged* a remedy—a cap on Georgia's water consumption—that would provide Florida with "adequate" relief without affecting the interests of the United States. Fl. Br. 27. But it is far from clear whether a consumption cap would give Florida increased water flow at the state line, at least during times of drought, when (as Florida itself says) its "need for water is particularly acute." Fl. Br. 14. Because the United States controls water flows in the ACF Basin for federal purposes through its operation of an integrated system of dams and reservoirs, this Court cannot ensure that such an increased water flow will actually reach Florida without the Corps' participation as a party.

In response to this point, Florida argues that a consumption cap would provide it relief because such a cap would "increase upstream *inflows* into the ACF Basin," Fl. Br. 13, which in turn would "increase the amount of water that ultimately passes through each [federal] dam and into the Apalachicola," *id*. at 26; *see also id*. at 14 (arguing that there is a "direct connection between the amount of water Georgia consumes before it reaches the Corps facilities and the amount of water that reaches the Apalachicola Basin"). But that argument is a *non sequitur*. The Corps can, and—at least during periods of drought, does—exercise its "paramount power … to control [ACF] flows for federal purposes," U.S. Br. 22 (internal quotation omitted), by impounding water upstream. *See*, *e.g.*, Scoping Report at 18 (Ex. A to Ga. Mot.) (explaining that the Corps "reduc[es] flow releases as pool levels drop as a result of drier-than-normal or drought conditions"). Without the Corps as a party, therefore, there is no way this Court can ensure that sufficient water will be released downstream to redress Florida's alleged injuries.

This is not a matter of "speculation." Fl. Br. 15. Under current federal law, during times of drought or seasonal low flows, the Corps' authority to take account of water flows in the Apalachicola River is limited to ensuring "a minimum flow of 5,000 cubic feet per second." U.S. Br. 3. And even that requirement is "suspended during drought contingency operations." Scoping Report at 9. The Corps would likely violate the Administrative Procedure Act (or other provisions of law) if it were to use any "increase[d] upstream inflows" created by a consumption cap to supplement flows in the Apalachicola beyond that level, if doing so served no

authorized federal statutory purpose. Federal law—not Georgia's "speculation"—would prevent a consumption cap from affording Florida relief in an action in which "the United States would not be legally bound by any decree of this Court requiring a minimum flow rate at Woodruff Dam." U.S. Br. 18.

The United States asserts in a footnote that its refusal to be bound by any decree of this Court "is not to suggest that the Corps would ignore such a decree if it were entered." U.S. Br. 18 n.4. That assertion is perplexing. The Corps is required to operate the unified system of dams and reservoirs in the ACF Basin for specific federal purposes. Thus, as the United States acknowledges in the very next sentence, any such "accommodation" of this Court's decree would necessarily be "subject to the limits of the Corps' authority." *Id.* There is certainly no basis for proceeding with this original action in the mere hope that the Corps might be able to accommodate any common-law equitable decree with its statutory obligations

Nor is it any answer to say that the "Flint River is not impounded by any federal dams or reservoirs." Fl. Br. 16 (internal quotations and emphasis omitted). Flows from the Flint River still must pass through the Woodruff Dam, and although the Corps does not operate dams or reservoirs on the Flint, the Corps nonetheless takes account of flows from the Flint when determining how much water to release from the four federal dams on the Chattahoochee River. Compl. ¶ 22 (explaining that "the Corps' dams are operated *as a unified whole* to achieve multiple project purposes") (emphasis added). Even if a consumption cap resulted in increased flows from the Flint River, therefore, the Corps—at least during low-flow or drought

conditions—would credit those flows toward maintaining the legally required 5,000 cubic-feet-per-second minimum at Woodruff Dam, while simultaneously impounding more water on the Chattahoochee to serve others federal purposes. In other words, increasing flows from the Flint would not, during periods of drought or seasonal low flows, increase the *net* amount of water flowing into the Apalachicola River.

Remarkably, the relief Florida purports to seek in this case—an order "capping Georgia's overall depletive water uses at the level then existing on January 3, 1992," Compl. at 21 (Prayer for Relief)—was apparently chosen by Florida without any regard for whether that relief would actually remedy Florida's alleged harms. Even if one were to assume, for the sake of argument, that there were some inescapable connection between Georgia's consumption and flow at the state line (which there is not), Florida alleges no plausible reason for why 1992 flow levels would be sufficient to redress its alleged injuries. Florida, instead, seems to have strategically requested that remedy in a calculated attempt to avoid the very problem that Georgia has identified—namely, that this case cannot proceed with the United States.

The inability of a consumption cap alone to remedy Florida's alleged injury also distinguishes this case from *Idaho ex rel. Evans v. Oregon*, 444 U.S. 380 (1980). That case concerned the equitable apportionment of fish, not water. And the Court held that the United States was not an indispensable party because—even though it operated a series of dams on the river in question—there was an "estimable [fish]

mortality rate at each dam" that did not vary significantly based on the Corps' operations. *Id*. That made it possible for the Court to calculate the number of fish that would be available downstream if Oregon's and Washington's consumption of fish was capped upstream. *Id*. at 389. Under those conditions, a cap on consumption would "under all but the most adverse river conditions, result in greater number of fish crossing each dam" and making their way to Idaho. *Id*. at 388-89.

This case is much different. There is no set mathematical formula by which the Corps releases water from the dams in the ACF Basin. *Id*. at 389. Rather, the Corps varies its releases over time depending on a complex set of hydrologic, climatic, and other factors. *See, e.g.*, Scoping Report at 18 ("[T]he complex hydrology and varied uses of the ACF system require that the [Corps] operate the system … in an attempt to meet all the authorized purposes while continuously monitoring the total system's water availability."). That means that—in the absence of the United States as a party that could be bound by the Court's decrees—it would be impossible to ensure that decreased consumption by Georgia would redress Florida's alleged injuries, particularly during periods of seasonal low flows or droughts when the Corps' federal statutory obligations might well require the Corps to impound much of the increased inflow to serve upstream federal purposes.

For similar reasons, Florida's and the United States' attempts to distinguish *Arizona v. California*, 298 U.S. 558 (1936), fall flat. *See* Fl. Br. 19-20; U.S. Br. 11-14. *First*, they argue that the water at issue in *Arizona* "was necessarily federal

project water," whereas the water in the ACF Basin is "not federal project water." Fl. Br. 19-20 (emphasis omitted); *see also* U.S. Br. 12. But regardless of who "own[s]" or "apportion[s]" the water in the ACF Basin, Fl. Br. 13 (quotations omitted), the United States has "paramount power … to control [ACF] *flows* for federal purposes" through its operation of its integrated system of dams and reservoirs. U.S. Br. 22 (quotations omitted and emphasis added). And that unquestioned authority to control flows in the ACF Basin to serve federal purposes is precisely what makes the United States a required party here.

Second, Florida and the United States argue that the "relief sought here would not necessarily require actions by the Corps," whereas the relief requested in *Arizona* "required direct action by the Bureau of Reclamation." U.S. Br. 12; Fl. Br. 20. That is just wrong: because Florida's alleged injuries all stem from allegedly inadequate water flows from Georgia into Florida, and because the Corps has the unquestioned authority to control those flows to serve federal purposes, the Corps will inevitably have to take *some* action to afford Florida relief—at least during periods of drought or seasonal low flows when binding regulatory requirements would otherwise compel the Corps to impound additional water upstream.

In any event, Florida fundamentally misunderstands the meaning of "adequacy" under Rule 19(b)(3). The term "adequate judgment" does not refer merely "to satisfaction of the [plaintiff's] claims." *Republic of Philippines v. Pimentel*, 553 U.S. 851, 870 (2008). Rather, adequacy also encompasses "the interest of the courts and the public in complete, consistent, and efficient settlement

of controversies," and the "public stake in settling disputes by wholes, whenever possible." *Provident*, 390 U.S. at 111; *see also Republic of Philippines*, 553 U.S. at 870 (same). In the absence of the United States as a party that can be bound by the judgment, this original action is simply not "an efficient use of judicial machinery." *Provident*, 390 U.S. at 112 n.10.

C. **There Are Other Adequate Remedies Available To Florida.**

Finally, if this case were dismissed, Florida would still have adequate remedies at its disposal. *See* Fed. R. Civ. P. 19(b)(4). The Corps is currently in the process of "updating the Master Manual and the individual reservoir regulation manuals" pursuant to which it operates federal projects in the ACF Basin. U.S. Br. 3. As part of that process, the Corps will "set the minimum flow rate required at Woodruff Dam to meet federal project purposes and the requirements of the Endangered Species Act of 1973." *Id*. Those federal "purposes" and "requirements" include the protection of various "endangered" species to which Florida claims harm from Georgia's upstream water use. *See, e.g.*, Compl. ¶¶ 53, 58.

Florida can seek—*and indeed already has sought*—relief for its alleged injuries by asking the Corps to set a new "minimum flow rate … at Woodruff Dam" that ensures that sufficient water flows into the Apalachicola River. *See* Scoping Report at 107-12 (comments regarding Master Manual update by Florida Department of Environmental Protection). If Florida is dissatisfied with the "minimum flow" the Corps sets, it can challenge that decision in federal district court under the Administrative Procedure Act. *See* U.S. Br. 22 ("To the extent a

State disagrees with the United States' final agency action revising the Master Manual, review would be available under the Administrative Procedure Act.").

Finally, Florida misses the point by arguing that Georgia previously acknowledged Florida's ability to "file an equitable apportionment case in the United States Supreme Court." Fl. Br. 27 (internal quotation omitted); *see also id.* at 2, 3. No one here denies that only this Court can equitably apportion waters between States. But by recognizing that Florida could *file* an equitable apportionment action, Georgia was hardly conceding that such an action would be appropriate *in the absence of the United States*, which is the very question presented here. To the contrary, Georgia has consistently maintained, in this case and in other proceedings, that the parties' dispute regarding waters in the ACF Basin can be resolved only with the participation of the United States.

CONCLUSION

For the foregoing reasons, Georgia respectfully asks this Court to dismiss this action for failure to join a required party.

Respectfully submitted,

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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 REPLY BRIEF IN SUPPORT OF STATE OF GEORGIA'S MOTION TO DISMISS FOR FAILURE TO JOIN A REQUIRED PARTY has been served on this 3rd day of April 2015, upon the following parties:

For State of Florida	**For United States of America**
By U.S. Mail and Email: REPLY BRIEF IN SUPPORT OF STATE OF GEORGIA'S MOTION TO DISMISS FOR FAILURE TO JOIN A REQUIRED PARTY; Certificate of Service	By U.S. Mail and Email: REPLY BRIEF IN SUPPORT OF STATE OF GEORGIA'S MOTION TO DISMISS FOR FAILURE TO JOIN A REQUIRED PARTY; Certificate of Service
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By Email Only: REPLY BRIEF IN SUPPORT OF STATE OF GEORGIA'S MOTION TO DISMISS FOR FAILURE TO JOIN A REQUIRED PARTY; Certificate of Service Donald G. Blankenau Jonathan A. Glogau Christopher M. Kise Matthew Z. Leopold Osvaldo Vazquez Thomas R. Wilmoth floridawaterteam@foley.com	By Email Only: REPLY BRIEF IN SUPPORT OF STATE OF GEORGIA'S MOTION TO DISMISS FOR FAILURE TO JOIN A REQUIRED PARTY; Certificate of Service Michael T. Gray michael.gray2@usdoj.gov James DuBois james.dubois@usdoj.gov
For State of Georgia By Email Only: REPLY BRIEF IN SUPPORT OF STATE OF GEORGIA'S MOTION TO DISMISS FOR FAILURE TO JOIN A REQUIRED PARTY; Certificate of Service Samuel S. Olens Nels Peterson Britt Grant Seth P. Waxman Craig S. Primis K. Winn Allen Sarah H. Warren georgiawaterteam@kirkland.com	/s/ Craig S. Primis _____ Craig S. Primis *Counsel of Record* KIRKLAND & ELLIS LLP 655 Fifteenth Street, NW Washington, DC 20005 T: 202-879-5000 craig.primis@kirkland.com